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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61 and 121

[Docket No.: FAA–2015–2129; Amdt. Nos. 61–134 and 121–372]

RIN 2120–AK68

Removal of Pilot Pairing Requirement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule conforms Federal Aviation Administration regulations to International Civil Aviation Organization standards and the Fair Treatment for Experienced Pilots Act, both of which no longer contain a pilot pairing requirement. Accordingly, this final rule removes the requirement for a pilot in command who has reached age 60 to be paired with a pilot under age 60 in international commercial air transport operations by air carriers conducting flag and supplemental operations, as well as for other pilots serving in certain international operations using civil airplanes on the U.S. registry. The removal of this restriction will allow all pilots serving on airplanes in international commercial air transport with more than one pilot to serve until age 65 without a requirement to be paired with a pilot under age 60.

DATES: This action becomes effective June 12, 2015.

FOR FURTHER INFORMATION CONTACT: For technical questions concerning this document, contact Nancy Lauck Claussen, Air Transportation Division (AFS–200), Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8166; email *Nancy.L.Claussen@faa.gov.*

For legal questions concerning this document, contact Sara Mikolop, Office of the Chief Counsel (AGC–200), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3073; email *Sara.Mikolop@faa.gov.*

SUPPLEMENTARY INFORMATION:

Good Cause for Immediate Adoption

The FAA is adopting this final rule without prior notice and public comment effective June 12, 2015. Section 553(b)(B) of the Administrative Procedure Act (APA) (5 U.S.C.) authorizes agencies to dispense with notice and comment procedures for rules when the agency for ''good cause'' finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under this section, an agency, upon finding good cause, may issue a final rule without seeking comment prior to the rulemaking. Additionally, section 553(d) of the APA provides a ''good cause'' exception from the requirement to publish a substantive rule at least 30 days before its effective date.

Recent action by the International Civil Aviation Organization (ICAO) to remove the requirement in ICAO Annex 1 (Personnel Licensing), Chapter 2 (Licenses and Ratings for Pilots), Standard 2.1.10.1 to pair a pilot in command (PIC) who has reached age 60 with a pilot under age 60, triggered the sunset of the pilot pairing limitation in 49 U.S.C. 44729(c)(1). Based on this action, as of November 13, 2014, the statutory basis for the pilot pairing requirements in §§ 61.3(j)(2), 61.77(g), and 121.383(d)(2) and (e)(2) of Title 14 of the Code of Federal Regulations (14 CFR) no longer exists and these regulations are contrary to 49 U.S.C. 44729.

The FAA finds that notice and public comment to this immediately adopted final rule are unnecessary and contrary to the public interest because this final rule is limited to conforming 14 CFR parts 61 and 121 with recent changes to statutory requirements pertaining to pilot age limitations. On November 13, 2014, the statutory requirement in 49 U.S.C. 44729(c)(1) for a pilot in command who had reached age 60 to be paired with a pilot under age 60 ceased to be effective, although the regulatory requirements in 14 CFR pertaining to pilot pairing remained in place.

It is contrary to the public interest to allow regulatory requirements pertaining to pilot age limitations to remain in the Code of Federal Regulations when those requirements present a direct conflict with the statutory requirements in the United States Code pertaining to pilot age limitations. Further, under section 553(d)(3) of the APA, the FAA finds that good cause exists for making this rule effective upon publication to minimize any possible confusion between the statutory requirements pertaining to pilot age limitations in 49 U.S.C. 44729 and the regulatory requirements pertaining to pilot age limitations in §§ 61.3(j)(2), 61.77(g), and 121.383(d)(2) and (e)(2) of 14 CFR.

Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency's authority. Additionally, the Fair Treatment for Experienced Pilots Act (Pub. L. 110–135), codified at 49 U.S.C. 44729, establishes requirements pertaining to pilot age limitations.

This rulemaking is promulgated under the authority described in 49 U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules and conform FAA requirements pertaining to pilot age limitations with the Fair Treatment for Experienced Pilots Act.

I. Overview of Immediately Adopted Final Rule

This final rule removes the requirements in §§ 61.3(j)(2), 61.77(g), and 121.383(d)(2) and (e)(2) for a PIC who has reached age 60 to be paired with a pilot under age 60 in international commercial air transport operations conducted under part 121, as well as for pilots relying on a certificate issued under part 61 and serving in certain international operations using civil airplanes on the U.S. registry. The removal of this restriction will allow all pilots serving on airplanes in international commercial air transport with more than one pilot, to serve beyond 60 years of age (until 65 years of age) without a requirement to be paired with a pilot under 60 years of age. This final rule conforms FAA

regulations with ICAO standards and the Fair Treatment for Experienced Pilots Act, which no longer contain a pilot pairing requirement.

II. Background

A. Fair Treatment for Experienced Pilots Act

On December 13, 2007, the Fair Treatment for Experienced Pilots Act (Pub. L. 110–135) amended Title 49 of the United States Code by adding section 44729. Section 44729(a) raised the age limit for pilots serving in operations under part 121 [1] from age 60 to age 65, subject to the limitations in section 44729(c) applicable to PICs on international flights.

Section 44729(c) provided a pilot pairing limitation for PICs serving on international flights. Specifically, section 44729(c)(1) states, ''A pilot who has attained 60 years of age may serve as pilot-in-command in covered operations between the United States and another country only if there is another pilot in the flight deck crew who has not yet attained 60 years of age.'' The pilot pairing requirement in section 44729(c)(1) was consistent with the pilot pairing standard in ICAO Annex 1 (Personnel Licensing), Chapter 2 (Licenses and Ratings for Pilots), Standard 2.1.10.1, applicable to multi-pilot crews in effect at the time that section 44729 was added to the United States Code. Until November 13, 2014, Standard 2.1.10.1 stated:

> A Contracting State, having issued pilot licences, shall not permit the holders thereof to act as pilot-in-command of an aircraft engaged in international commercial air transport operations if the licence holders have attained their 60th birthday or, in the case of operations with more than one pilot where the other pilot is younger than 60 years of age, their 65th birthday.

The Agency notes that for operations with a single pilot, Standard 2.1.10.1 requires the pilot to be under age 60.

The Fair Treatment for Experienced Pilots Act also provided for a self-executing sunset of the pilot pairing requirement. Specifically, section 44729(c)(2) provides that the pilot pairing requirement in section 44729(c)(1) would cease to be effective on the date that ICAO removed the pilot pairing limitation in Standard 2.1.10.1. Section 44729(c)(2) states that ''[p]aragraph [c](1), shall cease to be effective on such date as the Convention on International Civil Aviation provides that a pilot who has attained 60 years of age may serve as pilot-in-command in international commercial operations without regard to whether there is another pilot in the flight deck crew who has not attained age 60.''

B. ''Part 121 Pilot Age Limit'' Final Rule

On July 15, 2009, the FAA published the ''Part 121 Pilot Age Limit'' final rule (74 FR 34229) to conform FAA regulations to the statutory requirements in the Fair Treatment for Experienced Pilots Act (codified at 49 U.S.C. 44729). Based on the statutory authority in 49 U.S.C. 44729, the 2009 final rule raised the pilot age limitation from 60 to 65 and added the pilot pairing requirement for pilots conducting part 121 operations and other multi-pilot operations, between or over the territory of more than one country using U.S.-registered airplanes.

In the 2009 final rule preamble, the Agency stated that it believed that the Fair Treatment for Experienced Pilots Act intended to harmonize FAA regulations with the ICAO standard pertaining to pilot age limitations and pilot pairing requirements, which would encompass international operations in addition to the part 121 operations identified by the Act. *See* 74 FR 34229, 34230 (July 15, 2009). The ICAO standard pertaining to pilot age limitations and pilot pairing applies to pilots serving in operations between his or her home state and another country, as well as between two territories outside of his or her home state.

Accordingly, to harmonize the Agency's regulations with the ICAO standard and further the intent of the Fair Treatment for Experienced Pilots Act, the 2009 final rule added the pilot age limitations and pilot pairing requirement for pilots conducting operations between two international territories using U.S.-registered airplanes and relying on certificates issued under part 61.[2] As a result, for multi-pilot operations, the 2009 final rule increased the maximum age for a pilot to serve and added the pilot pairing requirement for part 121 operations and certain other international air service and air transportation operations using airplanes on the U.S. registry (*See* §§ 61.3(j), 61.77(e) and (g), and 121.383(d) and (e)).

The 2009 final rule did not change the maximum age for pilots serving in international operations covered by § 61.3(j)(1) using a single pilot (*i.e.,* the pilot must be under age 60). *See* § 61.3(j)(2) and 61.77(g). A pilot is only permitted to continue to serve upon reaching age 60 if that pilot serves as a member of a multi-pilot crew that includes a pilot under age 60. Thus, as was the case prior to the 2009 final rule, operations covered by § 61.3(j)(1) that use a single pilot can only be operated by a pilot who has not yet reached 60 years of age.

C. ICAO Amendment 172 to Annex 1, Personnel Licensing, Standard 2.1.10.1

During a meeting of the ICAO Council on March 3, 2014, Council members adopted Amendment 172 to Annex 1, Personnel Licensing. The amendment removed the requirement in Standard 2.1.10.1 to pair a PIC who has reached age 60 with a pilot under age 60, and renumbered the standard as 2.1.10. Without the pairing requirement, all pilots on multi-pilot crews serving in international air transport commercial operations may continue to serve as long as they have not reached 65 years of age.[3] Amendment 172 to Annex 1, Personnel Licensing, became applicable on November 13, 2014.

D. Effect of ICAO Amendment and Sunset of 49 U.S.C. 44729(c)(1) on FAA Regulations

As previously discussed, 49 U.S.C. 44729(c)(2) states that the pilot pairing requirement in 49 U.S.C. 44729(c)(1) ceases to be effective when ICAO removes the pilot pairing requirement from Annex 1 (Personnel Licensing), Chapter 2 (Licenses and Ratings for Pilots), Standard 2.1.10.1. On November 13, 2014, the revised Standard 2.1.10, that no longer contains the pilot pairing requirement, became applicable. Accordingly, on November 13, 2014, the

[1] The statute uses the term ''covered operations'' to describe part 121 operations. *See* 49 U.S.C. 44729(b).

[2] The Agency notes that in accordance with 14 CFR 129.5(b), each foreign air carrier conducting operations within the United States must conduct its operations in accordance with the Standards contained in Annex 1 (Personnel Licensing), Annex 6 (Operation of Aircraft), Part I (International Commercial Air Transport–Aeroplanes) or Part III (International Operations–Helicopters), as appropriate, and in Annex 8 (Airworthiness of Aircraft) to the Convention on International Civil Aviation. Additionally, in accordance with § 129.1(b), operations of U.S.-registered aircraft solely outside of the United States in common carriage by a foreign person or a foreign air carrier must also be in compliance with the ICAO Standards identified in § 129.5(b). Therefore, for these operations, the ICAO amendment to the pilot pairing limitation applies without further change to 14 CFR. The FAA further notes that beginning on the date the ICAO amendment became applicable (November 13, 2014), as an ICAO member state, no foreign air carrier conducting operations under part 129 may conduct operations to or from the United States with any pilot who has reached age 65. This same limitation applies to operations covered by § 129.1(b).

[3] Amendment 172 to Annex 1, Personnel Licensing, does not change the existing maximum age permitted for pilots engaged in single-pilot operations. Pilots serving in single-pilot operations must be under age 60.

pilot pairing limitation of 49 U.S.C. 44729(c)(1) ceased to be effective.

The FAA subsequently published a Notice of Policy (79 FR 67346, November 13, 2014) explaining that once the pilot pairing limitation of 49 U.S.C. 44729(c)(1) ceased to be effective, the statutory basis for the pilot pairing requirements in 14 CFR 61.3(j)(2), 61.77(g) and 121.383(d)(2) and (e)(2) would no longer exist, and those regulations would be contrary to 49 U.S.C. 44729. Based on the foregoing, in the Notice of Policy, the FAA further stated that it would no longer enforce the pilot pairing requirements contained in 14 CFR 61.3(j)(2), 61.77(g), and 121.383(d)(2) and (e)(2) as of the date the ICAO amendment became applicable and corresponding sunset of 49 U.S.C. 44729(c)(1). The ICAO amendment became applicable and the sunset of 49 U.S.C. 44729(c)(1) took place on November 13, 2014.

III. Discussion of Immediately Adopted Final Rule

This final rule conforms FAA regulations in Title 14 of the Code of Federal Regulations (14 CFR) with the Fair Treatment for Experienced Pilots Act by removing the current pilot pairing requirements from parts 121 and 61. Specifically, the Agency has amended § 121.383(d) and (e) to allow all pilots serving in part 121 operations of any kind (*i.e.,* domestic, flag, or supplemental) to serve as long as that pilot has not reached his or her 65th birthday. Additionally, the Agency has amended §§ 61.3 and 61.77 to allow all pilots relying on a certificate issued under part 61 and serving in certain international operations using civil airplanes on the U.S. registry to continue to serve in multi-pilot crews as long as they have not reached their 65th birthday. The maximum age for pilots serving in single pilot crews in operations covered by § 61.3(j)(1) has not changed.

This rulemaking provides relieving changes that create the opportunity for scheduling efficiencies because only the maximum pilot age of 65 needs to be considered in bidding for, or flying international flights. All pilots serving in any kind of part 121 operation (*i.e.,* domestic, flag, or supplemental) may continue to serve until they reach their 65th birthday, regardless of the age of the other pilot(s) on their flightcrew. This rulemaking also provides relieving changes for certain other pilots with certificates issued in accordance with part 61, who serve with multi-pilot crews in international operations using civil airplanes on the U.S. registry.

IV. Regulatory Notices and Analyses

A. Regulatory Evaluation

Changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 and Executive Order 13563 direct that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (Pub. L. 96–354) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (Pub. L. 96–39) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation with base year of 1995). This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If the expected cost impact is so minimal that a proposed or final rule does not warrant a full evaluation, this order permits that a statement to that effect and the basis for it to be included in the preamble if a full regulatory evaluation of the cost and benefits is not prepared. Such a determination has been made for this final rule. The reasoning for this determination follows:

This final rule is relieving in that it removes the requirement to pair a pilot who has reached age 60 with a pilot who is under age 60 in international operations covered by part 121 and certain other international operations identified in §§ 61.3 and 61.77. The removal of this pilot pairing requirement eases flight scheduling and crew rest requirement costs because, for multi-pilot operations, only the maximum pilot age of 65 needs to be considered in bidding for, or flying international flights covered by part 121 and certain other international operations. The expected outcome will be lower costs. Therefore, a regulatory evaluation was not prepared.

FAA has therefore determined that this final rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866, and it is not ''significant'' as defined in DOT's regulatory policies and procedures provided in DOT 2100.5.

B. Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (Pub. L. 96–354) (RFA) establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objectives of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the businesses, organizations, and governmental jurisdictions subject to regulation. To achieve this principle, agencies are required to solicit and consider flexible regulatory proposals and to explain the rationale for their actions to assure that such proposals are given serious consideration.'' The RFA covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a rule will have a significant economic impact on a substantial number of small entities. If the agency determines that it will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA believes that this final rule does not have a significant economic impact on a substantial number of small entities for the following reasons. This final rule removes the age-based pilot pairing requirements from parts 121 and 61. The expected result will be reduced costs or minimal cost for any small entity affected by this rulemaking action. Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

The Trade Agreements Act of 1979 (Pub. L. 96–39), as amended by the Uruguay Round Agreements Act (Pub.

L. 103–465), prohibits Federal agencies from establishing standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Pursuant to these Acts, the establishment of standards is not considered an unnecessary obstacle to the foreign commerce of the United States, so long as the standard has a legitimate domestic objective, such as the protection of safety, and does not operate in a manner that excludes imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. The FAA has assessed the potential effect of this final rule and determined that it conforms to international standards regarding pilot age limits and, therefore, does not create unnecessary obstacles to the foreign commerce of the United States.

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $151 million in lieu of $100 million. This final rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. The FAA has determined that there is no new requirement for information collection associated with this immediately adopted final rule.

F. International Compatibility and Executive Order 13609, Promoting International Regulatory Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to ICAO Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these proposed regulations.

Executive Order 13609, Promoting International Regulatory Cooperation, (77 FR 26413, May 4, 2012) promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed this action under the policy and agency responsibilities of Executive Order 13609, Promoting International Regulatory Cooperation. The FAA has determined that this action would eliminate differences between U.S. aviation standards and those of other civil aviation authorities by conforming FAA regulations to the corresponding ICAO Standards and Recommended Practices.

G. Environmental Analysis

FAA Order 1050.1E identifies FAA actions that are categorically excluded from preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraph 312f and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The Agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government; therefore, this final rule does not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use (May 18, 2001). The Agency has determined that it is not a ''significant energy action'' under the Executive Order, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

VI. How To Obtain Additional Information

A. Rulemaking Documents

An electronic copy of a rulemaking document may be obtained by using the Internet—

1. Search the Federal eRulemaking Portal *(http://www.regulations.gov*);
2. Visit the FAA's Regulations and Policies Web page at *http://www.faa.gov/regulations_policies/* or
3. Access the Government Publishing Office's Web page at: *http://www.gpo.gov/fdsys/.*

Copies may also be obtained by sending a request (identified by amendment or docket number of this rulemaking) to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document, may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the Internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 61

Airmen, Aviation safety.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of Title 14, Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 44729, 45102–45103, 45301–45302.

■ 2. Amend § 61.3 as follows:

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

■ b. Remove paragraph (j)(2); and
■ c. Redesignate paragraph (j)(3) as paragraph (j)(2).

The revision reads as follows:

§ 61.3 Requirement for certificates, ratings and authorizations.

* * * * *

(j) * * *

(1) *Age limitation.* No person who holds a pilot certificate issued under this part may serve as a pilot on a civil airplane of U.S. registry in the following operations if the person has reached his or her 60th birthday or, in the case of operations with more than one pilot, his or her 65th birthday:

* * * * *

■ 3. Amend § 61.77 as follows:
■ A. Revise paragraph (e) introductory text;
■ B. Remove paragraph (g); and
■ C. Redesignate paragraphs (h) through (j) as paragraphs (g) through (i), respectively.

The revision reads as follows:

§ 61.77 Special purpose pilot authorization: Operation of a civil aircraft of the United States and leased by a non-U.S. citizen.

* * * * *

(e) *Age limitation.* No person who holds a special purpose pilot authorization issued under this part may serve as a pilot on a civil airplane of U.S. registry in the following operations if the person has reached his or her 60th birthday or, in the case of operations with more than one pilot, his or her 65th birthday:

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 4. The authority citation for part 121 is revised to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44729, 44732, 46105; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112–95, 126 Stat. 62 (49 U.S.C. 44732 note).

■ 5. Amend § 121.383 by revising paragraphs (d) and (e) to read as follows:

§ 121.383 Airman: Limitations on use of services.

* * * * *

(d) No certificate holder may use the services of any person as a pilot on an airplane engaged in operations under this part if that person has reached his or her 65th birthday.

(e) No pilot may serve as a pilot in operations under this part if that person has reached his or her 65th birthday.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a), and 44703 in Washington, DC, on June 3, 2015.

Michael P. Huerta,

Administrator.

[FR Doc. 2015–14248 Filed 6–11–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2014–0744; Airspace Docket No. 14–ACE–5]

Establishment of Class E Airspace; Tribune, KS

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Tribune, KS. Controlled airspace is necessary to accommodate new Standard Instrument Approach Procedures (SIAPs) at Tribune Municipal Airport. The FAA is taking this action to enhance the safety and management of Instrument Flight Rules (IFR) operations for SIAPs at the airport.

DATES: Effective 0901 UTC, August 20, 2015. The Director of the Federal Register approves this incorporation by reference action under title 1, Code of Federal Regulations, part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.9Y, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line at *http://www.faa.gov/airtraffic/publications/*. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to *http://www.archives.gov/federal_register/code_of_federal-regulations/ibr_locations.html*.

FAA Order 7400.9, Airspace Designations and Reporting Points, is published yearly and effective on September 15. For further information, you can contact the Airspace Policy and ATC Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 29591; telephone: 202–267–8783.

FOR FURTHER INFORMATION CONTACT: Rebecca Shelby, Central Service Center, Operations Support Group, Federal Aviation Administration, Southwest Region, 2601 Meacham Blvd., Fort Worth, TX 76137; telephone: 817–321–7740.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Tribune Municipal Airport, Tribune, KS.

History

On November 20, 2014, the FAA published in the **Federal Register** a notice of proposed rulemaking (NPRM) to establish Class E airspace extending upward from 700 feet above the surface at Tribune Municipal Airport, Tribune, KS, (79 FR 69072). Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in Paragraphs 6005, of FAA Order 7400.9Y, dated August 6, 2014, and effective September 15, 2014, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.9Y, airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014. FAA Order 7400.9Y is publicly available as listed in the **ADDRESSES** section of this final rule. FAA Order 7400.9Y lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

The Rule

This action amends Title 14, Code of Federal Regulations (14 CFR), Part 71 by establishing Class E airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Tribune Municipal Airport, Tribune, KS, to accommodate new Standard Instrument

Approach Procedures at the airport. The FAA is taking this action to enhance the safety and management of IFR operations at the airport.

Regulatory Notices and Analyses

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that only affects air traffic procedures and air navigation, it is certified that this rule, when promulgated, does not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E. ''Environmental Impacts: Policies and Procedures,'' paragraph 311a. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

■ 1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

■ 2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9Y, Airspace Designations and Reporting Points, dated August 6, 2014, and effective September 15, 2014, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE KS E5 Tribune, KS [New]

Tribune Municipal Airport, KS
(Lat. 38°27′05″ N., long. 101°45′00″ W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Tribune Municipal Airport.

Issued in Fort Worth, TX, on June 5, 2015.

Christopher L. Southerland,

Acting Manager, Operations Support Group, ATO Central Service Center.

[FR Doc. 2015–14287 Filed 6–11–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9722]

RIN 1545–BM35

Partnership Transactions Involving Equity Interests of a Partner

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that prevent a corporate partner from avoiding corporate-level gain through transactions with a partnership involving equity interests of the partner. These regulations affect partnerships and their partners. The text of these temporary regulations serves as the text of proposed regulations (REG–149518–03) published in the Proposed Rules section in this issue of the **Federal Register**.

DATES: *Effective Date:* These regulations are effective on June 12, 2015.

Applicability Date: For dates of applicability, see §§ 1.337(d)–3T(i) and 1.732–1T(c)(5).

FOR FURTHER INFORMATION CONTACT: Concerning the final and temporary regulations, Kevin I. Babitz, (202) 317–6852.

SUPPLEMENTARY INFORMATION:

Background

The General Utilities Doctrine and Its Repeal

In *General Utilities & Operating Co.* v. *Helvering,* 296 U.S. 200 (1935), the Supreme Court held that corporations generally could distribute appreciated property to their shareholders without the recognition of any corporate level gain (the *General Utilities* doctrine). Beginning in 1969, Congress enacted a series of exceptions to the *General Utilities* doctrine, starting with certain non-liquidating distributions of depreciable property. In the Tax Equity and Fiscal Responsibility Act of 1982, Public Law 97–248, 96 Stat. 324, Congress enacted current section 311(b) (originally designated as section 311(d)), which required a corporation to recognize gain on appreciated property distributed to a shareholder in redemption of shares. In 1984, Congress enacted legislation that required gain recognition for all non-liquidating distributions. Finally, as part of the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, (the Act), Congress repealed what remained of the *General Utilities* doctrine by enacting section 336(a) of the Internal Revenue Code (Code) to apply gain and loss recognition to liquidating distributions. Under current law, sections 311(b) and 336(a) of the Code require a corporation that distributes appreciated property to its shareholders to recognize gain determined as if the property were sold to the shareholders for its fair market value. Additionally, section 631 of the Act added section 337(d) to the Code to permit the Secretary to prescribe regulations that are necessary or appropriate to carry out the purposes of the *General Utilities* repeal, ''including regulations to ensure that [the repeal of the *General Utilities* doctrine] may not be circumvented through the use of any provision of law or regulations.''

1992 Proposed Regulations

After the enactment of sections 311(b) and 337(d), the Treasury Department and the IRS became aware of transactions in which taxpayers used a partnership to postpone or avoid completely gain generally required to be recognized under section 311(b). In one example of this transaction, a corporation entered into a partnership and contributed appreciated property. The partnership then acquired stock of that corporate partner, and later made a liquidating distribution of this stock to the corporate partner. Under section 731(a), the corporate partner did not recognize gain on the partnership's distribution of its stock. By means of this transaction, the corporation had disposed of the appreciated property it formerly held and had acquired its own stock, permanently avoiding its gain in the appreciated property. If the corporation had directly exchanged the appreciated property for its own stock, section 311(b) would have required the

corporation to recognize gain upon the exchange.

In response to this type of transaction, the Treasury Department and the IRS issued Notice 89–37, 1989–1 CB 679, on March 9, 1989. Notice 89–37 announced that future regulations under section 337(d) would address the use of partnerships to avoid the repeal of the *General Utilities* doctrine. Specifically, the Treasury Department and the IRS determined that, in certain circumstances, the acquisition (or ownership) by a partnership of stock in one of its corporate partners (or stock of any member of the affiliated group of which the partner is a member) results in avoidance of the repeal of the *General Utilities* doctrine. Such avoidance occurs to the extent that a corporate partner, in substance, relinquishes an interest in appreciated property in exchange for an interest in its stock (or the stock of an affiliate). The Notice provided that section 311(b), rather than section 731(a), would apply when a partner received a distribution of its own stock, and that the partner would recognize gain whenever a pre-distribution transaction has the economic effect of an exchange of appreciated property for the partner's own stock.

On December 15, 1992, the Treasury Department and the IRS published a notice of proposed rulemaking under section 337(d) (PS–91–90, REG–208989–90, 1993–1 CB 919) in the **Federal Register** (57 FR 59324) addressing partnership transactions involving stock of a partner (the 1992 proposed regulations). The 1992 proposed regulations adopted two rules to protect the repeal of the *General Utilities* doctrine: the deemed redemption rule (the 1992 deemed redemption rule) and the distribution rule (the 1992 distribution rule). The 1992 proposed regulations also provided de minimis and inadvertence exceptions to these two rules.

The 1992 deemed redemption rule addressed pre-distribution transactions involving corporate partner stock owned or acquired by the partnership. The Treasury Department and the IRS believed that certain of these transactions created the economic effect of an exchange of appreciated property for corporate partner stock. The 1992 deemed redemption rule provided that a corporate partner recognizes gain at the time of, and to the extent that, any transaction (or series of transactions) has the economic effect of an exchange by the partner of its interest in appreciated property for an interest in its stock (or the stock of any member of the affiliated group of which such partner is a member) owned, acquired, or distributed by the partnership.

The 1992 distribution rule provided that a partnership's distribution to a partner of the partner's stock is treated as a redemption or an exchange of the stock of the partner for a portion of the partner's partnership interest with a value equal to the distributed stock. Thus, the 1992 distribution rule applied section 311(b) principles to the distribution to trigger gain to the corporate partner, rather than applying section 731, which would not have required gain recognition. The 1992 distribution rule ensured that section 311(b) would apply to any acquisition by the corporate partner of its own stock where the 1992 deemed redemption rule had not applied. The preamble to the 1992 proposed regulations indicated that commenters on the Notice raised concerns that the 1992 distribution rule could duplicate gain recognition and suggested a modified approach. However, the 1992 proposed regulations rejected the modified approach as overly complex.

As noted previously, the 1992 proposed regulations applied to stock of a partner, to stock of a partner's affiliate, and to other equity interests in the partner or affiliate. The 1992 proposed regulations used a modified affiliation standard to determine whether a partner and another corporation were affiliates. The 1992 proposed regulations treated a corporation as an affiliate of a partner at the time of a deemed redemption or distribution by the partnership if, immediately thereafter, the partner and corporation were members of an affiliated group as defined in section 1504(a) without regard to section 1504(b) (section 337(d) affiliation). On January 19, 1993, the Treasury Department and the IRS issued Notice 93–2, 1993–1 CB 292, which stated that the 1992 proposed regulations would be amended to limit the application of the regulations to transactions in which section 337(d) affiliation existed immediately before the deemed redemption or distribution. The Treasury Department and the IRS indicated that further study was required for cases in which section 337(d) affiliation did not exist prior to a distribution of stock by a partnership to a corporate partner, but resulted from the distribution.

The Treasury Department and the IRS received several written comments in response to Notice 89–37, the 1992 proposed regulations, and Notice 93–2. Commenters largely supported the 1992 deemed redemption rule, though some suggested modifications. Some commenters, however, opposed the 1992 distribution rule, asserting that the rule is overly broad and inconsistent with the deemed redemption rule. These comments are discussed in detail in the Explanation of Provisions section of this preamble.

After considering these comment letters, and taking into account subsequent changes in relevant law as described in part 1 of this preamble, the Treasury Department and the IRS are withdrawing the 1992 proposed regulations and simultaneously issuing temporary and final regulations that also serve as the text of new proposed regulations published in the Proposed Rules section of this issue of the **Federal Register**.

Explanation of Provisions

The purpose of these regulations authorized under section 337(d) is to prevent corporate taxpayers from using a partnership to circumvent gain required to be recognized under section 311(b) or section 336(a). These regulations, including the rules governing the amount and timing of recognized gain, must be applied in a manner consistent with, and which reasonably carries out, this purpose.

These regulations apply when a partnership, either directly or indirectly, owns, acquires, or distributes Stock of the Corporate Partner (as defined in part 1 of this preamble). Under these regulations, a Corporate Partner (as defined in part 1 of this preamble) may recognize gain when it is treated as acquiring or increasing its interest in Stock of the Corporate Partner held by a partnership in exchange for appreciated property in a manner that avoids gain recognition under section 311(b) or section 336(a). The regulations also provide exceptions under which a Corporate Partner is not required to recognize gain.

These regulations retain the 1992 deemed redemption rule with the modifications described in part 2 of this preamble. However, these regulations remove the 1992 distribution rule in response to comments. In its place, these regulations apply the deemed redemption rule to partnership distributions of Stock of the Corporate Partner to the Corporate Partner as though the partnership amended its agreement, immediately before the distribution, to allocate 100 percent of the distributed stock to the Corporate Partner.

1. Scope and Definitions

These regulations apply to certain partnerships that hold stock of a Corporate Partner. For this purpose, a ''Corporate Partner'' is defined as a

person that holds or acquires an interest in a partnership and that is classified as a corporation for federal income tax purposes. The regulations define ''Stock of the Corporate Partner'' expansively to include the Corporate Partner's stock, or other equity interests, including options, warrants, and similar interests, in the Corporate Partner or a corporation that controls (within the meaning of section 304(c)) the Corporate Partner. Stock of the Corporate Partner also includes interests in any entity to the extent that the value of the interest is attributable to Stock of the Corporate Partner.

These definitions of Corporate Partner and Stock of the Corporate Partner are consistent with those set forth in the 1992 proposed regulations except for two changes. First, these regulations modify the definition of Stock of the Corporate Partner. Based on changes in the law and comments received, the Treasury Department and the IRS have determined that the scope of the definition of ''Stock of a Partner'' in the 1992 proposed regulations was too narrow in certain instances and too broad in others. These regulations broaden the definition of Stock of a Corporate Partner to include stock or other equity interests of any corporation that controls the Corporate Partner within the meaning of section 304(c) (section 304(c) control), whereas the 1992 proposed regulations' definition was limited to stock or other equity interests issued by the Corporate Partner and its section 337(d) affiliates. Section 304(c) control generally exists when there is ownership of stock of a corporation possessing at least 50 percent of the total combined voting power of all classes of the corporation's stock that is entitled to vote or at least 50 percent of the value of the shares of all classes of stock of the corporation, while control of a corporation under section 1504(a)(2) requires ownership of stock of the corporation possessing at least 80 percent of the total voting power of the stock of the corporation and at least 80 percent of the total value of the stock of the corporation. The Treasury Department and the IRS believe the lower threshold for control set forth in section 304(c) is the more appropriate standard for this purpose because *General Utilities* repeal could be avoided by acquiring stock of a corporation that owns less than 80 percent of the vote and value of the Corporate Partner's stock. In addition, these regulations narrow the definition of Stock of a Corporate Partner to exclude stock of any corporation that does not possess section 304(c) control of the Corporate Partner, even if the corporation is a section 337(d) affiliate or a member of the same consolidated group as the Corporate Partner. The enactment of sections 732(f) and 755(c) subsequent to the issuance of the 1992 proposed regulations generally have served to prevent abusive transactions involving partnerships that own stock of lower tier section 337(d) affiliates of the Corporate Partner. Accordingly, these regulations do not apply to a partnership that owns, acquires, or distributes stock of any section 337(d) affiliate of the Corporate Partner unless that affiliate possesses section 304(c) control of the Corporate Partner. The Treasury Department and the IRS continue to study the application of these provisions and plan to issue additional guidance as needed to address further abuses in this area. Comments are requested regarding such guidance.

Second, these regulations add an exception for certain related-party partners. Under this exception, Stock of the Corporate Partner does not include any stock or other equity interest held or acquired by a partnership if all interests in the partnership's capital and profits are held by members of an affiliated group defined in section 1504(a) that includes the Corporate Partner. Thus, these regulations do not apply if, for example, a domestic corporation and its wholly owned domestic subsidiary (each of which is an includible corporation under section 1504(b)) are the only partners in a partnership and either corporation contributes stock of another affiliate. The Treasury Department and the IRS have determined that this additional exception is appropriate because the purpose of these regulations is not implicated if a partnership is owned entirely by affiliated corporations. The Treasury Department and the IRS invite comments on whether this exception should be extended, for example, to partnerships owned by controlled foreign corporations that are owned entirely by a single affiliated group.

For partnerships that hold Stock of the Corporate Partner, these regulations apply to a transaction (or series of transactions) that is a ''Section 337(d) Transaction.'' These regulations define a Section 337(d) Transaction as a transaction that has the effect of an exchange by a Corporate Partner of its interest in appreciated property for an interest in Stock of the Corporate Partner owned, acquired, or distributed by a partnership. For example, a Section 337(d) Transaction may occur if: (i) A Corporate Partner contributes appreciated property to a partnership that owns Stock of the Corporate Partner; (ii) a partnership acquires Stock of the Corporate Partner; (iii) a partnership that owns Stock of the Corporate Partner distributes appreciated property to a partner other than the Corporate Partner; (iv) a partnership distributes stock of the Corporate Partner to the Corporate Partner; or (v) a partnership agreement is amended in a manner that increases a Corporate Partner's interest in the Stock of the Corporate Partner (including in connection with a contribution to, or distribution from, a partnership).

If a partnership engages in a Section 337(d) Transaction, the Corporate Partner must recognize gain. The regulations define a ''Gain Percentage'' that the partnership uses to quantify the amount of gain recognized. The computation of the Gain Percentage is set forth in part 2 of this preamble.

2. Deemed Redemption Rule

These regulations largely retain the 1992 deemed redemption rule. If a transaction is a Section 337(d) Transaction described in part 1 of this preamble, a Corporate Partner must recognize gain under the deemed redemption rule. To determine the amount of gain, the Corporate Partner must first determine the amount of appreciated property (other than Stock of the Corporate Partner) effectively exchanged for Stock of the Corporate Partner (by value) and then calculate the amount of taxable gain recognized.

These regulations set forth general principles that apply in determining the amount of appreciated property effectively exchanged for Stock of the Corporate Partner. These general principles require that the Corporate Partner's economic interest with respect to both Stock of the Corporate Partner and all other appreciated property of the partnership be determined based on all facts and circumstances, including the allocation and distribution rights set forth in the partnership agreement. The deemed redemption rule applies only to the extent that the transaction has the effect of an exchange by the Corporate Partner of its interest in appreciated property for Stock of the Corporate Partner. Thus, these regulations do not apply to the extent a transaction has the effect of an exchange by a Corporate Partner of non-appreciated property for Stock of the Corporate Partner or has the effect of an exchange by a Corporate Partner of appreciated property for property other than Stock of the Corporate Partner.

A Corporate Partner must recognize gain under these regulations even if the

Section 337(d) Transaction would not otherwise change the Corporate Partner's allocable share of gain under section 704(c). For example, if a Corporate Partner contributes appreciated property to a newly-formed partnership and an individual contributes cash that the partnership subsequently uses to purchase Stock of the Corporate Partner, then the purchase of the stock is a Section 337(d) Transaction even though the Corporate Partner's allocable share of gain in the appreciated property under section 704(c) is the same before and after the purchase. The Treasury Department and the IRS believe that this gain recognition is appropriate because a Section 337(d) Transaction may create an immediate benefit to the Corporate Partner equivalent to the benefit associated with the redemption of corporate stock in exchange for appreciated property. *See Example 4* of § 1.337(d)–3T(h) in these regulations.

If the Corporate Partner has an existing interest in the partnership's Stock of the Corporate Partner prior to the Section 337(d) Transaction, the deemed redemption rule applies only with respect to the Corporate Partner's incremental increase in the Stock of the Corporate Partner. For example, changing allocations to increase a Corporate Partner's interest in the Stock of the Corporate Partner from 50 percent to 80 percent and to decrease the Corporate Partner's interest in other appreciated property from 80 percent to 50 percent would have the effect of an exchange by the Corporate Partner of the 30-percent incremental decrease in its interest in the appreciated property for the 30-percent incremental increase in the Stock of the Corporate Partner. *See Example 5* of § 1.337(d)–3T(h) in these regulations.

For purposes of recognizing gain under the deemed redemption rule, the Corporate Partner's interest in an identified share of Stock of the Corporate Partner will never be less than the Corporate Partner's largest interest (by value) in that share of Stock of the Corporate Partner that was taken into account when the partnership previously determined whether there had been a Section 337(d) Transaction (regardless of whether the Corporate Partner recognized gain in the earlier transaction). *See Example 6* of § 1.337(d)–3T(h) in these regulations. This rule ensures that alternating increases and decreases in a Corporate Partner's interest in Stock of the Corporate Partner do not cause duplicate gain recognition. This limitation does not apply if any reduction in the Corporate Partner's interest in the identified share of Stock of the Corporate Partner occurred as part of a plan or arrangement to circumvent the purpose of these regulations. *See Example 7* of § 1.337(d)–3T(h) in these regulations.

In certain limited circumstances, a partnership's acquisition of Stock of the Corporate Partner does not have the effect of an exchange of appreciated property for that stock. For example, as one commenter asserted, if a partnership with an operating business uses the cash generated in that business to purchase Stock of the Corporate Partner, the deemed redemption rule should not apply to the stock purchase because the Corporate Partner's share in appreciated property has not been reduced, and thus no exchange has occurred. The Treasury Department and the IRS acknowledge that such stock acquisitions would not contravene the purposes of these regulations. Accordingly, these regulations adopt this comment and do not apply to stock purchases or other transactions that do not have the effect of an exchange of appreciated property for Stock of the Corporate Partner.

If a transaction is a Section 337(d) Transaction, the deemed redemption rule requires the Corporate Partner to recognize a percentage of its total gain in partnership appreciated property equal to a fraction, the numerator of which is the Corporate Partner's interest (by value) in appreciated property effectively exchanged for Stock of the Corporate Partner under the deemed redemption rule, and the denominator of which is the Corporate Partner's interest (by value) in appreciated property immediately before the Section 337(d) Transaction. This fraction is defined in these regulations as the ''Gain Percentage.'' The Corporate Partner's gain under the deemed redemption rule equals the product of (i) the Corporate Partner's Gain Percentage and (ii) the gain from the appreciated property that is the subject of the exchange that the that the Corporate Partner would recognize if, immediately before the Section 337(d) Transaction, all assets of the partnership and any assets contributed to the partnership in the section 337(d) Transaction were sold in a fully taxable transaction for cash in an amount equal to the fair market value of such property (taking into account section 7701(g)), reduced, but not below zero, by any gain the Corporate Partner is required to recognize with respect to the appreciated property in the Section 337(d) Transaction under any other section of the Code. For example, if a Corporate Partner would be allocated $100x of tax gain on a sale of appreciated partnership property (other than Stock of the Corporate Partner) and the Corporate Partner's interest in that appreciated partnership property (determined under all facts and circumstances) is $500x, and if the partnership engages in a Section 337(d) Transaction that reduces the Corporate Partner's interest in appreciated partnership property by $200x and increases the Corporate Partner's interest in Stock of the Corporate Partner by $200x, then the Corporate Partner's Gain Percentage equals 40% (200x/500x), and the Corporate Partner's gain under the deemed redemption rule is $40x (40% of $100x).

The gain from the hypothetical sale used to compute gain under the deemed redemption rule is determined by applying the principles of section 704(c), which generally requires the partnership to take into account variations between the adjusted tax basis and fair market value of partnership property at the time it is contributed to the partnership and upon certain other events that allow or require the value of partnership property to be redetermined under § 1.704–1(b)(2)(iv)(*f*). *See Examples 3* and *5* of § 1.337(d)–3T(h) in these regulations. A partner's share of gain under section 704(c) for this purpose includes any remedial allocations under § 1.704–3(d) for a partnership that has elected under section 704(c) to report notional items of offsetting tax gain and loss to its partners to eliminate distortions that may arise when the partnership's total tax gain or loss on the sale of partnership property is less than all partners' aggregate share of gain or loss from the property.

These regulations also contain two rules related to the effect of the deemed redemption rule on partner and partnership basis. First, these regulations require the Corporate Partner to increase its basis in its partnership interest by an amount equal to the gain that the Corporate Partner recognizes in a Section 337(d) Transaction. This basis increase is necessary to prevent the Corporate Partner from recognizing gain a second time when the partnership liquidates (or, if property is distributed to the Corporate Partner, when that property is sold).

Second, the regulations require the partnership to increase its adjusted tax basis in the appreciated property that is treated as the subject of a Section 337(d) Transaction by the amount of gain that the Corporate Partner recognized with respect to that property as a result of the Section 337(d) Transaction. This basis

increase applies regardless of whether the partnership has elected under section 754 to adjust the basis of partnership property. This rule prevents the Corporate Partner from recognizing gain a second time when the partnership sells the property that was effectively exchanged under the deemed redemption rule.

One commenter suggested that when a partnership owns or acquires stock in a Corporate Partner's subsidiary or a sister of the Corporate Partner and the stock is not issued as part of the transaction, the deemed redemption rule should not apply unless and until a subsequent transaction relating to the stock creates tax consequences that are inconsistent with *General Utilities* repeal. As discussed in part 1 of this preamble, these regulations only apply to Stock of a Corporate Partner, which under these regulations, does not include stock in a Corporate Partner's sister corporation or subsidiary unless such corporation possesses section 304(c) control of the Corporate Partner. Such control could exist, if, for example, a Corporate Partner's subsidiary were to own so-called ''hook stock'' in the Corporate Partner. If such control of the Corporate Partner does exist, then it is appropriate to treat stock of a Corporate Partner's subsidiary or sister corporation as Stock of the Corporate Partner because the value of that sister or subsidiary corporation's stock owned or acquired by the partnership is in part attributable to the Corporate Partner's stock.

Another commenter suggested that the deemed redemption rule is no longer necessary. The commenter explained that the acquisition of Stock of the Corporate Partner is not the appropriate time to impose tax and that the 1992 distribution rule and changes in the law since 1989 make it more difficult to exit a partnership tax-free. The Treasury Department and the IRS do not adopt this comment because a Section 337(d) Transaction may create an immediate benefit to the Corporate Partner equivalent to the benefit associated with the redemption of corporate stock in exchange for appreciated property. If the deemed redemption rule does not apply at the time of this exchange, the Corporate Partner can defer paying tax on this economic benefit in a manner that is inconsistent with section 311(b).

3. Partnership Distributions of Stock of the Corporate Partner

The 1992 distribution rule required a Corporate Partner to recognize gain when the partnership distributes Stock of the Corporate Partner to the Corporate Partner. Commenters noted a number of concerns with this rule and recommended eliminating it.

Several commenters noted that the rule was overly broad because it could cause the Corporate Partner to recognize gain in an amount that exceeded the appreciation in property effectively exchanged for the stock. For example, the rule could require a Corporate Partner to recognize gain upon a partnership's distribution of appreciated Stock of the Corporate Partner even though the partnership held no other appreciated property. One commenter stated that the 1992 distribution rule would therefore require the Corporate Partner to recognize gain on appreciation inherent in its partnership interest, even though the distribution does not implicate the repeal of the *General Utilities* doctrine and even though section 1032 provides for nonrecognition of gain on the distribution. The commenter maintained that the 1992 distribution rule should not apply when a Corporate Partner merely exchanges an indirect interest in its own stock for a direct interest in its own stock.

The Treasury Department and the IRS agree with these comments and adopt new rules governing the tax consequences of a distribution of Stock of the Corporate Partner to that Corporate Partner. Instead of adopting the 1992 distribution rule, these regulations extend the deemed redemption rule to certain distributions to the Corporate Partner of Stock of the Corporate Partner. These new rules governing distributions apply only if the distributed stock has previously been the subject of a Section 337(d) Transaction or becomes the subject of a Section 337(d) Transaction as a result of the distribution (a section 337(d) distribution). Additionally, these regulations do not apply to a distribution to the Corporate Partner of the Stock of the Corporate Partner to which section 732(f) applies at the time of the distribution. If the deemed redemption rule applies to a distribution, these regulations deem the partnership to amend its agreement immediately before the distribution to allocate 100 percent of the distributed stock to the Corporate Partner and to allocate an appropriately reduced interest in other partnership property away from the Corporate Partner. This deemed allocation is solely for purposes of recognizing gain under these regulations, and no inference is intended with regard to the treatment of such allocations generally.

If a distribution is a section 337(d) distribution, then in addition to any gain recognized under the deemed redemption rule upon the distribution of Stock of the Corporate Partner to the Corporate Partner, these regulations also require the Corporate Partner to recognize gain to the extent that the partnership's basis in the distributed Stock of the Corporate Partner exceeds the Corporate Partner's basis in its partnership interest (as reduced by any cash distributed in the transaction) immediately before the distribution. Recognition of gain in this circumstance is necessary to prevent the Corporate Partner from shifting basis away from its own stock onto other property of the partnership. The regulations provide an exception to this additional gain recognition rule if the gain recognition or basis reduction rules of section 732(f) apply at the time of the distribution. Although this exception generally ensures that gain recognized as a result of these regulations will not be duplicated as a result of section 732(f), duplication may still result in certain circumstances. For example, if a Corporate Partner recognizes gain under section 337(d) on a partnership distribution and section 732(f) does not apply to the distribution because the section 732(f) control requirement is not satisfied at the time of the distribution, but the control requirement is subsequently satisfied triggering section 732(f), then the Corporate Partner could recognize gain under both provisions. The Treasury Department and the IRS invite comments on how the rules in these regulations should be coordinated with section 732(f).

These regulations set forth two rules under sections 337 and 732 to coordinate the effects of the rule requiring gain recognition when the Stock of the Corporate Partner is stepped down on a section 337(d) distribution with existing rules for determining the basis of property upon partnership distributions. The first rule applies for purposes of determining the basis of property distributed to the Corporate Partner (other than the basis of the Corporate Partner in its own stock), the basis of the Corporate Partner's remaining partnership interest, and the partnership's basis in undistributed Stock of the Corporate Partner, and for purposes of computing gain on the distribution. For these purposes, the basis of Stock of the Corporate Partner distributed to the Corporate Partner equals the greater of: (i) The partnership's basis of that distributed Stock of the Corporate Partner immediately before the distribution, or (ii) the fair market value of that distributed Stock of the

Corporate Partner immediately before the distribution less the Corporate Partner's allocable share of gain from all of the Stock of the Corporate Partner if the partnership sold all of its assets in a fully taxable transaction for cash in an amount equal to the fair market value of such property (taking into account section 7701(g)) immediately before the distribution. *See Examples 2* and *3* of § 1.337(d)–3T(h) in these regulations. This special rule is necessary to prevent basis from shifting away from distributed Stock of the Corporate Partner to other property. This basis shift could occur, for example, upon a distribution of less than all of the partnership's Stock of the Corporate Partner to the Corporate Partner. The Treasury Department and the IRS request comments on this rule, including comments on whether its objectives would be better achieved through guidance under section 732 providing that on a distribution of a partial interest in partnership property, the basis of the distributed property in the hands of the distributee partner is determined by taking the principles of section 704(c) into account.

A second rule applies when a Corporate Partner receives both Stock of the Corporate Partner and other property in a section 337(d) distribution. Under this rule, the basis to be allocated to the properties distributed under section 732(a) or (b) is allocated first to the Stock of the Corporate Partner before taking into account the distribution of any other property (other than cash). Therefore, before taking into account the distribution of other property, the Corporate Partner will reduce its basis in its partnership interest by the Corporate Partner's basis in the distributed Stock of the Corporate Partner (but not below zero). The Corporate Partner will determine its basis in other distributed partnership property and in its remaining partnership interest after giving effect to this reduction. This rule, which governs the application of sections 732(a) and 732(b), is being promulgated pursuant to the specific statutory grant of authority in section 337(d)(1) to ensure that the purposes of the repeal of the *General Utilities* doctrine are not circumvented through the use of any provision of law or regulations.

When a Corporate Partner receives a partnership distribution of its own stock, it is unclear under existing law whether the Corporate Partner has basis in that stock. (*See,* for example, Rev. Rul. 2006–2, 2006–1 CB 261.) The resolution of this question is beyond the scope of these regulations. However, because the distribution to a Corporate Partner of its own stock affects the Corporate Partner's basis in other distributed property and any retained partnership interest, these regulations require the partnership and the Corporate Partner to determine the basis of other distributed property and any retained partnership interest by reference to the partnership's basis in the distributed Stock of the Corporate Partner. That is, the Corporate Partner determines its basis in other distributed property and in any retained partnership interest as though the distributed stock was stock other than Stock of the Corporate Partner. Similarly, the regulations compute any gain recognition on the distribution by comparing the Corporate Partner's basis in its partnership interest to the basis of that Stock of the Corporate Partner in the hands of the partnership (without regard to whether the Corporate Partner can have basis in the distributed stock). No inference is intended with respect to the question of whether a corporation has or does not have basis in its own stock.

4. De Minimis and Inadvertence Exceptions

These regulations retain the de minimis and inadvertence exceptions from the 1992 proposed regulations, but make small modifications to the de minimis rule to reduce burden. As set forth in these regulations, the de minimis rule provides that these regulations do not apply to a Corporate Partner if three conditions are satisfied. These conditions are tested upon the occurrence of a Section 337(d) Transaction and upon any subsequent revaluation event described in § 1.704–1(b)(2)(iv)(*f*).

The first condition requires that both the Corporate Partner and any persons related to the Corporate Partner under section 267(b) or section 707(b) own, in the aggregate, less than five percent of the partnership. The second condition requires that the partnership hold Stock of the Corporate Partner worth less than two percent of the value of the partnership's gross assets, including Stock of the Corporate Partner. The third condition requires that the partnership has never, at any point in time, held more than $1,000,000 in Stock of the Corporate Partner or more than two percent of any particular class of Stock of the Corporate Partner. The 1992 proposed regulations contained similar conditions, but capped the permissible value of the partnership's Stock of the Corporate Partner at $250,000.

These regulations provide a special rule that applies if the conditions of the de minimis rule are satisfied at the time of a Section 337(d) Transaction, but are not satisfied at the time of a subsequent Section 337(d) Transaction or revaluation event described in § 1.704–1(b)(2)(iv)(*f*). This rule provides that, solely for purposes of the deemed redemption rule, a Corporate Partner may determine its gain on the subsequent acquisition or revaluation event as if it had already recognized gain at the previous event. Accordingly, the Corporate Partner would only recognize gain with respect to appreciation arising between the earlier acquisition or revaluation event and the subsequent event. Neither the Corporate Partner nor the partnership increases its basis by the gain the Corporate Partner would have recognized if the de minimis rule did not apply to the prior acquisition or revaluation event.

These regulations also contain an inadvertence exception. The inadvertence exception provides that these regulations do not apply to Section 337(d) Transactions in which the partnership satisfies two requirements. First, the partnership must dispose of, by sale or distribution, the Stock of the Corporate Partner before the due date (including extensions) of its federal income tax return for the taxable year in which the partnership acquired the stock (or in which the Corporate Partner joined the partnership, if applicable). Second, the partnership must not have distributed the Stock of the Corporate Partner to the Corporate Partner or a person possessing section 304(c) control of the Corporate Partner. Other than broadening and narrowing the scope of related distributees as a result of the modified definition of Stock of the Corporate Partner, this inadvertence exception is generally unchanged from the 1992 proposed regulations. However, the Treasury Department and the IRS will consider comments with respect to removing the prohibition against distributions of Stock of the Corporate Partner to the Corporate Partner in light of the enactment of section 737, which requires a partner to recognize gain on property with built-in gain contributed to a partnership when the partnership distributes other property to the partner within seven years of the contribution.

5. Tiered Partnerships

The Treasury Department and the IRS are concerned that taxpayers could use tiered partnerships to circumvent these regulations. Therefore, these regulations require taxpayers to apply these regulations to tiered partnerships in a

manner consistent with the regulations' purpose. *See Example 8* of § 1.337(d)–3T(h) in these regulations.

Effective/Applicability Date

These regulations apply to transactions occurring on or after June 12, 2015.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-referenced notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal authors of these regulations are Joseph R. Worst and Kevin I. Babitz, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Amendment to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART I—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.337(d)–3T also issued under 26 U.S.C. 337(d). * * *

■ **Par. 2.** Section 1.337(d)–3T is added to read as follows:

§ 1.337(d)–3T Gain recognition upon certain partnership transactions involving a partner's stock (temporary).

(a) *Purpose.* The purpose of this section is to prevent corporate taxpayers from using a partnership to circumvent gain required to be recognized under section 311(b) or section 336(a). The rules of this section, including the determination of the amount of gain, must be applied in a manner that is consistent with and that reasonably carries out this purpose.

(b) *In general.* This section applies when a partnership, either directly or indirectly, owns, acquires, or distributes Stock of the Corporate Partner (within the meaning of paragraph (c)(2) of this section). Under paragraphs (d) or (e) of this section, a Corporate Partner (within the meaning of paragraph (c)(1) of this section) is required to recognize gain when a transaction has the effect of the Corporate Partner acquiring or increasing an interest in its own stock in exchange for appreciated property in a manner that contravenes the purpose of this section as set forth in paragraph (a) of this section. Paragraph (f) of this section sets forth exceptions under which a Corporate Partner does not recognize gain.

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

(1) *Corporate Partner.* A Corporate Partner is a person that is classified as a corporation for federal income tax purposes and holds or acquires an interest in a partnership.

(2) *Stock of the Corporate Partner*—(i) *In general.* With respect to a Corporate Partner, Stock of the Corporate Partner includes the Corporate Partner's stock, or other equity interests, including options, warrants, and similar interests, in the Corporate Partner or a corporation that controls (within the meaning of section 304(c)) the Corporate Partner. Stock of the Corporate Partner also includes interests in any entity to the extent that the value of the interest is attributable to Stock of the Corporate Partner.

(ii) *Affiliated partner exception.* Stock of the Corporate Partner does not include any stock or other equity interests held or acquired by a partnership if all interests in the partnership's capital and profits are held by members of an affiliated group as defined in section 1504(a) that includes the Corporate Partner.

(3) *Section 337(d) Transaction.* A Section 337(d) Transaction is a transaction (or series of transactions) that has the effect of an exchange by a Corporate Partner of its interest in appreciated property for an interest in Stock of the Corporate Partner owned, acquired, or distributed by a partnership. For example, a Section 337(d) Transaction may occur when—

(i) A Corporate Partner contributes appreciated property to a partnership that owns Stock of the Corporate Partner;

(ii) A partnership acquires Stock of the Corporate Partner;

(iii) A partnership that owns Stock of the Corporate Partner distributes appreciated property to a partner other than a Corporate Partner;

(iv) A partnership distributes Stock of the Corporate Partner to the Corporate Partner; or

(v) A partnership agreement is amended in a manner that increases a Corporate Partner's interest in Stock of the Corporate Partner (including in connection with a contribution to, or distribution from, a partnership).

(4) *Gain Percentage.* A Corporate Partner's Gain Percentage equals a fraction, the numerator of which is the Corporate Partner's interest (by value) in appreciated property effectively exchanged for Stock of the Corporate Partner under the test described in paragraphs (d)(1) and (2) of this section, and the denominator of which is the Corporate Partner's interest (by value) in that appreciated property immediately before the Section 337(d) Transaction. Paragraph (d) of this section requires a partnership to multiply the Gain Percentage by the Corporate Partner's aggregate gain in appreciated property to determine gain recognized under this section.

(d) *Deemed redemption rule*—(1) *In general.* A Corporate Partner in a partnership that engages in a Section 337(d) Transaction recognizes gain at the time, and to the extent, that the Corporate Partner's interest in appreciated property (other than Stock of the Corporate Partner) is reduced in exchange for an increased interest in Stock of the Corporate Partner, as determined under paragraph (d)(2) of this section. This section does not apply to the extent a transaction has the effect of an exchange by a Corporate Partner of non-appreciated property for Stock of the Corporate Partner or has the effect of an exchange by a Corporate Partner for property other than Stock of the Corporate Partner.

(2) *Corporate Partner's Interest in Partnership Property.* The Corporate Partner's interest with respect to both Stock of the Corporate Partner and the appreciated property that is the subject of the exchange is determined based on all facts and circumstances, including the allocation and distribution rights set forth in the partnership agreement. The Corporate Partner's interest in an identified share of Stock of the Corporate Partner will never be less than the Corporate Partner's largest interest (by value) in that share of Stock of the Corporate Partner that was taken into account when the partnership previously determined whether there had been a Section 337(d) Transaction with respect to such share (regardless of

whether the Corporate Partner recognized gain in the earlier transaction). *See Example 6* of paragraph (h) of this section. However, this limitation will not apply if any reduction in the Corporate Partner's interest in the identified share of Stock of the Corporate Partner occurred as part of a plan or arrangement to circumvent the purpose of this section. *See Example 7* of paragraph (h) of this section.

(3) *Amount of gain recognized on the exchange.* The amount of gain the Corporate Partner recognizes under paragraph (d)(1) of this section equals the product of the Corporate Partner's Gain Percentage and the gain from the appreciated property that is the subject of the exchange that the Corporate Partner would recognize if, immediately before the Section 337(d) Transaction, all assets of the partnership and any assets contributed to the partnership in the Section 337(d) Transaction were sold in a fully taxable transaction for cash in an amount equal to the fair market value of such property (taking into account section 7701(g)), reduced, but not below zero, by any gain the Corporate Partner is required to recognize with respect to the appreciated property in the Section 337(d) Transaction under any other provision of this chapter. This gain is computed taking into account allocations of tax items applying the principles of section 704(c), including any remedial allocations under § 1.704–3(d).

(4) *Basis adjustments*—(i) *Corporate Partner's basis in the partnership interest.* The basis of the Corporate Partner's interest in the partnership is increased by the amount of gain that the Corporate Partner recognizes under this paragraph (d).

(ii) *Partnership's basis in partnership property.* The partnership's adjusted tax basis in the appreciated property that is treated as the subject of the exchange under this paragraph (d) is increased by the amount of gain recognized with respect to that property by the Corporate Partner as a result of that exchange, regardless of whether the partnership has an election in effect under section 754.

(e) *Distribution of Stock of the Corporate Partner*—(1) *In general.* This paragraph (e) applies to distributions to the Corporate Partner of Stock of the Corporate Partner to which section 732(f) does not apply and that have previously been the subject of a Section 337(d) Transaction or become the subject of a Section 337(d) Transaction as a result of the distribution. Upon the distribution of Stock of the Corporate Partner to the Corporate Partner, paragraph (d) of this section will apply as though immediately before the distribution the partners amended the partnership agreement to allocate to the Corporate Partner a 100 percent interest in that portion of the Stock of the Corporate Partner that is distributed and to allocate an appropriately reduced interest in other partnership property away from the Corporate Partner.

(2) *Basis rules*—(i) *Basis allocation on distributions of stock and other property.* If, as part of the same transaction, a partnership distributes Stock of the Corporate Partner and other property (other than cash) to the Corporate Partner, see § 1.732–1T(c)(1)(iii) for a rule allocating basis first to the Stock of the Corporate Partner before the distribution of the other property.

(ii) *Computation of Basis.* For purposes of determining the basis of property distributed to the Corporate Partner (other than the basis of the Corporate Partner in its own stock), the basis of the Corporate Partner's remaining partnership interest, and the partnership's basis in undistributed Stock of the Corporate Partner, and for purposes of computing gain under paragraph (e)(3) of this section, the partnership's basis of Stock of the Corporate Partner distributed to the Corporate Partner equals the greater of—

(A) The partnership's basis of that distributed Stock of the Corporate Partner immediately before the distribution, or

(B) The fair market value of that distributed Stock of the Corporate Partner immediately before the distribution less the Corporate Partner's allocable share of gain from all of the Stock of the Corporate Partner if the partnership sold all of its assets in a fully taxable transaction for cash in an amount equal to the fair market value of such property (taking into account section 7701(g)) immediately before the distribution.

(3) *Gain recognition.* The Corporate Partner will recognize gain on a distribution of Stock of the Corporate Partner to the Corporate Partner to the extent that the partnership's basis in the distributed Stock of the Corporate Partner (as determined under paragraph (e)(2)(ii) of this section) exceeds the Corporate Partner's basis in its partnership interest (as reduced by any cash distributed in the transaction) immediately before the distribution.

(f) *Exceptions*—(1) *De minimis rule*—(i) *In general.* This section does not apply to a Corporate Partner if at the time that the partnership acquires Stock of the Corporate Partner or at the time of a revaluation event as described in § 1.704–1(b)(2)(iv)(*f*) (without regard to whether or not the partnership revalues its assets)—

(A) The Corporate Partner and any persons related to the Corporate Partner under section 267(b) or section 707(b) own in the aggregate less than five percent of the partnership;

(B) The partnership holds Stock of the Corporate Partner with a value of less than two percent of the partnership's gross assets (including the Stock of the Corporate Partner); and

(C) The partnership has never, at any point in time, held in the aggregate—

(*1*) Stock of the Corporate Partner with a fair market value greater than $1,000,000; or

(*2*) More than two percent of any particular class of Stock of the Corporate Partner.

(ii) *De minimis rule ceases to apply.* If a partnership satisfies the conditions of the de minimis rule of paragraph (f)(1) of this section upon an acquisition of Stock of the Corporate Partner or revaluation event as described in § 1.704–1(b)(2)(iv)(*f*), but later fails to satisfy the conditions of the de minimis rule upon a subsequent acquisition or revaluation event, then solely for purposes of paragraph (d) of this section, the Corporate Partner may compute its gain on the subsequent acquisition or revaluation event as if it had already recognized gain at the previous event. Neither the Corporate Partner nor the partnership increases its basis by the gain the Corporate Partner would have recognized if the de minimis rule of paragraph (f)(1) of this section did not apply to the prior acquisition or revaluation event.

(2) *Inadvertence rule.* Unless acquired as part of a plan to circumvent the purpose of this section, this section does not apply to Stock of the Corporate Partner that—

(i) Is disposed of (by sale or distribution) by the partnership before the due date (including extensions) of its federal income tax return for the taxable year during which the Stock of the Corporate Partner is acquired (or for the taxable year in which the Corporate Partner becomes a partner, whichever is applicable); and

(ii) Is not distributed to the Corporate Partner or a corporation possessing section 304(c) control of the Corporate Partner.

(g) *Tiered partnerships.* The rules of this section shall apply to tiered partnerships in a manner that is consistent with the purpose set forth in paragraph (a) of this section.

(h) *Examples.* The following examples illustrate the principles of this section.

All amounts in the following examples are reported in millions of dollars:

Example 1. Deemed redemption rule—contribution of Stock of a Corporate Partner. (i) In Year 1, X, a corporation, and A, an individual, form partnership AX as equal partners in all respects. X contributes Asset 1 with a fair market value of $100 and a basis of $20. A contributes X stock, which is Stock of the Corporate Partner, with a basis and fair market value of $100.

(ii) Because A and X are equal partners in AX in all respects, the partnership formation causes X's interest in X stock to increase from $0 to $50 and its interest in Asset 1 to decrease from $100 to $50. Thus, the partnership formation is a Section 337(d) Transaction because the formation has the effect of an exchange by X of $50 of Asset 1 for $50 of X stock.

(iii) X must recognize gain under paragraph (d) of this section with respect to Asset 1 to prevent the circumvention of section 311(b) principles. X's gain equals the product of X's Gain Percentage and the gain from Asset 1 that X would recognize (decreased, but not below zero, by any gain that X recognized with respect to Asset 1 in the Section 337(d) Transaction under any other provision of this chapter) if, immediately before the Section 337(d) Transaction, all assets were sold in a fully taxable transaction for cash in an amount equal to the fair market value of such property. If Asset 1 had been sold in a fully taxable transaction immediately before the formation of partnership AX, X's allocable share of gain would have been $80. X's Gain Percentage is 50% (equal to a fraction, the numerator of which is X's $50 interest in Asset 1 effectively exchanged for X stock, and the denominator of which is X's $100 interest in Asset 1 immediately before the Section 337(d) Transaction). Thus, X recognizes $40 of gain ($80 multiplied by 50%) under the deemed redemption rule in paragraph (d) of this section. Under paragraph (d)(4)(i) of this section, X's basis in its AX partnership interest increases from $20 to $60. Under paragraph (d)(4)(ii) of this section, AX's basis in Asset 1 increases from $20 to $60 because Asset 1 is the appreciated property treated as the subject of the exchange.

Example 2. Distribution of Stock of the Corporate Partner—pro rata distribution. (i) The facts are the same as in *Example 1(i).* AX liquidates in Year 9, when Asset 1 and the X stock each have a fair market value of $200. X and A each receive 50% of Asset 1 and 50% of the X stock in the liquidation. At the time AX liquidates, X's basis in its AX partnership interest is $60 and A's basis in its AX partnership interest is $100.

(ii) When AX liquidates, X's interests in its stock and in Asset 1 do not change. Thus, the liquidation is not a Section 337(d) Transaction because it does not have the effect of an exchange by X of appreciated property for Stock of the Corporate Partner.

(iii) Paragraph (e) of this section applies because the distributed X stock was the subject of a previous Section 337(d) Transaction and because section 732(f) does not apply. Under § 1.732–1T(c)(1)(iii), the distribution to X of X stock is deemed to immediately precede the distribution of 50% of Asset 1 to X for purposes of determining X's basis in the distributed property. For purposes of determining X's basis in Asset 1 and X's gain on distribution, the basis of the distributed X stock is treated as $50, the greater of $50 (50% of the stock's $100 basis in the hands of the partnership), or $50, the fair market value of that distributed X stock ($100) less X's allocable share of gain from the distributed X stock if AX had sold all of its assets in a fully taxable transaction for cash in an amount equal to the fair market value of such property immediately before the distribution ($50). Thus, X reduces its basis in its partnership interest by $50 prior to the distribution of Asset 1. Accordingly, X's basis in the distributed portion of Asset 1 is $10. Because AX's basis in the distributed X stock immediately before the distribution ($50) does not exceed X's basis in its AX partnership interest immediately before the distribution ($60), X recognizes no gain under paragraph (e)(3) of this section.

Example 3. Distribution of Stock of the Corporate Partner—non pro rata distribution. (i) The facts are the same as *Example 2(i),* except that when AX liquidates, X receives 75% of the X stock and 25% of Asset 1 and A receives 25% of the X stock and 75% of Asset 1.

(ii) The liquidation of AX causes X's interest in X stock to increase from $100 to $150 and its interest in Asset 1 to decrease from $100 to $50. Thus, AX's liquidating distributions of X stock and Asset 1 to X are a Section 337(d) Transaction because the distributions have the effect of an exchange by X of $50 of Asset 1 for $50 of X stock.

(iii) X must recognize gain with respect to Asset 1 to prevent the circumvention of section 311(b) principles. Under paragraph (e)(1) of this section, paragraph (d) of this section is applied as if X and A amended the AX partnership agreement to allocate to X a 100% interest in the distributed portion of the X stock. X must recognize gain equal to the product of X's Gain Percentage and the gain from Asset 1 that X would have recognized (decreased, but not below zero, by any gain X recognized with respect to Asset 1 in the Section 337(d) Transaction under any other provision of this chapter) if, immediately before the Section 337(d) Transaction, AX had sold all of its assets in a fully taxable transaction for cash in an amount equal to the fair market value of such property.

(iv) If Asset 1 had been sold in a fully taxable transaction immediately before the amendment of the AX partnership agreement, X's allocable share of gain would have been $90, or the sum of X's $40 remaining gain under section 704(c) and $50 of the $100 post-contribution appreciation. X's Gain Percentage is 50% (equal to a fraction, the numerator of which is X's $50 interest in Asset 1 effectively exchanged for X stock, and the denominator of which is X's $100 interest in Asset 1 immediately before the Section 337(d) Transaction). Thus, X recognizes $45 of gain ($90 multiplied by 50%) under the deemed redemption rule in paragraph (d) of this section. Under paragraph (d)(4)(i) of this section, X's basis in its AX partnership interest increases from $60 to $105. Under paragraph (d)(4)(ii) of this section, AX's basis in Asset 1 increases from $60 to $105 because Asset 1 is the appreciated property treated as the subject of the exchange.

(v) Paragraph (e) of this section applies because the distributed X stock was the subject of a previous Section 337(d) Transaction and because section 732(f) does not apply. Under § 1.732–1T(c)(1)(iii), AX is treated as first distributing the X stock to X before the distribution of 25% of Asset 1. For purposes of determining X's basis in Asset 1 and X's gain on distribution, the basis of the distributed X stock is treated as $100, the greater of $75 (75% of the stock's $100 basis in the hands of the partnership) or $100, the fair market value of the distributed X stock ($150) less X's allocable share of gain if the partnership had sold all of the X stock immediately before the distribution for cash in an amount equal to its fair market value ($50). Thus, X will reduce its basis in its partnership interest by $100 prior to the distribution of Asset 1. Accordingly, X's basis in the distributed portion of Asset 1 is $5. Because AX's basis in the distributed X stock immediately before the distribution as computed for purposes of this section ($100) does not exceed X's basis in its AX partnership interest immediately before the distribution ($105), X recognizes no additional gain under paragraph (e)(3) of this section.

Example 4. Deemed redemption rule—subsequent purchase of Stock of the Corporate Partner. The facts are the same as *Example 1(i),* except that A contributes cash of $100 instead of X stock. In a later year, when the value of Asset 1 has not changed, AX uses the contributed cash to purchase X stock for $100. AX's purchase of X stock has the effect of an exchange by X of appreciated property for X stock, and thus, is a Section 337(d) Transaction. X must recognize gain at the time, and to the extent, that X's share of appreciated property (other than X stock) is reduced in exchange for X stock. Thus, the consequences of the partnership's purchase of X stock are the same as those described in *Example 1(ii)* and *(iii),* resulting in X recognizing $40 of gain.

Example 5. Change in allocation ratios—amendment of partnership agreement. (i) The facts are the same as *Example 2(i),* except that in Year 9, AX does not liquidate, and the AX partnership agreement is amended to allocate to X 80% of the income, gain, loss, and deduction from the X stock and to allocate to A 80% of the income, gain, loss, and deduction from Asset 1. If AX had sold the partnership assets immediately before the change to the partnership agreement, X would have been allocated $90 of gain from Asset 1 and $50 of gain from the X stock.

(ii) The amendment to the AX partnership agreement causes X's interest in its stock to increase from $100 (50% of the stock value immediately before the amendment of the agreement) to $160 (80% of stock value immediately following amendment of agreement) and its interest in Asset 1 to decrease from $100 to $40. Thus, the amendment of the partnership agreement is a Section 337(d) Transaction because the amendment has the effect of an exchange by X of $60 of Asset 1 for $60 of its stock.

(iii) X must recognize gain equal to the product of X's Gain Percentage and the gain from Asset 1 that X would have recognized (decreased, but not below zero, by any gain X recognized with respect to Asset 1 in the Section 337(d) Transaction under any other provision of this chapter) if, immediately before the Section 337(d) Transaction, AX had sold all of its assets in a fully taxable transaction for cash in an amount equal to the fair market value of such property. If Asset 1 had been sold in a fully taxable transaction immediately before the amendment of the AX partnership agreement, X's allocable share of gain would have been $90, or the sum of X's $40 remaining gain under section 704(c) and 50% of the $100 post-contribution appreciation. X's Gain Percentage is 60% (equal to a fraction, the numerator of which is X's $60 interest in Asset 1 effectively exchanged for X stock, and the denominator of which is X's $100 interest in Asset 1 immediately before the Section 337(d) Transaction). Thus, X recognizes $54 of gain ($90 multiplied by 60%) under the deemed redemption rule in paragraph (d) of this section. Under paragraph (d)(4)(i) of this section, X's basis in its AX partnership interest increases from $60 to $114. Under paragraph (d)(4)(ii) of this section, AX's basis in Asset 1 increases from $60 to $114 because Asset 1 is the appreciated property treated as the subject of the exchange.

Example 6. Change in allocation ratios—admission and exit of a partner. (i) The facts are the same as *Example 1(i).* In addition, in Year 2, when the values of Asset 1 and the X stock have not changed, B contributes $100 of cash to AX in exchange for a one-third interest in the partnership. Upon the admission of B as a partner, X's interest in Asset 1 decreases from $50 to $33.33, and its interest in B's contributed cash increases. B's admission is not a Section 337(d) Transaction because it does not have the effect of an exchange by X of its interest in Asset 1 for X stock. Accordingly, X does not recognize gain under paragraph (d) of this section.

(ii) In Year 9, when the values of Asset 1 and the X stock have not changed, the partnership distributes $50 of cash and 50% of Asset 1 (valued at $50) to B in liquidation of B's interest. X and A are equal partners in all respects after the distribution. Upon the liquidation of B's interest, X's interest in Asset 1 decreases from $33.33 to $25, and its interest in X stock increases from $33.33 to $50. AX's liquidation of B's interest has the effect of an exchange by X of appreciated property for X stock, and thus, is a Section 337(d) Transaction.

(iii) Pursuant to paragraph (d)(2) of this section, X's interest in X stock and other appreciated property held by the partnership is determined based on all facts and circumstances, including allocation and distribution rights in the partnership agreement. However, paragraph (d)(2) of this section also requires that X's interest in its stock for purposes of paragraph (d) will never be less than the Corporate Partner's largest interest (by value) in those shares of Stock of the Corporate Partner taken into account when the partnership previously determined whether there had been a Section 337(d) Transaction (regardless of whether the Corporate Partner recognized gain in the earlier transaction). Although X's interest in X stock increases to $50 upon AX's liquidation of B's interest, X's largest interest previously taken into account under paragraph (d)(1) of this section was $50. Thus, X's interest in its stock is not considered to be increased, and X therefore recognizes no gain under paragraph (d) of this section, provided that the transactions did not occur as part of a plan or arrangement to circumvent the purpose of this section.

Example 7. Change in allocation ratios—plan to circumvent purpose of this section. (i) In Year 1, X, a corporation, and A, an individual, contribute a small amount of capital to newly-formed partnership AX, with X receiving a 99% interest in AX and A receiving a 1% interest in AX. AX borrows $100 from a third-party lender and uses the proceeds to purchase X stock, which is Stock of the Corporate Partner. Later, as part of a plan or arrangement to circumvent the purposes of this section, A contributes $100 of cash, which AX uses to repay the loan, and X contributes Asset 1 with a fair market value of $100 and basis of $20. After these contributions, A and X are equal partners in AX in all respects.

(ii) Pursuant to paragraph (d)(2) of this section, X's interest in X stock and other appreciated property held by the partnership is determined based on all facts and circumstances, including allocation and distribution rights in the partnership agreement. Generally pursuant to paragraph (d)(2) of this section, X's interest in X stock for purposes of paragraph (d) will never be less than the Corporate Partner's largest interest (by value) in those shares of Stock of the Corporate Partner taken into account when the partnership previously determined whether there had been a Section 337(d) Transaction (regardless of whether the Corporate Partner recognized gain in the earlier transaction). This limitation does not apply, however, if the reduction in X's interest in X's stock occurred as part of a plan or arrangement to circumvent the purpose of this section. Because the transactions described in this example are part of a plan or arrangement to circumvent the purpose of this section, the limitation in paragraph (d)(2) of this section does not apply. Accordingly, the deemed redemption rule under paragraph (d) of this section applies to the transactions with the consequences described in Example 1(iii) of this section, resulting in X recognizing $40 of gain.

Example 8. Tiered partnership. (i) In Year 1, X, a corporation, and A, an individual, form partnership UTP. X contributes Asset 1 with a fair market value of $80 and a basis of $0 in exchange for an 80% interest in UTP. A contributes $20 of cash in exchange for a 20% interest in UTP. UTP and B, an individual, form partnership LTP as equal partners. UTP contributes Asset 1 and $20 of cash. B contributes X stock, which is Stock of the Corporate Partner, with a basis and fair market value of $100.

(ii) Pursuant to paragraph (g) of this section, the rules of this section shall apply to tiered partnerships in a manner that is consistent with the purpose set forth in paragraph (a) of this section. Pursuant to paragraph (d)(1) of this section, if X is in a partnership that engages in a Section 337(d) Transaction, X must recognize gain at the time, and to the extent, that X's share of appreciated property is reduced in exchange for X stock. The formation of LTP causes X's interest in X stock to increase from $0 to $40 and its interest in Asset 1 to decrease from $64 to $32. Thus, LTP's formation is a Section 337(d) Transaction because the formation has the effect of an exchange by X of $32 of Asset 1 for $32 of X stock.

(iii) X must recognize gain with respect to Asset 1 to prevent the circumvention of section 311(b) principles. X must recognize gain equal to the product of X's Gain Percentage and the gain from Asset 1 (decreased, but not below zero, by any gain X recognized with respect to Asset 1 in the Section 337(d) Transaction under any other provision of this chapter) that X would recognize if, immediately before the Section 337(d) Transaction, all assets were sold in a fully taxable transaction for cash in an amount equal to the fair market value of such property. If Asset 1 had been sold in a fully taxable transaction immediately before LTP's formation, X's allocable share of gain would have been $80 pursuant to section 704(c). X's Gain Percentage is 50% (equal to a fraction, the numerator of which is X's $32 interest in Asset 1 effectively exchanged for X stock, and the denominator of which is X's $64 interest in Asset 1 immediately before the Section 337(d) Transaction). Thus, X recognizes $40 of gain ($80 multiplied by 50%) under the deemed redemption rule in paragraph (d) of this section. Under paragraphs (d)(4)(i) and (d)(4)(ii) of this section, X's basis in its UTP partnership interest increases from $0 to $40, UTP's basis in its LTP partnership interest increases from $20 to $60, and LTP's basis in Asset 1 increases from $0 to $40 pursuant to paragraph (g) of this section.

(i) *Effective/applicability date.* This section applies to transactions occurring on or after June 12, 2015.

(j) *Expiration date.* This section expires on June 11, 2018.

■ **Par. 3.** Section 1.732–1 is amended by revising paragraphs (c)(1) and (5) to read as follows:

§ 1.732–1 Basis of distributed property other than money.

* * * * *

(c) * * * (1) [Reserved]. For further guidance, see § 1.732–1T(c)(1).

* * * * *

(5) *Effective/applicability date*—(i) *In general.* This paragraph (c) applies to distributions of property from a partnership that occur on or after December 15, 1999.

(ii) [Reserved]. For further guidance, see § 1.732–1T(c)(5)(ii).

* * * * *

■ **Par. 4.** Section 1.732–1T is added to read as follows:

§ 1.732–1T Basis of distributed property other than money (temporary).

(a) and (b) [Reserved]. For further guidance, see § 1.732–1(a) and (b).

(c) *Allocation of basis among properties distributed to a partner*—(1) *General rule*—(i) *Unrealized receivables and inventory items.* Except as provided in paragraph (c)(1)(iii) of this section, the basis to be allocated to properties distributed to a partner under section 732(a)(2) or (b) is allocated first to any unrealized receivables (as defined in section 751(c)) and inventory items (as defined in section 751(d)(2)) in an amount equal to the adjusted basis of each such property to the partnership immediately before the distribution. If the basis to be allocated is less than the sum of the adjusted bases to the partnership of the distributed unrealized receivables and inventory items, the adjusted basis of the distributed property must be decreased in the manner provided in § 1.732–1(c)(2)(i). See § 1.460–4(k)(2)(iv)(D) for a rule determining the partnership's basis in long-term contract accounted for under a long-term contract method of accounting.

(ii) *Other distributed property.* Any basis not allocated to unrealized receivables or inventory items under paragraph (c)(1)(i) of this section or to stock of persons that control the corporate partner or to the corporate partner's stock under paragraph (c)(1)(iii) of this section is allocated to any other property distributed to the partner in the same transaction by assigning to each distributed property an amount equal to the adjusted basis of the property to the partnership immediately before the distribution. However, if the sum of the adjusted bases to the partnership of such other distributed property does not equal the basis to be allocated among the distributed property, any increase or decrease required to make the amounts equal is allocated among the distributed property as provided in § 1.732–1(c)(2).

(iii) *Stock distributed to the corporate partner.* If a partnership makes a distribution described in § 1.337(d)–3T(e)(1), then for purposes of this section, the basis to be allocated to properties distributed under section 732(a)(2) or (b) is allocated first to the Stock of the Corporate Partner, as defined in § 1.337(d)–3T(c)(2), before the distribution of any other property (other than cash). The amount allocated to the Stock of the Corporate Partner is as provided in § 1.337(d)–3T(e)(2).

(2) through (5)(i) [Reserved]. For further guidance, see § 1.732–1(c)(2) through (c)(5)(i).

(ii) *Exception.* Nothwithstanding paragraph (c)(5)(i), the first sentence of each of paragraphs (c)(1)(i) and (c)(1)(ii) of this section, and paragraph (c)(1)(iii) of this section in its entirety, apply to distributions of Stock of the Corporate Partner, as defined in § 1.337(d)–3T(c)(2), that occur on or after June 12, 2015.

(d) and (e) [Reserved]. For further guidance, see § 1.732–1(d) and (e).

(f) *Expiration date.* This section expires on June 11, 2018.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

Approved: June 1, 2015.

Mark J. Mazur,

Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 2015–14405 Filed 6–11–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket No. USCG–2015–0421]

Safety Zones; Annual Events in the Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: At various times throughout the month of July, the Coast Guard will enforce certain safety zones that are codified in regulation. This action is necessary and intended for the safety of life and property on navigable waters during this event. During each enforcement period, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Buffalo.

DATES: The regulations in 33 CFR 165.939(a)(13) will be enforced on July 3, 2015 from 9 p.m. to 10:30 p.m.

FOR FURTHER INFORMATION CONTACT: If you have questions on this notice, call or email Waterways Management Division, Coast Guard Sector Buffalo, 1 Fuhrmann Blvd. Buffalo, NY 14203; Coast Guard telephone 716–843–9343, email *SectorBuffaloMarineSafety@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the Safety Zones; Annual Events in the Captain of the Port Buffalo Zone listed in 33 CFR 165.939 for the following events:

Tom Graves Memorial Fireworks, Port Bay, NY; The safety zone listed in 33 CFR 165.939(a)(13) will be enforced from 9 p.m. to 10:30 p.m. on July 3, 2015.

Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within these safety zones during an enforcement period is prohibited unless authorized by the Captain of the Port Buffalo or his designated representative. Those seeking permission to enter one of these safety zones may request permission from the Captain of Port Buffalo via channel 16, VHF–FM. Vessels and persons granted permission to enter one of these safety zones shall obey the directions of the Captain of the Port Buffalo or his designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

This notice is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552(a). In addition to this notice in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of these enforcement periods via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Buffalo determines that this safety zone need not be enforced for the full duration stated in this notice he or she may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone.

Dated: June 1, 2015.

B.W. Roche,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 2015–14475 Filed 6–11–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[USCG–2012–0375]

RIN 1625–AA00

Safety Zone, Milwaukee Harbor, Milwaukee, WI

AGENCY: Coast Guard, DHS.

ACTION: Notice of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the safety zone in Milwaukee Harbor, Milwaukee, WI for annual fireworks displays in the Captain of the Port Lake Michigan zone at specified times from June 6, 2015 until September 12, 2015. This action is necessary and intended to ensure safety of life on the navigable waters immediately prior to, during, and

immediately after fireworks displays. During the aforementioned periods, the Coast Guard will enforce restrictions upon, and control movement of, vessels in the safety zone. No person or vessel may enter the safety zone while it is being enforced without permission of the Captain of the Port Lake Michigan.

DATES: The regulations in 33 CFR 165.935 will be enforced at specified times from June 6, 2015 until September 12, 2015.

FOR FURTHER INFORMATION CONTACT: If you have questions on this document, call or email MST1 Joseph McCollum, Prevention Department, Coast Guard Sector Lake Michigan, Milwaukee, WI at (414) 747–7148, email *joseph.p.mccollum@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the safety zone listed in 33 CFR 165.935, Safety Zone, Milwaukee Harbor, Milwaukee, WI, at the following times for the following events:

(1) *Pridefest fireworks display* on June 6, 2015 from 9:15 p.m. until 10:15 p.m.;

(2) *Polish Fest fireworks display* on June 13, 2015 from 10:15 p.m. until 11:15 p.m.;

(3) *Summerfest fireworks display* on each day of June 24, 2015 and July 2, 2015 from 9:15 p.m. until 10:30 p.m.;

(4) *Festa Italiana fireworks display* on each day of July 17, 18, and 19, 2015 from 10:15 p.m. until 11:15 p.m.;

(5) *German Fest fireworks display* on each day of July 24 and 25, 2015 from 10:15 p.m. until 11:15 p.m.;

(6) *Irish Fest fireworks display* on August 13, 2015 from 10:15 p.m. until 11:15 p.m.;

(7) *Indian Summer fireworks display* on each day of September 11 and 12, 2015 from 9:45 p.m. until 10:45 p.m.

This safety zone will encompass the waters of Lake Michigan within Milwaukee Harbor including the Harbor Island Lagoon enclosed by a line connecting the following points: beginning at 43°02′00″ N., 087°53′53″ W.; then south to 43°01′44″ N., 087°53′53″ W.; then east to 43°01′44″ N., 087°53′25″ W.; then north to 43°02′00″ N., 087°53′25″ W.; then west to the point of origin. All vessels must obtain permission from the Captain of the Port Lake Michigan or her on-scene representative to enter, move within, or exit the safety zone. Vessels and persons granted permission to enter the safety zone must obey all lawful orders or directions of the Captain of the Port Lake Michigan or her on-scene representative.

This document is issued under authority of 33 CFR 165.935 Safety Zone, Milwaukee Harbor, Milwaukee, WI and 5 U.S.C. 552(a). In addition to this publication in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of the enforcement periods via Broadcast Notice to Mariners or Local Notice to Mariners. The Captain of the Port Lake Michigan or her on-scene representative may be contacted via VHF Channel 16.

Dated: May 29, 2015.

A.B. Cocanour,

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

[FR Doc. 2015–14447 Filed 6–11–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

Approval and Promulgation of Implementation Plans

CFR Correction

In Title 40 of the Code of Federal Regulations, Part 52 (§§ 52.01 to 52.1018), revised as of July 1, 2014, on page 49, in § 52.21, paragraph (aa)(10)(v) is reinstated to read as follows:

§ 52.21 Prevention of significant deterioration of air quality.

* * * * *

(aa) * * *

(10) * * *

(v) If the compliance date for a State or Federal requirement that applies to the PAL source occurs during the PAL effective period, and if the Administrator has not already adjusted for such requirement, the PAL shall be adjusted at the time of PAL permit renewal or title V permit renewal, whichever occurs first.

* * * * *

[FR Doc. 2015–14398 Filed 6–11–15; 8:45 am]

BILLING CODE 1505–01–D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2014–0915; FRL–9928–88–Region 4]

Approval and Promulgation of Implementation Plans; South Carolina; Charlotte-Rock Hill; Base Year Emissions Inventory and Emissions Statements Requirements for the 2008 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action to approve the portions of the state implementation plan (SIP) revisions submitted by the State of South Carolina, through South Carolina Department of Health and Environmental Control (SC DHEC) on August 8, 2014, and August 22, 2014, that address the base year emissions inventory and emissions statements requirements for the State's portion of the bi-state Charlotte-Gastonia-Rock Hill North Carolina-South Carolina 2008 8-hour ozone national ambient air quality standards (NAAQS) nonattainment area (hereinafter referred to as the ''bi-state Charlotte Area'' or ''Area''). Annual emissions reporting (*i.e.,* emissions statements) and a base year emissions inventory are required for all ozone nonattainment areas. The Area is comprised of the entire county of Mecklenburg and portions of Cabarrus, Gaston, Lincoln, Rowan, and Union Counties in North Carolina and a portion of York County in South Carolina. EPA has published proposed and direct final actions on the emissions inventory and emissions statements requirements for the North Carolina portion of the bi-state Charlotte Area in separate rulemaking documents.

DATES: This direct final rule is effective August 11, 2015 without further notice, unless EPA receives adverse comment by July 13, 2015. If EPA receives such comments, it 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–R04–OAR–2014–0915, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.

2. *Email: R4-ARMS@epa.gov.*

3. *Fax:* (404) 562–9019.

4. *Mail:* ''EPA–R04–OAR–2014–0915,'' Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.

5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of

operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2014–0915. 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 through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Bell can be reached at (404) 562–9088 and via electronic mail at *bell.tiereny@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On March 12, 2008, EPA promulgated a revised 8-hour ozone NAAQS of 0.075 parts per million (ppm). *See* 73 FR 16436 (March 27, 2008). Under EPA's regulations at 40 CFR part 50, the 2008 8-hour ozone NAAQS is attained when the 3-year average of the annual fourth-highest daily maximum 8-hour average ambient air quality ozone concentrations is less than or equal to 0.075 ppm. 40 CFR 50.15. Ambient air quality monitoring data for the 3-year period must meet a data completeness requirement. The ambient air quality monitoring data completeness requirement is met when the average percent of days with valid ambient monitoring data is greater than 90 percent, and no single year has less than 75 percent data completeness as determined in Appendix I of part 50.

Upon promulgation of a new or revised NAAQS, the Clean Air Act (CAA or Act) requires EPA to designate as nonattainment any area that is violating the NAAQS based on the three most recent years of ambient air quality data at the conclusion of the designation process. The bi-state Charlotte Area was designated nonattainment for the 2008 8-hour ozone NAAQS on April 30, 2012 (effective July 20, 2012) using 2009–2011 ambient air quality data. *See* 77 FR 30088 (May 21, 2012). At the time of designation, the bi-state Charlotte Area was classified as a marginal nonattainment area for the 2008 8-hour ozone NAAQS. On March 6, 2015, EPA finalized a rule entitled ''Implementation of the 2008 National Ambient Air Quality Standards for Ozone: State Implementation Plan Requirements'' (SIP Requirements Rule) that establishes the requirements that state, tribal, and local air quality management agencies must meet as they develop implementation plans for areas where air quality exceeds the 2008 8-hour ozone NAAQS.[1] *See* 80 FR 12264. This rule establishes nonattainment area attainment dates based on Table 1 of section 181(a) of the CAA, including an attainment date three years after the July 20, 2012, effective date, for areas classified as marginal for the 2008 8-hour ozone NAAQS. Therefore, the attainment date for the bi-state Charlotte Area is July 20, 2015.

Based on the nonattainment designation, South Carolina was required to develop a SIP revision addressing certain CAA requirements for the Area. Specifically, pursuant to CAA section 182(a)(3)(B) and section 182(a)(1), South Carolina was required to submit a SIP revision addressing the emissions statements and emissions inventory requirements, respectively.

Ground level ozone is not emitted directly into the air, but is created by chemical reactions between oxides of nitrogen (NO_X) and volatile organic compounds (VOC) in the presence of sunlight. Emissions from industrial facilities and electric utilities, motor vehicle exhaust, gasoline vapors, and chemical solvents are some of the major sources of NO_X and VOC. Section 182(a)(3)(B) of the CAA requires each state with ozone nonattainment areas to submit a SIP revision requiring annual emissions statements to be submitted to the state by the owner or operator of each NO_X or VOC stationary source[2] located within a nonattainment area showing the actual emissions of NO_X and VOC from that source. The first statement is due three years from the area's nonattainment designation, and subsequent statements are due at least annually thereafter. Section 182(a)(1) of the CAA requires states with areas designated nonattainment for the ozone NAAQS to submit a SIP revision providing a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in such area. NO_X and VOCs are the relevant pollutants because they are the precursors of ozone.

On August 8, 2014, South Carolina submitted a SIP revision that, among

[1] The SIP Requirements Rule addresses a range of nonattainment area SIP requirements for the 2008 ozone NAAQS, including requirements pertaining to attainment demonstrations, reasonable further progress (RFP), reasonably available control technology, reasonably available control measures, major new source review, emission inventories, and the timing of SIP submissions and of compliance with emission control measures in the SIP. The rule also revokes the 1997 ozone NAAQS and establishes anti-backsliding requirements.

[2] A state may waive the emission statement requirement for any class or category of stationary sources which emit less than 25 tons per year of VOCs or NO_X if the state meets the requirements of section 182(a)(3)(B)(ii).

other things, addressed emissions statements requirements related to the 2008 8-hour ozone NAAQS for its portion of the bi-state Charlotte Area. Additionally, on August 22, 2014, South Carolina submitted a SIP revision that included a base year emissions inventory for the Area. EPA is now taking action to approve the portion of the August 8, 2014 SIP revision related to emissions statements as meeting the requirements of sections 110 and 182(a)(3)(B) of the CAA and to approve the portion of the August 22, 2014 SIP revision related to the base year inventory as meeting the requirements of sections 110 and 182(a)(1) of the CAA.[3] More information on EPA's analysis of South Carolina's SIP revisions provided below.

II. Analysis of State's Submittal

a. Base Year Emission Inventory

As discussed above, section 182(a)(1) of the CAA requires states to submit a comprehensive, accurate, and current inventory of actual emissions from all sources of the relevant pollutant or pollutants in each ozone non-attainment area. The section 182(a)(1) base year inventory is defined in the SIP Requirements Rule as ''a comprehensive, accurate, current inventory of actual emissions from sources of VOC and NO_X emitted within the boundaries of the nonattainment area as required by CAA section 182(a)(1).'' *See* 40 CFR 51.1100(bb). The inventory year must be selected consistent with the baseline year for the RFP plan as required by 40 CFR 51.1110(b),[4] and the inventory must include actual ozone season day emissions as defined in 40 CFR 51.1100(cc) [5] and contain data elements consistent with the detail required by 40 CFR part 51, subpart A. *See* 40 CFR 51.1115(a), (c), (e). In addition, the point source emissions included in the inventory must be reported according to the point source emissions thresholds of the Air Emissions Reporting Requirements (AERR) in 40 CFR part 51, subpart A. 40 CFR 51.1115(d).

South Carolina selected 2011 as the base year for the emissions inventory which is the year corresponding with the first triennial inventory under 40 CFR part 51, subpart A. This base year is one of the three years of ambient data used to designate the Area as a nonattainment area and therefore represents emissions associated with nonattainment conditions. The emissions inventory is based on data developed and submitted by SC DHEC to EPA's 2011 National Emissions Inventory (NEI), and it contains data elements consistent with the detail required by 40 CFR part 51, subpart A.[6]

South Carolina's emissions inventory for its portion of the Area provides 2011 typical average summer day emissions data for NO_X and VOCs for the following general source categories: stationary point, area, non-road mobile, on-road mobile, and events.[7] A detailed discussion of the inventory development is located in Appendix A of the South Carolina submittal which is provided in the docket for this action. The table below provides a summary of the emissions inventory.

TABLE 1—2011 EMISSIONS FOR THE SOUTH CAROLINA, YORK COUNTY PORTION OF THE BI-STATE CHARLOTTE AREA

[Tons per summer day]

County	Point		Area		Non-road mobile		On-road mobile		Events	
	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC	NO_X	VOC
York County *	4.71	4.02	0.93	6.93	2.63	1.78	11.43	5.30	0.04	0.42

* Only a portion of York County is located in the nonattainment area.

The emissions reported for York County reflect the emissions for only the nonattainment portion of the county. The inventory contains point source emissions data for facilities located within the South Carolina portion of the Area based on Geographic Information Systems (GIS) mapping. For the remaining emissions categories, emissions from the South Carolina portion of the bi-state Charlotte Area were determined based on the population of the portion of York County that is included in the Area. More detail on the emissions inventory for individual sources categories is provided below and in Appendix A of the State's August 22, 2014 submittal.

Point sources are large, stationary, identifiable sources of emissions that release pollutants into the atmosphere. The point source emissions inventory for South Carolina's portion of the bi-state Charlotte Area was developed from facility-specific emissions data. A detailed account of the point sources can be found in Appendix A of the August 22, 2014, submittal, which is located in the docket for today's action. The point source emissions data meets the point source emissions thresholds of 40 CFR part 51, subpart A.

Area sources are small emission stationary sources which, due to their large number, collectively have significant emissions (*e.g.,* dry cleaners, service stations). Emissions for these sources were estimated by multiplying an emission factor by such indicators of collective emissions activity as production, number of employees, or population. These emissions were estimated at the county level. South Carolina developed its inventory according to the current EPA emissions

[3] Regarding the emissions statements requirements, today's direct final rulemaking is only approving certain revisions to Section III, Emissions Inventory and Emission Statements, of state Regulation No. 61–62.1 into the SIP. See sections II.b. and III, below, for further detail. EPA will act on the remaining portions of South Carolina's August 8, 2014, SIP revision in a separate action.

[4] 40 CFR 51.1110(b) states that ''at the time of designation for the 2008 ozone NAAQS the baseline emissions inventory shall be the emissions inventory for the most recent calendar year for which a complete triennial inventory is required to be submitted to EPA under the provisions of subpart A of this part. States may use an alternative baseline emissions inventory provided the state demonstrates why it is appropriate to use the alternative baseline year, and provided that the year selected is between the years 2008 to 2012.''

[5] ''Ozone season day emissions'' is defined as ''an average day's emissions for a typical ozone season work weekday. The state shall select, subject to EPA approval, the particular month(s) in the ozone season and the day(s) in the work week to be represented, considering the conditions assumed in the development of RFP plans and/or emissions budgets for transportation conformity.'' 40 CFR 51.1100(cc).

[6] Data downloaded from the EPA EIS from the 2011 NEI was subjected to quality assurance procedures described under quality assurance details under *2011 NEI Version 1 Documentation* located at *http://www.epa.gov/ttn/chief/net/2011inventory.html#inventorydoc.* The quality assurance and quality control procedures and measures associated with this data are outlined in the State's EPA-approved Emission Inventory Quality Assurance Project Plan.

[7] South Carolina included events (*i.e.* wildfires and prescribed fires) to account for actual event source emissions.

inventory guidance for area sources.[8] A detailed account of the area sources can be found in Appendix A of the August 22, 2014, submittal.

On-road mobile sources include vehicles used on roads for transportation of passengers or freight. South Carolina developed its on-road emissions inventory using EPA's Motor Vehicle Emissions Simulator (MOVES) model for each ozone nonattainment county.[9] County level on-road modeling was conducted using county-specific vehicle population and other local data. South Carolina developed its inventory according to the current EPA emissions inventory guidance for on-road mobile sources.[10] A detailed account of the on-road sources can be found in Appendix A of the August 22, 2014, submittal.

Non-road mobile sources include vehicles, engines, and equipment used for construction, agriculture, recreation, and other purposes that do not use roadways (*e.g.,* lawn mowers, construction equipment, railroad locomotives, and aircraft). South Carolina calculated emissions for most of the non-road mobile sources using EPA's NONROAD2008a model [11] and developed its non-road mobile source inventory according to the current EPA emissions inventory guidance for non-road mobile sources.[12] The railroad locomotive emissions are calculated with fuel use data, track miles and emission factors. A detailed account of the non-road mobile sources can be found in Appendix A of the August 22, 2014, submittal.

SC DEHC included 2011 actual emissions from event sources in its emissions inventory. Events sources in 2011 included wildfires and prescribed fires. Wildfires are unplanned, unwanted wild land fires including unauthorized human-caused fires, escaped prescribed fire projects, or other inadvertent fire situations where the objective is to put the fire out. Prescribed fires are any fires ignited by management actions to meet specific objectives related to the reduction of the biomass potentially available for wildfires. South Carolina calculated actual event source emissions using the 2011 NEI version 1 dataset developed by EPA. A detailed account of the event sources can be found in Appendix A of the August 22, 2014 submittal.

For the reasons discussed above, EPA has determined that South Carolina's emissions inventory meets the requirements under CAA section 182(a)(1) and the SIP Requirements Rule for the 2008 8-hour ozone NAAQS.

b. Emissions Statements

Pursuant to section 182(a)(3)(B), states with ozone nonattainment areas must require annual emissions statements from NO_X and VOC stationary sources within those nonattainment areas. This requirement applies to all ozone nonattainment areas regardless of classification (*e.g.,* Marginal, Moderate).

On August 8, 2014, South Carolina submitted a SIP revision to amend portions of Regulation No. 61–62.1, *Definitions and General Requirements,* as currently incorporated into the SIP, to reflect recent changes to the rule.[13] The changes to Regulation No. 61–62.1 that address emission statement requirements are the revision to the Section III title,[14] the addition of a second paragraph to Section III.A.,[15] and the addition of Section III.C.[16] EPA has determined that these three specific changes to Section III of Regulation No. 61–62.1, identified in the August 8, 2014 SIP submission, meet the requirements of section 182(a)(3)(B) for the 2008 8-hour ozone NAAQS and is approving those changes into the SIP.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is incorporating the following changes to Regulation No. 61–62.1, titled ''Definitions and General Requirements'': modification of the title of Section III, addition of a second paragraph to Section III.A defining an ''emissions statement,'' and addition of Section III.C titled ''Emissions Statement Requirements'' which were state effective on June 27, 2014. EPA has made, and will continue to make, documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

IV. Final Action

EPA is approving the portions of the SIP revisions submitted by South Carolina on August 22, 2014 and August 8, 2014, that relate to the base year emissions inventory and emissions statement requirements,[17] respectively, for the State's portion of the bi-state Charlotte Area. EPA has concluded that the portions of the State's submissions that EPA is approving meet the relevant requirements of sections 110 and 182 of the CAA. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse

[8] This guidance includes: *Procedures for the Preparation of Emission Inventories of Carbon Monoxide and Precursors of Ozone, Vol. 1,* EPA–450/4–91–016 (May 1991) and *Emissions Inventory Improvement Program (EIIP) Technical Report, Vol. 3, Area Sources* (Revised January 2001, updated April 2001).

[9] South Carolina used MOVES version 2010b because this was the latest version available at the time that the State submitted its SIP revision.

[10] This guidance includes: *Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,* EPA–454/R–05–001 (August 2005, updated November 2005); *Policy Guidance on the Use of MOVES2010 for State Implementation Plan Development, Transportation Conformity, and Other Purposes,* EPA–420–B–09–046 (December 2009); and *Technical Guidance on the Use of MOVES2010 for Emission Inventory Preparation in State Implementation Plans and Transportation Conformity,* EPA–420–B–10–023 (April 2010).

[11] For consistency with the NEI, South Carolina included emissions data aircraft (where they are reported to occur at the locations of the airports where they are generated) with the point source data in the base year inventory. See Appendix A and Appendix A of the State's SIP revision for a detailed discussion of the methodology used to calculate aircraft and locomotive emissions. No rail yards are located in York County, South Carolina.

[12] This guidance includes: *Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources,* EPA–450/4–81–026d (July 1991).

[13] EPA initially approved this state regulation into South Carolina's SIP in 2006. *See* 71 FR 70880 (December 7, 2006).

[14] The revised title of Section III is ''Emissions Inventory and Emissions Statements.''

[15] Paragraph two reads: ''An emissions statement is a less detailed statement which focuses on emissions estimates for pollutants associated with a nonattainment designation.''

[16] Section III.C. of the revised regulation states: ''1. Sources in areas designated nonattainment for an ozone National Ambient Air Quality Standard (NAAQS) must submit to the Department by March 31 for the previous calendar year an emissions statement which includes emissions estimates for both VOCs and nitrogen oxides (NO_X) beginning with the effective date of this regulation. 2. The statement must contain a certification that the information contained in the statement is accurate to the best knowledge of the individual certifying the statement. 3. All applicable information must be recorded in the current format for reporting emissions data provided by the Department. 4. Copies of all records and reports relating to emissions statements as required in this section must be retained by the owner or operator at the source for a minimum of five (5) years.'' On May 18, 2015, South Carolina submitted an email to EPA clarifying that the State used the term ''estimate'' in Section III.C.1 to ''make a distinction between a more detailed emissions inventory, which is also required, and the more general emission statement document'' and clarifying that the emission statement is a ''certified document submitted to the State, by the owner or operator of each stationary source in a nonattainment area, that reports actual prior year VOC and NO_X emissions from the respective nonattainment area stationary sources.'' This email is available in the docket for today's action. SC DHEC's Web site contains additional information regarding the State's emissions statements requirements. *See http://www.scdhec.gov/Environment/AirQuality/ComplianceandReporting/EmissionsInventory/OzoneNonattainmentAreaReportingRequirements/.*

[17] EPA is only incorporating the changes to Regulation No. 61–62.1 identified in sections II.b and III, above, into the SIP.

comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective August 11, 2015 without further notice unless the Agency receives adverse comments by July 13, 2015.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All adverse comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on August 11, 2015 and no further action will be taken on the proposed rule. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, the Agency may adopt as final those provisions of the rule that are not the subject of an adverse comment.

V. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 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 CAA. 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 CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this direct final rule for the South Carolina portion of the bi-state Charlotte area does not have Tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have substantial direct effects on an Indian Tribe. The Catawba Indian Nation Reservation is located within the South Carolina portion of the bi-state Charlotte Area. Pursuant to the Catawba Indian Claims Settlement Act, S.C. Code Ann. 27–16–120, ''all state and local environmental laws and regulations apply to the [Catawba Indian Nation] and Reservation and are fully enforceable by all relevant state and local agencies and authorities.'' EPA notes that today's action will not impose substantial direct costs on Tribal governments or preempt Tribal law.

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 August 11, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. *See* section 307(b)(2).

List of Subjects in 40 CFR Part 52

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

Dated: May 28, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

Therefore, 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 PP—South Carolina

■ 2. In § 52.2120:

■ a. Paragraph (c) is amended by revising the entry for ''Section III'' under ''Regulation No. 62.1''; and

■ b. Paragraph (e) is amended by adding an entry for ''2011 Base Year Emissions Inventory for the South Carolina portion of the bi-state Charlotte 2008 8-Hour Ozone Nonattainment Area'' at the end of the table.

The revisions read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA

State citation	Title/Subject	State effective date	EPA Approval date	**Federal Register** notice
* * *	*	*	*	*
Section III	Emission Inventory and Emissions Statement.	6/27/2014	6/12/2015	[Insert **Federal Register** citation]
* * *	*	*	*	*

* * * * * (e) * * *

EPA-APPROVED SOUTH CAROLINA NON-REGULATORY PROVISIONS

Provision	State effective date	EPA Approval date	Explanation
* * *	*	*	*
2011 Base Year Emissions Inventory for the South Carolina portion of the bi-state Charlotte 2008 8-Hour Ozone Nonattainment Area.	8/22/2014	6/12/2015 , [Insert **Federal Register** citation]	

[FR Doc. 2015–14338 Filed 6–11–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R02–OAR–2013–0192; FRL–9929–11–Region 2]

Approval and Promulgation of Implementation Plans; Revision to the New York State Implementation Plan for Carbon Monoxide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the State Implementation Plan revision (SIP) submitted by the New York State Department of Environmental Conservation. This revision consists of a change to New York's November 15, 1992 Carbon Monoxide Attainment Demonstration that would remove a reference to a limited off-street parking program as it relates to the New York County portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT Carbon Monoxide attainment area. The EPA is approving this SIP revision because it will not interfere with attainment or maintenance of the national ambient air quality standards (NAAQS) in the affected area or with any other applicable requirement of the Clean Air Act (CAA) and is consistent with EPA rules and guidance.

DATES: This rule is effective on July 13, 2015.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2013–0192. All documents in the docket are listed in the *http://www.regulations.gov* Web site. Although listed in the electronic docket, some information is not publicly available, *i.e.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *http://www.regulations.gov* or in hard copy for public inspection during normal business hours at the Air Programs Branch, Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007–1866. This Docket Facility is open from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The Docket telephone number is 212–637–4249.

FOR FURTHER INFORMATION CONTACT: If you have questions concerning this final action, please contact Henry Feingersh, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone number (212) 637–3382, fax number (212) 637–3901, email *feingersh.henry@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What action is the EPA taking?

The New York State Department of Environmental Conservation submitted a State Implementation Plan (SIP) revision request to remove a reference from the carbon monoxide (CO) SIP to a limited off-street parking program that only applied in the Manhattan Central Business District of New York City (CBD). The program limits the number of parking spaces permitted in newly constructed buildings. The EPA is approving New York's request to remove a reference to this limited off-street parking program in New York County because this SIP revision will not interfere with any applicable requirement concerning attainment and reasonable further progress (RFP) toward attainment and maintenance of any NAAQS or with any other applicable requirement of the CAA. The EPA has reviewed all the public comments and agrees with the State and City of New York that there is no evidence that removal from the SIP will interfere with attainment or maintenance of the NAAQS in the area or with any other CAA applicable requirement. In addition, New York, in its SIP modeling to support the previously EPA-approved demonstrations of attainment of the various NAAQS, did not take credit for any emission reductions that may be attributed to the limited off-street parking program measures. After removal from the federal SIP, the limited off-street parking program, which is implemented by the New York City Department of City Planning and subject to New York City administrative

procedures will no longer be federally enforceable. Removal of the limited off-street parking program from the SIP will not change the program's status under local law.

II. What comments did the EPA receive on the proposal and what are the EPA's responses?

Our April 12, 2013 proposed approval of the SIP provided for a public comment period that ran from April 12 through May 13, 2013. We received comments from the City of New York Law Department and from Mr. Daniel Gutman, some of which were timely. The City of New York Law Department submitted a letter dated May 13, 2013. Mr. Gutman provided several comments to the EPA: A May 13, 2013 letter, a June 7, 2013 electronic mail message, a June 11, 2013 electronic mail message and a July 26, 2013 letter. All comments, even those from Mr. Gutman that were received after the close of the public comment period, are included in the docket for this action. Although we are not required to respond to Mr. Gutman's late-submitted comments, we are electing to do so in this final action.

In general, the City of New York supports the EPA's proposed rule to approve New York's SIP request to remove a reference to a limited off-street parking program as it relates to the New York County portion of the New York-Northern New Jersey-Long Island, NY-NJ-CT CO attainment area. Mr. Gutman commented that the EPA should deny New York State's request to revise the SIP and not approve removal of the limited off-street parking program reference in the SIP.

A summary of the comments and the EPA's responses are provided below. Comments from the City of New York Law Department are referred to as ''the City of New York'' and comments from Mr. Daniel Gutman are referred to as ''Mr. Gutman.''

Comment: Mr. Gutman stated that the limited off-street parking program, with a decline of 20,000 public parking spaces, has been effective in reducing automobile vehicle miles traveled (VMT) and improving auto and truck vehicle speeds in the Manhattan CBD, contributing to the ability of New York to meet ozone and fine particle ($PM_{2.5}$) NAAQS.

Response: The EPA disagrees that Mr. Gutman has presented a clear relationship between the limited off-street parking restrictions and the ability of New York City to meet the ozone and $PM_{2.5}$ NAAQS. While Mr. Gutman cited documents asserting the limited off-street parking has been reduced, and vehicle speeds have improved, he has not cited evidence that either, or both, of those events correlate with the downward trend of CO concentrations. Mr. Gutman has not provided any information that quantifies the emission reductions he asserts have been produced or the emission increases that he asserts would be produced by removal of the program, or that indicates that the removal of the program will interfere with maintenance of the NAAQS. The EPA's overall conclusion, as explained by Figures 1–3 and the narrative addressing emission factors, average speeds and VMT, is that motor vehicle emissions are going down; any increase in VMT is outweighed by the decrease in motor vehicle emission rates.

Based on the EPA's review of the ''1981 Parking Study,'' submitted by Mr. Gutman along with his comments, the Study found that the number of parking spaces was not a limiting factor for drivers deciding to drive into the CBD. The 1981 Parking Study found ''[p]olicies based on changing auto trip cost and travel time may be ineffective in reducing auto trips since most of the variations in trip decisions are due to factors other than trip time and cost.'' (1981 Parking Study p. i). It also found that ''the air quality impact of economically based parking management strategies is minimal.'' (1981 Parking Study p. i). Furthermore, ''during the peak commuter entry hours there is no area of the CBD where lack of available off-street parking serves to limit auto entries.'' (1981 Parking Study p. ii). EPA is aware of another study [1] which concludes that Boston's cap on off-street parking has contributed to the excess VMT from people ''cruising'' for on-street parking spaces. Therefore, the amount of VMT generated due to travel into cities is a complex function of many variables that includes the relationship between off-street and on-street parking. In this situation, the impact of removing the reference to the limited off-street parking program on the precursors to ozone and $PM_{2.5}$ resulting from motor vehicles is so small as to not be meaningful and, most important, New York in its SIP modeling to support the previously EPA-approved demonstrations of attainment of the various NAAQS, did not take credit for any emission reductions that may be attributed to the limited off-street parking program measures.

No evidence was provided that a growth in the number of parking spaces in the CBD of New York City will lead to renewed growth of traffic, lower traffic speeds and/or higher emissions than assumed in New York's ozone and $PM_{2.5}$ attainment demonstrations. The EPA therefore disagrees that it should be assumed there is a direct correlation between growth in the number of parking spaces in the City of New York and its impact on any baseline assumptions associated with New York's attainment demonstrations to date.

In evaluating removal of the reference to the parking restrictions, the EPA considered New York's SIP revision request to address all criteria air pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. Regarding the air quality aspects of motor vehicle emissions and parking restrictions, increased emissions, if any, from additional motor vehicles in an area would be primarily CO compared to other criteria pollutants in the Manhattan CBD. Therefore, of all the criteria pollutants, CO concentrations would be the pollutant most sensitive to factors associated with the impact from changes to the existing limited off-street parking program that limits the number of parking spaces in permitted new construction.

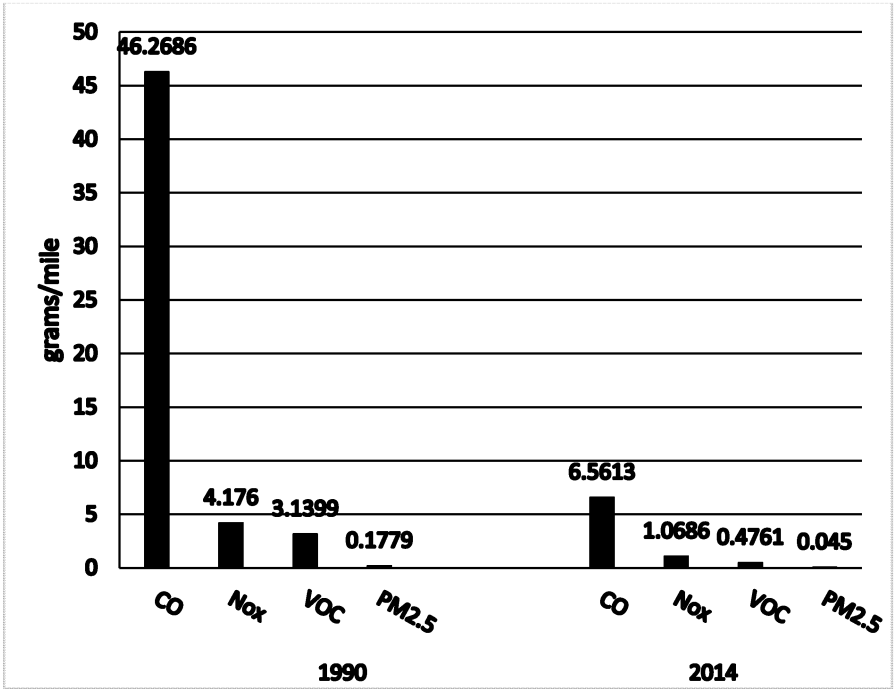
As presented in our April 12, 2013 proposed rule, CO concentrations in the New York Metropolitan Area have not violated the NAAQS or come close to exceeding the NAAQS since 1992 and have trended downward since that year. Currently, measured CO concentrations show values of approximately 20 percent of the NAAQS. Also, as stated in the April 12, 2013, proposed rule, ''This dramatic improvement can be attributed to the Federal Motor Vehicle Control Program along with advanced anti-pollution controls on motor vehicles.'' 78 FR 21867, 21869.

A comparison of vehicle emission factors between 1990 and 2014 calculated using EPA's mobile source model, MOVES, shows how the rate of mobile emissions have been reduced. In addition, it also shows how the other pollutants of interest, including ozone and $PM_{2.5}$, referenced by Mr. Gutman are emitted at levels significantly lower than CO (See Figure 1). The emission factors for 1990 and 2014 were calculated using default values for New York County (including default VMT).

[1] ''Cruising for parking,'' Donald C. Shoup, (Transport Policy 13 (2006), pages 479–486).

These are annual factors combining all vehicle types and road types.

Figure 1. New York County Emission Factors

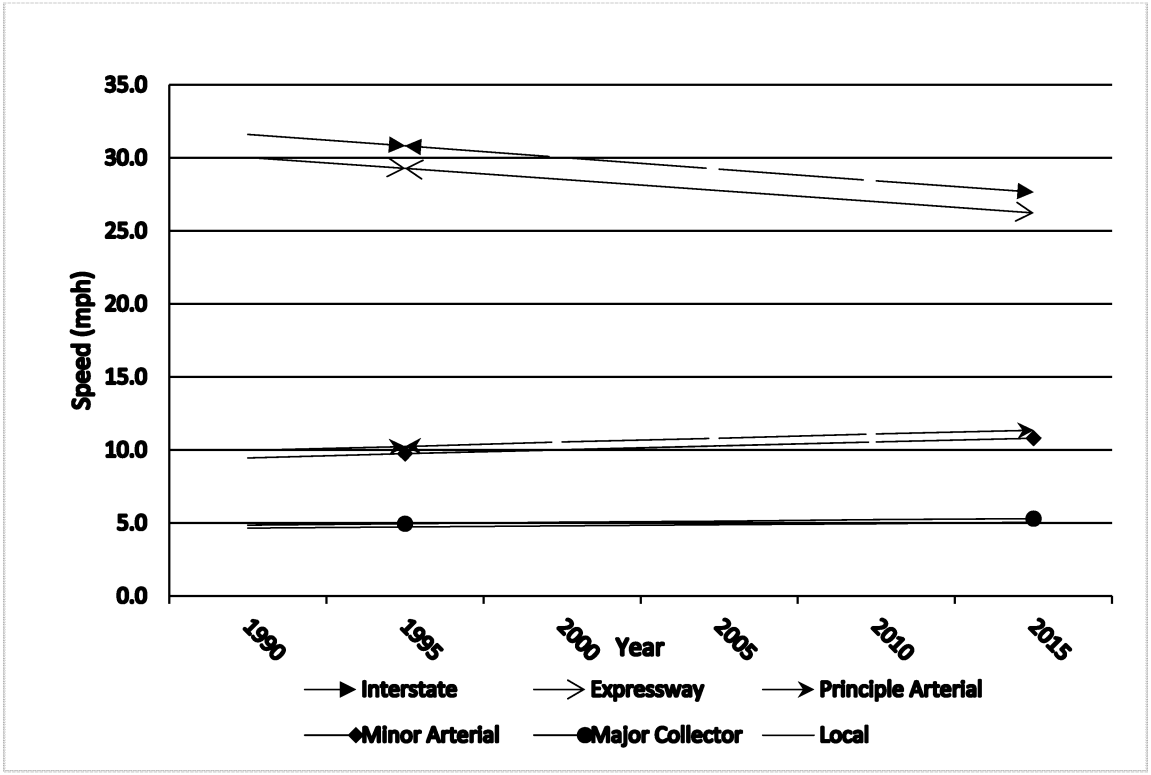


Source: USEPA Motor Vehicle Emission Simulator (MOVES) Model.

Reviewing the data submitted as part of the CO maintenance plan for the New York Metropolitan Area [2] figure 2, below, shows the average daily speeds used in modeling. Vehicle speeds have decreased slightly on highways and increased slightly or remained constant, from 1990 to the present, on local, major collector, minor arterial and principle arterial roadways while monitored CO values have decreased significantly to the levels observed in 2013. The New York-Northern New Jersey-Long Island, NY-NJ-CT CO attainment area, which includes the Manhattan CBD, is meeting the NAAQS.

[2] New York Metropolitan Area Carbon Monoxide Limited Maintenance Plan For 2012–2022, dated December 2012, Appendix C, Attachment 4 Speed Tables.

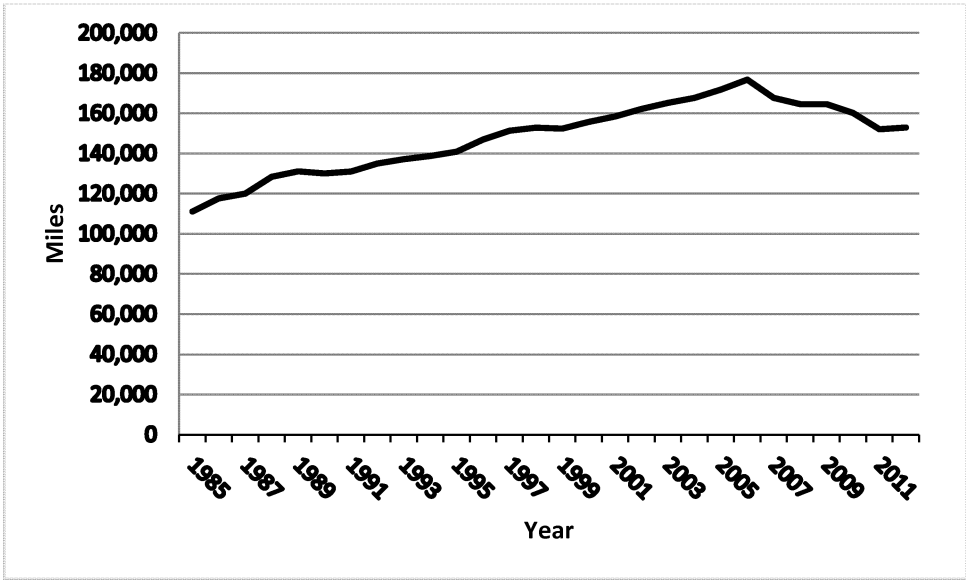
Figure 2. Average Speeds used in Manhattan Modeling



Source: New York Metropolitan Area Carbon Monoxide Limited Maintenance Plan For 2012 – 2022, Appendix C, Attachment 4, dated December 2012.

Based on traffic data from the New York State Department of Transportation, VMT increased from 1985 to 2006 and declined slightly from 2006 to 2011 (see Figure 3), but this has not affected average vehicle speeds in Manhattan or monitored CO concentrations which have decreased over the current period.

Figure 3. New York County Daily Vehicle Miles Traveled



When the EPA proposed to approve New York's 2nd CO maintenance plan on March 25, 2014 (79 FR 16265), the EPA only received comments supporting the proposal. A final rulemaking approving the CO maintenance plan was published on May 30, 2014 (79 FR 31045). Based on the CO maintenance plan, vehicle speeds and VMT in the Manhattan CBD have not shown much change, while vehicle emissions have decreased dramatically.

Therefore, no emission reductions were attributed to this program in the SIP. The reader is reminded that the limited off-street parking program is a limited program implemented by New York City Department of City Planning that applies only in the CBD of Manhattan and applies to new building construction. While this program applies to a portion of only one county, the $PM_{2.5}$ and ozone SIPs cover multiple counties.

Comment: Mr. Gutman commented that the EPA approved the 1979 SIP, which included a ''permanent project'' of regulating and restricting parking in the CBD of Manhattan. Mr. Gutman further commented that, as a permanent project, continuation of the CBD limited off-street parking program is a key assumption underlying projected traffic estimates incorporated into subsequent ozone and particulate matter SIP revisions. Mr. Gutman stated the EPA should deny New York State's request to revise the SIP and not approve removal of the limited off-street parking program reference in the SIP.

Response: Mr. Gutman maintains that the limited off-street parking program appears to be discussed as a permanent measure in the SIP. While a number of SIP actions [3] have discussed limited off-street parking programs, the EPA disagrees with Mr. Gutman's interpretation regarding the permanency of such measures.

Mr. Gutman's comments place emphasis on the ''permanency'' of measures in the SIP, suggesting that once a measure is approved into the SIP, it perpetually remains in the SIP. However, this is not the case. Section 110 of the CAA generally and section 110(l) specifically allow for the State to revise its SIP over time to add or remove control measures, subject to the condition that doing so does not result in interference with attainment and maintenance of any NAAQS or with any other CAA applicable requirement.[4] In this action, the EPA is approving New York's request to remove a reference in the SIP to a limited off-street parking program which the State has not relied on for any associated emissions reductions in any EPA-approved SIP.

New York indicated that it has not relied on any emission reductions that may be attributed to the limited off-street parking program measures in any SIP actions.[5] As discussed in the EPA's April 12, 2013 proposal to approve New York's removal of a reference in the SIP to a limited off-street parking program, CAA section 110(l) states: ''The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 7501 [171]), or any other applicable requirement of this Chapter.'' Section 110(l) allows New York to request that any measure be removed from the SIP as long as the state can demonstrate that removal of the measure complies with this restriction. In fact, section 110(l) would allow a State to remove a program that it clearly identified as a ''permanent'' control measure, even if the program included associated emission reductions that were credited to the SIP, so long as the State can demonstrate continued attainment and maintenance of any NAAQS and so long as the measure is not required by other provisions of the CAA. For example, New York's portable fuel container program is a SIP-approved, enforceable control measure program with associated emission reductions relied on in the SIP. As important as this program is for New York's continued attainment and maintenance of the NAAQS, New York has the ability to request removal of this program if New York can demonstrate such removal would not interfere under section 110(l). In this example, New York would need to replace the emission reductions associated with the portable fuel container program with other control measures since New York relied on the resulting emission reductions. In contrast, New York cannot replace emission reductions associated with the limited off-street parking program with another control measure, because there is no information demonstrating that the measures ever achieved a reduction in emissions or that the removal of the restrictions would lead to an increase in emissions, and no emission reductions from the limited off-street parking program were ever credited towards attainment of the CO standards. There is no quantifiable emission increase as a result of removing the limited off-street parking program.

Further, the limited off-street parking program's goal was to reduce vehicle entries to the CBD and thereby improve vehicle speeds and lower VMT with the idea that this would ultimately reduce CO emissions from automobiles on the road in the late 1970's and early 1980's. Over the years, VMT has increased and vehicle speeds have been little changed and emission control technology on vehicles has been greatly improved and CO concentrations have decreased dramatically to approximately 20 percent of the NAAQS. This suggests that VMT and vehicle speeds have a negligible effect in the Manhattan CBD but emission control efficiency has a large impact on CO emissions in Manhattan. The other pollutants emitted from automobiles, both in 1990 and 2014, are emitted at rates significantly less than CO and, since vehicle speeds and VMT in the Manhattan CBD have a negligible effect, it is expected that there would be no impact on the other automotive related pollutants. The limited off-street parking program was never included in any other NAAQS SIP. In this action the EPA is approving New York's request to remove a reference in the SIP to a limited off-street parking program that the State has not relied on for any associated emissions reductions.

Comment: Mr. Gutman commented that the New York City Planning Commission has proposed new rules that have a target to increase the number of parking spaces in the City of New York, which he asserts violates the SIP and he asserts, will lead to renewed growth of traffic, lower traffic speeds and higher emissions than assumed in New York's ozone and $PM_{2.5}$ attainment demonstrations.

Response: The issue of whether New York City or New York State is proposing regulations or statutes that may violate the SIP is separate from the EPA's April 12, 2013, proposal to approve a SIP revision submitted by the State to remove references to the limited off-street parking program in the SIP

[3] See, *e.g.,* 44 FR 70754 (Dec. 10, 1979); 45 FR 33981 (May 21, 1980); 45 FR 56369 (Aug. 25, 1980); 46 FR 8477 (Jan. 27, 1981); 67 FR 19337 (April 19, 2002).

[4] In addition, section 193 restricts modification of SIP requirements that were in effect before November 15, 1990, by prohibiting such modification in any area which is a nonattainment area for any air pollutant unless the modification insures equivalent or greater emission reduction of such air pollutant.

[5] Letter dated Oct. 5, 2012 from J. Martens, DEC, to J. Enck, EPA Region 2, including attachment dated August 2012 ''Assessment of Public Comments on the Proposed Amendment to the New York State Implementation Plan: Carbon Monoxide Attainment Demonstration: New York Metropolitan Area, August 2012.'' See, *e.g.,* Response to Comment 2, 5 and 28.

that apply solely to the Manhattan CBD. If the City of New York or State adopts regulations or statutes that are different than or conflict with requirements currently included in the SIP, the EPA will address those differences when such new rules are submitted by New York State for EPA review and approval into the SIP. In addition, should such rules not be submitted as a SIP revision to the EPA for consideration but get promulgated in conflict with the applicable SIP, the EPA also has the authority to issue a finding of failure to implement the SIP, which would require submittal of a SIP revision.

Mr. Gutman claims that the City of New York's proposed changes to the parking restrictions will violate the SIP because the changes are different than the parking restrictions currently contained in the SIP. However, Mr. Gutman failed to provide any specific references to the traffic levels or emission levels assumed in New York's SIPs. The state can always revise its SIP, consistent with the requirements of the CAA. When submitted as a SIP revision, EPA would be under an obligation to review the SIP revision on its merits and assess how it would affect the applicable SIP and attainment and maintenance of the NAAQS.

Comment: Mr. Gutman commented that since the EPA promulgated a new, more stringent annual NAAQS for $PM_{2.5}$ that also requires that additional monitors be located near roadways, vehicle emissions are likely to be more important in order for areas to meet the new $PM_{2.5}$ annual standard.

Response: EPA agrees that emissions from vehicle-related activities could be important considerations as states develop plans for meeting and maintaining the new $PM_{2.5}$ annual standard. EPA has established procedures, separate from this SIP revision action, which will address attainment of the new $PM_{2.5}$ annual standard and the establishment of near roadway monitors. On December 17, 2014 (80 FR 2206), EPA designated areas of the country as meeting or not meeting the new $PM_{2.5}$ annual standard, with moderate area attainment plans for any nonattainment areas to be submitted by the states to EPA no later than October 15, 2016. New York City was designated attainment/unclassifiable since air quality data from the existing ambient air monitoring network shows the New York Metropolitan Area is currently below the new $PM_{2.5}$ annual standard. As for the new near roadway monitors, states are required to phase-in these monitoring sites beginning in 2015. NYSDEC submitted its 2014 annual network plan, which provides for near roadway $PM_{2.5}$ monitors, and EPA approved the plan in a letter dated November 3, 2014. See Table 1 for the 3-Year design values.

TABLE 1—ANNUAL DESIGN VALUE CONCENTRATIONS FOR THE NY-NJ-CT NONATTAINMENT AREA (μg/m³)

[The 2012 Annual $PM_{2.5}$ NAAQS is 12.0 μg/m³]

County	AQS Monitor ID	3-Year design values				
		2007–2009	2008–2010	2009–2011	2010–2012	2011–2013
NEW YORK:						
Bronx	36–005–0080/0110/0133	13.9	12.5	11.9	9.8	9.6
Kings	36–047–0122	12.2	10.8	10.3	9.9	9.7
Nassau	36–059–0008	10.3	9.5	8.9	INC	INC
New York	36–061–0128/0134	12.1	12.1	11.7	11.8	11.7
Orange	36–071–0002	9.3	8.5	8.2	8.1	7.8
Queens	36–081–0124	10.6	10.0	9.4	9.1	8.7
Richmond	36–085–0055	11.6	10.5	9.8	9.7	9.0
Rockland	NM	NM	NM	NM	NM	NM
Suffolk	36–103–0002	9.7	8.9	8.4	8.4	8.1
Westchester	36–119–1002	10.6	9.6	9.1	INC	INC
NEW JERSEY:						
Bergen	34–003–0003	11.3	9.8	9.2	9.2	9.1
Essex	34–0013–003	INC	INC	INC	9.5	9.4
Hudson	34–017–2002	13.1	11.6	11.1	11.1	11.1
Mercer	34–021–0008	10.8	10.0	9.7	9.5	9.4
Middlesex	34–023–0006	10.4	8.8	7.9	8.0	8.2
Monmouth	NM	NM	NM	NM	NM	NM
Morris	34–027–0004	9.6	8.7	8.5	8.4	8.4
Passaic	34–031–0005	11.3	9.8	9.3	9.3	9.3
Somerset	NM	NM	NM	NM	NM	NM
Union	34–039–0006/2003	11.6	10.3	9.6	9.7	9.7
CONNECTICUT:						
Fairfield	09–001–0010	11.3	10.0	9.4	9.4	9.3
New Haven	09–009–1123	11.4	10.3	9.6	9.4	9.3

INC—Counties listed as INC did not meet 75 percent data completeness requirement for the relevant time period.
NM—No monitor located in county.

If new monitoring data demonstrates exceedances of the NAAQS, EPA would work with the State to bring any exceeding areas back into attainment.

Comment: Mr. Gutman commented that the limited off-street parking program is a useful reasonably available control measure or RACM and was so designated in the 1979 [proposed] SIP.

Response: The EPA agrees that the limited off-street parking program may be a RACM to make progress towards attainment of the NAAQS for a specific pollutant(s) depending on location specific factors that can change with time. The State, however, has the flexibility to decide which measures to include in RACM as a requirement of the SIP based on the ability of the measure to improve air quality in the given area and advance the attainment date. The EPA's April 12, 2013, proposed action explained in detail the connection between the limited off-street parking program and RACM. (See 78 FR 21869). As discussed in the EPA's April 12, 2013, proposal, New York

could have included the restrictions as a RACM in the subsequent CO SIP actions, but did not (1992, 2002). New York also never included the restrictions as part of any other NAAQS attainment demonstrations. These restrictions were not included because they were not needed to demonstrate RFP or to meet the attainment date. New York's SIP does not rely on any emission reductions associated with the parking restrictions, and all credited emissions reductions are attributed to other control measures in the SIP. New York is thus able to and has demonstrated attainment of the NAAQS without relying on the limited off-street parking program. Therefore the limited off-street parking program is not necessary to meet or accelerate attainment by the attainment date.

Comment: Mr. Gutman commented that the New York City Department of City Planning ''has been seeking to jettison'' rules, which they had supported in 1982, by proposing in 2004, to rewrite the restrictions for a large development area within the CBD that they called the Hudson Yards.

Response: This comment is not relevant to this SIP action. The EPA is approving New York's request to remove a reference in the SIP to a limited off-street parking program which the State has not relied on for any associated emissions reductions.

Comment: Mr. Gutman's comments state that the parking program was part of the SIP and reference a May 5, 2009, Court Order, which was submitted along with his comments to support his position.

Response: EPA agrees that the limited off-street parking program is referenced in the SIP, but also acknowledges that there was some confusion concerning its scope. New York State decided to address the issue by formally proposing revisions to the SIP, holding public hearings and requesting public comments. This action is the result of the State formally submitting a SIP revision.

Comment: Mr. Gutman commented that while the CBD parking regulations may need to be updated and modernized, there is no reason to gut their essence in the process, or to remove the program from the SIP, and the EPA should not allow it.

Response: As stated previously, the subject of the EPA's April 12, 2013, proposal is to act on a SIP revision submitted by the State to remove references to the limited off-street parking program in the SIP, based on the EPA's determination that such removal will not interfere with attainment and maintenance of all NAAQS. Once the limited off-street parking program is removed from the SIP, it will no longer be federally enforceable. Removal of the limited off-street parking program from the SIP will not change the program's status under local law. Any future changes to the program would be subject to local administrative procedures and public involvement.

Comment: Mr. Gutman commented that the EPA should clarify whether or not removing the limited off-street parking program from the 1992 CO SIP leaves the program in place as part of the SIP for other pollutants.

Response: The EPA is removing the reference to the limited off-street parking program from the SIP. The EPA's April 12, 2013, proposal focused on CO because when compared to other pollutants emitted from motor vehicles, CO emissions far exceed the others (see figure 1). However, as discussed in previous responses to comments and in the EPA's April 12, 2013 proposal, the EPA considered and evaluated New York's SIP revision request to address all criteria air pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. Regarding the relationship between motor vehicle emissions, pollutant concentrations and activities that would theoretically increase motor vehicle activity, on a grams per mile basis, the mass of increased emissions from additional motor vehicles in an area would be dominated by CO. Therefore, of all the criteria pollutants, CO would be the pollutant most affected by hypothetical activity that results in overall emissions increases and, as discussed in previous responses to comments, the impact on the area's CO concentrations would be insignificant. Concentrations of all the other criteria pollutants, including ozone and particulate matter, would be affected much less than CO concentrations. By removing the limited off-street parking program references from the CO SIP, the EPA is removing the reference from all of the SIP, and instead relying on New York's more recent SIP revision approvals relating to emission inventories, RACM, attainment demonstrations and maintenance plans for all pollutants.

Comment: The City of New York commented that the EPA's proposed rule will not interfere with attainment or maintenance of the NAAQS in the City of New York.

Response: The EPA agrees. As stated in previous responses, the EPA considered and evaluated New York's SIP revision request to address all criteria air pollutants whose emissions and/or ambient concentrations may change as a result of the SIP revision. While CO concentrations are the pollutant of most concern in this action, as stated in the April 12, 2013 proposed rule, the EPA considered the impacts of all the criteria pollutants.

Comment: New York City commented that the EPA's proposed rule allows the City of New York to be responsible for its own limited off-street parking program and that it believes that it is free to amend the parking regulations under the current SIP.

Response: The EPA agrees that the finalization of this rule will allow the City of New York to be responsible for the limited off-street parking restriction program in appropriate cases. However, until the references to the limited off-street parking program are removed from the SIP, the City of New York should continue to coordinate with the State to determine whether any such amendments are consistent with the SIP.

Comment: The City of New York supports the removal of the ''outdated'' parking controls in the SIP and to remove any confusion or misunderstanding regarding the City of New York's ability to regulate off-street parking.

Response: The EPA agrees with the suggestion that the parking controls discussed in the SIP in the early 1980s could be considered ''outdated'' in lay terms given the subsequent and more recent SIP revisions submitted by New York and approved by the EPA over the last three decades and the substantial progress which has been achieved in reducing air pollutants. New York has revised various emission inventories, RACMs, attainment demonstrations and maintenance plans at various times since the earlier references to the limited off-street parking program. The New York SIP has not and continues to not rely on the limited off-street parking program as a control measure. However, the rule is not actually ''outdated'' in a legal sense unless removed from the SIP, as is being done by this action.

III. What is the EPA's final action?

The EPA is approving New York's request to remove a reference to a limited off-street parking program in New York County from the SIP because this SIP revision will not interfere with attainment or maintenance of any NAAQS and will not interfere with any other CAA applicable requirements. In addition, New York did not rely on any emission reductions from this program in its SIP modeling to support the demonstration of attainment of the various NAAQS.

The EPA's review of the materials submitted indicates that New York has revised its SIP in accordance with the requirements of the CAA, 40 CFR part 51 and all of the EPA's technical requirements for a SIP revision. Therefore, the EPA is approving the removal of a reference to a limited off-street parking program in New York County from the SIP.

IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. 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 Order 12866 (58 FR 51735, October 4, 1993);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Nitrogen dioxide, Ozone, Particulate matter, Volatile organic compounds.

Dated: June 2, 2015.

Judith A. Enck,

Regional Administrator, Region 2.

Part 52, chapter I, title 40 of the Code of Federal Regulations 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 HH—New York

■ 2. In § 52.1670, the table in paragraph (e) is amended by adding the entry ''Limited off-street parking program'' at the end of the table to read as follows:

§ 52.1670 Identification of plan.

* * * * *

(e) * * *

EPA-APPROVED NEW YORK NONREGULATORY AND QUASI-REGULATORY PROVISIONS

Action/SIP element	Applicable geographic or nonattainment area	New York submittal date	EPA Approval date	Explanation
*	*	*	*	*
Limited off-street parking program.	New York County—Central Business District.	10/05/12	6/12/15 [insert **Federal Register** citation].	Removing reference to program from SIP

[FR Doc. 2015–14439 Filed 6–11–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 98

Mandatory Greenhouse Gas Reporting

CFR Correction

In Title 40 of the Code of Federal Regulations, Parts 96 to 99, revised as of July 1, 2014, on page 764, in § 98.153, at the end of paragraph (d) introductory text, the parameter E_D of Equation O–5 is revised and reinstated to read as follows:

§ 98.153 Calculating GHG emissions.

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(d) * * *

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E_D = Mass of HFC–23 emitted annually from destruction device (metric tons), calculated using Equation O–8 of this section.

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, 2, 15 and 68

[ET Docket No. 13–44; FCC 14–208]

Authorization of Radiofrequency Equipment

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document updates the Federal Communications Commission's (the Commission) radiofrequency (RF) equipment authorization program. The rules adopted by the Commission build on the success realized by our use of

Commission-recognized Telecommunication Certification Bodies (TCBs) and will facilitate the continued rapid introduction of new and innovative products to the market while ensuring that these products do not cause harmful interference to each other or to other communication devices and services.

DATES: Effective July 13, 2015. The incorporation by reference listed in the rule is approved by the Director of the Federal Register as of July 13, 2015.

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SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, ET Docket No. 13–44, FCC 14–208, adopted December 17, 2014, and released December 30, 2014. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street SW., Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov.*

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

Summary of the Report and Order

1. In the *Notice of Proposed Rulemaking* (''NPRM'') in this proceeding, the Commission proposed certain changes to ensure that its part 2 equipment authorization processes continue to operate efficiently and effectively, *See Amendment of Parts 0, 1, 2, and 15 of the Commission's Rules regarding Authorization of Radiofrequency Equipment and Amendment of Part 68 regarding Approval of Terminal Equipment by Telecommunications Certification Bodies, Notice of Proposed Rulemaking,* ET Docket No. 13–44, 28 FCC Rcd 1606 (2013) (NPRM); 78 FR 25916, May 3, 2013.

2. Specifically, the Commission proposed to clarify the obligations of TCBs and to strengthen the Commission's oversight of the TCBs. The Commission also proposed to require accreditation for all laboratories performing equipment authorization compliance tests. The Commission also proposed adopting updates to the measurement procedures used to determine RF equipment compliance.

3. In this Report and Order, the Commission updated its radiofrequency (RF) equipment authorization program. Specifically, it:

- Discontinued FCC acceptance of applications for equipment Certification of RF equipment and instead permitted TCBs to process and grant all applications for Certification;
- Codified a pre-grant approval procedure that TCBs must follow when certifying equipment based on new technology that requires consultation with the FCC;
- Clarified a TCB's responsibilities in performing post-market surveillance of products it has approved;
- Specified steps for addressing instances of deficient TCB performance, including appropriate sanctions for deficiencies that do not warrant rescinding a TCB's authority to issue a grant of Certification;
- Modified the rules to reference new standards used to accredit TCBs that approve RF equipment under part 2 of the Commission's rules and terminal equipment under part 68 of the Commission's rules;
- Required accreditation of all laboratories that test equipment subject to any of the certification procedures under part 2 of the Commission's rules and codify a procedure through which the Commission currently recognizes new laboratory accreditation bodies;
- Updated references to industry measurement procedures in the Commission's rules; and
- Provided greater flexibility under the Office of Engineering and Technology's (OET) existing delegated authority to enable it to address minor technical issues that may be raised when updating to the latest versions of industry standards that are referenced in parts 2, 5, 15, and 18 of the Commission's rules.

TCB Program

4. TCBs currently approve more than 98 percent of the RF equipment subject to the Certification process but are not permitted to certify equipment for which Commission rules or requirements do not exist or for which the application of the rules or requirements are unclear. Currently, OET publishes an ''exclusion list'' of the types of equipment that a TCB is not allowed to certify on the Commission's Knowledge DataBase (KDB) system. To enable TCBs to certify more types of devices, OET has established a ''permit-but-ask'' procedure that allows a TCB to review applications for Certification of equipment that would otherwise be excluded from TCB approval, provided that OET guidance on the specific test methods and technical requirements is sought prior to filing the application for Certification. Once a TCB has completed a review of equipment covered by the permit-but-ask procedure, it confirms with OET that appropriate measures have been taken prior to issuing a grant of Certification.

5. The Commission maintains a publicly-available database of all RF equipment certified by the Commission and TCBs (the Equipment Authorization System or ''EAS'') that contains copies of applications for and grants of Certification. This database also contains information on all entities recognized by the Commission in the equipment authorization process, thus allowing the Commission to monitor the activities of TCBs and the equipment authorization program in general.

1. Certification of RF Equipment

a. Application Processing Procedures

6. The Commission adopted the NPRM proposal to allow TCBs to issue all grants of equipment Certification, and to discontinue OET's acceptance and granting of applications for equipment Certification. Furthermore, the Commission eliminated the exclusion list and replaced it with pre-approval guidance procedures as proposed in the *NPRM* and supported by most of the commenters who addressed this issue. All items that were on the exclusion list or considered under the ''permit-but-ask'' procedure will now be considered under the pre-approval guidance procedures. Further, future changes to the devices and procedures included on the list will be made in a similar manner as the ''permit-but-ask'' list has been maintained, that is, via Commission/OET decision documents and OET Laboratory KDB guidance. Finally, the Commission adopted its proposal to allow TCBs to dismiss Certification applications consistent with the Commission's current dismissal authority, as also supported by several parties. The Commission also amended its rules to uniformly employ the phrase ''set aside'' to reference a TCB's decision to take back the grant of a Certification. In response to a question raised by Bay Area Compliance Laboratories Corp. (BACL), the Commission noted that TCBs will have authority to dismiss only those applications that have been submitted to them, and not those submitted to other TCBs. Similarly, TCBs will have authority to set aside only those grants of Certification that they have issued within the prior 30 days, and not those granted by other TCBs.

7. As it adopted the proposals to fully shift application processing to TCBs, the Commission noted its experience that TCBs have generally done an excellent job of reviewing and granting applications and following OET staff guidance on technical matters. The Commission noted that the various actions taken in the order would improve its oversight of the TCBs and ensure that products subject to Certification will comply with FCC rules. The Commission concluded that the adopted measures would continue the successful migration of additional responsibilities to TCBs while maintaining our control over the critical elements of the process, thus addressing National Association of Broadcasters' (NAB) underlying concern that devices with a greater potential for causing harmful interference are properly evaluated before being approved. The Commission also noted that, while ARRL, the National Association for Amateur Radio (ARRL) claims that the current TCB approval process has resulted in numerous incorrect grants of Certification, the group mentioned only one particular instance where an incorrect grant was alleged. The Commission did not find ARRLs arguments against the TCB processing proposals persuasive because ARRL had not provided any specific information to support this claim.

b. Application Filing Procedures

8. The Commission adopted the proposals made in the NPRM to codify existing application filing practice into its rules by modifying § 2.911 to specify how applicants will file with TCBs and modifying § 2.962 to specify that TCBs will file certification application information with the Commission electronically through the Commission's EAS. The Commission adopted its proposal to require TCBs to document via the EAS all information relevant to the processing of an application for certification, including pre-approval guidance inquiries and the dismissal of any applications. The Commission amended various sections of part 2 to reflect the TCB role in the Certification process.

9. The Commission decided to stop accepting applications for it to issue the grant of Certification as of the effective date of the Report and Order. The Commission modified § 1.1103 of the rules to remove the equipment authorization services sections related to Certification, and stated that no fee will be charged by the Commission when a TCB issues a grant of Certification. The Commission determined that it would review any applications that it received prior to the effective date under current procedures.

10. The Commission stated that Grants of certification are legal documents created by the TCB under the authority of the Commission when submitted to EAS, and must not be modified (by, for example, adding a letterhead or additional information) in any way.

11. The Commission agreed with the Hewlett Packard Company (HP) that a TCB may combine the different statements required of applicants—such as the verification of truthfulness and compliance with the Anti-Drug Abuse Act of 1988—into a single document with a single signature set, so long as the applicant makes all necessary certifications. The Commission declined HP's request to require TCB's to accept materials submitted by an applicant in electronic form rather than paper. While the Commission acknowledged that it expected that TCBs would accommodate electronic submissions to promote efficiency and reduce costs, it decided not to not mandate such a requirement because the existence of numerous TCB choices will give applicants the option to select a TCB on a variety of factors, including the convenience or efficiency of their provision of service.

12. The Commission did not adopt Bay Area Compliance Laboratories, Corp.'s (BACL) suggestion that it mandate the use of secure electronic signatures or require a time and date stamp on all documents submitted with the filing. The Commission was not convinced that the use of such requirements would fully resolve the issues of document authenticity, and stated that it expected TCBs to establish appropriate procedures to determine the veracity of documents.

13. The Commission determined, in response to comments of Northwest EMC, Inc., that a TCB confirmation of the authenticity of the test reports that submitted with an application for certification and is necessary. The Commission cited the existing TCB requirement to review submitted tests in a manner that allows it to be ''confident that the product meets the relevant requirements before it certifies the product.'' and noted that its adoption of an accreditation requirement for all compliance testing laboratories would ensure that the data reviewed by TCBs was based on testing that was performed by a competent organization.

14. The Commission found that Cisco and HP had not provided evidence to support their concern that TCBs could potentially establish higher fees to expedite the processing of applications. The Commission found it was not necessary to codify TCB fee requirements, noting the 36 TCBs recognized by the Commission to provide equipment authorization services and observing that clients can choose their TCB based upon factors most relevant to them, including cost.

2. Post-Market Surveillance

15. TCBs are required to be accredited, and accreditation is conditioned on their performance of post-market surveillance on products that it has certified. Section 2.962(g) of the Commission's rules provides general guidance regarding the scope of such post-market surveillance and the actions the TCB shall take in the event of a compliance problem. OET has developed specific procedures, detailed in KDB Publication 610077, that TCBs can use for performing post-market surveillance. The current guidance specifies a sample rate of at least 5 percent.

16. The Commission adopted its proposals to codify the guidelines currently appearing in the KDB for conducting post-market surveillance by placing them into § 2.962 of the Commission's rules as mandatory requirements. The new § 2.962 will address the amount of surveillance required, the responsibilities related to testing, the timing and content of periodic reports required to be submitted to the Commission, and other pertinent requirements.

17. The Commission consolidated all part 2 rules referring to the post-market sampling process into § 2.945, which codifies the current procedure whereby TCBs may request samples of equipment that they have certified directly from the grantee of Certification. Further, the Commission adopted the proposed procedure that permits OET to request the grantee of Certification to submit a sample directly to the TCB that issued the grant of Certification, and stated that failure to comply with a TCB request could lead to Commission enforcement action. The Commission required the TCB to immediately notify the grantee and the Commission if it determines that a device fails to comply with the Commission's rules, established that the grantee will be required to take corrective actions, and required the TCB to submit a follow-up report on these actions to the Commission within 30 days. The Commission also required TCBs to submit periodic reports of their post-market surveillance activities and findings to OET.

18. The Commission also addressed specific process-related issues raised on the record. The Commission found little

benefit in allowing a TCB to perform post-market surveillance on a device that it did not certify and identified potential complications, such as anti-competitive behavior where one TCB could raise doubt about the performance of another. Thus, the Commission adopted the requirement that TCBs shall perform post-market surveillance only on devices for which they issued the grant of Certification. The Commission affirmed that when a grantee challenges a TCB's finding that a device does not comply with the FCC rules, the grantee will be provided with appropriate information about test results and methodologies and the Commission will be the final arbiter in cases where a TCB and grantee are not able to resolve disagreements about compliance.

19. The Commission found that no commenter that filed in support of modifying the 5 percent sample size requirement provided sufficient evidence to justify either increasing or decreasing this number, and that in its monitoring of the market surveillance performed by TCBs, the Commission has found the vast majority of devices to be compliant. Most OET investigations have found that devices become non-compliant for reasons such as changes to the manufacturing process, and OET has been able to work with the grantee to resolve the matter and ensure compliance with our rules. When it has discovered manufacturers that are willfully non-compliant with our equipment authorization procedures, the Commission has not hesitated to take enforcement action.

20. The Commission rejected the TCB Council's suggestion that permissive changes and changes in FCC IDs not be included in the sampling process on the basis that the request did not include any actual filing totals that would quantify how the proposed change would affect the post-market surveillance burden of a given TCB; because it is not apparent that excluding a wide segment of applications would further improve the compliance process, since many products are updated via permissive changes; and because the inappropriate use of a permissive change or an FCC ID change presents the opportunity for the introduction of non-compliant equipment that needs to be monitored by inclusion in the sampling activity.

21. The Commission noted that, while the TCBs will continue to directly request samples from grantees, it intended to add a process to the EAS that allows TCBs to initiate a sample request from the Commission's EAS. This will allow the FCC to oversee the process, follow up directly with non-responsive grantees and improve the responsiveness of grantees.

22. The Commission observed that the requirements placed upon both the TCBs and the grantees should be sufficient to ensure that equipment samples are submitted and processed in a manner that ensures valid post-market surveillance, and that samples provided for testing will be appropriately representative of the marketed device. Thus, the Commission did not adopt suggestions in the record to implement additional compliance measures such as criminal sanctions or consumer refunds.

23. The Commission adopted the requirement that grantees, upon request, must provide a voucher to the Commission or the TCB authorizing the TCB to obtain a sample of the product from the marketplace at no cost to the Commission or TCB. As an alternative to providing a voucher, the grantee can allow the Commission or TCB to select a product randomly from the manufacturing or warehousing location. Furthermore, if special software or specialized mechanisms, methods, or modifications are required to test such unmodified production devices, the manufacturer must make these available (at no cost) along with any necessary instructions to the Commission or TCB upon request. In the case of expensive devices manufactured in limited numbers, the responsible party can negotiate with the TCB or the Commission for alternative means of providing a sample or providing a testing opportunity. The Commission agreed with commenters that such steps would help ensure that devices being post-market tested are representative of the devices being marketed.

3. Assessing TCB Performance

a. Designating Authority

24. An entity seeking recognition from the Commission as a TCB entitled by the FCC to issue grants of Certification must first be accredited by a Commission-recognized accreditation body as meeting applicable international standards and any additional Commission requirements. Subsequent to accreditation, the TCB would then apply to a recognized Designating Authority in its country that would designate it to the Commission for recognition. The Designating Authority evaluates the qualifications of prospective TCBs to ensure that they comply with all of the Commission's TCB requirements, and then designates them to the Commission via the EAS. TCBs outside the United States must be accredited and designated by an authority recognized by the Commission under the terms of a Mutual Recognition Agreement. For both foreign and domestic TCBs, once the Commission receives the Designating Authority's designation, the Commission performs a review of the TCB's qualifications and recognizes those that it determines meet the requirements. A recognized TCB will then be included on the Commission's publicly- available recognized TCB list. The NPRM included several proposals to clarify and codify this process.

25. All comments made in this regard supported the Commission's proposals, and the Commission revised §§ 2.960(b) and 68.160(b) of the rules to state with clarity that NIST is the recognized Designating Authority for TCBs within the United States (consistent with existing practice). NIST will continue to have authority to recognize other organizations to accredit TCBs. The Commission adopted the proposals codifying the requirement that an organization designated by NIST as a TCB would have to be recognized by the Commission before it could function as a TCB, and that the Commission could withdraw its recognition of a TCB designated by NIST that does not operate in accordance with the rules. The Commission made the designation and recognition requirements for domestic and foreign TCBs more consistent by modifying § 2.962 to clearly specify the recognition requirements for both foreign and domestic TCBs and address disputes over the recognition of foreign TCBs.

b. TCB Performance

26. Currently, the rules state that the Commission will withdraw recognition of a domestic TCB if the TCB's accreditation or designation is withdrawn, if the Commission determines there is just cause for withdrawing the recognition, or if the TCB no longer wants the recognition. The rules do not specify any action less severe than the withdrawal of the designation or recognition of a TCB if the Commission has concerns about the performance of a TCB. In the *NPRM,* the Commission acknowledged that there can be performance issues which need correcting but do not warrant complete withdrawal of a TCB's recognition and it proposed measures that the Commission could take to address TCB performance issues.

27. The Commission adopted the proposed procedures for addressing TCB performance issues: Initially, OET would send the TCB a notification to correct any apparent deficiencies. While it awaits response, OET may choose to monitor all grants, setting aside any that

were granted in error within the 30-day period provided for in the rules. If the TCB does not adequately address all identified deficiencies, OET will have the option of requiring that all Certification applications filed with that TCB would be processed using the pre-approval guidance procedure for a period of at least 30 days. Once a TCB demonstrates that it is again processing Certification applications in accordance with the rules, it would be permitted to resume normal processing.

28. For a TCB that continues to exhibit performance deficiencies after a Commission request for corrective action, the Commission could refer the case to the Designating Authority and accreditation body for investigation and identification of any necessary corrective actions. For such instances, the Commission will act based on the Designating Authority's and/or the accrediting body's response by, for example, limiting the scope of equipment that a TCB could approve or withdrawing its recognition of the TCB. For a foreign TCB recognized pursuant to the terms of a Mutual Recognition Agreement (MRA), the Commission will take similar actions, under the terms of the pertinent MRA. Any equipment Certifications previously approved by the TCB would remain valid unless specifically set aside or revoked by the Commission.

29. In adopting new procedures to address TCB performance issues, the Commission did not adopt American Association for Laboratory Accreditation's (A2LA) suggestion that the 60-day notice given to a TCB by the Commission when it intends to withdraw recognition be reduced routinely to 30 days, but the Commission did adopt the proposal permitting the reduction of the notice period if circumstances so warrant. The Commission identified other sanctions, including requiring the TCB to follow the pre-approval guidance procedure for all applications for certification before they can be granted, as well as an immediate suspension of recognition, if necessary. The Commission concluded that the procedures set forth are a clear indication of the Commission's willingness to address TCB performance issues, and address AFTRCC's concerns in this regard. The Commission noted that any finding that a TCB is non-compliant will be displayed on the Commission's Web site. Additionally, OET participates in workshops where TCBs are also required to attend in which OET presents changes and updates in the Commission rules; equipment authorization process and procedures; and updates to technical interpretations or guidance issued by the staff. Because these presentations are publicly available at the Commission's Web site, they include Commission guidance related to new or clarified TCB processes and procedures, and much of this guidance is the result of observations that OET derives from TCB audits and other information, the Commission concluded such processes are sufficient to address comments NAB raised regarding the overall transparency of the TCB process.

4. TCB Accreditation

30. The rules currently require that TCBs that approve either RF equipment under part 2 or terminal equipment under part 68 of the Commission's rules meet the accreditation standards in specific ISO/IEC standards. Subsequent to the adoption of the rules specifying these requirements, several ISO/IEC guides were updated. In the *NPRM,* the Commission proposed to modify the rules in parts 2 and 68 to reflect these updates. Specifically, the Commission proposed replacing references to Guide 58 and Guide 61 with references to ISO/IEC 17011, and to replace references to Guide 65 with references to ISO/IEC 17065. The Commission also proposed to change the term ''sub-contractors'' to ''external resources'' in the part 2 and 68 rules for consistency with the revised ISO/IEC 17065. The Commission also proposed to update § 68.162 to correct outdated references to ISO/IEC Guide 25, which is now designated ISO/IEC 17025. In the Order, the Commission adopted these proposals and will require that the standards be met by September 15, 2015—A date suggested by A2LA that conforms to the compliance date for ISO/IEC 17065 that was adopted in an International Accreditation Forum decision.

Test Laboratories

5. Accreditation of Test Laboratories

31. The Certification and DoC processes specify the type of testing facility in which a product shall be tested for compliance with the Commission's technical standards. Devices authorized under the DoC process must be tested at a testing laboratory that OET recognizes as ''accredited.'' Devices authorized under the Certification process for operation under that operates under part 15 or 18 of the Commission's rules must be tested in a facility that is either accredited or has been recognized by OET as having met the requirements of § 2.948 of the Commission's rules (''Section 2.948-listed'').

32. Laboratory accreditation is a rigorous process involving an extensive review of documentation and onsite visits by representative(s) of the accrediting body, a process repeated at intervals not to exceed two years. A testing laboratory may be recognized by the OET as accredited if it is assessed to the ISO/IEC 17025 standard in accordance with the requirements in § 2.948 of the Commission's rules. The accreditation of a foreign-based testing laboratory is considered acceptable under only one of the following conditions: (1) It is based on the terms of an applicable government-to-government MRA with the United States; or (2) the laboratory is accredited by an organization that has entered into an arrangement between accrediting organizations that is recognized by the Commission. On the other hand, a testing laboratory may be recognized as 2.948-listed of our rules based upon OET review of the information specified by § 2.948(b).

33. The Commission adopted the NPRM proposal to require that all laboratories that test equipment subject to Certification or to DoC under any rule part be accredited to ISO/IEC 17025, thus ending the ''2.948-listing'' program for unaccredited labs to test equipment to be certified under parts 15 and 18 of the rules. The Commission retained the requirement that accredited testing laboratories must be reassessed at least every two years to ensure continued compliance with the accreditation requirements to provide confidence that equipment testing done in support of Certification applications is conducted in accordance with the applicable standard and to maintain the reliability of and confidence in our certification program in the face of increasingly complex technology and devices. The Commission found little evidence in the record that the accreditation requirement represents a significant impact on small test laboratories and such concerns are greatly outweighed by the costs that can result when equipment causes harmful interference to other radio services or must be pulled from the market due to non-compliance that is the result of improper testing.

34. The Commission further proposed to include laboratories located outside of the United States on the accredited testing laboratory list only if it recognized the laboratories' accreditation under the terms of a Mutual Recognition Agreement (MRA) or other agreement. Because some testing laboratories are located in countries that do not have an MRA with the United States, the Commission proposed to continue to require in

§ 2.948 of the rules that such a laboratory must be accredited by an organization recognized by the Commission for performing accreditations in the country where the laboratory is located. The Commission sought comment on the appropriate process for recognizing the accreditation of testing laboratories in countries that do not have an MRA with the United States, such as by recognizing accreditations made by accreditation bodies that have been peer reviewed through the International Laboratory Accreditation Cooperation (ILAC) or other organizations. Comments related to the appropriate process for recognizing the accreditation of test laboratories in countries that do not have an MRA with the United States were almost evenly split, with a slight majority indicating that we should not recognize foreign laboratories unless there is an MRA in place. The comments that supported the recognition of accredited testing laboratories located in non-MRA countries provided limited recommendations on procedures that would ensure that such testing laboratories have the appropriate capabilities and reliability and that all products approved are compliant with our rules. In this regard, the Commission decided that requests for recognition of testing laboratories in countries that do not have an MRA with the United States and which were accredited by accreditation bodies recognized by the Commission will be handled under our current procedures in § 2.948.

35. The Commission also adopted the requirement that testing laboratories may only sub-contract/outsource testing to laboratories that have been recognized by the Commission as accredited to the appropriate international standard. The Commission rejected comments asking it to adopt a more permissive rule that would also allow an accredited testing laboratory to sub-contract/outsource testing to a competent unaccredited entity. The Commission found it to be inconsistent to disallow submission of test results from an unaccredited submitting laboratory but allow submission of test results from an unaccredited sub-contracting laboratory. The Commission also noted that it had not been provided with any information indicating that sub-contracting with laboratories that are recognized by the Commission as accredited is more burdensome to applicants for certification than using a sub-contracting process that meets the requirements of ISO/IEC 17025, or that such burdens (if any) would be substantial enough to outweigh the benefits associated with ensuring that all work is performed by accredited laboratories. The Commission also found no reason to exempt bench testing from the accreditation requirement, citing the importance of ensuring that such tests are performed properly and observing that because equipment subject to certification is rarely subject only to bench tests, there would be little benefit in providing an exception for labs that perform only such testing.

36. While the ''2.948 listing'' process was ended, the Commission decided that it would still maintain a list of accredited testing laboratories that are acceptable to the Commission for testing equipment subject to the Certification and DoC procedures, as well as the types of equipment that each laboratory is accredited to test. Additionally, the Commission decided to retain the requirement in § 2.948 that test laboratories compile a description of their measurement facilities and require that they supply this information to a laboratory accreditation body for review as part of its documentation for accreditation or to the Commission upon request.

37. The Commission will cease recognizing new unaccredited 2.948-listed laboratories as of the effective date of the rules adopted in the Report and Order. Laboratories recognized under the 2.948 criteria as of the effective date of this Report and Order will continue to appear on the OET published list for such laboratories and be recognized until their expiration date of recognition or for one year from the effective date, whichever is sooner, to allow them time to become accredited. 2.948-listed laboratories whose recognition expires prior to one year from the effective date of the rules may request that the Commission extend their recognition date until one year from the effective date of the rules set forth in the Report and Order. Any testing that is completed by unaccredited recognized 2.948-listed laboratories during the one-year period beginning on the effective date of the rules adopted in the Report and Order will be accepted only in support of a Certification application submitted within 15 months of the aforementioned effective date.

6. Selection of New Laboratory Accreditation Bodies

38. Under § 2.948(d) of the rules, any entity seeking recognition from the Commission as an accreditation body for test laboratories must obtain the approval of OET. The Commission proposed, in the *NPRM,* to codify the type of information that an applicant that desires to be recognized as a laboratory accreditation body should provide in support of its application. Specifically, it proposed to codify the following criteria for OET to use when determining the acceptability of new laboratory accreditation bodies:

1. Successful completion of a ISO/IEC 17011 peer review, such as being a signatory to the International Laboratory Accreditation Cooperation (ILAC) Mutual Recognition Arrangement or other equivalent laboratory accreditation agreement;

2. Experience with the accreditation of electromagnetic compatibility (EMC), radio and telecom testing laboratories to ISO/IEC 17025. This can be demonstrated by having OET staff participate in a witness audit of the accreditation body performing an assessment of an EMC/Radio/Telecom testing laboratory; or by having OET staff review the report generated by the NIST laboratory accreditation evaluation program conducted to support the Asia Pacific Economic Cooperation (APEC) Mutual Recognition Arrangement for Conformity tries that do not have an MRA with the United States were almost evenly split, with an Assessment of Telecommunications Equipment. An applicant that offers other evidence has the burden of demonstrating that the information would enable OET to evaluate its experience with the accreditation of EMC, radio and telecom testing laboratories to ISO/IEC 17025.

3. Accreditation personnel/assessors with specific technical experience in the Commission equipment authorization rules and requirements; and

4. Procedures and policies developed by [the testing firm accreditation bodies] for the accreditation of testing laboratories for FCC equipment authorization programs.

39. The Commission adopted the proposal to codify the above criteria for OET's determination of the acceptability of new laboratory accreditation bodies. Under these rules, the applicant will submit information addressing each of the four elements to OET for evaluation. Applicants will be able to choose how they show that they meet each of the elements, and OET was directed to use its existing resources—including the KDB and public notice process—to provide additional guidance, clarification, and updates, as needed.

40. In a slight change from the proposal, the adopted rule will not list specific organizations that operate recognition programs under ISO/IEC 17011 and instead includes a general

statement that recognition will be based on a peer review pursuant to an agreement found to be acceptable to the Commission. The Commission ultimately decided that the inclusion of specific organizations in the rules could inadvertently limit the flexibility of entities seeking recognition as an accreditation body or give the specific organization(s) a perceived advantage. Similarly, in response to NIST's suggestion that it clarify that its program only applies to domestic accrediting bodies, the Commission decided to remove the rule reference to the NIST program. The Commission will maintain a list of recognized accreditation bodies on its Web page to facilitate the prompt notice of new recognitions.

41. As to NIST's suggestion that the rule include further specific elaboration on other supporting evidence, the Commission noted that the rule specifies only the key elements that OET will use in evaluating the competence of an accreditation body and it gave OET the flexibility to accept other supporting evidence on a case-by-case basis in order to accommodate evolving industry practices.

7. Test Site Validation

42. Under the current rules, a measurement facility that is used for measuring radiated emissions from equipment subject to parts 15 and 18 must meet the site validation requirements in ANSI C63.4–2001. While radiated emission measurements at frequencies above 1 GHz are required for many devices subject to parts 15 and 18 of the rules, ANSI C63.4–2001 does not have specific site validation criteria for test facilities used for making radiated emissions in this frequency range. Rather, it only states that facilities determined to be suitable for performing measurements in the frequency range 30 MHz to 1 GHz are considered suitable for performing measurements in the frequency range 1 GHz to 40 GHz, without specific site validation criteria for the higher frequencies. Subsequent versions of the emission measurement standard, ANSI C63.4–2009 and ANSI C63.4–2014, both provide two options for test site validation for facilities used to make radiated emission measurements above 1 GHz, both of which include additional requirements. To be suitable for measurements in the frequency range 1 GHz to 40 GHz the facility must utilize RF absorbing material covers the ground plane in such a manner that either of the following conditions are met: (1) The site validation criteria specified in the CISPR 16–1–4 (CISPR 16) standard is met; or (2) a minimum area of the ground plane is covered using RF absorbing material.

43. In the *NPRM,* the Commission proposed to require that test facilities used to make radiated emission measurements on equipment authorized under any rule part meet the site validation requirements in ANSI C63.4–2009. Additionally, if the measurement site will be used for measuring radiated emissions in the range of 1 GHz to 40 GHz, it must meet the site validation criterion specified in ANSI C63.4 that references CISPR 16. The Commission indicated that the additional requirements were intended to provide better accuracy and repeatability of measurements than simply covering a minimum area of its ground plane. The Commission further proposed that a laboratory must confirm compliance with the site validation criterion no less than once every three years.

44. In the Order, the Commission required that test facilities that conduct radiated emission measurements above 1 GHz must meet the site validation requirements in ANSI C63.4–2014. The Commission found ANSI C63.4–2014 to be essentially the same as the 2009 version discussed in the NPRM (a specific set of validation criteria for test facilities that was missing in the 2001 version), and, noting that no parties had opposed ANSI C63's recommendation to we use the 2014 standard, determined that use of the 2014 version would avoid any confusion associated with using a version of the standard that is not the most current.

45. On its face, the adoption of the revised ANSI C63.4 standard necessitates compliance with the CISPR 16 standard. The Commission acknowledged the costs of the upgrades to test facilities that would be necessary to meet the site validation requirements in CISPR 16, and decided to allow either alternative for site validation in ANSI C63.4–2014 to be used to determine the suitability of a test facility to be used to make radiated emissions measurements above 1 GHz during a three-year transition period. After this time, test facilities used to make radiated emissions will be required to demonstrate compliance with the site validation criteria specified in CISPR 16. Because not all radiated emission measurement methods for licensed devices require the use of a test facility that meets the site validation requirements in ANSI C63.4–2014, the Commission revised to § 2.948(d) to specify that the site validation requirements only apply for radiated emissions test methods that require the use of a validated test site.

Measurement Procedures

8. Part 15 Devices

46. The Commission requires that most devices subject to part 15 technical requirements be tested to demonstrate compliance with the measurement procedures in ANSI C63.4 before they can be imported into or marketed within the United States. Specifically, § 15.31(a) of the rules states that the Commission will measure emissions from most intentional and unintentional radiators using the standard published by the American National Standard Institute Accredited Standards Committee C63®—Electromagnetic Compatibility (ANSI–ASC C63), titled ANSI C63.4–2003, *American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 KHz to 40 GHz* (ANSI C63.4 standard) to determine compliance with the Part 15 technical requirements.

47. The Commission has issued a number of public notices, interpretations and advisories on measurement standards to supplement the test procedures given in the ANSI C63.4 standard listed in the rules (*i.e.* ANSI C63.4–2003) to account for the growing number of intentional radiators and the resulting numbers of questions from test laboratories. Subsequently, ANSI–ASC C63 developed a new standard, ANSI C63.10–2009, for use in the measurement of intentional radiators in a wide range of frequency bands. This standard is essentially combines existing measurement procedures and associated Commission guidance for intentional radiators and does not add any new requirements for compliance testing. ANSI–ASC C63 also released a revised version of the ANSI C63.4 standard, ANSI C63.4–2014, to address unintentional radiators. Thus, ANSI C63.10 now contains the measurement procedures for intentional radiators, and ANSI C63.4 now contains the measurement procedures for unintentional radiators.

48. Upon publication of the 2009 standards by ANSI–ASC C63, OET issued a Public Notice announcing that, until it could initiate a rulemaking proceeding to incorporate the new standards into the rules, compliance measurements may be made under either the then-new 2009 standards or the 2003 standard currently in the rules. In the *NPRM,* the Commission proposed to update its rules to incorporate the latest standards—at that time, ANSI C63.10–2009 for intentional radiators and ANSI C63.4–2009 for unintentional radiators—into the rules. In keeping

with its previous policy with respect to ANSI C63.4, the Commission proposed to exclude the use of the sections in ANSI C63.4–2009 that allow the use of rod antennas for electric field measurements below 30 MHz; an artificial hand for holding handheld devices; an absorbing clamp for radio noise power measurements; and relaxed limits for transient emissions. Subsequent to the release of the *NPRM* ANSI–ASC C63 published updated versions of both standards, ANSI C63.4–2014 and ANSI C63.10–2013.

49. In the *NPRM* the Commission asked several questions related to the use of the updated ANSI C63.4 standard. Specifically, it questioned whether the benefits of adopting the increased burdens associated with the new standard outweighed the associated costs. It also asked whether certain technical changes in the 2009 revision (*e.g.,* a restriction on the use of hybrid antennas or the 2 dB rule) cause problems for manufacturers and/or test laboratories. Further, the Commission asked if the references to undated standards that are incorporated in the 2009 revision could result in a mandate of compliance with subsequently-modified standards without the opportunity for comment or transition period. The Commission also asked whether the interpretations of C63.4–2009 and C63.10–2009 on ANSI's Web site be accepted by the Commission as valid means for compliance. Finally, the Commission asked whether it could address the above concerns by not incorporating certain sections of the 2009 versions of the standards into the rules, and, if so, which particular sections should not be incorporated.

50. Finally, in the NPRM, the Commission recognized that work was underway to provide further updates to the standards, and sought comment on whether there were any significant differences between the 2009 versions of the standards and the latest drafts, and whether any of the changes in these drafts would address our concerns. After release of the *NPRM* and completion of the pleading cycle, ANSI–ASC C63 completed the process of adopting newer versions of both standards, and released ANSI C63.4–2014 and ANSI C63.10–2013.

51. ANSI–ASC C63 initially provided comments supporting the adoption of ANSI C63.4–2009 and ANSI C63.10–2009, along with suggestions that address concerns raised by other commenters. In its subsequent *ex parte* filings, ANSI C63.4 requested that the Commission update the rules to cross-reference ANSI C63.10–2013 and ANSI C63.4–2014.

52. ANSI–ASC C63 claimed that ANSI C63.4–2014 improved on various aspects of the C63.4–2009 standard. Specifically, the newest version of the standard addresses: Hybrid antenna qualification procedure; removal of testing procedures for transmitters as they are now covered by ANSI C63.10–2013; application of standard in the United States and Canada; improvements to ''2 dB rule''; test setup details for tablet computers; test site validation interval guideline for radiated emissions above 1 GHz; use of RF absorber for radiated emissions above 1 GHz; visual display procedures based on size of screen; and further clarification on radiated emissions above 1 GHz.

53. ANSI–ASC C63 further stated that the ANSI C63.10–2013 standard further improved on various aspects of the C63.10–2009, and it noted changes relating to: Clarifications of instrumentation factors such as detector and antenna requirements; the use of spectrum analyzers; out-of-band emission (OOBE) and band edge requirements; millimeter wave procedures, measurements below 30 MHz and above 1 GHz; new procedures for wireless devices using new technology (*e.g.,* Digital Transmission Systems (DTS); Unlicensed National Information Infrastructure (U–NII) devices; FM transmitters in vehicles; and Inductive Loop devices.

54. The Commission found that the improvements made in ANSI C63.4–2014 and ANSI C63.10–2013 represented the best measurement procedures, and it therefore decided to incorporate references to ANSI C63.4–2014 and ANSI C63.10–2013 into the rules as the measurement procedures for determining the compliance of unintentional and intentional radiators, respectively. The Commission concluded that the newest editions of the standards were adopted with the input of manufacturers, trade groups, and other academic bodies, and reflects the current state-of-the-art design and manufacturing processes. The new standards also provide a meaningful distinction between intentional and unintentional radiators, which will to ensure that noncompliant devices do not enter the marketplace where they may be difficult to eliminate. While the Commission acknowledged that compliance costs are a normal and expected part of a standards-driven regime where the standards are periodically updated, it noted that by implementing the 2013 and 2014 editions it can mitigate any costs that would have been associated with meeting the 2009 editions as an interim step, and recognized that there would be costs associated with not acting to implement the latest standards.

55. The Commission asserted its continued belief that there is insufficient evidence that rod antennas, artificial hands or absorber clamps produce accurate, repeatable measurements, and that short-duration emissions can produce as much nuisance to radio communications as continuous emissions, and decided to exclude ANSI C63.4–2014 sections that allow for these methods. The Commission also provided a transition period for ANSI C63.4 that will end one year from the effective date of the rules. During this time which parties may continue to comply with either ANSI C63.4–2003, ANSI C63.4–2009 (consistent with current practice) or with the new ANSI C63.4–2014. After the transition period date only compliance with ANSI C63.4–2014 will be accepted. The Commission also decided to apply a one-year transition period for use of the new edition of ANSI C63.10–2013.

56. The Commission also addressed numerous comments that addressed engineering and administrative issues implicated by the adoption of the new standards. Several commenters requested that the Commission not rule out future consideration of the use of CISPR 22 standard for measuring equipment subject to Part 15, as an alternative to ANSI C63.4–2009. In addition, HP proposed referencing CISPR 32 for test methods up to 6 GHz.

57. In the *NPRM* the Commission noted some differences between CISPR 22 requirements and those in ANSI C63.4–2009 and concluded that the ANSI standard was more appropriate for its purposes. Based on the record, the Commission to remains unconvinced that the measurement procedures in CISPR 22 for unintentional radiators would be an appropriate alternative to the ANSI–ASC standards. The Commission further noted that, CISPR 22 had been superseded by CISPR 32 and, in any event neither standard addresses all types of unintentional radiators covered in part 15.

58. Several commenters addressed the so-called ''2 dB rule,'' a method used to limit the amount of testing needed by determining the worst-case configuration. In this regard, ANSI–ASC C63 stated it had made additional improvements to the ''2 dB rule'' in ANSI C63.4–2014. The Commission found that the ANSI C63.4–2014 changes improved on ANSI C63.4–2009 and should address the record comments. Nevertheless, to reduce potential burdens on equipment

manufactures and as proposed by HP, the Commission decided to continue accepting the use of the ''2 dB'' method in ANSI C63.4–2003 for demonstrating compliance with the requirement in § 15.31(i) until it adopts further revisions to the standard.

59. ACIL and dB Technology discussed the proper arrangement of the measurement antenna relative to the equipment under test (EUT) when performing radiated emissions testing above 1 GHz. The Commission offered guidance for such testing: Measurement procedures for radiated emissions measurements above 1 GHz have required that the measurement antenna be pointed at the source of the radiated emission from the EUT in a manner that ensures that the measurement is maximized. This can be achieved using different methods.

60. The Commission received several comments complaining that ANSI C63.4–2009 excludes hybrid antennas for making radiated emissions measurements. ANSI–ASC C63 stated that ANSI C63.4–2014 has addressed concerns with the use of hybrid antennas, and it recommended that the Commission allow the use of hybrid antennas for testing of products pursuant to the new procedures in ANSI C63.4–2014 that detail how they are to be used. The Commission agreed and found that the ANSI C63.4–2014 standard is an improvement over the 2009 standard in that it provides a means for the use of hybrid antennas that is appropriate and reliable for providing accurate measurements.

61. The Commission recognized that standards development organizations often provide informative explanations and interpretations of the standards that they develop, offering helpful insight to the rationale behind the development of a standard. While it will continue to consider them in response to requests for guidance or clarification, the Commission clarified that it will not incorporate the interpretations of standards organizations automatically into its rules, as some commenters had assumed. The Commission asserted its discretion to use its own judgment in interpreting standards, even as it is informed by the interpretation(s) of the standards organization. In addition, the Commission would not adopt the interpretation of a standards organization in a case in which doing so would effectively change the Commission's rules without the opportunity for comment. Moreover, the Commission pointed out that ANSI–ASC C63 comments indicated that it does not require parties to follow such explanations and interpretations to be considered ''compliant'' with a standard, until such time that they are included in the normative part of the standard via full approval process by the ANSI–ASC C63 committee. The Commission also disagreed with commenters who asserted that it should not adopt the new ANSI standards because they cross-references to other undated standards. These commenters were concerned that this practice could inadvertently result in new compliance requirements by introducing revised editions without the opportunity for comment or defined transition periods. The Commission recognized that the use of undated references could be unclear to users—particularly when there are several versions of the referenced standard. However, the Commission believed that requiring that only dated standards be cross-referenced would not always result in certainty regarding compliance requirements. ANSI–ASC C63 explained that it decided to use undated references to other ANSI–ASC C63 standards since it carefully reviews the effect of any revisions as part of the standards development process. The Commission accepted this convention, acknowledging that, under this approach, there could be a revision to a standard cross-referenced referenced in ANSI C63.4 or ANSI C63.10. When this occurs, OET will provide guidance via the KDB on the use of updated references in ANSI C63.4 and ANSI C63.10. If the change that would result in a substantive change in requirements, the revised cross-referenced standard would not take effect until the Commission or OET on delegated authority completes a rulemaking adopting that change.

62. Finally, the Commission addressed a specific and narrow concern raised by Inovonics which stated that, while its products meet the frequency hopping requirements for unlicensed devices in § 15.247(a)(1)(i) using the bandwidth measurement procedure in ANSI C63.4–2003, it would be unable to meet the frequency hopping requirement using the proposed bandwidth measurement procedure in ANSI C63.10–2009 due to difference in resolution bandwidth setting techniques when measuring occupied bandwidth. Inovonics asserted that redesigning future products to meet the frequency hopping requirement would impose burdens on consumers of large-scale unlicensed systems who would no longer be able to modify their existing systems without substantially replacing all of their equipment. It suggested that, if the Commission adopts a revised standard, it include an extensive grandfathering period for testing equipment under the existing standard.

63. The Commission agreed with Inovonics argument that application of the 2009 standard would result in Inovonics' existing consumers having to choose whether to replace entire systems or forego the benefits of updating equipment or expanding their existing installations, and that application of the standard would be so unduly burdensome as to run counter to the public interest. In the evaluation of devices from Inovonics that are designed to be compatible with Inovonics equipment that has already been authorized, the Commission will to continue to accept the bandwidth measurement procedure in ANSI C63.4–2003 for purposes of demonstrating that products meet the frequency hopping requirements for its unlicensed devices in § 15.247(a)(1)(i). Inovonics must phase out its use of the 2003 standard after December 31, 2020—the date it suggests in its comments—or when the Commission adopts further revisions to the standard, whichever occurs first. The Commission found that this transition would allow Inovonics sufficient time to prepare its customers for replacing their systems as it plans equipment designs that can be tested to comply with the updated standard. Because it will still be subject to the objective measurement procedure embodied in the 2003 standard, the Commission affirmed its confidence that Inovonics' equipment will comport with the appropriate part 15 technical requirements and not create a risk of interference.

9. Updating Measurement Procedures

64. Parts 2 and 15 of the Commission's rules incorporate various industry measurement standards that have been developed by different industry groups, subject to periodic revision. The Commission has delegated authority to the Chief of OET to make editorial non-substantive changes to the rules pertaining to parts 2, 5, 15, and 18 of the rules, including references to updated standards that do not involve substantive changes. Non-editorial revisions to the rules require action by the full Commission and all rule changes to reference updated standards have been effected by Commission action. In the *NPRM,* the Commission proposed to explicitly allow OET to update references to industry standards that are already in the rules in parts 2, 5, 15 and 18 of the rules, provided that the changes do not raise major compliance issues.

65. The Commission adopted its NPRM proposal to give the Chief of OET delegated authority to engage in limited rulemaking action in order to modify parts 2, 5, 15, and 18 of rules to reference updated versions of standards that are already referenced in the rules. When it updates these references, in order to effectuate any degree of change to the substantive obligations of any party subject to FCC regulation, OET must follow Administrative Procedure Act (APA) requirements by publishing a notice in the **Federal Register**, providing sufficient opportunity for public comment, and considering the record compiled in the proceeding prior to adopting any substantive update to the standards. OET will determine whether there is a need for a transition period, and the appropriate length of any such transition, based on the comments filed in response to each public notice. In cases where parties provide convincing evidence that the proposed use of an updated standard would, in fact, raise major compliance issues, the Commission directed OET to refer the matter for review and decision by the Commission.

10. Other Issues

66. The Commission amended § 2.1033 of the rules to require that applications for Certification include photographs or diagrams of the test set-up for each of the required types of tests applicable to the device for which Certification is requested. The photographs or diagrams must show enough detail to confirm other information contained in the test report, and any photographs must clearly show the test configuration used. The Commission stated that the changes will make the Certification procedure consistent with the verification and DoC procedures, which require photographs or diagrams, and will allow it to determine whether a test laboratory or TCB tested equipment in accordance with the applicable measurement procedures. The Commission determined that the cost of this requirement would negligible because it requires a test laboratory or TCB to take a minimal number of additional photographs during testing or provide some relatively simple diagrams and include those with the test report submitted with the application for Certification. Additionally, the Commission found no need to specify in § 2.1033 that photographs or diagrams may be in electronic format since it accepts only electronic filings from TCBs and because codifying such aspects of the filing procedure could limit OET's flexibility in modifying them later. Additionally, the Commission decided to not adopt Bay Area Compliance's suggestion regarding a time/date stamp requirement since such data could be easily altered in conjunction with a fraudulent filing.

67. *Obsolete rules.* The Commission removed § 15.109(g)(4) because it references a rule provision that was deleted in 2002. The Commission also deleted the note in § 15.31(a)(3) as unnecessary.

Transition Period

68. To allow time for currently operating laboratories to become fully accredited and comply with the new ANSI C63.4 site validation criteria above 1 GHz, the Commission proposed adopted the transition periods set forth in the *NPRM* and applied them to the versions of the standards it adopted. Testing laboratories currently listed by the Commission under the § 2.948 process will remain recognized for the sooner of one year from the effective date of the rules adopted herein or until the date that their listing expires. As of the effective date of the rules, new laboratories must be accredited in order to be added to the Commission's list of recognized testing laboratories and the Commission will not recognize new 2.948-listed laboratories. Testing laboratories whose 2.948-listings expire within one year of the effective date of the rules may renew their listing but the renewal will be valid only until one year after the effective date of the rules. Applicants for grants of Certification using recognized 2.948-listed testing laboratories that test devices up until one year after the effective date of the rules must submit those test reports for grants of Certification within 90 days of the end of the one-year transition period (*i.e.,* within approximately 15 months of the effective date of the rules). The transition to the new site validation criteria will require testing laboratories to demonstrate compliance with the site validation criteria in ANSI C63.4–2014 clause 5.5.1 a) (CISPR 16–1–4), no later than three years after the effective date of the rules.

Other Matters

69. The docket included a Petition for Rulemaking filed by James E. Whedbee that proposed a new rule stating that a Commission license holder may use devices authorized for use under our part 15 rules and that such devices would not require a separate equipment authorization. Since the Commission currently does not place any restrictions on the use of part 15 devices by a holder of any other Commission license holder as long as the device is used within its authorized parameters, the Commission denied the petition as moot. To the extent that the petitioner intended to propose other alterations to our practice or procedures, the Commission found that the petition did not state what the proposed changes would do or why they are needed, and therefore failed to provide sufficient reason to justify the institution of a rulemaking proceeding.

Incorporation by Reference

70. The OFR recently revised the regulations to require that agencies must discuss in the preamble of the rule ways that the materials the agency incorporates by reference are reasonably available to interested persons and how interested parties can obtain the materials. In addition, the preamble of the rule must summarize the material. 1 CFR 51.5(b). In accordance with OFR's requirements, the discussion in this section summarizes ANSI, CISPR and ISO/IEC standards. Copies of the standards are also available for purchase from the standards development organizations: The IEEE standards may be purchased from the Institute of Electrical and Electronic Engineers (IEEE), 3916 Ranchero Drive, Ann Arbor, MI 48108, 1–800–699–9277, *http://www.techstreet.com/ieee;* and the ANSI, ISO and IEC standards are available for purchase from American National Standards Institute (ANSI), 25 West 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, *http://webstore.ansi.org/ansidocstore/IEEE.*

(1) ANSI C63.4–2014: ''American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz,'' ANSI approved June 13, 2014:

- Except sections 4.5.3, 4.6, 6.2.13, 8.2.2, 9, and 13, IBR approved for §§ 2.950(h), 15.31(a)(4), and 15.38(b)(1).
- Sections 5.4.4 through 5.5 IBR approved for §§ 2.910(c)(1), 2.948(d), and 2.950(f).

This standard, ANSI C63.4–2014, contains methods, instrumentation, and facilities for measurement of radio-frequency (RF) signals and noise emitted from electrical and electronic devices in the frequency range of 9 kHz to 40 GHz, as usable, for example, for compliance testing to U.S. (47 CFR part 15) and Industry Canada (ICES–003) regulatory requirements.

(2) ANSI C63.10–2013, ''American National Standard of Procedures for Compliance Testing of Unlicensed Wireless Devices,'' ANSI approved June 27, 2013, IBR approved for §§ 2.910(c)(3), 2.950(g), 15.31(a)(3), and 15.38(b)(4).

This standard, ANSI C63.10–2013, contains standard methods and instrumentation and test facilities requirements for measurement of radio frequency (RF) signals and noise emitted from unlicensed wireless devices (also called unlicensed transmitters, intentional radiators, and license-exempt transmitters) operating in the frequency range 9 kHz to 231 GHz.

IEC

(1) CISPR 16–1–4:2010–04: ''Specification for radio disturbance and immunity measuring apparatus and methods—Part 1–4: Radio disturbance and immunity measuring apparatus—Antennas and test sites for radiated disturbance measurements'' Edition 3.0, 2010–04, IBR approved for §§ 2.910(b)(1), 2.948(d), and 2.950(f).

This standard, CISPR 16–1–4:2010–04, specifies the characteristics and performance of equipment for the measurement of radiated disturbances in the frequency range 9 kHz to 18 GHz. Specifications for antennas and test sites are included. The requirements of this publication apply at all frequencies and for all levels of radiated disturbances within the CISPR indicating range of the measuring equipment.

ISO

(1) ISO/IEC 17011:2004(E), ''Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies,'' First Edition, 2004–09–01, IBR approved for §§ 2.910(d)(1), 2.948(e), 2.949(b)(1), 2.950(c) and (d), 2.960(b), and (c)(1), and 68.160(c)(1).

This standard, ISO/IEC 17011:2004(E), specifies general requirements for accreditation bodies assessing and accrediting conformity assessment bodies (CABs). It is also appropriate as a requirements document for the peer evaluation process for mutual recognition arrangements between accreditation bodies.

(2) ISO/IEC 17025:2005(E), ''General requirements for the competence of testing and calibration laboratories,'' Second Edition, 2005–05–15 IBR approved for §§ 2.910(d)(2), 2.948(e), 2.949(b)(2), 2.962(c)(3), (c)(4), and (d)(1), and 68.162(c)(3), (c)(4), and (d)(1).

This standard, ISO/IEC 17025:2005(E), specifies the general requirements for the competence to carry out tests and/or calibrations, including sampling. It covers testing and calibration performed using standard methods, non-standard methods, and laboratory-developed methods.

(3) ISO/IEC 17065:2012(E), ''Conformity assessment—Requirements for bodies certifying products, processes and services,'' First Edition, 2012–09–15, IBR approved for §§ 2.910(d)(3), 2.950(b), 2.960(b), 2.962(b)(1), (c)(1), (c)(4), (d)(1), (d)(3), (f)(2), and (g)(1), 68.160 (b) and 68.162(b)(1), (c)(1), (c)(4), (d)(1), (d)(2), (f)(2), and (g)(2).

This standard, ISO/IEC 17065:2012(E), specifies requirements, the observance of which is intended to ensure that certification bodies operate certification schemes in a competent, consistent and impartial manner, thereby facilitating the recognition of such bodies and the acceptance of certified products, processes and services on a national and international basis and so furthering international trade. This International Standard can be used as a criteria document for accreditation or peer assessment or designation by governmental authorities, scheme owners and others.

(4) ISO/IEC Guide 58:1993 ''Calibration and testing laboratory accreditation systems—General requirements for operation and recognition'', First Edition 1993 IBR approved for §§ 2.910(d)(4), and 2.950(d).

This document, ISO/IEC Guide 58:1993, sets out the general requirements for the operation of a system for accreditation of calibration and/or testing laboratories so that the accreditations granted and the services covered by the accreditations may be recognized at a national or international level as competent and reliable.

(5) ISO/IEC Guide 61:1996 ''General requirements for assessment and accreditation of certification/registration bodies'', First Edition 1996, IBR approved for §§ 2.910(d)(5), and 2.950(c).

This document, ISO/IEC Guide 61:1996, specifies general requirements for a body to follow if it is to be recognized at a national or international level as competent and reliable in assessing and subsequently accrediting certification bodies or registration bodies. Conformity to the requirements of this Guide will promote equivalence of national systems and facilitate agreements on mutual recognition of accreditations between such bodies.

(6) ISO/IEC Guide 65:1996, ''General requirements for bodies operating product certification systems,'' First Edition 1996, IBR approved for §§ 2.910(d)(6), and 2.950(b).

This document, ISO/IEC Guide 65: 1996, specifies requirements, the observance of which is intended to ensure that certification bodies operate third-party certification systems in a consistent and reliable manner, thereby facilitating their acceptance on a national and international basis and so furthering international trade.

Procedural Matters

Final Regulatory Flexibility Analysis

71. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),[1] an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *NPRM of Proposed Rulemaking* (*Authorization of Radiofrequency Equipment NPRM*) in ET Docket No. 13–44.[2] The Commission sought written public comment on the proposals in the NPRM, including comment on the IRFA. Those comments are discussed in the following text. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.[3]

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

72. In the Report and Order, the Commission took actions to update its radiofrequency (RF) equipment authorization program to build on the success realized by our use of Commission-recognized Telecommunication Certification Bodies (TCBs). The adopted rules will facilitate the continued rapid introduction of new and innovative products to the market while maintaining our ability to ensure that these products do not cause harmful interference with each other or with other communications devices and services.

Specifically, in this Report and Order the Commission:

- Discontinued FCC processing of any applications for equipment Certification of RF equipment;
- Permitted TCBs to process and grant all applications for Certification;
- Codified a pre-grant approval procedure that TCBs must currently follow when certifying equipment based on new technology that requires consultation with the FCC;
- Clarified a TCB's responsibilities in performing post-market surveillance of products it has approved;
- Specified steps for addressing instances of deficient TCB performance,

[1] *See* 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996), and the Small Business Jobs Act of 2010, Public Law 111–240, 124 Stat. 2504 (2010).

[2] *See Amendment of Parts 0, 1, 2, and 15 of the Commission's Rules to regarding Authorization of Radiofrequency Equipment and Amendment of Part 68 regarding Approval of Terminal Equipment by Telecommunications Certification Bodies, NPRM of Proposed Rulemaking,* ET Docket No. 13–44, RM–11673, 28 FCC Rcd 1606 (2013) (NPRM).

[3] *See* 5 U.S.C. 604.

including appropriate sanctions for deficiencies that do not warrant rescinding a TCB's authority to issue a grant of Certification;

• Modified the rules to reference current standards used to accredit TCBs that approve RF equipment under part 2 of the Commission's rules and terminal equipment under part 68 of the Commission's rules;

• Required accreditation of all laboratories that test equipment subject to any of the certification procedures under part 2 of the Commission's rules and codified a procedure through which the Commission currently recognizes new laboratory accreditation bodies;

• Updated references to industry measurement procedures in the Commission's rules; and provided greater flexibility under the Office of Engineering and Technology's (OET) existing delegated authority to enable it to address minor technical issues that may be raised when updating to the latest versions of industry standards that are referenced in parts 2, 5, 15, and 18 of the Commission's rules.

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

73. One commenter addressed the conclusions that were reached in the Initial Regulatory Flexibility Analysis (IRFA) regarding the economic impact that the proposed rules would have on small entities. That commenter, dB Technology, asserted that the IRFA failed to account for the negative effects of adopting the proposal to require that all laboratories that perform certification testing be accredited.[4] Specifically, dB Technology stated that the ''. . . cost overhead associated with 'accreditation' which has a much more significant impact on smaller test labs . . . may result in some small test labs no longer being able to offer services to local small entities.'' As a result, dB Technology concluded that there could be a ''. . . reduction in the number of competing test labs and increased costs for manufacturers.''[5]

74. In the Report and Order in this proceeding, the Commission adopted the requirement that all laboratories that perform Certification testing be accredited. It did so on the basis that requiring testing laboratory accreditation is an important adjunct to our decision to allow TCBs to certify all RF equipment, and because the requirement will provide a higher degree of confidence that equipment testing done in support of Certification applications is conducted in accordance with the applicable standards. To the extent that dB technologies is suggesting that the Commission take an alternate approach, such as continuing to allow for unaccredited laboratories, it was considered but rejected on the basis that it would not accomplish the objectives of the proceeding. It is extremely important that equipment be properly evaluated prior to being released into the marketplace (where it may be difficult or impossible to retrieve). Not requiring accreditation, or only applying such a requirement to certain types of laboratories, would present unacceptable risks to the integrity and success of our equipment authorization program. It would also increase the potential for the imposition of extraordinary costs (both costs associated with the identification and recall of noncompliant products by manufacturers, and costs associated with interference by noncompliant devices that could affect a larger group of users). For these reasons, the Commission adopted the accreditation rule based on the proposals in the NPRM and its accompanying IRFA.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

75. Pursuant to the Small Business Jobs Act of 2010, the Commission was required to respond to any comments filed by the Chief Counsel for Advocacy of the Small Business Administration (SBA), and to provide a detailed statement of any change made to the proposed rules as a result of those comments. The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

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

76. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.[6] The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small business concern'' under the Small Business Act.[7] A small business concern is one which: 1) is independently owned and operated; 2) is not dominant in its field of operation; and 3) satisfies any additional criteria established by the SBA.[8]

77. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.''[9] The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: all such firms having 750 or fewer employees. According to Census Bureau data for 2007, there were a total of 939 establishments in this category that operated for part or all of the entire year. Of this total, 912 had less than 500 employees and 17 had more than 1000 employees.[10] Thus, under that size standard, the majority of firms can be considered small.

E. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

78. The Commission's rules require that equipment be authorized in accordance with one of three procedures specified in Subpart J of part 2 of the rules described below (with certain

[4] *See* dB Technology ''small business impact'' comments filed March 22, 2013. dB Technology refers to itself as ''an independent EMC/Radio Test Site located in the United Kingdom,'' whose test facilities are '' 'listed' with the FCC but not 'accredited.' ''

[5] dB Technology also suggested that the IRFA should have considered the ''positive impact'' of relaxing other Commission equipment authorization procedures. However, the procedures it mentioned were not the direct subjects of this proceeding and these comments will not be discussed further.

[6] *Id.* at 603(b)(3).

[7] 5 U.S.C. 601(3) (incorporating by reference the definition of ''small business concern'' in 15 U.S.C. 632). Pursuant to the RFA, the statutory definition of a small business applies ''unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**.'' 5 U.S.C. 601(3).

[8] Small Business Act, 15 U.S.C. 632 (1996).

[9] The NAICS Code for this service 334220. *See* 13 CFR 121/201. *See also http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=300&-ds_name=EC0731SG2&-_lang=en.*

[10] *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-geo_id=&-fds_name=EC0700A1&-_skip=4500&-ds_name=EC0731SG3&-_lang=en.*

limited exceptions).[11] These requirements not only minimize the potential for harmful interference, but also ensure that the equipment complies with our rules that address other policy objectives—such as RF human exposure limits and hearing aid compatibility (HAC) with wireless handsets. The specific provisions of the three procedures apply to various types of devices based on their relative likelihood of harmful interference and the significance of the effects of such interference from the particular device at issue.

Certification, the most rigorous process for devices with the greatest potential to cause harmful interference, is an equipment authorization issued by the Commission or grant of Certification by a recognized TCB based on an application and test data submitted by the responsible party (*e.g.,* the manufacturer or importer).[12] The testing is done by a testing laboratory listed by the Commission as approved for such work and the Commission or a TCB examines the test procedures and data to determine whether the testing followed appropriate protocols and the data demonstrates technical and operational compliance with all pertinent rules. Technical parameters and other descriptive information for all certified equipment submitted in an application for Certification are published in a Commission-maintained public database, regardless of whether it is approved by the Commission or a TCB.[13]

Declaration of Conformity (DoC) is a procedure that requires the party responsible for compliance to use an accredited testing laboratory that follows established measurement protocols to ensure that the equipment complies with the appropriate technical standards.[14] The responsible party is not required to file an equipment authorization application with the Commission or a TCB, and equipment authorized under the DoC procedure is not listed in any Commission database. However, the responsible party must provide a test report and other information demonstrating compliance with the rules upon request by the Commission.

Verification is a procedure that requires the party responsible for compliance to rely on measurements that it or another party makes on its behalf to ensure that the equipment complies with the appropriate technical standards.[15] The responsible party is not required to use an accredited testing laboratory. It is not required to file an application with the Commission or a TCB, and equipment authorized under the verification procedure is not listed in any Commission database. However, the responsible party must provide a test report and other information demonstrating compliance with the rules upon request by the Commission.

79. In the *Notice of Proposed Rulemaking* (''NPRM'') in this proceeding, the Commission proposed certain changes to ensure its part 2 equipment authorization processes continue to operate efficiently and effectively.[16] Specifically, the Commission proposed to clarify the obligations of TCBs and to strengthen the Commission's oversight of the TCB's. The Commission also proposed to require accreditation for all labs performing equipment authorization compliance tests. The Commission also proposed adopting updates to the measurement procedures used to determine RF equipment compliance.

80. The Commission adopted its proposals specifying how applicants will file with TCBs and how TCBs will file with the Commission, and will required that the information provided to the Commission shall be submitted electronically through the Commission's EAS.

81. The Commission will stop accepting applications for grant of Certification as of the effective date of the Report and Order and will modify § 1.1103 of the rules to remove the equipment authorization services sections related to Certification as all of the processes under the Certification section will no longer be handled by the Commission, and no fee will be charged by the Commission when a TCB issues a grant of Certification. Applications received prior to the effective date will be reviewed following the current review procedures and approved if compliant with all requirements. Finally, the Commission also adopted the proposed TCB process changes and amended the various sections of part 2 that required updating to reflect the TCB role in the Certification process, as modified herein.

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

82. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.[17]

83. The Commission adopted the proposed modifications to the administrative requirements for test laboratories and TCBs on the belief that the changes will make the equipment authorization program more efficient and effective, thus benefiting small entities. Specifically, TCBs will approve all equipment, including equipment that TCBs may not currently approve because it incorporates new technology or requires measurements for which the procedures are not yet clearly defined. To more efficiently implement this change, the Commission will also integrate a new procedure into our equipment authorization system that will enable TCBs to obtain guidance from the Commission on testing or other certification issues. It is expected that these changes will reduce the time required for manufacturers to obtain equipment approval.

84. The Commission also adopted its proposals to require accreditation of test laboratories that perform certification testing and establish additional measures to address TCB performance in order to ensure the continuing quality of the TCB program. This will benefit equipment manufacturers by ensuring that all TCBs operate in accordance with the Commission's rules, thus providing a clear path to market and a level

[11] *See* 47 CFR part 2, subpart J, 2.901, *et seq.* Some devices are exempt from the equipment authorization requirements, such as unlicensed digital devices used exclusively in transportation vehicles, utility or industrial plants, test equipment, appliances and medical devices. *See* 47 CFR 15.103. In addition, most radio receivers that tune only outside the frequency range of 30–960 MHz are exempt from equipment authorization requirements. *See* 47 CFR 15.101(b). Operation of these exempt digital devices and radio receivers is subject to the condition that the devices may not cause harmful interference to authorized services. *See* 47 CFR 15.5(b). Additionally, some devices are exempt from equipment authorization requirements by statute, such as equipment intended solely for export or marketed exclusively for use by the Federal Government. *See* 47 U.S.C. 302a(c) and 47 CFR 2.807.

[12] *See* 47 CFR 2.907.

[13] *See http://www.fcc.gov/eas/.*

[14] *See* 47 CFR 2.906. The party responsible for compliance is defined in 47 CFR 2.909.

[15] *See* 47 CFR 2.909(b) and 2.953.

[16] *See Amendment of Parts 0, 1, 2, and 15 of the Commission's Rules regarding Authorization of Radiofrequency Equipment and Amendment of Part 68 regarding Approval of Terminal Equipment by Telecommunications Certification Bodies, Notice of Proposed Rulemaking,* ET Docket No. 13–44, 28 FCC Rcd 1606 (2013).

[17] 5 U.S.C. 603(c).

playing field for all manufacturers, both large and small.

Report to Congress: The Commission will send a copy of the Report and Order, including this FRFA, in a report to Congress pursuant to the Congressional Review Act.[18] In addition, the Commission will send a copy of the Report and Order, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the Report and Order and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Paperwork Reduction Act

85. This Report and Order contains no new information collection requirements, only non-substantive modifications.

Congressional Review Act

86. The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to the Congressional Review Act.[19]

Ordering Clauses

87. Pursuant to sections 1, 4(i), 7(a), 301, 302, 303(f), 303(g), 303(r), 307(e) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157(a), 301, 302a, 303(f), 303(g), 303(r), 307(e), and 332, this Report and Order *is adopted.*

88. The rules and requirements adopted in this Report and Order will be effective July 13, 2015.

89. Pursuant to the authority of Section 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 155(c), the Commission delegate authority to the Office of Engineering and Technology as set forth herein.

90. The Petition for Rulemaking filed by James E. Whedbee *is denied.*

91. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Certification, to the Chief Counsel for Advocacy of the Small Business Administration.

92. Pursuant to the authority contained in Sections 4(i), 4(j), and 303 of the Communications Act, as amended, 47 U.S.C. 154(i), 154(j) and 303, that should no petitions for reconsideration or applications for review be timely filed, this proceeding *is terminated* and ET Docket No. 13–44 *is closed.*

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies), Reporting and recordkeeping requirements.

47 CFR Part 1

Administrative practice and procedure, Reporting and recordkeeping requirements.

47 CFR Part 2

Communications equipment, Incorporation by reference, Reporting and recordkeeping requirements.

47 CFR Part 15

Communications equipment, Incorporation by reference, Radio, and Reporting and recordkeeping requirements.

47 CFR Part 68

Communications equipment, Incorporation by reference, and Reporting and recordkeeping.

Federal Communications Commission.

Gloria J. Miles,

Federal Register Liaison Officer.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1, 2, 15 and 68 as follows:

PART 0—COMMISSION ORGANIZATION

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

Authority: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, 225, unless otherwise noted.

■ 2. Section 0.241 is amended by revising paragraphs (a)(1) and (f) to read as follows:

§ 0.241 Authority delegated.

(a) * * *

(1) Notice of proposed rulemaking and of inquiry and final orders in rulemaking proceedings, inquiry proceedings and non-editorial orders making changes, except that:

(i) The Chief of the Office of Engineering and Technology is delegated authority, together with the Chief of the Wireless Telecommunications Bureau, to adopt certain technical standards applicable to hearing aid compatibility under § 20.19 of this chapter, as specified in § 20.19(k).

(ii) The Chief of the Office of Engineering and Technology is delegated authority, by notice-and-comment rulemaking if required by statute or otherwise in the public interest, to issue an order amending rules in parts 2, 5, 15, or 18 of this chapter that reference industry standards to specify revised versions of the standards. This delegation is limited to modifying rules to reference revisions to standards that are already in the rules and not to incorporate a new standard into the rules, and is limited to the approval of changes to the technical standards that do not raise major compliance issues.

* * * * *

(f) The Chief of the Office of Engineering and Technology is authorized to enter into agreements with the National Institute of Standards and Technology and other accreditation bodies to perform accreditation of test laboratories pursuant to § 2.948(e) of this chapter. In addition, the Chief is authorized to make determinations regarding the continued acceptability of individual accrediting organizations and accredited laboratories.

* * * * *

■ 3. Section 0.408 is amended by revising the entry for ''3060–0636'' in paragraph (b) to read as follows.

§ 0.408 OMB control numbers and expiration dates assigned pursuant to the Paperwork Reduction Act of 1995.

* * * * *

(b) *Display.*

OMB Control No.	FCC Form number or 47 CFR section or part, docket number or title identifying the collection	OMB Expiration date
*	* * * * * *	
3060–0636	Secs. 2.906, 2.909, 2.1071, 2.1075, 2.1077, and 15.37	05/31/15
*	* * * * * *	

[18] *See* 5 U.S.C. 801(a)(1)(A).

[19] See 5 U.S.C. 801(a)(1)(A).

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 *et seq.;* 47 U.S.C. 151, 154(i), 154(j), 155, 157, 160, 201, 225, 227, 303, 309, 332, 1403, 1404, 1451, 1452 and 1455.

■ 5. Section 1.1103 is revised to read as follows:

§ 1.1103 Schedule of charges for equipment approval, experimental radio services (or service).

Payment can be made electronically using the Commission's electronic filing and payment system ''Fee Filer'' (*www.fcc.gov/feefiler*). Remit manual filings and/or payments for these services to: Federal Communications Commission, OET Services, P.O. Box 979095, St. Louis, MO 63197–9000.

Service Equipment approval service(s)	FCC form No.	Fee amount	Payment type code
1. Advance Approval of Subscription TV Systems	Corres & 159	$4,180.00	EIS
a. Request for Confidentiality For Advance Approval of Subscription TV Systems.	Corres & 159	195.00	EBS
2. Assignment of Grantee Code:			
a. For all Application Types, except Subscription TV (Electronic Filing Only—Optional Electronic Payment).	Electronic Assignment & Form 159 or Optional Electronic Payment.	65.00	EAG
3. Experimental Radio Service(s):			
a. New Station Authorization	442 & 159	65.00	EAE
b. Modification of Authorization	442 & 159	65.00	EAE
c. Renewal of Station Authorization	405 & 159	65.00	EAE
d. Assignment of License or Transfer of Control	702 & 159 or	65.00	EAE
	703 & 159	65.00	EAE
e. Special Temporary Authority	Corres & 159	65.00	EAE
f. Additional fee required for any of the above applications that request withholding from public inspection.	Corres & 159	65.00	EAE

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

■ 6. The authority citation for part 2 continues to read as follows:

Authority: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

■ 7. Section 2.901 is revised to read as follows:

§ 2.901 Basis and purpose.

(a) In order to carry out its responsibilities under the Communications Act and the various treaties and international regulations, and in order to promote efficient use of the radio spectrum, the Commission has developed technical standards for radio frequency equipment and parts or components thereof. The technical standards applicable to individual types of equipment are found in that part of the rules governing the service wherein the equipment is to be operated. In addition to the technical standards provided, the rules governing the service may require that such equipment be verified by the manufacturer or importer, be authorized under a Declaration of Conformity, or receive a grant of Certification from a Telecommunication Certification Body.

(b) Sections 2.902 through 2.1077 describe the verification procedure, the procedure for a Declaration of Conformity, and the procedures to be followed in obtaining certification and the conditions attendant to such a grant.

■ 8. Section 2.906 is amended by revising paragraph (a) to read as follows:

§ 2.906 Declaration of Conformity.

(a) A Declaration of Conformity is a procedure where the responsible party, as defined in § 2.909, makes measurements or takes other necessary steps to ensure that the equipment complies with the appropriate technical standards. Submittal of a sample unit or representative data to the Commission demonstrating compliance is not required unless specifically requested pursuant to § 2.945.

* * * * *

■ 9. Section 2.907 is amended by revising paragraph (a) to read as follows:

§ 2.907 Certification.

(a) Certification is an equipment authorization approved by the Commission or issued by a Telecommunication Certification Body (TCB) and authorized under the authority of the Commission, based on representations and test data submitted by the applicant.

* * * * *

■ 10. Section 2.909 is amended by revising paragraph (a) to read as follows:

§ 2.909 Responsible party.

* * * * *

(a) In the case of equipment which requires the issuance of a grant of certification, the party to whom that grant of certification is issued (the grantee). If the radio frequency equipment is modified by any party other than the grantee and that party is not working under the authorization of the grantee pursuant to § 2.929(b), the party performing the modification is responsible for compliance of the product with the applicable administrative and technical provisions in this chapter.

* * * * *

■ 11. Section 2.910 is added before the undesignated center heading ''Application Procedures for Equipment Authorizations'' to read as follows:

§ 2.910 Incorporation by reference.

(a) The materials listed in this section are incorporated by reference in this part. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the **Federal Register**. All approved material is available for inspection at the Federal Communications Commission, 445 12th St. SW., Reference Information Center, Room CY–A257, Washington, DC 20554, (202) 418–0270 and is available from the sources below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(b) International Electrotechnical Commission (IEC), IEC Central Office, 3, rue de Varembe, CH–1211 Geneva 20, Switzerland, Email: *inmail@iec.ch, www.iec.ch.*

(1) CISPR 16–1–4:2010–04: ''Specification for radio disturbance and immunity measuring apparatus and methods—Part 1–4: Radio disturbance and immunity measuring apparatus—Antennas and test sites for radiated disturbance measurements'', Edition 3.0, 2010–04, IBR approved for §§ 2.948(d) and 2.950(f).

(2) [Reserved]

(c) Institute of Electrical and Electronic Engineers (IEEE), 3916 Ranchero Drive, Ann Arbor, MI 48108, 1–800–699–9277, *http://www.techstreet.com/ieee;* (ISO publications can also be purchased from the American National Standards Institute (ANSI) through its NSSN operation (*www.nssn.org*), at Customer Service, American National Standards Institute, 25 West 43rd Street, New York, NY 10036, telephone (212) 642–4900.)

(1) ANSI C63.4–2014: ''American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz,'' ANSI approved June 13, 2014, IBR approved for § 2.950(h) and:

(i) Sections 5.4.4 through 5.5, IBR approved for §§ 2.948(d) and 2.950(f); and

(ii) [Reserved]

(2) ANSI C63.10–2013, ''American National Standard of Procedures for Compliance Testing of Unlicensed Wireless Devices,'' ANSI approved June 27, 2013, IBR approved for § 2.950(g).

(d) International Organization for Standardization (ISO), 1, ch. De la Voie-Creuse, CP 56, CH–1211, Geneva 20, Switzerland; *www.iso.org* ; Tel.: +41 22 749 01 11; Fax: +41 22 733 34 30; email: *central@iso.org.* (ISO publications can also be purchased from the American National Standards Institute (ANSI) through its NSSN operation (*www.nssn.org*), at Customer Service, American National Standards Institute, 25 West 43rd Street, New York, NY 10036, telephone (212) 642–4900.)

(1) ISO/IEC 17011:2004(E), ''Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies,'' First Edition, 2004–09–01, IBR approved for §§ 2.948(e), 2.949(b), 2.950(c) and (d), and 2.960(c).

(2) ISO/IEC 17025:2005(E), ''General requirements for the competence of testing and calibration laboratories,'' Section Edition, 2005–05–15, IBR approved for §§ 2.948(e), 2.949(b), 2.962(c) and (d).

(3) ISO/IEC 17065:2012(E), ''Conformity assessment—Requirements for bodies certifying products, processes and services,'' First Edition, 2012–09–15, IBR approved for §§ 2.950(b), 2.960(b), 2.962(b), (c), (d), (f), and (g).

(4) ISO/IEC Guide 58:1993(E), ''Calibration and testing laboratory accreditation systems—General requirements for operation and recognition'', First Edition 1993, IBR approved for § 2.950(d).

(5) ISO/IEC Guide 61:1996(E), ''General requirements for assessment and accreditation of certification/registration bodies'', First Edition 1996, IBR approved for § 2.950(c).

(6) ISO/IEC Guide 65:1996(E), ''General requirements for bodies operating product certification systems,'' First Edition 1996, IBR approved for § 2.950(b).

■ 12. Section 2.911 is revised to read as follows:

§ 2.911 Application requirements.

(a) All requests for equipment authorization shall be submitted in writing to a Telecommunication Certification Body (TCB) in a manner prescribed by the TCB.

(b) A TCB shall submit an electronic copy of each equipment authorization application to the Commission pursuant to § 2.962(f)(6) on a form prescribed by the Commission at *https://www.fcc.gov/eas.*

(c) Each application that a TCB submits to the Commission shall be accompanied by all information required by this subpart and by those parts of the rules governing operation of the equipment, the applicant's certifications required by paragraphs (d)(1) and (2) of this section, and by requisite test data, diagrams, photographs, etc., as specified in this subpart and in those sections of rules under which the equipment is to be operated.

(d) The applicant shall provide to the TCB all information that the TCB requests to process the equipment authorization request and to submit the application form prescribed by the Commission and all exhibits required with this form.

(1) The applicant shall provide a written and signed certification to the TCB that all statements it makes in its request for equipment authorization are true and correct to the best of its knowledge and belief.

(2) The applicant shall provide a written and signed certification to the TCB that the applicant complies with the requirements in § 1.2002 of this chapter concerning the Anti-Drug Abuse Act of 1988.

(3) Each request for equipment authorization submitted to a TCB, including amendments thereto, and related statements of fact and authorizations required by the Commission, shall be signed by the applicant if the applicant is an individual; by one of the partners if the applicant is a partnership; by an officer, if the applicant is a corporation; or by a member who is an officer, if the applicant is an unincorporated association: Provided, however, that the application may be signed by the applicant's authorized representative who shall indicate his title, such as plant manager, project engineer, etc.

(4) Information on the Commission's equipment authorization requirements can be obtained from the Internet at *https://www.fcc.gov/eas.*

(e) Technical test data submitted to the TCB and to the Commission shall be signed by the person who performed or supervised the tests. The person signing the test data shall attest to the accuracy of such data. The Commission or TCB may require the person signing the test data to submit a statement showing that they are qualified to make or supervise the required measurements.

(f) Signed, as used in this section, means an original handwritten signature; however, the Office of Engineering and Technology may allow signature by any symbol executed or adopted by the applicant or TCB with the intent that such symbol be a signature, including symbols formed by computer-generated electronic impulses.

§ 2.913 [Removed]

■ 13. Section 2.913 is removed.

■ 14. Section 2.915 is amended by revising paragraph (a) introductory text and adding paragraphs (d), (e) and (f) to read as follows:

§ 2.915 Grant of application.

(a) A Commission recognized TCB will grant an application for certification if it finds from an examination of the application and supporting data, or other matter which it may officially notice, that:

* * * * *

(d) Grants will be effective from the date of publication on the Commission Web site and shall show any special condition(s) attaching to the grant. The official copy of the grant shall be maintained on the Commission Web site.

(e) The grant shall identify the approving TCB and the Commission as the issuing authority.

(f) In cases of a dispute the Commission will be the final arbiter.

■ 15. Section 2.917 is amended by revising paragraph (c) to read as follows:

§ 2.917 Dismissal of application.

* * * * *

(c) If an applicant is requested to file additional documents or information and fails to submit the requested material within the specified time period, the application may be dismissed.

■ 16. Section 2.924 is revised to read as follows:

§ 2.924 Marketing of electrically identical equipment having multiple trade names and models or type numbers under the same FCC Identifier.

The grantee of an equipment authorization may market devices having different model/type numbers or trade names without additional authorization, provided that such devices are electrically identical and the equipment bears an FCC Identifier validated by a grant of certification. A device will be considered to be electrically identical if no changes are made to the authorized device, or if the changes made to the device would be treated as class I permissive changes within the scope of § 2.1043(b)(1). Changes to the model number or trade name by anyone other than the grantee, or under the authorization of the grantee, shall be performed following the procedures in § 2.933.

§ 2.925 [Amended]

■ 17. Section 2.925 is amended by removing paragraph (b)(3) and redesignating paragraph (b)(4) as paragraph (b)(3).

■ 18. Section 2.926 is amended by revising paragraphs (a), (c)(1), and (e) to read as follows:

§ 2.926 FCC identifier.

(a) A grant of certification will list the validated FCC Identifier consisting of the grantee code assigned by the FCC pursuant to paragraph (b) of this section, and the equipment product code assigned by the grantee pursuant to paragraph (c) of this section. *See* § 2.925.

* * * * *

(c) * * *

(1) After assignment of a grantee code each grantee will continue to use the same grantee code for subsequent equipment authorization applications. In the event the grantee name is changed or ownership is transferred, the circumstances shall be reported to the Commission so that a new grantee code can be assigned, if appropriate. See § 2.929(c) and (d) for additional information.

* * * * *

(e) No FCC Identifier may be used on equipment to be marketed unless that specific identifier has been validated by a grant of equipment certification. This shall not prohibit placement of an FCC identifier on a transceiver which includes a verified receiver subject to § 15.101 of this chapter, provided that the transmitter portion of such transceiver is covered by a valid grant of type acceptance or certification. The FCC Identifier is uniquely assigned to the grantee and may not be placed on the equipment without authorization by the grantee. See § 2.803 for conditions applicable to the display at trade shows of equipment which has not been granted equipment authorization where such grant is required prior to marketing. Labelling of such equipment may include model or type numbers, but shall not include a purported FCC Identifier.

■ 19. Section 2.927 is revised to read as follows:

§ 2.927 Limitations on grants.

(a) A grant of certification is valid only when the FCC Identifier is permanently affixed on the device and remains effective until set aside, revoked, withdrawn, surrendered, or terminated.

(b) A grant of certification recognizes the determination that the equipment has been shown to be capable of compliance with the applicable technical standards if no unauthorized change is made in the equipment and if the equipment is properly maintained and operated. The issuance of a grant of equipment certification shall not be construed as a finding with respect to matters not encompassed by the Commission's rules, especially with respect to compliance with 18 U.S.C. 2512.

(c) No person shall, in any advertising matter, brochure, etc., use or make reference to an equipment authorization in a deceptive or misleading manner or convey the impression that such certification reflects more than a Commission-authorized determination that the device or product has been shown to be capable of compliance with the applicable technical standards of the Commission's rules.

■ 20. Section 2.929 is amended by revising paragraphs (a), (c), and (d) to read as follows:

§ 2.929 Changes in name, address, ownership or control of grantee.

(a) An equipment authorization may not be assigned, exchanged or in any other way transferred to a second party, except as provided in this section.

* * * * *

(c) Whenever there is a change in the name and/or address of the grantee of certification, notice of such change(s) shall be submitted to the Commission via the Internet at *https://apps.fcc.gov/eas* within 30 days after the grantee starts using the new name and/or address.

(d) In the case of transactions affecting the grantee, such as a transfer of control or sale to another company, mergers, or transfer of manufacturing rights, notice must be given to the Commission via the Internet at *https://apps.fcc.gov/eas* within 60 days after the consummation of the transaction. Depending on the circumstances in each case, the Commission may require new applications for certification. In reaching a decision the Commission will consider whether the acquiring party can adequately ensure and accept responsibility for continued compliance with the regulations. In general, new applications for each device will not be required. A single application for certification may be filed covering all the affected equipment.

■ 21. Section 2.932 is amended by revising paragraph (d) to read as follows:

§ 2.932 Modification of equipment.

* * * * *

(d) All requests for permissive changes must be accompanied by the anti-drug abuse certification required under § 1.2002 of this chapter.

■ 22. Section 2.933 is amended by revising paragraphs (a), (b) introductory text, and (b)(5) to read as follows:

§ 2.933 Change in identification of equipment.

(a) A new application for certification shall be filed whenever there is a change in the FCC Identifier for the equipment with or without a change in design, circuitry or construction. However, a change in the model/type number or trade name performed in accordance with the provisions in § 2.924 of this chapter is not considered to be a change in identification and does not require additional authorization.

(b) An application filed pursuant to paragraph (a) of this section where no change in design, circuitry or construction is involved, need not be accompanied by a resubmission of equipment or measurement or test data customarily required with a new application, unless specifically requested. In lieu thereof, the applicant shall attach a statement setting out:

* * * * *

(5) The photographs required by § 2.1033(b)(7) or (c)(12) showing the exterior appearance of the equipment, including the operating controls available to the user and the identification label. Photographs of the construction, the component placement on the chassis, and the chassis assembly are not required to be submitted unless specifically requested.

* * * * *

§ 2.936 [Removed]

■ 23. Section 2.936 is removed.

§ 2.943 [Removed]

■ 24. Section 2.943 is removed.

■ 25. Section 2.945 is revised to read as follows:

§ 2.945 Submission of equipment for testing and equipment records.

(a) *Prior to certification.* (1) The Commission or a Telecommunication Certification Body (TCB) may require an applicant for certification to submit one or more sample units for measurement at the Commission's laboratory or the TCB.

(2) If the applicant fails to provide a sample of the equipment, the TCB may dismiss the application without prejudice.

(3) In the event the applicant believes that shipment of the sample to the Commission's laboratory or the TCB is impractical because of the size or weight of the equipment, or the power requirement, or for any other reason, the applicant may submit a written explanation why such shipment is impractical and should not be required.

(4) The Commission may take administrative sanctions against a grantee of certification that fails to respond within 21 days to a Commission or TCB request for an equipment sample, such as suspending action on applications for equipment authorization submitted by that party while the matter is being resolved. The Commission may consider extensions of time upon submission of a showing of good cause.

(b) *Subsequent to equipment authorization.* (1) The Commission may request that the responsible party or any other party marketing equipment subject to this chapter submit a sample of the equipment, or provide a voucher for the equipment to be obtained from the marketplace, to determine the extent to which production of such equipment continues to comply with the data filed by the applicant or on file with the responsible party for equipment subject to verification or Declaration of Conformity. The Commission may request that a sample or voucher to obtain a product from the marketplace be submitted to the Commission, or in the case of equipment subject to certification, to the TCB that certified the equipment.

(2) A TCB may request samples of equipment that it has certified from the grantee of certification, or request a voucher to obtain a product from the marketplace, for the purpose of performing post-market surveillance as described in § 2.962. TCBs must document their sample requests to show the date they were sent and provide this documentation to the Commission upon request.

(3) The cost of shipping the equipment to the Commission's laboratory and back to the party submitting the equipment shall be borne by the party from which the Commission requested the equipment.

(4) In the event a party believes that shipment of the sample to the Commission's laboratory or the TCB is impractical because of the size or weight of the equipment, or the power requirement, or for any other reason, that party may submit a written explanation why such shipment is impractical and should not be required.

(5) Failure of a responsible party or other party marketing equipment subject to this chapter to comply with a request from the Commission or TCB for equipment samples or vouchers within 21 days may be cause for actions such as such as suspending action on applications for certification submitted by a grantee or forfeitures pursuant to § 1.80 of this chapter. The Commission or TCB requesting the sample may consider extensions of time upon submission of a showing of good cause.

(c) *Submission of records.* Upon request by the Commission, each responsible party shall submit copies of the records required by §§ 2.938, 2.955, and 2.1075 to the Commission. Failure of a responsible party or other party marketing equipment subject to this chapter to comply with a request from the Commission for records within 21 days may be cause for forfeiture, pursuant to § 1.80 of this chapter. The Commission may consider extensions of time upon submission of a showing of good cause.

(d) *Inspection by the Commission.* Upon request by the Commission, each responsible party shall make its manufacturing plant and facilities available for inspection.

§ 2.946 [Removed]

■ 26. Section 2.946 is removed.

■ 27. Section 2.947 is amended by revising paragraphs (a) and (e) to read as follows:

§ 2.947 Measurement procedure.

(a) Test data must be measured in accordance with the following standards or measurement procedures:

* * * * *

(e) If deemed necessary, additional information may be required concerning the measurement procedures employed in obtaining the data submitted for equipment authorization purposes.

■ 28. Section 2.948 is revised to read as follows:

§ 2.948 Measurement facilities.

(a) Equipment authorized under the certification or Declaration of Conformity (DoC) procedure shall be tested at a laboratory that is accredited in accordance with paragraph (e) of this section.

(b) A laboratory that makes measurements of equipment subject to an equipment authorization under the certification, DoC or verification procedure shall compile a description of the measurement facilities employed.

(1) The description of the measurement facilities shall contain the following information:

(i) Location of the test site.

(ii) Physical description of the test site accompanied by photographs that clearly show the details of the test site.

(iii) A drawing showing the dimensions of the site, physical layout of all supporting structures, and all structures within 5 times the distance between the measuring antenna and the device being measured.

(iv) Description of structures used to support the device being measured and the test instrumentation.

(v) List of measuring equipment used.

(vi) Information concerning the calibration of the measuring equipment, *i.e.,* the date the equipment was last calibrated and how often the equipment is calibrated.

(vii) For a measurement facility that will be used for testing radiated emissions, a plot of site attenuation data taken pursuant to paragraph (d) of this section.

(2) The description of the measurement facilities shall be provided to a laboratory accreditation body upon request.

(3) The description of the measurement facilities shall be retained by the party responsible for verification of equipment and provided to the Commission upon request.

(i) The party responsible for verification of equipment may rely upon the description of the measurement facilities retained by an independent laboratory that performed the tests. In this situation, the party responsible for

verification of the equipment is not required to retain a duplicate copy of the description of the measurement facilities.

(ii) No specific site calibration data is required for equipment that is verified for compliance based on measurements performed at the installation site of the equipment. The description of the measurement facilities may be retained at the site at which the measurements were performed.

(c) The Commission will maintain a list of accredited laboratories that it has recognized. The Commission will make publicly available a list of those laboratories that have indicated a willingness to perform testing for the general public. Inclusion of a facility on the Commission's list does not constitute Commission endorsement of that facility. In order to be included on this list, the accrediting organization (or Designating Authority in the case of foreign laboratories) must submit the information listed below to the Commission's laboratory:

(1) Laboratory name, location of test site(s), mailing address and contact information;

(2) Name of accrediting organization;

(3) Scope of laboratory accreditation;

(4) Date of expiration of accreditation;

(5) Designation number;

(6) FCC Registration Number (FRN);

(7) A statement as to whether or not the laboratory performs testing on a contract basis;

(8) For laboratories outside the United States, the name of the mutual recognition agreement or arrangement under which the accreditation of the laboratory is recognized;

(9) Other information as requested by the Commission.

(d) When the measurement method used requires the testing of radiated emissions on a validated test site, the site attenuation must comply with the requirements of Sections 5.4.4 through 5.5 of the following procedure: ANSI C63.4–2014 (incorporated by reference, see § 2.910). Measurement facilities used to make radiated emission measurements from 30 MHz to 1 GHz shall comply with the site validation requirements in ANSI C63.4–2014 (clause 5.4.4) and for radiated emission measurements from 1 GHz to 40 GHz shall comply with the site validation requirement of ANSI C63.4–2014 (clause 5.5.1 a) 1)), such that the site validation criteria called out in CISPR 16–1–4:2010–04 (incorporated by reference, see § 2.910) is met. Test site revalidation shall occur on an interval not to exceed three years.

(e) A laboratory that has been accredited with a scope covering the measurements required for the types of equipment that it will test shall be deemed competent to test and submit test data for equipment subject to verification, Declaration of Conformity, and certification. Such a laboratory shall be accredited by a Commission recognized accreditation organization based on the International Organization for Standardization/International Electrotechnical Commission International Standard ISO/IEC 17025, (incorporated by reference, see § 2.910). The organization accrediting the laboratory must be recognized by the Commission's Office of Engineering and Technology, as indicated in § 0.241 of this chapter, to perform such accreditation based on International Standard ISO/IEC 17011 (incorporated by reference, see § 2.910). The frequency for reassessment of the test facility and the information that is required to be filed or retained by the testing party shall comply with the requirements established by the accrediting organization, but shall occur on an interval not to exceed two years.

(f) The accreditation of a laboratory located outside of the United States, or its possessions, will be acceptable only under one of the following conditions:

(1) If the accredited laboratory has been designated by a foreign Designating Authority and recognized by the Commission under the terms of a government-to-government Mutual Recognition Agreement/Arrangement (MRA); or

(2) If the laboratory is located in a country that does not have an MRA with the United States, then it must be accredited by an organization recognized by the Commission under the provisions of § 2.949 for performing accreditations in the country where the laboratory is located.

■ 29. Section 2.949 is added before the undesignated center heading ''Verification'' to read as follows:

§ 2.949 Recognition of laboratory accreditation bodies.

(a) A party wishing to become a laboratory accreditation body recognized by OET must submit a written request to the Chief of OET requesting such recognition. OET will make a determination based on the information provided in support of the request for recognition.

(b) Applicants shall provide the following information as evidence of their credentials and qualifications to perform accreditation of laboratories that test equipment to Commission requirements, consistent with the requirements of § 2.948(e). OET may request additional information, or showings, as needed, to determine the applicant's credentials and qualifications.

(1) Successful completion of an ISO/IEC 17011 (incorporated by reference, see § 2.910) peer review, such as being a signatory to an accreditation agreement that is acceptable to the Commission.

(2) Experience with the accreditation of electromagnetic compatibility (EMC), radio and telecommunications testing laboratories to ISO/IEC 17025 (incorporated by reference, see § 2.910).

(3) Accreditation personnel/assessors with specific technical experience on the Commission equipment authorization rules and requirements.

(4) Procedures and policies developed for the accreditation of testing laboratories for FCC equipment authorization programs.

■ 30. Section 2.950 is added before the undesignated center heading ''Verification'' to read as follows:

§ 2.950 Transition periods.

(a) As of July 13, 2015 the Commission will no longer accept applications for Commission issued grants of equipment certification.

(b) Prior to September 15, 2015 a TCB shall be accredited to either ISO/IEC Guide 65 or ISO/IEC 17065 (incorporated by reference, see § 2.910). On or after September 15, 2015 a TCB shall be accredited to ISO/IEC 17065.

(c) Prior to September 15, 2015 an organization accrediting the prospective telecommunication certification body shall be capable of meeting the requirements and conditions of ISO/IEC Guide 61 or ISO/IEC 17011 (incorporated by reference, see § 2.910). On or after September 15, 2015 an organization accrediting the prospective telecommunication certification body shall be capable of meeting the requirements and conditions of ISO/IEC 17011.

(d) Prior to September 15, 2015 an organization accrediting the prospective accredited testing laboratory shall be capable of meeting the requirements and conditions of ISO/IEC Guide 58 or ISO/IEC 17011. On or after September 15, 2015 an organization accrediting the prospective accredited testing laboratory shall be capable of meeting the requirements and conditions of ISO/IEC 17011.

(e) The Commission will no longer accept applications for § 2.948 test site listing as of July 13, 2015. Laboratories that are listed by the Commission under the § 2.948 process will remain listed until the sooner of their expiration date or July 13, 2016 and may continue to submit test data in support of

certification applications for October 13, 2016. Laboratories with an expiration date before July 13, 2016 may request the Commission to extend their expiration date to July 13, 2016.

(f) Measurement facilities used to make radiated emission measurements from 1 GHz to 40 GHz shall comply with the site validation option of ANSI C63.4–2014, (clause 5.5.1a)1)) which references CISPR 16–1–4:2010–04 (incorporated by reference, see § 2.910) by July 13, 2018.

(g) Measurements for intentional radiators subject to part 15 of this chapter are to be made using the procedures in ANSI C63.10–2013 (incorporated by reference, see § 2.910) by July 13, 2016.

(h) Measurements for unintentional radiators are to be made using the procedures in ANSI C63.4, except clauses 4.5.3, 4.6, 6.2.13, 8.2.2, 9, and 13 (incorporated by reference, see § 2.910), by July 13, 2016.

■ 31. Section 2.953 is amended by revising paragraph (b) to read as follows.

§ 2.953 Responsibility for compliance.

* * * * *

(b) The importer of equipment subject to verification may, upon receiving a written statement from the manufacturer that the equipment complies with the appropriate technical standards, rely on the manufacturer or independent testing agency to verify compliance. The test records required by § 2.955 however should be in the English language and made available to the Commission upon a reasonable request, in accordance with § 2.945.

* * * * *

§ 2.956 [Removed]

■ 32. Section 2.956 is removed.

■ 33. Section 2.960 is by amending by revising the section heading and paragraphs (a), (b) and (c)(1) to read as follows:

§ 2.960 Recognition of Telecommunication Certification Bodies (TCBs).

(a) The Commission may recognize Telecommunication Certification Bodies (TCBs) which have been designated according to requirements of paragraph (b) or (c) of this section to issue grants of certification as required under this part. Certification of equipment by a TCB shall be based on an application with all the information specified in this part. The TCB shall review the application to determine compliance with the Commission's requirements and shall issue a grant of equipment certification in accordance with § 2.911.

(b) In the United States, TCBs shall be accredited and designated by the National Institute of Standards and Technology (NIST) under its National Voluntary Conformity Assessment Evaluation (NVCASE) program, or other recognized programs based on ISO/IEC 17065 (incorporated by reference, see § 2.910) to comply with the Commission's qualification criteria for TCBs. NIST may, in accordance with its procedures, allow other appropriately qualified accrediting bodies to accredit TCBs. TCBs shall comply with the requirements in § 2.962 of this part.

(c) * * *

(1) The organization accrediting the prospective telecommunication certification body shall be capable of meeting the requirements and conditions of ISO/IEC 17011 (incorporated by reference, see § 2.910).

* * * * *

■ 34. Section 2.962 is revised to read as follows:

§ 2.962 Requirements for Telecommunication Certification Bodies.

(a) Telecommunication certification bodies (TCBs) designated by NIST, or designated by another authority pursuant to an effective bilateral or multilateral mutual recognition agreement or arrangement to which the United States is a party, shall comply with the requirements of this section.

(b) *Certification methodology.* (1) The certification system shall be based on type testing as identified in ISO/IEC 17065 (incorporated by reference, see § 2.910).

(2) Certification shall normally be based on testing no more than one unmodified representative sample of each product type for which certification is sought. Additional samples may be requested if clearly warranted, such as when certain tests are likely to render a sample inoperative.

(c) *Criteria for designation.* (1) To be designated as a TCB under this section, an entity shall, by means of accreditation, meet all the appropriate specifications in ISO/IEC 17065 for the scope of equipment it will certify. The accreditation shall specify the group of equipment to be certified and the applicable regulations for product evaluation.

(2) The TCB shall demonstrate expert knowledge of the regulations for each product with respect to which the body seeks designation. Such expertise shall include familiarity with all applicable technical regulations, administrative provisions or requirements, as well as the policies and procedures used in the application thereof.

(3) The TCB shall have the technical expertise and capability to test the equipment it will certify and shall also be accredited in accordance with ISO/IEC 17025 (incorporated by reference, see § 2.910) to demonstrate it is competent to perform such tests.

(4) The TCB shall demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel shall demonstrate knowledge of how to obtain current and correct technical regulation interpretations. The competence of the TCB shall be demonstrated by assessment. The general competence, efficiency, experience, familiarity with technical regulations and products covered by those technical regulations, as well as compliance with applicable parts of ISO/IEC 17025 and ISO/IEC 17065 shall be taken into consideration during assessment.

(5) A TCB shall participate in any consultative activities, identified by the Commission or NIST, to facilitate a common understanding and interpretation of applicable regulations.

(6) The Commission will provide public notice of the specific methods that will be used to accredit TCBs, consistent with these qualification criteria.

(7) A TCB shall be reassessed for continued accreditation on intervals not exceeding two years.

(d) *External resources.* (1) In accordance with the provisions of ISO/IEC 17065 the evaluation of a product, or a portion thereof, may be performed by bodies that meet the applicable requirements of ISO/IEC 17025 in accordance with the applicable provisions of ISO/IEC 17065 for external resources (outsourcing) and other relevant standards. Evaluation is the selection of applicable requirements and the determination that those requirements are met. Evaluation may be performed using internal TCB resources or external (outsourced) resources.

(2) A TCB shall not outsource review and certification decision activities.

(3) When external resources are used to provide the evaluation function, including the testing of equipment subject to certification, the TCB shall be responsible for the evaluation and shall maintain appropriate oversight of the external resources used to ensure reliability of the evaluation. Such oversight shall include periodic audits of products that have been tested and other activities as required in ISO/IEC 17065 when a certification body uses external resources for evaluation.

(e) *Recognition of a TCB.* (1)(i) The Commission will recognize as a TCB

any organization in the United States that meets the qualification criteria and is accredited and designated by NIST or NIST's recognized accreditor as provided in § 2.960(b).

(ii) The Commission will recognize as a TCB any organization outside the United States that meets the qualification criteria and is designated pursuant to an effective bilateral or multilateral MRA as provided in § 2.960(c).

(2) The Commission will withdraw its recognition of a TCB if the TCB's designation or accreditation is withdrawn, if the Commission determines there is just cause for withdrawing the recognition, or if the TCB requests that it no longer hold its designation or recognition. The Commission will limit the scope of equipment that can be certified by a TCB if its accreditor limits the scope of its accreditation or if the Commission determines there is good cause to do so. The Commission will notify a TCB in writing of its intention to withdraw or limit the scope of the TCB's recognition and provide at least 60 days for the TCB to respond. In the case of a TCB designated and recognized pursuant to an effective bilateral or multilateral mutual recognition agreement or arrangement (MRA), the Commission shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any disputes arising under an MRA for compliance with the Telecommunications Trade Act of 1988 (Section 1371–1382 of the Omnibus Trade and Competitiveness Act of 1988).

(3) The Commission will notify a TCB in writing when it has concerns or evidence that the TCB is not certifying equipment in accordance with the Commission's rules and policies and request that it explain and correct any apparent deficiencies. The Commission may require that all applications for the TCB be processed under the pre-approval guidance procedure in § 2.964 for at least 30 days, and will provide a TCB with 30 days' notice of its intent to do so unless good cause exists for providing shorter notice. The Commission may request that a TCB's Designating Authority or accreditation body investigate and take appropriate corrective actions as required, and the Commission may initiate action to limit or withdraw the recognition of the TCB as described in § 2.962(e)(2).

(4) If the Commission withdraws its recognition of a TCB, all certifications issued by that TCB will remain valid unless specifically set aside or revoked by the Commission under paragraph (f)(5) of this section.

(5) A list of recognized TCBs will be published by the Commission.

(f) *Scope of responsibility.* (1) A TCB shall certify equipment in accordance with the Commission's rules and policies.

(2) A TCB shall accept test data from any Commission-recognized accredited test laboratory, subject to the requirements in ISO/IEC 17065 and shall not unnecessarily repeat tests.

(3) A TCB may establish and assess fees for processing certification applications and other Commission-required tasks.

(4) A TCB may only act on applications that it has received or which it has issued a grant of certification.

(5) A TCB shall dismiss an application which is not in accordance with the provisions of this subpart or when the applicant requests dismissal, and may dismiss an application if the applicant does not submit additional information or test samples requested by the TCB.

(6) Within 30 days of the date of grant of certification the Commission or TCB issuing the grant may set aside a grant of certification that does not comply with the requirements or upon the request of the applicant. A TCB shall notify the applicant and the Commission when a grant is set aside. After 30 days, the Commission may revoke a grant of certification through the procedures in § 2.939.

(7) A TCB shall follow the procedures in § 2.964 of this part for equipment on the pre-approval guidance list.

(8) A TCB shall supply an electronic copy of each certification application and all necessary exhibits to the Commission prior to grant or dismissal of the application. Where appropriate, the application must be accompanied by a request for confidentiality of any material that may qualify for confidential treatment under the Commission's rules.

(9) A TCB shall grant or dismiss each certification application through the Commission's electronic filing system.

(10) A TCB may not:

(i) Grant a waiver of the rules;

(ii) Take enforcement actions; or

(iii) Authorize a transfer of control of a grantee.

(11) All TCB actions are subject to Commission review.

(g) *Post-market surveillance requirements.* (1) In accordance with ISO/IEC 17065 a TCB shall perform appropriate post-market surveillance activities. These activities shall be based on type testing a certain number of samples of the total number of product types which the certification body has certified.

(2) The Chief of the Office of Engineering and Technology (OET) has delegated authority under § 0.241(g) of this chapter to develop procedures that TCBs will use for performing post-market surveillance. OET will publish a document on TCB post-market surveillance requirements, and this document will provide specific information such as the number and types of samples that a TCB must test.

(3) OET may request that a grantee of equipment certification submit a sample directly to the TCB that performed the original certification for evaluation. Any equipment samples requested by the Commission and tested by a TCB will be counted toward the minimum number of samples that the TCB must test.

(4) TCBs may request samples of equipment that they have certified directly from the grantee of certification in accordance with § 2.945.

(5) If during post market surveillance of a certified product, a TCB determines that a product fails to comply with the technical regulations for that product, the TCB shall immediately notify the grantee and the Commission in writing of its findings. The grantee shall provide a report to the TCB describing the actions taken to correct the situation, and the TCB shall provide a report of these actions to the Commission within 30 days.

(6) TCBs shall submit periodic reports to OET of their post-market surveillance activities and findings in the format and by the date specified by OET.

■ 35. Section 2.964 is added to read as follows:

§ 2.964 Pre-approval guidance procedure for Telecommunication Certification Bodies.

(a) The Commission will publish a ''Pre-approval Guidance List'' identifying the categories of equipment or types of testing for which Telecommunication Certification Bodies (TCBs) must request guidance from the Commission before approving equipment on the list.

(b) TCBs shall use the following procedure for approving equipment on the Commission's pre-approval guidance list.

(1) A TCB shall perform an initial review of the application and determine the issues that require guidance from the Commission. The TCB shall electronically submit the relevant exhibits to the Commission along with a specific description of the pertinent issues.

(2) The TCB shall complete the review of the application in accordance with the Commission's guidance.

(3) The Commission may request and test a sample of the equipment before the application can be granted.

(4) The TCB shall electronically submit the application and all exhibits to the Commission along with a request to grant the application.

(5) The Commission will give its concurrence for the TCB to grant the application if it determines that the equipment complies with the rules. The Commission will advise the TCB if additional information or equipment testing is required, or if the equipment cannot be certified because it does not comply with the Commission's rules.

■ 36. Section 2.1033 is amended by adding paragraph (b)(14), revising paragraph (c) introductory text and adding paragraph (c)(21) to read as follows:

§ 2.1033 Application for certification.

* * * * *

(b) * * *

(14) Contain at least one drawing or photograph showing the test set-up for each of the required types of tests applicable to the device for which certification is requested. These drawings or photographs must show enough detail to confirm other information contained in the test report. Any photographs used must be focused originals without glare or dark spots and must clearly show the test configuration used.

(c) Applications for equipment other than that operating under parts 15, 11 and 18 of this chapter shall be accompanied by a technical report containing the following information:

* * * * *

(21) Contain at least one drawing or photograph showing the test set-up for each of the required types of tests applicable to the device for which certification is requested. These drawings or photographs must show enough detail to confirm other information contained in the test report. Any photographs used must be focused originals without glare or dark spots and must clearly show the test configuration used.

* * * * *

■ 37. Section 2.1043 is amended by revising paragraphs (a), (b), (c), and (f) to read as follows:

§ 2.1043 Changes in certificated equipment.

(a) Except as provided in paragraph (b)(3) of this section, changes to the basic frequency determining and stabilizing circuitry (including clock or data rates), frequency multiplication stages, basic modulator circuit or maximum power or field strength ratings shall not be performed without application for and authorization of a new grant of certification. Variations in electrical or mechanical construction, other than these indicated items, are permitted provided the variations either do not affect the characteristics required to be reported to the Commission or the variations are made in compliance with the other provisions of this section. Changes to the software installed in a transmitter that do not affect the radio frequency emissions do not require any additional filings and may be made by parties other than the holder of the grant of certification.

(b) Three classes of permissive changes may be made in certificated equipment without requiring a new application for and grant of certification. None of the classes of changes shall result in a change in identification.

(1) A Class I permissive change includes those modifications in the equipment which do not degrade the characteristics reported by the manufacturer and accepted by the Commission when certification is granted. No filing is required for a Class I permissive change.

(2) A Class II permissive change includes those modifications which degrade the performance characteristics as reported to the Commission at the time of the initial certification. Such degraded performance must still meet the minimum requirements of the applicable rules. When a Class II permissive change is made by the grantee, the grantee shall provide complete information and the results of tests of the characteristics affected by such change. The modified equipment shall not be marketed under the existing grant of certification prior to acknowledgement that the change is acceptable.

(3) A Class III permissive change includes modifications to the software of a software defined radio transmitter that change the frequency range, modulation type or maximum output power (either radiated or conducted) outside the parameters previously approved, or that change the circumstances under which the transmitter operates in accordance with Commission rules. When a Class III permissive change is made, the grantee shall provide a description of the changes and test results showing that the equipment complies with the applicable rules with the new software loaded, including compliance with the applicable RF exposure requirements. The modified software shall not be loaded into the equipment, and the equipment shall not be marketed with the modified software under the existing grant of certification, prior to acknowledgement that the change is acceptable. Class III changes are permitted only for equipment in which no Class II changes have been made from the originally approved device.

Note to paragraph (b)(3): Any software change that degrades spurious and out-of-band emissions previously reported at the time of initial certification would be considered a change in frequency or modulation and would require a Class III permissive change or new equipment authorization application.

(4) Class I and Class II permissive changes may only be made by the holder of the grant of certification, except as specified.

(c) A grantee desiring to make a change other than a permissive change shall file a new application for certification accompanied by the required information as specified in this part and shall not market the modified device until the grant of certification has been issued. The grantee shall attach a description of the change(s) to be made and a statement indicating whether the change(s) will be made in all units (including previous production) or will be made only in those units produced after the change is authorized.

* * * * *

(f) For equipment other than that operating under parts 15 or 18 of this chapter, when a Class II permissive change is made by other than the grantee of certification, the information and data specified in paragraph (b)(2) of this section shall be supplied by the person making the change. The modified equipment shall not be operated under an authorization prior to acknowledgement that the change is acceptable.

* * * * *

■ 38. Section 2.1073 is amended by revising paragraph (b) to read as follows:

§ 2.1073 Responsibilities.

* * * * *

(b) The responsible party, if different from the manufacturer, may upon receiving a written statement from the manufacturer that the equipment complies with the appropriate technical standards, relies on the manufacturer or independent testing agency to determine compliance. However, the test records required by § 2.1075 shall be in the English language and shall be made available to the Commission upon

a reasonable request in accordance with the provisions of § 2.945.

* * * * *

■ 39. Section 2.1075 is amended by revising paragraph (c) to read as follows:

§ 2.1075 Retention of records.

* * * * *

(c) The records listed in paragraphs (a) and (b) of this section shall be retained for two years after the manufacture or assembly, as appropriate, of said equipment has been permanently discontinued, or until the conclusion of an investigation or a proceeding if the responsible party is officially notified that an investigation or any other administrative proceeding involving the equipment has been instituted. Requests for the records described in this section and for sample units also are covered under the provisions of § 2.945.

§ 2.1076 [Removed]

■ 40. Section 2.1076 is removed.

PART 15—RADIO FREQUENCY DEVICES

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

Authority: 47 U.S.C. 154, 302a, 303, 304, 307, 336, 544a, and 549.

■ 42. Section 15.31 is amended by revising paragraph (a)(3), removing the Note to paragraph (a)(3), and adding paragraph (a)(4) to read as follows:

§ 15.31 Measurement standards.

(a) * * *

(3) Other intentional radiators are to be measured for compliance using the following procedure: ANSI C63.10–2013 (incorporated by reference, see § 15.38).

(4) Unintentional radiators are to be measured for compliance using the following procedure excluding clauses 4.5.3, 4.6, 6.2.13, 8.2.2, 9, and 13: ANSI C63.4–2014 (incorporated by reference, see § 15.38).

* * * * *

■ 43. Section 15.38 is amended by revising paragraph (b), by redesignating paragraph (f) as paragraph (g), and by adding new paragraph (f) to read as follows:

§ 15.38 Incorporation by reference.

* * * * *

(b) The following documents are available from the following address: American National Standards Institute (ANSI), 25 West 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or at *http://webstore.ansi.org/ansidocstore/default.asp;*

(1) ANSI C63.17–2013: ''American National Standard for Methods of Measurement of the Electromagnetic and Operational Compatibility of Unlicensed Personal Communications Services (UPCS) Devices,'' approved August 12, 2013, IBR approved for § 15.31.

(2) Third Edition of the International Special Committee on Radio Interference (CISPR), Pub. 22, Information Technology Equipment-Radio Disturbance Characteristics-Limits and Methods of Measurement,'' 1997, IBR approved for § 15.09.

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(f) Institute of Electrical and Electronic Engineers (IEEE), 3916 Ranchero Drive, Ann Arbor, MI 48108, 1–800–699–9277, *http://www.techstreet.com/ieee*.

(1) ANSI C63.4–2014: ''American National Standard for Methods of Measurement of Radio-Noise Emissions from Low-Voltage Electrical and Electronic Equipment in the Range of 9 kHz to 40 GHz,'' ANSI approved June 13, 2014, IBR approved for § 15.31(a)(4), except clauses 4.5.3, 4.6, 6.2.13, 8.2.2, 9, and 13.

(2) ANSI C63.10–2013, ''American National Standard of Procedures for Compliance Testing of Unlicensed Wireless Devices,''ANSI approved June 27, 2013, IBR approved for § 15.31(a)(3).

* * * * *

§ 15.109 [Amended]

■ 44. Section 15.109 is amended by removing paragraph (g)(4).

PART 68—CONNECTION OF TERMINAL EQUIPMENT TO THE TELEPHONE NETWORK

■ 45. The authority citation for part 68 continues to read as follows:

Authority: Secs. 4, 5, 303, 48 Stat., as amended, 1066, 1068, 1082; (47 U.S.C. 154, 155, 303).

■ 46. Section 68.160 is amended by revising paragraphs (a), (b), and (c)(1) and adding paragraph (d) to read as follows:

§ 68.160 Designation of Telecommunication Certification Bodies (TCBs).

(a) The Commission may recognize designated Telecommunication Certification Bodies (TCBs) which have been designated according to the requirements of paragraphs (b) or (c) of this section to certify equipment as required under this part. Certification of equipment by a TCB shall be based on an application with all the information specified in this part. The TCB shall process the application to determine compliance with the Commission's requirements and shall issue a written grant of equipment authorization. The grant shall identify the approving TCB and the Commission as the issuing authority.

(b) In the United States, TCBs shall be accredited and designated by the National Institute of Standards and Technology (NIST) under its National Voluntary Conformity Assessment Evaluation (NVCASE) program, or other recognized programs based on ISO/IEC 17065:2012, to comply with the Commission's qualification criteria for TCBs. NIST may, in accordance with its procedures, allow other appropriately qualified accrediting bodies to accredit TCBs. TCBs shall comply with the requirements in § 68.162 of this part.

(c) * * *

(1) The organization accrediting the prospective telecommunication certification body shall be capable of meeting the requirements and conditions of ISO/IEC 17011:2004.

* * * * *

(d) *Incorporation by reference.* (1) The materials listed in this section are incorporated by reference in this part. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the **Federal Register**. All approved material is available for inspection at the Federal Communications Commission, 445 12th St. SW., Reference Information Center, Room CY–A257, Washington, DC 20554, (202) 418–0270 and is available from the sources below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(2) International Electrotechnical Commission (IEC), IEC Central Office, 3, rue de Varembe, CH–1211 Geneva 20, Switzerland, Email: *inmail@iec.ch,www.iec.ch* or International Organization for Standardization (ISO), 1, ch. De la Voie-Creuse, CP 56, CH–1211, Geneva 20, Switzerland; *www.iso.org;* Tel.: +41 22 749 01 11; Fax: +41 22 733 34 30; email: *central@iso.org* . (ISO publications can also be purchased from the American National Standards Institute (ANSI) through its NSSN operation (*www.nssn.org*), at Customer Service, American National Standards Institute, 25 West 43rd Street, New York, NY 10036, telephone (212) 642–4900.)

(i) ISO/IEC 17011:2004(E), ''Conformity assessment—General requirements for accreditation bodies accrediting conformity assessment bodies,'' First Edition, 2004–09–01, IBR approved for § 68.160(c).

(ii) ISO/IEC 17065:2012(E), ''Conformity assessment—Requirements for bodies certifying products, processes and services,'' First Edition, 2012–09–15.

■ 47. Section 68.162 is amended by revising paragraphs (a), (b)(1), (c)(1), (c)(3), (c)(4), (d), (e), (f)(2), (g)(2) through (g)(4), and (h) and by adding paragraphs (g)(5), (g)(6) and (i) to read as follows:

§ 68.162 Requirements for Telecommunication Certification Bodies.

(a) Telecommunication certification bodies (TCBs) designated by the National Institute of Standards and Technology (NIST), or designated by another authority pursuant to an effective bilateral or multilateral mutual recognition agreement or arrangement to which the United States is a party, shall comply with the following requirements.

(b) *Certification methodology.* (1) The certification system shall be based on type testing as identified in ISO/IEC 17065.

* * * * *

(c) *Criteria for designation.* (1) To be designated as a TCB under this section, an entity shall, by means of accreditation, meet all the appropriate specifications in ISO/IEC 17065 for the scope of equipment it will certify. The accreditation shall specify the group of equipment to be certified and the applicable regulations for product evaluation.

* * * * *

(3) The TCB shall have the technical expertise and capability to test the equipment it will certify and shall also be accredited in accordance with ISO/IEC 17025 to demonstrate it is competent to perform such tests.

(4) The TCB shall demonstrate an ability to recognize situations where interpretations of the regulations or test procedures may be necessary. The appropriate key certification and laboratory personnel shall demonstrate knowledge of how to obtain current and correct technical regulation interpretations. The competence of the telecommunication certification body shall be demonstrated by assessment. The general competence, efficiency, experience, familiarity with technical regulations and products included in those technical regulations, as well as compliance with applicable parts of the ISO/IEC 17025 and ISO/IEC 17065 shall be taken into consideration.

* * * * *

(d) *External resources.* (1) In accordance with the provisions of ISO/IEC 1706 the evaluation of a product, or a portion thereof, may be performed by bodies that meet the applicable requirements of ISO/IEC 1702 and ISO/IEC 17065, in accordance with the applicable provisions of ISO/IEC 17065, for external resources (outsourcing) and other relevant standards. Evaluation is the selection of applicable requirements and the determination that those requirements are met. Evaluation may be performed by using internal TCB resources or external (outsourced) resources.

(2) A recognized TCB shall not outsource review and certification decision activities.

(3) When external resources are used to provide the evaluation function, including the testing of equipment subject to certification, the TCB shall be responsible for the evaluation and shall maintain appropriate oversight of the external resources used to ensure reliability of the evaluation. Such oversight shall include periodic audits of products that have been tested and other activities as required in ISO/IEC 17065 when a certification body uses external resources for evaluation.

(e) *Recognition of TCBs.* (1)(i) The Commission will recognize as a TCB any organization that meets the qualification criteria and is accredited and designated by NIST or its recognized accreditor as provided in § 68.160(b).

(ii) The Commission will recognize as a TCB any organization outside the United States that meets the qualification criteria and is designated pursuant to an effective bilateral or multilateral Mutual Recognition Agreement (MRA) as provided in § 68.160(c).

(2) The Commission will withdraw the recognition of a TCB if the TCB's accreditation or designation by NIST or its recognized accreditor is withdrawn, if the Commission determines there is just cause for withdrawing the recognition, or if the TCB requests that it no longer hold the recognition. The Commission will limit the scope of equipment that can be certified by a TCB if its accreditor limits the scope of its accreditation or if the Commission determines there is good cause to do so. The Commission will notify a TCB in writing of its intention to withdraw or limit the scope of the TCB's recognition and provide a TCB with at least 60 day notice of its intention to withdraw the recognition and provide the TCB with an opportunity to respond. In the case of a TCB designated and recognized pursuant to an effective bilateral or multilateral MRA, the Commission shall consult with the Office of United States Trade Representative (USTR), as necessary, concerning any disputes arising under an MRA for compliance with the Telecommunications Trade Act of 1988 (Section 1371–1382 of the Omnibus Trade and Competitiveness Act of 1988).

(3) The Commission may request that a TCB's Designating Authority or accreditation body investigate and take appropriate corrective actions as required, when it has concerns or evidence that the TCB is not certifying equipment in accordance with Commission rules or ACTA requirements, and the Commission may initiate action to limit or withdraw the recognition of the TCB.

(4) If the Commission withdraws the recognition of a TCB, all certifications issued by that TCB will remain valid unless specifically revoked by the Commission.

(5) A list of recognized TCBs will be published by the Commission.

(f) * * *

(2) A TCB shall accept test data from any source, subject to the requirements in ISO/IEC 17065 and shall not unnecessarily repeat tests.

* * * * *

(g) * * *

(2) In accordance with ISO/IEC 17065 a TCB is required to conduct appropriate surveillance activities. These activities shall be based on type testing a few samples of the total number of product types which the certification body has certified. Other types of surveillance activities of a product that has been certified are permitted provided they are no more onerous than testing type. The Commission may at any time request a list of products certified by the certification body and may request and receive copies of product evaluation reports. The Commission may also request that a TCB perform post-market surveillance, under Commission guidelines, of a specific product it has certified.

(3) The Commission may request that a grantee of equipment certification submit a sample directly to the TCB that performed the original certification for evaluation. Any equipment samples requested by the Commission and tested by a TCB will be counted toward the minimum number of samples that the TCB must test.

(4) A TCBs may request samples of equipment that they have certified directly from the grantee of certification.

(5) If during, post-market surveillance of a certified product, a certification body determines that a product fails to comply with the applicable technical regulations, the certification body shall immediately notify the grantee and the Commission. The TCB shall provide a follow-up report to the Commission within 30 days of reporting the non-compliance by the grantee to describe the resolution or plan to resolve the situation.

(6) Where concerns arise, the TCB shall provide a copy of the application file to the Commission within 30 calendar days of a request for the file made by the Commission to the TCB and the manufacturer. Where appropriate, the file should be accompanied by a request for confidentiality for any material that may qualify for confidential treatment under the Commission's rules. If the application file is not provided within 30 calendar days, a statement shall be provided to the Commission as to why it cannot be provided.

(h) In the case of a dispute with respect to designation or recognition of a TCB and the testing or certification of products by a TCB, the Commission will be the final arbiter. Manufacturers and recognized TCBs will be afforded at least 60 days to comment before a decision is reached. In the case of a TCB designated or recognized, or a product certified pursuant to an effective bilateral or multilateral mutual recognition agreement or arrangement (MRA) to which the United States is a party, the Commission may limit or withdraw its recognition of a TCB designated by an MRA party and revoke the Certification of products using testing or certification provided by such a TCB. The Commission shall consult with the Office of the United States Trade Representative (USTR), as necessary, concerning any disputes arising under an MRA for compliance with under the Telecommunications Trade Act of 1988.

(i) *Incorporation by reference:* The materials listed in this section are incorporated by reference in this part. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval, and notice of any change in these materials will be published in the **Federal Register**. All approved material is available for inspection at the Federal Communications Commission, 445 12th St. SW., Reference Information Center, Room CY–A257, Washington, DC 20554, (202) 418–0270 and is available from the sources below. It is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal_register/code_of_federal_regulations/ibr_locations.html.*

(1) International Electrotechnical Commission (IEC), IEC Central Office, 3, rue de Varembe,CH–1211 Geneva 20, Switzerland, Email: *inmail@iec.ch,www.iec.ch* or International Organization for Standardization (ISO), 1, ch. De la Voie-Creuse, CP 56, CH–1211, Geneva 20, Switzerland; *www.iso.org;* Tel.: +41 22 749 01 11; Fax: +41 22 733 34 30; email: *central@iso.org* . (ISO publications can also be purchased from the American National Standards Institute (ANSI) through its NSSN operation (*www.nssn.org*), at Customer Service, American National Standards Institute, 25 West 43rd Street, New York, NY 10036, telephone (212) 642–4900.)

(i) ISO/IEC 17025:2005(E), ''General requirements for the competence of testing and calibration laboratories,'' Second Edition, 2005–05–15.

(ii) ISO/IEC 17065:2012(E), ''Conformity assessment—Requirements for bodies certifying products, processes and services,'' First Edition, 2012–09–15.

(2) [Reserved]

[FR Doc. 2015–14072 Filed 6–11–15; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 80, No. 113
Friday, June 12, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 37

[Docket Nos. PRM–37–1; NRC–2014–0172; NRC–2015–0094]

Physical Protection of Category 1 and Category 2 Quantities of Radioactive Materials

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; consideration in the rulemaking process.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will consider in the rulemaking process three issues raised in a petition for rulemaking (PRM), PRM–37–1, submitted by Anthony Pietrangelo, on behalf of the Nuclear Energy Institute (NEI or the petitioner). The petitioner requests that the NRC amend its regulations to clarify and expand current exemptions for when the physical protection measures for category 1 and category 2 quantities of radioactive material do not apply to a licensee.

DATES: The docket for the petition, PRM–37–1, is closed on June 12, 2015.

ADDRESSES: Further NRC action on the issues raised by this petition can be found on the Federal rulemaking Web site at *http://www.regulations.gov* by searching on Docket ID NRC–2015–0094, which is the identification for the potential future rulemaking.

Please refer to the petition Docket ID NRC–2014–0172 when contacting the NRC about the availability of information regarding this petition. You can obtain publicly-available documents related to this petition by using any of the following methods:

- *Federal Rulemaking Web site:* Go to: *http://www.regulations.gov* and search for the petition Docket ID NRC–2014–0172. 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 is available in ADAMS) is provided the first time that a document is referenced.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Cardelia Maupin, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–2312; email: *Cardelia.Maupin@nrc.gov;* U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. The Petition

The NRC received and docketed a petition for rulemaking (ADAMS Accession No. ML14199A570) dated June 12, 2014, filed by Anthony R. Pietrangelo on behalf of the NEI. On October 28, 2014 (79 FR 64149) the NRC published a notice of docketing and request for comment on the petition. The petitioner requests that the NRC amend part 37 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material,'' to clarify and expand current exemptions in 10 CFR 37.11 for when the physical protection measures for category 1 and category 2 quantities of radioactive material do not apply to a licensee. The petitioner states that both licensees and the NRC have encountered significant problems with 10 CFR 37.11 that can only practically be remedied with a rulemaking. Specifically, the petitioner requests that the exemptions in 10 CFR 37.11(b) and (c) be revised and that a new 10 CFR 37.11(d) be added. The petitioner states that the exemption in 10 CFR 37.11(b) needs to be revised to remove undue regulatory burden on licensees with established physical security programs required by 10 CFR part 73, ''Physical Protection of Plants and Materials.'' The petitioner states the exemption should provide for a more direct recognition of the extent to which facilities with robust 10 CFR part 73 security programs already meet the objectives set forth in 10 CFR part 37 and inherently protect category 1 and category 2 quantities of radioactive material. The petitioner states that the exemption in 10 CFR 37.11(c) needs to be revised to improve its clarity, provide greater regulatory certainty, and ensure licensees implement 10 CFR part 37 consistent with the NRC's intent as expressed in regulatory guidance. Lastly, the petitioner states that a new exemption is needed to address the technical issues identified in Enforcement Guidance Memorandum (EGM) EGM–14–001, ''Interim Guidance for Dispositioning 10 CFR part 37 Inspection Findings with Respect to Large Components and Robust Structures at Facilities Licensed Under 10 CFR parts 50 and 52,'' (ADAMS Accession No. ML14056A151) for large components and material stored in robust structures.

II. Public Comments on the Petition

The NRC solicited public comment through the notice of docketing and request for comment. The comment period closed on January 12, 2015. The NRC received seven comment letters. All seven letters were from members or representatives of the nuclear industry. The public comments supported NEI's request for rulemaking and urged the NRC to promptly initiate rulemaking to implement the changes proposed in the petition.

In addition to supporting the statements in NEI's PRM, some of the commenters also raised additional points in support of the petition. One commenter provided examples of some of the differences between 10 CFR part 37 and 10 CFR part 73 that the commenter did not believe resulted in an increased level of protection for category 1 or category 2 quantities of radioactive materials at power reactors, but must be addressed by licensees under 10 CFR part 37. Two commenters requested that the suggested change for

large components and material stored in robust structures be expanded to include waste materials. One of the commenters suggested the inclusion of a dose rate criterion in the exemption.

The NRC considered the public comments in its analysis of the petition.

III. NRC Analysis

This section presents the three issues raised by the petitioner followed by the NRC's analysis of the issues.

Issue 1: Revise the Exemption in 10 CFR 37.11(b)

The petitioner requests that 10 CFR 37.11(b) be amended to allow for byproduct material kept within any area for which 10 CFR part 73 requires access control to be exempted from 10 CFR part 37 requirements regardless of whether the byproduct material ''activities'' are specifically ''included in'' a 10 CFR part 73 security plan. The petitioner states that the exemption should recognize the extent to which the physical protection requirements in 10 CFR part 73 meet or exceed the requirements of 10 CFR part 37, so there is no need for any additional security measures or documentation in the 10 CFR part 73 security plan. The petitioner asserts that 10 CFR part 37 currently imposes undue burden on licensees that should be alleviated through a rulemaking.

NRC Response to Issue 1: The NRC will consider Issue 1 in the rulemaking process. The NRC agrees that the language in 10 CFR 37.11(b) and the accompanying guidance in NUREG–2155, ''Implementation Guidance for 10 CFR part 37 Physical Protection of Category I and Category 2 Quantities of Radioactive Material'' (ADAMS Accession No. ML13053A061), could be clarified as to what is being exempted and what action, if any, a licensee with a 10 CFR part 73 security plan needs to take to use the exemption. The exact wording of a revision to paragraph (b), if any, and the associated implications for the guidance document (NUREG–2155), would be determined during the rulemaking process.

Issue 2: Revise the Exemption in 10 CFR 37.11(c)

The petitioner requests that 10 CFR 37.11(c) be modified to remove any ambiguity as to what type of wastes the exemption applies. The petitioner states that the language is difficult to understand and has prompted numerous inquiries and many discussions among NRC and the nuclear industry. The petitioner notes that the NRC's guidance document, NUREG–2155, does clarify the ambiguity; however, the petitioner states that the NRC should provide licensees and the public with greater regulatory certainty by clarifying the provision in the regulations.

NRC Response to Issue 2: The NRC will consider Issue 2 in the rulemaking process. The petitioner raises regulatory stability and predictability concerns with respect to the language of the exemption provision. The NRC notes that the guidance in NUREG–2155 does clarify the intent of the exemption provision; however, the NRC agrees that the regulatory language should be clear.

Issue 3: Add an Exemption To Address Large Components and Storage in Robust Structures

The petitioner requests that 10 CFR 37.11 be revised to include a new paragraph (d) that would address large components and storage of radioactive material in robust structures. The petitioner states that the exemption in 10 CFR 37.11(c) only addresses waste material, and therefore, large components and non-waste material stored in robust structures that present a similar or lower risk for theft or diversion are not exempt from the 10 CFR part 37 requirements. The petitioner notes that as part of the 10 CFR part 37 implementation process, the NRC recognized this material as low risk and issued EGM–14–001 to address large components and storage of material in robust structures. The petitioner states that a rulemaking to codify the EGM's rationale would recognize the practicalities militating against theft or diversion and would avoid the long-term use of enforcement discretion and case-by-case exemption in this area. The petitioner also states that definitions for ''large component'' and ''robust structure'' should be added to the regulations.

NRC Response to Issue 3: The NRC will consider Issue 3 in the rulemaking process. The NRC has issued enforcement guidance (EGM–14–001) to address large components and storage of radioactive material in robust structures. The EGM states that it will remain effective until the underlying technical issue is dispositioned through rulemaking or other regulatory action.

IV. Determination of Petition

The NRC has reviewed the petition and related public comments. Based on its review, the NRC will consider the three issues raised in the petition in the rulemaking process. The docket for the petition, PRM–37–1, is closed.

Further NRC action on the issues raised in PRM–37–1 can be monitored on the Federal rulemaking Web site, *http://www.regulations.gov,* by searching on Docket ID NRC–2015–0094, which is the Docket ID for the potential future rulemaking. In addition, the Federal rulemaking Web site allows you to receive alerts when changes or additions occur in a docket folder. To subscribe to alerts: (1) Navigate to the docket folder (NRC–2015–0094); (2) click the ''Sign up for Email Alerts'' link; and (3) enter your email address and select how frequently you would like to receive emails (daily, weekly, or monthly). The NRC also tracks all PRMs and rulemaking actions on its Web site at *http://www.nrc.gov/reading-rm/doc-collections/rulemaking-ruleforum/petitions-by-year.html* and on the Federal rulemaking Web site, *http://www.regulations.gov.*

Dated at Rockville, Maryland, this 2nd day June, 2015.

For the Nuclear Regulatory Commission.

Michael R. Johnson,

Acting Executive Director for Operations.

[FR Doc. 2015–14422 Filed 6–11–15; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–149518–03]

RIN 1545–BM34

Partnership Transactions Involving Equity Interests of a Partner

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking and notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS and the Treasury Department are issuing temporary regulations that prevent a corporate partner from using a partnership to avoid corporate level gain required to be recognized. These regulations affect partnerships and their partners. The text of the temporary regulations in this issue of the **Federal Register** also serves as the text of these proposed regulations.

DATES: Comments and requests for a public hearing must be received by September 10, 2015.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–149518–03), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station,

Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–149518–03), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–149518–03).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kevin I. Babitz, (202) 317–6852; concerning submission of comments or to request a public hearing, Oluwafunmilayo Taylor at (202) 317–6901.

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) relating to section 337(d). The temporary regulations set forth rules for applying section 337(d) to partnerships and S corporations. The text of the temporary regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the temporary regulations and these proposed regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. These proposed regulations do not impose a collection of information on small entities. Further, pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these proposed regulations would primarily affect sophisticated ownership structures with interlocking ownership of corporations, partnerships and corporate stock. Additionally, these proposed regulations contain a number of de minimis provisions that render the regulations inapplicable to most small businesses. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Joseph R. Worst and Kevin I. Babitz, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and the Treasury Department participated in their development.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (PS–91–90; REG–208989–90) that was published in the **Federal Register** on December 15, 1992 (57 FR 59324), is withdrawn.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART I—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.337(d)–3 also issued under 26 U.S.C. 337(d). * * *

■ **Par. 2.** Section 1.337(d)–3 is added to read as follows:

§ 1.337(d)–3 Gain recognition upon certain partnership transactions involving a partner's stock.

[The text of proposed § 1.337(d)–3 is the same as the text of § 1.337(d)–3T(a) through (i) published elsewhere in this issue of the **Federal Register**].

■ **Par. 3.** Section 1.732–1 is amended by revising paragraphs (c)(1) and (c)(5)(ii) to read as follows:

§ 1.732–1 Basis of distributed property other than money.

* * * * *

(c)(1) [The text of proposed § 1.732–1(c)(1) is the same as the text of § 1.732–1T(c)(1) published elsewhere in this issue of the **Federal Register**].

* * * * *

(5) * * *

(ii) [The text of proposed § 1.732–1(c)(5)(ii) is the same as the text of § 1.732–1T(c)(5)(ii) published elsewhere in this issue of the **Federal Register**].

* * * * *

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2015–14403 Filed 6–11–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–138759–14]

RIN 1545–BM48

Aggregation of Basis for Partnership Distributions Involving Equity Interests of a Partner

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would allow consolidated group members that are partners in the same partnership to aggregate their bases in stock distributed by the partnership for the purpose of limiting the application of rules that might otherwise cause basis reduction or gain recognition. The proposed regulations would also require certain corporations that engage in gain elimination transactions to reduce the basis of corporate assets or to recognize gain. The proposed regulations affect partnerships and their partners.

DATES: Comments and requests for a public hearing must be received by September 10, 2015.

ADDRESSES: Send submissions to: CC:PA:LPD:PR (REG–138759–14), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG–138759–

14), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC, or sent electronically, via the Federal eRulemaking Portal at *http://www.regulations.gov* (IRS REG–138759–14).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kevin I. Babitz, (202) 317–6852; concerning submission of comments or to request a public hearing, Oluwafunmilayo Taylor at (202) 317–6901.

SUPPLEMENTARY INFORMATION:

Background

1. Section 337(d) and the Repeal of the General Utilities Doctrine

In *General Utilities & Operating Co.* v. *Helvering,* 296 U.S. 200 (1935), the Supreme Court held that corporations generally could distribute appreciated property to their shareholders without the recognition of any corporate level gain (the *General Utilities* doctrine). Beginning in 1969 and ending with the Tax Reform Act of 1986, Public Law 99–514, 100 Stat. 2085, (the Act), Congress enacted a series of statutory changes that limited and ultimately repealed the *General Utilities* doctrine. Under current law, sections 311(b) and 336(a) of the Internal Revenue Code (Code) require a corporation that distributes appreciated property to its shareholders to recognize gain determined as if the property were sold to the shareholders for its fair market value. Additionally, section 631 of the Act added section 337(d) to the Code to permit the Secretary to prescribe regulations that are necessary or appropriate to carry out the purposes of the *General Utilities* repeal, ''including regulations to ensure that [the repeal of the *General Utilities* doctrine] may not be circumvented through the use of any provision of law or regulations.''

2. Section 732(f)

Section 538 of the Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106–170, 113 Stat. 1860, (the Ticket to Work Act), enacted section 732(f) on December 17, 1999. Section 732(f) provides that if: (1) A corporate partner receives a distribution from a partnership of stock in another corporation (distributed corporation), (2) the corporate partner has control of the distributed corporation (ownership of stock meeting the requirements of section 1504(a)(2)) immediately after the distribution or at any time thereafter (the ''control requirement''), and (3) the partnership's basis in the stock immediately before the distribution exceeded the corporate partner's basis in the stock immediately after the distribution, then the basis of the distributed corporation's property must be reduced by this excess. The amount of this reduction is limited to the amount by which the sum of the aggregate adjusted basis of property and the amount of money of the distributed corporation exceeds the corporate partner's adjusted basis in the stock of the distributed corporation. The corporate partner must recognize gain to the extent that the basis of the distributed corporation's property cannot be reduced.

Congress enacted section 732(f) due to concerns that a corporate partner could otherwise negate the effects of a basis step-down to distributed property required under section 732(b) by applying the step-down against the basis of distributed stock of a corporation (distributed corporation). The Senate Finance Committee stated that:

> The Committee is concerned that the downward adjustment to the basis of property distributed by a partnership may be nullified if the distributed property is corporate stock. The distributed corporation can be liquidated by the corporate partner, so that the stock basis adjustment has no effect. Similarly, if the corporations file a consolidated return, their taxable income may be computed without reference to the downward adjustment to the basis of the stock. These results can occur either if the partnership has contributed property to the distributed corporation, or if the property was held by the corporation before the distribution. Therefore, the provision requires a basis reduction to the property of the distributed corporation.

S. Rep. No. 106–201, 106th Cong., 1st Sess. 50 (1999).

For example, assume a corporate partner has a partnership interest with zero basis and receives a partnership distribution of high-basis stock in a corporation. The corporate partner's basis in the distributed corporation's stock is reduced to zero under section 732(a) or section 732(b). If the partnership has elected under section 754, then the basis of other partnership property is increased by an equal amount under section 734(b). The effects of the section 732 basis decrease and the section 734(b) basis increase generally offset each other. However, if the corporate partner owned stock in the distributed corporation that satisfied the control requirement, the corporate partner could liquidate the distributed corporation under section 332, and section 334(b) would generally provide for a carryover basis in the distributed corporation's property received by the corporate partner in the liquidation. Taken together, these rules could permit the partnership to increase the basis of its retained property without an equivalent basis reduction following the liquidation of the distributed corporation. Section 732(f) generally precludes this result by requiring that either the distributed corporation must reduce the basis of its property or the corporate partner must recognize gain (to the extent the distributed corporation is unable to reduce the basis of its property). Thus, section 732(f) generally ensures that any basis increase under section 734(b) is ultimately offset.

Section 732(f) applies if the corporate partner either has control of the distributed corporation following the distribution or if the corporate partner subsequently acquires control of the distributed corporation at any time thereafter. Section 732(f) does not apply if the corporate partner does not have control of the distributed corporation immediately following the distribution and the corporate partner establishes to the satisfaction of the Secretary that the distribution was not part of a plan or arrangement to acquire control of the distributed corporation.

In its discussion of the control requirement of section 732(f)(1)(B), the Conference Report to the Ticket to Work Act explains that ''[t]his provision also calls for regulations, including regulations to avoid double counting and to prevent the abuse of the purposes of this provision.'' H.R. Conf. Rep. No. 106–478, 106th Cong., 1st Sess. 174 (1999). This grant of regulatory authority is codified at section 732(f)(8), which provides that ''[t]he Secretary shall prescribe such regulations as may be necessary to carry out the purposes of this subsection, including regulations to avoid double counting and to prevent the abuse of such purposes.''

Simultaneous with this notice of proposed rulemaking, the Treasury Department and the IRS are issuing final and temporary regulations under section 337(d) (§ 1.337(d)–3T) that prevent a corporate partner from using a partnership to avoid corporate-level gain required to be recognized under section 311(b) or section 336(a) following the repeal of the *General Utilities* doctrine. Those final and temporary regulations address partnership acquisitions, ownership, and distributions of stock and other equity interests in a corporate partner. Sections 732(f) and 337(d) share a common purpose of preserving corporate-level gains. Given this shared purpose, these proposed regulations are issued under the combined authority of sections 337(d) and 732(f).

Explanation of Provisions

As described in this preamble, Congress provided the Treasury Department and the IRS with a broad grant of statutory authority to carry out the purposes of sections 337(d) and 732(f). The Treasury Department and the IRS believe that as currently applied, section 732(f) may be too broad in some circumstances and too narrow in others. Specifically, section 732(f) may require basis reduction or gain recognition even though that basis reduction or gain recognition does not further the purposes of section 732(f). In other circumstances, corporate partners may inappropriately avoid the purposes of section 732(f) by engaging in transactions that allow corporate partners to receive property held by a distributed corporation without reducing the basis of that property to account for basis reductions under section 732(b) made when the partnership distributed stock of the distributed corporation to the corporate partner. These proposed regulations add rules to conform the application of section 732(f) with Congress's identified purposes for enacting sections 337(d) and 732(f) in these situations.

1. Aggregation of Section 732(b) Basis Adjustments

Section 732(f) generally applies on a partner-by-partner basis. However, the Treasury Department and the IRS believe that in certain circumstances, it is appropriate to aggregate the bases of consolidated group members in a partnership for purposes of applying section 732(f). For example, basis aggregation may be appropriate when two or more corporate partners in the same consolidated group (member-partners) receive a deemed distribution of stock in a distributed corporation either because (a) the partnership elects to be treated as an association taxable as a corporation under § 301.7701–3 or (b) one corporate partner acquires all of the interests in the partnership causing the partnership to liquidate. In these instances, section 732(b) may cause one member-partner to increase the basis of distributed stock while another member-partner reduces the basis of distributed stock by an equivalent amount. Under current law, section 732(f) may require the member-partner whose basis is reduced to recognize gain or to reduce the basis of the distributed corporation's property, with no offsetting loss or increase to the basis of the distributed corporation's property with respect to the member-partner whose basis is increased. The Treasury Department and the IRS do not believe that prohibiting member-partners from consolidating their bases in a partnership for purposes of applying section 732(f) in these situations furthers Congress's intent to sustain the effect of the basis reduction to distributed property.

These proposed regulations provide for the aggregation of basis within the same consolidated group (as defined in § 1.1502–1(h)), for purposes of section 732(f), when two conditions are met. First, two or more of the corporate partners receive a distribution of stock in a distributed corporation. Second, the distributed corporation is or becomes a member of the distributee partners' consolidated group following the distribution.

Under this rule, section 732(f) only applies to the extent that the partnership's adjusted basis in the distributed stock immediately before the distribution exceeds the aggregate basis of the distributed stock in the hands of all members of the distributee corporate partner's consolidated group immediately after the distribution. The requirement that the distributed corporation be a member of the consolidated group is intended to avoid unintended consequences that could result if that corporation was a controlled foreign corporation. However, the Treasury Department and the IRS request comments on whether this proposed rule should apply more broadly.

2. Gain Elimination Transactions

As described in the Background section of this Preamble, Congress enacted section 732(f) to address concerns that a corporate partner could otherwise negate the effects of a basis step-down to distributed property required under section 732(b) by applying the step-down against stock of a distributed corporation. Congress indicated that it intended for the control requirement to apply expansively by requiring corporate partners to apply section 732(f) whenever the corporate partner acquires control (as defined in section 732(f)(5)) of the distributed corporation as part of a plan or arrangement. The formalistic definition of control, however, fails to anticipate other scenarios in which a corporate partner's acquisition of the property of a distributed corporation has the same effect. To address these scenarios, Congress granted the Secretary authority to promulgate regulations necessary to carry out the purposes of section 732(f).

The Treasury Department and the IRS are concerned that some corporate partners might eliminate gain in the stock of a distributed corporation while avoiding the effects of a basis step-down in transactions in which the corporate partner's ownership of the distributed corporation does not satisfy the control requirement. For example, a distributed corporation not controlled by a corporate partner might subsequently merge into the corporate partner in a reorganization under section 368(a) in which gain is not recognized as part of a plan or arrangement. In this situation, the gain inherent in the stock of the distributed corporation is eliminated, but the basis of the distributed corporation's property is not reduced. If section 732(f) does not apply to this transaction, then the basis step-down is negated, contravening the purposes of section 732(f) and *General Utilities* repeal.

Accordingly, these proposed regulations provide that, in the event of a gain elimination transaction, section 732(f) shall apply as though the corporate partner acquired control (as defined in section 732(f)(5)) of the distributed corporation immediately before the gain elimination transaction.

The proposed regulations define several terms for purposes of applying this rule. The term ''Corporate Partner'' means a person that is classified as a corporation for federal income tax purposes and that holds or acquires an interest in a partnership. The term ''Stock'' includes other equity interests, including options, warrants and similar interests. The term ''Distributed Stock'' means Stock distributed by a partnership to a Corporate Partner, or Stock the basis of which is determined by reference to the basis of such Stock. Distributed Stock also includes Stock owned directly or indirectly by a Distributed Corporation if the basis of such Stock has been reduced pursuant to section 732(f)(7). The term ''Distributed Corporation'' means the issuer of Distributed Stock (or, in the case of an option, the issuer of the Stock into which the option is exercisable). The term ''Gain Elimination Transaction'' means a transaction in which Distributed Stock is disposed of and less than all of the gain is recognized, unless (1) the transferor of the Distributed Stock receives in exchange Stock or a partnership interest that is exchanged basis property (as defined in section 7701(a)(44)) with respect to the Distributed Stock, or (2) a transferee corporation holds the Distributed Stock as transferred basis property (as defined in section 7701(a)(43)) with respect to a transferor corporation's gain. Examples of Gain Elimination Transactions include (without limitation) a reorganization under section 368(a) in which the

Corporate Partner and the Distributed Corporation combine, and a distribution of the Distributed Stock by the Corporate Partner to which section 355(c)(1) or 361(c)(1) applies.

3. Tiered Partnerships

The IRS and the Treasury Department are concerned that taxpayers could use tiered partnerships to circumvent these regulations and section 732(f) generally. Congress specified in the Conference Report to the Ticket to Work Act that taxpayers should not be permitted to avoid the purposes of section 732(f) through the use of tiered partnerships. H.R. Conf. Rep. No. 106–478, 106th Cong., 1st Sess. 174 (1999). Therefore, these regulations require taxpayers to apply these regulations to tiered partnerships in a manner consistent with the purpose of section 732(f).

Effective/Applicability Date

The rules governing aggregation of basis apply to distributions occurring on or after the date these regulations are published as final regulations in the **Federal Register**. The rules governing gain elimination transactions apply to transactions occurring on or after the date these regulations are published as final regulations in the **Federal Register**. The rules governing tiered partnerships apply to distributions and transactions occurring on or after the date these regulations are published as final regulations in the **Federal Register**. No inference is expressed or implied with respect to distributions or transactions occurring before the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. These proposed regulations do not impose a collection of information on small entities. Further, pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), it is hereby certified that these proposed regulations would not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these proposed regulations would primarily affect sophisticated ownership structures with interlocking ownership of corporations, partnerships and corporate stock. Accordingly, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed rules. All comments will be available at *www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person that timely submits written or electronic comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are Kevin I. Babitz and Joseph R. Worst, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART I—INCOME TAXES

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

Authority: 26 U.S.C. 7805 * * *

Section 1.732–3 also issued under 26 U.S.C. 337(d), 732(f), and 1502. * * *

■ **Par. 2.** Section 1.732–3 is revised to read as follows:

§ 1.732–3 Corresponding adjustment to basis of assets of a distributed corporation controlled by a corporate partner.

(a) *Determination of control.* The determination of whether a corporate partner that is a member of a consolidated group has control of a distributed corporation for purposes of section 732(f) shall be made by applying the special aggregate stock ownership rules of § 1.1502–34.

(b) *Aggregation of basis within consolidated group.* With respect to distributed stock of a corporation, if the following two conditions are met, then section 732(f) shall apply only to the extent that the partnership's adjusted basis in the distributed stock immediately before the distribution exceeds the aggregate basis of the distributed stock of the corporation in the hands of corporate partners that are members of the same consolidated group (as defined in § 1.1502–1(h)) immediately after the distribution:

(1) Two or more of the corporate partners receive a distribution of stock in another corporation; and

(2) The corporation, the stock of which was distributed by the partnership, is or becomes a member of the distributee partners' consolidated group following the distribution.

(c) *Application of section 732(f) to Gain Elimination Transactions*—(1) *General rule.* In the event of a Gain Elimination Transaction, section 732(f) shall apply as though the Corporate Partner acquired control (as defined in section 732(f)(5)) of the Distributed Corporation immediately before the Gain Elimination Transaction.

(2) *Definitions.* The following definitions apply for purposes of this paragraph (c):

(i) *Corporate Partner.* The term Corporate Partner means a person that is classified a corporation for federal income tax purposes and that holds or acquires an interest in a partnership.

(ii) *Stock.* The term Stock includes other equity interests, including options, warrants and similar interests.

(iii) *Distributed Stock.* The term Distributed Stock means Stock distributed by a partnership to a Corporate Partner, or Stock the basis of which is determined by reference to the basis of such Stock. Distributed Stock also includes Stock owned directly or indirectly by a Distributed Corporation if the basis of such Stock has been reduced pursuant to section 732(f).

(iv) *Distributed Corporation.* The term Distributed Corporation means the issuer of Distributed Stock (or, in the case of an option, the issuer of the Stock into which the option is exercisable).

(v) *Gain Elimination Transaction.* The term Gain Elimination Transaction means a transaction in which Distributed Stock is disposed of and less than all of the gain is recognized unless—

(A) The transferor of the Distributed Stock receives in exchange Stock or a partnership interest that is exchanged basis property (as defined in section 7701(a)(44)) with respect to the Distributed Stock, or

(B) A transferee corporation holds the Distributed Stock as transferred basis property (as defined in section

7701(a)(43)) with respect to the transferor corporation's gain. A Gain Elimination Transaction includes (without limitation) a reorganization under section 368(a) in which the Corporate Partner and the Distributed Corporation combine, and a distribution of the Distributed Stock by the Corporate Partner to which section 355(c)(1) or 361(c)(1) applies.

(d) *Tiered partnerships.* The rules of this section shall apply to tiered partnerships in a manner that is consistent with the purposes of section 732(f).

(e) *Effective/applicability date.* The rules governing aggregation of basis in paragraph (b) of these regulations apply to distributions occurring on or after the date these regulations are published as final regulations in the **Federal Register**. The rules governing gain elimination transactions in paragraph (c) of this section apply to transactions occurring on or after the date these regulations are published as final regulations in the **Federal Register**. The rules governing tiered partnerships in paragraph (d) of this section apply to distributions and transactions occurring on or after the date these regulations are published as final regulations in the **Federal Register**.

John Dalrymple,

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2015–14404 Filed 6–11–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[SATS No. KY–258–FOR; Docket ID: OSM–2015–0001; S1D1SSS08011000SX066A00067F144S180110; S2D2SSS08011000SX066A00033F14XS501520]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSMRE), is announcing receipt of a proposed amendment to the Kentucky regulatory program (the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky submitted this proposed amendment with the intent to clarify certain permit application requirements. Specifically, Kentucky proposes to amend the language of two provisions that outline the permit application requirements for an operator seeking to mine land with severed surface and mineral estates.

This document gives the times and locations that the Kentucky program and this proposed amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments on this amendment until 4 p.m., Eastern Standard Time (EST), July 13, 2015. If requested, we will hold a public hearing on the amendment on July 7, 2015. We will accept requests to speak at a hearing until 4:00 p.m., EST on June 29, 2015.

ADDRESSES: You may submit comments, identified by SATS No. KY–258–FOR and Docket ID OSM–2015–0001, by either of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* The proposed rule has been assigned Docket ID OSM–2015–0001. If you would like to submit comments via the Federal eRulemaking portal, go to *www.regulations.gov* and follow the instructions.
- *Mail/Hand Delivery:* Mr. Robert Evans, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503.
- *Email: bevans@osmre.gov.*
- *Fax:* (859) 260–8410.

Instructions: All submissions received must include the agency name and docket number for this rulemaking. For detailed instructions on submitting comments and additional information on the rulemaking process, see the ''Public Comment Procedures'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to review copies of the Kentucky program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document, you must go to the address listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSMRE's Lexington Field Office or the full text of the program amendment is available for you to read at *www.regulations.gov.*

Mr. Robert Evans, Field Office Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (859) 260–3900. Email: *bevans@osmre.gov.*

In addition, you may review a copy of the amendment during regular business hours at the following location:

Mr. Steve Hohmann, Commissioner, Kentucky Department for Natural Resources, 2 Hudson Hollow, Frankfort, Kentucky 40601, Telephone: (502) 564–6940. Email: *Steve.Hohmann@ky.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Robert Evans, Office of Surface Mining Reclamation and Enforcement, Telephone: (859) 260–3900. Email: *bevans@osmre.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, ''. . . a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of this Act . . .; and rules and regulations consistent with regulations issued by the Secretary pursuant to this Act.'' *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval, in the May 18, 1982, **Federal Register** (47 FR 21434). You can also find later actions concerning the Kentucky program and program amendments at 30 CFR 917.11, 917.12, 917.13, 917.15, 917.16, and 917.17.

II. Description of the Proposed Amendment

By letter dated January 29, 2015 (Administrative Record No. KY–2001), the Kentucky Department for Natural Resources (KYDNR) submitted an amendment to its program under SMCRA (30 U.S.C. 1201 *et seq.*).

SMCRA sets forth the minimum application requirements for approval of a permit at section 510. When the mineral estate has been severed from the private surface estate, section 510(b)(6) of SMCRA provides that an operator

must submit a permit application demonstrating one of the following to establish right of entry and right to mine: (1) The written consent of the surface owner to the extraction of coal by surface mining methods, (2) a conveyance expressly granting or reserving the right to extract coal by surface mining methods, or (3) if the conveyance is silent regarding the right to extract coal, the regulatory authority is required to determine the ''surface-subsurface legal relationship'' in accordance with the State law. Moreover, SMCRA clarifies, at section 510(b)(6)(c), that the regulatory authority does not have the authority to adjudicate property rights disputes.

Currently, the Kentucky program requires a permit applicant to submit proof of its legal right to enter and commence surface or underground mining activities within the proposed permit area. The applicant is also required to explain the legal rights claimed and identify whether that right is the subject of pending litigation, among other application requirements. When the proposed land to be mined involves severed estates where the conveyance does not expressly grant the right to extract coal by surface mining methods and the operator has not obtained the written consent of all surface owners, the approved Kentucky program provides that the submission of a copy of the original instrument of severance and documentation that under applicable State law, the applicant has the legal authority to extract the coal by those methods is sufficient to demonstrate a right of entry and right to surface mine.

KYDNR now seeks to revise section 4 of 405 KAR 8:030 for surface coal mining permits, and 405 KAR 8:040 for underground coal mining permits. Specifically, KYDNR proposes to modify section 4(2)(c) to contain language that it believes clarifies the applicant's duty to demonstrate a right of entry and right to mine when the private surface estate and mineral estate has been severed. This revision proposes to remove the language in the current Kentucky program that requires the applicant to provide a copy of the original severance instrument. The proposed amendment would also move the proviso that the regulatory authority is prohibited from adjudicating property rights disputes into a new section, located at section 4(3) of 405 KAR 8:030 and 8:040.

The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES** or at *www.regulations.gov.*

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Electronic or Written Comments

If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, confined to issues pertinent to the proposed regulations, and explain the reason for any recommended change(s). We appreciate any and all comments, but those most useful and likely to influence decisions on the final regulations will be those that either involve personal experience or include citations to and analyses of SMCRA, its legislative history, its implementing regulations, case law, other pertinent State or Federal laws or regulations, technical literature, or other relevant publications.

We cannot ensure that comments received after the close of the comment period (see **DATES**) or sent to an address other than those listed (see **ADDRESSES**) will be included in the docket for this rulemaking and considered.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information, may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., EST on June 29, 2015. If you are disabled and need reasonable accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT**. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak, we will not hold a hearing.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at the public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been given an opportunity to be heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**. All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES**. We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Other Laws and Executive Orders Affecting Rulemaking

When a State submits a program amendment to OSMRE for review, our regulations at 30 CFR 732.17(h) require us to publish a notice in the **Federal Register** indicating receipt of the proposed amendment, its text or a summary of its terms, and an opportunity for public comment. We conclude our review of the proposed amendment after the close of the public comment period and determine whether the amendment should be approved, approved in part, or not approved. At that time, we will also make the determinations and certifications required by the various laws and executive orders governing the rulemaking process and include them in the final rule.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 30, 2015.

Thomas D. Shope,

Regional Director, Appalachian Region.

[FR Doc. 2015–14409 Filed 6–11–15; 8:45 am]

BILLING CODE 4310–05–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2009–0805; EPA–R05–OAR–2011–0969; FRL–9928–55–Region 5]

Illinois; Disapproval of State Board Infrastructure SIP Requirements for the 2006 $PM_{2.5}$ and 2008 Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove an element of State Implementation Plan (SIP) submissions from Illinois regarding the infrastructure requirements of section 110 of the Clean Air Act (CAA) for the 2006 fine particulate matter ($PM_{2.5}$) and 2008 ozone National Ambient Air Quality Standards (NAAQS). The infrastructure requirements are designed to ensure that the structural components of each state's air quality management program are adequate to meet the state's responsibilities under the CAA. This action pertains specifically to infrastructure requirements concerning state board requirements.

DATES: Comments must be received on or before July 13, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2009–0805 (2006 $PM_{2.5}$ infrastructure elements) and EPA–R05–OAR–2011–0969 (2008 ozone infrastructure elements) by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: aburano.douglas@epa.gov.*
3. *Fax:* (312) 408–2279.
4. *Mail:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Douglas Aburano, Chief, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID. EPA–R05–OAR–2009–0805 (2006 $PM_{2.5}$ infrastructure elements) and EPA–R05–OAR–2011–0969 (2008 ozone infrastructure elements). 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 EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Sarah Arra, Environmental Scientist, at (312) 886–9401 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Sarah Arra, Environmental Scientist, Attainment Planning and Maintenance Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–9401, *arra.sarah@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. What should I consider as I prepare my comments for EPA?
II. What is the background of these SIP submissions?
III. What is EPA's review of these SIP submissions?
IV. What action is EPA taking?
V. Statutory and Executive Order Reviews

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

When submitting comments, remember to:

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

II. What is the background of these SIP submissions?

This rulemaking addresses August 9, 2011, and December 31, 2012, submissions from the Illinois Environmental Protection Agency (Illinois EPA) intended to address all applicable infrastructure requirements for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS.

The requirement for states to make a SIP submission of this type arises out of CAA section 110(a)(1). Pursuant to section 110(a)(1), states must make SIP submissions ''within 3 years (or such shorter period as the Administrator may prescribe) after the promulgation of a national primary ambient air quality standard (or any revision thereof),'' and

these SIP submissions are to provide for the ''implementation, maintenance, and enforcement'' of such NAAQS. The statute directly imposes on states the duty to make these SIP submissions, and the requirement to make the submissions is not conditioned upon EPA's taking any action other than promulgating a new or revised NAAQS. Section 110(a)(2) includes a list of specific elements that ''[e]ach such plan'' submission must address.

This specific rulemaking is only taking action on the CAA section 110(a)(2)(E)(ii) requirement of these submittals. The majority of the other infrastructure elements were approved October 29, 2012 (77 FR 65478) and October 16, 2014 (79 FR 62042), rulemakings.

III. What is EPA's review of these SIP submissions?

On September 13, 2013, EPA issued ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Sections 110(a)(1) and 110(a)(2)'' (2013 Memo). This guidance provides, among other things, advice on the development of infrastructure SIPs for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS. As noted in the 2013 Memo, pursuant to CAA section 110(a), states must provide reasonable notice and opportunity for public hearing for all infrastructure SIP submissions. Illinois EPA provided public comment opportunities on both submittals. EPA is also soliciting comment on our evaluation of the state's infrastructure SIP submission in this notice of proposed rulemaking. Illinois provided a detailed synopsis of how various components of its SIP meet each of the applicable requirements in section 110(a)(2) for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS, as applicable. The following review only evaluates the state's submissions for CAA section 110(a)(2)(E)(ii) requirements.

Section 110(a)(2)(E)(ii)—Compliance With State Board Requirements of Section 128

Section 110(a)(2)(E)(ii) requires each SIP to contain provisions that comply with the state board requirements of section 128 of the CAA. That provision contains two explicit requirements: (1) That any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits and enforcement orders under this chapter, and (2) that any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed. The 2013 Memo specifies that the provisions that implement CAA section 128 would need to be contained within the SIP. ''EPA would not approve an infrastructure SIP submission that only provides a narrative description of existing air agency laws, rules, and regulations that are not approved into the SIP to address CAA section 128 requirements.'' 2013 Memo at 42.

After reviewing Illinois' SIP, EPA has made the preliminary determination that it does not contain provisions to comply with section 128 of the CAA, and thus Illinois' August 9, 2011, and December 31, 2012, infrastructure SIP submissions do not meet the requirements of the CAA. While Illinois has state statutes that may address, in whole or in part, requirements related to state boards at the state level, these provisions are not included in the SIP as required by the CAA. Based on an evaluation of the Federally-approved Illinois SIP, EPA is proposing to disapprove Illinois' infrastructure SIP submission in regards to meeting the requirements of section 110(a)(2)(E)(ii) of the CAA for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS.

IV. What action is EPA taking?

EPA is proposing to disapprove a portion of submissions from Illinois certifying that its current SIP is sufficient to meet the required infrastructure element under CAA section 110(a)(2)(E)(ii) for the 2006 $PM_{2.5}$ and 2008 ozone NAAQS.

V. Statutory and Executive Order Reviews

Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a ''significant regulatory action'' and, therefore, is not subject to review by the Office of Management and Budget.

Paperwork Reduction Act

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

Regulatory Flexibility Act

This action merely proposes to disapprove state law as not meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Unfunded Mandates Reform Act

Because this rulemaking proposes to disapprove pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4).

Executive Order 13132: Federalism

This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to disapprove a state rule, and does not alter the relationship or the distribution of power and responsibilities established in the CAA.

Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

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 proposed 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).

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

This rulemaking also is not subject to Executive Order 13045 ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997), because it proposes to disapprove a state rule.

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

Because it is not a ''significant regulatory action'' under Executive Order 12866 or a ''significant energy action,'' this action is also not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply,

Distribution, or Use'' (66 FR 28355, May 22, 2001).

National Technology Transfer Advancement Act

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

List of Subjects in 40 CFR Part 52

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

Dated: May 19, 2015.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2015–14348 Filed 6–11–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2014–0915; FRL–9928–87–Region 4]

Approval and Promulgation of Implementation Plans; South Carolina; Charlotte-Rock Hill; Base Year Emissions Inventory and Emissions Statements Requirements for the 2008 8-Hour Ozone Standard

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the portions of the state implementation plan (SIP) revisions submitted by the State of South Carolina, through South Carolina Department of Health and Environmental Control on August 8, 2014, and August 22, 2014, that address the base year emissions inventory and emissions statements requirements for the State's portion of the bi-state Charlotte-Gastonia-Rock Hill North Carolina-South Carolina 2008 8-hour ozone national ambient air quality standards (NAAQS) nonattainment area. Annual emissions reporting (*i.e.,* emissions statements) and a base year emissions inventory are required for all ozone nonattainment areas. The Area is comprised of the entire county of Mecklenburg and a portion of Cabarrus, Gaston, Lincoln, Rowan, Union Counties in North Carolina and a portion of York County in South Carolina. EPA has published proposed and direct final actions on the emissions inventory and emissions statements requirements for the North Carolina portion of the bi-state Charlotte Area in separate rulemaking documents.

DATES: Written comments must be received on or before July 13, 2015

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R04–OAR–2014–0915 by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4–ARMS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2014–0915,'' Air Regulatory Management Section (formerly the Regulatory Development Section), Air Planning and Implementation Branch (formerly the Air Planning Branch), Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

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

FOR FURTHER INFORMATION CONTACT: Tiereny Bell, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Bell can be reached at (404) 562–9088 and via electronic mail at *bell.tiereny@epa.gov.*

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules Section of this **Federal Register**. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

Dated: May 28, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2015–14346 Filed 6–11–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 82

[EPA–HQ–OAR–2013–0369; FRL–9922–39–OAR]

RIN 2060–AS44

Protection of Stratospheric Ozone: The 2016 Critical Use Exemption From the Phaseout of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing uses that qualify for the critical use exemption and the amount of methyl bromide that may be produced or imported for those uses for the 2016 control period. EPA is proposing this action under the authority of the Clean Air Act to reflect consensus decisions of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Twenty-Sixth Meeting of the Parties in November 2014.

DATES: Comments must be received on or before July 13, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2013–0369, to the Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or withdrawn. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information

whose disclosure is restricted by statute. If you need to include CBI as part of your comment, please visit *http://www.epa.gov/dockets/comments.html* for instructions. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make.

For additional submission methods, the full EPA public comment policy, and general guidance on making effective comments, please visit *http://www.epa.gov/dockets/comments.html.*

FOR FURTHER INFORMATION CONTACT: Jeremy Arling, Stratospheric Protection Division, Office of Atmospheric Programs, Mail Code 6205T, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number (202) 343–9055; email address *arling.jeremy@epa.gov.* You may also visit the methyl bromide section of the Ozone Depletion Web site of EPA's Stratospheric Protection Division at *www.epa.gov/ozone/mbr* for further information about the methyl bromide critical use exemption, other Stratospheric Ozone Protection regulations, the science of ozone layer depletion, and related topics.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

This proposed rule concerns Clean Air Act (CAA) restrictions on the consumption, production, and use of methyl bromide (a Class I, Group VI controlled substance) for critical uses during calendar year 2016. Under the Clean Air Act, methyl bromide consumption (consumption is defined under section 601 of the CAA as production plus imports minus exports) and production were phased out on January 1, 2005, apart from allowable exemptions, such as the critical use and the quarantine and preshipment (QPS) exemptions. With this action, EPA is proposing and seeking comment on the uses that will qualify for the critical use exemption as well as specific amounts of methyl bromide that may be produced and imported for proposed critical uses for 2016.

II. General Information

A. Does this action apply to me?

Entities and categories of entities potentially regulated by this proposed action include producers, importers, and exporters of methyl bromide; applicators and distributors of methyl bromide; and users of methyl bromide that applied for the 2016 critical use exemption including growers of vegetable crops, ornamentals, fruits, and nursery stock, and owners of stored food commodities. This list is not intended to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this proposed action. To determine whether your facility, company, business, or organization could be regulated by this proposed action, you should carefully examine the regulations promulgated at 40 CFR part 82, subpart A. If you have questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding section.

III. What is methyl bromide?

Methyl bromide is an odorless, colorless, toxic gas which is used as a broad-spectrum pesticide and is controlled under the CAA as a Class I ozone-depleting substance (ODS). Methyl bromide was once widely used as a fumigant to control a variety of pests such as insects, weeds, rodents, pathogens, and nematodes. Information on methyl bromide can be found at *http://www.epa.gov/ozone/mbr.*

Methyl bromide is also regulated by EPA under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and other statutes and regulatory authority, as well as by States under their own statutes and regulatory authority. Under FIFRA, methyl bromide is a restricted use pesticide. Restricted use pesticides are subject to Federal and State requirements governing their sale, distribution, and use. Nothing in this proposed rule implementing Title VI of the Clean Air Act is intended to derogate from provisions in any other Federal, State, or local laws or regulations governing actions including, but not limited to, the sale, distribution, transfer, and use of methyl bromide. Entities affected by this proposal must comply with FIFRA and other pertinent statutory and regulatory requirements for pesticides (including, but not limited to, requirements pertaining to restricted use pesticides) when producing, importing, exporting, acquiring, selling, distributing, transferring, or using methyl bromide. The provisions in this proposed action are intended only to implement the CAA restrictions on the production, consumption, and use of methyl bromide for critical uses exempted from the phaseout of methyl bromide.

IV. What is the background to the phaseout regulations for ozone-depleting substances?

The regulatory requirements of the stratospheric ozone protection program that limit production and consumption of ozone-depleting substances are in 40 CFR part 82, subpart A. The regulatory program was originally published in the **Federal Register** on August 12, 1988 (53 FR 30566), in response to the 1987 signing and subsequent ratification of the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol). The Montreal Protocol is the international agreement aimed at reducing and eliminating the production and consumption of stratospheric ozone-depleting substances. The United States was one of the original signatories to the 1987 Montreal Protocol, and the United States ratified the Protocol in 1988. Congress then enacted, and President George H.W. Bush signed into law, the Clean Air Act Amendments of 1990 (CAAA of 1990), which included Title VI on Stratospheric Ozone Protection, codified as 42 U.S.C. Chapter 85, Subchapter VI, to ensure that the United States could satisfy its obligations under the Protocol. EPA issued regulations to implement this legislation and has since amended the regulations as needed.

Methyl bromide was added to the Protocol as an ozone-depleting substance in 1992 through the Copenhagen Amendment to the Protocol. The Parties to the Montreal Protocol (Parties) agreed that each developed country's level of methyl bromide production and consumption in 1991 should be the baseline for establishing a freeze on the level of methyl bromide production and consumption for developed countries. EPA published a rule in the **Federal Register** on December 10, 1993 (58 FR 65018), listing methyl bromide as a Class I, Group VI controlled substance. This rule froze U.S. production and consumption at the 1991 baseline level of 25,528,270 kilograms, and set forth the percentage of baseline allowances for methyl bromide granted to companies in each control period (each calendar year) until 2001, when the complete phaseout would occur. This phaseout date was established in response to a petition filed in 1991 under sections 602(c)(3) and 606(b) of the CAAA of 1990, requesting that EPA list methyl bromide as a Class I substance and phase out its production and consumption. This date was consistent with section 602(d) of the CAAA of 1990, which, for newly listed Class I ozone-depleting substances provides that ''no extension [of the phaseout schedule in section 604] under this subsection may extend the date for termination of production of any class I substance to a date more than 7 years after January 1 of the year after the year

in which the substance is added to the list of class I substances.''

At the Seventh Meeting of the Parties (MOP) in 1995, the Parties agreed to adjustments to the methyl bromide control measures and agreed to reduction steps and a 2010 phaseout date for developed countries with exemptions permitted for critical uses. At that time, the United States continued to have a 2001 phaseout date in accordance with section 602(d) of the CAAA of 1990. At the Ninth MOP in 1997, the Parties agreed to further adjustments to the phaseout schedule for methyl bromide in developed countries, with reduction steps leading to a 2005 phaseout. The Parties also established a phaseout date of 2015 for countries operating under Article 5 of the Protocol (developing countries).

V. What is the legal authority for exempting the production and import of methyl bromide for critical uses permitted by the Parties to the Montreal Protocol?

In October 1998, the U.S. Congress amended the Clean Air Act to prohibit the termination of production of methyl bromide prior to January 1, 2005, to require EPA to align the U.S. phaseout of methyl bromide with the schedule specified under the Protocol, and to authorize EPA to provide certain exemptions. These amendments were contained in Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998) and were codified in section 604 of the CAA, 42 U.S.C. 7671c. The amendment that specifically addresses the critical use exemption appears at section 604(d)(6), 42 U.S.C. 7671c(d)(6). EPA revised the phaseout schedule for methyl bromide production and consumption in a rulemaking on November 28, 2000 (65 FR 70795), which allowed for the reduction in methyl bromide consumption specified under the Protocol and extended the phaseout to 2005 while creating a placeholder for critical use exemptions. Through an interim final rule on July 19, 2001 (66 FR 37751), and a final rule on January 2, 2003 (68 FR 238), EPA amended the regulations to allow for an exemption for quarantine and preshipment purposes.

On December 23, 2004 (69 FR 76982), EPA published a rule (the ''Framework Rule'') that established the framework for the critical use exemption, set forth a list of approved critical uses for 2005, and specified the amount of methyl bromide that could be supplied in 2005 from stocks and new production or import to meet the needs of approved critical uses. EPA subsequently published rules applying the critical use exemption framework for each of the annual control periods from 2006 to 2015.

In accordance with Article 2H(5) of the Montreal Protocol, the Parties have issued several Decisions pertaining to the critical use exemption. These include Decisions IX/6 and Ex. I/4, which set forth criteria for review of critical uses. The status of Decisions is addressed in *NRDC* v. *EPA,* (464 F.3d 1, D.C. Cir. 2006) and in EPA's ''Supplemental Brief for the Respondent,'' filed in *NRDC* v. *EPA* and available in the docket for this proposed action. In this proposed rule on critical uses for 2016, EPA is honoring commitments made by the United States in the Montreal Protocol context.

Under authority of section 604(d)(6) of the CAA, EPA is now proposing the uses that will qualify as approved critical uses for 2016, as well as the amount of methyl bromide that may be produced or imported to satisfy those uses. The proposed critical uses and amounts reflect Decision XXVI/6, taken at the Twenty-Sixth Meeting of the Parties in November 2014.

VI. What is the critical use exemption process?

A. Background of the Process

Article 2H of the Montreal Protocol established the critical use exemption provision. At the Ninth Meeting of the Parties in 1997, the Parties established the criteria for an exemption in Decision IX/6. In that Decision, the Parties agreed that ''a use of methyl bromide should qualify as 'critical' only if the nominating Party determines that: (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and (ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination.'' EPA promulgated these criteria in the definition of ''critical use'' at 40 CFR 82.3.

In addition, Decision IX/6 provides that production and consumption, if any, of methyl bromide for critical uses should be permitted only if a variety of conditions have been met, including that all technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide, that research programs are in place to develop and deploy alternatives and substitutes, and that methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide.

EPA requested critical use exemption applications for 2016 through a **Federal Register** notice published on May 31, 2013 (78 FR 32646). Applicants submitted data on their use of methyl bromide, the technical and economic feasibility of using alternatives, ongoing research programs into the use of alternatives in their sector, and efforts to minimize use and emissions of methyl bromide.

EPA reviews the data submitted by applicants, as well as data from governmental and academic sources, to establish whether there are technically and economically feasible alternatives available for a particular use of methyl bromide, and whether there would be a significant market disruption if no exemption were available. In addition, an interagency workgroup reviews other parameters of the exemption applications such as dosage and emissions minimization techniques and applicants' research or transition plans. As required in section 604(d)(6) of the CAA, for each exemption period, EPA consults with the United States Department of Agriculture (USDA).[1] This assessment process culminates in the development of the U.S. critical use nomination (CUN). Annually since 2003, the U.S. Department of State has submitted a CUN to the United Nations Environment Programme (UNEP) Ozone Secretariat. The Methyl Bromide Technical Options Committee (MBTOC) and the Technology and Economic Assessment Panel (TEAP), which are advisory bodies to Parties to the Montreal Protocol, review each Party's CUN and make recommendations to the Parties on the nominations. The Parties then take Decisions on critical use exemptions for particular Parties, including how much methyl bromide may be supplied for the exempted critical uses. EPA then provides an opportunity for public comment on the amounts and specific uses of methyl bromide that the agency is proposing to exempt.

On January 22, 2014, the United States submitted the twelfth *Nomination for a Critical Use Exemption for Methyl Bromide for the United States of*

[1] See CAA section 604(d)(6): ''To the extent consistent with the Montreal Protocol, the Administrator, after notice and the opportunity for public comment, and after consultation with other departments or instrumentalities of the Federal Government having regulatory authority related to methyl bromide, including the Secretary of Agriculture, may exempt the production, importation, and consumption of methyl bromide for critical uses.''

America to the Ozone Secretariat of UNEP. This nomination contained the request for 2016 critical uses. In March 2014, MBTOC sent questions to the United States concerning technical and economic issues in the 2016 nomination. The United States transmitted responses to MBTOC in March 2014. In May 2014, the MBTOC provided their interim recommendations on the U.S. nomination in the May TEAP Interim Report. These documents, together with reports by the advisory bodies noted above, are in the public docket for this rulemaking. The proposed critical uses and amounts approved in this rule reflect the analyses contained in those documents.

B. How does this proposed rule relate to previous critical use exemption rules?

The December 23, 2004, Framework Rule established the framework for the critical use exemption program in the United States, including definitions, prohibitions, trading provisions, and recordkeeping and reporting obligations. The preamble to the Framework Rule included EPA's determinations on key issues for the critical use exemption program.

Since publishing the Framework Rule, EPA has annually promulgated regulations to exempt specific quantities of production and import of methyl bromide and to indicate which uses meet the criteria for the exemption program for that year.

This proposed action continues the approach established in the 2013 Rule (78 FR 43797, July 22, 2013) for determining the amounts of Critical Use Allowances (CUAs) to be allocated for critical uses. A CUA is the privilege granted through 40 CFR part 82 to produce or import 1 kilogram (kg) of methyl bromide for an approved critical use during the specified control period. A control period is a calendar year. See 40 CFR 82.3. Each year's allowances expire at the end of that control period and, as explained in the Framework Rule, are not bankable from one year to the next.

C. Proposed Critical Uses

In Decision XXVI/6, taken in November 2014, the Parties to the Protocol agreed ''[t]o permit, for the agreed critical-use categories for 2015 and 2016 set forth in table A of the annex to the present decision for each party, subject to the conditions set forth in the present decision and in decision Ex.I/4 to the extent that those conditions are applicable, the levels of production and consumption for 2015 and 2016 set forth in table B of the annex to the present decision, which are necessary to satisfy critical uses. . . .'' The following uses are those set forth in table A of the annex to Decision XXVI/6 for the United States for 2016:

- Cured pork
- Strawberry field

EPA is proposing to modify the table in 40 CFR part 82, subpart A, appendix L to reflect the agreed critical use categories for 2016. EPA is proposing to amend the table of critical uses and critical users based on the uses permitted in Decision XXVI/6 and the technical analyses contained in the 2016 U.S. nomination that assess data submitted by applicants to the CUE program.

Specifically, EPA is proposing to remove the food processing uses that were listed as critical uses for 2014. The California Date Commission as well as all users under the food processing use (rice millers, pet food manufacturing facilities, and members of the North American Millers' Association) did not submit CUE applications for 2016 and therefore were not included in the 2016 U.S. nomination to the Parties of the Montreal Protocol.

EPA is also proposing to remove the remaining commodity uses (walnuts, dried plums, figs, and raisins). These sectors applied for a critical use in 2016 but the United States did not nominate them for 2016. In addition, some sectors that were not on the list of critical uses for 2014 or 2015 submitted applications for 2016. These sectors are: Michigan cucurbit, eggplant, pepper, and tomato growers; Florida eggplant, pepper, strawberry, and tomato growers; the California Association of Nursery and Garden Centers; California stone fruit, table and raisin grape, walnut, and almond growers; ornamental growers in California and Florida; and the U.S. Golf Course Superintendents Association. EPA conducted a thorough technical assessment of each application and considered the effects that the loss of methyl bromide would have for each agricultural sector, and whether significant market disruption would occur as a result. Following this technical review, EPA consulted with the USDA and the Department of State. EPA determined that these users did not meet the critical use criteria in Decision IX/6 and the United States therefore did not include them in the 2016 Critical Use Nomination. EPA notified these sectors of their status by letters dated March 28, 2014. For each of these uses, EPA found that there are technically and economically feasible alternatives to methyl bromide. EPA refers readers to the **Federal Register** Notice ''Request for Methyl Bromide Critical Use Exemption Applications for 2017'' (79 FR 38887; July 9, 2014) for a summary of information on how the agency evaluated specific uses and available alternatives when considering applications for critical uses for 2016. EPA requests comment on the technical assessments of the applications in the sector summary documents found in the docket to this rule and the determination that these users did not meet the critical use criteria and whether there is any new or additional information that the agency may consider in preparing future nominations.

EPA is also seeking comment on the technical analyses contained in the U.S. nomination (available for public review in the docket) and information regarding any changes to the registration (including cancellations or registrations), use, or efficacy of alternatives that occurred after the nomination was submitted. EPA recognizes that as the market for alternatives evolves, the thresholds for what constitutes ''significant market disruption'' or ''technical and economic feasibility'' may change. Such information has the potential to alter the technical or economic feasibility of an alternative and could thus cause EPA to modify the analysis that underpins EPA's determination as to which uses and what amounts of methyl bromide qualify for the CUE. EPA notes that it will not finalize a rule containing uses beyond those agreed to by the Parties for 2016.

D. Proposed Critical Use Amounts

Table A of the annex to Decision XXVI/6 lists critical uses and amounts agreed to by the Parties to the Montreal Protocol for 2016. The maximum amount of new production and import for U.S. critical uses in 2016, specified in Table B of the annex to Decision XXVI/6, is 234.78 MT, minus available stocks. This figure is equivalent to less than 1 percent of the U.S. 1991 methyl bromide consumption baseline of 25,528 MT.

EPA is proposing to determine the level of new production and import according to the framework and as modified by the 2013 Rule. Under this approach, the amount of new production for each control period would equal the total amount permitted by the Parties to the Montreal Protocol in their Decisions minus any reductions for available stocks, carryover, and the uptake of alternatives. These terms (available stocks, carryover, and the uptake of alternatives) are discussed in detail below. Applying this approach,

EPA is proposing to allocate allowances to exempt 140,531 kg of new production and import of methyl bromide for critical uses in 2016, making reductions for available stocks and carryover. EPA invites comment on the proposal to make reductions for available stocks and carryover and on the analyses below.

Available Stocks: For 2016 the Parties indicated that the United States should use ''available stocks,'' but did not indicate a minimum amount expected to be taken from stocks. Consistent with EPA's past practice, EPA is considering what amount, if any, of the existing stocks may be available to critical users during 2016. The latest data reported to EPA from December 31, 2014, show existing stocks to be 158,121 kg (158 MT). This shows that 198 MT of pre-2005 stocks were used in 2014. These data do not reflect drawdown of stocks that is likely to occur during 2015.

The Parties to the Protocol recognized in their Decisions that the level of existing stocks may differ from the level of available stocks. Decision XXVI/6 states that ''production and consumption of methyl bromide for critical uses should be permitted only if methyl bromide is not available in sufficient quantity and quality from existing stocks. . . .'' In addition, the Decision states that ''parties operating under critical-use exemptions should take into account the extent to which methyl bromide is available in sufficient quantity and quality from existing stocks. . . .'' Earlier Decisions also refer to the use of ''quantities of methyl bromide from stocks that the Party has recognized to be available.'' Thus, it is clear that individual Parties may determine their level of available stocks. Section 604(d)(6) of the CAA does not require EPA to adjust the amount of new production and import to reflect the availability of stocks; however, as explained in previous rulemakings, making such an adjustment is a reasonable exercise of EPA's discretion under this provision.

In the 2013 CUE Rule (78 FR 43797, July 22, 2013), EPA established an approach that considered whether a percentage of the existing inventory was available. In that rule, EPA took comment on whether 0% or 5% of the existing stocks was available. The final rule found that 0% was available for critical use in 2013 for a number of reasons including: A pattern of significant underestimation of inventory drawdown; the increasing concentration of critical users in California while inventory remained distributed nationwide; and the recognition that the agency cannot compel distributors to sell inventory to critical users. For further discussion, please see the 2013 CUE Rule (78 FR 43802).

EPA believes that 5% of existing stocks will be available in 2016 for the two proposed critical uses. As a result of the changes to the FIFRA labeling, methyl bromide sold or distributed in 2015 can only be used for approved critical uses or for quarantine and preshipment purposes. Except for sectors with quarantine and preshipment uses, California strawberries is the only pre-plant sector that will be able to use stocks in 2015 or 2016. EPA does not anticipate stocks to be used for quarantine and preshipment uses as there are no production allowances required to manufacture that material and it tends to be less expensive than stocks. Distributors will therefore likely make stocks available to California strawberry growers in 2015 and 2016.

While EPA is not proposing to estimate the amount that will be used in 2015, EPA believes that at least 5% stocks will be available in 2016. As discussed in the carryover section below, demand by California strawberry growers in 2014 for critical use methyl bromide was lower than anticipated. For the first time since 2009, not all of the critical use material produced or imported for a control period was sold. Decreased demand for critical use methyl bromide in 2014 means that unsold material already produced will be available in 2015 in addition to stocks.

Furthermore, EPA now knows the national distribution and composition of stocks (*e.g.* pure or mixed with chloropicrin) due to a recent information collection request under section 114 of the Clean Air Act. EPA believes there is geographically accessible pure methyl bromide for ham producers in the Southeastern U.S. as well as pre-plant methyl bromide for California strawberry producers.

For these reasons, EPA is proposing to find 5% of the existing inventory available for use in 2016. EPA specifically invites comment on whether between 0% and 5% of existing inventory will be available to critical users in 2016, taking into consideration the FIFRA labeling changes, the recent history of inventory drawdown, the amount of unsold 2014 critical use methyl bromide, the removal of the critical stock allowance provisions that limited the amount of stocks that can be sold for critical uses, the quantity and geographical location of approved uses, and the quantity and location of stocks. Existing stocks, as of December 31, 2014, were equal to 158,121 kg. Therefore, EPA is proposing to reduce the amount of new production for 2016 by 7,906 kg.

Carryover Material: EPA regulations prohibit methyl bromide produced or imported after January 1, 2005, under the critical use exemption, from being added to the pre-2005 inventory. Quantities of methyl bromide produced, imported, exported, or sold to end-users under the critical use exemption in a control period must be reported to EPA the next year. EPA uses these reports to calculate any excess methyl bromide left over from that year's CUE and, using the framework established in the 2005 CUE Rule, reduces the following year's total allocation by that amount. Carryover had been reported to the Agency every year from 2005 to 2009. Carryover material (which is produced using critical use allowances) is not included in EPA's definition of existing inventory (which applies to pre-2005 material) because this would lead to a double-counting of carryover amounts.

In 2015, companies reported that 442,200 kg of methyl bromide was produced or imported for U.S. critical uses in 2014. EPA also received reports that 355,857 kg of critical use methyl bromide was sold to end-users in 2014. EPA calculates that the carryover amount at the end of 2014 was 86,343 kg, which is the difference between the reported amount of critical use methyl bromide produced or imported in 2014 and the reported amount of sales of that material to end users in 2014. EPA's calculation of carryover is consistent with the method used in previous CUE rules, and with the format in Decision XVI/6 for calculating column L of the U.S. Accounting Framework. All U.S. Accounting Frameworks for critical use methyl bromide are available in the public docket for this rulemaking. EPA is therefore proposing to reduce the total level of new production and import for critical uses by 86,343 kg to reflect the amount of carryover material available at the end of 2014, in addition to the 7,906 kg reduction for available stocks discussed above.

Uptake of Alternatives: EPA considers data on the availability of alternatives that it receives following submission of each nomination to UNEP. In previous rules EPA has reduced the total CUE amount when a new alternative has been registered and increased the new production amount when an alternative is withdrawn, but not above the amount permitted by the Parties. Neither circumstance has occurred since the nomination was submitted for 2016.

EPA is not proposing to make any other modifications to CUE amounts to account for availability of alternatives. Rates of transition to alternatives have

already been applied for permitted 2016 critical use amounts through the nomination and authorization process. EPA will consider new data received during the comment period and continues to gather information about methyl bromide alternatives through the CUE application process, and by other means. EPA also continues to support research and adoption of methyl bromide alternatives, and to request information about the economic and technical feasibility of all existing and potential alternatives.

Allocation Amounts: EPA is proposing to allocate critical use allowances for new production or import of methyl bromide equivalent to 140,531 kg to Great Lakes Chemical Corporation, Albemarle Corporation, ICL–IP America, and TriCal, Inc in proportion to their respective baselines. Paragraph 3 of Decision XXVI/6 states that ''parties shall endeavour to license, permit, authorize or allocate quantities of methyl bromide for critical uses as listed in table A of the annex to the present decision. . . .'' This is similar to language in prior Decisions permitting critical uses. These Decisions call on Parties to endeavor to allocate critical use methyl bromide on a sector basis.

EPA is proposing to assign the 7,906 kg reduction for available stocks and 86,343 kg reduction for carryover in proportion to the amounts indicated in Table A of the annex to Decision XXVI/6. In other words, both the pre-plant and the post-harvest allocation would be reduced by 40%. Specifically, the pre-plant allocation for California strawberry production would decline from 231,540 kg to 138,592 kg and the post-harvest allocation for dry cured ham would decline from 3,240 kg to 1,939 kg. Reported data show that the critical use methyl bromide carried over from 2014 and the existing stocks include both pre-plant and post-harvest material. EPA invites comment on reducing the allocation in this proportional manner or whether an alternate method is preferable.

The proposed Framework Rule contained several options for allocating critical use allowances, including a sector-by-sector approach. The agency evaluated various options based on their economic, environmental, and practical effects. After receiving comments, EPA determined in the final Framework Rule that a lump-sum, or universal, allocation, modified to include distinct caps for pre-plant and post-harvest uses, was the most efficient and least burdensome approach that would achieve the desired environmental results, and that a sector-by-sector approach would pose significant administrative and practical difficulties. Because EPA is proposing only one use in the pre-plant sector and one use in the post-harvest sector for 2016, this proposed rule follows the breakout of specific uses in Decision XXVI/6.

Emergency Use: The U.S. government is committed to using flexibility in the Protocol's existing mechanisms as an avenue to address changes in national circumstance that affect the transition to alternatives. EPA welcomes comments and any new information on specific emergency situations that may necessitate the use of methyl bromide, consistent with the requirements of the Montreal Protocol, and which could be difficult to address using current tools and authorities.

E. The Criteria in Decisions IX/6 and Ex. I/4

Decision XXVI/6 calls on Parties to apply the criteria in Decision IX/6, paragraph 1 and the conditions set forth in Decision Ex. I/4 (to the extent applicable) to exempted critical uses for the 2016 control period. The following section provides references to sections of this preamble and other documents where EPA considers the criteria of those two Decisions.

Decision IX/6, paragraph 1 contains the critical use criteria, which are summarized in Section III.A of the preamble. The nomination documents detail how each proposed critical use meets the criteria in Decision IX/6, paragraph 1 including: The lack of available technically and economically feasible alternatives under the circumstance of the nomination; efforts to minimize use and emissions of methyl bromide where technically and economically feasible; and the development of research and transition plans. The nomination documents also address the requests in Decision Ex. I/4 paragraphs 5 and 6 that Parties consider and implement MBTOC recommendations, where feasible, on actions a Party may take to reduce the critical uses of methyl bromide and include information on the methodology they use to determine economic feasibility.

A discussion of the agency's application of the critical use criteria to the proposed critical uses for 2016 appears in Sections III.A., III.C., and III.D. of this preamble. EPA solicits comments on the technical and economic basis for determining that the uses listed in this proposed rule meet the criteria of the critical use exemption.

The agency has previously provided its interpretation of the criterion in Decision IX/6, paragraph (1)(a)(i) regarding the presence of significant market disruption in the absence of an exemption. EPA refers readers to the preamble to the 2006 CUE rule (71 FR 5989, February 6, 2006) as well as to the memo in the docket titled ''Development of 2003 Nomination for a Critical Use Exemption for Methyl Bromide for the United States of America'' for further elaboration. As explained in those documents, EPA's interpretation of this term has several dimensions, including looking at potential effects on both demand and supply for a commodity, evaluating potential losses at both an individual level and at an aggregate level, and evaluating potential losses in both relative and absolute terms.

The United States has also considered the adoption of alternatives and research into methyl bromide alternatives in the development of the National Management Strategy submitted to the Ozone Secretariat in December 2005 and updated in October 2009. The National Management Strategy addresses all of the aims specified in Decision Ex. I/4, paragraph 3 to the extent feasible and is available in the docket for this rulemaking.

F. Emissions Minimization

Previous Decisions of the Parties have stated that critical users shall employ emissions minimization techniques such as virtually impermeable films, barrier film technologies, deep shank injection and/or other techniques that promote environmental protection, whenever technically and economically feasible. EPA developed a comprehensive strategy for risk mitigation through the 2009 Reregistration Eligibility Decision (RED)[2] for methyl bromide, available in the docket to this rulemaking, which is implemented through restrictions on how methyl bromide products can be used. This approach means that methyl bromide labels require that treated sites be tarped. The RED also incorporated incentives for applicators to use high-barrier tarps, such as virtually impermeable film, by allowing smaller buffer zones around those sites. In addition to minimizing emissions, use of high-barrier tarps has the benefit of providing pest control at lower application rates. The amount of methyl bromide nominated by the United States reflects the lower application rates necessary when using high-barrier tarps.

EPA will continue to work with the U.S. Department of Agriculture–

[2] Additional information on risk mitigation measures for soil fumigants is available at *http://epa.gov/pesticides/reregistration/soil_fumigants/*.

Agricultural Research Service (USDA–ARS) and the National Institute for Food and Agriculture (USDA–NIFA) to promote emissions reduction techniques. The federal government has invested substantial resources into developing and implementing best practices for methyl bromide use, including emissions reduction practices. The Cooperative Extension System, which receives some support from USDA–NIFA, provides locally appropriate and project-focused outreach education regarding methyl bromide transition best practices. Additional information on USDA research on alternatives and emissions reduction can be found at: *http://www.ars.usda.gov/research/programs/programs.htm?NP_CODE=303, http://www.ars.usda.gov/research/programs/programs.htm?NP_CODE=304,* and *http://www.csrees.usda.gov.*

Users of methyl bromide should continue to make every effort to minimize overall emissions of methyl bromide. EPA also encourages researchers and users who are using techniques to minimize emissions of methyl bromide to inform EPA of their experiences and to provide information on such techniques with their critical use applications.

VII. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *http://www2.epa.gov/laws-regulations/laws-and-executive-orders.*

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

This action is a significant regulatory action that was submitted to the Office of Management and Budget (OMB) for review. This action was deemed to raise novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket.

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 2060–0482. The application, recordkeeping, and reporting requirements have already been established under previous critical use exemption rulemakings.

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. Since this rule would allow the use of methyl bromide for approved critical uses after the phaseout date of January 1, 2005, this action would confer a benefit to users of methyl bromide. 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. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

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. This action would allocate allowances for the production and import of methyl bromide to private entities. This rule also would limit the proposed critical uses to geographical areas that reflect the scope of the trade associations that applied for a critical use. This rule does not impose any duties or responsibilities on State governments or allocate any rights to produce or use methyl bromide to a State government.

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

This action does not have tribal implications as specified in Executive Order 13175. This rule does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose any enforceable duties on communities of Indian tribal governments. Thus, Executive Order 13175 does not apply to this action.

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

This action is not subject to Executive Order 13045 because it is not economically significant as defined in Executive Order 12866, and because the Agency does not believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. This action's health and risk assessments are contained in the Regulatory Impacts Analysis and Benefits Analysis found in the docket.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action does not pertain to any segment of the energy production economy nor does it regulate any manner of energy use.

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

EPA believes this action will not have disproportionately high and adverse human health or environmental effects on minority or low-income populations, because it affects the level of environmental protection equally for all affected populations without having any disproportionately high and adverse human health or environmental effects on any population, including any minority or low-income population. Any ozone depletion that results from this action will result in impacts that are, in general, equally distributed across geographical regions in the United States. The impacts do not fall disproportionately on minority or low-income populations but instead vary with a wide variety of factors. Populations that work or live near fields or other application sites may benefit from the reduced amount of methyl bromide applied, as compared to amounts allowed under previous critical use exemption rules.

List of Subjects in 40 CFR Part 82

Environmental protection, Chemicals, Exports, Imports, Ozone depletion.

Dated: June 3, 2015.

Gina McCarthy,

Administrator.

For the reasons set forth in the preamble, EPA proposes to amend 40 CFR part 82 as follows:

PART 82—PROTECTION OF STRATOSPHERIC OZONE

■ 1. The authority citation for part 82 continues to read as follows:

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

■ 2. Amend § 82.8 by revising the table in paragraph (c)(1) to read as follows:

§ 82.8 Grant of essential use allowances and critical use allowances.

* * * * *

(c) * * *

(1) * * *

Company	2016 Critical use allowances for pre-plant uses * (kilograms)	2016 Critical use allowances for post-harvest uses * (kilograms)
Great Lakes Chemical Corp. A Chemtura Company	84,222	1,179
Albemarle Corp	34,634	485
ICL–IP America	19,140	268
TriCal, Inc	596	8
Total	138,592	1,939

* For production or import of Class I, Group VI controlled substance exclusively for the Pre-Plant or Post-Harvest uses specified in appendix L to this subpart.

* * * * *

■ 3. Amend subpart A by revising appendix L to read as follows:

Appendix L to Subpart A of Part 82—Approved Critical Uses and Limiting Critical Conditions for Those Uses for the 2016 Control Period

Column A	Column B	Column C
Approved Critical Uses	Approved Critical User, Location of Use	Limiting Critical Conditions that exist, or that the approved critical user reasonably expects could arise without methyl bromide fumigation.
PRE-PLANT USES		
Strawberry Fruit	California growers	Moderate to severe black root rot or crown rot. Moderate to severe yellow or purple nutsedge infestation. Moderate to severe nematode infestation. Local township limits prohibiting 1,3-dichloropropene.
POST-HARVEST USES		
Dry Cured Pork Products	Members of the National Country Ham Association and the American Association of Meat Processors, Nahunta Pork Center (North Carolina), and Gwaltney of Smithfield Inc.	Red legged ham beetle infestation. Cheese/ham skipper infestation. Dermestid beetle infestation. Ham mite infestation.

[FR Doc. 2015–14473 Filed 6–11–15; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 150121066–5497–01]

RIN 0648–BE81

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Quotas

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

ACTION: Proposed rule; request for comments; notice of public hearing.

SUMMARY: NMFS proposes to modify the baseline annual U.S. quota and subquotas for Atlantic bluefin tuna (BFT). NMFS also proposes minor modifications to the regulatory text regarding Atlantic tuna purse seine auxiliary vessel activity under the ''transfer at sea'' provisions. This action is necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received on or before July 13, 2015. NMFS will host an operator-assisted public hearing conference call and webinar on July 1, 2015, from 2 to 4 p.m. EDT, providing an opportunity for individuals from all geographic areas to participate. See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: You may submit comments on this document, identified by ''NOAA–NMFS–2015–0011,'' by either of the following methods:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2015-0011,* click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.

• *Mail:* Submit written comments to Sarah McLaughlin, Highly Migratory Species (HMS) Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Drive, Gloucester, MA 01930.

• *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and generally will be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

The public hearing conference call information is phone number 1–800–779–5379; participant passcode 1594994. Participants are strongly encouraged to log/dial in 15 minutes prior to the meeting. NMFS will show a brief presentation via webinar followed by public comment. To join the webinar, go to: *https://noaaevents2.webex.com/noaaevents2/onstage/g.php?d=990480432&t=a.* Enter your name, email address, and password ''webtuna'' (without typing the quotation marks) and click the ''JOIN'' button. Participants who have not used WebEx before will be prompted to download and run a plug-in program that will enable them to view the webinar.

Supporting documents, including the Environmental Assessment, Regulatory Impact Review, and Initial Regulatory Flexibility Analysis, may be downloaded from the HMS Web site at *www.nmfs.noaa.gov/sfa/hms/.* These documents also are available by contacting Sarah McLaughlin at the mailing address specified above.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic bluefin tuna, bigeye tuna, albacore tuna, yellowfin tuna, and skipjack tuna (hereafter referred to as ''Atlantic tunas'') are managed under the dual authority of the Magnuson-Stevens Act and ATCA. As an active member of ICCAT, the United States implements binding ICCAT recommendations. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate to carry out ICCAT recommendations. 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.

Background

Since 1982, ICCAT has recommended a Total Allowable Catch (TAC) of western Atlantic BFT, and since 1991, ICCAT has recommended specific limits (quotas) for the United States and other Contracting Parties.

In 2006, NMFS published a final rule in the **Federal Register** implementing the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), which consolidated management of all Atlantic HMS (*i.e.,* sharks, swordfish, tunas, and billfish) into one comprehensive FMP (71 FR 58058, October 2, 2006). Among other things, the 2006 Consolidated HMS FMP maintained an allocation scheme, established in the 1999 Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP), for dividing the baseline annual U.S. BFT quota among several domestic quota categories. NMFS amended the BFT allocations, effective January 1, 2015, in the recently published Amendment 7 to the 2006 Consolidated HMS FMP (Amendment 7) (79 FR 71510, December 2, 2014).

Regulations implemented under the authority of ATCA (16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Act (16 U.S.C. 1801 *et seq.*) governing the harvest of BFT by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 635. NMFS is required under ATCA and the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest the ICCAT-recommended quota. Section 635.27 currently codifies the annual U.S. baseline BFT quota first recommended by ICCAT in 2010 and divides it among the various domestic fishing categories consistent with the process established in Amendment 7. Adjustment of the annual U.S. baseline BFT quota is necessary to implement the new quota adopted in a 2014 ICCAT recommendation for western BFT, as required by ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act, including rebuilding stocks and ending overfishing. NMFS also is proposing minor modifications to regulatory text to clarify that while transfer at sea is prohibited, an auxiliary vessel (*i.e.,* a skiff) may conduct limited assistance activities for its associated purse seine vessel in catch operations for BFT. The text modification reflects current practice but is necessary to clarify that ''transfer at sea'' is prohibited consistent with ICCAT Recommendation 14–05 (Recommendation by ICCAT Amending the Supplemental Recommendation by ICCAT Concerning the Western Atlantic BFT Rebuilding Program) and its intended application. This text modification is administrative, reflects current practice, and would have no environmental impacts or effects on current fishing operations.

NMFS has prepared an Environmental Assessment (EA), Regulatory Impact Review (RIR), and an Initial Regulatory Flexibility Analysis (IRFA), which present and analyze anticipated environmental, social, and economic impacts of several alternatives for each of the major issues contained in this proposed rule. The list of alternatives and their analyses are provided in the draft EA/RIR/IRFA and are not repeated here in their entirety. A copy of the draft EA/RIR/IRFA prepared for this proposed rule is available from NMFS (see **ADDRESSES**).

2014 ICCAT Recommendation

At its November 2014 meeting, ICCAT adopted a western Atlantic BFT TAC of 2,000 mt annually for 2015 and 2016 after considering the results of the 2014 BFT stock assessment and following negotiations among Contracting Parties (ICCAT Recommendation 14–05). This TAC, which is an increase from the 1,750-mt TAC that has applied annually since 2011, is consistent with scientific advice from the 2014 stock assessment, which indicated that annual catches of less than 2,250 mt would have a 50-percent probability of allowing the spawning stock biomass to be at or above its 2013 level by 2019 under either recruitment scenario, and that annual catches of 2,000 mt or less would continue to allow stock growth under both the low and high recruitment scenarios for the remainder of the rebuilding program. All TAC, quota, and weight information discussed in this notice are whole weight amounts.

For 2015 and 2016, the ICCAT Recommendation also makes the following allocations from the western BFT 2,000-mt TAC for bycatch related to directed longline fisheries in the Northeast Distant gear restricted area (NED): 15 mt for Canada and 25 mt for the United States. Following subtraction of these allocations from the TAC, the recommendation allocates the remainder to the United States (54.02 percent), Canada (22.32 percent) Japan (17.64 percent), Mexico (5.56 percent), UK (0.23 percent), and France (0.23 percent). For the United States, 54.02 percent of the remaining 1,960 mt is

1,058.79 mt annually for 2015 and 2016. This represents an increase of approximately 135 mt (approximately 14 percent) from the U.S. baseline BFT quota that applied annually for 2011 through 2014. Thus, the annual total U.S. quota, including the 25 mt to account for bycatch related to pelagic longline fisheries in the NED, is 1,083.79 mt.

As a method for limiting fishing mortality on juvenile BFT, ICCAT continued to recommend a tolerance limit on the annual harvest of BFT measuring less than 115 cm (straight fork length) to no more than 10 percent by weight of a Contracting Party's total BFT quota over the 2015 and 2016 fishing periods. The United States implements this provision by limiting the harvest of school BFT (measuring 27 to less than 47 inches (68.5 to less than 119 cm curved fork length)) as appropriate to not exceed the 10-percent limit over the two-year period.

Domestic Allocations and Quotas

The 1999 FMP and its implementing regulations established baseline percentage quota shares for the domestic fishing categories. These percentage shares were based on allocation procedures that NMFS developed over several years, based on historical share, fleet size, effort, and landings by category, and stock assessment data collection needs. The baseline percentage quota shares established in the 1999 FMP were continued in the 2006 Consolidated HMS FMP. Amendment 7 to the 2006 Consolidated HMS FMP modified the quota calculation process as follows: First, 68 mt is subtracted from the baseline annual U.S. BFT quota and allocated to the Longline category quota. Second, the remaining quota is divided among the categories according to the following percentages: General—47.1 percent; Angling—19.7 percent; Harpoon—3.9 percent; Purse Seine—18.6 percent; Longline—8.1 percent (plus the 68-mt initial allocation); Trap—0.1 percent; and Reserve—2.5 percent.

The table below shows the proposed quotas and subquotas that result from applying this process. These quotas would be codified at § 635.27(a) and would remain in effect until changed (for instance, if any new ICCAT western BFT TAC recommendation is adopted). Because ICCAT adopted TACs for 2015 and 2016 in Recommendation 14–05, NMFS currently anticipates that these annual base quotas would be in effect through 2016.

TABLE 1—PROPOSED ANNUAL ATLANTIC BLUEFIN TUNA (BFT) QUOTAS

[In metric tons]

Category	Annual baseline quotas and subquotas		
	Quota	Subquotas	
General	466.7		
		January–March [1]	24.7
		June–August	233.3
		September	123.7
		October–November	60.7
		December	24.3
Harpoon	38.6		
Longline	148.3		
Trap	1.0		
Purse Seine	[2] 184.3		
Angling	195.2		
		School	108.4
		Reserve	20.1
		North of 39°18′ N. lat	41.7
		South of 39°18′ N. lat	46.6
		Large School/Small Medium	82.3
		North of 39°18′ N. lat	38.9
		South of 39°18′ N. lat	43.5
		Trophy	4.5
		North of 39°18′ N. lat	1.5
		South of 39°18′ N. lat	1.5
		Gulf of Mexico	1.5
Reserve	[2] 24.8		
U.S. Baseline BFT Quota	[3] 1,058.9		
Total U.S. Quota, including 25 mt for NED (Longline)	[3] 1,083.9		

[1] January 1 through the effective date of a closure notice filed by NMFS announcing that the January subquota is reached or projected to be reached, or through March 31, whichever comes first.

[2] Baseline amount shown. Does not reflect the annual adjustment process (for the Purse Seine and Reserve category quotas) adopted in Amendment 7, discussed below.

[3] Totals subject to rounding error.

Also as a result of the Amendment 7 process and consistent with the regulations, NMFS at the beginning of the year calculated the quota available to individual Atlantic Tunas Purse Seine category fishery participants for 2015 based on BFT catch (landings and dead discards) by those fishery participants in 2014 and then reallocated the remaining 87.4 mt of available Purse Seine category quota to the Reserve category for the 2015 fishing year. This process resulted in revised Purse Seine and Reserve category quotas of 71.7 mt and 108.8 mt, respectively (80 FR 7547, February 11, 2015). If NMFS finalizes the U.S. baseline BFT quota as proposed here, NMFS will again calculate the amounts of quota available to individual Purse Seine fishery participants for 2015 applying the baseline Purse Seine category quota as finalized (and adjust the Reserve category quota as appropriate). Based on

the proposed U.S. baseline BFT quota, the Purse Seine and Reserve category quotas would be further adjusted to 82.9 mt (an 11.2-mt increase) and 126.2 mt (a 17.4-mt decrease), respectively. Consistent with § 635.27(a)(4)(v)(C), NMFS would notify Atlantic Tunas Purse Seine fishery participants of the adjusted amount of quota available for their use in 2015 through the Individual Bluefin Quota electronic system established under § 635.15 and in writing and will publish notice of the adjusted Purse Seine and Reserve category quotas for 2015 in the **Federal Register** notice announcing the final rule.

Amendment 7 also changed the way that NMFS adjusts the U.S. annual quota for any previous year's underharvest. Rather than publishing proposed and final quota specifications annually to adjust the quota for the underharvest as NMFS has in the past, NMFS will automatically augment the Reserve category quota to the extent that underharvest from the previous year is available. Such adjustment will be consistent with ICCAT limits and will be calculated when complete BFT catch information for the prior year is available and finalized. NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota pursuant to regulatory determination criteria described at 50 CFR 635.27(a)(8), or for scientific research.

Although preliminary 2014 landings and dead discard estimates indicate an underharvest of approximately 218 mt (using the 160.6-mt 2013 dead discard estimate as a proxy), the amount the United States may carry forward to 2015 is limited to 94.9 mt by ICCAT recommendation. The final 2013 estimate and a preliminary 2014 estimate will be available in June 2015, and NMFS will announce any adjustment to the 2015 Reserve category quota based on the amount of 2014 underharvest.

Atlantic Tunas Purse Seine Auxiliary Vessel Activity

Currently, HMS regulations specify that an owner or operator of a vessel for which an Atlantic Tunas Purse Seine category permit has been issued ''may transfer large medium and giant BFT at sea from the net of the catching vessel to another vessel for which an Atlantic Tunas Purse Seine category permit has been issued, provided the amount transferred does not cause the receiving vessel to exceed its currently authorized vessel allocation, including incidental catch limits.'' NMFS is proposing minor modifications to this regulatory text to clarify that this text was not meant to allow ''transfer at sea,'' which clearly is prohibited by ICCAT Recommendation 14–05, but only to allow the routine, limited operations of an auxiliary vessel (*i.e.,* a skiff) that is assisting its associated purse seine vessel in catch operations for BFT. Such activities are not the type of activity meant to be prohibited by that Recommendation. This clarification would be administrative, reflect current practice, and would have no environmental impacts or effects on current fishing operations.

Request for Comments

NMFS solicits comments on this proposed rule through July 13, 2015. See instructions in **ADDRESSES** section.

Public Hearing Conference Call

NMFS will hold a public hearing conference call and webinar on July 1, 2015, from 2 p.m. to 4 p.m. EDT, to allow for an additional opportunity for interested members of the public from all geographic areas to submit verbal comments on the proposed quota rule.

The public is reminded that NMFS expects participants at public hearings and on conference calls to conduct themselves appropriately. At the beginning of the conference call, a representative of NMFS will explain the ground rules (all comments are to be directed to the agency on the proposed action; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the meeting.

Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the 2006 Consolidated HMS FMP and its amendments, the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

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

An IRFA was prepared, as required by section 603 of the Regulatory Flexibility Act. The IRFA describes the economic impact this proposed rule, if adopted, would have on small entities. A description of the action, why it is being considered, and the legal basis for this action are contained in the **SUMMARY** section of the preamble. A summary of the analysis follows. A copy of this analysis is available from NMFS (see **ADDRESSES**).

In compliance with section 603(b)(1) of the Regulatory Flexibility Act, the purpose of this proposed rulemaking is, consistent with the 2006 Consolidated HMS FMP objectives, the Magnuson-Stevens Act, and other applicable law, to analyze the impacts of the alternatives for implementing and allocating the ICCAT-recommended U.S. quota for 2015 and 2016; and to clarify the purse seine transfer at sea regulations for Atlantic tunas.

In compliance with section 603(b)(2) of the Regulatory Flexibility Act, the objective of this proposed rulemaking is to implement ICCAT recommendations.

Section 603(b)(3) requires agencies to provide an estimate of the number of small entities to which the rule would apply. The Small Business Administration (SBA) has established size criteria for all major industry sectors in the United States, including fish harvesters. This proposed rule is expected to directly affect commercial and for-hire fishing vessels that possess an Atlantic Tunas permit or Atlantic HMS Charter/Headboat permit. In general, the HMS Charter/Headboat category permit holders can be regarded as small entities for RFA purposes. HMS Angling (recreational) category permit holders are typically obtained by individuals who are not considered small entities for purposes of the RFA. The SBA has established size criteria for all major industry sectors in the United States including fish harvesters (79 FR 33647; June 12, 2014). A business involved in fish harvesting is classified as a ''small business'' if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts (revenue) not in excess of $20.5 million for all of its affiliated operations worldwide (NAICS code 114111, finfish fishing). NAICS is the North American Industry Classification System, a standard system used by business and government to classify business establishments into industries, according to their economic activity. The United States government developed NAICS to collect, analyze, and publish data about the economy. In addition, the SBA has defined a small charter/party boat entity (NAICS code 487210, for-hire) as one with average annual receipts (revenue) of less than $7.5 million.

As described in the recently published final rule to implement Amendment 7 to the 2006 Consolidated HMS FMP (79 FR 71510, December 2, 2014), the average annual gross revenue per active pelagic longline vessel was estimated to be $187,000 based on the 170 active vessels between 2006 and 2012 that produced an estimated $31.8 million in revenue annually. The maximum annual revenue for any pelagic longline vessel during that time period was less than $1.4 million, well below the SBA size threshold of $20.5 million in combined annual receipts. Therefore, NMFS considers all Atlantic Tunas Longline category permit holders to be small entities. NMFS is unaware of any other Atlantic Tunas category permit holders that potentially could earn more than $20.5 million in revenue annually. NMFS is also unaware of any charter/headboat businesses that could exceed the $7.5 million thresholds for those small entities. HMS Angling category permit holders are typically obtained by individuals who are not considered small entities for purposes of the RFA. Therefore, NMFS considers all Atlantic Tunas permit holders and HMS Charter/Headboat permit holders subject to this action to be small entities.

This action would apply to all participants in the Atlantic BFT fishery, *i.e.,* to the over 27,000 vessels that held an Atlantic HMS Charter/Headboat, Atlantic HMS Angling, or an Atlantic Tunas permit as of October 2014. This proposed rule is expected to directly affect commercial and for-hire fishing vessels that possess an Atlantic Tunas permit or Atlantic HMS Charter/Headboat permit. It is unknown what portion of HMS Charter/Headboat permit holders actively participate in the BFT fishery or fishing services for recreational anglers. As summarized in the 2014 SAFE Report for Atlantic HMS, there were 6,792 commercial Atlantic tunas or Atlantic HMS permits in 2014, as follows: 2,782 in the Atlantic Tunas General category; 14 in the Atlantic Tunas Harpoon category; 5 in the Atlantic Tunas Purse Seine category; 246 in the Atlantic Tunas Longline category; 3 in the Atlantic Tunas Trap category; and 3,742 in the HMS Charter/Headboat category. In the process of developing the IBQ regulations implemented in the Amendment 7 final rule, NMFS deemed 135 Longline category vessels as eligible for IBQ shares (*i.e.,* 135 vessels reported a set in the HMS logbook between 2006 and 2012 and had valid Atlantic Tunas Longline category permits on a vessel as of August 21, 2013, the publication date of the Amendment 7 proposed rule). This constitutes the best available information regarding the universe of permits and permit holders recently analyzed. No impacts are expected to occur from the clarification of the transfer at sea prohibition regulatory text.

NMFS has determined that this action would not likely directly affect any small government jurisdictions defined under the RFA.

Under section 603(b)(4) of the Regulatory Flexibility Act, agencies are required to describe any new reporting, record-keeping, and other compliance requirements. There are no new reporting or recordkeeping requirements in any of the alternatives considered for this action.

Under section 603(b)(5) of the Regulatory Flexibility Act, agencies must identify, to the extent practicable, relevant Federal rules which duplicate, overlap, or conflict with the proposed rule. Fishermen, dealers, and managers in these fisheries must comply with a number of international agreements, domestic laws, and other FMPs. These include, but are not limited to, the Magnuson-Stevens Act, the ATCA, the High Seas Fishing Compliance Act, the Marine Mammal Protection Act, the Endangered Species Act (ESA), the National Environmental Policy Act, the Paperwork Reduction Act, and the Coastal Zone Management Act. This proposed rule has also been determined not to duplicate, overlap, or conflict with any relevant regulations, Federal or otherwise.

Under section 603(c) of the Regulatory Flexibility Act, agencies are required to describe any alternatives to the proposed rule which accomplish the stated objectives and which minimize any significant economic impacts. These alternatives and their impacts are discussed below. Additionally, the Regulatory Flexibility Act (5 U.S.C. 603 (c) (1)–(4)) lists four general categories of significant alternatives that would assist an agency in the development of significant alternatives. These categories of alternatives are: (1) Establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) clarification, consolidation, or simplification of compliance and reporting requirements under the rule for such small entities; (3) use of performance rather than design standards; and, (4) exemptions from coverage of the rule for small entities.

In order to meet the objectives of this proposed rule, consistent with the Magnuson-Stevens Act, ATCA, and the ESA, NMFS cannot exempt small entities or change the reporting requirements only for small entities because all the entities affected are considered small entities. Thus, no alternatives are discussed that fall under the first and fourth categories described above. Amendment 7 implemented criteria for determining the availability of quota for Purse Seine fishery category participants and IBQs for the Longline category. Both of these and the eligibility criteria for IBQs and access to the Cape Hatteras GRA for the Longline category can be considered individual performance standards. NMFS has not yet found a practical means of applying individual performance standards to the other quota categories while, concurrently, complying with the Magnuson-Stevens Act. Thus, there are no alternatives considered under the third category.

NMFS has estimated the average impact that establishing the increased baseline annual U.S. BFT quota for all domestic fishing categories would have on each quota category and the vessels within those categories. As mentioned above, the 2014 ICCAT recommendation increased the annual U.S. baseline BFT quota for each of 2015 and 2016 to 1,058.79 mt and provides 25 mt annually for incidental catch of BFT related to directed longline fisheries in the NED. The baseline annual subquotas would be adjusted consistent with the process established in Amendment 7 (79 FR 71510, December 2, 2014), and these amounts would be codified.

To calculate the average ex-vessel revenues under the proposed action, NMFS first estimated potential category-wide revenues. The most recent ex-vessel average price per pound information for each commercial quota category is used to estimate potential ex-vessel gross revenues under the proposed subquotas (*i.e.,* 2014 prices for the General, Harpoon, Purse Seine, and Longline/Trap categories). For comparison, in 2014, gross revenues were approximately $7.8 million, broken out by category as follows: General—$5.9 million, Harpoon—$544,778, Purse Seine—$391,607, Longline—$953,055, and Trap—$0. The proposed baseline subquotas could result in estimated gross revenues of $11 million, if finalized and fully utilized, broken out by category as follows: General category: $6.8 million (466.7 mt * $6.60/lb); Harpoon category: $611,851 (38.6 mt * $7.19/lb); Purse Seine category: $1.9 million (184.3 mt * $ 4.77/lb); Longline category: $1.7 million (148.3 mt * $5.22/lb); and Trap category: $11,508 (1.0 mt * $ 5.22/lb). This rulemaking proposes to implement the recently adopted ICCAT-recommended U.S. quota and applies the allocations

for each quota category as recently amended in the implementing regulations for Amendment 7 to the 2006 Consolidated HMS FMP. This action would be consistent with ATCA, under which the Secretary promulgates regulations as necessary and appropriate to carry out ICCAT recommendations.

No affected entities would be expected to experience negative, direct economic impacts as a result of this action. On the contrary, each of the quota categories would increase relative to the baseline quotas that applied in 2011 through 2014 and the quotas finalized in Amendment 7. To the extent that Purse Seine fishery participants and IBQ participants could receive additional quota as a result of Amendment 7-implemented allocation formulas being applied to increases in available Purse Seine and Longline category quota, those participants would receive varying increases, which would result in direct benefits from either increased fishing opportunities or quota leasing.

To estimate potential average ex-vessel revenues that could result from this action, NMFS divides the potential annual gross revenues for the General, Harpoon, Purse Seine, and Trap category by the number of permit holders. For the Longline category, NMFS divides the potential annual gross revenues by the number of active vessels as defined in Amendment 7. This is an appropriate approach for BFT fisheries, in particular because available landings data (weight and ex-vessel value of the fish in price-per-pound) allow NMFS to calculate the gross revenue earned by a fishery participant on a successful trip. The available data (particularly from non-Longline participants) do not, however, allow NMFS to calculate the effort and cost associated with each successful trip (*e.g.,* the cost of gas, bait, ice, etc.), so net revenue for each participant cannot be calculated. As a result, NMFS analyzes the average impact of the proposed alternatives among all participants in each category.

Success rates vary widely across participants in each category (due to extent of vessel effort and availability of commercial-sized BFT to participants where they fish) but for the sake of estimating potential revenues per vessel, category-wide revenues can be divided by the number of permitted vessels in each category. For the Longline fishery, the number of vessels deemed eligible for IBQ shares is used, and actual revenues would depend, in part, on each vessel's IBQ in 2015. Although HMS Charter/Headboat vessels may fish commercially under the General category quota and retention limits, because it is unknown what portion of HMS Charter/Headboat permit holders actively participate in the BFT fishery, NMFS is estimating potential General category ex-vessel revenue changes using the number of General category vessels only.

Estimated potential 2015 revenues on a per vessel basis, considering the number of permit holders listed above and the proposed subquotas, could be $2,441 for the General category; $43,703 for the Harpoon category; $387,618 for the Purse Seine category; $12,642 for the Longline category, using the 135 vessels eligible for IBQ shares; and $3,836 for the Trap category. Thus, all of the entities affected by this rule are considered to be small entities for the purposes of the RFA.

Consistent with Amendment 7 regulations, NMFS calculated the quota available to Purse Seine fishery participants for 2015 and then reallocated the remaining 87.4 mt of available Purse Seine category quota to the Reserve category (80 FR 7547, February 11, 2015). NMFS will further adjust those amounts if the U.S. baseline BFT quota in this proposed rule is finalized. The analyses in this IRFA are limited to the proposed baseline subquotas.

Because the directed commercial categories have underharvested their subquotas in recent years, the potential increases in ex-vessel revenues above may overestimate the probable economic impacts to those categories relative to recent conditions. Additionally, there has been substantial interannual variability in ex-vessel revenues per category in recent years due to recent changes in BFT availability and other factors.

The proposed modifications to the regulatory text concerning Atlantic tunas purse seine transfer at sea are intended to clarify the prohibition on transfer at sea. They apply to the five Purse Seine fishery participants only and are not expected to have significant economic impacts as they are administrative in nature, reflect current practice, and would not result in changes to Atlantic tunas purse seine operations.

List of Subjects in 50 CFR Part 635

Fisheries, Fishing, Fishing vessels, Foreign relations, Imports, Penalties, Reporting and recordkeeping requirements, Treaties.

Dated: June 8, 2015.

Samuel D. Rauch III,

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

For the reasons set out in the preamble, 50 CFR part 635 is proposed to be amended as follows:

PART 635—ATLANTIC HIGHLY MIGRATORY SPECIES

■ 1. The authority citation for part 635 continues to read as follows:

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

■ 2. In § 635.27, paragraphs (a) introductory text, (a)(1)(i), (a)(2), (a)(3), (a)(4)(i), (a)(5), (a)(6), (a)(7)(i), and (a)(7)(ii) are revised to read as follows:

§ 635.27 Quotas.

(a) *Bluefin tuna.* Consistent with ICCAT recommendations, and with paragraph (a)(10)(iv) of this section, NMFS may subtract the most recent, complete, and available estimate of dead discards from the annual U.S. bluefin tuna quota, and make the remainder available to be retained, possessed, or landed by persons and vessels subject to U.S. jurisdiction. The remaining baseline annual U.S. bluefin tuna quota will be allocated among the General, Angling, Harpoon, Purse Seine, Longline, Trap, and Reserve categories, as described in this section. Bluefin tuna quotas are specified in whole weight. The baseline annual U.S. bluefin tuna quota is 1,058.79 mt, not including an additional annual 25-mt allocation provided in paragraph (a)(3) of this section. The bluefin quota for the quota categories is calculated through the following process. First, 68 mt is subtracted from the baseline annual U.S. bluefin tuna quota and allocated to the Longline category quota. Second, the remaining quota is divided among the categories according to the following percentages: General—47.1 percent (466.7 mt); Angling—19.7 percent (195.2 mt), which includes the school bluefin tuna held in reserve as described under paragraph (a)(7)(ii) of this section; Harpoon—3.9 percent (38.6 mt); Purse Seine—18.6 percent (184.3 mt); Longline—8.1 percent (80.3 mt) plus the 68-mt allocation (*i.e.,* 148.3 mt total not including the 25-mt allocation from paragraph (a)(3)); Trap—0.1 percent (1.0 mt); and Reserve—2.5 percent (24.8 mt). NMFS may make inseason and annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section, including quota adjustments as a result of the annual reallocation of

Purse Seine quota described under paragraph (a)(4)(v) of this section.

(1) * * *

(i) Catches from vessels for which General category Atlantic Tunas permits have been issued and certain catches from vessels for which an HMS Charter/Headboat permit has been issued are counted against the General category quota in accordance with § 635.23(c)(3). Pursuant to paragraph (a) of this section, the amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold under the General category quota is 466.7 mt, and is apportioned as follows, unless modified as described under paragraph (a)(1)(ii) of this section:

(A) January 1 through the effective date of a closure notice filed by NMFS announcing that the January subquota is reached, or projected to be reached under § 635.28(a)(1), or through March 31, whichever comes first—5.3 percent (24.7 mt);

(B) June 1 through August 31—50 percent (233.3 mt);

(C) September 1 through September 30—26.5 percent (123.7 mt);

(D) October 1 through November 30—13 percent (60.7 mt); and

(E) December 1 through December 31—5.2 percent (24.3 mt).

* * * * *

(2) *Angling category quota.* In accordance with the framework procedures of the Consolidated HMS FMP, prior to each fishing year, or as early as feasible, NMFS will establish the Angling category daily retention limits. In accordance with paragraph (a) of this section, the total amount of bluefin tuna that may be caught, retained, possessed, and landed by anglers aboard vessels for which an HMS Angling permit or an HMS Charter/Headboat permit has been issued is 195.2 mt. No more than 2.3 percent (4.5 mt) of the annual Angling category quota may be large medium or giant bluefin tuna. In addition, over each two-consecutive-year period (starting with 2015–2016), no more than 10 percent of the annual U.S. bluefin tuna quota, inclusive of the allocation specified in paragraph (a)(3) of this section, may be school bluefin tuna (*i.e.,* 108.4 mt). The Angling category quota includes the amount of school bluefin tuna held in reserve under paragraph (a)(7)(ii) of this section. The size class subquotas for bluefin tuna are further subdivided as follows:

(i) After adjustment for the school bluefin tuna quota held in reserve (under paragraph (a)(7)(ii) of this section), 52.8 percent (46.6 mt) of the school bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining school bluefin tuna Angling category quota (41.7 mt) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(ii) An amount equal to 52.8 percent (43.5 mt) of the large school/small medium bluefin tuna Angling category quota may be caught, retained, possessed, or landed south of 39°18′ N. lat. The remaining large school/small medium bluefin tuna Angling category quota (38.9 mt) may be caught, retained, possessed or landed north of 39°18′ N. lat.

(iii) One third (1.5 mt) of the large medium and giant bluefin tuna Angling category quota may be caught, retained, possessed, or landed, in each of the three following geographic areas: (1) North of 39°18′ N. lat.; (2) south of 39°18′ N. lat., and outside of the Gulf of Mexico; and (3) in the Gulf of Mexico. For the purposes of this section, the Gulf of Mexico region includes all waters of the U.S. EEZ west and north of the boundary stipulated at 50 CFR 600.105(c).

(3) *Longline category quota.* Pursuant to paragraph (a) of this section, the total amount of large medium and giant bluefin tuna that may be caught, discarded dead, or retained, possessed, or landed by vessels that possess Atlantic Tunas Longline category permits is 148.3 mt. In addition, 25 mt shall be allocated for incidental catch by pelagic longline vessels fishing in the Northeast Distant gear restricted area, and subject to the restrictions under § 635.15(b)(8).

(4) * * *

(i) *Baseline Purse Seine quota.* Pursuant to paragraph (a) of this section, the baseline amount of large medium and giant bluefin tuna that may be caught, retained, possessed, or landed by vessels that possess Atlantic Tunas Purse Seine category permits is 184.3 mt, unless adjusted as a result of inseason and/or annual adjustments to quotas as specified in paragraphs (a)(9) and (10) of this section; or adjusted (prior to allocation to individual participants) based on the previous year's catch as described under paragraph (a)(4)(v) of this section. Annually, NMFS will make a determination when the Purse Seine fishery will start, based on variations in seasonal distribution, abundance or migration patterns of bluefin tuna, cumulative and projected landings in other commercial fishing categories, the potential for gear conflicts on the fishing grounds, or market impacts due to oversupply. NMFS will start the bluefin tuna purse seine season between June 1 and August 15, by filing an action with the Office of the Federal Register, and notifying the public. The Purse Seine category fishery closes on December 31 of each year.

* * * * *

(5) *Harpoon category quota.* The total amount of large medium and giant bluefin tuna that may be caught, retained, possessed, landed, or sold by vessels that possess Harpoon category Atlantic Tunas permits is 38.6 mt. The Harpoon category fishery commences on June 1 of each year, and closes on November 15 of each year.

(6) *Trap category quota.* The total amount of large medium and giant bluefin tuna that may be caught, retained, possessed, or landed by vessels that possess Trap category Atlantic Tunas permits is 1.0 mt.

(7) * * *

(i) The total amount of bluefin tuna that is held in reserve for inseason or annual adjustments and research using quota or subquotas is 24.8 mt, which may be augmented by allowable underharvest from the previous year, or annual reallocation of Purse Seine category quota as described under paragraph (a)(4)(v) of this section. Consistent with paragraphs (a)(8) through (10) of this section, NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any fishing category quota.

(ii) The total amount of school bluefin tuna that is held in reserve for inseason or annual adjustments and fishery-independent research is 18.5 percent (20.1 mt) of the total school bluefin tuna Angling category quota as described under paragraph (a)(2) of this section. This amount is in addition to the amounts specified in paragraph (a)(7)(i) of this section. Consistent with paragraph (a)(8) of this section, NMFS may allocate any portion of the school bluefin tuna Angling category quota held in reserve for inseason or annual adjustments to the Angling category.

* * * * *

■ 3. In § 635.29, paragraph (c) is revised to read as follows:

§ 635.29 Transfer at sea and transshipment.

* * * * *

(c) An owner or operator of a vessel for which an Atlantic Tunas Purse Seine category permit has been issued under § 635.4 may use an auxiliary vessel associated with the permitted vessel (*i.e.,* a skiff) to assist in routine purse seine fishery operations, provided that the vessel has not been issued an Atlantic Tunas or HMS vessel permit and functions only in an auxiliary

capacity during routine purse seine operations. The auxiliary vessel may transfer large medium and giant Atlantic BFT to its associated purse seine vessel during routine purse seine operations, provided that the amount transferred does not cause the receiving vessel to exceed its currently authorized vessel allocation, including incidental catch limits.

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Notices

Federal Register
Vol. 80, No. 113
Friday, June 12, 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

Commodity Credit Corporation

Farm Service Agency

Notice of Intent To Prepare a Programmatic Environmental Impact Statement for the Biomass Crop Assistance Program

AGENCY: Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice of Intent (NOI); request for comments.

SUMMARY: This notice announces that the Farm Service Agency (FSA), on behalf of the Commodity Credit Corporation (CCC), intends to prepare a Programmatic Environmental Impact Statement (PEIS) as required by the National Environmental Policy Act of 1969 (NEPA). The PEIS will assess the potential environmental consequences associated with proposed discretionary changes to the Biomass Crop Assistance Program (BCAP). This notice informs the public of FSA's intent to seek public comment on potential changes being considered for BCAP and on any environmental concerns related to the proposed changes. The input we receive as a result of this notice will enable us to develop alternatives for implementing the proposed changes to BCAP and begin to evaluate the impacts of those alternatives, as required by NEPA.

DATES: We will consider comments that we receive by July 13, 2015. Comments received after this date will be considered to the extent possible.

ADDRESSES: We invite you to submit comments on this NOI. In your comments, include the volume, date, and page number of this issue of the **Federal Register**. You may submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments;
- Email: *BCAPComments@cardno-gs.com*
- Online: Go to *http://bcappeis.com.* Follow the online instructions for submitting comments.
- Fax: (757) 594–1469.
- Mail, Hand Delivery, or Courier: BCAP PEIS, c/o Cardno TEC, Inc., 11817 Canon Blvd., Suite 300, Newport News, VA 23606.

All written comments will be available for inspection online at *www.regulations.gov* and in the Office of the Director, Conservation and Environmental Programs Division, FSA, USDA, 1400 Independence Ave SW., Room 4709, South Building, Washington, DC, 20250, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. A copy of this notice is available through the FSA homepage at *http://www.fsa.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Nell Fuller, National Environmental Compliance Manager, USDA, FSA, CEPD, Stop 0513, 1400 Independence Ave, SW., Washington, DC, 20250–0513, telephone: (202) 720–6303. Persons with disabilities who require alternative means for communication should contact the USDA Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: As required by NEPA (42 U.S.C. 4321–4347), the Council on Environmental Quality (CEQ) Regulations for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), and FSA's NEPA compliance regulations (7 CFR part 799), FSA intends to assess potential discretionary changes to BCAP in 2015 by preparing a PEIS. The purpose of the PEIS process is to provide FSA decision makers, other agencies, Tribes, and the public with an analysis of the potential beneficial, adverse, and cumulative environmental impacts associated with proposed discretionary changes to BCAP.

BCAP was first authorized by the Food, Conservation, and Energy Act of 2008 (the 2008 Farm Bill, Pub. L. 110–246). BCAP is a voluntary program that is intended to assist agricultural and forest land owners and operators with the establishment and production of eligible crops in selected project areas for conversion to bioenergy. Additionally, BCAP provides matching payments for the collection, harvest, storage and transportation of eligible material to designated biomass conversion facilities for use as heat, power, biobased products, research, or advanced biofuels. BCAP is administered by FSA on behalf of CCC with the support of other Federal and local agencies. More detailed information on BCAP may be obtained at *http://www.fsa.usda.gov/bcap.*

Since BCAP was initially authorized, FSA has completed extensive NEPA analysis relating to BCAP and to specific project areas and feedstocks. In 2010, a Final Programmatic Environmental Impact Statement (PEIS) for BCAP was published by FSA and resulted in a Record of Decision (ROD) that was signed on October 27, 2010. That PEIS evaluated environmental consequences of establishing and administering the BCAP as specified in the 2008 Farm Bill. The PEIS examined the environmental consequences of two alternatives: Targeted BCAP Implementation and Broad BCAP Implementation. Since 2010, Environmental Assessments (EA) have been prepared for various project areas and for specific feedstocks.

The Agricultural Act of 2014 (the 2014 Farm Bill, Pub. L. 113–79) amended and reauthorized BCAP through 2018. The 2014 Farm Bill included a number of non-discretionary changes to BCAP. Those changes are primarily administrative in nature and do not alter the general scope of the program. The 2014 Farm Bill changes have already been implemented through rulemaking (80 FR 10569–10575) and do not require additional analysis under NEPA.

FSA is currently considering discretionary changes to the way BCAP is implemented. Those discretionary changes define the scope of the new PEIS for which this NOI applies. The new PEIS that will be prepared for the proposed discretionary changes to BCAP will tie to the other applicable BCAP NEPA documentation as appropriate and will examine only those aspects of the program that are not covered in previous analyses. Copies of all FSA NEPA documents can be found at: *http://www.fsa.usda.gov/nepa.*

Proposed Changes

FSA is proposing several discretionary changes to further improve the functionality and flexibility of the establishment and annual

payments part of BCAP. No discretionary changes are being proposed for the matching payments part of BCAP. The proposed changes include:

• Consideration and review of additional crops including: pongamia pinnata, giant miscanthus seeded and rhizome clones, giant reed (Arundo donax), pennycress (Thlaspi arvense), energy cane (Saccharum spp.), biomass sorghum, sweet sorghum, yellowhorned fruit tree, eastern cottonwood (Populus deltoides), kenaf, jatropha, eucalyptus (fast growing), castor beans (Ricinus communis), short rotation pine, tropical maize, hybrid willow, sweetgum, black locust, loblolly pine, aspen, rubber rabbitbrush (Ericameria nauseosa) and guayule (Parthenium argentatum).

• Requirements or additional practices for conservation plans on expiring Conservation Reserve Program (CRP) or Agricultural Conservation Easement Program (ACEP) land acres that would be enrolled in BCAP project areas.

• Potential for enrolling annual crops in BCAP project areas for contracts of less than five years.

• Program management processes that could help offset the lack of crop insurance for biomass crops or provide sufficient information for the Noninsured Crop Disaster Assistance Program (NAP) to establish coverage.

• Treatment of the required FSA annual rental reductions in the event of no bioenergy market end use (conversion to heat, power, advance biofuel or biobased product) for the harvested or collected biomass crops.

FSA will conduct scoping meetings to provide information on the proposed changes to BCAP and to solicit input from program participants, the public, and other stakeholders on the environmental impacts of these changes and alternatives to these changes. FSA will hold five scoping meetings. Each meeting will begin with an Open House (6 p.m.–6:30 p.m.) followed by a presentation (6:30 p.n.–7 p.m.). At the conclusion of the presentation FSA will accept verbal comments and answer questions. Times and locations are provided in the table below.

TABLE 1—PUBLIC MEETING DATES, TIMES, AND LOCATIONS*

Date	Time	Location
July 14, 2015	6 p.m.–8 p.m.	Hilton Garden Inn Sacramento/South Natomas, 2540 Venture Oaks Way, Sacramento, CA 95833.
July 15, 2015	6 p.m.–8 p.m.	Pacific Beach Hotel, 2490 Kalakaua Avenue, Honolulu, HI 96815.
August 3, 2015	6 p.m.–8 p.m.	Hampton Inn & Suites Raleigh-Durham Airport, 8021 Acro Corporate Drive, Raleigh, NC 27617.
August 4, 2015	6 p.m.–8 p.m.	Orlando Airport Marriott Lakeside, 7499 Augusta National Drive, Orlando, FL 32822.
August 5, 2015	6 p.m.–8 p.m.	Holiday Inn Sioux City, 701 Gordon Drive, Sioux City, IA 51101.

*The five public meeting locations were chosen for the purposes of allowing public input from communities where BCAP has an existing project area or where FSA is aware that project area planning is in underway.

Under NEPA, the PEIS process provides a means for the public to provide input on implementation alternatives and environmental concerns for federal actions and programs. This notice informs the public of FSA's intent to prepare a PEIS for discretionary changes to BCAP, and provides notice of the opportunity for public input on the proposed discretionary changes. The PEIS will provide an analysis that evaluates program effects in appropriate contexts, describes the intensity of adverse as well as beneficial environmental impacts, and addresses the cumulative environmental impacts associated with the proposed changes to BCAP. There will be additional opportunities for public comment on the draft PEIS when it is developed. The final PEIS and subsequent Record of Decision will be used by FSA decision-makers in implementing changes to BCAP.

Signed in Washington, DC, on June 9, 2015.

Val Dolcini,

Executive Vice President, Commodity Credit Corporation, and Administrator, Farm Service Agency.

[FR Doc. 2015–14393 Filed 6–11–15; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Angeles and San Bernardino National Forests; California; San Gabriel Mountains National Monument Management Plan

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental assessment.

SUMMARY: The Forest Service intends to prepare an environmental assessment to establish management direction for the land and resources within San Gabriel Mountains National Monument, designated by Presidential Proclamation on October 10, 2014. The Forest Service, as the responsible agency, proposes to amend the 2006 Angeles National Forest Land Management Plan with a management plan to provide for the protection of the objects of interest identified in the Proclamation. Approximately 99 percent of the Monument occurs on the Angeles National Forest and 1 percent on the San Bernardino National Forest.

DATES: Comments concerning the scope of the analysis must be received by July 27, 2015. The draft environmental assessment is expected in the spring of 2016, and the final environmental assessment and draft decision notice is expected in the summer of 2016.

ADDRESSES: Send written comments to Justin Seastrand, on behalf of the Angeles National Forest Supervisor, 701 North Santa Anita Avenue, Arcadia, CA 91006. Comments may also be provided via facsimile to 626–574–5235. Or submitted on the San Gabriel Mountain National Monument project Web page: *http://www.fs.fed.us/nepa/nepa_project_exp.php?project=46964.*

FOR FURTHER INFORMATION CONTACT: Justin Seastrand, Environmental Coordinator, USDA Forest Service, Angeles National Forest, 701 North Santa Anita Avenue, Arcadia, CA 91006; phone 626–574–5278; email *jseastrand@fs.fed.us.*

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

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The Presidential Proclamation establishing San Gabriel Mountains National Monument (the Monument) requires the preparation of a

management plan. The purpose and need of developing the management plan is to ensure that the lands and resources within the Monument are managed in accordance with the intent of the Presidential Proclamation that established the Monument. As stated in the Proclamation, the plan will provide for the protection and interpretation of the scientific and historic objects within the Monument and for continued public access to those objects, consistent with their protection, as well as access by Indian tribal members for traditional cultural, spiritual, and tree and forest product-, food- and medicine-gathering purposes. Scientific and historic objects relate to cultural resources; modern recreation; scientific significance; wildlife and habitat; infrastructure; watershed values; recreation and scenery; and vegetation communities. The Proclamation withdrew the area from all forms of location, entry, and patent under mining laws and from disposition under all laws relating to mineral and geothermal leasing, except under the Materials Act of 1947 (sand, stone, gravel). Existing claims will still be honored. The Proclamation also requires the development of a transportation plan that focuses on protecting the objects of historic and scientific interest.

Based on a preliminary comparison of the Proclamation to the existing Angeles National Forest Land Management Plan (Forest Plan), agency personnel have concluded that, generally, Forest Plan direction is consistent with the management direction provided in the Proclamation for the Monument. However, some changes are necessary. Preliminary needs for changes to the Forest Plan to ensure consistency with the Proclamation include:

1. *Transportation:* The Proclamation requires the development of a transportation plan for the Monument that focuses on protecting those objects of historic and scientific interest identified by the President.

2. *Land Use Zones:* Some land use zones identified in the Forest Plan need to be updated to reflect new wilderness designations and other relevant and overlapping designations such as the Pacific Crest Trail, San Dimas, etc., that have taken place since the Forest Plan was adopted.

3. *Minerals/Mining:* Forest Plan direction needs revision to reflect the mineral withdrawal of lands within the Monument as directed by the Proclamation. Existing claims will still be honored.

4. *Recreation:* Forest Plan direction may need to be revised to ensure that recreation settings, opportunities, and access are managed to meet public expectations while minimizing resource concerns associated with high public use and limited facilities. The Monument Management Plan and associated Forest Plan direction should provide a framework for making ecologically, economically, and socially sustainable recreation management decisions.

Proposed Action

The Angeles National Forest proposes to change some existing management direction in the Forest Plan and to capture those changes in the San Gabriel Mountains National Monument Management Plan. The Forest Plan may be amended in the following areas to ensure appropriate management of the Monument, consistent with the Proclamation: (1) Forest Plan Part 1—Goal 4.1, related to Energy and Minerals Production; (2) Forest Plan Part 2—Land Use Zones (as amended), related to Wilderness Areas and suitable uses allowed within land use zones; (3) Forest Plan Part 2—Appendix B—Strategies, related to Minerals management and Off Highway Vehicle Use Opportunities; and (4) Forest Plan Part 3—Appendix D—Standard S34, related to the framework for regulation of recreational uses.

All other aspects of the Forest Plan in Part 1 (Vision, including goals), Part 2 (Strategy including objectives, suitable uses within land use zones, and 'places'), and Part 3 (Design Criteria, including standards) would not change as part of this proposal and would be carried forward as written into the San Gabriel Mountains National Monument Management Plan.

At the end of the process, there would be a single document that would serve as a standalone San Gabriel Mountains National Monument Management Plan, even though it would be adopted as an amendment to the Forest Plan. Any existing direction from the Forest Plan that applies to and is brought forward for the Monument will be repeated in the Management Plan, so that a single document provides all management direction for the Monument. The Management Plan will apply to all National Forest Systems lands within the monument including the small portion of the Monument that is on San Bernardino National Forest System lands (1 percent), which would also be guided by the direction provided by the Management Plan.

Responsible Official

The Angeles National Forest Supervisor will issue the decision.

Nature of Decision To Be Made

This decision will amend the Angeles Forest Plan, and in doing so, create the San Gabriel Mountains National Monument Management Plan. The decision would only apply to National Forest System lands within the Monument. Those National Forest System lands outside the Monument will continue to be managed according to current direction in the Angeles Forest Plan.

Scoping Process

This notice of intent initiates the scoping process, which guides the development of the environmental assessment. The Angeles National Forest encourages public review of this preliminary purpose and need for action and preliminary proposal. Public meetings will be held to answer questions about the preliminary Need to Change analysis, provide additional information, and gather comments and concerns. Public meetings will be held at the following locations and during the following times (Pacific time):

- June 22, 4–8 p.m., Pacific Community Center, 501 S. Pacific Ave., Glendale, CA
- June 23, 4–8 p.m., Palmdale Legacy Commons Senior Center, 930 East Avenue Q9, Palmdale, CA
- June 24, 4–8 p.m., Glendora Public Library, 140 S Glendora Ave;, Glendora, CA
- June 25, 3–7 p.m., Pico House, 424 N Main St, Los Angeles, CA
- June 26, 4–8 p.m., Big Pines Lodge, 24537 Big Pines Highway, Wrightwood, CA

While public input is welcome through the planning process, two additional formal opportunities for public comment will occur when the draft environmental assessment is released for a 45-day comment period (anticipated spring 2016) and when the final environmental assessment and draft decision notice are released for a 45-day objection period (anticipated summer 2016).

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental assessment. Therefore, comments should be provided before the close of the comment period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted

anonymously will be accepted and considered.

The San Gabriel Mountains National Monument Management Plan will be developed pursuant to the requirements of the National Forest Management Act of 1976 (NFMA) and the U.S. Forest Service Planning Rule. This project is an action to amend a Forest Plan, and as such, is subject to pre-decisional administrative review, pursuant to Subpart B of the Planning Rule (36 CFR part 219).

Dated: June 5, 2015.

Daniel Lovato,

Acting Forest Supervisor.

[FR Doc. 2015–14412 Filed 6–11–15; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

National Institute of Food and Agriculture

Notice of Intent To Revise a Currently Approved Information Collection

AGENCY: National Institute of Food and Agriculture, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the National Institute of Food and Agriculture's (NIFA) intention to revise a currently approved information collection entitled, ''Research, Education, and Extension project online reporting tool (REEport).''

DATES: Written comments on this notice must be received by August 17, 2015, to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments may be submitted by any of the following methods: Email: *rmartin@nifa.usda.gov;* Fax: 202–720–0857; Mail: Office of Information Technology (OIT), NIFA, USDA, STOP 2216, 1400 Independence Avenue SW., Washington, DC 20250–2216.

FOR FURTHER INFORMATION CONTACT: Robert Martin, Records Officer; email: *rmartin@nifa.usda.gov.*

SUPPLEMENTARY INFORMATION:

Title: Reporting Requirements for Research, Education, and Extension project online reporting tool (REEport).

OMB Number: 0524–0048.

Expiration Date of Current Approval: January 31, 2018.

Type of Request: Revision of a currently approved information collection.

Abstract: The United States Department of Agriculture (USDA), NIFA administers several competitive, peer-reviewed research, education, and extension programs, under which awards of a high-priority are made. These programs are authorized pursuant to the authorities contained in the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. 3101 *et seq.*); Competitive, special, and facilities research grants (7 U.S.C. 450i) and other legislative authorities. NIFA also administers several formula funded research programs. The programs are authorized pursuant to the authorities contained in the McIntire-Stennis Cooperative Forestry Research Act of October 10, 1962 (16 U.S.C. 582a–1–582a–7); the Hatch Act of 1887, as amended (7 U.S.C. 4361a–361i); Section 1445 of Public Law 95–113, the Food and Agriculture Act of 1977, as amended (7 U.S.C. 3222); and Section 1433 of Subtitle E (Sections 1429–1439), Title XIV of Public Law 95–113, as amended (7 U.S.C. 3191–3201).

The purpose of this revision is to collect two new pieces of information as part of REEport: (1) Demographic data on grant participants, and (2) additional lines on the REEport Financial Report for ''Non-Federal Funds'' used on projects funded by NIFA.

Demographic Data: NIFA proposes to collect the following data as approved in the Research Performance Progress Report (RPPR). NIFA is being asked by other Federal Government entities for information regarding the demographics of grantee participants in research, higher education, and extension, including Project Directors, Co-Project Directors, Students, etc. Demographic data (*i.e.,* gender, ethnicity, race, and disability status) should be provided directly by significant contributors, with the understanding that submission of such data is voluntary. There are no adverse consequences if the data are not provided. Confidentiality of demographic data will be in accordance with agency's policy and practices for complying with the requirements of the Privacy Act.

Gender

- Male;
- Female;
- Do not wish to provide

Ethnicity

- Hispanic or Latino;
- Not-Hispanic or not-Latino;
- Do not wish to provide

Race (Select One or More)

- American Indian or Alaska Native;
- Asian;
- Black or African American;
- Native Hawaiian or other Pacific Islander;
- White;
- Do not wish to provide

Disability Status

- Yes (check yes if any of the following apply to you)
  - Deaf or serious difficulty hearing
  - Blind or serious difficulty seeing even when wearing glasses
  - Serious difficulty walking or climbing stairs
  - Other serious disability related to a physical, mental, or emotional condition

No

- Do not wish to provide

Addition to the ''Non-Federal Funds'' Section of the REEport Financial Report: NIFA proposes to collect the following data as part of the REEport Financial Report:

Other Non-Federal Funds

- Foundation Funding
- International Funding

I. Demographic Data

Estimate of the Burden: The total reporting and record keeping requirements for the submission of the ''Demographic Data on Grant Project Participants'' is estimated to average 0.1 hour per response. This estimate is based on a percentage of 5 percent of the burden for a full Progress Report as previously approved by the Office of Management and Budget.

Estimated Number of Responses: 8700.

Estimated Burden per Response: 0.1 hours.

Estimated Total Annual Burden on Respondents: 870 hours.

Frequency of Responses: Annually.

II. Addition of Data to ''Non-Federal Funds'' Section of the REEport Financial Report

Estimate of the Burden: The total reporting and record keeping requirements for the submission of the ''Non-Federal Funds'' data on the REEport Financial Report is estimated to average 0.1 hour per response. This estimate is based on a percentage 5 percent of the burden for a full Financial Report as previously approved by the Office of Management and Budget.

Estimated Number of Responses: 8700.

Estimated Burden per Response: 0.1 hours.

Estimated Total Annual Burden on Respondents: 870 hours.

Frequency of Responses: Annually.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) 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. Comments should be sent to the address stated in the preamble.

All responses to this notice will be summarized and included in the request for OMB approval. All comments also will become a matter of public record.

Done at Washington, DC, this 5 day of June 2015.

Ann Bartuska,

Deputy Under Secretary, Research, Education, and Economics.

[FR Doc. 2015–14416 Filed 6–11–15; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–39–2015]

Foreign-Trade Zone (FTZ) 64—Jacksonville, Florida; Notification of Proposed Production Activity; Saft America Inc. (Lithium-Ion Batteries); Jacksonville, Florida

The Jacksonville Port Authority, grantee of FTZ 64, submitted a notification of proposed production activity to the FTZ Board on behalf of Saft America Inc. (Saft), located in Jacksonville, Florida. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on June 1, 2015.

The Saft facility is located within Site 10 of FTZ 64. The facility is used for the warehousing, production and distribution of lithium-ion batteries. Pursuant to 15 CFR 400.14(b), FTZ activity would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt Saft from customs duty payments on the foreign status components used in export production. On its domestic sales, Saft would be able to choose the duty rates during customs entry procedures that apply to: Lithium-ion batteries; lithium-ion batteries for vehicles; lithium-ion battery covers and jelly rolls; battery terminals; and, battery components (duty rate 3.4%) for the foreign status inputs noted below. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The components and materials sourced from abroad include: Natural graphite powder; lithium nickel cobalt; plastic casing; PVC sleeves; stand wire cables for batteries; wire fitted parts; aluminum can stocks; aluminum cans; storage battery modules; lithium-ion batteries and internal components; connecting cables; board panels; electrical circuits; copper cables; ocean-ready containers; and, battery test systems (duty rate ranges from duty-free to 5.8%).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 22, 2015.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the Board's Web site, which is accessible via *www.trade.gov/ftz.*

For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: June 9, 2015.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2015–14453 Filed 6–11–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 1978]

Approval of Expansion of Subzone 72B, Eli Lilly and Company, Plainfield, Indiana

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, the Foreign-Trade Zones Act provides for ''. . . the establishment . . . of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes,'' and authorizes the Foreign-Trade Zones Board to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs and Border Protection ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of subzones for specific uses;

Whereas, the Indianapolis Airport Authority, grantee of Foreign-Trade Zone 72, has made application to the Board for the expansion of Subzone 72B on behalf of Eli Lilly and Company to include a site located in Plainfield, Indiana (FTZ Docket B–8–2015, docketed 2–13–2015);

Whereas, notice inviting public comment has been given in the **Federal Register** (80 FR 9434, 2–23–2015) and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board adopts the findings and recommendations of the examiner's memorandum, and finds that the requirements of the FTZ Act and the Board's regulations are satisfied;

Now, therefore, the Board hereby approves the application to expand Subzone 72B to include a site located in Plainfield, Indiana, as described in the application and **Federal Register** notice, subject to the FTZ Act and the Board's regulations, including Section 400.13.

Signed at Washington, DC, this 3rd day of June 2015.

Ronald K. Lorentzen,

Acting Assistant Secretary of Commerce for Enforcement and Compliance, Alternate Chairman, Foreign-Trade Zones Board.

ATTEST:

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–14455 Filed 6–11–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–38–2015]

Foreign-Trade Zone 8—Toledo, Ohio; Application for Reorganization (Expansion of Service Area) Under Alternative Site Framework

An application has been submitted to the Foreign-Trade Zones (FTZ) Board by the Toledo-Lucas County Port Authority, grantee of Foreign-Trade Zone 8, requesting authority to reorganize the zone to expand its service area under the alternative site framework (ASF) adopted by the FTZ Board (15 CFR Sec. 400.2(c)). The ASF is an option for grantees for the establishment or reorganization of zones and can permit significantly greater

flexibility in the designation of new subzones or ''usage-driven'' FTZ sites for operators/users located within a grantee's ''service area'' in the context of the FTZ Board's standard 2,000-acre activation limit for a zone. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the FTZ Board (15 CFR part 400). It was formally docketed on June 9, 2015.

FTZ 8 was approved by the FTZ Board on October 11, 1960 (Board Order 51, 25 FR 9909, 10/15/1960) and reorganized under the ASF on December 20, 2012 (Board Order 1875, 78 FR 1197, 1/8/2013). The zone currently has a service area that includes Sandusky, Henry, Wood, Lucas and Defiance Counties, Ohio.

The applicant is now requesting authority to expand the service area of the zone to include Erie, Fulton, Ottawa, Paulding and Williams Counties, as described in the application. If approved, the grantee would be able to serve sites throughout the expanded service area based on companies' needs for FTZ designation. The proposed expanded service area is adjacent to the Toledo Customs and Border Protection Port of Entry.

In accordance with the FTZ Board's regulations, Elizabeth Whiteman of the FTZ Staff is designated examiner to evaluate and analyze the facts and information presented in the application and case record and to report findings and recommendations to the FTZ Board.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is August 11, 2015. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 26, 2015.

A copy of the application will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Elizabeth Whiteman at *Elizabeth.Whiteman@trade.gov* or (202) 482–0473.

Dated: June 9, 2015.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2015–14454 Filed 6–11–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–818]

Certain Pasta From Italy: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review

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

SUMMARY: In response to a request from P.A.P. S.R.L. (PAP SRL), a producer/exporter of certain pasta from Italy, and pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act), 19 CFR 351.216 and 351.22l(c)(3)(ii), the Department of Commerce (the Department) is initiating a changed circumstances review (CCR) of the antidumping duty (AD) order on certain pasta from Italy with regard to PAP SRL. Based on the information received, we preliminarily determine that PAP SRL is the successor-in-interest to P.A.P. SNC Di Pazienza G. B. & C (PAP SNC) for purposes of determining AD liability. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date:* June 12, 2015.

FOR FURTHER INFORMATION CONTACT: Cindy Robinson, 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) 482–3797.

SUPPLEMENTARY INFORMATION:

Background

On July 24, 1996, the Department published in the **Federal Register** the AD duty order on certain pasta from Italy.[1] On April 22, 2015, PAP SRL requested that the Department conduct a CCR under section 751(b)(1) of the Act and 19 CFR 351.216 (b) to determine that it is the successor-in-interest to PAP SNC,[2] and assign it the cash deposit rate of its predecessor, PAP SNC. PAP SRL based its request on the claim that it operates as the same business entity as PAP SNC.[3]

We received no comments from interested parties.

Scope of the Order

Imports covered by the order are shipments of certain non-egg dry pasta. The merchandise subject to review is currently classifiable under items 1901.90.90.95 and 1902.19.20 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to the order is dispositive.[4]

Initiation and Issuance of Preliminary Results of Changed Circumstances Review

Pursuant to section 751(b)(1) of the Act and 19 CFR 351.216(d), the Department will conduct a CCR upon receipt of a request from an interested party or receipt of information concerning an AD order which shows changed circumstances sufficient to warrant a review of the order.

As noted above in the ''Background'' section, we received information indicating that in January 2015, PAP SNC's legal form was changed from a *Società in nome collettivo,* or SNC, which is a form of partnership, to a *Società a responsabilità limitata,* or SRL, which is a form of limited-liability corporation. The Department determines that the information submitted by PAP SRL constitutes sufficient evidence to warrant a CCR of this order.[5] Therefore, in accordance with section 751(b)(1) of the Act and 19 CFR 351.216(d), we are initiating a CCR based upon the information contained in PAP SRL's submission.[6]

19 CFR 351.221(c)(3)(ii) permits the Department to combine the notice of initiation of a CCR and the notice of preliminary results if the Department concludes that expedited action is warranted. In this instance, because we have the information necessary on the record to make a preliminary finding, we find that expedited action is warranted, and are combining the notice of initiation and the notice of preliminary results in accordance with 19 CFR 351.221(c)(3)(ii).[7]

[1] *See Notice of Antidumping Duty Order and Amended Final Determination of Sales at Less Than Fair Value: Certain Pasta From Italy,* 61 FR 38547 (July 24, 1996) (*Pasta Italy Order*).

[2] *See* PAP SRL's request for Changed-Circumstances Review dated April 22, 2015 (CCR Request).

[3] *Id.,* at 2–4.

[4] For a full description of the scope of the order, *see* the memorandum titled ''Initiation and Preliminary Results of Changed Circumstances Review: Certain Pasta from Italy'' from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, dated concurrently with this notice (Preliminary Decision Memorandum).

[5] *See* 19 CFR 351.216(d).

[6] *See, generally,* CCR Request.

[7] *See, e.g., Polyethylene Terephthalate Film, Sheet, and Strip From the Republic of Korea: Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review,* 76 FR 27005 (May 10, 2011) (*PET Film from Korea*); *Ball Bearings and Parts Thereof from Japan: Initiation and Preliminary Results of Changed-Circumstances Review,* 71 FR 14679 (March 23, 2006); *Fresh and*

Methodology

In making a successor-in-interest determination, the Department examines several factors, including but not limited to, changes in: (1) Management; (2) production facilities; (3) supplier relationships; and (4) customer base.[8] While no single factor or combination of these factors will necessarily provide a dispositive indication of a successor-in-interest relationship, the Department will generally consider the new company to be the successor to the previous company if the new company's resulting operation is essentially similar to that of its predecessor.[9] Thus, if the evidence demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the former predecessor company, the Department will afford the new company the same AD treatment as its predecessor, *i.e.,* will assign the new company the same cash deposit rate of its predecessor.[10]

For a full description of the methodology underlying our conclusions, *see* Preliminary Decision Memorandum.[11] 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, 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/.* The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Preliminary Results of the Changed Circumstances Review

Based on the evidence reviewed, we preliminarily determine that PAP SRL is the successor-in-interest to PAP SNC. Specifically, we find that the change of the company's legal form from SNC to SRL resulted in no significant changes to management, production facilities, supplier relationships, and customers with respect to the production and sale of the subject merchandise. Thus, PAP SRL operates essentially as the same business entity as PAP SNC with respect to the subject merchandise.

If the Department adopts these preliminary results in the final results, PAP SRL will be assigned the AD cash deposit rate currently assigned to PAP SNC with respect to the subject merchandise (*i.e.,* zero percent *ad valorem*),[12] we will instruct Customs and Border Protection (CBP) to suspend liquidation of entries of certain pasta from Italy made by PAP SRL, effective on the publication date of the final results, at the cash deposit rate that is currently assigned to PAP SNC.[13]

Public Comment

Interested parties may submit case briefs and/or written comments not later than 30 days after the date of publication of this notice.[14] Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the deadline for filing case briefs.[15] Parties who submit case or rebuttal briefs 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. All comments are to be filed electronically using ACCESS, and must also be served on interested parties.[16] An electronically filed document must be received successfully in its entirety by ACCESS by 5:00 p.m. Eastern Standard Time on the day it is due.[17]

Interested parties that 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, filed electronically *via* ACCESS, within 30 days after the date of publication of this notice.[18] Requests should contain the party's name, address, and telephone number, the number of participants, and 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, we will inform parties of the scheduled date for the hearing which will be held at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and location to be determined.[19] Parties should confirm by telephone the date, time, and location of the hearing.

Consistent with 19 CFR 351.216(e), we will issue the final results of this CCR no later than 270 days after the date on which this review was initiated, or within 45 days if all parties agree to our preliminary finding.

We are issuing and publishing this finding and notice in accordance with sections 751(b)(l) and 777(i)(l) of the Act and 19 CFR 351.216 and 351.221(c)(3)(ii).

Dated: June 5, 2015.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Decision Memorandum for Initiation and Preliminary Results of Changed Circumstances Review: Certain Pasta From Italy

I. Summary
II. Background
III. Scope of the Order
IV. Initiation and Preliminary Results of Changed Circumstances Review
V. Discussion of Methodology
VI. Analysis
  A. Management
  B. Production Facilities
  C. Supplier Relationship
  D. Customer Base

[FR Doc. 2015–14450 Filed 6–11–15; 8:45 am]

BILLING CODE 3510–DS–P

Chilled Atlantic Salmon from Norway; Initiation and Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review, 63 FR 50880 (September 23, 1998).

[8] *See, e.g., Pressure Sensitive Plastic Tape from Italy: Preliminary Results of Antidumping Duty Changed Circumstances Review,* 75 FR 8925 (February 26, 2010), unchanged in *Pressure Sensitive Plastic Tape From Italy: Final Results of Antidumping Duty Changed Circumstances Review,* 75 FR 27706 (May 18, 2010); *Brake Rotors From the People's Republic of China: Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 70 FR 69941 (November 18, 2005), citing *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992); and *Structural Steel Beams from Korea: Preliminary Results of Changed Circumstances Antidumping Duty Administrative Review,* 66 FR 15834 (March 21, 2001).

[9] *See, e.g., PET Film from Korea,* 76 FR at 27006; *Industrial Phosphoric Acid from Israel: Final Results of Antidumping Duty Changed Circumstances Review,* 59 FR 6944, 6945 (February 14, 1994); *Brass Sheet and Strip from Canada: Final Results of Antidumping Duty Administrative Review,* 57 FR 20460 (May 13, 1992) at Comments 1 and 2; and *Certain Lined Paper Products From India: Notice of Final Results of Antidumping Duty Changed Circumstances Review,* 80 FR 183873 (April 6, 2015).

[10] *See Fresh and Chilled Atlantic Salmon From Norway; Final Results of Changed Circumstances Antidumping Duty Administrative Review,* 64 FR 9979, 9980 (March 1, 1999).

[11] *See* Preliminary Decision Memorandum.

[12] *See Notice of Implementation of Determination Under Section 129 of the Uruguay Round Agreements Act: Stainless Steel Plate in Coils from Belgium, Steel Concrete Reinforcing Bars from Latvia, Purified Carboxymethylcellulose from Finland, Certain Pasta from Italy, Purified Carboxymethylcellulose from the Netherlands, Stainless Steel Wire Rod from Spain, Granular Polytetrafluoroethylene Resin from Italy, and Stainless Steel Sheet and Strip in Coils from Japan,* 77 FR 36257 (June 18, 2012).

[13] *See Certain Lined Paper Products from India: Final Results of Antidumping Duty Administrative Review; 2010–2011,* 78 FR 22232 (April 15, 2013).

[14] *See* 19 CFR 351.309(c)(2).

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

[16] *See* 19 CFR 351.303(b) and (f).

[17] *See* 19 CFR 351.303(b).

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

[19] *See* 19 CFR 351.310.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–838]

Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2012–2013

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

SUMMARY: On December 9, 2014, the Department of Commerce (the Department) published in the **Federal Register** the *Preliminary Results* of the 2012–2013 administrative review of the antidumping duty order on seamless refined copper tube and pipe from Mexico.[1] This review covers two producers/exporters of the subject merchandise, GD Affiliates S. de R.L. de C.V. (Golden Dragon)[2] and Nacional de Cobre, S.A. de C.V. (Nacobre). We gave interested parties an opportunity to comment on the *Preliminary Results* and, based upon our analysis of the comments received, we continue to find that sales of subject merchandise have been made at prices below normal value.

DATES: *Effective date:* June 12, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth Eastwood or Dennis McClure, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3874 or (202) 482–5973, respectively.

SUPPLEMENTARY INFORMATION:

Background

On December 9, 2014, the Department published in the **Federal Register** the *Preliminary Results* of the 2012–2013 administrative review of the antidumping duty order on seamless refined copper pipe and tube from Mexico. We invited parties to comment on the *Preliminary Results.*

From December 15 through 19, 2014, we conducted a verification of the cost data reported by Golden Dragon.

On January 29, 2015, we received case briefs from Golden Dragon, Nacobre[3], and the petitioners.

On March 23, 2015, we postponed the final results by 60 days, until June 8, 2015.[4]

Scope of the Order

The merchandise subject to the order[5] is seamless refined copper pipe and tube. The product is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheadings 7407.10.1500, 7419.99.5050, 8415.90.8065, and 8415.90.8085. Although the HTSUS numbers are provided for convenience and customs purposes, the written product description, available in the Issues and Decision Memorandum,[6] remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by Golden Dragon and the petitioners are listed in the Appendix to this notice and addressed in the Issues and Decision Memorandum. Parties can find a complete discussion of these issues and the corresponding recommendations in this public memorandum, which 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 Issues and 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 Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html.* The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on the comments received from interested parties regarding our *Preliminary Results,* we revised our preliminary margin calculations for Golden Dragon. These changes are listed in the Issues and Decision Memorandum. We made no changes to the calculation of Nacobre's weighted-average dumping margin in these final results.

Period of Review

The period of review (POR) is November 1, 2012, through October 31, 2013.

Final Results of the Review

Producer/exporter	Weighted-average dumping margin (percent)
GD Affiliates S. de R.L. de C.V	0.00
Nacional de Cobre, S.A. de C.V	0.00

Disclosure

We intend to disclose the calculations performed for Golden Dragon within five days of the date of publication of this notice to parties in this proceeding in accordance with 19 CFR 351.224(b). Because the Nacobre calculations did not change, there is nothing to disclose.

Assessment Rates

The Department shall determine, and CBP shall assess, antidumping duties on all appropriate entries.

Pursuant to the *Final Modification for Reviews,*[7] because the weighted-average dumping margins for Golden Dragon and Nacobre are zero, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[8]

The Department intends to issue assessment instructions to CBP 41 days after the date of publication of these

[1] *See Seamless Refined Copper Pipe and Tube From Mexico: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013,* 79 FR 73028 (December 9, 2014), and accompanying Preliminary Decision Memorandum (*Preliminary Results*).

[2] The Department has previously treated GD Affiliates S. de R.L. de C.V. as part of a single entity including: (1) GD Copper Cooperatief U.A.; (2) Hong Kong GD Trading Co. Ltd.; (3) Golden Dragon Holding (Hong Kong) International, Ltd.; (4) GD Copper U.S.A. Inc.; (5) GD Affiliates Servicios S. de R.L. de C.V.; and (6) GD Affiliates S. de R.L. de C.V., which is collectively referred to as Golden Dragon. *See, e.g., Seamless Refined Copper Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review; 2011–2012,* 79 FR 36719 (June 30, 2014), and accompanying Issues and Decision Memorandum.

[3] Nacobre withdrew its case brief on February 3, 2015.

[4] *See* memorandum to Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, from Dennis McClure, Senior Analyst, Office II, Antidumping and Countervailing Duty Operations, entitled ''Seamless Refined Copper Pipe and Tube from Mexico: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2012–2013,'' dated March 24, 2015.

[5] *See Seamless Refined Copper Pipe and Tube From Mexico and the People's Republic of China: Antidumping Duty Orders and Amended Final Determination of Sales at Less Than Fair Value From Mexico,* 75 FR 71070 (November 22, 2010) (*Amended Final and Order*).

[6] *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Seamless Refined Copper Pipe and Tube from Mexico; 2012–2013,'' issued concurrently with and hereby adopted by this notice (Issues and Decision Memorandum).

[7] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification for Reviews*).

[8] *Id.* at 8102.

final results of review, pursuant to 19 CFR 356.8(a).

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of the notice of these final results for all shipments of seamless refined copper pipe and tube from Mexico entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(2) of the Act: (1) The cash deposit rates for Golden Dragon and Nacobre will be equal to the weighted-average dumping margins established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a completed prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment for the manufacturer of the merchandise; (4) the cash deposit rate for all other manufacturers or exporters will continue to be 26.03 percent, the all-others rate established in the *Amended Final and Order.* These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

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

Administrative Protective Order

In accordance with 19 CFR 351.305(a)(3), 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, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act and 19 CFR 351.213(h).

Dated: June 5, 2015.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

Summary
Background
Margin Calculations
Scope of the Order
Discussion of the Issues
  Comment 1: Date of Sale for Consignment Sales
  Comment 2: Imputed Credit Expense for Consignment Sales
  Comment 3: Reporting of Costs Related to Global Operations
  Comment 4: Use of Updated Cost Database
Recommendation

[FR Doc. 2015–14451 Filed 6–11–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

NIST Cloud Computing Forum & Workshop

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice.

SUMMARY: The National Institute of Standards and Technology (NIST) 8th NIST Cloud Computing Forum and Workshop will be held in Gaithersburg, Maryland on Tuesday, July 7, Wednesday, July 8, Thursday, July 9, and Friday July 10, 2015. The format is a four-day forum that emphasizes the participation and progress made by standard development organizations, researchers and the community of cloud computing experts. The Forum and Workshop will bring together leaders and innovators from industry, academia and government in an interactive format that combines keynote presentations, panel discussions, and breakout sessions. The forum and workshop are open to the general public. NIST invites presentations from interested speakers at this event as described in the **SUPPLEMENTARY INFORMATION** section below.

In addition, NIST invites organizations to participate as exhibitors as described in the **SUPPLEMENTARY INFORMATION** section below.

DATES: The 8th Forum and Workshop will be held 9:00 a.m.–5:00 p.m. Eastern Time (ET) on Tuesday, July 7, 9:00 a.m.-5:00 p.m. ET on Wednesday, July 8, 9:00 a.m.–5:00 p.m. ET on Thursday, July 9, and 9:00 a.m.–5:00 p.m. ET on Friday, July 10, 2015.

ADDRESSES: The event will be held at the National Institute of Standards and Technology, 100 Bureau Drive, Gaithersburg, MD 20899 in the Red Auditorium of the Administration Building (Building 101). Please note admittance instructions in the **SUPPLEMENTARY INFORMATION** section below.

FOR FURTHER INFORMATION CONTACT: Robert Bohn by email at *robert.bohn@nist.gov* or by phone at (301) 975–4731.

SUPPLEMENTARY INFORMATION: NIST hosted seven prior Cloud Computing Forum and Workshop events in May 2010, November 2010, April 2011, November 2011, June 2012, January 2013 and March 2014. This year's meeting will focus on the progress the cloud community has made on the 10 requirements provided in the USG Cloud Computing Technology Roadmap (NIST Special Publication 500–293). The NIST Cloud Computing Program (NCCP) published the final version of the Roadmap in October 2014.

Each of the 10 requirements described in the Roadmap comes with a set of Priority Action Plans (PAPs) that are self-tasking for the cloud computing community. Therefore, the NCCP is sponsoring a call for papers that address the Requirements and PAPs found in the Roadmap and welcomes relevant submissions for a talk approximately 15–20 minutes long. Authors of accepted abstracts will be invited to present their work. Additional information may be found at: *http://www.nist.gov/itl/cloud/ccfwviii.cfm.*

There will be a single-day parallel meeting on Thursday, July 9 on Cloud Forensics, which will focus on the issues enumerated in the NIST Cloud Computing Forensic Science Challenges (NIST IR 8006, draft). There will also be sessions dedicated to deployments of cloud computing in the government sector (Federal, State, Local) and on Cloud Computing Standards.

The series of workshops was originally organized in response to the request of the U.S. Chief Information Officer that NIST lead federal efforts on standards for data portability, cloud

interoperability, and security.[1] The workshops' goals are to engage with industry, academia, and standards development organizations to accelerate the development of cloud standards for interoperability, portability, and security; discuss the Federal Government's experience with cloud computing; report on the status of the NIST Cloud Computing efforts; report progress on the NIST-led initiative to collaboratively develop a U.S. Government (USG) Cloud Computing Technology Roadmap among multiple federal and industrial stakeholders; and to advance the dialogue among all of these stakeholders.

NIST invites members of the public and other community stakeholders to participate in this event as a presenter or an exhibitor. To participate as a presenter, one will need to submit a completed ''Abstract Submission'' form to *ForumSubmit@nist.gov.* Instructions for completing and submitting an abstract are available at: *http://www.nist.gov/itl/cloud/abssubinst.cfm.*

On Tuesday, July 7, Wednesday, July 8, Thursday July 9, and Friday July 10, 2015, space will be available for 25 academic, industry, and standards development organizations to exhibit their respective Cloud Computing work at an exhibit table. The first 25 organizations requesting an exhibit table related to Cloud Computing will be accepted. Interested organizations should contact Tara Brown, email: *tara.brown@nist.gov* or (301) 975–4178. Requests for an exhibit table will be granted on a first-come, first-serve basis. Responses must be submitted by an authorized representative of the organization. Logistics information will be provided to accepted exhibitors. NIST will provide the exhibit location space and one work-table, free of charge. Exhibitors are responsible for the cost of the exhibit, including staffing and materials. NIST reserves the right to exercise its judgment in the placement of exhibits. General building security is supplied; however, exhibitors are responsible for transporting and securing exhibit equipment and materials. NIST is not liable with regard to damage or loss of equipment used in the exhibit booth/table.

The official event Web site is with hotel information is: *http://nist.gov/itl/cloud/cloud_computing_wkshp_viii.cfm.* The workshop is open to the general public; however, those wishing to attend must register through *https://www-s.nist.gov/CRS/conf_disclosure.cfm?conf_id=8354* by 5:00 p.m. ET on Tuesday, June 23, 2015. All visitors to the NIST site are required to pre-register to be admitted and must have appropriate government-issued photo ID to gain entry to NIST.

Richard Cavanagh,

Acting Associate Director for Laboratory Programs.

[FR Doc. 2015–14316 Filed 6–11–15; 8:45 am]

BILLING CODE 3510–13–P

[1] Office of Management and Budget, U.S. Chief Information Officer, *Federal Cloud Computing Strategy,* Feb. 8, 2011. Online: *https://cio.gov/wp-content/uploads/downloads/2012/09/Federal-Cloud-Computing-Strategy.pdf.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD131

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Construction of the Block Island Transmission System

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

ACTION: Notice; issuance of revised incidental harassment authorization.

SUMMARY: In accordance with regulations implementing the Marine Mammal Protection Act (MMPA), notification is hereby given that NMFS has issued a revised Incidental Harassment Authorization (IHA) to The Narragansett Electric Company, doing business as National Grid (TNEC), to take marine mammals, by harassment, incidental to construction of the Block Island Transmission System (BITS).

DATES: Effective November 1, 2014, through October 31, 2015.

ADDRESSES: A copy of the revised IHA is available by writing to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, MD 20910.

An electronic copy of the revised IHA may be obtained by visiting the internet at: *http://www.nmfs.noaa.gov/pr/permits/incidental/.*

FOR FURTHER INFORMATION CONTACT: John Fiorentino, Office of Protected Resources, NMFS, (301) 427–8477.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

An authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses (where relevant), and if the permissible methods of taking and requirements pertaining to the mitigation, monitoring and reporting of such takings are set forth.

Summary of Request

On August 22, 2014, NMFS issued an IHA to Deepwater Wind Block Island Transmission, LLC (DWBIT) to take marine mammals, by Level B harassment, incidental to construction of the BITS, effective from November 1, 2014 through October 31, 2015 (79 FR 51314). On January 30, 2015, DWBIT sold the BITS, in its entirety, to TNEC. The BITS, a bi-directional submarine transmission cable, will interconnect Block Island to TNEC's existing distribution system in Narragansett, Rhode Island. To date, no construction has occurred.

DWBIT and TNEC subsequently submitted a written request to transfer the current IHA from DWBIT to TNEC. With the transfer of the BITS IHA, TNEC agrees to comply with the associated terms, conditions, stipulations, and restrictions of the original BITS IHA. No other changes were requested. The revised IHA remains effective from November 1, 2014, through October 31, 2015.

This **Federal Register** notice sets forth only a change in the BITS IHA holder's name. There are no other changes to the current IHA as described in the August 28, 2014, **Federal Register** notice of a final IHA (79 FR 51314): the specified activity; description of marine mammals in the area of the specified activity; potential effects on marine mammals and their habitat; mitigation and related monitoring used to implement mitigation; reporting; estimated take by incidental harassment; negligible impact and small numbers analyses and determinations; impact on availability of affected species or stocks for subsistence uses and the period of effectiveness remain unchanged and are herein incorporated by reference.

Revision to BITS IHA

NMFS is changing the name of the holder of the BITS IHA from ''Deepwater Wind Block Island Transmission, LLC, 56 Exchange Terrace, Suite 101, Providence, Rhode Island, 02903'' to ''The Narragansett Electric Company, d/b/a National Grid, 40 Sylvan Road, Waltham, Massachusetts, 02451.''

Comments and Responses

NMFS published a notice of the proposed revised IHA and request for public comments in the **Federal Register** on April 13, 2015 (80 FR 19639). In a letter dated April 30, 2015, the Marine Mammal Commission concurred with the proposed transfer of the BITS IHA. NMFS did not receive any other comments during the 30-day public comment period.

Dated: June 8, 2015.

Donna S. Weiting,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–14310 Filed 6–11–15; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to and Deletions from the Procurement List.

SUMMARY: The Committee is proposing to add products and service to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes services previously furnished by such agencies.

Comments Must be Received on Or Before: 7/13/2015.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

For Further Information or to Submit Comments Contact: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

If the Committee approves the proposed additions, the entities of the Federal Government identified in this notice will be required to procure the products and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

The following products and service are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

PRODUCTS:

NSN(s)—Product Name(s):
- 5120–01–240–2120—Combination Tool, Fire Fighter's
- 5120–01–296–3592—Tool Handle, Replacement, Fire Line Combination Tool
- 5120–00–293–3467—Pulaski Tool, Fire Fighter's
- 5110–01–137–7507—Handle, Pulaski Tool, With Wedge

Mandatory Purchase For:
Total Government Requirement
Mandatory Source of Supply:
Mississippi Industries for the Blind, Meridian, MS
Contracting Activity:
Defense Logistics Agency Troop Support, Philadelphia, PA
Distribution:
B-List

NSN(s)—Product Name(s):
- 8940–00–NIB–0108—Fish Oil, 1000mg, 100 Capsules
- 8940–00–NIB–0109—Cyanocobalamin (B–12), 1000mcg, 100 Tablets
- 8940–00–NIB–0110—Cholecalciferol (D–3), 2000 IU, 100 Pills
- 8940–00–NIB–0111—Magnesium Oxide, 420mg, 100 Tablets
- 8940–00–NIB–0112—Omega-3 Fish Oil, 500mg, 45 Softgel Tablets
- 8940–00–NIB–0113—Omega-3 Fish Oil, 1000mg, 60 Softgel Tablets
- 8940–00–NIB–0114—Dual Spectrum Krill/Fish Oil-Omega-3, 120 Pills
- 8940–00–NIB–0115—Omega 3–6–9, 120 Pills
- 8940–00–NIB–0116—Krill Oil, 300mg, 60 Pills
- 8940–00–NIB–0118—Co-Q–10, 200mg, 100 Pills
- 8940–00–NIB–0119—Glucosamine Chondroitin, Triple Strength, 120 Pills

Mandatory Purchase For:
100% of the requirements of the Department of Defense
Mandatory Source of Supply:
Alphapointe Association for the Blind
Contracting Activity:
Defense Logistics Agency Troop Support—Subsistence, Philadelphia, PA
Distribution:
C-List

NSN(s)—Product Name(s):
- 8455–00–NIB–0003—Badge Reel, ID, Retractable, Bulldog Clip, Black
- 8455–00–NIB–0050—Flight Line Lanyard, Cord Style, Breakaway, with Holder, Black, 36'' × .25''
- 8455–00–NIB–0051—Holder, Badge, Vinyl, Re-Sealable, Clear, 3–3/4'' × 2–5/8''

Mandatory Purchase For:
Total Government Requirement
Mandatory Source of Supply:
West Texas Lighthouse for the Blind, San Angelo, TX
Contracting Activity:
General Services Administration, Fort Worth, TX
Distribution:
A-List

NSN(s)—Product Name(s):
- 5130–00–NIB–0075—3/8 Drive Shallow Standard, SAE 6 Point Fasteners, 12 Pieces
- 5130–00–NIB–0076—3/8 Drive Deep Standard, SAE 6 Point Fasteners, 12 Pieces
- 5130–00–NIB–0077—1/2 Drive Shallow Standard, SAE 6 Point Fasteners, 11 Pieces
- 5130–00–NIB–0078— 1/2 Drive Deep Standard, SAE 6 Point Fasteners, 13 Pieces
- 5130–00–NIB–0079—3/8 Drive Shallow Metric, 6 Point Fasteners, 14 Pieces
- 5130–00–NIB–0080—3/8 Drive Deep Metric, 6 Point Fasteners, 14 Pieces
- 5130–00–NIB–0081—1/2 Drive Shallow Metric, 6 Point Fasteners, 15 Pieces
- 5130–00–NIB–0082—1/2 Drive Deep Metric, 6 Point Fasteners, 15 Pieces

Mandatory Purchase For:
Total Government Requirement
Mandatory Source of Supply:
Beyond Vision, Inc., Milwaukee, WI
Contracting Activity:
General Services Administration, Kansas City, MO
Distribution:
B-List

NSN(s)—Product Name(s):
- 8340–00–NIB–0019—20'×25' polyethylene 8×8 tarp with grommets
- 8340–00–NIB–0020—20'×25' polyethylene 10×10 tarp with grommets

Mandatory Purchase For:
100% of the requirements of the Department of Defense
Mandatory Source of Supply:
Association for Vision Rehabilitation and Employment, Inc., Binghamton, NY
Contracting Activity:
Defense Logistics Agency Troop Support—Construction & Equipment, Philadelphia, PA
Distribution:
C-List

NSN(s)—Product Name(s):
- 4240–00–NIB–0237—5' Illuminating Grip Wrap
- 4240–00–NIB–0238—10' Illuminating Grip Wrap
- 4240–00–NIB–0239—SCBA ID Tags
- 4240–00–NIB–0240—One-Sided Exit Sign, Silver Frame, Post Mount
- 4240–00–NIB–0241—Two-Sided Exit Sign, Silver Frame, Post Mount
- 4240–00–NIB–0242—One-Sided Exit Sign, Silver Frame, Wall Mount
- 4240–00–NIB–0243—One-Sided Exit Sign, No Frame, No Mount
- 4240–00–NIB–0244—25' Illuminating Tape
- 4240–00–NIB–0245—50' Illuminating Tape
- 4240–00–NIB–0246—25' Illuminating Tape with Arrows

4240–00–NIB–0247—50' Illuminating Tape with Arrows
4240–00–NIB–0248—Illuminating Helmet Band
Mandatory Purchase For:
100% of the requirements of the Department of Defense
Mandatory Source of Supply:
Cincinnati Association for the Blind and Visually Impaired, Cincinnati, OH
Contracting Activity:
Defense Logistics Agency Troop Support—Construction & Equipment, Philadelphia, PA
Distribution:
C-List
NSN(s)—Product Name(s):
5340–00–NIB–0152—Door Closer, Architectural Commercial Grade
5340–00–NIB–0134—Lockset, Cylindrical, Passage/Closet Function, Philadelphia-style Lever
5340–00–NIB–0239—Lockset, Cylindrical, Exit Function, Philadelphia-style Lever
5340–00–NIB–0240—Lockset, Cylindrical, Exit Function, Boston-style Lever
5340–00–NIB–0254—Lockset, Cylindrical, Passage/Closet Function, Boston-style Lever
5340–00–NIB–0136—Lockset, Cylindrical, Privacy Function, Philadelphia-style Lever
5340–00–NIB–0255—Lockset, Cylindrical, Privacy Function, Boston-style Lever
5340–00–NIB–0154—Door Closer, Architectural Commercial Grade with Hold Open Function
5340–00–NIB–0132—Lockset, Cylindrical, Storeroom Function, Philadelphia-style Lever, Small Format Interchangeable Core
5340–00–NIB–0133—Lockset, Cylindrical, Office/Entrance Function, Philadelphia-style Lever, Small Format Interchangeable Core
5340–00–NIB–0250—Lockset, Cylindrical, Entrance Function, Boston-style Lever, Small Format Interchangeable Core
5340–00–NIB–0252—Lockset, Cylindrical, Storeroom Function, Boston-style Lever, Small Format Interchangeable Core
5340–00–NIB–0256—Lockset, Cylindrical, Entry Function, Philadelphia-style Lever, Small Format Interchangeable Core
5340–00–NIB–0257—Lockset, Cylindrical, Entry Function, Boston-style Lever, Small Format Interchangeable Core
5340–00–NIB–0251—Lockset, Cylindrical, Entrance Function, Philadelphia-style Lever, Large Format Interchangeable Core
5340–00–NIB–0253—Lockset, Cylindrical, Storeroom Function, Philadelphia-style Lever, Large Format Interchangeable Core
5340–00–NIB–0258—Lockset, Cylindrical, Entrance Function, Philadelphia-style Lever, Large Format Interchangeable Core
5340–00–NIB–0293—Door Closer, Architectural Commercial Grade with Door Saver Arm, Aluminum
5340–00–NIB–0294—Door Closer, Architectural Commercial Grade with Door Saver Arm, Cast Iron
5340–00–NIB–0247—Lockset, Cylindrical, Dormitory/Corridor Function, Philadelphia-style Lever, Small Format Interchangeable Core
5340–00–NIB–0248—Lockset, Cylindrical, Dormitory/Corridor Function, Boston-style Lever, Small Format Interchangeable Core
5340–00–NIB–0249—Lockset, Cylindrical, Dormitory/Corridor Function, Philadelphia-style Lever, Large Format Interchangeable Core
5340–00–NIB–0135—Lockset, Cylindrical, Vestibule/Classroom Function, Philadelphia-style Lever, Small Format Interchangeable Core
5340–00–NIB–0237—Lockset, Cylindrical, Storeroom Function, Boston-style Lever, Small Format Interchangeable Core
5340–00–NIB–0241—Lockset, Cylindrical, Institutional Function, Philadelphia-style Lever, Small Format Interchangeable Core
5340–00–NIB–0242—Lockset, Cylindrical, Institutional Function, Boston-style Lever, Small Format Interchangeable Core
5340–00–NIB–0244—Lockset, Cylindrical, Communication Function, Philadelphia-style Lever, Large Format Interchangeable Core
5340–00–NIB–0245—Lockset, Cylindrical, Communication Function, Boston-style Lever, Small Format Interchangeable Core
5340–00–NIB–0259—Lockset, Cylindrical, Vestibule/Classroom/Security function, Philadelphia-style Lever, Small Format Interchangeable Core
5340–00–NIB–0236—Lockset, Cylindrical, Store Room Function, Philadelphia-style Lever, Small Format Interchangeable Core
5340–00–NIB–0238—Lockset, Cylindrical, Storeroom Function, Philadelphia-style Lever, Large Format Interchangeable Core
5340–00–NIB–0243—Lockset, Cylindrical, Institutional Function, Philadelphia-style Lever, Large Format Interchangeable Core
5340–00–NIB–0246—Lockset, Cylindrical, Communication Function, Philadelphia style lever, Large Format Interchangeable Core
5340–00–NIB–0260—Lockset, Cylindrical, Vestibule/Classroom/Security function, Boston-style Lever, Large Format Interchangeable Core
5340–00–NIB–0153—Door Closer, Heavy Duty Institutional Grade
5340–00–NIB–0299—Door Closer, Heavy Duty Institutional Grade, Delayed Action
5340–00–NIB–0139—Lockset, Mortise, Passage Function, Escutcheon Trim, Philadelphia-style Lever
5340–00–NIB–0282—Lockset, Mortise, Passage Function, Escutcheon Trim, Ball Knob
5340–00–NIB–0283—Lockset, Mortise, Passage Function, Escutcheon Trim, Dallas-style Lever
5340–00–NIB–0295—Door Closer, Architectural Commercial Grade with Spring Cushion Stop
5340–00–NIB–0141—Lockset, Mortise, Privacy Function, Escutcheon Trim, Philadelphia-style Lever
5340–00–NIB–0291—Lockset, Mortise, Privacy Function, Escutcheon Trim, Ball Knob
5340–00–NIB–0292—Lockset, Mortise, Privacy Function, Escutcheon Trim, Dallas-style Lever
5340–00–NIB–0261—Lockset, Cylindrical, Classroom Security LED Function, Philadelphia-style Lever, Small Format Interchangeable Core
5340–00–NIB–0262—Lockset, Cylindrical, Classroom Security LED function, Boston-style Lever, Small Format Interchangeable Core
5340–00–NIB–0298—Door Closer, Heavy Duty Institutional Grade with Spring Cushion Stop
5340–00–NIB–0155—Door Closer, Heavy Duty Institutional Grade with Hold Open Function
5340–00–NIB–0296—Door Closer, Heavy Duty Institutional Grade with Door Saver Arm
5340–00–NIB–0297—Door Closer, Heavy Duty Institutional Grade with Door Saver, Hold Open Arm
5340–00–NIB–0137—Lockset, Mortise, Storeroom Function, Escutcheon Trim, Philadelphia-style Lever
5340–00–NIB–0138—Lockset, Mortise, Office Function, Escutcheon Trim, Philadelphia-style Lever
5340–00–NIB–0263—Lockset, Mortise, Classroom Holdback Function, Escutcheon Trim, Philadelphia-style Lever
5340–00–NIB–0264—Lockset, Mortise, Holdback Function, Escutcheon Trim, Ball Knob
5340–00–NIB–0265—Lockset, Mortise, Classroom Holdback Function, Escutcheon Trim, Dallas-style Lever
5340–00–NIB–0278—Lockset, Mortise, Storeroom Function, Escutcheon Trim, Ball Knob
5340–00–NIB–0279—Lockset, Mortise, Storeroom Function, Escutcheon Trim, Dallas-style Lever
5340–00–NIB–0280—Lockset, Mortise, Office Function, Ball Knob
5340–00–NIB–0281—Lockset, Mortise, Office Function, Escutcheon Trim, Dallas-style Lever
5340–00–NIB–0140—Mortise Lockset, Corridor Function, Escutcheon Trim, Philadelphia-style Lever
5340–00–NIB–0266—Lockset, Mortise, Front Door/Corridor Function, Escutcheon Trim, Philadelphia-style Lever
5340–00–NIB–0267—Lockset, Mortise, Front Door/Corridor Function, Escutcheon Trim, Ball Knob
5340–00–NIB–0268—Lockset, Mortise, Front Door/Corridor Function, Escutcheon trim, Dallas-style Lever
5340–00–NIB–0275—Lockset, Mortise, Entrance/Storeroom Function, Escutcheon trim, Philadelphia-style Lever
5340–00–NIB–0276—Lockset, Mortise, Entrance/Storeroom Function, Escutcheon Trim, Ball Knob
5340–00–NIB–0277—Lockset, Mortise, Entrance/Storeroom Function, Escutcheon Trim, Dallas-style Lever

5340–00–NIB–0284—Lockset, Mortise, Corridor Function, Escutcheon Trim, Ball Knob, Dallas-style Lever
5340–00–NIB–0285—Lockset, Mortise, Corridor Function, Escutcheon Trim
5340–00–NIB–0286—Lockset, Mortise, Entrance function, Escutcheon Trim, Philadelphia-style Lever
5340–00–NIB–0287—Lockset, Mortise, Entrance function, Escutcheon Trim, Ball Knob
5340–00–NIB–0288—Lockset, Mortise, Entrance Function, Escutcheon Trim, Dallas-style Lever
5340–00–NIB–0289—Lockset, Mortise, Dormitory/Exit Function, Escutcheon Trim, Ball Knob
5340–00–NIB–0290—Lockset, Mortise, Dormitory/Exit Function, Escutcheon Trim, Dallas-style Lever
5340–00–NIB–0301—Lockset, Mortise, Dormitory/Exit Function, Escutcheon Trim, Philadelphia-style Lever
5340–00–NIB–0300—Door Closer, Heavy Duty Institutional Grade with Door Arm Saver, Delayed Action
5340–00–NIB–0269—Lockset, Mortise, Store Door Function, Escutcheon Trim, Philadelphia-style Lever
5340–00–NIB–0270—Lockset, Mortise, Store Door Function, Escutcheon Trim, Ball Knob
5340–00–NIB–0271—Lockset, Mortise, Store Door Function, Escutcheon Trim, Dallas-style Lever
5340–00–NIB–0272—Lockset, Mortise, Dormitory Function, Escutcheon Trim, Philadelphia-style Lever
5340–00–NIB–0273—Lockset, Mortise, Dormitory Function, Escutcheon Trim, Ball Knob
5340–00–NIB–0274—Lockset, Mortise, Dormitory Function, Escutcheon Trim, Dallas-style Lever
5340–00–NIB–0142—Electronic Push Button Lockset, Philadelphia-style Lever, Small Format Interchangeable Core
5340–00–NIB–0143—Electronic Push Button Lockset, Philadelphia-style Lever, Large Format Interchangeable Core
5340–00–NIB–0144—Exit Device, Rim, Panic Listed, 3' Door
5340–00–NIB–0148—Exit Device, Rim, Panic Listed, 4' Door
5340–00–NIB–0145—Exit Device, Rim, Fire Listed, 3' Door
5340–00–NIB–0149—Exit Device, Rim, Fire Listed, 4' Door
5340–00–NIB–0146—Exit Device, Surface Vertical Rod, Panic Listed, 3' Door
5340–00–NIB–0147—Exit Device, Surface Vertical Rod, Fire Listed
5340–01–NIB–0150—Exit Device, Surface Vertical Rod, Panic Listed, 4' Door
5340–01–NIB–0151—Exit Device, Surface Vertical Rod, Fire Listed, 4' Door
Mandatory Purchase For:
100% of the requirements of the Department of Defense
Mandatory Source of Supply:
VisionCorps, Lancaster, PA
Contracting Activity:
Defense Logistics Agency Troop Support—Industrial Hardware, Philadelphia, PA
Distribution:
C-List
NSN(s)—Product Name(s):
7240–00–NIB–0006—Kit, Cleaning, Bucket and Caddy
Mandatory Purchase For:
Total Government Requirement
Mandatory Source of Supply:
Industries for the Blind, Inc., West Allis, WI
Contracting Activity:
General Services Administration, Fort Worth, TX
Distribution:
B-List
NSN(s)—Product Name(s):
1005–00–NIB–0016—Guard, Gun Barrel, Black, One Size Fits All
Mandatory Purchase For:
100% of the requirement of the Department of Defense
Mandatory Source of Supply:
The Lighthouse for the Blind in New Orleans, Inc., New Orleans, LA
Contracting Activity:
Defense Logistics Agency Land and Maritime, Columbus, OH
Distribution:
C-List
NSN(s)—Product Name(s):
7510–00–272–9805—Envelope, Transparent, Large, 10″ × 13″, BX/100
7510–00–NIB–9955—Envelope, Transparent, Large, 10″ × 13″, BX/25
Mandatory Purchase For:
Total Government Requirement
Mandatory Source of Supply:
Georgia Industries for the Blind, Bainbridge, GA
Contracting Activity:
General Services Administration, New York, NY
Distribution:
A-List
NSN(s)—Product Name(s):
6650–00–NIB–0009—Complete Eyeglasses (frames and lenses). Clear plastic single vision eyewear frames and lenses. CR–39 lens material, single vision, plastic lens type. UOI is EA.
6650–00–NIB–0010—Complete Eyeglasses (frames and lenses). Clear plastic flat top 28 bifocal eyewear frames and lenses. CR–39 lens material, flat top 28, bifocal, clear lens type. UOI is EA.
6650–00–NIB–0011—35 bifocal eyewear frames and lenses. CR–39 lens material, flat top 35, bifocal, clear lens type. UOI is EA.
6650–00–NIB–0012—Complete Eyeglasses (frames and lenses). Clear plastic round 25 and round 28, eyewear frames and lenses. CR–39 lens material, round 25 and 28, clear lens type. UOI is EA.
6650–00–NIB–0013—Complete Eyeglasses (frames and lenses). Clear plastic flat top 7 × 28 eyewear frames and lenses. CR–39 lens material, flat top 7 × 28 clear lens type. UOI is EA.
6650–00–NIB–0014—Complete Eyeglasses (frames and lenses). Clear plastic flat top 8 × 35 eyewear frames and lenses. CR–39 lens material, flat top 8 × 35 clear lens type. UOI is EA.
6650–00–NIB–0015—Complete Eyeglasses (frames and lenses). Clear plastic progressives (VIP, Adaptar, Freedom, Image) eyewear frames and lenses. CR–39 lens material, progressives, clear lens type. UOI is EA.
6650–00–NIB–0016—Complete Eyeglasses (frames and lenses). Clear plastic lenticular aspheric single vision eyewear frames and lenses. CR–39 lens material, single vision aspheric lenticular lens material. UOI is EA.
6650–00–NIB–0017—Complete Eyeglasses (frames and lenses). Clear plastic flat top or round aspheric lenticular eyewear frames and lenses. CR–39 lens material, flat top or round aspheric lenticular lens type. UOI is EA.
6650–00–NIB–0018—Complete Eyeglasses (frames and lenses). Clear plastic executive bifocal eyewear frames and lenses. CR–39 lens material, executive bifocal clear lens type. UOI is EA.
6650–00–NIB–0019—Complete Eyeglasses (frames and lenses). Clear glass single vision eyewear frames and lenses. Glass lens material, single vision clear lens type. UOI is EA.
6650–00–NIB–0020—Complete Eyeglasses (frames and lenses). Clear glass flat top bifocal eyewear frames and lenses. Glass lens material, flat top 28 bifocal clear lens type. UOI is EA.
6650–00–NIB–0021—Complete Eyeglasses (frames and lenses). Clear glass flat top 35 bifocal eyewear frames and lenses. Glass lens material, flat top 35 bifocal clear lens type. UOI is EA.
6650–00–NIB–0022—Complete Eyeglasses (frames and lenses). Clear glass flat top 7 × 28 trifocal eyewear frames and lenses. Glass lens material, flat top 7 × 28 trifocal clear lens type. UOI is EA.
6650–00–NIB–0023—Complete Eyeglasses (frames and lenses). Clear glass flat top 8 × 35 trifocal eyewear frames and lenses. Glass lens material, flat top 8 × 35 trifocal clear lens type. UOI is EA.
6650–00–NIB–0024—Complete Eyeglasses (frames and lenses). Clear glass progressives (VIP, Adaptar, Freedom) eyewear frames and lenses. Glass lens material, progressive clear lens type. UOI is EA.
6650–00–NIB–0026—Complete Eyeglasses (frames and lenses). Clear single vision polycarbonate eyewear frames and lenses. Polycarbonate lens material, single vision clear lens type. UOI is EA.
6650–00–NIB–0027—Complete Eyeglasses (frames and lenses). Clear flat top 28 bifocal polycarbonate eyewear frames and lenses. Polycarbonate lens material, flat top 28 clear lens type. UOI is EA.
6650–00–NIB–0028—Complete Eyeglasses (frames and lenses). Clear flat top 35 polycarbonate eyewear frames and lenses. Polycarbonate lens material, flat top 35 clear lens type. UOI is EA.
6650–00–NIB–0029—Complete Eyeglasses (frames and lenses). Clear flat top 7 × 28 polycarbonate eyewear frames and lenses. Polycarbonate lens material, flat top 7 × 28 clear lens type. UOI is EA.
6650–00–NIB–0030—Complete Eyeglasses (frames and lenses). Clear flat top 8 × 35 polycarbonate eyewear frames and lenses. Polycarbonate lens material, flat top 8 × 35 clear lens type. UOI is EA.
6650–00–NIB–0031—Complete Eyeglasses (frames and lenses) Progressives (VIP,

Adaptar, Freedom, Image) polycarbonate eyewear frames and lenses. Polycarbonate lens material, progressives, clear lens type. UOI is EA.
6650–00–NIB–0032—Lenses only, 1 pair of clear plastic single vision clear eyewear lenses. CR–39 lens material, single vision plastic clear lens type. UOI is EA.
6650–00–NIB–0033—Lenses only, 1 pair of clear plastic flat top 28 bifocal clear eyewear lenses. CR–39 lens material, flat top 28 bifocal clear lens type. UOI is EA.
6650–00–NIB–0034—Lenses only, 1 pair of clear plastic flat top 35 bifocal clear lenses. CR–39 lens material, flat top 35 bifocal clear lens type. UOI is EA.
6650–00–NIB–0035—Lenses only, 1 pair of clear plastic round 25 and round 28 clear lenses. CR–39 lens material, Round 25 and 28 clear lens type. UOI is EA.
6650–00–NIB–0036—Lenses only, 1 pair of clear plastic flat top 7 × 28 trifocal clear lenses. CR–39 lens material, flat top 7 × 28 clear lens type. UOI is EA.
6650–00–NIB–0037—Lenses only, 1 pair of clear plastic flat top 8 × 35 trifocal clear lenses. CR–39 lens material, flat top 8 × 35 clear lens type. UOI is EA.
6650–00–NIB–0038—Lenses only, 1 pair of clear plastic progressives (VIP, Adaptar, Freedom, Image) lenses. CR–39 lens material, progressive, clear lens type. UOI is EA.
6650–00–NIB–0039—Lenses only, 1 pair of clear plastic single vision aspheric lenticular lenses. CR–39 lens material, single vision aspheric lenticular lens type. UOI is EA.
6650–00–NIB–0040—Lenses only, 1 pair of clear plastic flat top or round aspheric lenticular lenses. CR–39 lens material, flat top or round aspheric lenticular lens type. UOI is EA.
6650–00–NIB–0041—Lenses only, 1 pair of clear plastic executive bifocal lenses. CR–39 lens material, executive bi-focal clear lens type. UOI is EA.
6650–00–NIB–0042—Lenses only, 1 pair of clear glass single vision lenses. Glass lens material, single vision clear lens type. UOI is EA.
6650–00–NIB–0043—Lenses only, 1 pair of clear glass bifocal flat top 28 lenses. Glass lens material, Flat Top 28, bifocal, clear lens type. UOI is EA.
6650–00–NIB–0044—Lenses only, 1 pair of clear glass bifocal flat top 35 eyewear lenses. Glass lens material, Flat Top 35, bifocal, clear lens type. UOI is EA.
6650–00–NIB–0045—Lenses only, 1 pair of clear glass trifocal flat top 7 × 28 lenses. Glass lens material, Flat Top 7 × 28, trifocal, clear lens type. UOI is EA.
6650–00–NIB–0046—Lenses only, 1 pair of clear glass trifocal flat top 8 × 35 lenses. Glass lens material, Flat Top 8 × 35, trifocal, clear lens type. UOI is EA.
6650–00–NIB–0047—Lenses only, 1 pair of clear glass progressives (VIP, Adaptar, Freedom) lenses. Glass lens material, progressive, clear lens type. UOI is EA.
6650–00–NIB–0049—Lenses only, 1 pair of clear polycarbonate single vision lenses. Polycarbonate lens material, single vision lens type. UOI is EA.
6650–00–NIB–0050—Lenses only, 1 pair of clear polycarbonate flat top 28 eyewear lenses. Polycarbonate lens material, flat top 28 clear lens type. UOI is EA.
6650–00–NIB–0051—Lenses only, 1 pair of clear polycarbonate bifocal flat top 35 lenses. Polycarbonate lens material, flat top 35 clear lens type. UOI is EA.
6650–00–NIB–0052—Lenses only, 1 pair of clear polycarbonate trifocal flat top 7 × 28 lenses. Polycarbonate lens material, flat top 7 × 28, clear lens type. UOI is EA.
6650–00–NIB–0053—Lenses only, 1 pair of clear polycarbonate trifocal flat top 8 × 35 lenses. Polycarbonate lens material, flat top 8 × 35, clear lens type. UOI is EA.
6650–00–NIB–0054—Lenses only, 1 pair of polycarbonate progressives (VIP, Adaptar, Freedom, Image) lenses. Polycarbonate lens material, progressives, clear lens type. UOI is EA.
6650–00–NIB–0055—Plastic transition tints and coating. CR–39 or polycarbonate lens material; Single vision or multi-focal lens type. UOI is EA.
6650–00–NIB–0056—Photochromatic/transition (Polycarbonate material) tints and coating. Polycarbonate lens material; Single vision or multifocal lens type. UOI is EA.
6650–00–NIB–0057—Photogrey tints and coating. Glass lens material. Single vision or multi-focal lens type. UOI is EA.
6650–00–NIB–0058—High index transition tints and coating. CR–39 lens material. Single vision or multi-focal lens type. UOI is EA.
6650–00–NIB–0059—Anti-reflective coating. CR–39 or polycarbonate lens material; Single vision or multi-focal lens type. UOI is EA.
6650–00–NIB–0060—Ultraviolet coating. CR–39 lens material; Single vision or multifocal lens type. UOI is EA.
6650–00–NIB–0061—CR–39 lens material. (single vision) tints and coating for polarized lenses. Single vision or multi-focal lens type. UOI is EA.
6650–00–NIB–0062—Lens add-on. CR–39 or polycarbonate lens material. Single vision or multi-focal lens type. UOI is EA.
6650–00–NIB–0063—Lens add-on. High index lens material. Single vision or multifocal lens type. UOI is EA.
6650–00–NIB–0064—Lens add-on. Prism (up to 6 diopters no charge) >6 diopters/per diopter. CR–39 or polycarb lens material. UOI is EA.
6650–00–NIB–0065—Lens add-on. Diopter + or − 9.0 and above. CR–39 lens material. UOI is EA.
6650–00–NIB–0066—Lens add-on. Oversize eye lenses greater than 58 excluding progressive. Roll and polish edge; CR–39 lens material and polycarbonate lens type. UOI is EA.
6650–00–NIB–0067—Lens add-on. Hyper 3 drop single vision. CR–39 lens material; Multi-focal lens type. UOI is EA.
6650–00–NIB–0068—Lens add-on. Add powers over 4.0. CR–39 lens material; Multifocal lens type. UOI is EA.
6650–00–NIB–0069—Metal or plastic eyeglass frame without the lenses. Frame only. UOI is EA.

Mandatory Purchase For:
100% of the requirement of the Department of Veteran's Affairs
Mandatory Source of Supply:
Winston-Salem Industries for the Blind, Inc., Winston-Salem, NC
Contracting Activity:
Department of Veterans Affairs, 248-Network Contract Office 8, Tampa, FL
Distribution:
C-List

SERVICE:

Service Type:
Laundry Service
Service Mandatory For:
US Army, Asymmetric Warfare Training Center Lee Drive Fort A.P. Hill, VA
Mandatory Source of Supply:
Rappahannock Goodwill Industries, Inc., Fredericksburg, VA
Contracting Activity:
Dept of the Army, W6QK ACC–APG DIR, Aberdeen Proving Ground, MD

Deletions

The following services are proposed for deletion from the Procurement List:

SERVICES:

Service Type:
Janitorial/Custodial & Grounds Maintenance Service
Service Mandatory For:
Naval & Marine Corps Reserve Center 261 Industrial Park Drive, Ebensburg, PA
Mandatory Source of Supply:
Unknown
Contracting Activity:
Dept of the Navy, Naval Facilities Engineering CMD MID LANT, Norfolk, VA

Service Type:
Janitorial/Custodial Service
Service Mandatory For:
OCIE Warehouse, Latrobe, PA
Mandatory Source of Supply:
Rehabilitation Center and Workshop, Inc., Greensburg, PA
Contracting Activity:
Dept of the Army, W6QM MICC Ctr-Ft Dix (RC), Fort Dix, NJ

Service Type:
Repair of Adding Machines Service
Service Mandatory For:
Unknown
Mandatory Source of Supply:
Federation Employment and Guidance Service, Inc., New York, NY
Contracting Activity:
General Services Administration, FPDS Agency Coordinator, Washington, DC

Service Type:
Janitorial/Custodial Service
Service Mandatory For:
Bureau of Land Management Imperial County, CA
Mandatory Source of Supply:
ACHIEVE Human Services. Inc., Yuma, AZ
Contracting Activity:
Office of Policy, Management, and Budget, NBC Acquisition Services Division, Washington, DC

Service Type:

Medical Transcription Service
Service Mandatory For:
355th Medical Supply-F5HOSP, 4175 South Alamo, Bldg 400, Davis-Monthan AFB, AZ
Mandatory Source of Supply:
National Telecommuting Institute, Inc., Boston, MA
Contracting Activity:
Dept of the Air Force, FA7014 AFDW PK, Andrews AFB, MD

Service Type:
Mailroom Operation Service
Service Mandatory For:
14th U.S. Coast Guard District, 300 Ala Moana Boulevard, Honolulu, HI
Mandatory Source of Supply:
Goodwill Contract Services of Hawaii, Inc., Honolulu, HI
Contracting Activity:
U.S. Coast Guard, SILC BSS, Norfolk, VA

Service Type:
Car Wash Service
Service Mandatory For:
Customs and Border Protection, Indio Border Station, 83–801 Vin Deo Circle, Indio, CA
Mandatory Source of Supply:
Sheltering Wings Corp., Blythe, CA
Contracting Activity:
U.S. Customs and Border Protection, Procurement Directorate, Washington, DC

Service Type:
Administrative Service
Service Mandatory For:
GSA, Tucson PBS: Tucson Field Office, 300 W. Congress, Tucson, AZ
Mandatory Source of Supply:
J.P. Industries, Inc., Tucson, AZ
Contracting Activity:
General Services Administration, FPDS Agency Coordinator, Washington, DC

Service Type:
Mailroom Operation Service
Service Mandatory For:
U.S. Army Corps of Engineers: Los Angeles District, Los Angeles, CA
Mandatory Source of Supply:
Elwyn, Inc., Aston, PA
Contracting Activity:
Office of Asst Secretary For Health Except National Centers, Mid-America CASU in Kansas City, Kansas City, MO

Service Type:
Recycling Service
Service Mandatory For:
Davis-Monthan Air Force Base, AZ
Mandatory Source of Supply:
Beacon Group SW., Inc., Tucson, AZ
Contracting Activity:
Department of Veterans Affairs, NAC, Hines, IL

Service Type:
Mailroom Operation Service
Service Mandatory For:
Customs and Border Protection Laguna Niguel Facilities, 24000 Avila Road. Laguna Niguel, CA
Mandatory Source of Supply:
Landmark Services, Inc., Santa Ana, CA
Contracting Activity:
Bureau of Customs and Border Protection, National Acquisition Center, Indianapolis, IN

Service Type:
Janitorial/Grounds and Related Service
Service Mandatory For:
Clearfield Federal Depot: Buildings C–6, C–7, D–5 and 2, Clearfield, UT
Mandatory Source of Supply:
Pioneer Adult Rehabilitation Center Davis County School District, Clearfield, UT
Contracting Activity:
General Services Administration, FPDS Agency Coordinator, Washington, DC

Service Type:
Janitorial/Custodial Service
Service Mandatory For:
VA Greater Los Angeles Regional Healthcare System, Consolidated Mail Outpatient Pharmacy, 11301 Wilshire Boulevard, Building 222, Los Angeles, CA
Mandatory Source of Supply:
Job Options, Inc., San Diego, CA
Contracting Activity:
Department of Veterans Affairs, NAC, Hines, IL

Service Type:
Warehousing Operations Service
Service Mandatory For:
O'Brien Warehouse, U.S. Geological Survey, Menlo Park Science Center, 1020 O'Brien Drive, Menlo Park, CA
Mandatory Source of Supply:
Hope Services, San Jose, CA
Contracting Activity:
Geological Survey, Office of Acquisition and Grants—Sacramento, CA

Service Type:
Janitorial/Custodial Service
Service Mandatory For:
VA Outreach Center, 9737 Haskell Avenue, Sepulveda, CA
Mandatory Source of Supply:
Job Options, Inc., San Diego, CA
Contracting Activity:
Department of Veterans Affairs, NAC, Hines, IL

Service Type:
Grounds Maintenance Service
Service Mandatory For:
National Park Service: Golden Gate National Recreation Area, Fort Mason, San Francisco, CA
Contracting Activity:
National Park Service, PWR Regional Contracting, San Francisco, CA

Barry S. Lineback,

Director, Business Operations.

[FR Doc. 2015–14441 Filed 6–11–15; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Addition and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Addition to and Deletions from the Procurement List.

SUMMARY: This action adds a service to the Procurement List that will be provided by a nonprofit agency employing persons who are blind or have other severe disabilities, and deletes products and services from the Procurement List previously furnished by such agencies.

DATES: *Effective date:* July 13, 2015.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 1401 S. Clark Street, Suite 715, Arlington, Virginia, 22202–4149.

FOR FURTHER INFORMATION CONTACT: Barry S. Lineback, Telephone: (703) 603–7740, Fax: (703) 603–0655, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Addition

On 2/27/2015 (80 FR 10668), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed addition to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agency to provide the service and impact of the addition on the current or most recent contractor, the Committee has determined that the service listed below is suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organization that will provide the service to the Government.

2. The action will result in authorizing a small entity to provide the service to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service is added to the Procurement List:

Service:

Service Type:
Mail Service
Service Mandatory For:
U.S. Air Force, Official Mail Center & Postal Service Center, 740 Arnold Avenue, Suite 1B, Whiteman AFB, MO

Mandatory Source of Supply:
Anthony Wayne Rehabilitation Center for Handicapped and Blind, Inc., Fort Wayne, IN
Contracting Activity:
Dept of the Air Force, FA4890 ACC AMIC, Newport News, VA

Deletions

On 5/1/2015 (80 FR 24905) and 5/8/2015 (80 FR 26548–26549), the Committee for Purchase From People Who Are Blind or Severely Disabled published notices of proposed deletions from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the products and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action may result in authorizing small entities to furnish the products and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the products and services deleted from the Procurement List.

End of Certification

Accordingly, the following products and services are deleted from the Procurement List:

Products:

NSN(s)—Product Name(s):
MR 584—One Step Tub & Shower Cleaner
Mandatory Source of Supply:
Winston-Salem Industries for the Blind, Inc., Winston- Salem, NC
NSN(s)—Product Name(s)
MR 917—Brush, Bowl, Hardwood
Mandatory Source of Supply:
Alabama Industries for the Blind, Talladega, AL
Contracting Activity:
Defense Commissary Agency, Fort Lee, VA

NSN(s)—Product Name(s):
7530–00–988–6517—Card, File Guide, 1/5 Cut, 1st/5th Positions Tabs, Letter, Light Green
7530–00–988–6520—Card, File Guide, 1/3 Cut, 1st/3rd Positions Tabs, Legal, Light Green
Mandatory Source of Supply:
Georgia Industries for the Blind, Bainbridge, GA
Contracting Activity:
General Services Administration, New York, NY

Services:

Service Type:
Grounds Maintenance Service
Service Purchase For:
Fort Ord, CA
Mandatory Source of Supply:
Unknown
Contracting Activity:
Dept of the Army, W40M Northern Region Contract Office, Fort Belvoir, VA

Service Type:
Shelf Stocking & Custodial Service
Service Purchase For:
Barbers Point Naval Air Station, Barbers Point, HI
Mandatory Source of Supply:
Trace, Inc., Boise, ID
Contracting Activity:
Defense Commissary Agency, Fort Lee, VA

Service Type:
Janitorial/Custodial Service
Service Purchase For:
U.S. Army Reserve Center #1, 295 Goucher Street, Johnstown, PA
U.S. Army Reserve Center #2, 1300 St. Clair Road, Johnstown, PA
Johnstown Aviation Support Facility, Airport Road #2, Johnstown, PA
Mandatory Source of Supply:
Goodwill Industries of the Conemaugh Valley, Johnstown, PA
Contracting Activity:
Dept of the Army, W6QM MICC Ctr-Ft Dix (RC), Fort Dix, NJ
U.S. Marine Corps Reserve Center, 218 Aviation Drive, Johnstown, PA
Contracting Activity:
Dept of the Army, W40M Northern Region Contract Ofc, Fort Belvoir, VA

Barry S. Lineback,
Director, Business Operations.

[FR Doc. 2015–14442 Filed 6–11–15; 8:45 am]
BILLING CODE 6353–01–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection Number 3038–0007, Regulation of Domestic Exchange-Traded Options

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''CFTC'' or ''Commission'') is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (''PRA''), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on rules related to risk disclosure concerning exchange-traded commodity options.

DATES: Comments must be submitted on or before August 11, 2015.

ADDRESSES: You may submit comments, identified by ''Regulation of Domestic Exchange-Traded Options,'' and Collection Number 3038–0007 by any of the following methods:

- *The Agency's Web site, via its Comments Online process: http://comments.cftc.gov.* Follow the instructions for submitting comments through the Web site.
- *Mail:* 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 through the Portal.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Commodity Futures Trading Commission, Three Lafayette Center, 1155 21st Street NW., Washington, DC 20581; Dana R. Brown, Division of Market Oversight, telephone: (202) 418–5093 and email: *dbrown@cftc.gov;* or Jacob Chachkin, Division of Swap Dealer and Intermediary Oversight, telephone: (202) 418–5496 and email: *jchachkin@cftc.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA, 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, the CFTC is publishing

notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov.* You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that 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 Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://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 Information Collection Request 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.

Title: Rules Relating to Regulation of Domestic Exchange-Traded Options, OMB Control Number 3038–0007—Extension.

Abstract: The rules require futures commission merchants and introducing brokers: (1) To provide their customers with standard risk disclosure statements concerning the risk of trading commodity interests; and (2) to retain all promotional material and the source of authority for information contained therein. The purpose of these rules is to ensure that customers are advised of the risks of trading commodity interests and to avoid fraud and misrepresentation. This information collection contains the recordkeeping and reporting requirements needed to ensure regulatory compliance with Commission rules relating to this issue.

An agency may not conduct or sponsor, and person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for the Commission's regulations were published on December 30, 1981.[2]

Burden Statement: The Commission estimates the burden of this collection of information as follows:

ESTIMATED ANNUAL REPORTING BURDEN

Regulation	Estimated number of respondents or recordkeepers per year	Reports annually by each respondent	Total annual responses	Estimated average number of hours per response	Estimated total number of hours of annual burden in fiscal year
Reporting:					
38.3, 38.4, 40.2 and 40.3 (Procedure for designation or self-certification)	13.00	2.00	26.00	25.00	650.00
33.7—(Risk disclosure)	1,401.00	115.00	161,115.00	0.08	12,889.20
Subtotal (Reporting requirements)	1,414.00		20,151.00		13,539.20
Recordkeeping:					
33.8—(Retention of promotional material)	1,401.00	1.00	1,401.00	25.00	35,025.00
Subtotal (Recordkeeping requirements)	1,401.00	1.00	1,401.00	25.00	35,025.00
Grand total (Reporting and Recordkeeping)	*2,815.00*		*21,155.20*		*48,564.2*

There are no capital costs or operating and maintenance costs associated with this collection.

Authority: 44 U.S.C. 3501 *et seq.*

Dated: June 8, 2015.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2015–14332 Filed 6–11–15; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9, 74 FR 17395 (Apr. 15, 2009).

[2] 46 FR 63035 (Dec. 30, 1981).

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities: Notice of Intent To Renew Collection

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (''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, and to allow 60 days

for public comment. This notice solicits comments on collections of information provided for by Part 40, Provisions Common To Registered Entities.

DATES: Comments must be submitted on or before August 11, 2015.

ADDRESSES: You may submit comments, identified by OMB Control No. 3038–0093 by any of the following methods:

- The Agency's Web site, at *http://comments.cftc.gov/*. Follow the instructions for submitting comments through the Web site.
- *Mail:* 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 through the Portal.

Please submit your comments using only one method.

FOR FURTHER INFORMATION CONTACT: Lois J. Gregory, Associate Director, Division of Market Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; (202) 418–5092; email: *lgregory@cftc.gov*.

SUPPLEMENTARY INFORMATION: Under the PRA, 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 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 before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

Title: Part 40, Provisions Common To Registered Entities (OMB Control No. 3038–0093). This is a request for extension of a currently approved information collection.

Abstract: This collection of information involves the collection and submission to the Commission of information from registered entities concerning new products, rules, and rule amendments pursuant to the procedures outlined in 17 CFR 40.2, 40.3, 40.5, 40.6, and 40.10.

With respect to the collection of information, the CFTC invites comments on:

- Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;
- The accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments will be posted as received to *http://www.cftc.gov*. You should submit only information that you wish to make available publicly. If you wish the Commission to consider information that 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 Commission's regulations.[1]

The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *http://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 Information Collection Request 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.

Burden Statement: Registered entities must comply with certification and approval requirements which include an explanation and analysis when seeking to implement new products, rules, and rule amendments, including changes to product terms and conditions. The Commission's regulations §§ 40.2, 40.3, 40.4, 40.5 and 40.6 provide procedures for the submission of rules and rule amendments by designated contract markets, swap execution facilities, derivatives clearing organizations, and swap data repositories. They establish the procedures for submitting the ''written certification'' required by Section 5c of the Commodity Exchange Act (''Act''). In connection with a product or rule certification, the registered entity must provide a concise explanation and analysis of the submission and its compliance with statutory provisions of the Act. Accordingly, new rules or rule amendments must be accompanied by concise explanations and analyses of the purposes, operations, and effects of the submissions. This information may be submitted as part of the same submission containing the required ''written certification.'' The Commission estimates the average burden of this collection of information as follows:

- *Rules 40.2, 40.3, 40.5, and 40.6*

Estimated Number of Respondents: 70.

Annual Responses by each Respondent: 100.

Estimated Hours per Response: 2.

Estimated Total Hours per Year: 14,000.

- *Rule 40.10*

Estimated Number of Respondents: 4.

Annual Responses by each Respondent: 2.

Estimated Hours per Response: 5.

Estimated Total Hours per Year: 40.

(**Authority:** 44 U.S.C. 3501 *et seq.*)

Dated: June 8, 2015.

Robert N. Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2015–14333 Filed 6–11–15; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Active Duty Service Determinations for Civilian or Contractual Groups

AGENCY: Office of the Secretary of the Air Force, DOD.

ACTION: Notice.

On May 22, 2015, the Secretary of the Air Force, acting as Executive Agent of the Secretary of Defense, determined that the service of the group known as: ''U.S. and Foreign Employees of Air America, Inc., who operated fixed wing or helicopter aircraft in support of U.S. Army Special Forces in Laos as part of Operation Hot Foot and Operation White Star from 1959–1963; and the U.S. and Foreign Employees of Air America, Inc., who operated fixed wing

and helicopter aircraft in direct support of the U.S. Air Force operating in Laos in the Steve Canyon Program (Ravens), SAR and direct support for the Site 85 Operation, High Altitude Relay Project (HARP), Photo Reconnaissance collaboration with 7th/13th Air Force and CIA, and with the Search And Rescue (SAR) Operations for U.S. Military flight crews from 1964 through 1974, who were necessary to support those missions and held supervisory positions'' shall not be considered ''active duty'' for purposes of all laws administered by the Department of Veterans Affairs.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce T. Brown, Executive Secretary, DoD Civilian/Military Service Review Board, 1500 West Perimeter Road, Suite 3700, Joint Base Andrews, NAF Washington, MD 20762–7002, 240–612–5364, *bruce.t.brown12.civ@mail.mil.*

Henry Williams Jr.,

Acting Air Force Federal Register Liaison Officer.

[FR Doc. 2015–14383 Filed 6–11–15; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 15–14]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 15–14 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: June 9, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

MAY 29 2015

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 15-14, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to the United Arab Emirates for defense articles and services estimated to cost $130 million. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology
4. Regional Balance (Classified Document Provided Under Separate Cover)

Transmittal No. 15–14

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* United Arab Emirates

(ii) *Total Estimated Value:*

Major Defense Equipment *	$100 million
Other	$ 30 million
Total	$130 million

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* 500 GBU–31B/B(V)1 (MK–84/BLU–117) bombs, 500 GBU–31B/B(V)3 (BLU–109) bombs, and 600 GBU–12 (MK–82/BLU–111) bombs, containers, fuzes, spare and repair parts, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor logistics and technical support services, and other related elements of logistics support.

(iv) *Military Department:* USAF (AAE)

(v) *Prior Related Cases, if any:*
FMS case SAA-$114M–24Aug00
FMS case YAB-$156M–31Aug02
FMS case YAC-$874M–4Mar08
FMS case AAC-$14M–8Jun11
FMS case AAD-$12M–30Jan15

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services*

Proposed to be Sold: See Attached Annex

(viii) *Date Report Delivered to Congress:* 29 MAY 2015

* As defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Arab Emirates (UAE)—Guided Bomb Units (GBU–31s and GBU–12s)

The Government of the United Arab Emirates has requested a possible sale of 500 GBU–31B/B(V)1 (MK–84/BLU–117) bombs, 500 GBU–31B/B(V)3 (BLU–109) bombs, and 600 GBU–12 (MK–82/BLU–111) bombs, containers, fuzes, spare and repair parts, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor logistics and technical support services, and other related elements of logistics support. The estimated cost is $130 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping a strategic partner which has been, and continues to be, an important force for political stability and economic progress in the Middle East.

The proposed sale will provide the UAE with additional precision guided munitions capability to meet the current threat represented by the Islamic State in Iraq and the Levant, and Houthi aggression in Yemen. The UAE continues to provide host-nation support of vital U.S. forces stationed at Al Dhafra Air Base and plays a vital role in supporting U.S. regional interests. The UAE has proven to be a valued partner and an active participant in coalition operations. The UAE will have no difficulty absorbing these additional munitions into its armed forces.

The proposed sale of these munitions will not alter the basic military balance in the region.

The principal contractors will be The Boeing Company in Chicago, Illinois; and Raytheon Missile Systems in Tucson, Arizona. There are no known offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require any additional U.S. Government or contractor representatives' in the UAE. However, periodic travel will be required on a temporary basis for program reviews and technical support.

There will be no adverse impact on U.S. defense readiness as a result of this sale.

Transmittal No. 15–14

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The GBU–31 (2000 lb) Joint Direct Attack Munition (JDAM) is a guidance tail kit that converts unguided free-fall bombs into accurate, GPS guided adverse weather ''smart'' munitions. With the addition of a new tail section that contains an inertial navigational system and a global positioning system guidance control unit, JDAM improves the accuracy of unguided, general-purpose bombs in any weather condition. JDAM can be launched from very low to very high altitudes in a dive, toss and loft, or in straight and level flight with an on-axis or off-axis delivery. JDAM enables multiple weapons to be directed against single or multiple targets on a single pass. The GBU–31 V1 contains the standard BLU–117, Mk-84 bomb body. The GBU–31 V3 contains the BLU–109 penetrator bomb body. The highest classification for the JDAM, its components, and technical data is Secret. Weapon accuracy is dependent on target coordinates and present position as entered into the guidance control unit. After weapon release, movable tail fins guide the weapon to the target coordinates. In addition to the tail kit, other elements in the overall system that are essential for successful employment include:

a. Access to accurate target coordinates

b. INS/GPS capability

c. Operational Test and Evaluation Plan.

2. The Guided Bomb Unit (GBU–12) is a laser-guided ballistic bomb (LGB) based on the Mk 82 500-lb general purpose bomb. The LGB is a maneuverable, free-fall weapon that guides to a spot of laser energy reflected off of the target. The LGB is delivered like a normal general purpose warhead and the semi-active guidance corrects for many of the normal errors inherent in any delivery system. Laser designation for the weapon can be provided by a variety of laser target markers or designators. The laser seeker allows the user to select a unique code for use in the multi-laser environment and reduce the probability of interference among multiple weapons. The LGB consists of a laser guidance kit, a computer control group (CCG) and a warhead specific Air Foil Group (AFG) that attach to the nose and tail of the Mk 82. The overall classification of the weapon is Confidential.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that the recipient country can provide the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

5. All defense articles and services listed in this transmittal have been authorized for release and export to the United Arab Emirates.

[FR Doc. 2015–14406 Filed 6–11–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0154; Docket 2015–0053; Sequence 4]

Submission to OMB for Review; Federal Acquisition Regulation; Construction Rate Requirements-Price Adjustment (Actual Method)

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat 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 the Construction Rate Requirements-Price Adjustment (Actual Method). A notice published in the **Federal Register** at 80 FR 11205 on March 2, 2015. No comments were received.

DATES: Submit comments on or before July 13, 2015.

ADDRESSES: Submit comments identified by Information Collection 9000–0154, Construction Rate

Requirements-Price Adjustment (Actual Method), 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 9000–0154. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0154, Construction Rate Requirements-Price Adjustment (Actual Method)''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0154, Construction Rate Requirements-Price Adjustment (Actual Method)'' on your attached document.

• *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0154, Construction Rate Requirements-Price Adjustment (Actual Method).

Instructions: Please submit comments only and cite Information Collection 9000–0154, Construction Rate Requirements-Price Adjustment (Actual Method), 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. Edward Loeb, Procurement Analyst, Federal Acquisition Policy Division, GSA, 202–501–0650, or via email *Edward.loeb@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Government contracting officers may include FAR clause 52.222–32, Construction Rate Requirements-Price Adjustment (Actual Method) in fixed-price solicitations and contracts, subject to the Construction Wage Rate Requirements statute under certain conditions. The conditions are that the solicitation or contract contains option provisions to extend the term of the contract and the contracting officer determines that the most appropriate method to adjust the contract price at option exercise is to use a computation method based on the actual increase or decrease from a new or revised Department of Labor Construction Wage Rate Requirements statute wage determination.

The clause requires that a contractor submit at the exercise of each option to extend the term of the contract, a statement of the amount claimed for incorporation of the most current wage determination by the Department of Labor, and any relevant supporting data, including payroll records, that the contracting officer may reasonably require. The information is used by Government contracting officers to establish the contract price adjustment for the construction requirements of a contract, generally if the contract requirements are predominantly services subject to the Service Contract Labor Standards.

B. Annual Reporting Burden

Respondents: 842.
Responses per Respondent: 1.
Annual Responses: 842.
Hours per Response: 40.
Total Burden Hours: 33,680.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and 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. 9000–0154, Construction Rate Requirements-Price Adjustment (Actual Method), in all correspondence.

Dated: June 8, 2015.

Edward Loeb,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2015–14438 Filed 6–11–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2014–OS–0112]

Submission for OMB Review; Comment Request

ACTION: Notice.

SUMMARY: The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act.

DATES: Consideration will be given to all comments received by July 13, 2015.

FOR FURTHER INFORMATION CONTACT: Fred Licari, 571–372–0493.

SUPPLEMENTARY INFORMATION:

Title, Associated Form and OMB Number: Department of Defense (DoD) Electronic Mall Web site (DoD EMALL); 0704–XXXX.

Type of Request: New.

Number of Respondents: 33,379.

Responses per Respondent: 1.

Annual Responses: 33,379.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 8345.

Needs and Uses: The information collection requirement is necessary to register on the Web site. Each user of the DoD EMALL Web site must complete registration information in order to receive DOD EMALL access. Only authorized personnel of Federal, State, and Local Government are able to register and log into the DoD EMALL Web site to shop, search, order, and make purchases.

Affected Public: Not-for-profit institutions; State, local, or Tribal governments.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Ms. Jasmeet Seehra.

Written comments and recommendations on the proposed information collection should be sent to Ms. Jasmeet Seehra at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503. You may also submit comments, identified by docket number and title, by the following method:

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

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

DOD Clearance Officer: Mr. Frederick Licari.

Written requests for copies of the information collection proposal should

be sent to Mr. Licari at WHS/ESD Directives Division, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Dated: June 8, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2015–14314 Filed 6–11–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0062; Docket 2015–0055; Sequence 2]

Submission to OMB for Review; Federal Acquisition Regulation; Material and Workmanship

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat 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 material and workmanship. A notice was published in the **Federal Register** at 80 FR 8650 on February 18, 2015. No comments were received.

DATES: Submit comments on or before July 13, 2015.

ADDRESSES: Submit comments identified by Information Collection 9000–0062, Material and Workmanship, 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 9000–0062. Select the link ''Comment Now'' that corresponds with ''Information Collection 9000–0062, Material and Workmanship''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 9000–0062, Material and Workmanship'' on your attached document.
- *Mail:* General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC 20405. ATTN: Ms. Flowers/IC 9000–0062, Material and Workmanship.

Instructions: Please submit comments only and cite Information Collection 9000–0062, Material and Workmanship, 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, Federal Acquisition Policy Division, GSA, telephone 202–501–1448, or via email at *curtis.glover@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

Under Federal contracts requiring that equipment (*e.g.,* pumps, fans, generators, chillers, etc.) be installed in a project, the Government must determine that the equipment meets the contract requirements. Therefore, the contractor must submit sufficient data on the particular equipment to allow the Government to analyze the item.

The Government uses the submitted data to determine whether or not the equipment meets the contract requirements in the categories of performance, construction, and durability. This data is placed in the contract file and used during the inspection of the equipment when it arrives on the project and when it is made operable.

B. Annual Reporting Burden

The information collection requirement at FAR clause 52.236–5 has increased due to the rounding up of the responses annually from 1.5 to 2.0, as you cannot have .5 of a response per year.

Respondents: 3,160.
Responses Per Respondent: 2.0.
Annual Responses: 6,320.
Hours Per Response: .25.
Total Burden Hours: 1,580.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and 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. 9000–0062, Material and Workmanship, in all correspondence.

Dated: June 8, 2015.

Edward Loeb,

Acting Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2015–14432 Filed 6–11–15; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 15–35]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. B. English, DSCA/DBO/CFM, (703) 601–3740.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 15–35 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: June 9, 2015.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DEFENSE SECURITY COOPERATION AGENCY
201 12TH STREET SOUTH, STE 203
ARLINGTON, VA 22202-5408

The Honorable John A. Boehner
Speaker of the House
U.S. House of Representatives
Washington, DC 20515

JUN 01 2015

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, we are forwarding herewith Transmittal No. 15-35, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance to the Government of Japan for defense articles and services estimated to cost $1.70 billion. After this letter is delivered to your office, we plan to issue a press statement to notify the public of this proposed sale.

Sincerely,

J. W. Rixey
Vice Admiral, USN
Director

Enclosures:
1. Transmittal
2. Policy Justification
3. Sensitivity of Technology

Transmittal No. 15–35

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act, as amended

(i) *Prospective Purchaser:* Government of Japan

(ii) *Total Estimated Value:*

Major Defense Equipment *	$ .850 billion
Other	$ .850 billion
Total	$1.700 billion

(iii) *Description and Quantity or Quantities of Articles or Services under Consideration for Purchase:* four (4) E–2D Advanced Hawkeye (AHE) Airborne Early Warning and Control (AEW&C) aircraft, ten (10) T56–A–427A engines (8 installed and 2 spares), eight (8) Multifunction Information Distribution System Low Volume Terminals (MIDS–LVT), four (4) APY–9 Radars, modifications, spare and repair parts, support equipment, publications and technical documentation, personnel training and training equipment, ferry services, aerial refueling support, U.S. Government and contractor logistics, engineering, and technical support services, and other related elements of logistics and program support.

(iv) *Military Department:* Navy (SCJ)

(v) *Prior Related Cases, if any:* None

(vi) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None

(vii) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See Attached Annex.

(viii) *Date Report Delivered to Congress:* 01 June 2015

* as defined in Section 47(6) of the Arms Export Control Act.

Policy Justification

Japan—E–2D Advanced Hawkeye Airborne Early Warning and Control Aircraft.

The Government of Japan has requested a possible sale of four (4) E–2D Advanced Hawkeye (AHE) Airborne Early Warning and Control (AEW&C) aircraft, ten (10) T56–A–427A engines (8 installed and 2 spares), eight (8) Multifunction Information Distribution System Low Volume Terminals (MIDS–LVT), four (4) APY–9 Radars, modifications, spare and repair parts, support equipment, publications and technical documentation, personnel training and training equipment, ferry services, aerial refueling support, U.S. Government and contractor logistics, engineering, and technical support services, and other related elements of logistics and program support. The estimated cost is $1.7 billion.

This proposed sale will contribute to the foreign policy and national security of the United States. Japan is one of the major political and economic powers in East Asia and the Western Pacific and a key partner of the United States in ensuring peace and stability in that region. It is vital to the U.S. national interest to assist Japan in developing and maintaining a strong and ready self-defense capability. This proposed sale is consistent with U.S. foreign policy and national security objectives and the 1960 Treaty of Mutual Cooperation and Security.

The proposed sale of E–2D AHE aircraft will improve Japan's ability to effectively provide homeland defense utilizing an AEW&C capability. Japan will use the E–2D AHE aircraft to provide AEW&C situational awareness of air and naval activity in the Pacific region and to augment its existing E–2C Hawkeye AEW&C fleet. Japan will have no difficulty absorbing these aircraft into its armed forces.

The proposed sale of these aircraft and support will not alter the basic military balance in the region.

The principal contractor will be Northrop Grumman Corporation Aerospace Systems in Melbourne, Florida. The acquisition and integration of all systems will be managed by the U.S. Navy's Naval Air Systems Command (NAVAIR). There are no known offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require any additional U.S. Government or contractor personnel in Japan. However, U.S. Government or contractor personnel in-country visits will be required on a temporary basis in conjunction with program technical and management oversight and support requirements.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 15–35

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex

Item No. vii

(vii) *Sensitivity of Technology:*

1. The E–2D Advanced Hawkeye (AHE) Airborne Early Warning and Control (AEW&C) is a state of the art aircraft. The E–2D AHE provides detection and surveillance of regional surface and aircraft platforms through the use of the APY–9 radar, APX–122A Identification Friend or Foe (IFF), and ALQ 217 Electronic Support Measures (ESM) systems. The E–2D AHE provides area surveillance and detection, air intercept control, air traffic control, search and rescue assistance, communication relay and automatic tactical data exchange. The E–2D AHE is classified Secret.

2. The APY–9 radar is a mechanically rotated, electronically scanned array, which utilizes Space Time Adaptive Processing technology to provide 360-degree detection and surveillance in high clutter environments. It is able to provide simultaneous detection and surveillance of surface and air units. The APY–9 radar is classified Secret.

3. The Multifunction Information Distribution System Low Volume Terminals (MIDS–LVT) is a command, control, communications, and intelligence (C3I) system incorporating high-capacity, jam-resistant, digital communication links for exchange of near real-time tactical information including both data and voice, among air, ground and sea elements. The MIDS–LVT incorporates the Link-16 military technical data exchange network which supports key theater functions such as surveillance, identification, air control, and direction for U.S. Services and those allied and partner nations for which there is a validated interoperability requirement. The system provides jam-resistant, wide-area communications on a Link-16 network. Link-16 provides a correlated, real-time picture of the battle space. These devices have embedded communications security (COMSEC) which contains sensitive encryption algorithms and keying material. The MIDS–LVT is classified Secret.

4. The APX–122 Interrogator and APX–123 IFF Transponder are identification systems designed for command and control. They provide the ability to distinguish friendly aircraft, vehicles, or forces, and to determine their bearing and range from the interrogator. These devices have embedded COMSEC which contains sensitive encryption algorithms and keying material. The APX–122 Interrogator and APX–123 IFF Transponder are classified Secret.

5. The ALQ–217 Electronic Support Measure system is used to detect, intercept, identify, locate, record, and/or analyze sources of radiated electromagnetic energy to support classification of unknown surface and airborne units. The ALQ–217 is classified Secret.

6. If a technologically advanced adversary obtained knowledge of the specific hardware or software in the proposed sale, the information could be used to develop countermeasures which might reduce weapons system effectiveness or be used in the development of a system with similar or advanced capabilities.

7. A determination has been made that the Government of Japan can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

8. All defense articles and services listed in this transmittal have been authorized for release and export to the Government of Japan.

[FR Doc. 2015–14414 Filed 6–11–15; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

Application for New Awards; Charter Schools Program (CSP); Grants for Replication and Expansion of High-Quality Charter Schools

AGENCY: Office of Innovation and Improvement, Department of Education.

ACTION: Notice.

Overview Information:

CSP Grants for Replication and Expansion of High-Quality Charter Schools.

Notice inviting applications for new awards for fiscal year (FY) 2015.

Catalog of Federal Domestic Assistance (CFDA) Number: 84.282M.

DATES: Applications Available: June 12, 2015.

Date of Pre-Application Meeting: June 16, 2015, 2:00 p.m. to 3:30 p.m., Washington, DC, time.

Deadline for Transmittal of Applications: July 15, 2015.

Deadline for Intergovernmental Review: September 25, 2015.

Full Text of Announcement

I. Funding Opportunity Description

Purpose of Program: The purpose of the CSP is to increase national understanding of the charter school model by expanding the number of high-quality charter schools available to students across the Nation; providing financial assistance for the planning, program design, and initial implementation of charter schools; and evaluating the effects of charter schools, including their effects on students, student academic achievement, staff, and parents.

The purpose of the CSP Grants for Replication and Expansion of High-Quality Charter Schools (Replication and Expansion) competition (CFDA 84.282M) is to award grants to eligible applicants to enable them to replicate or expand high-quality charter schools with demonstrated records of success, including success in increasing student academic achievement. Eligible applicants may use their grant funds to expand the enrollment of one or more existing charter schools by substantially increasing the number of available seats per school or to open one or more new charter schools that are based on the charter school model for which the eligible applicant has presented evidence of success.

SUPPLEMENTARY INFORMATION: The FY 2015 Replication and Expansion competition differs from the FY 2014 Replication and Expansion competition in several ways. First, for the FY 2015 competition, we are using the Low-Income Demographic priority from the final priorities, requirements, and selection criteria for this program, published in the **Federal Register** on July 12, 2011 (76 FR 40898) (Final Priorities), as an absolute priority. The Department has added this as an absolute priority in order to ensure that projects are designed to meet the needs of educationally disadvantaged students.

Second, for FY 2015, the Department has consolidated three competitive preference priorities into a single competitive preference priority for projects designed to support specific types of high-need students. Applicants addressing this priority may select and address only one of these elements.

Element (a) of *Competitive Preference Priority 1—High Need Students* is for projects designed to support students who are members of federally recognized Indian tribes. This priority is from the Secretary's final supplemental priorities and definitions for discretionary grant programs, published in the **Federal Register** on December 10, 2014 (79 FR 73425) (Final Supplemental Priorities). The Department understands that Native American communities confront unique educational challenges and have developed unique strategies to meet those challenges. This element is designed to encourage collaboration between charter school developers and Native American communities, as part of these communities' efforts to strengthen public education.

Element (b) of *Competitive Preference Priority 1—High Need Students* is for projects designed to replicate and expand high-quality charter schools in order to support school improvement efforts by local educational agencies (LEAs). As one of the Department's top priorities is to help turn around the Nation's lowest-performing public schools, this element is designed to link LEAs with high-quality charter schools as effective partners in school intervention projects. This element comes from the Final Priorities for this program.

Element (c) of *Competitive Preference Priority 1—High Need Students* is for projects designed to replicate and expand high-quality charter schools in federally designated Promise Zones, and is from the notice of final priority for promise zones, published in the **Federal Register** on March 27, 2014 (79 FR 17035) (Final Promise Zones Priority). Promise zones are part of an initiative by the President to designate, over a period of four years, 20 high-poverty communities for the Federal government to partner with, and invest in, to create jobs, increase economic activity, improve educational opportunities, reduce violent crime, and leverage private investment. The Department is cooperating with the Department of Housing and Urban Development (HUD), the Department of Agriculture (USDA), and nine other Federal agencies to support comprehensive revitalization efforts in these high-poverty urban, rural, and tribal communities across the country. The thirteen Promise Zones that have been designated thus far are located in Camden City NJ, the Chocktaw Nation of Oklahoma, East Indianapolis IN, Los Angeles CA, the Lowlands of South Carolina, Minneapolis MN, North Hartford CT, Philadelphia PA, Pine Ridge SD, Sacramento CA, San Antonio TX, Southeastern Kentucky, and St. Louis MO. Each of the lead entities for these Promise Zones has put forward a plan for how it will partner with local business and community leaders to make investments that reward hard work and expand opportunity.

The Department also has added an invitational priority that encourages applicants to conduct rigorous evaluations of their proposed projects. If well-implemented, the evaluations will produce evidence about the project's effectiveness that meets What Works Clearinghouse Evidence Standards. The Department is particularly interested in rigorous evaluations of applicants' schools or specific practices within those schools.

In addition, in January 2014, the Department updated Section E of the CSP Nonregulatory Guidance to clarify the circumstances in which charter schools receiving CSP funds may use weighted lotteries, including to give educationally disadvantaged students slightly better chances for admission. Applicants proposing to use weighted lotteries should review the information in the *Note* for Application Requirement (j) in section V of this notice and the updated CSP Nonregulatory Guidance. For information on the CSP lottery requirement, including permissible exemptions from the lottery and the circumstances under which charter schools receiving CSP funds may use weighted lotteries, see Section E of the CSP Nonregulatory Guidance at*www2.ed.gov/programs/charter/nonregulatory-guidance.html.*

Finally, the Consolidated and Further Continuing Appropriations Act, 2015 (FY 2015 Appropriations Act), Division G, Pub. L. 113–235, retains the authority from the Consolidated Appropriations Act, 2014 (FY 2014 Appropriations Act), Division H, Public Law 113–76, for CSP grant recipients to use funds to support preschool education in charter schools. For information on the use of CSP funds to support preschool education in charter schools, see the ''Guidance on the use of Funds to Support Preschool Education'' at *www2.ed.gov/programs/charter/csppreschoolfaqs.doc.*

All charter schools receiving CSP funds, as outlined in section 5210(1)(G) of the Elementary and Secondary Education Act of 1965, as amended (ESEA), must comply with various non-discrimination laws, including the Age Discrimination Act of 1975, title VI of the Civil Rights Act of 1964, title IX of the Education Amendments of 1972, section 504 of the Rehabilitation Act of 1973, part B of the Individuals with Disabilities Education Act (specifies rights afforded to students with disabilities and their parents), and applicable State laws.

Priorities: This notice includes two absolute priorities, three competitive

preference priorities, and one invitational priority. The absolute priorities are from the Final Priorities for this program. The competitive preference priorities are from the Final Priorities for this program; the Final Promise Zones Priority; the Final Supplemental Priorities; and 34 CFR 75.225.

Absolute Priorities: For FY 2015 and any subsequent year in which we make awards from the list of unfunded applications from this competition, these priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet both of the following priorities:

Absolute Priority 1—Experience Operating or Managing High-Quality Charter Schools.

This priority is for projects that will provide for the replication or expansion of high-quality charter schools by applicants that currently operate or manage more than one high-quality charter school (as defined in this notice).

Absolute Priority 2—Low-Income Demographic.

To meet this priority, an applicant must demonstrate that at least 60 percent of all students in the charter schools it currently operates or manages are individuals from low-income families (as defined in this notice).

Note 1: The Secretary encourages applicants to describe the extent to which the charter schools they currently operate or manage serve individuals from low-income families at rates that are comparable to the rates at which these individuals are served by public schools in the surrounding area.

Note 2: For charter schools that serve students younger than five years old or older than 17 years old in accordance with their State's definition of ''elementary education'' or ''secondary education,'' at least 60 percent of all students in the schools who are between the ages of five and 17 must be individuals from low-income families to meet this priority.

Competitive Preference Priorities: For FY 2015 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, these priorities are competitive preference priorities. Under 34 CFR 75.105(c)(2)(i), we will award an additional five points to an application that addresses element (a) of *Competitive Preference Priority 1;* an additional four points to an application that addresses element (b) of *Competitive Preference Priority 1;* or an additional one point to an application that addresses element (c) of *Competitive Preference Priority 1.* An applicant may receive points under *Competitive Preference Priority 1* for only one of the three elements. We will award an additional three points to an application that meets *Competitive Preference Priority 2,* and an additional two points to an application that meets *Competitive Preference Priority 3.* The maximum total competitive preference priority points an application can receive for this competition is 10.

Note: In order to receive points under these competitive preference priorities, the applicant must identify the priority or priorities that it is addressing and provide documentation that supports the identified competitive preference priority or priorities.

These priorities are:

Competitive Preference Priority 1—Serving High-Need Students. (0, 1, 4, or 5 points).

This priority is for projects that will serve high-need students through one of the methods described below. An application may receive priority points for only one element of *Competitive Preference Priority 1.* Therefore, an applicant should address only one element of *Competitive Preference Priority 1* and must specify which element (*i.e.,* (a), (b) or (c)) it is addressing. If an applicant addresses more than one element of *Competitive Preference Priority 1* and does not specify whether it is addressing element (a), (b), or (c), the application will be awarded priority points only for the element addressed in the application that has the highest maximum point value, regardless of the number of priority points the application is awarded for that particular element of Competitive Preference Priority 1.

This priority is for projects that will serve high-need students through element (a), (b) or (c) as described below:

(a) *Supporting Students Who are Members of Federally Recognized Indian Tribes.* (79 FR 73425) (0 or 5 points).

To meet this priority, an application must demonstrate that the proposed project is designed to improve academic outcomes or learning environments, or both, for students who are members of federally recognized Indian tribes.

Note: Applicants are encouraged to demonstrate how the proposed project is designed to serve students who are members of federally recognized Indian tribes through a variety of means, such as creating or expanding charter schools in geographic areas with large numbers of students who are members of federally recognized Indian tribes, conducting targeted outreach and recruitment, or including in the charters or performance contracts for the charter schools funded under the project specific performance goals for students who are members of federally recognized Indian tribes.

(b) *School Improvement.* (76 FR 40898) (0 or 4 points).

To meet this priority, an applicant must demonstrate that its proposed replication or expansion of one or more high-quality charter schools (as defined in this notice) will occur in partnership with, and will be designed to assist, one or more LEAs in implementing academic or structural interventions to serve students attending schools that have been identified for improvement, corrective action, closure, or restructuring under section 1116 of the Elementary and Secondary Education Act of 1965, as amended (ESEA), and as described in the notice of final requirements for School Improvement Grants, published in the **Federal Register** on October 28, 2010 (75 FR 66363).[1]

Note: Applicants in States operating under ESEA Flexibility that have opted to waive the requirement in ESEA section 1116(b) for LEAs to identify for improvement, corrective action, or restructuring, as appropriate, their Title I schools that fail to make adequate yearly progress (AYP) for two or more consecutive years may partner with LEAs to serve students attending priority or focus schools (see the Department's June 7, 2012 guidance entitled, ''ESEA Flexibility,'' at *www.ed.gov/esea/flexibility*). The Secretary encourages such applicants to describe how their proposed projects would complement efforts to serve students attending priority or focus schools described in the State's approved request for waivers under ESEA Flexibility.

(c) *Promise Zones.* (79 FR 17035) (0 or 1 point).

This priority is for projects that are designed to serve and coordinate with a federally designated Promise Zone.[2]

Note: To view the list of designated Promise Zones and lead organizations please go to *www.hud.gov/promisezones.* The link to HUD Form 50153 (Certification of Consistency with Promise Zone Goals and Implementation), which has been cleared by the Office of Management and Budget under the Paperwork Reduction Act, is *http://portal.hud.gov/hudportal/documents/huddoc?id=HUD_Form_50153.pdf.*

Competitive Preference Priority 2—Promoting Diversity. (76 FR 40898) (0 or 3 points).

This priority is for applicants that demonstrate a record of (in the schools they currently operate or manage), as

[1] In March 2015, the Department issued nonregulatory guidance on School Improvement Grants (SIGs), entitled ''Guidance on School Improvement Grants under Section 1003(g) of the Elementary and Secondary Education Act of 1965, at *www2.ed.gov/programs/sif/sigguidance032015.doc.*

[2] For additional information on Promise Zones, see *www.whitehouse.gov/the-press-office/2014/01/08/fact-sheet-president-obama-s-promise-zones-initiative.*

well as an intent to continue (in schools that they will be creating or substantially expanding under this grant), taking active measures to—

(a) Promote student diversity, including racial and ethnic diversity, or avoid racial isolation;

(b) Serve students with disabilities at a rate that is at least comparable to the rate at which these students are served in public schools in the surrounding area; and

(c) Serve English learners at a rate that is at least comparable to the rate at which these students are served in public schools in the surrounding area.

In support of this priority, applicants must provide enrollment data as well as descriptions of existing policies and activities undertaken or planned to be undertaken.

Note 1: An applicant addressing *Competitive Preference Priority 2—Promoting Diversity* is invited to discuss how the proposed design of its project will encourage approaches by charter schools that help bring together students of different backgrounds, including students from different racial and ethnic backgrounds, to attain the benefits that flow from a diverse student body. The applicant should discuss in its application how it would ensure that those approaches are permissible under current law.

Note 2: For information on permissible ways to meet this priority, please refer to the joint guidance issued by the Department's Office for Civil Rights and the U.S. Department of Justice entitled, ''Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools'' (*www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.pdf*) and ''Schools' Civil Rights Obligations to English Learner Students and Limited English Proficient Parents'' (*www2.ed.gov/about/offices/list/ocr/ellresources.html*).

Competitive Preference Priority 3—Novice Applicant. (34 CFR 75.225(c)(2)) (0 or 2 points).

This priority is for applicants that qualify as novice applicants. For purposes of this competition, ''novice applicant'' means an applicant for a grant from the Department that (i) has never received a Replication and Expansion grant; (ii) has never been a member of a group application, submitted in accordance with 34 CFR 75.127–75.129, that received a Replication and Expansion grant; and (iii) has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications for new awards under this Replication and Expansion grant competition.

For purposes of clause (iii) in the preceding paragraph, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds (34 CFR 75.225(b)).

Invitational Priority: For FY 2015 and any subsequent year in which we make awards based on the list of unfunded applications from this competition, this priority is an invitational priority. Under 34 CFR 75.105(c)(1), we do not give an application that meets this invitational priority any preference over other applications.

This priority is:

Invitational Priority—Rigorous Evaluation.

The Secretary is particularly interested in funding applications that demonstrate that the applicant is currently conducting, or will conduct, a rigorous independent evaluation of the applicant's charter schools, or specific practices within those charter schools, such as professional development practices (*e.g.,* teacher coaching or leadership training) through a quasi-experimental design study or randomized controlled trial that will, if well implemented, meet What Works Clearinghouse Evidence Standards.

Note 1: In accordance with 34 CFR 75.590, Replication and Expansion grant funds may be used to cover post-award costs associated with an evaluation under this invitational priority or an evaluation under selection criterion (e) in section V.2 of this notice, provided that such costs are reasonable and necessary to meet the objectives of the approved project.

Note 2: We encourage applicants to review the following technical assistance resources on evaluation: (1) WWC Procedures and Standards Handbook: *http://ies.ed.gov/ncee/wwc/references/idocviewer/doc.aspx?docid=19&tocid=1*; and (2) IES/NCEE Technical Methods papers: *http://ies.ed.gov/ncee/tech_methods/.* In addition, we invite applicants to view two optional Webinar recordings that were hosted by the Institute of Education Sciences. The first Webinar discussed strategies for designing and executing well-designed quasi-experimental design studies. Applicants interested in viewing this Webinar may find more information at the following Web site: *http://ies.ed.gov/ncee/wwc/news.aspx?sid=23.* We also encourage applicants to review a second Webinar recorded by the IES that focused on more rigorous evaluation designs.

This Webinar discusses strategies for designing and executing studies that meet WWC standards without reservations. Applicants interested in reviewing this Webinar may find more information at the following Web site: *http://ies.ed.gov/ncee/wwc/News.aspx?sid=18.*

Definitions:

The following definitions are from 34 CFR 77.1 and the Final Priorities for this program.

Ambitious means promoting continued, meaningful improvement for program participants or for other individuals or entities affected by the grant, or representing a significant advancement in the field of education research, practices, or methodologies. When used to describe a performance target, whether a performance target is ambitious depends upon the context of the relevant performance measure and the baseline for that measure. (34 CFR 77.1)

Baseline means the starting point from which performance is measured and targets are set. (34 CFR 77.1)

Charter management organization (CMO) is a nonprofit organization that operates or manages multiple charter schools by centralizing or sharing certain functions and resources among schools. (76 FR 40898)

Educationally disadvantaged students includes, but is not necessarily limited to, individuals from low-income families (as defined in this notice), English learners, migratory children, children with disabilities, and neglected or delinquent children. (76 FR 40898)

High-quality charter school is a school that shows evidence of strong academic results for the past three years (or over the life of the school, if the school has been open for fewer than three years), based on the following factors:

(1) Increasing student academic achievement and attainment for all students, including, as applicable, educationally disadvantaged students served by the charter schools operated or managed by the applicant.

(2) Either (i) Demonstrated success in closing historic achievement gaps for the subgroups of students described in section 1111(b)(2)(C)(v)(II) of the ESEA at the charter schools operated or managed by the applicant, or;

(ii) No significant achievement gaps between any of the subgroups of students described in section 1111(b)(2)(C)(v)(II) of the ESEA at the charter schools operated or managed by the applicant and significant gains in student academic achievement with all populations of students served by the charter schools operated or managed by the applicant.

(3) Achieved results (including performance on statewide tests, annual student attendance and retention rates, high school graduation rates, college attendance rates, and college persistence rates where applicable and available) for low-income and other educationally disadvantaged students served by the charter schools operated or managed by

the applicant that are above the average academic achievement results for such students in the State.

(4) No significant compliance issues (as defined in this notice), particularly in the areas of student safety and financial management. (76 FR 40898)

Individual from low-income family means an individual who is determined by a State educational agency (SEA) or LEA to be a child, age 5 through 17, from a low-income family on the basis of (a) data used by the Secretary to determine allocations under section 1124 of the ESEA, (b) data on children eligible for free or reduced-price lunches under the Richard B. Russell National School Lunch Act, (c) data on children in families receiving assistance under part A of title IV of the Social Security Act, (d) data on children eligible to receive medical assistance under the Medicaid program under Title XIX of the Social Security Act, or (e) an alternate method that combines or extrapolates from the data in items (a) through (d) of this definition (see 20 U.S.C. 6537(3)). (76 FR 40898)

Performance measure means any quantitative indicator, statistic, or metric used to gauge program or project performance. (34 CFR 77.1)

Performance target means a level of performance that an applicant would seek to meet during the course of a project or as a result of a project. (34 CFR 77.1)

Quasi-experimental design study means a study using a design that attempts to approximate an experimental design by identifying a comparison group that is similar to the treatment group in important respects. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards (as defined in this notice) with reservations (but not What Works Clearinghouse Evidence Standards without reservations). (34 CFR 77.1)

Randomized controlled trial means a study that employs random assignment of, for example, students, teachers, classrooms, schools, or districts to receive the intervention being evaluated (the treatment group) or not to receive the intervention (the control group). The estimated effectiveness of the intervention is the difference between the average outcome for the treatment group and for the control group. These studies, depending on design and implementation, can meet What Works Clearinghouse Evidence Standards (as defined in this notice) without reservations. (34 CFR 77.1)

Replicate means to open one or more new charter schools that are based on the charter school model or models for which the applicant has presented evidence of success. (76 FR 40898)

Significant compliance issue means a violation that did, will, or could lead to the revocation of a school's charter. (76 FR 40898)

Substantially expand means to increase the student count of an existing charter school by more than 50 percent or to add at least two grades to an existing charter school over the course of the grant. (76 FR 40898)

What Works Clearinghouse Evidence Standards means the standards set forth in the What Works Clearinghouse Procedures and Standards Handbook (Version 3.0, March 2014), which can be found at the following link: *//ies.ed.gov/ncee/wwc/DocumentSum.aspx?sid=19.* (34 CFR 77.1)

Program Authority: Consolidated and Further Continuing Appropriations Act, 2015 (FY 2015 Appropriations Act), Division G, Pub. L. 113–235; and the Elementary and Secondary Education Act of 1965, as amended (ESEA) (20 U.S.C. 7221–7221j).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 75, 76, 77, 79, 81, 82, 84, 86, 97, 98, and 99. (b) The OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement) in 2 CFR part 180, as adopted and amended as regulations of the Department in 2 CFR part 3485. (c) The Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards in 2 CFR part 200, as adopted and amended in 2 CFR part 3474. (d) The Final Priorities for this program. (e) The Final Promise Zones Priority.(f) The Final Supplemental Priorities.

Note 1: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note 2: The regulations in 34 CFR part 86 apply only to institutions of higher education.

Note 3: The regulations in 34 CFR part 99 apply only to an educational agency or institution.

II. Award Information

Type of Award: Discretionary grants.

Estimated Available Funds: $40,000,000.

Contingent upon the availability of funds and the quality of applications, we may make additional awards in FY 2016 and future years from the list of unfunded applications from this competition.

Estimated Range of Awards: $500,000 to $3,000,000 per year.

Estimated Average Size of Awards: $1,600,000 per year.

Estimated Number of Awards: 19–25.

Note: The Department is not bound by any estimates in this notice. The estimated range, average size, and number of awards are based on a single 12-month budget period. However, the Department may choose to fund more than 12 months of a project using FY 2015 funds.

Project Period: Up to 60 months.

III. Eligibility Information

1. *Eligible Applicants:* Non-profit charter management organizations (as defined in this notice) and other entities that are not for-profit entities. Eligible applicants may also apply as a group or consortium.

2. *Cost Sharing or Matching:* This competition does not require cost sharing or matching.

3. *Other:*

(a) *Reasonable and Necessary Costs:* The Secretary may elect to impose maximum limits on the amount of grant funds that may be awarded per charter school replicated, per charter school substantially expanded, or per new school seat created.

For this competition the maximum limit of grant funds that may be awarded per new school seat is $3,000, including a maximum limit per new school created of $800,000. The maximum limit per new school seat in a charter school that is substantially expanding its enrollment is $1,500, including a maximum limit per substantially expanded school of $800,000.

Note: Applicants must ensure that all costs included in the proposed budget are reasonable and necessary in light of the goals and objectives of the proposed project. Any costs determined by the Secretary to be unreasonable or unnecessary will be removed from the final approved budget.

(b) *Other CSP Grants:* A charter school that receives funds under this competition is ineligible to receive funds for the same purpose under section 5202(c)(2) of the ESEA, including for planning and program design or the initial implementation of a charter school (*i.e.,* CFDA 84.282A or 84.282B).

A charter school that has received CSP funds for replication previously, or that has received funds for planning or initial implementation of a charter school (*i.e.,* CFDA 84.282A or 84.282B), may not use funds under this grant for the same purpose. However, such charter schools may be eligible to receive funds under this competition to substantially expand the charter school beyond the existing grade levels or student count.

IV. Application and Submission Information

1. *Address to Request Application Package:* Brian Martin, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W224, Washington, DC 20202–5970. Telephone: (202) 205–9085 or by email: *brian.martin@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or a text telephone (TTY), call the Federal Relay Service (FRS), toll free, at 1–800–877–8339.

Individuals with disabilities can obtain a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting the program contact person listed in this section.

2.a. *Content and Form of Application Submission:* Requirements concerning the content of an application, together with the forms you must submit, are in the application package for this competition.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. We recommend that you limit the application narrative [Part III] to no more than 60 pages, using the following standards:

- A ''page'' is 8.5'' x 11'', on one side only, with 1'' margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12 point or larger or no smaller than 10 pitch (characters per inch).
- Use one of the following fonts: Times New Roman, Courier, Courier New, or Arial. An application submitted in any other font (including Times Roman or Arial Narrow) will not be accepted.

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, the page limit does apply to all of the application narrative section [Part III].

b. *Submission of Proprietary Information:*

Given the types of projects that may be proposed in applications for the Replication and Expansion competition, an application may include business information that the applicant considers proprietary. The Department's regulations define ''business information'' in 34 CFR 5.11.

Because we plan to make successful applications available to the public, you may wish to request confidentiality of business information.

Consistent with Executive Order 12600, please designate in your application any information that you feel is exempt from disclosure under Exemption 4 of the Freedom of Information Act. In the appropriate Appendix section of your application, under ''Other Attachments Form,'' please list the page number or numbers on which we can find this information. For additional information please see 34 CFR 5.11(c).

3. *Submission Dates and Times:*

Applications Available: June 12, 2015.

Date of Pre-Application Meeting: The Department will hold a pre-application meeting via Webinar for prospective applicants on June 16, 2015, from 2:00 p.m. to 3:30 p.m., Washington, DC, time. Individuals interested in attending this meeting are encouraged to pre-register by emailing their name, organization, and contact information with the subject heading ''PRE–APPLICATION MEETING'' to *CharterSchools@ed.gov.* There is no registration fee for attending this meeting.

For further information about the pre-application meeting, contact Brian Martin, U.S. Department of Education, 400 Maryland Avenue SW., Room 4W224, Washington, DC 20202–5970. Telephone: (202) 205–9085 or by email: *brian.martin@ed.gov.*

Deadline for Transmittal of Applications: July 15, 2015.

Applications for grants under this competition must be submitted electronically using the Grants.gov Apply site (Grants.gov). For information (including dates and times) about how to submit your application electronically, or in paper format by mail or hand delivery if you qualify for an exception to the electronic submission requirement, please refer to section IV. 7. *Other Submission Requirements* of this notice.

We do not consider an application that does not comply with the deadline requirements.

Individuals with disabilities who need an accommodation or auxiliary aid in connection with the application process should contact the person listed under **FOR FURTHER INFORMATION CONTACT** in section VII of this notice. If the Department provides an accommodation or auxiliary aid to an individual with a disability in connection with the application process, the individual's application remains subject to all other requirements and limitations in this notice.

Deadline for Intergovernmental Review: September 25, 2015.

4. *Intergovernmental Review:* This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. Information about Intergovernmental Review of Federal Programs under Executive Order 12372 is in the application package for this competition.

5. *Funding Restrictions:* Grantees under this program must use the grant funds to *replicate* or *substantially expand* the charter school model or models for which the applicant has presented evidence of success. Grant funds must be used to carry out allowable activities, as described in section 5204(f)(3) of the ESEA (20 U.S.C. 7221c(f)(3)).

Pursuant to section 5204(f)(3) of the ESEA, grantees under this program must use the grant funds for—

(a) Post-award planning and design of the educational program, which may include: (i) Refinement of the desired educational results and of the methods for measuring progress toward achieving those results; and (ii) professional development of teachers and other staff who will work in the charter school; and

(b) Initial implementation of the charter school, which may include: (i) Informing the community about the school; (ii) acquiring necessary equipment and educational materials and supplies; (iii) acquiring or developing curriculum materials; and (iv) other initial operational costs that cannot be met from State or local sources.

Note 1: The FY 2015 Appropriations Act authorizes the use of CSP funds ''for grants that support preschool education in charter schools.'' Therefore, an application submitted under this competition may propose to use CSP funds to support preschool education in a charter school. For additional information and guidance regarding the use of CSP funds to support preschool education in charter schools, see ''Guidance on the use of Funds to support Preschool Education,'' released in November 2014 (*www2.ed.gov/programs/charter/csppreschoolfaqs.doc*).

Note 2: In accordance with the Final Priorities for this program, a grantee may use up to 20 percent of grant funds for initial operational costs associated with the expansion or improvement of the grantee's oversight or management of its charter schools, provided that: (i) the specific charter schools being created or substantially expanded under the grant are the intended beneficiaries of such expansion or

improvement, and (ii) such expansion or improvement is intended to improve the grantee's ability to manage or oversee the charter schools created or substantially expanded under the grant.

We reference additional regulations outlining funding restrictions in the *Applicable Regulations* section of this notice.

6. *Data Universal Numbering System Number, Taxpayer Identification Number, and System for Award Management:* To do business with the Department of Education, you must—

a. Have a Data Universal Numbering System (DUNS) number and a Taxpayer Identification Number (TIN);

b. Register both your DUNS number and TIN with the System for Award Management (SAM) (formerly the Central Contractor Registry (CCR)), the Government's primary registrant database;

c. Provide your DUNS number and TIN on your application; and

d. Maintain an active SAM registration with current information while your application is under review by the Department and, if you are awarded a grant, during the project period.

You can obtain a DUNS number from Dun and Bradstreet. A DUNS number can be created within one-to-two business days.

If you are a corporate entity, agency, institution, or organization, you can obtain a TIN from the Internal Revenue Service. If you are an individual, you can obtain a TIN from the Internal Revenue Service or the Social Security Administration. If you need a new TIN, please allow 2–5 weeks for your TIN to become active.

The SAM registration process can take approximately seven business days, but may take upwards of several weeks, depending on the completeness and accuracy of the data entered into the SAM database by an entity. Thus, if you think you might want to apply for Federal financial assistance under a program administered by the Department, please allow sufficient time to obtain and register your DUNS number and TIN. We strongly recommend that you register early.

Note: Once your SAM registration is active, you will need to allow 24 to 48 hours for the information to be available in Grants.gov and before you can submit an application through Grants.gov.

If you are currently registered with SAM, you may not need to make any changes. However, please make certain that the TIN associated with your DUNS number is correct. Also note that you will need to update your registration annually. This may take three or more business days.

Information about SAM is available at *www.SAM.gov.* To further assist you with obtaining and registering your DUNS number and TIN in SAM or updating your existing SAM account, we have prepared a SAM.gov Tip Sheet, which you can find at: *www2.ed.gov/fund/grant/apply/;sam-faqs.html.*

In addition, if you are submitting your application via Grants.gov, you must (1) be designated by your organization as an Authorized Organization Representative (AOR); and (2) register yourself with Grants.gov as an AOR. Details on these steps are outlined at the following Grants.gov Web page: *www.grants.gov/web/grants/register.html.*

7. *Other Submission Requirements.* Applications for grants under this competition must be submitted electronically unless you qualify for an exception to this requirement in accordance with the instructions in this section.

a. *Electronic Submission of Applications.*

Applications for grants under the CSP Grants for Replication and Expansion of High-Quality Charter Schools, CFDA number 84.282M, must be submitted electronically using the Governmentwide Grants.gov Apply site at *www.Grants.gov.* Through this site, you will be able to download a copy of the application package, complete it offline, and then upload and submit your application. You may not email an electronic copy of a grant application to us.

We will reject your application if you submit it in paper format unless, as described elsewhere in this section, you qualify for one of the exceptions to the electronic submission requirement *and* submit, no later than two weeks before the application deadline date, a written statement to the Department that you qualify for one of these exceptions. Further information regarding calculation of the date that is two weeks before the application deadline date is provided later in this section under *Exception to Electronic Submission Requirement.*

You may access the electronic grant application for CSP Grants for Replication and Expansion of High-Quality Charter Schools at *www.Grants.gov.* You must search for the downloadable application package for this competition by the CFDA number. Do not include the CFDA number's alpha suffix in your search (*e.g.,* search for 84.282, not 84.282M).

Please note the following:

- When you enter the Grants.gov site, you will find information about submitting an application electronically through the site, as well as the hours of operation.
- Applications received by Grants.gov are date and time stamped. Your application must be fully uploaded and submitted and must be date and time stamped by the Grants.gov system no later than 4:30:00 p.m., Washington, DC time, on the application deadline date. Except as otherwise noted in this section, we will not accept your application if it is received—that is, date and time stamped by the Grants.gov system—after 4:30:00 p.m., Washington, DC time, on the application deadline date. We do not consider an application that does not comply with the deadline requirements. When we retrieve your application from Grants.gov, we will notify you if we are rejecting your application because it was date and time stamped by the Grants.gov system after 4:30:00 p.m., Washington, DC time, on the application deadline date.
- The amount of time it can take to upload an application will vary depending on a variety of factors, including the size of the application and the speed of your Internet connection. Therefore, we strongly recommend that you do not wait until the application deadline date to begin the submission process through Grants.gov.
- You should review and follow the Education Submission Procedures for submitting an application through Grants.gov that are included in the application package for this competition to ensure that you submit your application in a timely manner to the Grants.gov system. You can also find the Education Submission Procedures pertaining to Grants.gov under News and Events on the Department's G5 system home page at *www.G5.gov.*
- You will not receive additional point value because you submit your application in electronic format, nor will we penalize you if you qualify for an exception to the electronic submission requirement, as described elsewhere *in this section, and submit your application in paper* format.
- You must submit all documents electronically, including all information you typically provide on the following forms: the Application for Federal Assistance (SF 424), the Department of Education Supplemental Information for SF 424, Budget Information—Non-Construction Programs (ED 524), and all necessary assurances and certifications.
- You must upload any narrative sections and all other attachments to your application as files in a .PDF (Portable Document) read-only, non-modifiable format. Specifically, do not upload an interactive or fillable .PDF

file. Do not upload an interactive or fillable PDF file. If you upload a file type other than a read-only, non-modifiable .PDF or submit a password-protected file, we will not review that material.

• Your electronic application must comply with any page-limit requirements described in this notice.

• After you electronically submit your application, you will receive from Grants.gov an automatic notification of receipt that contains a Grants.gov tracking number. (This notification indicates receipt by Grants.gov only, not receipt by the Department.) The Department then will retrieve your application from Grants.gov and send a second notification to you by email. This second notification indicates that the Department has received your application and has assigned your application a PR/Award number (an ED-specified identifying number unique to your application).

• We may request that you provide us original signatures on forms at a later date.

Application Deadline Date Extension in Case of Technical Issues with the Grants.gov System: If you are experiencing problems submitting your application through Grants.gov, please contact the Grants.gov Support Desk, toll free, at 1–800–518–4726. You must obtain a Grants.gov Support Desk Case Number and must keep a record of it.

If you are prevented from electronically submitting your application on the application deadline date because of technical problems with the Grants.gov system, we will grant you an extension until 4:30:00 p.m., Washington, DC time, the following business day to enable you to transmit your application electronically or by hand delivery. You also may mail your application by following the mailing instructions described elsewhere in this notice.

If you submit an application after 4:30:00 p.m., Washington, DC time, on the application deadline date, please contact the person listed under *For Further Information Contact* in section VII of this notice and provide an explanation of the technical problem you experienced with *Grants.gov*, along with the *Grants.gov* Support Desk Case Number. We will accept your application if we can confirm that a technical problem occurred with the Grants.gov system and that that problem affected your ability to submit your application by 4:30:00 p.m., Washington, DC time, on the application deadline date. The Department will contact you after a determination is made on whether your application will be accepted.

Note: The extensions to which we refer in this section apply only to the unavailability of, or technical problems with, the Grants.gov system. We will not grant you an extension if you failed to fully register to submit your application to Grants.gov before the application deadline date and time or if the technical problem you experienced is unrelated to the Grants.gov system.

Exception to Electronic Submission Requirement: You qualify for an exception to the electronic submission requirement, and may submit your application in paper format, if you are unable to submit an application through the Grants.gov system because—

• You do not have access to the Internet; or

• You do not have the capacity to upload large documents to the Grants.gov system; *and*

• No later than two weeks before the application deadline date (14 calendar days or, if the fourteenth calendar day before the application deadline date falls on a Federal holiday, the next business day following the Federal holiday), you mail or fax a written statement to the Department, explaining which of the two grounds for an exception prevent you from using the Internet to submit your application.

If you mail your written statement to the Department, it must be postmarked no later than two weeks before the application deadline date. If you fax your written statement to the Department, we must receive the faxed statement no later than two weeks before the application deadline date.

Address and mail or fax your statement to: Brian Martin, U.S. Department of Education, 400 Maryland Avenue, SW., room 4W224, Washington, DC 20202–5970. FAX: (202) 205–5630.

Your paper application must be submitted in accordance with the mail or hand delivery instructions described in this notice.

b. *Submission of Paper Applications by Mail.*

If you qualify for an exception to the electronic submission requirement, you may mail (through the U.S. Postal Service or a commercial carrier) your application to the Department. You must mail the original and two copies of your application, on or before the application deadline date, to the Department at the following address:

U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.282M, LBJ Basement Level 1, 400 Maryland Avenue, SW., Washington, DC 20202–4260.

You must show proof of mailing consisting of one of the following:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary of the U.S. Department of Education.

If you mail your application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

If your application is postmarked after the application deadline date, we will not consider your application.

Note: The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

c. *Submission of Paper Applications by Hand Delivery.*

If you qualify for an exception to the electronic submission requirement, you (or a courier service) may deliver your paper application to the Department by hand. You must deliver the original and two copies of your application by hand, on or before the application deadline date, to the Department at the following address: U.S. Department of Education, Application Control Center, Attention: CFDA Number 84.282M, 550 12th Street, SW., Room 7039, Potomac Center Plaza, Washington, DC 20202–4260.

The Application Control Center accepts hand deliveries daily between 8:00 a.m. and 4:30:00 p.m., Washington, DC time, except Saturdays, Sundays, and Federal holidays.

Note for Mail or Hand Delivery of Paper Applications: If you mail or hand deliver your application to the Department—

(1) You must indicate on the envelope and—if not provided by the Department—in Item 11 of the SF 424 the CFDA number, including suffix letter, if any, of the competition under which you are submitting your application; and

(2) The Application Control Center will mail to you a notification of receipt of your grant application. If you do not receive this notification within 15 business days from the application deadline date, you should call the U.S. Department of Education Application Control Center at (202) 245–6288.

V. Application Review Information

1. *Application Requirements:* Applications for CSP Replication and Expansion grant funds must address the following application requirements and

the selection criteria described in this notice. An applicant may choose to respond to the application requirements in the context of its responses to the selection criteria.

These application requirements are from the Final Priorities for this program.

(a) Describe the objectives of the project for replicating or substantially expanding high-quality charter schools (as defined in this notice) and the methods by which the applicant will determine its progress toward achieving those objectives.

(b) Describe how the applicant currently operates or manages the charter schools for which it has presented evidence of success, and how the proposed new or substantially expanded charter schools will be operated or managed. Include a description of central office functions, governance, daily operations, financial management, human resources management, and instructional management. If applying as a group or consortium, describe the roles and responsibilities of each member of the group or consortium and how each member will contribute to this project.

(c) Describe how the applicant will ensure that each proposed new or substantially expanded charter school receives its commensurate share of Federal education funds that are allocated by formula each year, including during the first year of operation of the school and any year in which the school's enrollment substantially expands.

(d) Describe the educational program to be implemented in the proposed new or substantially expanded charter schools, including how the program will enable all students (including educationally disadvantaged students) to meet State student academic achievement standards, the grade levels or ages of students to be served, and the curriculum and instructional practices to be used.

Note: An applicant proposing to create or substantially expand a single-sex charter school should include in its application, or as an addendum to the application, a detailed description of how it is complying with applicable nondiscrimination laws, including the Equal Protection Clause of the U.S. Constitution (as interpreted in *United States v. Virginia*, 518 U.S. 515 (1996) and other cases) and Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) and its regulations, including 34 CFR 106.34(c). Specifically, the applicant should provide a written justification for each new or existing single-sex charter school that explains (1) how the single-sex charter school is based on an important governmental objective(s); and (2) how the single-sex nature of the charter school is substantially related to the stated objective(s). An applicant that operates or is proposing to operate a single-sex charter school that is part of an LEA and not a single-school LEA under State law, should also provide (1) information about whether there is a substantially equal single-sex school(s) for students of the excluded sex, and, if so, a detailed description of both the current or proposed single-sex charter school and the substantially equal single-sex school(s), based on the factors in 34 CFR 106.34(c)(3); and (2) information about whether there is a substantially equal coeducational school(s) for students of the excluded sex, and, if so, a detailed description of both the current or proposed single-sex charter school and the substantially equal coeducational school(s), based on the factors in 34 CFR 106.34(c)(3).

An applicant that currently offers or is proposing to create or expand single-sex classes or extracurricular activities at a coeducational charter school should also include in its application, or as an addendum to its application, a detailed description of how it will comply with applicable nondiscrimination laws, including the Equal Protection Clause of the U.S. Constitution (as interpreted in United States v. Virginia, 518 U.S. 515 (1996) and other cases) and Title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*) and its regulations, including 34 CFR 106.34(b) with respect to those single-sex offerings. The Title IX requirements are discussed in more detail in the Department's ''Questions and Answers on Title IX and Single-Sex Elementary and Secondary Classes and Extracurricular Activities,'' available at *www2.ed.gov/about/offices/list/ocr/docs/faqs-title-ix-single-sex-201412.pdf.*

(e) Describe the administrative relationship between the charter school or schools to be replicated or substantially expanded by the applicant and the authorized public chartering agency.

(f) Describe how the applicant will provide for continued operation of the proposed new or substantially expanded charter school or schools once the Federal grant has expired.

(g) Describe how parents and other members of the community will be involved in the planning, program design, and implementation of the proposed new or substantially expanded charter school or schools.

(h) Include a request and justification for waivers of any Federal statutory or regulatory provisions that the applicant believes are necessary for the successful operation of the proposed new or substantially expanded charter schools.

(i) Describe how the grant funds will be used, including how these funds will be used in conjunction with other Federal programs administered by the Secretary, and with any matching funds.

(j) Describe how all students in the community, including students with disabilities, English learners, and other educationally disadvantaged students, will be informed about the proposed new or substantially expanded charter schools and given an equal opportunity to attend such schools.

Note: The applicant should provide a detailed description of its recruitment and admissions policies and practices, including a description of the lottery it plans to employ at each charter school if more students apply for admission than can be accommodated. The applicant should also describe any current or planned use of a weighted lottery or exemptions of certain categories of students from the lottery and how the use of such weights or exemptions is consistent with State law and the CSP authorizing statute. For information on the CSP lottery requirement, including permissible exemptions from the lottery and the circumstances under which charter schools receiving CSP funds may use weighted lotteries, see Section E of the CSP Nonregulatory Guidance at *www2.ed.gov/programs/charter/nonregulatory-guidance.html* (revised January 2014).

An application that proposes to use a weighted lottery should provide the following:

(1) Information concerning the circumstances in which a weighted lottery would be used, including the specific categories of students the weighted lottery would favor;

(2) Evidence that (a) the use of a weighted lottery is necessary to comply with Federal or State law; or (b) the State permits the use of a weighted lottery under the circumstances in which a weighted lottery is proposed to be used (*e.g.,* in favor of educationally disadvantaged students). State permission to use a weighted lottery can be evidenced by the fact that weighted lotteries for such students are expressly permitted under the State charter school law, a State regulation, or a written State policy consistent with the State charter school law or regulation, or, in the absence of express authorization, confirmation from the State's Attorney General, in writing, that State law permits the use of weighted lotteries in favor of such students;

(3) Information concerning the mechanisms that exist (if any) for an oversight entity (*e.g.,* the SEA or an authorized public chartering agency) to review, approve, or monitor specific lottery practices, including the establishment of weight amounts if applicable;

(4) Information concerning how the use of a weighted lottery for a permitted purpose is within the scope and objectives of the proposed project; and

(5) Information concerning the amount or range of lottery weights that will be employed or permitted and the rationale for these weights.

(k) Describe how the proposed new or substantially expanded charter schools that are considered to be LEAs under State law, or the LEAs in which the new or substantially expanded charter schools are located, will comply with sections 613(a)(5) and 613(e)(1)(B) of the Individuals with Disabilities Education Act (IDEA) (for additional information on IDEA, please see *idea.ed.gov/explore/view/p/%2Croot%2Cstatute%2CI%2CB%2C613%2C*).

(l) Provide information on any significant compliance issues identified within the past three years for each school managed by the applicant, including compliance issues in the areas of student safety, financial management, and statutory or regulatory compliance.

(m) For each charter school currently operated or managed by the applicant, provide the following information: the year founded, the grades currently served, the number of students, the address, the percentage of students in each subgroup of students described in section 1111(b)(2)(C)(v)(II) of the ESEA, results on the State assessment for the past three years (if available) by subgroup, attendance rates, student attrition rates for the past three years, and (if the school operates a 12th grade) high school graduation rates and college attendance rates (maintaining standards to protect personally identifiable information).

Note: The Secretary encourages applicants to also provide suspension and expulsion rates by each subgroup for the past three years (if available) for each charter school currently operated or managed by the applicant.

(n) Provide objective data showing applicant quality. In particular, the Secretary requires the applicant to provide the following data:

(1) Performance (school-wide and by subgroup) for the past three years (if available) on statewide tests of all charter schools operated or managed by the applicant as compared to all students in other schools in the State or States at the same grade level, and as compared with other schools serving similar demographics of students (maintaining standards to protect personally identifiable information);

(2) Annual student attendance and retention rates (school-wide and by subgroup) for the past three years (or over the life of the school, if the school has been open for fewer than three years), and comparisons with other similar schools (maintaining standards to protect personally identifiable information); and

(3) Where applicable and available, high school graduation rates, college attendance rates, and college persistence rates (school-wide and by subgroup) for the past three years (if available) of students attending schools operated or managed by the applicant, and the methodology used to calculate these rates (maintaining standards to protect personally identifiable information). When reporting data for schools in States that may have particularly demanding or low standards of proficiency, applicants are invited to discuss how their academic success might be considered against applicants from across the country.

(o) Provide such other information and assurances as the Secretary may require.

2. *Selection Criteria.* The selection criteria for this program are from the Final Priorities for this program and 34 CFR 75.210. The maximum possible score for addressing all of the criteria in this section is 100 points. The maximum possible score for addressing each criterion is indicated in parentheses following the criterion.

In evaluating an application, the Secretary considers the following criteria:

(a) *Quality of the eligible applicant.* (76 FR 40898) (50 points)

In determining the quality of the applicant, the Secretary considers the following factors—

(1) The degree, including the consistency over the past three years, to which the applicant has demonstrated success in significantly increasing student academic achievement and attainment for all students, including, as applicable, educationally disadvantaged students served by the charter schools operated or managed by the applicant (20 points).

(2) Either—

(i) The degree, including the consistency over the past three years, to which the applicant has demonstrated success in closing historic achievement gaps for the subgroups of students described in section 1111(b)(2)(C)(v)(II) of the ESEA at the charter schools operated or managed by the applicant, or

(ii) The degree, including the consistency over the past three years, to which there have not been significant achievement gaps between any of the subgroups of students described in section 1111(b)(2)(C)(v)(II) of the ESEA at the charter schools operated or managed by the applicant and to which significant gains in student academic achievement have been made with all populations of students served by the charter schools operated or managed by the applicant (15 points).

(3) The degree, including the consistency over the past three years, to which the applicant has achieved results (including performance on statewide tests, annual student attendance and retention rates, high school graduation rates, college attendance rates, and college persistence rates where applicable and available) for low-income and other educationally disadvantaged students served by the charter schools operated or managed by the applicant that are significantly above the average academic achievement results for such students in the State (15 points).

(b) *Contribution in assisting educationally disadvantaged students.* (76 FR 40898) (10 points)

The contribution the proposed project will make in assisting educationally disadvantaged students served by the applicant to meet or exceed State academic content standards and State student academic achievement standards, and to graduate college- and career-ready. When responding to this selection criterion, applicants must discuss the proposed locations of schools to be created or substantially expanded and the student populations to be served.

Note: The Secretary encourages applicants to describe their prior success in improving educational achievement and outcomes for educationally disadvantaged students, including students with disabilities and English learners. In addition, the Secretary encourages applicants to address how they will ensure that all eligible students with disabilities receive a free appropriate public education and how the proposed project will assist educationally disadvantaged students, including students with disabilities and English learners, in mastering State academic content standards and State student academic achievement standards.

(c) *Quality of the project design.* (76 FR 40898 and 34 CFR 75.210(c)(2)(xxviii)) (10 points)

The Secretary considers the quality of the design of the proposed project. In determining the quality of the design of the proposed project, the Secretary considers the extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified, measurable, and attainable. Applicants proposing to open schools serving substantially different populations than those currently served by the model for which they have demonstrated evidence of success must address the attainability of outcomes given this difference.

(d) *Quality of the management plan and personnel.* (76 FR 40898) (20 points)

The Secretary considers the quality of the management plan and personnel to replicate and substantially expand high-quality charter schools (as defined in this notice). In determining the quality of the management plan and personnel for the proposed project, the Secretary considers—

(1) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks (4 points).

(2) The business plan for improving, sustaining, and ensuring the quality and performance of charter schools created or substantially expanded under these grants beyond the initial period of Federal funding in areas including, but not limited to, facilities, financial management, central office, student academic achievement, governance, oversight, and human resources of the charter schools (4 points).

(3) A multi-year financial and operating model for the organization, a demonstrated commitment of current and future partners, and evidence of broad support from stakeholders critical to the project's long-term success (4 points).

(4) The plan for closing charter schools supported, overseen, or managed by the applicant that do not meet high standards of quality (2 points).

(5) The qualifications, including relevant training and experience, of the project director, chief executive officer or organization leader, and key project personnel, especially in managing projects of the size and scope of the proposed project (6 points).

(e) *Quality of the evaluation plan.* (34 CFR 75.210(h)(2)(iv)) (10 points)

The Secretary considers the quality of the evaluation to be conducted of the proposed project. In determining the quality of the evaluation, the Secretary considers the extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data.

3. *Review and Selection Process:* We remind potential applicants that in reviewing applications in any discretionary grant competition, the Secretary may consider, under 34 CFR 75.217(d)(3), the past performance of the applicant in carrying out a previous award, such as the applicant's use of funds, achievement of project objectives, and compliance with grant conditions. The Secretary may also consider whether the applicant failed to submit a timely performance report or submitted a report of unacceptable quality.

In addition, in making a competitive grant award, the Secretary also requires various assurances including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department of Education (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

4. *Special Conditions:* Under 2 CFR 3474.10, the Secretary may impose special conditions and, in appropriate circumstances, high-risk conditions on a grant if the applicant or grantee is not financially stable; has a history of unsatisfactory performance; has a financial or other management system that does not meet the standards in 2 CFR part 200, subpart D; has not fulfilled the conditions of a prior grant; or is otherwise not responsible.

VI. Award Administration Information

1. *Award Notices:* If your application is successful, we notify your U.S. Representative and U.S. Senators and send you a Grant Award Notification (GAN); or we may send you an email containing a link to access an electronic version of your GAN. We may notify you informally, also.

If your application is not evaluated or not selected for funding, we notify you.

2. *Administrative and National Policy Requirements:* We identify administrative and national policy requirements in the application package and reference these and other requirements in the *Applicable Regulations* section of this notice.

We reference the regulations outlining the terms and conditions of an award in the *Applicable Regulations* section of this notice and include these and other specific conditions in the GAN. The GAN also incorporates your approved application as part of your binding commitments under the grant.

3. *Reporting:* (a) If you apply for a grant under this competition, you must ensure that you have in place the necessary processes and systems to comply with the reporting requirements in 2 CFR part 170 should you receive funding under the competition. This does not apply if you have an exception under 2 CFR 170.110(b).

(b) At the end of your project period, you must submit a final performance report, including financial information, as directed by the Secretary. If you receive a multi-year award, you must submit an annual performance report that provides the most current performance and financial expenditure information as directed by the Secretary under 34 CFR 75.118. The Secretary may also require more frequent performance reports under 34 CFR 75.720(c). For specific requirements on reporting, please go to *www.ed.gov/fund/grant/apply/appforms/appforms.html.*

4. *Performance Measures:*

(a) Program Performance Measures. The goal of the CSP is to support the creation and development of a large number of high-quality charter schools that are free from State or local rules that inhibit flexible operation, are held accountable for enabling students to reach challenging State performance standards, and are open to all students. The Secretary has two performance indicators to measure progress towards this goal: (1) the number of charter schools in operation around the Nation, and (2) the percentage of fourth- and eighth-grade charter school students who are achieving at or above the proficient level on State assessments in mathematics and reading/language arts. Additionally, the Secretary has established the following measure to examine the efficiency of the CSP: Federal cost per student in implementing a successful school (defined as a school in operation for three or more consecutive years).

(b) Project-Specific Performance Measures. Applicants must propose project-specific performance measures and performance targets consistent with the objectives of the proposed project. Applications must provide the following information as directed under 34 CFR 75.110(b) and (c):

(1) Performance measures. How each proposed performance measure (as defined in this notice) would accurately measure the performance of the project and how the proposed performance measure would be consistent with the performance measures established for the program funding the competition.

(2) Baseline data. (i) Why each proposed baseline (as defined in this notice) is valid; or (ii) If the applicant has determined that there are no established baseline data for a particular performance measure, an explanation of why there is no established baseline and of how and when, during the project period, the applicant would establish a valid baseline for the performance measure.

(3) Performance targets. Why each proposed performance target (as defined in this notice) is ambitious (as defined in this notice) yet achievable compared to the baseline for the performance

measure and when, during the project period, the applicant would meet the performance target(s).

Note: The Secretary encourages applicants to consider measures and targets tied to their grant activities (for instance, if grant funds will support professional development for teachers and other staff, applicants should include measures related to the outcomes for the professional development), as well as to student academic achievement during the grant period. The measures should be sufficient to gauge the progress throughout the grant period, and show results by the end of the grant period.

For technical assistance in developing effective performance measures, applicants are encouraged to review information provided by the Department's Regional Educational Laboratories (RELs). The RELs seek to build the capacity of States and school districts to incorporate data and research into education decision-making. Each REL provides research support and technical assistance to its region but makes learning opportunities available to educators everywhere. For example, the REL Northeast and Islands has created the following resource on logic models: *relpacific.mcrel.org/resources/elm-app.*

(4) The applicant must also describe in the application: (i) the data collection and reporting methods the applicant would use and why those methods are likely to yield reliable, valid, and meaningful performance data, and (ii) the applicant's capacity to collect and report reliable, valid, and meaningful performance data, as evidenced by high-quality data collection, analysis, and reporting in other projects or research.

Note: If the applicant does not have experience with collection and reporting of performance data through other projects or research, the applicant should provide other evidence of capacity to successfully carry out data collection and reporting for their proposed project.

All grantees must submit an annual performance report with information that is responsive to these performance measures.

5. *Continuation Awards:* In making a continuation award under 34 CFR 75.253, the Secretary considers, among other things: whether a grantee has made substantial progress in achieving the goals and objectives of the project; whether the grantee has expended funds in a manner that is consistent with its approved application and budget; and, if the Secretary has established performance measurement requirements, the performance targets in the grantee's approved application. In making a continuation grant, the Secretary also considers whether the grantee is operating in compliance with the assurances in its approved application, including those applicable to Federal civil rights laws that prohibit discrimination in programs or activities receiving Federal financial assistance from the Department (34 CFR 100.4, 104.5, 106.4, 108.8, and 110.23).

VII. Agency Contact

For Further Information Contact: Brian Martin, U.S. Department of Education, 400 Maryland Avenue SW., room 4W224, Washington, DC 20202–5970. Telephone: (202) 205–9085 or by email: *brian.martin@ed.gov.*

If you use a TDD or a TTY, call the FRS, toll free, at 1–800–877–8339.

VIII. Other Information

Accessible Format: Individuals with disabilities can obtain this document and a copy of the application package in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) on request to the program contact person listed under *For Further Information Contact* in section VII of this notice.

Electronic Access to This Document: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of this Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF you must have Adobe Acrobat Reader, which is available free at the site.

You may also access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

Dated: June 8, 2015.

Nadya Chinoy Dabby,

Assistant Deputy Secretary for Innovation and Improvement.

[FR Doc. 2015–14386 Filed 6–11–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[OE Docket No. PP–400]

Notice of Availability (NOA) for the Draft Environmental Impact Statement (EIS) and Announcement of Public Hearings for the Proposed New England Clean Power Link (NECPL) Transmission Line

AGENCY: U.S. Department of Energy.

ACTION: Notice of availability and public hearings.

SUMMARY: The U.S. Department of Energy (DOE) announces the availability of the ''*Draft Environmental Impact Statement for the New England Clean Power Link Transmission Line Project*'' (DOE/EIS–0503) for public review and comment. DOE is also announcing two public hearings to receive comments on the Draft EIS. The Draft EIS evaluates the environmental impacts of DOE's proposed Federal action of issuing a Presidential permit to the Applicant: Champlain VT, LLC, doing business as TDI New England (''TDI–NE''), to construct, operate, maintain, and connect a new electric transmission line across the U.S./Canada border in northern Vermont.

DATES: DOE invites interested Members of Congress, state and local governments, other Federal agencies, American Indian tribal governments, organizations, and members of the public to provide comments on the Draft EIS during the 60-day public comment period. The public comment period starts on June 12, 2015, with the publication in the **Federal Register** by the U.S. Environmental Protection Agency of its Notice of Availability of the Draft EIS, and will continue until August 11, 2015. Written and oral comments will be given equal weight and all comments received or postmarked by that date will be considered by DOE in preparing the Final EIS. Comments received or postmarked after that date will be considered to the extent practicable.

Locations, dates, and start time for the public hearings are listed in the **SUPPLEMENTARY INFORMATION** section of this NOA.

ADDRESSES: Requests to provide oral comments at the public hearings may be made at the time of the hearing(s).

Written comments on the Draft EIS may be provided on the NECPL EIS Web site at *http://necplinkeis.com/* (preferred) or addressed to Mr. Brian Mills, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue SW.,

Washington, DC 20585; by electronic mail to *Brian.Mills@hq.doe.gov*; or by facsimile to 202–318–7761.

FOR FURTHER INFORMATION CONTACT: Mr. Brian Mills at the addresses above, or at 202–586–8267.

SUPPLEMENTARY INFORMATION: The public hearings will consist of the formal taking of comments with transcription by a court stenographer. The hearings will provide interested parties the opportunity to make comments for consideration in the preparation of the Final EIS.

The locations, dates, and starting times of the public hearings are listed in the table below:

Location	Date and time	Address
Sheraton, Burlington, Vermont	July 15, 2015, 6:00 p.m	870 Williston Road, South Burlington, Vermont 05403.
Holiday Inn, Rutland, Vermont	July 16, 2015, 6:00 p.m	476 Holiday Drive, Rutland, Vermont 05701.

Availability of the Draft EIS

Copies of the Draft EIS have been distributed to appropriate members of Congress, state and local government officials, American Indian tribal governments, and other Federal agencies, groups, and interested parties. Printed copies of the document may be obtained by contacting Mr. Mills at the above address. Copies of the Draft EIS and supporting documents are also available for inspection at the following locations:

- South Hero Free Library—76 South Street, South Hero, Vermont
- Fletcher Free Library—235 College Street, Burlington, Vermont
- Winooski Public Library—32 Malletts Bay Avenue, Winooski, Vermont
- Middlebury Library—75 Main Street, Middlebury, Vermont
- Rutland Free Library—10 Court Street, Rutland, Vermont
- West Rutland Library—595 Main Street, West Rutland, Vermont
- Shrewsbury Library—98 Town Hill Road, Cuttingsville, Vermont
- Gilbert Hart Library—14 S. Main Street, Wallingford, Vermont
- Fair Haven Public Library—107 North Main Street, Fair Haven, Vermont
- Mount Holly Town Library—26 Maple Hill Road, Belmont, Vermont
- Bailey Memorial Library—111 Moulton Avenue, North Clarendon, Vermont

The Draft EIS is also available on the EIS Web site at *http://necplinkeis.com/* and on the DOE NEPA Web site at *http://nepa.energy.gov/*.

Issued in Washington, DC, on June 4, 2015.

Patricia A. Hoffman,

Assistant Secretary, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2015–14335 Filed 6–11–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC15–96–000.
Applicants: Osprey Energy Center, LLC, Duke Energy Florida, Inc.
Description: Osprey Energy Center, LLC and Duke Energy Florida, Inc submit additional information concerning the 3/13/15 application.
Filed Date: 6/4/15.
Accession Number: 20150608–0019.
Comments Due: 5 p.m. ET 6/18/15.

Docket Numbers: EC15–154–000.
Applicants: 67RK 8me LLC.
Description: Application for Authorization Under Section 203 of the Federal Power Act, Request for Expedited Consideration and Confidential Treatment of 67RK 8me LLC.
Filed Date: 6/5/15.
Accession Number: 20150605–5239.
Comments Due: 5 p.m. ET 6/26/15.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG15–92–000.
Applicants: Panda Liberty LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Panda Liberty LLC.
Filed Date: 6/5/15.
Accession Number: 20150605–5131.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: EG15–93–000.
Applicants: Panda Patriot LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Panda Patriot LLC.
Filed Date: 6/5/15.
Accession Number: 20150605–5132.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: EG15–94–000.
Applicants: Panda Stonewall LLC.
Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Panda Stonewall LLC.
Filed Date: 6/5/15.
Accession Number: 20150605–5136.
Comments Due: 5 p.m. ET 6/26/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2249–004.
Applicants: Portland General Electric Company.
Description: Supplement to February 13, 2015 Notice of Non-Material Change in Status of Portland General Electric Company.
Filed Date: 6/5/15
Accession Number: 20150605–5237
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER13–80–006.
Applicants: Tampa Electric Company.
Description: Compliance filing per 35: OATT Order No. 1000 Amendment of 2014–2015 Compliance Filings to be effective 1/1/2015.
Filed Date: 6/8/15.
Accession Number: 20150608–5080.
Comments Due: 5 p.m. ET 6/29/15.

Docket Numbers: ER13–86–006.
Applicants: Duke Energy Florida, Inc., Duke Energy Carolinas, LLC.
Description: Compliance filing per 35: FRCC Fourth Order No. 1000 Compliance Filing to be effective 1/1/2015.
Filed Date: 6/8/15.
Accession Number: 20150608–5076.
Comments Due: 5 p.m. ET 6/29/15.

Docket Numbers: ER15–1210–001
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing per 35: 2015–06–08_Hoosier-SIPC RTO Adder Compliance to be effective 5/10/2015.
Filed Date: 6/8/15.
Accession Number: 20150608–5152.
Comments Due: 5 p.m. ET 6/29/15.
Docket Numbers: ER15–1386–000.
Applicants: Arizona Public Service Company.
Description: eTariff filing per 35.19a(b): Service Agreement No. 343 Refund Report to be effective N/A.
Filed Date: 6/5/15.
Accession Number: 20150605–5121.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1877–000.

Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2015–06–05_Consumers Schedules 7, 8, 9 & 26, Att WW to be effective 10/1/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5168.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1878–000
Applicants: Champion Energy Marketing LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Seller Category Change to be effective 6/6/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5173.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1879–000.
Applicants: Champion Energy Services, LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Seller Category Change to be effective 6/6/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5175.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1880–000.
Applicants: Champion Energy, LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Seller Category Change to be effective 6/6/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5176.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1881–000.
Applicants: Talen Energy Marketing, LLC.
Description: Compliance filing per 35: Notice of Succession to Reactive Power Tariff to be effective 6/5/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5177.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1882–000.
Applicants: PSEG Energy Resources & Trade LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(ii): Revised Reactive Tariff to be effective 6/5/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5178.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1883–000.
Applicants: Adelanto Solar, LLC.
Description: Baseline eTariff Filing per 35.1: Adelanto Solar, LLC Application for Market-Based Rates to be effective 8/5/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5179.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1884–000.
Applicants: EDF Energy Services, LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): normal filing 2015 to be effective 6/8/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5180.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1885–000.
Applicants: EDF Trading North America, LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): normal filing 2015 to be effective 6/8/2015.
Filed Date: 6/8/15.
Accession Number: 20150608–5001.
Comments Due: 5 p.m. ET 6/29/15.

Docket Numbers: ER15–1886–000.
Applicants: EDF Industrial Power Services (CA), LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): normal filing 2015 to be effective 6/8/2015.
Filed Date: 6/8/15.
Accession Number: 20150608–5002.
Comments Due: 5 p.m. ET 6/29/15.

Docket Numbers: ER15–1887–000.
Applicants: EDF Industrial Power Services (IL), LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): normal filing 2015 to be effective 6/8/2015.
Filed Date: 6/8/15.
Accession Number: 20150608–5003.
Comments Due: 5 p.m. ET 6/29/15.

Docket Numbers: ER15–1888–000.
Applicants: EDF Industrial Power Services (NY), LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): normal filing 2015 to be effective 6/8/2015.
Filed Date: 6/8/15.
Accession Number: 20150608–5004.
Comments Due: 5 p.m. ET 6/29/15.

Docket Numbers: ER15–1889–000.
Applicants: EDF Industrial Power Services (OH), LLC.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): normal filing 2015 to be effective 6/8/2015.
Filed Date: 6/8/15.
Accession Number: 20150608–5005.
Comments Due: 5 p.m. ET 6/29/15.
Docket Numbers: ER15–1890–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2015–06–05_MISO–PJM JOA 35% Filing to be effective 8/4/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5242.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1891–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 1067R4 East Texas Electric Cooperative NITSA and NOA to be effective 6/1/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5243.
Comments Due: 5 p.m. ET 6/26/15.

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: June 8, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–14390 Filed 6–11–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: PR15–34–001.
Applicants: Bridgeline Holdings, L.P.
Description: Submits tariff filing per 284.123(b), (e), (g): Rate Petition Filing 5–28–15 to be effective 4/1/2015; Filing Type: 1270.
Filed Date: 5/28/15.
Accession Number: 20150528–5112.
Comments Due: 5 p.m. ET 6/18/15.

284.123(g) Protests Due: 5 p.m. ET 6/18/15.

Docket Numbers: RP15–1026–000.
Applicants: Maritimes & Northeast Pipeline, L.L.C.
Description: § 4(d) rate filing per 154.312: Maritimes & Northeast Pipeline, L.L.C. Section 4 Rate Case Filing to be effective 7/1/2015.
Filed Date: 5/29/15.
Accession Number: 20150529–5464.
Comments Due: 5 p.m. ET 6/10/15.

Docket Numbers: RP10–147–000.
Applicants: Natural Gas Pipeline Company of America.
Description: Cost and Revenue Study of Natural Gas Pipeline Company of America LLC.
Filed Date: 6/1/15.

Accession Number: 20150601–5438.
Comments Due: 5 p.m. ET 6/15/15.

Docket Numbers: RP15–1042–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) rate filing per 154.204: June 5—30 2015 Auction to be effective 6/2/2015.
Filed Date: 6/2/15.
Accession Number: 20150602–5070.
Comments Due: 5 p.m. ET 6/15/15.

Docket Numbers: RP15–1043–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) rate filing per 154.204: Neg Rate 2015–06–02 Encana to be effective 6/2/2015.
Filed Date: 6/2/15.
Accession Number: 20150602–5104.
Comments Due: 5 p.m. ET 6/15/15.

Docket Numbers: RP15–1044–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) rate filing per 154.204: GT&C Points of Receipt and Delivery to be effective 7/1/2015.
Filed Date: 6/2/15.
Accession Number: 20150602–5160.
Comments Due: 5 p.m. ET 6/15/15.

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 date(s). 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: June 3, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–14388 Filed 6–11–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP15–1011–000.
Applicants: Transcontinental Gas Pipe Line Company,
Description: § 4(d) rate filing per 154.204: Non-Conforming Agreement_NESL_MSCG to be effective 6/1/2015.
Filed Date: 5/29/15.
Accession Number: 20150529–5002.
Comments Due: 5 p.m. ET 6/10/15.

Docket Numbers: RP15–1012–000.
Applicants: Transcontinental Gas Pipe Line Company,
Description: § 4(d) rate filing per 154.204: Update List of Non-Conforming Service Agreements (NESL_MSCG) to be effective 6/1/2015.
Filed Date: 5/29/15.
Accession Number: 20150529–5005.
Comments Due: 5 p.m. ET 6/10/15.

Docket Numbers: RP15–1013–000.
Applicants: Colorado Interstate Gas Company, L.L.C.
Description: § 4(d) rate filing per 154.403(d)(2): FL&U to be effective July 1, 2015 to be effective 7/1/2015.
Filed Date: 5/29/15.
Accession Number: 20150529–5007.
Comments Due: 5 p.m. ET 6/10/15.

Docket Numbers: RP15–1014–000.
Applicants: Hardy Storage Company, LLC.
Description: § 4(d) rate filing per 154.204: Annual Penalty Revenue Crediting Report 2015 to be effective 6/29/2015.
Filed Date: 5/29/15.
Accession Number: 20150529–5074.
Comments Due: 5 p.m. ET 6/10/15.

Docket Numbers: RP15–1015–000.
Applicants: MarkWest Pioneer, L.L.C.
Description: § 4(d) rate filing per 154.403(d)(2): Quarterly FRP Filing to be effective 7/1/2015.
Filed Date: 5/29/15.
Accession Number: 20150529–5079.
Comments Due: 5 p.m. ET 6/10/15.

Docket Numbers: RP15–1016–000.
Applicants: Kinder Morgan Louisiana Pipeline LLC.
Description: § 4(d) rate filing per 154.403: Periodic Rate Adjustment to be effective 7/1/2015.
Filed Date: 5/29/15.
Accession Number: 20150529–5182.
Comments Due: 5 p.m. ET 6/10/15.

Docket Numbers: RP15–1017–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) rate filing per 154.204: Non-Conforming Agreements Filing (PNM) to be effective 7/1/2015.
Filed Date: 5/29/15.
Accession Number: 20150529–5233.
Comments Due: 5 p.m. ET 6/10/15.

Docket Numbers: RP15–1018–000.
Applicants: Dominion Transmission, Inc.
Description: § 4(d) rate filing per 154.204: DTI—May 29, 2015 Nonconforming Service Agreement to be effective 6/1/2015.
Filed Date: 5/29/15.
Accession Number: 20150529–5238.
Comments Due: 5 p.m. ET 6/10/15.

Docket Numbers: RP15–1019–000.
Applicants: Ruby Pipeline, L.L.C.
Description: § 4(d) rate filing per 154.403(d)(2): FL&U to be effective July 1, 2015 to be effective 7/1/2015.
Filed Date: 5/29/15.
Accession Number: 20150529–5247.
Comments Due: 5 p.m. ET 6/10/15.

Docket Numbers: RP15–1020–000.
Applicants: Rockies Express Pipeline LLC.
Description: Penalty Charge Reconciliation Filing of Rockies Express Pipeline LLC.
Filed Date: 5/29/15.
Accession Number: 20150529–5269.
Comments Due: 5 p.m. ET 6/10/15.

Docket Numbers: RP15–1021–000.
Applicants: Cheyenne Plains Gas Pipeline Company, L.
Description: § 4(d) rate filing per 154.204: Rate Schedule HSP to be effective 7/1/2015.
Filed Date: 5/29/15.
Accession Number: 20150529–5272.
Comments Due: 5 p.m. ET 6/10/15.

Docket Numbers: RP15–1022–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) rate filing per 154.204: New Services Offering to be effective 7/1/2015.
Filed Date: 5/29/15.
Accession Number: 20150529–5277.
Comments Due: 5 p.m. ET 6/10/15.

Docket Numbers: RP15–1023–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) rate filing per 154.204: Neg Rate 2015–05–29 Yates, ConocoPhillips to be effective 6/1/2015.
Filed Date: 5/29/15.
Accession Number: 20150529–5278.
Comments Due: 5 p.m. ET 6/10/15.

Docket Numbers: RP15–1024–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) rate filing per 154.204: Neg Rate 2015–05–29 ITs Sequent, BP, Mieco, Tenaska, Exelon to be effective 6/1/2015.
Filed Date: 5/29/15.
Accession Number: 20150529–5307.
Comments Due: 5 p.m. ET 6/10/15.

Docket Numbers: RP15–1025–000.
Applicants: Tallgrass Interstate Gas Transmission, L.
Description: § 4(d) rate filing per 154.204: Neg Rate 2015/5/29 Cross Timbers to be effective 6/1/2015.
Filed Date: 5/29/15.
Accession Number: 20150529–5365.
Comments Due: 5 p.m. ET 6/10/15.

Docket Numbers: RP15–1027–000.
Applicants: Iroquois Gas Transmission System, L.P.
Description: § 4(d) rate filing per 154.204: 05/29/15 Negotiated Rates—Cargill Incorporated (RTS) 3085–23 to be effective 5/29/2015.
Filed Date: 5/29/15.
Accession Number: 20150529–5467.
Comments Due: 5 p.m. ET 6/10/15.

Docket Numbers: RP15–1028–000.
Applicants: Gas Transmission Northwest LLC.
Description: Compliance filing per 154.203: Compliance to RP15–904–000 to be effective 7/1/2015.
Filed Date: 5/29/15.
Accession Number: 20150529–5469.
Comments Due: 5 p.m. ET 6/10/15.

Docket Numbers: RP15–1045–000.
Applicants: American Midstream (AlaTenn), LLC.
Description: § 4(d) rate filing per 154.204: Off-System Capacity Filing to be effective 7/6/2015.
Filed Date: 6/3/15.
Accession Number: 20150603–5137.
Comments Due: 5 p.m. ET 6/15/15.

Docket Numbers: RP15–1046–000.
Applicants: Equitrans, L.P.
Description: § 4(d) rate filing per 154.204: Negotiated Capacity Release Agreement- 6/03/2015 to be effective 6/3/2015.
Filed Date: 6/3/15.
Accession Number: 20150603–5138.
Comments Due: 5 p.m. ET 6/15/15.

Docket Numbers: RP15–1047–000.
Applicants: Alliance Pipeline L.P.
Description: § 4(d) rate filing per 154.204: June 9—19 2015 Auction to be effective 6/3/2015.
Filed Date: 6/3/15.
Accession Number: 20150603–5161.
Comments Due: 5 p.m. ET 6/15/15.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

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Dated: June 4, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–14389 Filed 6–11–15; 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: ER15–1067–002.
Applicants: Midcontinent Independent System Operator, Inc.
Description: Compliance filing per 35: 2015–06–05_MMTG RTO Adder Compliance Supplement to be effective 6/16/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5070.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1410–002.
Applicants: San Diego Gas & Electric Company.
Description: Compliance filing per 35: Compliance Filing Appendix X Formula of TO Tariff to be effective 6/1/2015.
Filed Date: 6/4/15.
Accession Number: 20150604–5154.
Comments Due: 5 p.m. ET 6/25/15.

Docket Numbers: ER15–1496–001.
Applicants: 2014 ESA Project Company, LLC.
Description: Tariff Amendment per 35.17(b): 2014 ESA Project Company, LLC—Supplemental MBR Filing to be effective 6/4/2015.
Filed Date: 6/4/15.
Accession Number: 20150604–5176.
Comments Due: 5 p.m. ET 6/18/15.

Docket Numbers: ER15–1858–000.
Applicants: Southern California Edison Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Cert of Concurrence ANPP IA APS, LADWP, El Paso, PSC Nex Mexico, SRP, SCPPA, SCE to be effective 5/21/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5007.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1859–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2900R3 KMEA NITSA NOA to be effective 6/1/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5069.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1860–000.
Applicants: Tucson Electric Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Transmission Service Agreement Nos. 218 and 267 to be effective 9/16/2010.
Filed Date: 6/5/15.
Accession Number: 20150605–5079.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1861–000.
Applicants: Tucson Electric Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): OATT Service Agreements to be effective 9/16/2010.
Filed Date: 6/5/15.
Accession Number: 20150605–5080.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1862–000.
Applicants: Tucson Electric Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): OATT Service Agreements to be effective 8/5/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5081.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1863–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Withdrawal per 35.15: Notice of Cancellation of SA No. 3237; Queue No. W4–093 to be effective 7/6/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5082.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1864–000.
Applicants: Alabama Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Infigen Energy US Development LGIA Filing to be effective 5/26/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5106.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1865–000.
Applicants: Tucson Electric Power Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Cancelled Service Agreements to be effective 8/5/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5107.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1866–000.
Applicants: ISO New England Inc.
Description: ISO New England Inc. Resource Termination Filing—Efficiency Maine Trust.
Filed Date: 6/5/15.
Accession Number: 20150605–5111.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1867–000
Applicants: ISO New England Inc.
Description: ISO New England Inc. Resource Termination—Direct Energy Business Marketing, LLC.

Filed Date: 6/5/15.
Accession Number: 20150605–5112.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1868–000.
Applicants: Montour, LLC.
Description: Compliance filing per 35: Succession Notice & Certification of Concurrance—Conemaugh to be effective 6/5/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5116.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1869–000.
Applicants: PJM Interconnection, L.L.C.
Description: Tariff Withdrawal per 35.15: Notice of Cancellation of WMPA SA No. 3204; Queue W3–149 to be effective 7/6/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5118.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1870–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 1065R4 Tex-La Electric Cooperative of Texas NITSA and NOA to be effective 6/1/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5120.
Comments Due: 5 p.m. ET 6/26/15.
Docket Numbers: ER15–1871–000.
Applicants: Arizona Public Service Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Service Agreement Nos. 344 and 345, Agreements with CSE and S&R to be effective 5/12/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5122.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1872–000.
Applicants: Montour, LLC.
Description: Compliance filing per 35: Succession Notice & Certification of Concurrance—Keystone to be effective 6/5/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5127.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1873–000.
Applicants: Buckeye Wind Energy LLC.
Description: Initial rate filing per 35.12 Application for Market-Based Rate Authorization to be effective 8/5/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5141.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1873–001.
Applicants: Buckeye Wind Energy LLC.
Description: Tariff Amendment per 35.17(b): Supplement to Market-Based Rate Application to be effective 8/5/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5148.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1874–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revisions to PJM–MISO JOA Attachment 3 re 35% Flowgates to be effective 8/4/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5146.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1875–000.
Applicants: California Independent System Operator Corp.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2015–06–05 Commitment Cost Enhancements Phase 2 to be effective 9/15/2015.
Filed Date: 6/5/15.
Accession Number: 20150605–5147.
Comments Due: 5 p.m. ET 6/26/15.

Docket Numbers: ER15–1876–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2015–06–05_SA 6507 White Pine 1 SSR Agr Unanticipated Repairs to be effective 6/1/2016.
Filed Date: 6/5/15.
Accession Number: 20150605–5150.
Comments Due: 5 p.m. ET 6/26/15.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES15–32–000
Applicants: Duquesne Light Company
Description: Application of Duquesne Light Company Pursuant to Section 204 of the Federal Power Act for an Order Authorizing the Issuance of Short-Term Indebtedness.
Filed Date: 6/5/15.
Accession Number: 20150605–5151.
Comments Due: 5 p.m. ET 6/26/15.

Take notice that the Commission received the following public utility holding company filings:

Docket Numbers: PH15–15–000.
Applicants: Starwood Energy Group Global, L.L.C.
Description: Starwood Energy Group Global, L.L.C. submits FERC 65–B Material Change in Facts of Waiver Notification.
Filed Date: 6/4/15.
Accession Number: 20150604–5211.
Comments Due: 5 p.m. ET 6/25/15.

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: June 5, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–14387 Filed 6–11–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2015–0341; FRL–9929–15–OAR]

Notice of Availability of the Environmental Protection Agency's Update of Two Chapters in the EPA Air Pollution Control Cost Manual

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice that two chapters of the current EPA Air Pollution Control Cost Manual (''Control Cost Manual'') have been revised and updated. The EPA is requesting comment on the update of these two chapters, both of which deal with oxides of nitrogen (NOx) emissions control measures, and the supporting data and methods applied.

DATES: Comments must be received on or before August 11, 2015. Please refer to **SUPPLEMENTARY INFORMATION** for additional information on submitting comments on the provided data.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OAR–2015–0341, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the on-line instructions for submitting comments.
- *Email: A-and-R-Docket@epa.gov.* Include docket ID No. EPA–HQ–OAR–2015–0341 in the subject line of the message.
- *Fax:* (202) 566–9744. Attention Docket ID No. EPA–HQ–OAR–2015–0341.
- *Mail:* EPA Docket Center, WJC West Building, Attention Docket ID No. EPA–HQ–OAR–2015–0341, U.S.

Environmental Protection Agency, Mailcode: 28221T, 1200 Pennsylvania Ave. NW., Washington, DC 20460. Please include a total of 2 copies.

• *Hand Delivery:* U.S. Environmental Protection Agency, WJC West Building, 1301 Constitution Avenue NW., Room 3334, Washington, DC 20004, Attention Docket ID No. EPA–HQ–OAR–2015–0341. 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–2015–0341. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means the EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to the EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. 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 and Radiation Docket and Information Center, EPA/DC, WJC West Building, 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: For questions on the EPA Air Pollution Control Cost Manual update and on how to submit comments, contact Larry Sorrels, Health and Environmental Impacts Division, Environmental Protection Agency, C439–02, 109 T.W. Alexander Drive, Research Triangle Park, NC 27709; telephone number: (919) 541–5041; fax number: (919) 541–0839; email address: *sorrels.larry@epa.gov.*

SUPPLEMENTARY INFORMATION: The EPA is requesting comment on the EPA Air Pollution Control Cost Manual update; in particular, on the specific Control Cost Manual chapters included in this notice.

I. Additional Information on Submitting Comments

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

1. *Submitting CBI.* Do not submit this information to the EPA through *www.regulations.gov* or email. Clearly mark the 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 docket office specified in the *Instructions,* 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:

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

b. Explain your comments, why you agree or disagree; suggest alternatives and substitute data that reflects your requested changes.

c. Describe any assumptions and provide any technical information and/or data that you used.

d. Provide specific examples to illustrate your concerns, and suggest alternatives.

e. Explain your views as clearly as possible, avoiding the use of profanity or personal threats.

f. Make sure to submit your comments by the comment period deadline identified.

II. Information Available for Public Comment

The EPA is requesting comment on two revised chapters of the EPA Air Pollution Control Cost Manual. The Control Cost Manual contains individual chapters on control measures, with data and equations available to aid users to estimate the capital costs for installation and annual costs for operation and maintenance of these measures. The Control Cost Manual is used by the EPA for estimating the impacts of rulemakings, and serves as a basis for sources to estimate costs of controls that are best available control technology (BACT) under the New Source Review (NSR), and best available retrofit technology (BART) under the Regional Haze Program, and for other programs.

The two revised Control Cost Manual chapters are the selective non-catalytic reduction (SNCR) and the selective catalytic reduction (SCR) chapters (Section 4, Chapters 1 and 2, respectively). The current Cost Manual version (sixth edition) is available at *http://epa.gov/ttn/catc/products.html#cccinfo,* and was last updated in 2003. The Consolidated Appropriations Act of 2014 requested that the EPA begin development of a seventh edition of the Cost Manual. The EPA has met with state, local, and tribal officials to discuss plans for the Control Cost Manual update as called for under the Consolidated Appropriations Act of 2014. The EPA has met with other groups as well at their request.

To help focus review of the SNCR and SCR chapters, we offer the following list of questions that the agency is particularly interested in addressing through this notice, although commenters are welcome to address any aspects of these chapters. Please provide supporting data for responses to these questions, and other aspects of the chapters, as mentioned above.

For the SNCR chapter:

(1) What is a reasonable estimate of equipment life (defined as design or operational life) for this control measure?

(2) How do the costs of SNCR installation and operation differ between the electric power sector and industrial sources?

(3) What is a reasonable estimate of contingency, whether it be for one or more types, for this control measure?

For the SCR chapter:

(1) What is a reasonable estimate of equipment life (defined as design or operational life) for this control measure?

(2) How do the costs of SCR installation and operation differ between the electric power sector and industrial sources?

(3) What are typical SCR costs for catalyst replacement? In particular, please comment on the two different approaches for estimating catalyst replacement costs in this chapter. What are typical SCR costs for catalyst regeneration?

(4) What is a reasonable estimate of contingency, whether it be for one or more types, for this control measure?

Dated: June 5, 2015.

Stephen D. Page,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 2015–14470 Filed 6–11–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2015–0233; FRL–9925–36]

Chemical Safety Advisory Committee; Establishment of a Federal Advisory Committee; Request for Nominations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (FACA), we are giving notice that EPA recently established the Chemical Safety Advisory Committee (CSAC). The purpose of the CSAC is to provide expert scientific advice, information, and recommendations to the Office of Pollution Prevention and Toxics (OPPT). The major objective is to provide advice and recommendations on: The scientific basis for risk assessments, methodologies, and pollution prevention measures or approaches. EPA has determined that this federal advisory committee is necessary and in the public interest and will assist the EPA in performing its duties and responsibilities. Copies of the CSAC charter will be filed with the appropriate congressional committees and the Library of Congress. EPA invites the public to nominate experts to be considered for the Chemical Safety Advisory Committee.

DATES: Comments must be received on or before July 13, 2015.

ADDRESSES: Submit your nominations, identified by docket identification (ID) number EPA–HQ–OPPT–2015–0233, by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPPT Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *http://www.epa.gov/dockets/contacts.html.*

Additional instructions on visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Laura Bailey, (7201M), Office of Science Coordination and Policy (OSCP), Office of Chemical Safety and Pollution Prevention (OCSPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001, email address: *bailey.laura@epa.gov*, telephone number: (202) 564–8450.

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those involved in the manufacture, processing, distribution, disposal, and/or interested in the assessment of risks involving chemical substances and mixtures. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What is EPA's authority?

This committee is being established under FACA, 5 U.S.C. Appendix 2.

II. Purpose and Function of the Chemical Safety Advisory Committee

The CSAC was established under FACA section 9(a) to provide advice and recommendations on the scientific basis for risk assessments, methodologies, and pollution prevention measures or approaches.

OPPT manages programs under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* and the Pollution Prevention Act (PPA), 42 U.S.C. 13101 *et seq.* Under these laws, EPA evaluates new and existing chemical substances and their risks, and finds ways to prevent or reduce pollution before it is released into the environment. OPPT also manages a variety of environmental stewardship programs that encourage companies to reduce and prevent pollution.

The CSAC will be composed of approximately ten members who will serve as Regular Government Employees (RGEs) or Special Government Employees (SGEs). The CSAC expects to meet in person or by electronic means (*e.g.,* telephone, videoconference, webcast, etc.) approximately 3 to 4 times a year, or as needed and approved by the Designated Federal Officer (DFO). Meetings will be held in the Washington, DC or Virginia area. The CSAC will be examined annually and will exist until the EPA determines that the CSAC is no longer needed. The charter will be in effect for 2 years from the date it is filed with Congress. After the initial 2-year period, the charter may be renewed as authorized in accordance with section 14 of FACA (5 U.S.C. Appendix 2, Section 14). A copy of the charter will be available on the EPA Web site and in the docket.

III. Nominations Sought

Nominations for membership are being solicited through publication of this document in the **Federal Register** and through other sources. Any interested person or organization may nominate him or herself or any qualified individual to be considered for the CSAC.

Nominations should include candidates who have demonstrated high levels of competence, knowledge, and expertise in scientific/technical fields relevant to chemical risk assessment and pollution prevention. To the extent feasible, the members will include representation of the following disciplines, including, but not limited to: toxicology, pathology, environmental toxicology and chemistry, exposure assessment, and related sciences, *e.g.,* synthetic biology, pharmacology, biotechnology, nanotechnology, biochemistry, biostatistics, pharmacologically based pharmacokinetic (PBPK) modeling, computational toxicology, epidemiology, environmental fate, and environmental engineering and sustainability. EPA values and welcomes diversity and encourages

nominations of women and men of all racial and ethnic groups.

IV. Selection Criteria

In selecting members, EPA will also consider the differing perspectives and breadth of collective experience needed to address EPA's charge to the CSAC, as well as the following:

- Demonstrated ability to work constructively and effectively in a committee setting;
- Absence of financial conflicts of interest or the appearance of lack of impartiality;
- Skills and experience working on committees and advisory panels;
- Background and experiences that would contribute to the diversity of viewpoints on the committee, *e.g.,* workforce sector; geographical location; social, cultural, and educational backgrounds; and professional affiliations;
- Willingness to commit adequate time for the thorough review of materials provided to the committee; and
- Availability to participate in committee meetings.

Names, affiliations and a brief biographical sketch of the nominees selected to serve on the CSAC will be available on the EPA Web site.

Authority: 5 U.S.C. Appendix 2.

Dated: June 4, 2015.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2015–14331 Filed 6–11–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2003–0052; FRL–9929–14–OSWER]

Proposed Information Collection Request; Comment Request; Risk Management Program; Requirements and Petitions to Modify the List of Regulated Substances Under Section 112(r) of the Clean Air Act (CAA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency is planning to submit an information collection request (ICR), ''Risk Management Program Requirements and Petitions to Modify the List of Regulated Substances under section 112(r) of the Clean Air Act (CAA).'' (EPA ICR No. 1656.15, OMB Control No. 2050–0144) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through December 31, 2015. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before August 11, 2015.

ADDRESSES: Submit your comments, referencing Docket ID No. EPA–HQ–OAR–2003–0052, online using *www.regulations.gov* (our preferred method), or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

FOR FURTHER INFORMATION CONTACT: James Belke, Office of Emergency Management, mail code 5104A, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8023; fax number: (202) 564–2625; email address: *belke.jim@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents which explain in detail the information that the EPA will be collecting are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave., NW., Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

Pursuant to section 3506(c)(2)(A) of the PRA, EPA is soliciting comments and information to enable it to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (ii) 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; (iii) enhance the quality, utility, and clarity of the information to be collected; and (iv) 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. EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval. At that time, EPA will issue another **Federal Register** notice to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB.

Abstract: The 1990 CAA Amendments added section 112(r) to provide for the prevention and mitigation of accidental releases. Section 112(r) mandates that EPA promulgate a list of ''regulated substances'' with threshold quantities and establish procedures for the addition and deletion of substances from the list of regulated substances. Processes at stationary sources that contain more than a threshold quantity of a regulated substance are subject to accidental release prevention regulations promulgated under CAA section 112(r)(7). These two rules are codified as 40 CFR part 68.

Part 68 requires that sources with more than a threshold quantity of a regulated substance in a process develop and implement a risk management program and submit a risk management plan to EPA. EPA uses risk management plans to conduct oversight of regulated sources, and to communicate information concerning them to federal, state, and local agencies and the public, as appropriate.

The compliance schedule for the part 68 requirements was established by rule on June 20, 1996. The burden to sources that are currently covered by part 68, for initial rule compliance, including rule familiarization and program implementation was accounted for in previous ICRs. Sources submitted their first RMPs by June 21, 1999. For most sources, the next compliance deadlines occurred thereafter at five year intervals—in 2004, 2009, and 2014. A source submitting an RMP update to comply with their five-year compliance deadline will often submit their updated RMP several days or weeks early to ensure it is received by EPA before their deadline—these sources are assigned a new five-year deadline based off of the actual date of their most recent submission. Therefore, resubmissions tend to occur in ''waves'' peaking each

fifth year. Some sources revised and resubmitted their RMPs between the five-year deadlines, because of changes occurring at the source that triggered an earlier resubmission. These sources were then assigned a new five-year compliance deadline based on the date of their most recent revised plan submission. However, since most sources are not required to resubmit earlier than their five-year compliance deadline, the next RMP submission deadline for most sources occurs in 2019. The remaining sources have been assigned a different deadline in 2016, 2017, 2018, or 2020 based on the date of their most recent submission. Only the first three years are within the period covered by this ICR.

In this ICR, EPA has accounted for burden for new sources that may become subject to the regulations, currently covered sources with compliance deadlines in this ICR period (2016 to 2018), sources that are out of compliance since the last regulatory deadline but are expected to comply during this ICR period, and sources that have deadlines beyond this ICR period but are required to comply with certain prevention program documentation requirements during this ICR period.

Form numbers: Risk Management Plan Form: EPA Form 8700–25; CBI Substantiation Form: EPA Form 8700–27; CBI Unsanitized Data Element Form: EPA Form 8700–28.

Respondents/affected entities: Entities potentially affected by this action are chemical manufacturers, petroleum refineries, water treatment systems, agricultural chemical distributors, refrigerated warehouses, chemical distributors, non-chemical manufacturers, wholesale fuel distributors, energy generation facilities, etc.

Respondent's obligation to respond: Mandatory (40 CFR part 68).

Estimated number of respondents: 12,600 (total).

Frequency of response: Sources must resubmit RMPs at least every five years and update certain on-site documentation more frequently.

Total estimated burden: 80,546 hours (per year). Burden is defined at 5 CFR 1320.03(b).

Total estimated cost: $6,736,212 (per year), includes $0 annualized capital or operation & maintenance costs.

Changes in estimates: The above burden estimates are based on the current approved ICR. In the final notice for the renewed ICR, EPA will publish revised burden estimates based on updates to respondent data and unit costs. The revised burden estimates may decrease slightly from the current ICR, as the total universe of respondents has decreased slightly, and also because the new ICR period will not include a major (five-year) reporting cycle year. The most recent five-year reporting cycle year was 2014, which is covered by the current approved ICR. The next major five-year reporting cycle year is 2019, which is after the period covered by the new ICR. However, wage inflation may offset this decrease or even result in a marginal increase in burden compared with the ICR currently approved by OMB.

Dated: June 1, 2015.

Reggie Cheatham,

Acting Director, Office of Emergency Management.

[FR Doc. 2015–14445 Filed 6–11–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–9021–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7146 or *http://www.epa.gov/compliance/nepa/*.

Weekly receipt of Environmental Impact Statements (EISs)
Filed 06/01/2015 Through 06/05/2015
Pursuant to 40 CFR 1506.9.

Notice: Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxnodengn.epa.gov/cdx-enepa-public/action/eis/search*.

EIS No. 20150160, Draft, USFWS, HI, Na Pua Makani Wind Project and Habitat Conservation Plan, Comment Period Ends: 08/11/2015, Contact: Jodi Charrier 808–792–9400.

EIS No. 20150161, Draft, DOE, VT, New England Clean Power Link Transmission Line Project, Comment Period Ends: 08/11/2015, Contact: Brian Mills 202–586–8267.

EIS No. 20150162, Draft Supplement, FTA, CA, Regional Connector Transit Corridor, Comment Period Ends: 07/27/2015, Contact: Mary Nguyen 213–202–3960.

EIS No. 20150163, Final, BLM, CA, Soda Mountain Solar Project Proposed Plan Amendment, Review Period Ends: 07/13/2015, Contact: Jeff Childers 760–252–6000.

EIS No. 20150164, Draft Supplement, BLM, UT, Alton Coal Tract Lease by Application, Comment Period Ends: 08/11/2015, Contact: Keith Rigtrup 435–865–3063.

EIS No. 20150165, Final, APHIS, National, Feral Swine Damage Management—A National Approach, Review Period Ends: 07/13/2015, Contact: Kimberly Wagner 608–837–2727.

EIS No. 20150166, Final, USFS, CO, Invasive Plant Management for the Medicine Bow- Routt National Forests and Thunder Basin National Grasslands, Review Period Ends: 07/27/2015, Contact: Misty Hays 307–358–7102.

EIS No. 20150167, Final, USFS, MT, Como Forest Health Project (FHP), Review Period Ends: 07/13/2015, Contact: Sara Grove 406–821–3269.

Dated: June 9, 2015.

Dawn Roberts,

Management Analyst, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 2015–14435 Filed 6–11–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the ''Government in the Sunshine Act'' (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, June 16, 2015, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous Board of Directors' Meetings.

Memorandum and resolution re: Regulatory Capital Rules: Regulatory Capital, Revisions Applicable to Banking Organizations Subject to the Advanced Approaches Risk-Based Capital Rule.

Memorandum and resolution re: Final Rule to Implement Requirements of the Biggert-Waters Flood Insurance Reform Act and the Homeowner Flood Insurance Affordability Act.

Summary reports, status reports, reports of the Office of Inspector General, and reports of actions taken pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Deposit Insurance Assessments for Small Banks.

The meeting will be held in the Board Room located on the sixth floor of the FDIC Building located at 550 17th Street, NW., Washington, DC

This Board meeting will be Webcast live via the Internet and subsequently made available on-demand approximately one week after the event. Visit *https://fdic.primetime.mediaplatform.com/#!/channel/1232003497484/Board+Meetings* to view the event. If you need any technical assistance, please visit our Video Help page at: *http://www.fdic.gov/video.html.*

The FDIC will provide attendees with auxiliary aids (*e.g.,* sign language interpretation) required for this meeting. Those attendees needing such assistance should call 703–562–2404 (Voice) or 703–649–4354 (Video Phone) to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at 202–898–7043.

Dated: June 9, 2015.

FEDERAL DEPOSIT INSURANCE CORPORATION.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–14500 Filed 6–10–15; 11:15 am]

BILLING CODE 6714–01–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 July 9, 2015.

A. Federal Reserve Bank of Cleveland (Nadine Wallman, Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. *CF Mutual Holding Company and CF Bancorp, Inc.,* both in Cincinnati, Ohio, to become savings and loan holding companies, by acquiring Cincinnati Federal Savings Loan Association, Cincinnati, Ohio.

Board of Governors of the Federal Reserve System, June 9, 2015.

Michael J. Lewandowski,

Associate Secretary of the Board.

[FR Doc. 2015–14407 Filed 6–11–15; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0221; Docket 2015–0001; Sequence 3]

Submission to OMB for Review; Civilian Board of Contract Appeals; Civilian Board of Contract Appeals Rules of Procedure (GSA Form 9534 Civilian Board of Contract Appeals Subpoena; Form 4 Government Certificate of Finality; Form 5 Appellant/Applicant Certificate of Finality)

AGENCY: Civilian Board of Contract Appeals, GSA.

ACTION: Notice of request for comments regarding a reinstatement to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a previously approved information collection requirement regarding the Civilian Board of Contract Appeals (CBCA) Rules of Procedure. A notice was published in the **Federal Register** at 80 FR 13002, on March 12, 2015. No comments were received.

DATES: Submit comments on or before: July 13, 2015.

ADDRESSES: Submit comments identified by Information Collection IC 3090–0221, Civilian Board of Contract Appeals Rules of Procedure, 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 3090–0221. Select the link ''Comment Now'' that corresponds with ''Information Collection IC 3090–0221, Civilian Board of Contract Appeals Rules of Procedure''. Follow the instructions provided on the screen. Please include your name, company name (if any), and ''Information Collection 3090–0221, Civilian Board of Contract Appeals Rules of Procedure'' on your attached document.
- Mail: General Services Administration, Regulatory Secretariat Division (MVCB), 1800 F Street NW., Washington, DC, 20405. ATTN: Ms. Flowers/IC 3090–0221, Civilian Board of Contract Appeals Rules of Procedure.

Instructions: Please submit comments only and cite Information Collection 3090–0221, Civilian Board of Contract Appeals Rules of Procedure, 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: J. Gregory Parks, Chief Counsel, Civilian Board of Contract Appeals, 1800 F Street NW., Washington, DC 20405, telephone 202–606–8800 or via email to *Greg.Parks@cbca.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The CBCA requires the information collected in order to conduct proceedings in contract appeals and petitions, and cost applications. Parties include those persons or entities filing appeals, petitions, cost applications, and government agencies.

B. Annual Reporting Burden

Respondents: 85.
Responses per Respondent: 1.
Hours per Response: .1.
Total Burden Hours: 9.

C. Public Comments

Public comments are particularly invited on: Whether this collection of information is necessary and 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.

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. 3090–0221, Civilian Board of Contract Appeals Rules of Procedure, in all correspondence.

Dated: June 4, 2015.

David A. Shive,

Chief Information Officer.

[FR Doc. 2015–14446 Filed 6–11–15; 8:45 am]

BILLING CODE 6820–AL–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Recordkeeping/Reporting Requirements Under Emergency Review by the Office of Management and Budget (OMB)

Title: Immediate Disaster Case Management Intake Assessment.

OMB No.: 0970–New.

Description

Section 426 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), as amended, 42 U.S.C. 5189d authorizes the Federal Emergency Management Agency (FEMA) and the U.S. Department of Health Services' Administration for Children and Families (ACF) to provide Immediate Disaster Case Management (IDCM) services under the federal Disaster Case Management Program (DCMP).

The use of the Electronic Case Management Record System (ECMRS) is aligned with Executive Order of the President 13589 and the memorandum to the Heads of Executive Departments and Agencies M–12–12 from the Office of Management and Budget to ''Promote Efficient Spending to Support Agency Operations.''

The primary purpose of the information collection pertains to ACF/OHSEPR's initiative to improve the intake process and delivery of case management services to individuals and households impacted by a disaster. Further, the information collection will be used to support ACF/OHSEPR's goal to quickly identify critical gaps, resources, needs, and services to support State, local and non-profit capacity for disaster case management and to augment and build capacity where none exists.

There are two versions of this Paper Reduction Act request: (1) paper intake assessment that will be used until ECMRS is implemented and operational and (2) Electronic Case Record platform. The ECMRS will greatly reduce respondent burden through built-in algorithms that will streamline response options and patterns. All information gathered will be exclusively used to inform the delivery of disaster case management services and programmatic strategies and improvements.

Respondents: Individuals impacted by a major disaster.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
IDCM Intake Assessment	3,500	1	40 minutes	140,000 minutes

Estimated Total Annual Burden Hours: 140,000 minutes.

Additional Information

ACF is requesting that OMB grant a 180 day approval for this information collection under procedures for emergency processing by June 19, 2015. A copy of this information collection, with applicable supporting documentation, may be obtained by calling the Administration for Children and Families, Reports Clearance Officer, Robert Sargis at (202) 690–7275.

Comments and questions about the information collection described above should be directed to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ACF, Office of Management and Budget, Paperwork Reduction Project, 725 17th Street NW., Washington, DC 20503; FAX: (202) 395–7285; email:*oira_submission@omb.eop.gov.*

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–14400 Filed 6–11–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2008–N–0543]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Waivers of Invivo Demonstration of Bioequivalence of Animal Drugs in Soluble Powder Oral Dosage Form and Type A Medicated Articles

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled, ''Waivers of Invivo Demonstration of Bioequivalence of Animal Drugs in Soluble Powder Oral Dosage Form and Type A Medicated Articles'' 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 April 24, 2015, the Agency submitted a proposed collection of information entitled, ''Waivers of Invivo Demonstration of Bioequivalence of Animal Drugs in Soluble Powder Oral Dosage Form and Type A Medicated

Articles'' 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 0910–0575. The approval expires on May 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: June 9, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–14436 Filed 6–11–15; 8:45 am]

BILLING CODE P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–0634]

Cell-Based Products for Animal Use; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry #218 (GFI #218) entitled ''Cell-Based Products for Animal Use.'' FDA is aware that many potential veterinary therapies may be produced using cell-based products. GFI #218 describes FDA's Center for Veterinary Medicine's current thinking on cell-based products for animal use that meet the definition of a new animal drug. This guidance is for persons developing, manufacturing, or marketing cell-based products, including ''animal stem cell-based products''.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

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

FOR FURTHER INFORMATION CONTACT: Lynne Boxer, Center for Veterinary Medicine (HFV–114), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0611, *lynne.boxer@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 1, 2014 (79 FR 44803), FDA published the notice of availability for a draft guidance for industry #218 entitled ''Cell-Based Products for Animal Use'' giving interested persons until September 30, 2014, to comment on the draft guidance. FDA received several comments on the draft guidance and those comments were considered as the guidance was finalized. Editorial changes were made to improve clarity. The guidance announced in this notice finalizes the draft guidance dated August 1, 2014.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on Cell-Based Products for Animal Use. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These 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). The collections of information in 21 CFR part 514 and 21 CFR 511.1 have been approved under OMB control numbers 0910–0032 and 0910–0117, respectively.

IV. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

V. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: June 8, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–14360 Filed 6–11–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1030]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Food Allergen Labeling and Reporting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled ''Food Allergen Labeling and Reporting'' 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 March 30, 2015, the Agency submitted a proposed collection of information entitled ''Food Allergen Labeling and Reporting'' 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 0910–0792. The approval expires on May 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: June 9, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–14437 Filed 6–11–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0793]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Medical Device Recall Authority

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 July 13, 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 0910–0432. 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.

Medical Device Recall Authority—21 CFR 810 (OMB Control Number 0910–0432)—Extension

This collection of information implements section 518(e) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360h(e)) and part 810 (21 CFR part 810), medical device recall authority provisions. Section 518(e) of the FD&C Act provides FDA with the authority to issue an order requiring an appropriate person, including manufacturers, importers, distributors, and retailers of a device, if FDA finds that there is reasonable probability that the device intended for human use would cause serious adverse health consequences or death, to: (1) Immediately cease distribution of such device; (2) immediately notify health professionals and device-user facilities of the order; and (3) instruct such professionals and facilities to cease use of such device.

Further, the provisions under section 518(e) of the FD&C Act set out the following three-step procedure for issuance of a mandatory device recall order:

- If there is a reasonable probability that a device intended for human use would cause serious, adverse health consequences or death, FDA may issue a cease distribution and notification order requiring the appropriate person to immediately:
  - ○ Cease distribution of the device,
  - ○ notify health professionals and device user facilities of the order, and
  - ○ instruct those professionals and facilities to cease use of the device;
- FDA will provide the person named in the cease distribution and notification order with the opportunity for an informal hearing on whether the order should be modified, vacated, or amended to require a mandatory recall of the device; and
- After providing the opportunity for an informal hearing, FDA may issue a mandatory recall order if the Agency determines that such an order is necessary.

The information collected under the recall authority provisions will be used by FDA to do the following: (1) Ensure that all devices entering the market are safe and effective; (2) accurately and immediately detect serious problems with medical devices; and (3) remove dangerous and defective devices from the market.

In the **Federal Register** of March 11, 2015 (80 FR 13586), 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]

Collection activity—21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Collections Specified in the Order—810.10(d)	2	1	2	8	16
Request for Regulatory Hearing—810.11(a)	1	1	1	8	8
Written Request for Review—810.12(a–b)	1	1	1	8	8
Mandatory Recall Strategy—810.14	2	1	2	16	32
Periodic Status Reports—810.16(a–b)	2	12	24	40	960
Termination Request—810.17(a)	2	1	2	8	16
Total Hours					1,040

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

Collection activity—21 CFR Section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
Documentation of Notifications to Recipients—810.15(b)	2	1	1	8	8

[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]

Collection Activity—21 CFR Section	Number of respondents	Number of disclosures per respondent	Total annual disclosures	Average burden per disclosure	Total hours
Notification to Recipients—810.15(a)–(c)	2	1	2	12	24
Notification to Recipients; Followup—810.15(d)	2	1	2	4	8
Notification of Consignees by Recipients—810.15(e)	10	1	10	1	10
Total					42

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: June 8, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–14359 Filed 6–11–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–N–0776]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Reclassification Petitions for Medical Devices

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 July 13, 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 0910–0138. 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.

Reclassification Petitions for Medical Devices (OMB Control Number 0910–0138)—Extension

Under sections 513(e) and (f), 514(b), 515(b), and 520(*l*) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c(e) and (f), 360d(b), 360e(b), and 360j(*l*)) and part 860 (21 CFR part 860), subpart C, FDA has responsibility to collect data and information contained in reclassification petitions. The reclassification provisions of the FD&C Act allow any person to petition for reclassification of a device from any of the three classes, *i.e.,* I, II, and III, to another class. The reclassification content regulation (§ 860.123) requires the submission of valid scientific evidence demonstrating that the proposed reclassification will provide a reasonable assurance of safety and effectiveness of the device type for its indications for use.

The reclassification procedure regulation requires the submission of specific data when a manufacturer is petitioning for reclassification. This includes a ''Supplemental Data Sheet,'' Form FDA 3427, and a ''General Device Classification Questionnaire,'' Form FDA 3429. Both forms contain a series of questions concerning the safety and effectiveness of the device type.

In the **Federal Register** of March 25, 2014 (79 FR 16252), FDA issued a proposed rule that would eliminate the need for Forms FDA 3427 and FDA 3429. However, because the proposed rule has not been finalized, we continue to include the forms in the burden estimate for this information collection.

The reclassification provisions of the FD&C Act serve primarily as a vehicle for manufacturers to seek reclassification from a higher to a lower class, thereby reducing the regulatory requirements applicable to a particular device type, or to seek reclassification from a lower to a higher class, thereby increasing the regulatory requirements applicable to that device type. If approved, petitions requesting classification from class III to class II or class I provide an alternative route to market in lieu of premarket approval for class III devices. If approved, petitions requesting reclassification from class I or II, to a different class, may increase requirements.

In the **Federal Register** of March 10, 2015 (80 FR 12642), FDA published a 60-day notice requesting public comment on the proposed collection of information. One comment was received.

The comment refers to changes to the form FDA 3429 as proposed by the commenter in a citizen petition (FDA–2014–P–0283–0001), which was subsequently denied by FDA in a final response letter to the petitioner (FDA–2014–P–0283–0003). Because the proposed changes have already been denied through the citizen petition process, we have not made changes to this information collection based on the comment.

The Center for Devices and Radiological Health (CDRH) has continually maintained contact with industry. Informal communications concerning the importance and effect of reclassification are provided primarily through trade organizations, and via CDRH's Web site. The consensus from the Agency's most recent contact with these trade organizations is that they are in favor of the program. The trade organizations involved are AdvaMed, the Food and Drug Law Institute (FDLI), and the National Electrical Manufacturers Association (NEMA):

AdvaMed, Tara Federici, 1030 15th Street NW., suite 1100, Washington, DC 20005, 202–452–8240;

Food and Drug Law Institute (FDLI), 1000 Vermont Ave. NW., suite 1200, Washington, DC 20005, 202–371–1420; and National Electrical Manufacturers Association (NEMA), 1300 North 17th Street, suite 1847, Rosslyn, VA 22209, 703–841–3200.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	FDA Form Nos.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Supporting data for reclassification petition		6	1	6	497	2,982
Supplemental Data Sheet	3427	6	1	6	1.5	9
General Device Classification Questionnaire	3429	6	1	6	1.5	9
Total						3,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on reclassification petitions received in the last 3 years, FDA anticipates that six petitions will be submitted each year. The time required to prepare and submit a reclassification petition, including the time needed to assemble supporting data, averages 500 hours per petition. This average is based upon estimates by FDA administrative and technical staff who: (1) Are familiar with the requirements for submission of a reclassification petition, (2) have consulted and advised manufacturers on these requirements, and (3) have reviewed the documentation submitted.

This document refers to previously approved collections of information found in FDA regulations. These 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). The collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120 and the collections of information in 21 CFR part 814, subparts A through E, have been approved under OMB control number 0910–0231.

Dated: June 8, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–14358 Filed 6–11–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–P–1197]

Medical Devices; Exemption From Premarket Notification: Electric Positioning Chair

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it has received a petition requesting exemption from the premarket notification requirements for an electric positioning chair with a motorized positioning control that is intended for medical purposes and that can be adjusted to various positions. The device is used to provide stability for patients with athetosis (involuntary spasms) and to alter postural positions. FDA is publishing this notice to obtain comments in accordance with procedures established by the Food and Drug Administration Modernization Act of 1997 (FDAMA).

DATES: Submit either electronic or written comments by July 13, 2015.

ADDRESSES: You may submit comments, identified by Docket No. FDA–2015–P–1197, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

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

Written Submissions

Submit written submissions in the following way:

• *Mail/Hand delivery/Courier (for paper submissions):* Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Instructions: All submissions received must include the docket number for this notice. All comments received may be posted without change to *http://www.regulations.gov*, including any personal information provided. For additional information on submitting comments, see the ''Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts, and/or go to the Division of Dockets Management, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Jismi Johnson, Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1524, Silver Spring, MD 20993–0002, 301–796–6424, *jismi.johnson@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Statutory Background

Under section 513 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360c), FDA must classify devices into one of three regulatory classes: Class I, class II, or class III. FDA classification of a device is determined by the amount of regulation necessary to provide a reasonable assurance of safety and effectiveness. Under the Medical Device Amendments of 1976 (1976 amendments) (Pub. L. 94–295), as amended by the Safe Medical Devices Act of 1990 (Pub. L. 101–629), devices are to be classified into class I (general controls) if there is information showing that the general controls of the FD&C Act are sufficient to assure safety and effectiveness; into class II (special controls) if general controls, by themselves, are insufficient to provide reasonable assurance of safety and effectiveness, but there is sufficient information to establish special controls to provide such assurance; and into class III (premarket approval) if there is insufficient information to support classifying a device into class I or class II and the device is a life sustaining or life supporting device, or is for a use which is of substantial importance in preventing impairment of human health or presents a potential unreasonable risk of illness or injury.

Most generic types of devices that were on the market before the date of the 1976 amendments (May 28, 1976) (generally referred to as preamendments devices) have been classified by FDA under the procedures set forth in section 513(c) and (d) of the FD&C Act through the issuance of classification regulations into one of these three regulatory classes. Devices introduced into interstate commerce for the first time on or after May 28, 1976 (generally referred to as postamendments devices), are classified through the premarket notification process under section

510(k) of the FD&C Act (21 U.S.C. 360(k). Section 510(k) of the FD&C Act and the implementing regulations, 21 CFR part 807, require persons who intend to market a new device to submit a premarket notification (510(k)) containing information that allows FDA to determine whether the new device is ''substantially equivalent'' within the meaning of section 513(i) of the FD&C Act to a legally marketed device that does not require premarket approval.

On November 21, 1997, the President signed into law FDAMA (Pub. L. 105–115). Section 206 of FDAMA, in part, added a new section, 510(m), to the FD&C Act. Section 510(m)(1) of the FD&C Act requires FDA, within 60 days after enactment of FDAMA, to publish in the **Federal Register** a list of each type of class II device that does not require a report under section 510(k) of the FD&C Act to provide reasonable assurance of safety and effectiveness. Section 510(m) of the FD&C Act further provides that a 510(k) will no longer be required for these devices upon the date of publication of the list in the **Federal Register**. FDA published that list in the **Federal Register** of January 21, 1998 (63 FR 3142).

Section 510(m)(2) of the FD&C Act provides that 1 day after date of publication of the list under section 510(m)(1), FDA may exempt a device on its own initiative or upon petition of an interested person if FDA determines that a 510(k) is not necessary to provide reasonable assurance of the safety and effectiveness of the device. This section requires FDA to publish in the **Federal Register** a notice of intent to exempt a device, or of the petition, and to provide a 30-day comment period. Within 120 days of publication of this document, FDA must publish in the **Federal Register** its final determination regarding the exemption of the device that was the subject of the notice. If FDA fails to respond to a petition under this section within 180 days of receiving it, the petition shall be deemed granted.

II. Criteria for Exemption

There are a number of factors FDA may consider to determine whether a 510(k) is necessary to provide reasonable assurance of the safety and effectiveness of a class II device. These factors are discussed in the guidance the Agency issued on February 19, 1998, entitled ''Procedures for Class II Device Exemptions from Premarket Notification, Guidance for Industry and CDRH Staff.'' That guidance is available through the Internet at *http://www.fda.gov/downloads/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/UCM080199.pdf.* Send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 159 to identify the guidance you are requesting.

III. Proposed Class II Device Exemptions

FDA has received the following petition requesting an exemption from premarket notification for a class II device: Brian Orwat, Stryker Medical, 3800 East Centre Ave., Portage, MI 49002 for its electric positioning chair classified under 21 CFR 890.3110.

IV. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Dated: June 9, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–14434 Filed 6–11–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–D–2001]

Assessment of Male-Mediated Developmental Risk for Pharmaceuticals; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a draft guidance for industry entitled ''Assessment of Male-Mediated Developmental Risk for Pharmaceuticals.'' This draft guidance provides recommendations to sponsors for assessing risks to embryo/fetal development resulting from administration of an active pharmaceutical ingredient (API) to males either through an effect on the male germ cell or from fetal exposure following seminal transfer of a potentially developmental toxicant to pregnant females. The need for measures to mitigate the risk to embryo/fetal development posed by males participating in clinical trials is also addressed.

DATES: Although you can comment on any guidance at any time (see 21 CFR 10.115(g)(5)), to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance, submit either electronic or written comments on the draft guidance by August 11, 2015.

ADDRESSES: Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

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

FOR FURTHER INFORMATION CONTACT: Lynnda Reid, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5388, Silver Spring, MD 20993–0002, 301–796–0984.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance for industry entitled ''Assessment of Male-Mediated Developmental Risk for Pharmaceuticals.'' This guidance presents an overview of FDA's current approach to assessing potential risks associated with pharmaceutical use in male patients. Current regulatory guidance exists regarding the need to assess the genotoxic and embryo/fetal developmental toxicity potential of pharmaceuticals before their administration to pregnant women and females of reproductive potential. However, there is a lack of consistency in clinical trial protocol designs and labeling documents regarding pregnancy risk for sexual partners of men being administered an API. The conceptus of a female sexual partner may be subject to developmental risk associated with

pre- or post-conception exposure of a male to an API. Such male-mediated developmental toxicity may result from an effect of the API on the male germ cell before conception or occur as a result of direct exposure of the conceptus to the pharmaceutical following seminal transfer and vaginal uptake in a pregnant partner.

This draft guidance provides recommendations for addressing the potential for male-mediated adverse effects on pregnancy outcome for sponsors developing an investigational drug. Topics covered include: (1) Factors that investigators should consider when testing a new API in males, (2) nonclinical studies relevant to the assessment of male-mediated developmental risks, and (3) measures to prevent pregnancy or seminal transfer to a pregnant sexual partner when risk is either unknown or anticipated.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on the assessment of male-mediated developmental risk for pharmaceuticals. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information that 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). The collections of information in 21 CFR part 312 have been approved under OMB control number 0910–0014.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov.*

Dated: June 8, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–14363 Filed 6–11–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–E–1656]

Determination of Regulatory Review Period for Purposes of Patent Extension; XELJANZ

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for XELJANZ 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 XELJANZ (tofacitinib citrate). XELJANZ is indicated for the treatment of adult patients with moderately to severely active rheumatoid arthritis who have had an inadequate response or intolerance to methotrexate. Subsequent to this approval, the USPTO received a patent term restoration application for XELJANZ (U.S. Patent No. RE41,783) from Pfizer Inc., 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 XELJANZ 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 XELJANZ is 3,947 days. Of this time, 3,564 days occurred during the testing phase of the regulatory review period, while 383 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:* January 18, 2002. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on January 18, 2002.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the FD&C Act:* October 21, 2011. FDA has verified the applicant's claim that the new drug application (NDA) for XELJANZ (NDA 203214) was submitted on October 21, 2011.

3. *The date the application was approved:* November 6, 2012. FDA has verified the applicant's claim that NDA 203214 was approved on November 6, 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 August 11, 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 December 9, 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: June 9, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–14433 Filed 6–11–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–0928]

Recommendations for Preparation and Submission of Animal Food Additive Petitions; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry (GFI) #221 entitled ''Recommendations for Preparation and Submission of Animal Food Additive Petitions.'' This guidance describes the types of information that FDA's Center for Veterinary Medicine recommends for inclusion in food additive petitions submitted for food additives intended for use in food for animals. It is intended to help the petitioner submit this information in a consistent and appropriate manner.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of the guidance to the Policy and Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

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

FOR FURTHER INFORMATION CONTACT: Center for Veterinary Medicine, Division of Animal Feeds (HFV–220), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–7077; *AskCVM@fda.hhs.gov,* in the subject line please include ATTN: Division of Animal Feeds.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of September 11, 2013 (78 FR 55727), FDA published the notice of availability for a draft guidance entitled ''Recommendations for Preparation and Submission of Animal Food Additive Petitions'' giving interested persons until November 12, 2013, to comment on the draft guidance. In the **Federal Register** of December 10, 2013 (78 FR 74154), FDA published a notice reopening the comment period for the draft guidance giving interested persons until January 9, 2014, to comment on the draft guidance.

FDA received four comments on the draft guidance and considered those comments as we finalized the guidance. The guidance announced in this notice finalizes the draft guidance dated September 2013.

II. Significance of Guidance

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on recommendations for preparation and submission of animal food additive petitions. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

III. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These 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). The collections of information in 21 CFR 571.1 and 571.6 have been approved under OMB control number 0910–0546.

IV. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

V. Electronic Access

Persons with access to the Internet may obtain the guidance at either *http://www.fda.gov/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/default.htm* or *http://www.regulations.gov.*

Dated: June 8, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–14364 Filed 6–11–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, July 09, 2015, 09:00 a.m. to July 10, 2015, 01:00 p.m., The Fairmont Washington, DC, 2401 M Street NW., Washington, DC 20037 which was published in the **Federal Register** on May 13, 2015, 80 FRN27332.

The meeting notice is amended to change the location of the meeting from The Fairmont Washington DC to the Hyatt Regency Bethesda. The date and time remain the same. The meeting is closed to the public.

Dated: June 9, 2015.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–14427 Filed 6–11–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review Amended; Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, June 25, 2015, 11:00 a.m. to June 25, 2015, 12:00 p.m., National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on May 28, 2015, 80 FR 30475.

The meeting will be held on June 24, 2015. The meeting time and location remain the same. The meeting is closed to the public.

Dated: June 9, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–14428 Filed 6–11–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR Panel: Development of Appropriate Pediatric Formulations and Pediatric Drug Delivery System.

Date: July 8, 2015.

Time: 2:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Robert C Elliott, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3130, MSC 7850, Bethesda, MD 20892, 301–435–3009, *elliotro@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Glia Development, Function and Disease.

Date: July 9, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person:

Carol Hamelink, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4192, MSC 7850, Bethesda, MD 20892, (301) 213–9887, *hamelinc@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Fellowship: Cell Biology, Developmental Biology and Bioengineering.

Date: July 14–15, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel Bethesda, (Formerly Holiday Inn Select), 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Alexander Gubin, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4196, MSC 7812, Bethesda, MD 20892, 301–435–2902, *gubina@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Oral, Dental, and Craniofacial Sciences SBIR/STTR.

Date: July 14–15, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Yi-Hsin Liu, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4214, MSC 7814, Bethesda, MD 20892, 301–435–1781, *liuyh@csr.nih.gov*.

*Name of Committee:*Center for Scientific Review Special Emphasis Panel, Lung Diseases Member Conflicts.

Date: July 14–15, 2015.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: George M Barnas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4220, MSC 7818, Bethesda, MD 20892, 301–435–0696, *barnasg@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Small Business: Nephrology.

Date: July 14–15, 2015.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Atul Sahai, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2188, MSC 7818, Bethesda, MD 20892, 301–435–1198, *sahaia@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Neurogenesis and Neurodevelopment.

Date: July 14, 2015.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Laurent Taupenot, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4188, MSC 7850, Bethesda, MD 20892, 301–435–1203, *laurent.taupenot@nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Center on Membrane Protein Production and Analysis (COMPPAA).

Date: July 14–16, 2015.

Time: 5:00 p.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: The Lucerne Hotel, 201 West 79th Street, New York, NY 10024.

Name of Committee: Nitsa Rosenzweig, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4152, MSC 7760, Bethesda, MD 20892, (301) 404–7419, *rosenzweign@csr.nih.gov*.

Name of Committee: AIDS and Related Research Integrated Review Group, AIDS Molecular and Cellular Biology Study Section.

Date: July 15, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Ave. NW, Washington, DC 20037.

Contact Person: Kenneth A Roebuck, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5214, MSC 7852, Bethesda, MD 20892, (301) 435–1166, *roebuckk@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel, PAR Panel: Multidisciplinary Studies of HIV/AIDS and Aging.

Date: July 15, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Robert Freund, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5216, MSC 7852, Bethesda, MD 20892, 301–435–1050, *freundr@csr.nih.gov*.

*Name of Committee:*Center for Scientific Review Special Emphasis Panel, Member Conflict: Child Psychopathology and Developmental Disabilities.

Date: July 15, 2015.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Serena Chu, Ph.D., Scientific Review Officer, BBBP IRG, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3178, MSC 7848, Bethesda, MD 20892, 301–500–5829, *sechu@csr.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 8, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–14341 Filed 6–11–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director; Notice of Charter Renewal

In accordance with Title 41 of the U.S. Code of Federal Regulations, Section 102–3.65(a), notice is hereby given that the Charter for the Advisory Committee to the Director, National Institutes of Health, was renewed for an additional two-year period on May 31, 2015.

It is determined that the Advisory Committee to the Director, National Institutes of Health, is in the public interest in connection with the performance of duties imposed on the National Institutes of Health by law, and that these duties can best be performed through the advice and counsel of this group.

Inquiries may be directed to Jennifer Spaeth, Director, Office of Federal Advisory Committee Policy, Office of the Director, National Institutes of Health, 6701 Democracy Boulevard, Suite 1000, Bethesda, Maryland 20892 (Mail code 4875), Telephone (301) 496–2123, or *spaethj@od.nih.gov.*

Dated: June 8, 2015.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–14345 Filed 6–11–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of meetings of the Board of Scientific Counselors for Clinical Sciences and Epidemiology, National Cancer Institute and the Board of Scientific Counselors for Basic Sciences, National Cancer Institute.

The meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Cancer Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors for Clinical Sciences and Epidemiology, National Cancer Institute.

Date: July 13, 2015.

Time: 9:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 31 Center Drive, Building 31, C-Wing, 6th Floor, Conference Room 6, Bethesda, MD 20892.

Contact Person: Brian E. Wojcik, Ph.D., Executive Secretary, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 3W414, Rockville, MD 20850, 240–276–5660, *wojcikb@mail.nih.gov.*

*Name of Committee:*Board of Scientific Counselors for Basic Sciences, National Cancer Institute.

Date: July 14, 2015.

Time: 9:00 a.m. to 3:30 p.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Institutes of Health, 31 Center Drive, Building 31, C-Wing, 6th Floor, Conference Room 6, Bethesda, MD 20892.

Contact Person: Mehrdad Tondravi, Ph.D., Chief, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 9609 Medical Center Drive, Room 3W302, Rockville, MD 20850, 240–276–5660, *tondravim@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 8, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–14342 Filed 6–11–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications/contract proposals and the discussions

could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications/contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Innovative Research in Cancer Nanotechnology (IRCN),
Date: July 13–14, 2015.
Time: 11:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 1W030/6E030, Rockville, MD 20850, (Telephone Conference Call).
Contact Person: Kenneth Bielat, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W244, Bethesda, MD 20892–9750, 240–276–6373, *bielatk@mail.nih.gov.*

Name of Committee: National Cancer Institute, Special Emphasis Panel Cancer Detection, Diagnostic and Treatment Technologies for Global Health.
Date: July 16, 2015.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Hilton Crystal City, 2399 Jefferson Davis Hwy, Arlington, VA 22202.
Contact Person: Gerard Lacourciere, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division Of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W248, Bethesda, MD 20892–9750, 240–276–5457, *gerard.lacourciere@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Partnerships between Institutions to Advance Cancer Research and Address Relevant Disparities.
Date: July 20–21, 2015.
Time: 8:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.
Contact Person: Christopher L. Hatch, Ph.D., Scientific Review Officer, Program Coordination & Referral Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, 7W554, Rockville, MD 20850, 240–276–6454, *ch29v@nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, BBA Carbon Ion.
Date: July 23, 2015.
Time: 11:00 a.m. to 3:00 p.m.
Agenda: To review and evaluate contract proposals.
Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 2W914, Rockville, MD 20850, (Telephone Conference Call).
Contact Person: Kenneth Bielat, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W244, Bethesda, MD 20892–9750, 240–276–6373, *bielatk@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, Core Infrastructure & Methodological Research for Cancer Epidemiology Cohorts (U01).
Date: July 24, 2015.
Time: 9:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 7W030, Rockville, MD 20850, (Telephone Conference Call).
Contact Person: Thomas A. Winters, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W412, Bethesda, MD 20892–8328, 240–276–6386, *twinters@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel Multilevel Interventions in Cancer Care Delivery.
Date: July 28, 2015.
Time: 11:00 a.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: National Cancer Institute Shady Grove, 9609 Medical Center Drive, Room 2E030, Rockville, MD 20850, (Telephone Conference Call).
Contact Person: Kenneth Bielat, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, 9609 Medical Center Drive, Room 7W244, Bethesda, MD 20892–9750, 240–276–6373, *bielatk@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Omnibus R21 & R03- SEP–5.
Date: July 28–29, 2015.
Time: 8:00 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Gaithersburg Marriott Washingtonian Center, 9751 Washingtonian Boulevard, Gaithersburg, MD 20878.
Contact Person: Thomas A. Winters, Ph.D., Scientific Review Officer, Special Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W412, Bethesda, MD 20892–8328, 240–276–6386, *twinters@mail.nih.gov.*

Name of Committee: National Cancer Institute Special Emphasis Panel, NCI Omnibus SEP–12 Review.
Date: July 30, 2015.
Time: 8:00 a.m. to 6:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Double Tree Hotel, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Reed A. Graves, Ph.D., Scientific Review Officer, Research Technology and Contract Review Branch, Division of Extramural Activities, National Cancer Institute, NIH, 9609 Medical Center Drive, Room 7W264, Bethesda, MD 20892–8328, 240–276–6384, *gravesr@mail.nih.gov.*

Information is also available on the Institute's/Center's home page: *http://deainfo.nci.nih.gov/advisory/sep/sep.htm,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: June 8, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–14344 Filed 6–11–15; 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 Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; Multigenotypic Mouse Colony.
Date: July 8, 2015.
Time: 11:00 a.m. to 4:00 p.m..
Agenda: To review and evaluate contract proposals.
Place: National Institute on Aging, Gateway Building, Suite 2C212, 7201 Wisconsin Avenue, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Alicja L. Markowska, Ph.D., DSC, Scientific Review Branch, National Institute On Aging, 7201 Wisconsin Avenue, Suite 2c212, Bethesda, MD 20892, 301–496–9666, *markowsa@nia.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: June 8, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–14343 Filed 6–11–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Host-Directed TB Therapy: New Approaches (UH2/UH3).

Date: July 7, 2015.

Time: 10:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health Room 4H100, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Kelly Y. Poe, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room 3F40B National Institutes of Health, NIAID, 5601 Fishers Lane, MSC 9823, Bethesda, MD 20892–9823, (240) 669–5036, *poeky@mail.nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Innovative Measures of Oral Medication Adherence for HIV Treatment and Prevention (R01).

Date: July 7–8, 2015.

Time: 8:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Room 3G21B, 5601 Fishers Lane, Rockville, MD 20892, (Telephone Conference Call).

Contact Person: Uday K. Shankar, Ph.D., MSC, Scientific Review Officer, Scientific Review Program, DEAS/NIAID/NIH/DHHS, 5601 Fishers Lane, Rockville, MD 20892–7616, 240–669–5051, *uday.shankar@nih.gov.*

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel; Non-Traditional Therapeutics that limit Antibacterial Resistance.

Date: July 9–10, 2015.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Sheraton Silver Spring Hotel, 8777 Georgia Avenue, Silver Spring, MD 20892.

Contact Person: Yong Gao, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, Room #3G13B, National Institutes of Health/NIAID, 5601 Fishers Lane, MSC 9823, Rockville, MD 20892–7616, (240) 669–5048, *yong.gao@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: June 9, 2015.

David Clary,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–14429 Filed 6–11–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; Review of K99 Research Grant Applications.

Date: July 14, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Garden Inn Bethesda, 7301 Waverly Street, Bethesda, MD 20814.

Contact Person: Lee Warren Slice, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12E, Bethesda, MD 20892, 301–435–0807, *slicelw@mail.nih.gov.*

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; SCORE Applications.

Date: July 17, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites at the Chevy Chase Pavilion, 4300 Military Road NW., Washington, DC 20015.

Contact Person: Saraswathy Seetharam, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3An.12C, Bethesda, MD 20892, 301–594–2763, *seetharams@nigms.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: June 9, 2015.

Melanie J. Gray,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–14430 Filed 6–11–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2015–0030]

Homeland Security Advisory Council—Meeting

AGENCY: The Office of Intergovernmental Affairs, DHS.

ACTION: Notice of open teleconference federal advisory committee meeting.

SUMMARY: The Homeland Security Advisory Council (HSAC) will meet via teleconference for the purpose of reviewing and deliberating on recommendations by the HSAC CBP Integrity Advisory Panel.

DATES: The HSAC conference call will take place from 4 p.m. to 5 p.m. EDT on June 29, 2015. The meeting is scheduled for one hour and may end early if all business is completed before 5 p.m. EDT.

ADDRESSES: The HSAC meeting will be held via teleconference. Members of the public interested in participating may do so by following the process outlined below (see ''Public Participation''). Written comments must be submitted and received by Thursday, June 25, 2015. Comments must be identified by Docket No. DHS–2015–0030 and may be submitted by *one* of the following methods:

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

• *Email: HSAC@hq.dhs.gov.* Include Docket No. DHS–2015–0013 in the subject line of the message.
• *Fax:* (202) 282–9207.
• *Mail:* Homeland Security Advisory Council, Department of Homeland Security, Mailstop 0445, 245 Murray Lane SW., Washington, DC 20528.

Instructions: All Submissions received must include the words ''Department of Homeland Security'' and DHS–2015–0030, the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read comments received by the DHS Homeland Security Advisory Council, go to *http://www.regulations.gov,* search ''DHS–2015–0030,'' ''Open Docket Folder'' and provide your comments.

FOR FURTHER INFORMATION CONTACT: Jay Visconti at *hsac@dhs.gov* or at (202) 447–3135.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under Section 10(a) of the Federal Advisory Committee Act (FACA), Public Law 92–463 (5 U.S.C. App.) requires each FACA committee meeting to be open to the public.

The HSAC provides organizationally independent, strategic, timely, specific, and actionable advice and recommendations for the consideration of the Secretary of the Department of Homeland Security (DHS) on matters related to homeland security. The Council is comprised of leaders of local law enforcement, first responders, state and local government, the private sector, and academia.

The HSAC will review and deliberate on the CBP Integrity Advisory Panel interim findings and recommendations.

Public Participation: Members of the public will be in listen-only mode. The public may register to participate in this HSAC teleconference via the following procedures. Each individual must provide his or her full legal name and email address no later than 5 p.m. EDT on Tuesday, June 23, 2015 to a staff member of the HSAC via email to *HSAC@dhs.gov* or via phone (202) 447–3135. The conference call details and the CBP Integrity Advisory Panel report will be provided to interested members of the public at the time they register.

Information on Services for Individuals with Disabilities: For information on facilities or services for individuals with disabilities, or to request special assistance during the teleconference contact Jay Visconti (202) 447–3135.

Dated: June 8, 2015.

Sarah E. Morgenthau,

Executive Director, Homeland Security Advisory Council, DHS.

[FR Doc. 2015–14401 Filed 6–11–15; 8:45 am]

BILLING CODE 9110–9M–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5828–N–24]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Juanita Perry, Department of Housing and Urban Development, 451 Seventh Street SW., Room 7266, Washington, DC 20410; telephone (202) 402–3970; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, and suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Where property is described as for ''off-site use only'' recipients of the property will be required to relocate the building to their own site at their own expense. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to: Ms. Theresa M. Ritta, Chief Real Property Branch, the Department of Health and Human Services, Room 5B–17, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–2265 (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Ann Marie Oliva at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing

sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Mr. Robert E. Moriarty, P.E., AFCEC/CI, 2261 Hughes Avenue, Ste. 155, JBSA Lackland TX 78236–9853; COE: Mr. Scott Whiteford, Army Corps of Engineers, Real Estate, CEMP–CR, 441 G Street NW., Washington, DC 20314; (202) 761–5542 (These are not toll-free numbers).

Dated: June 4, 2015.

Brian P. Fitzmaurice,

Director, Division of Community Assistance, Office of Special Needs Assistance Programs.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 06/12/2015

Suitable/Available Properties

Building

Nevada

Facility 2
4455 Grissom
Nellis AFB NV 89156
Landholding Agency: Air Force
Property Number: 18201520008
Status: Unutilized
Comments: 33+ yrs. old; 10,044 sq. ft.; office; asbestos; escort or base pass required for entry; contact AF for more information.

FAM HSG RELO 600–603
Gregg Circle on Parcel
008–261–19
Tonopah NV 89049
Landholding Agency: Air Force
Property Number: 18201520027
Status: Unutilized
Comments: off-site removal only; no future agency need; 4 mobile homes; residential; 1,344 sq. ft. each; major repairs needed; contamination; contact AF for more information.

New Jersey

3 Buildings
Joint Base McGuire-Dix Lakehurst
Joint Base MDL NJ 08640
Landholding Agency: Air Force
Property Number: 18201520015
Status: Unutilized
Directions: Building #1506(1,994 sq. ft.) 3606(538 sq. ft.) #1506 (1,994 sq. ft.)
Comments: off-site removal; 58–60+ yrs. old; 2+mos. vacant; communications transmitter; water support bldg.; poor conditions; contact AF for more information.

Tennessee

Memphis USARC, AMSA #105 (G) (TN012/TN115)
2562 Avery Ave.
Memphis TN 38112
Landholding Agency: COE
Property Number: 31201520007
Status: Excess
Directions: Admin. Bldg. (14,000 sq. ft.); POL Storage (600 sq. ft.); AMSA Shop (7, 280 sq. ft.)
Comments: off-site removal only; removal extremely difficult due to size/type; fair conditions; contact COE for more information.

Virginia

F.1380
1380 Washington Blvd.
JBLE (Ft. Eustis) VA 23604
Landholding Agency: Air Force
Property Number: 18201520022
Status: Unutilized
Comments: 45+ yrs. old; 6,231 sq. ft.; gas station; 28+mos. vacant; must go through visitor's gate; beyond economic repair; contaminants; contact AF for more information/accessibility requirements.

Land

Arkansas

23.7 Acres
Harris Road/Little Rock AFB
Little Rock AR 72099
Landholding Agency: Air Force
Property Number: 18201520021
Status: Unutilized
Comments: 23.7 Acres; contact AF for more information.

South Carolina

53 Acre Parcel W Side of N Rhe
null
JB Charleston SC 29445
Landholding Agency: Air Force
Property Number: 18201520020
Status: Unutilized
Comments: 53 acres; contact AF for more information.

Unsuitable Properties

Building

Arkansas

2 Buildings
Little Rock AFB
Little Rock AFB AR 72099
Landholding Agency: Air Force
Property Number: 18201520004
Status: Underutilized
Directions: Building #330 NKAK 15–1010 & B–552 NKAK 96–3001P
Comments: public access denied and no alternative method to gain access without compromising National Security.
Reasons: Secured Area

4 Buildings
Little Rock AFB
Little Rock AFB AR 72099
Landholding Agency: Air Force
Property Number: 18201520005
Status: Unutilized
Directions: Building #959 NKAK16–1006, #756 NKAK101016, #1569 NKAK161005, #159 NKAK151014
Comments: public access denied and no alternative method to gain access without compromising National Security.
Reasons: Secured Area

California

7 Buildings
Edwards AFB
Edwards AFB CA 93523
Landholding Agency: Air Force
Property Number: 18201520010
Status: Unutilized
Directions: Bldg. #1866, 1400, 9592, 9590,1636,3920,4240
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: secured Area

2 Buildings
Edwards AFB
Edwards AFB CA 93523
Landholding Agency: Air Force
Property Number: 18201520011
Status: Excess
Directions: Bldg. #1862, 1864
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

4 Buildings
Los Angeles Air Force Base, Fort MacArthur
San Pedro CA 90009
Landholding Agency: Air Force
Property Number: 18201520013
Status: Underutilized
Directions: Building 156, 75, 74, 68
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

2 Buildings
Edwards AFB
Edwards AFB CA 93523
Landholding Agency: Air Force
Property Number: 18201520025
Status: Unutilized
Directions: Bldg. 4239 & 8645
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Delaware

Building 263
263 Chad Street
Dover AFB DE 19902
Landholding Agency: Air Force
Property Number: 18201520023
Status: Underutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Florida

9 Buildings
MacDill AFB
MacDill AFB FL 33621
Landholding Agency: Air Force
Property Number: 18201520012
Status: Unutilized
Directions: Building #826, 827, 1105, 1107, 694, 60, 13, 1051, 65
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Georgia

5 Buildings
Dobbins Air Reserve Base
Dobbins ARB GA
Landholding Agency: Air Force
Property Number: 18201520026
Status: Underutilized
Directions: 451(1,576 sq. ft.), 452(1,576 sq. ft.), 453 (1,576 sq. ft.), 454 (1,630 sq. ft.), 455 (1,910 sq. ft.)
Comments: public access denied and no alternative method to gain access without compromising national security.

Reasons: Secured Area

Massachusetts

2 Buildings
Hanscom AFB
Hanscom AFB MA 01731
Landholding Agency: Air Force
Property Number: 18201520018
Status: Excess
Directions: Building 1218 & B1217
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Mississippi

2 Buildings
Columbus AFB
Columbus AFB MS 39710
Landholding Agency: Air Force
Property Number: 18201520016
Status: Excess
Directions: Building 226 & 1004
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Building 435
57 Simler Blvd.
Columbus AFB MS 39710
Landholding Agency: Air Force
Property Number: 18201520017
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Nevada

2 Buildings
Nellis AFB
Nellis AFB NV 89191
Landholding Agency: Air Force
Property Number: 18201520007
Status: Unutilized
Directions: Facility 10220 & Facility 892
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

5 Buildings
Creech AFB
Creech AFB NV 89018
Landholding Agency: Air Force
Property Number: 18201520009
Status: Unutilized
Directions: Facility #6, 7, 8,86,2381
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

New Mexico

2 Buildings
Kirtland AFB
Bernalillo NM 87117
Landholding Agency: Air Force
Property Number: 18201520014
Status: Underutilized
Directions: Building 1026, 2426
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

New York

Building 811
2600 Ent Avenue
Niagara Falls IAP–ARS NY 14304
Landholding Agency: Air Force
Property Number: 18201520024
Status: Unutilized
Comments: public access denied and no alternative method to gain access without compromising national security.
Reasons: Secured Area

Land

South Carolina

0.24 Acre Parcel Yellow House
JB Charleston
Charleston SC 29492
Landholding Agency: Air Force
Property Number: 18201520019
Status: Unutilized
Comments: property located within floodway which has not been correct or contained.
Reasons: Floodway

[FR Doc. 2015–14190 Filed 6–11–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2015–N008; FXES11120100000–156–FF01E00000]

Draft Environmental Impact Statement and Draft Habitat Conservation Plan for the Na Pua Makani Wind Energy Project, Oahu, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Na Pua Makani Power Partners, LLC (applicant), for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA). The applicant is requesting an ITP to authorize take of one threatened and six endangered species (''covered species''). If issued, the ITP would authorize incidental take of the covered species that may occur as a result of the construction and operation of the Na Pua Makani Wind Energy Project (Project). The ITP application includes a draft Habitat Conservation Plan (HCP) describing the applicant's actions and the measures the applicant will implement to minimize, mitigate, and monitor incidental take of the covered species. The Service also announces the availability of a draft Environmental Impact Statement (EIS) that has been prepared in response to the permit application in accordance with requirements of the National Environmental Policy Act (NEPA). We are making the ITP application, including the draft HCP and the draft EIS, available for public review and comment.

DATES: To ensure consideration, please send your written comments by August 11, 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 Na Pua Makani HCP, draft EIS, and the proposed issuance of the ITP:

- *Internet:* Documents may be viewed on the internet at *http://www.fws.gov/pacificislands/.*
- *Email: NaPuaMakanihcp@fws.gov.* Include ''Na Pua Makani HCP and draft EIS'' in the subject line of the message.
- *U.S. Mail:* Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, Hawaii 96850.
- *Fax:* 808–792–9581, Attn: Field Supervisor. Include ''Na Pua Makani HCP and draft EIS'' in the subject line of the message.
- *In-Person Drop-off, Viewing, or Pickup:* Comments and materials received will be available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Pacific Islands Fish and Wildlife Office, 300 Ala Moana Boulevard, Room 3–122, Honolulu, Hawaii 96850. Written comments can be dropped off during regular business hours at the above address on or before the closing date of the public comment period (see **DATES**).

FOR FURTHER INFORMATION CONTACT: Ms. Jodi Charrier (Renewable Energy Coordinator) or Mr. Aaron Nadig (Oahu, Kauai, American Samoa Geographic Deputy Field Supervisor), U.S. Fish and Wildlife Service (see **ADDRESSES** above); by telephone 808–792–9400; or by email at *NaPuaMakanihcp@fws.gov.* If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: We have received an application from Na Pua Makani Power Partners, LLC (applicant), a subsidiary of Champlin Hawaii Wind Holdings, LLC, for an incidental take permit (ITP) under the ESA (16 U.S.C. 1531 *et seq.*). The applicant is requesting an ITP to authorize take of the threatened Newell's shearwater (*Puffinus auricularis newelli*), and the endangered Hawaiian stilt (*Himantopus mexicanus knudseni*), Hawaiian coot (*Fulica americana alai*), Hawaiian moorhen, (*Gallinula chloropus sandvicensis*), Hawaiian duck (*Anas wyvilliana*), Hawaiian goose (*Branta*

sandvicensis), and Hawaiian hoary bat (*Lasiurus cinereus semotus*) (collectively these seven species are hereafter referred to as the ''covered species''). If issued, the ITP would authorize incidental take of the covered species that may occur as a result of the construction and operation of the Na Pua Makani Wind Energy Project (Project). The ITP application includes a draft Habitat Conservation Plan (HCP) describing the applicant's actions and the measures the applicant will implement to minimize, mitigate, and monitor incidental take of the covered species. The Service also announces the availability of a draft Environmental Impact Statement (EIS) that has been prepared in response to the permit application in accordance with requirements of the National Environmental Policy Act (NEPA). We are making the ITP application, including the draft HCP and the draft EIS, available for public review and comment.

Background

Section 9 of the ESA prohibits take of fish and wildlife species listed as endangered or threatened under section 4 of the ESA. Under the ESA, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term ''harm,'' as defined in our regulations, includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term ''harass'' is defined in our regulations as to carry out actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavioral patterns, which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

However, under specified circumstances, the Service may issue permits that authorize take of federally listed species, provided the take is incidental to, but not the purpose of, an otherwise lawful activity. Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32, respectively. Section 10(a)(1)(B) of the ESA contains provisions for issuing such incidental take permits to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

(1) The taking will be incidental;

(2) The applicant will prepare a conservation plan that, to the maximum extent practicable, identifies the steps the applicant will take to minimize and mitigate the impact of such taking;

(3) The applicant will ensure that adequate funding for the plan will be provided;

(4) The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and

(5) The applicant will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the plan.

Proposed Action

The applicant proposes to construct and operate the wind energy generation Project on approximately 707 acres of public and private lands near the town of Kahuku on the island of Oahu, Hawaii. The western portion of the Project would be located on about 254 acres of State of Hawaii lands managed by the Department of Land and Natural Resources (DLNR). The eastern portion of the Project would be located on about 452 acres of land owned by the Malaekahana Hui West, LLC. Additional parcels would be used to access the Project, for which the applicant would utilize temporary entry permits, licenses or easements.

The proposed Project would have a generating capacity of up to approximately 25 megawatts (MW) and would supply wind-generated electricity to the Hawaii Electric Company (HECO). The Project would consist of up to 10 wind turbine generators (WTGs), 1 permanent un-guyed lattice-frame meteorological tower, up to 5.5 miles of new and existing access roads, an operations and maintenance facility, electrical collection and interconnection infrastructure, an electrical substation, and a temporary laydown area. The applicant is considering a variety of WTG models ranging in height and generating capacity. Project WTGs could range in generating capacity from 1.7 MW models to 3.3 MW, and the maximum blade tip height could range from 427 feet to 512 feet above ground level. The applicant will select the most appropriate WTGs prior to construction.

The proposed Project area is surrounded by agricultural farm lands to the north; residential housing, community infrastructure, and agricultural farm lands to the east; a mixture of agricultural farm lands and undeveloped forest lands to the south; and undeveloped forest lands to the west. The James Campbell National Wildlife Refuge is approximately 0.75 mile to the north, and the Malaekahana State Recreation Area is 0.1 mile to the east. The operational 30–MW Kahuku wind project abuts the proposed Project area to the northwest.

The proposed Project is located on Oahu, where Hawaiian hoary bats are known to have collided with wind turbine structures at the existing 30–MW Kahuku and 69–MW Kawailoa wind projects. The Hawaiian goose and Hawaiian hoary bat are also known to have collided with wind turbine structures at the existing 30–MW Kaheawa I and the 21–MW Kaheawa II wind projects on Maui. The Hawaiian hoary bat is also known to have collided with wind turbine structures at the existing the 21–MW Auwahi wind project on Maui. The Hawaiian goose occurs in the vicinity of the proposed Project and may collide with Project structures. Acoustic monitoring indicates that the Hawaii hoary bat flies in the area proposed for wind turbine development, and that this species may roost in the Project site. Although there have been no known occurrences of Newell's shearwaters, Hawaiian stilts, Hawaiian coots, Hawaiian moorhens, or Hawaiian ducks colliding with wind turbine structures within the State of Hawaii, these covered species may be affected by the applicant's activities associated with the construction and operation of the Project.

The applicant has developed a draft HCP that addresses the incidental take of the seven covered species that may occur as a result of the construction and operation of the Project over a period of 21 years. The draft HCP addresses proposed measures the applicant will implement to minimize, mitigate, and monitor incidental take of the covered species. The applicant has also applied for a State of Hawaii incidental take license under Hawaii State law.

To offset anticipated take, the applicant is proposing mitigation measures on Oahu that include: (1) Funding research to support management of Newell's shearwaters; (2) fencing and predator control to conserve the Hawaiian goose at James Campbell National Wildlife Refuge; (3) a combination of bat research and native forest restoration and management to increase Hawaiian hoary bat habitat; (4) acoustic surveys to document the occupancy of the Hawaiian hoary bat; and (5) fencing and public outreach at Hamakua Marsh to benefit conservation of the Hawaiian stilt, Hawaiian coot, Hawaiian moorhen and the Hawaiian duck. This HCP incorporates adaptive management provisions to allow for modifications to the mitigation and monitoring measures as knowledge is gained during implementation of the HCP.

The Service proposes to approve the HCP and to issue an ITP with a term of 21 years to the applicant for incidental take of the covered species caused by covered activities associated with the construction and operation of the Project, if permit issuance criteria are met.

National Environmental Policy Act Compliance

The development of the draft HCP and the proposed issuance of an ITP under this plan is a Federal action that triggers the need for compliance with NEPA (42 U.S.C. 4321 *et seq.*). We have prepared a draft EIS to analyze the environmental impacts of three alternatives related to the issuance of the ITP and implementation of the conservation program under the proposed HCP. The three alternatives include the proposed action, a no-action alternative, and a larger wind energy generation project alternative.

The proposed action alternative is construction and operation of the Project, implementation of the HCP, and issuance of the ITP.

Under the no-action alternative, the proposed Project would not be constructed, the proposed HCP would not be implemented, and no ITP would be issued.

The larger wind energy generation project alternative would include the construction and operation of a larger generation facility of up to 42 MW. This alternative would consist of up to 12 WTGs, each with a generating capacity of up to 3.3 MW, implementation of a HCP, and issuance of the ITP.

Public Comments

You may submit your comments and materials by one of the methods listed in the **ADDRESSES** section. We specifically request information, views, and opinions from the public on our proposed Federal action, including identification of any other aspects of the human environment not already identified in the draft EIS pursuant to NEPA regulations in the Code of Federal Regulations (CFR) at 40 CFR 1506.6. Further, we specifically solicit information regarding the adequacy of the Na Pua Makani Wind Energy Project pursuant to the requirements for ITPs at 50 CFR parts 13 and 17.

Public Availability of Comments

All comments and materials we receive 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. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety. Comments and materials we receive, as well as supporting documentation we use in preparing the EIS, will be available for public inspection by appointment, during normal business hours, at our Pacific Islands Field Office (see **ADDRESSES**).

Next Steps

We will evaluate the permit application, associated documents, and public comments in reaching a final decision on whether the application meets the requirements of section 10(a) of the ESA (16 U.S.C. 1531 *et seq.*). The HCP and EIS may change in response to public comments. We will prepare responses to public comments and publish a notice of availability of the final HCP and final EIS. We will also evaluate whether the proposed permit action would comply with section 7 of the ESA by conducting an intra-Service section 7 consultation. We will use the results of this consultation, in combination with the above findings, in our final analysis to determine whether or not to issue an ITP. If the requirements are met, we will issue the ITP to the applicant. We will issue a record of decision and issue or deny the ITP no sooner than 30 days after publication of the notice of availability of the final EIS.

Authority

We provide this notice in accordance with the requirements of section 10(c) of the ESA and its implementing regulations (50 CFR 17.22 and 17.32) and NEPA and its implementing regulations (40 CFR 1506.6).

Richard Hannan,

Deputy Regional Director, Pacific Region, U.S. Fish and Wildlife Service, Portland, Oregon.

[FR Doc. 2015–14194 Filed 6–11–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2015–0033; FF03E00000–FXES11120300000–156]

Draft Environmental Impact Statement for the Proposed Midwest Wind Energy Multi-Species Habitat Conservation Plan

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement; notice of scoping meeting and request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), advise the public that we intend to prepare an environmental impact statement (EIS) to evaluate the impacts of several alternatives relating to the proposed issuance of Endangered Species Act (ESA) Incidental Take Permits (Permit(s) or ITP(s)) under the Midwest Wind Energy Multi-Species Habitat Conservation Plan (MSHCP). We also provide this notice to announce a public scoping period.

The MSHCP is being prepared by the Service and their planning partners for wind energy development within an eight-state Plan Area. The activities covered under the MSHCP (''Covered Activities'') include the construction, operation, maintenance, and decommissioning of wind energy facilities within portions of the Plan Area where ESA incidental take coverage may be considered, as well as activities associated with the management of mitigation lands. The planning partners have requested incidental take coverage for eight species in the MSHCP (''Covered Species''), including six species that are federally listed, one species that is not federally listed but may become listed during the term of the MSHCP, and the bald eagle (*Haliaeetus leucocephalus*), which is protected under the Bald and Golden Eagle Protection Act (Eagle Act; 50 CFR 22.11). As allowed under the Eagle Act, we anticipate extending Eagle Act take authorization for bald eagle through the section 10(a)(1)(B) permit(s) associated with the MSHCP, provided permittees are in full compliance with the terms and conditions of the ITP and Eagle Act.

DATES: The public scoping period begins with the publication of this notice in the **Federal Register** and will continue through August 11, 2015. The Service will consider all comments on the scope of the EIS analysis that are received or postmarked by this date. Comments

received or postmarked after this date will be considered to the extent practicable. The Service will also conduct eight scoping meetings during the scoping period:

- July 13, 2015—Elliott Recreation Center, 1000 E. 14th Street, Minneapolis, Minnesota, 5 to 7 p.m.
- July 14, 2015—Warner Park Community Center, 1625 Northpost Drive, Madison, Wisconsin, 5 to 7 p.m.
- July 15, 2015—Iowa State University Memorial Union, Campanile Room, 2229 Lincoln Way, Ames, Iowa, 5 to 7 p.m.
- July 16, 2015—Battle High School, Commons, 7575 East Street Charles Road, Columbia, Missouri, 5 to 7 p.m.
- July 20, 2015—Letts Community Center, 1220 West Kalamazoo Street, Lansing, Michigan, 5 to 7 p.m.
- July 21, 2015—Columbus Downtown High School, Commons, 364 South 4th Street, Columbus, Ohio, 5 to 7 p.m.
- July 22, 2015—World Sports Park, Ballroom, 1313 South Post Road, Indianapolis, Indiana, 5 to 7 p.m.
- July 23, 2015—Illinois Wesleyan University Memorial Center, Young Main Lounge, 104 E. University Avenue, Bloomington, Illinois, 5 to 7 p.m.

The scoping meetings will provide the public an opportunity to ask questions, discuss issues with Service and State staff regarding the EIS, and provide written comments.

In addition, the Service will host an online webinar on July 28, 2015 at 1:00 p.m. central time. Information on how to participate in the webinar is provided on the Internet at: *http://www.midwestwindenergyhcpeis.org.*

ADDRESSES: To request further information or submit written comments, please use one of the following methods:

- *U.S. Mail:* Regional Director, Attn: Rick Amidon, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.
- *Electronically:* Go to the Federal eRulemaking Portal, at *http://www.regulations.gov.* In the search box enter Docket Number FWS–R3–ES–2015–0033.

FOR FURTHER INFORMATION CONTACT: Rick Amidon, Ecological Services, at the address shown above or at (612) 713–5164 (telephone). If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: We publish this notice under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and its implementing regulations in the Code of Federal Regulations at 40 CFR 1506.6, and pursuant to Section 10(c) of the ESA and Section 668a of the Eagle Act. We intend to prepare a draft EIS to evaluate the impacts of several alternatives related to the potential issuance of ITPs under the MSHCP from Covered Activities. The permits would authorize the incidental take of species included in the MSHCP that could occur as a result of existing and future wind energy development and operations. The planning partners intend to request a 45-year permit term.

The primary purpose of the scoping process is for the public and other agencies to assist in developing the EIS by identifying important issues and alternatives related to the MSHCP and the Service's proposed action (issuance of ITPs under the MSHCP).

Background

Section 9 of the ESA prohibits ''take'' of fish and wildlife species listed as endangered under section 4 (16 U.S.C. 1538, 1533, respectively). The ESA implementing regulations extend, under certain circumstances, the prohibition of take to threatened species (50 CFR 17.31). Under section 3 of the ESA, the term ''take'' means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to engage in any such conduct (16 U.S.C. 1532(19)). The term ''harm'' is defined by regulation as an act which actually kills or injures wildlife. Such act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). The term ''harass'' is defined in the regulations as an intentional or negligent act or omission which creates the likelihood of injury to wildlife by annoying it to such an extent as to significantly disrupt normal behavioral patterns which include, but are not limited to, breeding, feeding, or sheltering (50 CFR 17.3).

Under section 10(a) of the ESA, the Service may issue permits to authorize incidental take of listed fish and wildlife species. ''Incidental take'' is defined by the ESA as take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Section 10(a)(1)(B) of the ESA contains provisions for issuing ITPs to non-Federal entities for the take of endangered and threatened species, provided the following criteria are met:

- The taking will be incidental;
- The applicant will, to the maximum extent practicable, minimize and mitigate the impact of such taking;
- The applicant will develop a HCP and ensure that adequate funding for the plan will be provided;
- The taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild; and
- The applicant will carry out any other measures that the Secretary may require as being necessary or appropriate for the purposes of the HCP.

Regulations governing permits for endangered and threatened species are at 50 CFR 17.22 and 17.32.

Eagles are protected under the Eagle Act, which prohibits take and disturbance of individuals and nests. ''Take'' under the Eagle Act includes any actions that pursue, shoot, shoot at, poison, wound, kill, capture, trap, collect, destroy, molest, and disturb eagles. ''Disturb'' is further defined in 50 CFR 22.3 as to agitate or bother a bald or golden eagle to a degree that causes, or is likely to cause, based on the best scientific information available, (1) injury to an eagle, (2) a decrease in its productivity, by substantially interfering with normal breeding, feeding, or sheltering behavior, or (3) nest abandonment, by substantially interfering with normal breeding, feeding, or sheltering behavior. 50 CFR 22.11 allows Eagle Act take authorization to be extended to permittees authorized to take eagles by an ITP issued pursuant to section 10(a)(1)(B) of the ESA. Take coverage for bald eagles provided through an ITP applies for the duration of the permit, or until the amount or level of take authorized has been met, provided the permittee complies with all terms and conditions provided in the ITP.

Proposed Plan

The MSHCP is being prepared by the Service and their planning partners for wind energy development within an eight-state Plan Area. The planning partners include the conservation agencies for seven of the eight states within the Plan Area, the American Wind Energy Association, a consortium of wind energy companies, and The Conservation Fund. The following summarizes information provided in the draft MSHCP.

The MSHCP Plan Area encompasses all lands within the political boundary of Region 3 of the Service, which includes eight states: Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Ohio, and Wisconsin. The geographic area where incidental take authorization would be allowed under the MSHCP (''Covered Lands'') are a subset of the Plan Area and specifically exclude lands that are within: (a) 20 miles of

sensitive bat hibernacula identified by the Service and state wildlife agencies; (b) 3 miles of the shores of the Great Lakes; (c) 1 mile of the edges of rivers supporting bird and bat migration corridors and/or concentrations of wintering waterfowl; (d) floodplain areas along the Mississippi and Illinois Rivers; (e) high bat concentration areas in Indiana and Missouri; and (f) bird migratory areas in Illinois and around large lakes in Minnesota. In 2012, the Service prepared a notice of intent to prepare the MSHCP (77 FR 52754). Public comment during that scoping process informed the geographic scope of Covered Lands included in the MSHCP.

The MSHCP does not preclude the development of wind energy projects outside of Covered Lands; however, those projects would not be eligible for participation in the MSHCP. Mitigation measures under the MSHCP (*e.g.,* habitat protection and restoration) may occur throughout the Plan Area, as appropriate for the conservation of Covered Species.

Covered Activities under the MSHCP include actions necessary to construct, operate, maintain and repair, decommission and reclaim, and repower commercial multi-turbine wind energy projects with Covered Lands. Covered Activities also include management of compensatory mitigation lands and monitoring. The MSHCP anticipates 33,000 megawatts (MW) of new wind energy may be installed within the Covered Lands over the term of the permit(s). New wind energy development would vary by state. The actual implemented build-out of new wind development projects may be less than the maximum anticipated build-out, depending on the number and generation capacity of wind energy projects that are issued take authorizations under the MSHCP. The Plan Area also currently supports approximately 13,681 MW of installed wind energy. Existing commercial multi-turbine wind facilities would be able to ''opt in'' to the MSHCP if they meet all of the requirements of the MSHCP for existing facilities and implement the required avoidance, minimization, and mitigation measures. Repowering of existing commercial wind energy facilities would also be included. There would be no limit on the number of qualifying existing wind energy facilities that may opt-in to the MSHCP.

The MSHCP would cover eight species that are subject to injury or mortality at wind turbine facilities, including six federally listed species and two unlisted species. The six federally listed species covered under the MSHCP include: Indiana bat (*Myotis sodalis*), northern long-eared bat (*Myotis septentrionalis*), Kirtland's warbler (*Dendroica kirtlandii*), piping plover (*Charadrius melodius*) (Great Lakes population and northern Great Plains population which are two distinct population segments), and interior least tern (*Sternula antillarum athalassos*). The unlisted species included in the MSHCP are little brown bat (*Myotis lucifugus*) and bald eagle (*Haliaeetus leucocephalus*). Species may be added or deleted as the MSHCP is developed based on further analysis, new information, agency consultation, and public comment.

The proposed permit term under the MSHCP is 45 years. During the first 15 years, proposed and existing commercial multi-wind energy projects may apply for and receive take authorizations under the MSHCP. The duration of take authorizations issued to new projects would be 30 years from the time project operations commence or up to the 45 year term of the MSHCP. The duration of take authorizations issued to existing commercial multi-turbine wind energy projects would extend from the time of issuance until the project is decommissioned and reclaimed up to a period of 30 years.

The MSHCP would be implemented as both a ''template'' HCP for wind energy project proponents and a ''programmatic'' HCP implemented through a ''master permittee.'' Under the template HCP, the Service would directly issue individual permits to applicants that agree to implement the MSHCP. Under the programmatic HCP, the Service would issue a permit to a master permittee, who would be responsible for issuing certificates of inclusion to wind energy companies that agree to implement the MSHCP at their facility. Issuance of certificates of inclusion by the master permittee would be completed in coordination with, and with concurrence from, the Service. The master permittee is anticipated to be comprised of a Board with representation from the wind energy industry and wind energy development-related conservation interests.

Environmental Impact Statement

NEPA (42 U.S.C. 4321 *et seq.*) requires that Federal agencies conduct an environmental analysis of their proposed actions to determine if the actions may significantly affect the human environment. Based on 40 CFR 1508.27 and 40 CFR 1508.2, we have determined that the proposed MSHCP may have significant effects on the human environment. Therefore, before deciding whether to issue Federal permits under the MSHCP, we will prepare an EIS to analyze the environmental impacts associated with those actions.

The EIS will consider the impacts of the proposed action—the issuance of section 10(a)(1)(B) permits under the ESA on the human environment. The EIS will also include analysis of a reasonable range of alternatives to the proposed action. Alternatives considered in the EIS may include, but are not limited to, variations in the permit term or permit structure; the No Surprises timeframe allowed under the ITPs; the level of take allowed; the level, location, or type of conservation, monitoring, or mitigation provided in the MSHCP; the scope of Covered Activities; the list of Covered Species; or a combination of these factors. Additionally, a No Action Alternative will be included. Under the No Action Alternative, the Service would not issue ITPs, and wind energy developers would be obligated to prepare an independent Section 10(a)(1)(B) application and/or eagle permit application; avoid incidental take of federally-listed species and bald eagle; or be subject to enforcement action by the Service.

The EIS will identify and describe direct, indirect, and cumulative impacts on biological resources, land use, air quality, water quality, water resources, socioeconomics, climate, and other environmental resources that could occur with the implementation of the proposed action and alternatives. The Service will also identify measures, consistent with NEPA and other relevant considerations of national policy, to avoid or minimize any significant effects of the proposed action on the quality of the human environment. Following completion of the environmental review, the Service will publish a notice of availability and a request for comment on a draft EIS, which will include a draft of the proposed MSHCP.

Request for Information

We request data, comments, new information, or suggestions from the public, other concerned governmental agencies, the scientific community, Tribes, industry, or any other interested party on this notice. We will consider these comments in developing the draft EIS. We seek specific comments on:

1. Biological information and relevant data concerning Covered Species;

2. Additional information concerning the range, distribution, population size, and population trends of Covered Species;

3. Direct, indirect, and cumulative impacts that implementation of the proposed Covered Activities could have on endangered, threatened, and other Covered Species, and their communities or habitats;

4. Other possible alternatives to the proposed action that the Service should consider;

5. Other current or planned activities in the subject area and their possible impacts on Covered Species;

6. The presence of archaeological sites, buildings and structures, historic events, sacred and traditional areas, and other historic preservation concerns, which are required to be considered in project planning by the National Historic Preservation Act; and

7. Identification of any other environmental issues that should be considered with regard to the proposed MSHCP and permit action.

Public Availability of Comments

You may submit your comments and materials by one of the methods listed above in the **ADDRESSES** section. Before including your address, phone number, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—might 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.

Comments and materials we receive, as well as supporting documentation we use in preparing the EIS, will be available for public inspection by appointment, during normal business hours, at the Services Midwest Regional Office in Bloomington, Minnesota. (see **FOR FURTHER INFORMATION CONTACT** section). You may obtain copies of this notice on the Internet at: *http://www.midwestwindenergyhcpeis.org,* or from the Midwest Regional Office (see **FOR FURTHER INFORMATION CONTACT** section).

Scoping Meetings

See **DATES** for the date/s and time/s of our public scoping meetings. The primary purpose of these meetings and public comment period is to provide the public with a general understanding of the background of the proposed action and to solicit suggestions and information on the scope of issues and alternatives we should consider when drafting the EIS. Written comments will be accepted at the meetings. Comments can also be submitted by methods listed in the **ADDRESSES** section. Once the draft EIS and proposed MSHCP are complete and made available for review, there will be additional opportunity for public comment on the content of those documents.

Persons needing reasonable accommodations in order to attend and participate in the public meetings should contact the Midwest Region using one of the methods listed above in **ADDRESSES** as soon as possible. In order to allow sufficient time to process requests, please make contact no later than one week before the public meeting. Information regarding this proposed action is available in alternative formats upon request.

Authority

We provide this notice under section 10 of the ESA (16 U.S.C. 1531 *et seq.*), section 668a of the Eagle Act (16 U.S.C. 668a–668d), and per NEPA regulations (40 CFR 1501.7, 40 CFR 1506.5 and 1508.22).

Dated: May 29, 2015.

Lynn Lewis,

Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2015–14408 Filed 6–11–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2013–N194; FXHC11300300000–156–FF03E00000]

Notice of Availability of the Draft Damage Assessment and Restoration Plan and Environmental Assessment for Enbridge Line 6B Oil Discharges Near Marshall, MI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; request for public comments.

SUMMARY: The U.S. Department of the Interior (DOI), acting through the U.S. Fish and Wildlife Service (FWS); the Nottawaseppi Huron Band of the Potawatomi Tribe; and the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians have written a Draft Damage Assessment and Restoration Plan and Environmental Assessment (Draft Plan), which describes proposed alternatives for restoring injured natural resources and compensating for losses resulting from the discharges of oil from Enbridge's Line 6B oil pipeline near Marshall, Michigan, in July 2010. The Draft Plan was prepared in accordance with the Oil Pollution Act of 1990 (OPA) and the National Environmental Policy Act (NEPA). The purpose of this notice is to inform the public of the availability of the Draft Plan and to seek written comments.

DATES: Written comments must be postmarked no later than July 27, 2015.

ADDRESSES: *Obtaining Documents:* You may obtain copies of the documents by any of the following methods:

- *Online: http://www.fws.gov/midwest/es/ec/nrda/MichiganEnbridge/index.html.*
- *Email:* Lisa L. Williams, at *lisa_williams@fws.gov.* Do not use any special characters or forms of encryption in your email.
- *In-person:* U.S. Fish and Wildlife Service, 2651 Coolidge Road, Suite 101, East Lansing, MI 48848.
- *U.S. mail:* Lisa L. Williams, Contaminants Specialist, at the Coolidge Road address above.

Submitting Comments: You may submit comments to Lisa L. Williams at the Coolidge Road address above or via email at *kzoorivernrda@fws.gov* with ''Enbridge NRDA Comment'' in the subject line

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Lisa Williams, (517) 351–8324.

SUPPLEMENTARY INFORMATION: DOI, acting through FWS; the Nottawaseppi Huron Band of the Potawatomi Tribe; and the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians have written a Draft Damage Assessment and Restoration Plan and Environmental Assessment (Draft Plan), which describes proposed alternatives for restoring injured natural resources and compensating for losses resulting from the discharges of oil from Enbridge's Line 6B oil pipeline near Marshall, Michigan, which occurred July 25–26, 2010. The Draft Plan was prepared in accordance with the Oil Pollution Act of 1990 (OPA) and the National Environmental Policy Act (NEPA). DOI and the two tribes prepared this Draft Plan in cooperation with our co-Trustees: The Department of Commerce (DOC), acting through the National Oceanic and Atmospheric Administration (NOAA), and the State of Michigan, acting through the Michigan Department of Environmental Quality (MDEQ), the Michigan Department of Natural Resources (MDNR), and the Michigan Department of Attorney General (MDAG). The purpose of this notice is to inform the public of the availability of the Draft Plan and to seek written comments. This notice is provided pursuant to Natural Resource Damage Assessment and Restoration (NRDAR) regulations

(15 CFR 990.23 and 990.55(c)) and NEPA regulations (40 CFR 1506.6).

The DOI (represented by the FWS), the DOC (represented by the NOAA), the Nottawaseppi Huron Band of the Potawatomi Tribe, the Match-E-Be-Nash-She-Wish Band of the Pottawatomi Indians, and the State of Michigan (the latter acting through MDEQ, MDNR, and MDAG) are Trustees for natural resources considered in this Draft Plan, pursuant to subpart G of the National Oil and Hazardous Substances Pollution Contingency Plan (40 CFR 300.600, 300.605, and 300.610) and Executive Order 12580. The Trustees followed the NRDAR regulations found at 15 CFR part 990 and the NEPA regulations found at 40 CFR parts 1500–1508 for the development of the Draft Plan. The Trustees will consider all public comments received during the public comment as we proceed to finalize the Draft Plan. The Draft Plan will be finalized prior to implementation of restoration. Any significant additions or modifications to the Final Plan that become necessary as restoration actions proceed will be made available for public review before any changes in restoration actions are undertaken.

Background

The goal of NRDAR under the Oil Pollution Act of 1990 (33 U.S.C. 2701 *et seq.;* OPA) is to make the environment and public whole for injuries to natural resources and natural resource services resulting from incidents involving discharge or substantial threat of discharge of oil. This goal is achieved through returning injured natural resources and services to baseline and compensating for interim losses of such natural resources and services through the restoration, rehabilitation, replacement, or acquisition of equivalent natural resources and/or services.

Process

In this case, the Trustees worked together in a cooperative process to identify appropriate restoration activities to address natural resource injuries caused by discharges of oil from Enbridge's Line 6B pipeline near Marshall, Michigan. The results of this administrative process are contained in the Draft Plan, which is a planning and decision document being published for public review under OPA and NEPA. The Draft Plan describes the injuries that occurred as a result of the discharges of oil, how the Trustees estimated damages, how those damages will be addressed through proposed restoration alternatives, and what the expected environmental impacts of the proposed projects would be. By law, natural resource damages received must be used to restore, rehabilitate, replace, and/or acquire the equivalent of those injured natural resources.

Public Involvement

Interested members of the public are invited to review and comment on the Plan. Copies can be requested from the address and Web site listed above. Comments on the Draft Plan should be sent to the U.S. Fish and Wildlife Service (see **ADDRESSES**). The U.S. Fish and Wildlife Service will provide copies of all comments to the other Trustees. All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act and the Council on Environmental Quality's NEPA regulations (40 CFR 1506.6(f)).

Availability of Public Comments

The Trustees' practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that the entire comment, including your personal identifying information, may be available at any time. While individual respondents may request that the Fish and Wildlife Service withhold their personal identifying information from public review, we cannot guarantee we will be able to do so.

Authority

This notice is provided pursuant to NRDAR regulations (15 CFR 990.23 and 990.55(c)) and NEPA regulations (40 CFR 1506.6).

Dated: April 3, 2015.

Charles Wooley,

Acting Regional Director, Midwest Region, U.S. Fish and Wildlife Service.

[FR Doc. 2015–14410 Filed 6–11–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2015–N115; FXIA16710900000–156–FF09A30000]

Endangered Species; Marine Mammals; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species or marine mammals. With some exceptions, the Endangered Species Act (ESA) and Marine Mammal Protection Act (MMPA) prohibit activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before July 13, 2015. We must receive requests for marine mammal permit public hearings, in writing, at the address shown in the **ADDRESSES** section by July 13, 2015.

ADDRESSES: Brenda Tapia, U.S. Fish and Wildlife Service, Division of Management Authority, Branch of Permits, MS: IA, 5275 Leesburg Pike, Falls Church, VA 22041; fax (703) 358–2281; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2281 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How Do I Request Copies of Applications or Comment on Submitted Applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will not consider requests or comments sent to an email or address not listed under **ADDRESSES**. If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we

receive after the close of the comment period (see DATES) or comments delivered to an address other than those listed above (see ADDRESSES).

B. May I Review Comments Submitted by Others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. 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.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken. Under the MMPA, you may request a hearing on any MMPA application received. If you request a hearing, give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Service Director.

III. Permit Applications

A. Endangered Species

Applicant: Tanganyika Wildlife Park, Goddard, KS; PRT–51119B

The applicant requests a permit to import one female captive-born mandrill (*Mandrillus sphinx*) from the Moscow Zoo, Moscow, Russia, for the purpose of enhancement of the species through captive propagation and conservation education.

Applicant: Tanganyika Wildlife Park, Goddard, KS; PRT–54794B

The applicant requests a permit to import one male and one female captive-born mandrill (*Mandrillus sphinx*) from Nature Resource Network S.R.O., Zbecno, Czech Republic, for the purpose of enhancement of the species through captive propagation and conservation education.

Applicant: Wildlife Conservation Society, Bronx, NY; PRT–60999B

The applicant requests a permit to import 12 live gavials (*Gavialis gangeticus*) from the Madras Crocodile Bank Trust, Tamil Nadu, India, for the purpose of enhancement of the survival of the species.

Applicant: Disney's Animal Kingdom, Bay Lake, FL; PRT–63962B

The applicant requests a permit to import four male captive-born African wild dogs (*Lycaon pictus pictus*) from the Perth Zoo, South Perth, Australia, for the purpose of enhancement of the species through captive propagation and conservation education.

Applicant: Wildlife & Environmental Conservation, Inc., Moorpark, CA; PRT–54022B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for leopard *(Panthera pardus*), snow leopard (*Uncia uncia*), Galapagos tortoise (*Chelonoidis nigra*), and radiated tortoise (*Astrochelys radiata*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Virginia Zoological Park, Norfolk, VA; PRT–676511

The applicant request amendment of their captive-bred registration under 50 CFR 17.21(g) to add the following species: White-nape crane (*Grus vipio*), African elephant (*Loxodonta africana*), Goeldi's marmoset (*Callimico goeldii*), and orangutan (*Pongo pygmaeus*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Wright Family LLC, Clarendon, TX; PRT–42009B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the barasingha (*Rucervus duvaucelii*), Arabian oryx (*Oryx leucoryx*), and red lechwe (*Kobus leche*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Wright Family LLC, Clarendon, TX; PRT–42018B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess barasingha (*Rucervus duvaucelii*), Arabian oryx (*Oryx leucoryx*), and red lechwe (*Kobus leche*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Lori Snook, Bolivar, OH; PRT–177999

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the radiated tortoise (*Astrochelys radiate*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Stanford University, Stanford, CA; PRT–54288B

On May 27, 2015, we published a **Federal Register** notice inviting the public to comment on their application to conduct scientific research with gray mouse lemur (*Microcebus rufus*) [80 FR 30263]. The scientific name is being modified to conduct research with any species of mouse lemurs. All the other information we printed was correct. With this notice, we correct the scientific name and reopen the comment period for PRT–54288B. The corrected entry for this application is as follows: The applicant request a permit to import biological samples for mouse lemurs (*Microcebus species*) and (*Mirza coquereli*) from France and Madagascar, for the purpose of enhancement of the species through scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Multiple Applicants

The following applicants each request a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: Andrew Gwynn, Anna, TX; PRT–64739B

Applicant: Tadd Tellepsen, Houston, TX; PRT–65907B

Applicant: Marion Smith, Prairie City, IA; PRT–66658B

Applicant: James McDonald, Odessa, TX; PRT–63770B

B. Marine Mammals

Applicant: U.S. Geological Survey, Alaska Science Center, Anchorage, AK; PRT- 801652

The applicant requests an amendment of the permit to harass Pacific walrus (*Odobenus rosmarus divergens*) during at-sea trials and terrestrial aerial surveys with an Unmanned Aircraft System in Alaska for the purpose of scientific research. This notification covers activities to be conducted by the applicant for the remainder of the permit validity.

Concurrent with publishing this notice in the **Federal Register**, we are forwarding copies of the above application to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Lisa Lierheimer,

Supervisory Policy Specialist,

Branch of Permits, Division of Management Authority.

[FR Doc. 2015–14334 Filed 6–11–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[156A2100DD/AAKC001030/ A0A501010.999900 253G]

Confederated Tribes of the Umatilla Indian Reservation Liquor Code—Amendment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes amendments to the Confederated Tribes of the Umatilla Indian Reservation Liquor Code. This codification amends the existing Confederated Tribes of the Umatilla Indian Reservation Liquor Code, enacted by the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation, which was published in the **Federal Register** on February 22, 2012 (77 FR 10551).

DATES: *Effective Date:* This amended code shall become effective June 12, 2015.

FOR FURTHER INFORMATION CONTACT: Gregory Norton, Division of Tribal Government Services Officer, Northwest Regional Office, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, OR 97232–4169, Telephone: (503) 231–6723, Fax: (503) 231–2201; or Laurel Iron Cloud, Chief, Division of Tribal Government Services, Office of Indian Services, Bureau of Indian Affairs, 1849 C Street NW., MS–4513–MIB, Washington, DC 20240, Telephone: (202) 513–7641.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in Rice v. Rehner, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation duly adopted amendments to the Confederated Tribes of the Umatilla Indian Reservation Liquor Code on March 23, 2015. This **Federal Register** notice of amendment supersedes the Confederated Tribes of the Umatilla Indian Reservation Liquor Code, enacted by the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation, which was published in the **Federal Register** on February 22, 2012 (77 FR 10551).

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs. I certify that the Board of Trustees of the Confederated Tribes of the Umatilla Indian Reservation duly adopted amendments to the Confederated Tribes of the Umatilla Indian Reservation Liquor Code by Resolution No. 15–019 on March 23, 2015.

Dated: June 8, 2015.

Kevin K. Washburn,

Assistant Secretary—Indian Affairs.

The Confederated Tribes of the Umatilla Indian Reservation Liquor Code, as amended, shall read as follows:

CHAPTER 1. Liquor Code

SECTION 1.01. Title

This Code shall be the Liquor Code of the Confederated Tribes of the Umatilla Indian Reservation (Confederated Tribes) and shall be referenced as the Liquor Code.

SECTION 1.02. Findings And Purpose

A. The introduction, possession, and sale of liquor on Indian reservations has historically been recognized as a matter of special concern to Indian tribes and to the United States. The control of liquor on the Umatilla Indian Reservation remains exclusively subject to the legislative enactments of the Confederated Tribes in its exercise of its governmental powers over the Reservation, and the United States.

B. Federal law prohibits the introduction of liquor into Indian Country (18 U.S.C. 1154), and authorized tribes to decide when and to what extent liquor transactions, sales, possession and service shall be permitted on their reservation (18 U.S.C. 1161).

C. The Board of Trustees, as the governing body of the Confederated Tribes pursuant to Article VI, § 1 of the Constitution and Bylaws of the Confederated Tribes, have adopted Resolutions to permit the sale and service of liquor at the Wildhorse Resort & Casino and at Coyote Business Park as provided in this Code, but at no other locations.

D. Pursuant to the authority in Article VI, § 1(a) of the Confederated Tribes' Constitution, the Board of Trustees has the authority ''to represent the [Confederated] Tribes and to negotiate with the Federal, State and local governments on projects and legislation that affect the [Confederated] Tribes''.

E. Pursuant to the authority in Article VI, § 1(d) of the Confederated Tribes' Constitution, the Board of Trustees has the authority ''to promulgate and enforce ordinances governing the conduct of all persons and activities within the boundaries of the Umatilla Indian Reservation, providing for the procedure of the Board of Trustees, and carrying out any powers herein conferred upon the Board of Trustees''.

F. The enactment of this Liquor Code to govern liquor sales and service on the Umatilla Indian Reservation will increase the ability of the Confederated Tribes to control Reservation liquor distribution, sales, service and possession, and at the same time will provide an important source of revenue for the continued operation of Tribal government and the delivery of governmental services, as well as provide an amenity to customers of enterprises of the Confederated Tribes.

G. The Confederated Tribes have entered into a Memorandum of Understanding (MOU) with the Oregon Liquor Control Commission to deal with governmental issues associated with the licensing and regulation of liquor sales on the Umatilla Indian Reservation.

SECTION 1.03. Definitions

A. Unless otherwise required by the context, the following words and phrases shall have the designated meanings.

1. ''Alcohol''. That substance known as ethyl alcohol, hydrated oxide or ethyl, spirits or wine as defined herein, which is commonly produced by the

fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of those substances.

2. ''Coyote Business Park''. Shall included Coyote Business Park North, South and East, but shall not include the Arrowhead Travel Plaza.

3. ''Wildhorse Chief Executive Officer''. That person appointed by the Confederated Tribes to manage the Wildhorse Resort & Casino.

4. ''Liquor'' or ''Liquor Products''. Includes the four varieties of liquor herein defined (alcohol, spirits, wine, and beer) and all fermented, spirituous, vinous, or malt liquor, or a combination thereof, and mixed liquor, a part of which is fermented, spirituous, vinous, or malt liquor or otherwise intoxicating in every liquid or solid or semi-solid or other substance patented or not containing alcohol, spirits, wine, or beer, and all drinks of potable liquids and all preparations or mixtures capable of human consumption, and any liquid, semi-solid, solid, or other substance, which contains more than one percent (1%) of alcohol by weight shall be conclusively deemed to be intoxicating.

5. ''Wildhorse Resort & Casino''. Shall include the casino, hotels, golf course (including club house), cineplex, RV park and future facilities that become a part of the Wildhorse Resort & Casino located on the Umatilla Indian Reservation.

6. ''Sale'' and ''Sell''. Includes exchange, barter, and traffic; and also the supplying or distribution by any means whatsoever, of liquor or any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or wine, by any person to any other person; and also includes the supply and distribution to any other person.

7. ''Spirits''. Any beverage which contains alcohol obtained by distillation, including wines exceeding seventeen percent (17%) of alcohol by weight.

8. ''Wine''. Any alcoholic beverage obtained by fermentation of fruits, grapes, berries, or any other agricultural product containing sugar, to which any saccharin substances may have been added before, during or after fermentation, and containing not more than seventeen percent (17%) of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and anglican, not exceeding seventeen percent (17%) of alcohol by weight.

SECTION 1.04. Jurisdiction

To the extent permitted by applicable law, the Confederated Tribes asserts jurisdiction to determine whether liquor sales and service are permitted within the boundaries of the Umatilla Indian Reservation. As provided in section 1.06 of this Code, liquor sales and service is only permitted at the Wildhorse Resort & Casino facilities and in the Coyote Business Park under this Code. Nothing in this Code is intended nor shall be construed to limit the jurisdiction of the Confederated Tribes to regulate liquor sales and service on all lands within the boundaries of the Umatilla Indian Reservation.

SECTION 1.05. Relation To Other Laws

All prior codes, ordinances, resolutions and motions of the Confederated Tribes regulating, authorizing, prohibiting, or in any way dealing with the sale or service of liquor are hereby repealed and are of no further force or effect to the extent they are inconsistent or conflict with the provisions of this Code. Specifically, amendments to the Criminal Code to make it consistent with this Liquor Code have been approved by Resolution 05–095 (October 3, 2005). No Tribal business licensing law or other Tribal law shall be applied in a manner inconsistent with the provisions of this Code.

SECTION 1.06. Authorized Sale And Service Of Liquor

A. Liquor may be offered for sale and may be served on the Umatilla Indian Reservation only at the following locations:

1. At the Wildhorse Resort & Casino.

2. At the Coyote Business Park by any Coyote Business Park lessee if liquor sales and service is permitted in the lease between the lessee and the Confederated Tribes.

SECTION 1.07. Prohibitions

A. General Prohibitions. The commercial introduction of liquor for sales and service, other than as permitted by this Code, is prohibited within the Umatilla Indian Reservation, and is hereby declared an offense under Tribal law. Federal liquor laws applicable to Indian Country shall remain applicable to any person, act, or transaction which is not authorized by this Code and violators of this Code shall be subject to federal prosecution as well as to legal action in accordance with the law of the Confederated Tribes.

B. Age Restrictions. No person shall be authorized to serve liquor unless they are at least 21 years of age. No person may be served liquor unless they are 21 years of age.

C. Off Premises Consumption of Liquor.

1. All liquor sales and service authorized by this Code at the Wildhorse Resort & Casino shall be fully consumed at the Wildhorse Resort & Casino as set forth in section 1.06 of this Code *and* no open containers of liquor, or unopened containers of liquor in bottles, cans, or otherwise may be permitted outside of the above-described premises, except as follows:

a) Patrons at Wildhorse restaurants may be permitted to remove a partially consumed bottle of wine from the restaurant if the wine is served in conjunction with the patron's meal, the patron is not a minor and the patron is not visibly intoxicated.

b) Organizers of meetings or conventions at Wildhorse may be permitted to offer or award liquor, including wine, to meeting and convention participants, provided that the participant is not a minor nor visibly intoxicated, and such liquor or wine may be removed from the Wildhorse premises by the participant so long as the liquor or wine is not opened.

2. Liquor sales and service at Coyote Business Park shall be conducted in strict compliance with the lease between the Coyote Business Park lessee and the Confederated Tribes.

D. No Credit Liquor Sales. The sales and service of liquor authorized by this Code shall be upon a cash basis only. For purposes of this Code, payment for liquor on a cash basis shall include payment by cash, credit card, or check.

SECTION 1.08. Conformity With State Law

A. Authorized liquor sales and service on the Umatilla Indian Reservation shall comply with Oregon State liquor law standards to the extent required by 18 U.S.C. 1161.

B. Wildhorse Resort & Casino. The Wildhorse Chief Executive Officer shall be responsible for ensuring that all OLCC license requirements are satisfied, that the license(s) is renewed on an annual basis, and that all reasonable and necessary actions are taken to sell and serve liquor to Wildhorse patrons in a manner consistent with this Code, applicable State law, and the Tribal-State Compact. The Wildhorse Chief Executive Officer shall also be authorized to purchase liquor from the State or other source for sale and service within the Wildhorse Resort & Casino. The Wildhorse Chief Executive Officer is further authorized to treat as a casino expense any license fees associated with the OLCC liquor license.

C. Coyote Business Park. The Coyote Business Park lessee authorized to sell

or serve liquor as provided in section 1.06(A)(*2*) of this Code, shall be responsible for insuring that all OLCC license requirements are satisfied, that the license(s) is renewed on an annual basis, and that all reasonable and necessary actions are taken to sell and serve liquor in a manner consistent with this Code and applicable Tribal and State law.

SECTION 1.09. Penalty

Any person or entity possessing, selling, serving, bartering, or manufacturing liquor products in violation of any part of this Code shall be subject to a civil fine of not more than $500 for each violation involving possession, but up to $5,000 for each violation involving selling, bartering, or manufacturing liquor products in violation of this Code, and violators may be subject to exclusion from the Umatilla Indian Reservation. In addition, persons or entities subject to the criminal jurisdiction of the Confederated Tribes who violate this Code shall be subject to criminal punishment as provided in the Criminal Code. All contraband liquor shall be confiscated by the Umatilla Tribal Police Department (UTPD). The Umatilla Tribal Court shall have exclusive jurisdiction to enforce this Code and the civil fines, criminal punishment and exclusion authorized by this section.

SECTION 1.10. Sovereign Immunity Preserved

Nothing in this Code is intended or shall be construed as a waiver of the sovereign immunity of the Confederated Tribes. No manager or employee of the Confederated Tribes or the Wildhorse Resort & Casino shall be authorized, nor shall they attempt, to waive the sovereign immunity of the Confederated Tribes pursuant to this Code.

SECTION 1.11. Severability

If any provision or provisions in this Code are held invalid by a court of competent jurisdiction, this Code shall continue in effect as if the invalid provision(s) were not a part hereof.

SECTION 1.12. Effective Date

This Code shall be effective following approval by the Board of Trustees and approval by the Secretary of the Interior or his/her designee and publication in the **Federal Register** as provided by federal law.

[FR Doc. 2015–14419 Filed 6–11–15; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNV952000 L14400000.BJ0000.LXSSF2210000.241A; 13–08807; MO# 4500080175; TAS: 15X1109]

Filing of Plats of Survey; NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the filing of Plats of Survey in Nevada.

DATES: Unless otherwise stated filing is effective at 10 a.m. on the dates indicated below.

FOR FURTHER INFORMATION CONTACT: Michael O. Harmening, Chief, Branch of Geographic Sciences, Bureau of Land Management, Nevada State Office, 1340 Financial Blvd., Reno, NV 89502–7147, phone: 775–861–6490. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

1. The Plat of Survey of the following described lands was officially filed at the Bureau of Land Management (BLM) Nevada State Office, Reno, Nevada on January 12, 2015:

The plat, in 1 sheet, representing the dependent resurvey of a portion of Mineral Survey No. 1905, in Township 6 South, Range 70 East, Mount Diablo Meridian, under Group No. 931, was accepted January 12, 2015. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

2. The Plat of Survey of the following described lands was officially filed at the BLM Nevada State Office, Reno, Nevada on March 2, 2015:

The plat, in 1 sheet, representing the dependent resurvey of a portion of the subdivisional lines, Mineral Survey No. 3808, and portions of Mineral Survey No. 3961, in Township 46 North, Range 39 East, of the Mount Diablo Meridian, Nevada, under Group No. 939, was accepted March 2, 2015. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

3. The Plat of Survey of the following described lands was officially filed at the BLM Nevada State Office, Reno, Nevada on April 8, 2015:

The plat, in 2 sheets, representing the retracement of a portion of the south boundary, a portion of the subdivisional lines, the subdivision of sections 29 and 32, and metes-and-bounds surveys, in Township 6 South, Range 61 East, of the Mount Diablo Meridian, Nevada, under Group No. 925, was accepted April 8, 2015. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

4. The Plat of Survey of the following described lands was officially filed at the BLM Nevada State Office, Reno, Nevada on April 8, 2015:

The plat, in 1 sheet, representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of section 5, in Township 7 South, Range 61 East, of the Mount Diablo Meridian, Nevada, under Group No. 934, was accepted April 8, 2015. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

5. The Plat of Survey of the following described lands was officially filed at the BLM Nevada State Office, Reno, Nevada on April 9, 2015:

The plat, in 2 sheets, representing the dependent resurvey of a portion of the south boundary, a portion of the subdivisional lines, the subdivision of section 36 and a metes-and-bounds survey in section 36, in Township 21 South, Range 63 East, of the Mount Diablo Meridian, Nevada, under Group No. 940, was accepted April 9, 2015. This survey was executed to meet certain administrative needs of the Bureau of Land Management.

The surveys listed above are now the basic record for describing the lands for all authorized purposes. These records have been placed in the open files in the BLM Nevada State Office and are available to the public as a matter of information. Copies of the surveys and related field notes may be furnished to the public upon payment of the appropriate fees.

Dated: June 8, 2015.

Michael O. Harmening,

Chief Cadastral Surveyor, Nevada.

[FR Doc. 2015–14431 Filed 6–11–15; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLORP0000.16100000.DR0000 LXSS053H0000 HAG14–0129]

Notice of Availability of Record of Decision for the John Day Basin Resource Management Plan Final Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Land Management (BLM) announces the availability of the Record of Decision (ROD) for the Approved Resource Management Plan (RMP) for the John Day Basin planning area located in northern central Oregon. The Oregon/Washington State Director signed the ROD on April 28, 2015, which constitutes the final decision of the BLM and makes the Approved RMP effective immediately.

ADDRESSES: Copies of the ROD/Approved RMP are available upon request from the Central Oregon Field Manager, Prineville District Office, Bureau of Land Management, 3050 NE Third Street, Prineville, OR 97754, or via the internet at *http://www.blm.gov/or/districts/prineville/plans/johndayrmp/jdbdocuments.php.* Copies of the ROD/Approved RMP are available for public inspection at the Prineville District Office.

FOR FURTHER INFORMATION CONTACT: Teal Purrington, Planning and Environmental Coordinator; telephone, 541–416–6700; address, Prineville District Office, Bureau of Land Management, 3050 NE Third Street, Prineville, OR 97754; email, *tpurring@blm.gov.* Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: Interaction with the public regarding this RMP began in early 2006 and included dozens of public meetings and workshops. The BLM worked with cooperators from six Federal agencies, including the National Marine Fisheries Service and the U.S. Fish and Wildlife Service; three state agencies; and eight county governments. The BLM also consulted, on a government-to-government basis, with three federally recognized tribes with interests in the planning area. The RMP provides management direction for 456,600 acres of public land. The Approved RMP describes the actions that will meet desired resource conditions for soil, vegetation, water quality, aquatic habitat, and wildlife habitat; protects cultural resources, visual resources, Wild and Scenic River values, Wilderness areas, and Areas of Critical Environmental Concern; and provides opportunities for recreation, transportation, livestock grazing, rights-of-way, and energy and mineral development. The preferred alternative published October 2008 in the Draft RMP/Environmental Impact Statement (EIS) was carried forward as the Proposed RMP in the Final EIS with minor modifications. The Proposed RMP/EIS was published in April 2012, and the BLM received three protest letters. After careful consideration of all points raised in those protests, the BLM Director concluded that the BLM followed all applicable laws, regulations, policies, and pertinent resource considerations in developing the proposed plan. Responses were sent from the BLM Director to all protesting parties to address their concerns. The BLM's protest summary report is available on the Prineville District Web page at: *http://www.blm.gov/or/districts/prineville/plans/johndayrmp/jdbsupportdocs.*

The Governor of Oregon was provided a formal, 60-day review period to determine if the Proposed RMP/EIS is consistent with existing state or local plans, programs, or policies. No inconsistencies were identified. In preparing the Approved RMP, the BLM applied the seasonal wildlife closures considered in Alternatives 4 and 5 to the 3,970-acre area identified as an Open Off-highway Vehicle (OHV) designation in the Rudio Mountain area. As a result, the OHV designation was also changed to Limited. All other changes were minor editorial modifications.

There are several implementation decisions in the Approved RMP which are appealable under 43 CFR part 4: (a) Limits on decibels, hours of operation, and class of OHV at Little Canyon Mountain; (b) interim management plan for Spring Basin Wilderness; (c) interim management direction for the portion of the North Fork John Day River determined to be suitable for designation as a Wild and Scenic River; (d) management plan for the existing wild and scenic river designations on the John Day River; (e) seasonal area and route closures; and (f) decisions identifying routes of travel for motorized vehicles. Any party adversely affected may appeal within 30 days of publication of this Notice of Availability. The appeal should state the specific decision(s) being appealed. The appeal must be filed with the Central Oregon Field Manager at the above listed address. Please consult the appropriate regulations (43 CFR part 4, subpart E) for further appeal requirements.

Authority: 40 CFR 1506.6.

Jerome E. Perez,

State Director, Oregon/Washington.

[FR Doc. 2015–14485 Filed 6–11–15; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[14XL LLIDI01000.L12320000.AL0000. LVRDID130000]

Proposed Information Collection, OMB Control Number 1004–XXXX

AGENCY: Bureau of Land Management, Interior.

ACTION: 30-Day notice and request for comments.

SUMMARY: The Bureau of Land Management (BLM) has submitted an information collection request to the Office of Management and Budget (OMB) to approve the information collection (IC) described below. In compliance with the Paperwork Reduction Act of 1995, we invite the general public and other Federal agencies to submit comments on this IC to OMB.

DATES: The OMB is required to respond to this information collection request within 60 days but may respond after 30 days. For maximum consideration, written comments should be received on or before July 13, 2015.

ADDRESSES: Please submit comments directly to the Desk Officer for the Department of the Interior (OMB #1004–XXXX), Office of Management and Budget, Office of Information and Regulatory Affairs, fax 202–395–5806, or by electronic mail at *OIRA_submission@omb.eop.gov.* Please provide a copy of your comments to the BLM. You may do so via mail, fax, or electronic mail.

Mail: U.S. Department of the Interior, Bureau of Land Management, 1849 C Street NW., Room 2134LM, Attention: Jean Sonneman, Washington, DC 20240.

Fax: to Jean Sonneman at 202–245–0050.

Electronic mail: Jean_Sonneman@blm.gov.

Please indicate ''Attn: 1004–XXXX'' regardless of the form of your comments.

FOR FURTHER INFORMATION CONTACT: Shannon Bassista, Upper Snake Field Office, at (208) 524–7552. Persons who use a telecommunication device for the deaf may call the Federal Information Relay Service at 1–800–877–8339, to leave a message for Ms. Bassista. You may also review the information collection request online at *http://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act (44 U.S.C. 3501–3521) and OMB regulations at 5 CFR part 1320 provide that an agency may not conduct or sponsor a collection of information unless it displays a currently valid OMB control number. Until OMB approves a collection of information, you are not obligated to respond. In order to obtain and renew an OMB control number, Federal agencies are required to seek public comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d) and 1320.12(a)).

As required at 5 CFR 1320.8(d), the BLM published a 60-day notice in the **Federal Register** on January 21, 2015 (80 FR 2967). The public comment period expired on March 23, 2015. No public comments were submitted in response to that notice. The BLM now requests comments on the following subjects:

1. Whether the collection of information is necessary for the proper functioning of the BLM, including whether the information will have practical utility;
2. The accuracy of the BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;
3. The quality, utility and clarity of the information to be collected; and
4. How to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Please send comments as directed under **ADDRESSES** and **DATES**. Please refer to OMB control number 1004–XXXX in your correspondence. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The following information pertains to this request:

OMB Control Number: 1004–XXXX.

Title: Visitor Use Survey for St. Anthony Sand Dunes.

Abstract: The BLM is proposing to sponsor a visitor use survey for the St. Anthony Sand Dunes in the Upper Snake Field Office, Idaho, which includes lands designated as a Special Recreation Management Area (SRMA), lands designated as a Wilderness Study Area, and lands designated as an Area of Critical Environmental Concern. This collection of information will enable the BLM to develop a plan for the St. Anthony Sand Dunes on subjects such as existing and proposed management actions, issuance of Special Recreation Permits, conflicts between visitors, and travel management issues. The proposed survey will be distributed as a mail-back questionnaire and will be available online through a University of Idaho Web site. The collection of information will take place during the summer season when visitation rates are highest. Data will be analyzed and a final report will be developed for the area.

Frequency: Once.

Description of Respondents: Visitors and recreationists.

Respondents' Obligation: Voluntary.

Estimated Reporting and Recordkeeping ''Hour'' Burden: 845 responses and 211 hours.

The estimated burdens are itemized in the following table:

A. Activity	B. Estimated number of responses	C. Completion time per response (minutes)	D. Total hours (column B × column C)
Sampling Frame 1: On-site visitors: on-site, mail or on-line questionnaires	420	15	105
Sampling Frame 2: mail or online questionnaire to vested interests	425	15	106
Totals	845		211

Jean Sonneman,

Information Collection Clearance Officer, Bureau of Land Management.

[FR Doc. 2015–14484 Filed 6–11–15; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[15X L1109AF LLUTW01000 L12200000. DO0000 241A]

Notice of Intent To Amend the Pony Express Resource Management Plan for the Salt Lake Field Office, Utah, and Prepare an Associated Environmental Assessment for the Eastern Lake Mountains Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) Salt Lake Field Office (SLFO), Salt Lake City, Utah, intends to prepare a Resource Management Plan (RMP) Amendment with an associated Environmental Assessment (EA) for target shooting in the Eastern Lake Mountains area. This notice is announcing the beginning of the scoping process to solicit public comments and identify issues.

DATES: This notice initiates the public scoping process for the RMP amendment with an associated EA. Comments on issues to be considered may be submitted in writing until July 13, 2015. The date(s) and location(s) of any scoping meetings will be announced at least 15 days in advance through local news media, newspapers and the BLM Web site at: *http://www.blm.gov/ut/st/en/fo/salt_lake/planning.html*. In order to be included in the analysis, all comments must be received prior to the close of the 30-day scoping period or 15 days after the last public meeting, whichever is later. We will provide additional opportunities for public participation as appropriate.

ADDRESSES: You may submit comments on issues and planning criteria related to the Eastern Lake Mountains Plan Amendment/EA by any of the following methods:

- Web site: *https://www.blm.gov/ut/enbb/index.php*
- Email: *blm_ut_sl_comments@blm.gov*

- Fax: 801–977–4397 or
- Mail: BLM–SLFO, 2370 South Decker Lake Boulevard, West Valley City, Utah 84119

Documents pertinent to this proposal may be examined at the SLFO located at 2370 South Decker Lake Boulevard, West Valley City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Pam Schuller, Planning and Environmental Coordinator, telephone 801–977–4377; address BLM–SLFO, 2370 South Decker Lake Boulevard, West Valley City, Utah 84119; email: *blm_ut_sl_comments@blm.gov*. Contact Ms. Schuller to have your name added to our mailing list. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: This document provides notice that the BLM SLFO, Salt Lake City, Utah, intends to prepare an RMP amendment with an associated EA for the Eastern Lake Mountains area, announces the beginning of the scoping process, and seeks public input on issues and planning criteria. The planning area is located in Utah County, Utah, and encompasses approximately 8,124 acres of public land. The purpose of the public scoping process is to determine relevant issues that will influence the scope of the environmental analysis, including alternatives, and guide the planning process. Preliminary issues for the plan amendment area have been identified by BLM personnel; Federal, State, and local government agencies; and other stakeholders. The issues identified to date include: target shooting, public health and safety, and protection of cultural resources.

Preliminary planning criteria include:

- The RMP amendment will address BLM-administered lands only.
- The RMP amendment will make land use planning decisions specific to potential closure or restrictions of target shooting to determine the desired future condition and uses of these public lands.
- The RMP amendment will utilize a collaborative and multi-jurisdictional approach to determine the desired future condition of public lands.
- The RMP amendment will comply with NEPA, FLPMA, and other applicable laws, executive orders, regulations and policy.
- The RMP amendment will recognize valid and existing rights.

You may submit comments on issues and planning criteria in writing to the BLM at any public scoping meeting, or you may submit them to the BLM using one of the methods listed in the **ADDRESSES** section above. Interested parties may submit comments by the close of the 30-day scoping period or within 15 days after the last public meeting, whichever is later.

The BLM will utilize and coordinate the NEPA scoping process to help fulfill the public involvement process under section 106 of the National Historic Preservation Act (54 U.S.C. 306108) as provided in 36 CFR 800.2(d)(3). The information about historic and cultural resources within the area potentially affected by the proposed action will assist the BLM in identifying and evaluating impacts to such resources.

The BLM will consult with Native American tribes on a government-to-government basis in accordance with Executive Order 13175 and other policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration.

Federal, State, and local agencies, along with tribes and other stakeholders that may be interested in or affected by the proposed action that the BLM is evaluating, are invited to participate in the scoping process and, if eligible, may request, or be requested by the BLM, to participate in the development of the environmental analysis as a cooperating agency.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

The minutes and list of attendees for each scoping meeting will be available to the public and open for 30 days after the meeting to any participant who wishes to clarify the views he or she expressed. The BLM will evaluate identified issues to be addressed in the plan, and will place them into one of three categories:

1. Issues to be resolved in the plan amendment;
2. Issues to be resolved through policy or administrative action; or
3. Issues beyond the scope of this plan amendment.

The BLM will explain in the Draft RMP Amendment/Draft EA why an issue was placed in category two or three. The public is also encouraged to help identify any management questions and concerns that should be addressed in the plan. The BLM will work collaboratively with interested parties to identify the management decisions that are best suited to local, regional, and national needs and concerns.

The BLM will use an interdisciplinary approach to develop the plan amendment in order to consider the variety of resource issues and concerns identified. Specialists with expertise in the following disciplines will be involved in the planning process: outdoor recreation, archaeology, rangeland management, wildlife, fire management, realty, and hazardous materials.

Authority: 40 CFR 1501.7 and 43 CFR 1610.2.

Lance C. Porter,

Acting Associate State Director.

[FR Doc. 2015–14296 Filed 6–11–15; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNM006200 L99110000.EK0000 XXX L4053RV]

Notice of Proposed Action: Crude Helium Sale and Auction for Fiscal Year 2016 Delivery

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this action is to inform the public that the Department of the Interior, Bureau of Land Management (BLM), will conduct a Phase B sale and auction of crude helium for Fiscal Year (FY) 2016 delivery. For purposes of the Phase B sale, the BLM is seeking comments regarding the methods BLM should use to arrive at the sale price of the helium; the auction format BLM should follow in selling helium; who will be allowed to purchase helium; and the process BLM should follow for allocating helium.

DATES: Comments regarding the helium sale and auction must be received by the BLM on or before July 13, 2015.

ADDRESSES: You may submit your comments in one of two ways. You may mail comments to Bureau of Land Management, Amarillo Field Office, 801 S. Fillmore, Suite 500, Amarillo, TX 79101, Attention: Helium Sale and Auction; or email them to *blm_nm_amfo_spo@blm.gov* with ''Helium Sale and Auction'' in the subject line.

FOR FURTHER INFORMATION CONTACT: Robert Jolley, Amarillo Field Manager, at 806–356–1002. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. The FIRS is available 24 hours a day, 7 days a week, to leave a message. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION:

Background: In October 2013, Congress passed the Helium Stewardship Act of 2013 (the ''Act''), Public Law 113–40. Beginning in FY 2014, the Act requires the Department of the Interior, through the BLM Director, to offer for sale and auction annually a portion of the helium reserves owned by the United States and stored underground in the Cliffside Gas Field, which is near Amarillo, Texas. 50 U.S.C. 167d(b).

On July 22, 2014, the BLM published a ''Final Notice for Implementation of Helium Stewardship Act Sales and Auctions'' in the **Federal Register**, (79 FR 42808) (''2014 Final Notice''). The 2014 Final Notice contained information about the Act, definitions of terms used in the Notice, the reasons for the action, and a process for conducting the auctions and sales in FY 2014. The 2014 Final Notice is available at the BLM helium operations Web site at: *http://www.blm.gov/nm/helium.*

Comments requested: The BLM is specifically seeking comments on elements of the FY 2016 sale and auction that differ from the process described the 2014 Final Notice. These include:

a. The process for arriving at the price for helium to be sold at the Phase B auction and sale, as described in section 1.01 of this Notice;

b. The format of the auction, as described in section 1.04 of this Notice;

c. Who will be allowed to purchase helium in the FY 2016 Phase B sale, as described in section 2.01 of this Notice; and

d. The process for allocating helium for the FY 2016 Phase B sale, as described in section 2.02 of this Notice.

Any comments regarding the sale or auction will be reviewed by the BLM State Director or other authorized official of the Department of the Interior, who may sustain, vacate, or modify the sale or auction. After consideration of comments on this notice and comments on a proposed new form of the helium storage contract, the BLM will publish a final notice of the FY 2016 sale and auction. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Volumes Offered in the FY 2016 Helium Auction and Sale: Table 1 identifies the volumes to be offered for auction and sale in FY 2015 for FY 2016 delivery.

TABLE 1—PROJECTED VOLUMES FOR PHASE B AUCTION AND SALE FOR FY 2016 DELIVERY

Fiscal year (FY)	Forecasted production capability (NITEC study)	In-kind sales (sales to Federal users)	Total remaining production available for sale/auction or delivery	Volume available for auction	Previously sold in FY 2014 Advanced sale	Volume available for sale
MMcf*	MMcf	MMcf	MMcf	MMcf	MMcf	MMcf
FY 2016**	1,310	160	1,150	***300	****250	600

*MMcf means one million cubic feet of gas measured at standard conditions of 14.65 per square inch atmosphere (psia) and 60 degrees Fahrenheit.
**Delivery for FY 2016 sales and auctions will be subject to a new storage contract beginning October 1, 2015.
***25% of total production capacity after deducting In-Kind (rounded).
****In accordance with the Act, 250 MMcf of FY 2016 volumes were offered in FY 2014.

FY 2016 Helium Auction

1.01 What is the minimum FY 2016 Phase B auction price and minimum FY 2016 Phase B sales price, and how were those prices determined? Under the Act (50 U.S.C. 167d(b)), there are two occasions when helium is sold in Phase B: A public auction for qualified bidders (''Phase B auction'') and a sale of helium to persons who have the ability to accept delivery of crude helium from the Federal Helium System (''Phase B sale'').

The minimum FY 2016 Phase B auction reserve price is $100 per Mcf (one thousand cubic feet of gas measured at standard conditions of 14.65 psia and 60 degrees Fahrenheit). The BLM will calculate the FY 2016 Phase B sale price using the weighted average price of the crude helium sold in the FY 2016 Phase B auction. If there are no successful sales during the FY 2016 Phase B auction, all helium volume offered in the auction will be added to the Phase B sale at a market-based survey price or calculated average price under 50 U.S.C. 167d (b)(7)(B) or (C), respectively.

1.02 What will happen to the helium offered but not sold in the helium auction? Any volume of helium offered but not sold in the FY 2016 Phase B auction will be added to the 600 MMcf available for sale and will be offered for sale in the FY 2016 Phase B sale.

1.03 When will the sale and auction take place? The BLM intends to offer helium for FY 2016 according to the following tentative schedule. This schedule may be adjusted based upon the timing of the required notices and complexity of comments received.

August 18, 2015 FY 2016 Phase B helium auction held in Amarillo, Texas

August 19, 2015 FY 2016 Phase B helium auction results published on the BLM Web site

August 24, 2015 Phase B Helium Sale

September 30, 2015 Revenues from auction and sale due to the BLM

1.04 What is the auction format? The auction will be a live auction, held at the Amarillo Field Office in Amarillo, Texas. The procedures for the auction and the pre-bid qualification form will be available after publication of a Final Notice. The Final Notice will include a web link. Please call BLM at 806–356–1001 if you have any questions relating to the auction.

1.05 Who is qualified to purchase helium at the Phase B auction? Only ''qualified bidders,'' as defined in 50 U.S.C. 167(9), may participate in and purchase helium at the Phase B auction. The BLM will make the final determination of who is a qualified bidder using the Act's definition of a

qualified bidder, regardless of whether or not that person was previously determined to be a qualified bidder.

1.06 How many helium lots does the BLM anticipate offering at the FY 2016 Phase B auction? The BLM anticipates auctioning 300 MMcf in a total of 18 lots for FY 2016. The lots would be divided as follows:

(8) lots of 25 MMcf each
(5) lots of 15 MMcf each
(5) lots of 5 MMcf each

1.07 What must I do to bid at auction? The BLM will describe the live auction procedures, including detailed bidding instructions and pre-bid registration requirements, on its Web page at a web link that will be included in the Final Notice. The Final Notice will contain information regarding the time and location of the auction, process for notification of winning bidders, payments, and how to make such payments.

1.08 When will helium that is purchased at sale or won at auction be available in the purchaser's storage account? The BLM will transfer the volumes purchased in the FY 2016 Phase B auction and sale to the buyers' storage accounts beginning on the first day of the month following receipt of payment.

FY 2016 Phase B Helium Sale

2.01 Who will be allowed to purchase helium in the FY 2016 Phase B sale? Any person (including individuals, corporations, partnerships, or other entities) with the ability to accept delivery of crude helium from the Federal Helium Pipeline (as defined in 50 U.S.C. 167(2)) may purchase helium in the FY 2016 Phase B sale.

2.02 How will the helium sold in the FY 2016 Phase B sale be allocated among the persons with the ability to take helium? Any person desiring to participate in the FY 2016 Phase B sale needs to report its excess refining capacity and operational capacity by August 14, 2015 using the Excess Refining Capacity form, which can be downloaded at *http://www.blm.gov/nm/heliumreporting.* Each person participating in the sale will then be allocated a proportional share based upon that person's operational capacity.

2.03 How does a person apply for access to the Federal Helium Pipeline for the purpose of taking crude helium? The steps for taking crude helium are provided in the BLM's Helium Operations Web site at *http://www.blm.gov/nm/helium.* Reporting forms show the due dates for each report, and can be found at *http://www.blm.gov/nm/heliumreporting.* The length of time required to apply for and obtain access to the Federal Helium Pipeline will vary based on the person's plans for plant construction, pipeline metering installation, and other variables. The BLM is available to provide technical assistance, including contact information for applying for access and meeting any applicable National Environmental Policy Act requirements.

2.04 What will happen if one or more persons request an amount other than the person's share of the volume offered for sale? If one or more persons requests less than its share or their shares, any other person(s) that request(s) more than its share or their shares will be allowed to purchase the excess volume based on the proportionate shares of operational capacity of all persons requesting more than their initial shares.

2.05 What will happen if the total amount requested by persons is less than the 600 MMcf offered in the FY 2016 Phase B sale? Any excess volume not sold in the FY 2016 Phase B sale will be available for future sale or auction.

2.06 Do you have a hypothetical example of how the FY 2016 Phase B Sale would be conducted? A hypothetical example of how the Phase B Sale will be conducted is available at the Helium Operations Web site at: *http://www.blm.gov/nm/helium.*

Delivery of Helium in FY 2016

3.01 When will I receive helium that I purchase in a sale or win based on a successful auction bid? Helium purchased at the FY 2016 sale or won at the FY 2016 auction will be delivered starting October 1, 2015, in accordance with the crude helium storage contract. The intent is to ensure delivery of all helium purchased at sale or auction up to the BLM's production capability for the year.

3.02 How will the BLM prioritize delivery? The Act, at 50 U.S.C. 167d(b)(1)(D) and (b)(3), gives priority to Federal In-Kind helium (*i.e.,* helium sold to Federal users). After meeting that priority, the BLM will make delivery on a reasonable basis, as described in the crude helium storage contract, to ensure storage contract holders who have purchased or won helium at auction have the opportunity during the year to have that helium produced or refined in monthly increments.

Background Documents

Supplementary documents referenced in this Notice are available at the BLM helium operations Web site at: *http://www.blm.gov/nm/helium,* and include the following:

a. Table of Projected Volumes for Sales and Auctions for Delivery for FY 2017–FY 2021 (informational);

b. Hypothetical example of how the FY 2016 Phase B Sale would be conducted (informational);

c. The Helium Stewardship Act of 2013, 50 U.S.C. 167;

d. FY 2014 Helium Auction Notice;

e. Helium Storage Contract; and

f. Required forms for helium reporting.

Authority: The Helium Stewardship Act of 2013, Public Law 113–40, codified to various sections in 50 U.S.C. 167–167q.

Sheila K. Mallory,

Acting State Director.

[FR Doc. 2015–14487 Filed 6–11–15; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMA00000 L16400000.PN0000]

Notice of Relocation: Change of Street Address for Albuquerque District and Rio Puerco Field Offices

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management, Albuquerque District and Rio Puerco Field Offices located at 435 Montaño NE., Albuquerque, New Mexico is relocating to 100 Sun Avenue NE., Suite 330, Albuquerque, New Mexico.

DATES: The Albuquerque District and Rio Puerco Field Offices are scheduled to move June 26, 2015, through June 28, 2015, and will be open for business on Monday, June 29, 2015.

FOR FURTHER INFORMATION CONTACT: Danette Herrera, Administrative Officer, at (505) 761–8952, BLM Albuquerque District Office, Albuquerque, New Mexico 87107. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The service is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The BLM will meet its goals of improving overall efficiency and reducing costs by co-locating with the USDA Forest Service.

The main office telephone number will remain (505) 761–8700.

Lonny R. Bagley,

Acting, Associate State Director.

[FR Doc. 2015–14476 Filed 6–11–15; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SER–BICY–18394; PPSEBICY00, PPMPSPD1Z.YM0000]

Cancellation of the Big Cypress National Preserve Off-Road Vehicle Advisory Committee Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice; cancellation of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16), notice is hereby given that the June 16, 2015, meeting of the Big Cypress National Preserve Off-Road Vehicle Advisory Committee previously announced in the **Federal Register**, Vol. 80, April 1, 2015, p. 17486, is cancelled.

FOR FURTHER INFORMATION CONTACT: J.D. Lee, Acting Superintendent, Big Cypress National Preserve, 33100 Tamiami Trail East, Ochopee, Florida 34141–1000, or via telephone (239) 695–1103.

SUPPLEMENTARY INFORMATION: The Committee was established (**Federal Register**, Vol. 72, August 1, 2007, pp. 42108–42109) pursuant to the Preserve's 2000 *Recreational Off-Road Vehicle Management Plan* and the Federal Advisory Committee Act of 1972 (5 U.S.C. Appendix 1–16) to examine issues and make recommendations regarding the management of off-road vehicles in the Preserve. The agendas for these meetings are published by press release and on the *http://www.nps.gov/bicy/parkmgmt/orv-advisory-committee.htm* Web site.

Dated: June 9, 2015.

Shirley Sears,

Acting Chief, Office of Policy.

[FR Doc. 2015–14463 Filed 6–11–15; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–18353; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

Nominations for the following properties being considered for listing or related actions in the National Register were received by the National Park Service before May 16, 2015. Pursuant to section 60.13 of 36 CFR part 60, written comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation. Comments may be forwarded by United States Postal Service, to the National Register of Historic Places, National Park Service, 1849 C St. NW., MS 2280, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 1201 Eye St. NW., 8th Floor, Washington, DC 20005; or by fax, 202–371–6447. Written or faxed comments should be submitted by June 29, 2015. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: May 29, 2015.

J. Paul Loether,

Chief, National Register of Historic Places/National Historic Landmarks Program.

ARIZONA

Pinal County

Chi'chil Bildagoteel Historic District, Address Restricted, Kearney, 15000358

CALIFORNIA

Los Angeles County

Forsythe Memorial School for Girls, (Latinos in 20th Century California MPS) 506 N. Evergreen Ave., Los Angeles, 15000359

Solano County

Von Pfister General Store, Von Pfister Alley, Benicia, 15000360

GEORGIA

Jones County

Roberts—Bush—Roberts House, 157 Eatonton Hwy., Gray, 15000361

LOUISIANA

Rapides Parish

Long, Huey P., Memorial Hospital, 352 Hospital Blvd., Pineville, 15000362

MICHIGAN

Genesee County

Swayze Apartments, 313 W. Court St., Flint, 15000363

Lenawee County

Blissfield Downtown Historic District, Roughly bounded by Pearl, Jefferson & Giles Sts., Adrian & Blissfield RR., Blissfield, 15000364

MISSOURI

Cape Girardeau County

Wilson, J. Maple and Grace Senne, House, 344 N. Ellis St., Cape Girardeau, 15000365

NEW JERSEY

Essex County

Bloomfield Cemetery, 383 Belleville Ave., Bloomfield Township, 15000366

NEW YORK

Erie County

First Unitarian Church of Buffalo, 695 Elmwood Ave., Buffalo, 15000367

Monroe County

Inglewood and Thurston Historic District, 15–218 Inglewood Dr., 169–291 Thurston Rd. & 5 Marlborough, Rochester, 15000368

Schoharie County

Hess, Christian, House and Shoemaker's Shop, 111 Stony Brook Rd., Schoharie, 15000369

Ulster County

Alligerville Historic District, Berme, Church Hill, Creek, Rose Hill & Towpath Rds., Cty. Rd. 6, Church & Purcell Lns., Accord, 15000370

OHIO

Cuyahoga County

Scranton South Side Historic District, 2314–2658, 3339 Scranton Rd., 1632–2101 Holmden, 1644–2115 Brainard, 1724–2105 Corning, 1701–2034 Clover Aves., Cleveland, 15000371

Montgomery County

Miami Valley Golf Course and Clubhouse, 3311 Salem Ave., Dayton, 15000372

OREGON

Coos County

First National Bank of Bandon, 112 2nd St. SE., Bandon, 15000373

Lane County

Leaburg Hydroelectric Project Historic District, 14348 McKenzie River Hwy., Leaburg, 15000375

Tillamook County

Tillamook Bay Life-Saving Station, 15280 US 101 N., Barview, 15000374

VERMONT

Addison County

First Congregational Church of Cornwall Parsonage, 18 VT 74, Cornwall, 15000376

WISCONSIN

Rock County

Gray, William H. and Edith, Farmstead, 313 E. High St., Milton, 15000377

[FR Doc. 2015–14402 Filed 6–11–15; 8:45 am]

BILLING CODE 4312–51–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SERO–RTCA–18435; PPMPSPD1T.Y00000] [PPSESERO10]

Wekiva River System Advisory Management Committee 2015 Meeting Schedule

AGENCY: National Park Service, Interior.

ACTION: Meeting Notice.

SUMMARY: This notice announces the 2015 schedule of meetings for the Wekiva River System Advisory Management Committee.

DATES: The meetings are scheduled for: September 1, 2015, and November 4, 2015. Both meetings will begin at 3:00 p.m. and will end by 5:00 p.m. (EASTERN)

ADDRESSES: All scheduled meetings will be held at the Wekiwa Springs State Park, 1800 Wekiwa Circle, Apopka, Florida 32712. Call (407) 884–2006 or visit online at *floridastateparks.org/wekiwasprings/* for additional information on this facility.

FOR FURTHER INFORMATION CONTACT: Jaime Doubek-Racine, Community Planner and Designated Federal Officer, Rivers, Trails, and Conservation Assistance Program, Florida Field Office, Southeast Region, 5342 Clark Road, PMB #123, Sarasota, Florida 34233, or via telephone (941) 685–5912.

SUPPLEMENTARY INFORMATION: The Wekiva River System Advisory Management Committee was established by Public Law 106–299 to assist in the development of the comprehensive management plan for the Wekiva River System and provide advice to the Secretary in carrying out management responsibilities of the Secretary under the Wild and Scenic Rivers Act (16 U.S.C. 1274). Efforts have been made locally to ensure that the interested public is aware of the meeting dates.

The scheduled meetings will be open to the public. Each scheduled meeting will result in decisions and steps that advance the Wekiva River System Advisory Management Committee towards its objective of managing and implementing projects developed from the Comprehensive Management Plan for the Wekiva Wild and Scenic River. Any member of the public may file with the Committee a written statement concerning any issues relating to the development of the Comprehensive Management Plan for the Wekiva Wild and Scenic River. The statement should be addressed: Wekiva River System Advisory Management Committee, National Park Service, 5342 Clark Road, PMB #123, Sarasota, Florida 34233.

Before including your address, telephone number, email address, or other personal identifying information in your comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Dated: June 9, 2015.

Shirley Sears,

Acting Chief, Office of Policy.

[FR Doc. 2015–14460 Filed 6–11–15; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–PWR–KAHO–17585; PPPWKAHOS0, PPMPSPD1Z.S00000]

Notice of Request for Nominations and Meeting Cancellation for the Na Hoa Pili O Kaloko-Honokohau National Historical Park Advisory Commission

AGENCY: National Park Service, Interior.

ACTION: Request for nominations and meeting cancellation.

SUMMARY: The National Park Service, U.S. Department of the Interior, proposes to appoint new members to the Na Hoa Pili O Kaloko-Honokohau (The Friends of Kaloko-Honokohau), an Advisory Commission for the park. The Superintendent, Kaloko-Honokohau National Historical Park, acting as administrative lead, is requesting nominations for qualified persons to serve as members of the Advisory Commission.

In accordance with the Federal Advisory Committee Act (5 U.S.C. Appendix 1–16), notice is hereby given that the August 7, 2015, meeting of the Advisory Commission previously announced in the **Federal Register**, Vol. 79, December 22, 2014, pp. 76365, is cancelled.

DATES: Nominations must be postmarked by July 13, 2015.

ADDRESSES: Nominations should be sent to Tammy Duchesne, Superintendent, Kaloko-Honokohau National Historical Park, 73–4786 Kanalani Street, Suite #14, Kailua-Kona, HI 96740.

FOR FURTHER INFORMATION CONTACT: Jeff Zimpfer, National Park Service, Environmental Protection Specialist, Kaloko-Honokohau National Historical Park, 73–4786 Kanalani St., #14, Kailua Kona, HI 96740, telephone number (808) 329–6881, ext. 1500, or email *jeff_zimpfer@nps.gov.*

SUPPLEMENTARY INFORMATION: The Kaloko-Honokohau National Historical Park and the Advisory Commission were established by Public Law 95–625, November 10, 1978, as amended.

The purpose of the Advisory Commission is to advise the Director of the National Park Service with respect to the historical, archeological, cultural, and interpretive programs of the Park. The Commission is to afford particular emphasis to the quality of traditional native Hawaiian cultural practices demonstrated in the Park.

The Advisory Commission consists of nine members, each appointed by the Secretary of the Interior, and four ex officio non-voting members. All nine Secretarial appointees must be residents of the State of Hawaii, and at least six of those appointees must be native Hawaiians. Native Hawaiians are defined as any lineal descendents of the race inhabiting the Hawaiian Islands prior to the year 1778. At least five members will be appointed from nominations received from Native Hawaiian organizations to represent the interests of those organizations. The other four members will represent other Native Hawaiian interests. The nine voting members will be appointed for 5-year terms.

The four ex officio members include the Park Superintendent, the Pacific West Regional Pacific Islands Director, one person appointed by the Governor of Hawaii, and one person appointed by the Mayor of the County of Hawaii. The Secretary of the Interior shall designate one member of the Commission to be Chairman.

No member may serve more than one term consecutively. Any vacancy in the Commission shall be filled by appointment for the remainder of the term.

We are currently seeking nominations five nomination as follows: (1) Three members to represent Native Hawaiian interests and (2) two members from nominations received from Native

Hawaiian organizations to represent the interests of those organizations.

Nominations should be typed and must include each of the following:

A. Brief summary of no more than two (2) pages explaining the nominee's suitability to serve on the Commission.

B. Resume or curriculum vitae.

C. At least one (1) letter of reference.

Members of the Commission will receive no pay, allowances, or benefits by reason of their service on the Commission. However, while away from their homes or regular places of business in the performance of services for the Commission as approved by the Designated Federal Officer, members will be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in Government service are allowed such expenses under Section 5703 of Title 5 of the United States Code.

Individuals who are Federally registered lobbyists are ineligible to serve on all FACA and non-FACA boards, committees, or councils in an individual capacity. The term ''individual capacity'' refers to individuals who are appointed to exercise their own individual best judgment on behalf of the government, such as when they are designated Special Government Employees, rather than being appointed to represent a particular interest.

All required documents must be compiled and submitted in one complete nomination package. Incomplete submissions (missing one or more of the items described above) will not be considered.

Nominations should be postmarked no later than July 13, 2015, to Tammy Duchesne, Superintendent, Kaloko-Honokohau National Historical Park, 73–4786 Kanalani Street, Suite #14, Kailua-Kona, HI 96740.

Dated: June 4, 2015.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2015–14469 Filed 6–11–15; 8:45 am]

BILLING CODE 4310–EE–P

DEPARTMENT OF THE INTERIOR

Office of Natural Resources Revenue

[Docket No. ONRR–2011–0012; DS63610000 DR2PS0000.CH7000 156DO102R2]

Major Portion Prices and Due Date for Additional Royalty Payments on Indian Gas Production in Designated Areas Not Associated With an Index Zone

AGENCY: Office of the Secretary, Office of Natural Resources Revenue (ONRR), Interior.

ACTION: Notice.

SUMMARY: Final regulations for valuing gas produced from Indian leases, published August 10, 1999, require ONRR to determine major portion prices and notify industry by publishing the prices in the **Federal Register**. The regulations also require ONRR to publish a due date for industry to pay additional royalties based on the major portion prices. Consistent with these requirements, this notice provides major portion prices for the 12 months of calendar year 2013.

DATES: The due date to pay additional royalties based on the major portion prices is August 31, 2015.

FOR FURTHER INFORMATION CONTACT: Michael Curry, Manager, Denver B, Western Audit & Compliance, ONRR; telephone (303) 231–3741; fax number (303) 231–3473; email *Michael.Curry@onrr.gov*; or Rob Francoeur, Denver B, Team 2, Western Audit & Compliance, ONRR; telephone (303) 231–3723; fax (303) 231–3473; email *Rob.Francoeur@onrr.gov.* Mailing address: Office of Natural Resources Revenue, Western Audit & Compliance, Denver B, P.O. Box 25165, MS 62520B, Denver, Colorado 80225–0165.

SUPPLEMENTARY INFORMATION: On August 10, 1999, ONRR published a final rule titled ''Amendments to Gas Valuation Regulations for Indian Leases'' effective January 1, 2000 (64 FR 43506). The gas valuation regulations apply to all gas production from Indian (Tribal or allotted) oil and gas leases, except leases on the Osage Indian Reservation.

The regulations require ONRR to publish major portion prices for each designated area not associated with an index zone for each production month beginning January 2000, as well as the due date for additional royalty payments. See 30 CFR 1206.174(a)(4)(ii). If you owe additional royalties based on a published major portion price, you must submit to ONRR by the due date an amended Form ONRR–2014, Report of Sales and Royalty Remittance. If you do not pay the additional royalties by the due date, ONRR will bill you late payment interest under 30 CFR 1218.54. The interest will accrue from the due date until ONRR receives your payment and an amended Form ONRR–2014. The table below lists the major portion prices for all designated areas not associated with an index zone. The due date is the end of the month following 60 days after the publication date of this notice.

GAS MAJOR PORTION PRICES ($/MMBTU) FOR DESIGNATED AREAS NOT ASSOCIATED WITH AN INDEX ZONE

ONRR-designated areas	Jan 2013	Feb 2013	Mar 2013	Apr 2013
Blackfeet Reservation	2.60	2.59	2.93	3.14
Fort Belknap	4.73	4.91	4.85	5.00
Fort Berthold	3.52	3.50	3.64	4.27
Fort Peck Reservation	5.79	5.60	5.23	4.73
Navajo Allotted Leases in the Navajo Reservation	3.32	3.26	3.33	3.95
Turtle Mountain Reservation	4.28	4.27	4.17	4.39
ONRR-designated areas	**May 2013**	**Jun 2013**	**Jul 2013**	**Aug 2013**
Blackfeet Reservation	3.03	2.73	2.10	1.87
Fort Belknap	5.00	4.83	4.84	4.77
Fort Berthold	4.41	4.36	3.82	3.67
Fort Peck Reservation	4.95	4.78	4.83	5.16
Navajo Allotted Leases in the Navajo Reservation	3.91	3.90	3.53	3.42
Turtle Mountain Reservation	4.41	4.23	4.23	4.78
ONRR-designated areas	**Sep 2013**	**Oct 2013**	**Nov 2013**	**Dec 2013**
Blackfeet Reservation	1.62	2.71	2.98	3.17
Fort Belknap	4.78	4.81	4.87	5.01
Fort Berthold	3.69	3.71	3.89	4.03

ONRR-designated areas	Sep 2013	Oct 2013	Nov 2013	Dec 2013
Fort Peck Reservation	5.27	4.84	4.43	5.05
Navajo Allotted Leases in the Navajo Reservation	3.52	3.48	3.56	3.95
Turtle Mountain Reservation	4.78	4.67	5.31	6.08

For information on how to report additional royalties due to major portion prices, please refer to our Dear Payor letter dated December 1, 1999, on the ONRR Web site at *http://www.onrr.gov/ReportPay/PDFDocs/991201.pdf*.

Dated: June 4, 2015.

Gregory J. Gould,

Director, Office of Natural Resources Revenue.

[FR Doc. 2015–14193 Filed 6–11–15; 8:45 am]

BILLING CODE 4335–30–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–524–525 and 731–TA–1260–1261 (Final)]

Certain Welded Line Pipe From Korea and Turkey; 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–524–525 and 731–TA–1260–1261 (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 certain welded line pipe from Korea and Turkey, provided for in subheadings 7305.11, 7305.12, 7305.19, and 7306.19 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce to be sold at less-than-fair-value and imports of certain welded line pipe from Turkey preliminarily determined to have been subsidized by the government of Turkey.[1] [2]

DATES: *Effective Date:* Friday, May 22, 2015.

FOR FURTHER INFORMATION CONTACT: Angela Newell ((202) 708–5409), 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:

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 Korea and Turkey of certain welded line pipe, 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 October 16, 2014, by the American Cast Iron Pipe Company (''ACIPCO''), Birmingham, Alabama; Energex, a division of JMC Steel Group, Chicago, Illinois; Maverick Tube Corporation, Houston, Texas; Northwest Pipe Company, Vancouver, Washington; Stupp Corporation (''Stupp''), Baton Rouge, Louisiana; Tex-Tube Company, Houston, Texas; TMK IPSCO, Houston, Texas; and Welspun Tubular LLC USA, Little Rock, Arkansas.

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

[1] For purposes of these investigations, the Department of Commerce has defined the subject merchandise as circular welded carbon and alloy steel (other than stainless steel) pipe of a kind used for oil or gas pipelines (welded line pipe), not more than 24 inches in nominal outside diameter, regardless of wall thickness, length, surface finish, end finish, or stenciling. Welded line pipe is normally produced to the American Petroleum Institute (API) specification 5L, but can be produced to comparable foreign specifications, to proprietary grades, or can be non-graded material. All pipe meeting the physical description set forth above, including multiple-stenciled pipe with an API or comparable foreign specification line pipe stencil is covered by the scope of this investigation.

[2] The Department of Commerce has preliminarily determined that de minimis countervailable subsidies are being provided to producers and exporters of welded line pipe from Korea. 80 FR 14907, March 20, 2015. For purposes of efficiency the Commission hereby waives rule 207.21(b) so that the final phase of these investigations may proceed concurrently in the event that Commerce makes final affirmative determinations with respect to such imports. Section 207.21(b) of the Commission's rules provides that, where the Department of Commerce has issued a negative preliminary determination, the Commission will publish a Final Phase Notice of Scheduling upon receipt of an affirmative final determination from Commerce.

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 September 22, 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 October 6, 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 October 1, 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 October 5, 2015, at the U.S. International Trade Commission Building, 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 September 29, 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 October 13, 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 October 13, 2015. On October 30, 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 November 3, 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: June 8, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–14319 Filed 6–11–15; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–914]

Certain Sulfentrazone, Sulfentrazone Compositions, and Processes for Making Sulfentrazone; Commission's Determination Not To Review in Part a Final Initial Determination Finding No Violation of Section 337, and, on Review, To Set Aside Findings on One Issue and Correct a Typographical Error; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (''ID'') issued by the presiding administrative law judge (''ALJ''). On review, the Commission determined to vacate the ALJ's findings on one issue and to correct a typographical error. The Commission has found no violation of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in this investigation. The investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Robert Needham, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–5468. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 14, 2014, based on a complaint filed by FMC Corporation (''FMC'') on March 5, 2014. 79 FR 20907–08. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain sulfentrazone active ingredient and formulated sulfentrazone compositions made by a process that infringes certain claims of U.S. Patent No. 7,169,952 (''the '952 patent''). The Commission's notice of investigation named as respondents Beijing Nutrichem Science and Technology Stock Co., Ltd., of Beijing, China (''Beijing Nutrichem''); Summit Agro USA, LLC, of Cary, North Carolina; Summit Agro North America, Holding Corporation of New York, New York; and Jiangxi Heyi Chemicals Co. Ltd. of Jiujiang City, China. *Id.* at 20908. The ALJ later granted FMC's motion to amend the complaint and notice of investigation to replace Beijing Nutrichem with Nutrichem Co., Ltd. (''Nutrichem''). Order No. 9 (May 29, 2014), *not reviewed* June 23, 2014. The Office of Unfair Import Investigations is also a party to the investigation.

On April 10, 2015, the ALJ issued her final ID finding no violation of section 337. She found that, under her claim constructions, there was insufficient evidence to conclude that the respondents infringed the asserted claims or that FMC satisfied either the technical prong or the economic prong of the domestic industry requirement. She further found that the respondents showed by clear and convincing evidence that the asserted claims of the '952 patent are invalid under 35 U.S.C. 102(g).

On April 22, 2015, FMC filed a timely petition for review challenging nearly all of the ID's findings. On April 30, 2015, the respondents and the Commission investigative attorney timely opposed FMC's petition.

Having examined the record of this investigation, including the ALJ's final ID, the petition for review, and the responses thereto, the Commission has determined to review the final ID in part. The Commission has determined to review and set aside the ALJ's findings on the economic prong of the domestic industry requirement *See* 19 CFR 210.45(c).

The Commission has also determined to review the the ALJ's construction of ''a temperature in the range of about 120 °C to about 160 °C'' because it contains a typographical error. The ALJ cites the Commission's affirmance of her construction of the claim phrase during the temporary phrase of this investigation, but adds the word ''about'' to her quotation of the Commission's construction and to her final construction. Because the ID indicates the intent to be consistent with the Commission's construction, the Commission finds that the inclusion of the word ''about'' in the construction is a typographical error. On review, the Commission finds that ''a temperature in the range of about 120 °C to about 160 °C'' means ''a temperature in the range of 120 °C (+/−2.5 °C) to 160 °C (+/−2.5 °C).'' This minor change does not impact any of the ALJ's findings on infringement, invalidity, or the technical prong of the domestic industry requirement.

The Commission has determined not to review the remaining findings in the ID.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in Part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 8, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–14380 Filed 6–11–15; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Oil Pollution Act

On June 8, 2015, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the Western District of Michigan in the lawsuit entitled *United States, et al.* v. *Enbridge Energy Limited Partnership, et al.,* Civil Action No. 1:15–CV–590.

The United States, the State of Michigan, the Nottawaseppi Huron Band of the Potawatomi Indians and the Match-E-Be-Nash-E-Wish Band of the Pottowatomi filed this action seeking damages under the Oil Pollution Act for injuries to natural resources that occurred as a result of discharges of oil into Talmadge Creek, the Kalamazoo River and adjoining shorelines following a July 2010 rupture of the Line 6B oil pipeline owned and operated by various Enbridge entities. The State of Michigan also asserts claims for natural resource damages under State law.

Under the proposed Consent Decree, seven affiliated Enbridge entities (''Enbridge'') will pay $1,484,952, plus interest, to reimburse past natural resource damage assessment costs incurred by federal natural resource trustees and an additional $150,000, plus interest, to reimburse natural resource damage assessment costs incurred by the two Tribes. The Consent Decree also requires Enbridge to complete a number of natural resource damage restoration projects in accordance with workplans and schedules established or approved under a separate State Consent Judgment in *Michigan Dep't of Envtl. Quality* v. *Enbridge Energy Partners, L.P., et al.,* No. 15–1411–CE (Calhoun County Cir. Ct. May 13, 2015). In addition, Enbridge will pay $2,265,048, plus interest, to a Restoration Account within the Department of the Interior's Natural Resource Damage Assessment and Restoration Fund, for joint use of federal, state, and tribal natural resource trustees. Of the Funds in the Restoration Account, at least $1,703,174, plus interest, will be used to fund additional natural resource restoration projects consistent with a Restoration Plan that is subject to approval by the natural resource trustees. Up to $561,875 of the funds in the Restoration Account, plus interest, will be available for and applied as needed to fund Future Costs of federal and tribal natural resource trustees, including costs of restoration planning activities and costs of overseeing implementation of any natural resource restoration projects required under the Consent Decree. The proposed Consent Decree will resolve natural resource damages claims asserted against Enbridge in the complaint, but it does not resolve other claims against Enbridge arising from the July 2010 oil discharges from the Line 6B pipeline, including claims for injunctive relief and civil penalties under the Clean Water Act. The proposed Consent Decree reserves such claims for separate resolution.

The publication of this notice opens a period for public comment on the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division and should refer to *United States et al.,* v. *Enbridge Energy Limited Partnership, et al.,* D.J. Ref. No. 90–5–1–1–10099/1. 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 proposed Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the proposed Consent Decree 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 $10.75 (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. 2015–14384 Filed 6–11–15; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employee Retirement Income Security Act of 1974 Technical Release 91–1

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is submitting the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, ''Employee Retirement Income Security Act of 1974 Technical Release 91–1,'' to the Office of Management and Budget (OMB) for review and approval for continued use, without change, in accordance with the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.* Public comments on the ICR are invited.

DATES: The OMB will consider all written comments that agency receives on or before July 13, 2015.

ADDRESSES: A copy of this ICR with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained free of charge from the RegInfo.gov Web site at *http://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201505-1210-004* (this link will only become active on the day following publication of this notice) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Submit comments about this request by mail or courier to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for DOL–EBSA, Office of Management and Budget, Room 10235, 725 17th Street NW., Washington, DC 20503; by Fax: 202–395–5806 (this is not a toll-free number); or by email: *OIRA_submission@omb.eop.gov.* Commenters are encouraged, but not required, to send a courtesy copy of any comments by mail or courier to the U.S. Department of Labor-OASAM, Office of the Chief Information Officer, Attn: Departmental Information Compliance Management Program, Room N1301, 200 Constitution Avenue NW., Washington, DC 20210; or by email: *DOL_PRA_PUBLIC@dol.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or by email at *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks to extend PRA authority for the Employee Retirement Income Security Act of 1974 (ERISA) Technical Release 91–1 information collection. The subject information collection requirements arise from ERISA section 101(e), which establishes notice requirements that must be satisfied before an employer may transfer excess assets from a defined benefit pension plan to a retiree health benefit account, as permitted under conditions set forth in Internal Revenue Code of 1986 as amended section 420. *See* 29 U.S.C. 1021(e); 26 U.S.C. 420. The ERISA section 101(e) notice requirements are two-fold. First, subsection (e)(1) requires a plan administrator to provide advance written notification of any such transfer to participants and beneficiaries. Second, subsection (e)(2)(A) requires an employer to provide advance written notification of any such transfer to the Secretaries of Labor and the Treasury, the plan administrator, and each employee organization representing participants in the plan. Both notices must be given at least sixty (60) days before the transfer date. The two subsections prescribe the information to be included in each type of notice and further authorize the Secretary of Labor to prescribe (1) how notice to participants and beneficiaries must be given and (2) any additional reporting requirements deemed necessary.

ERISA Technical Release 91–1 provides guidance on how to satisfy the subject ERISA notice requirements. The Release made two changes in the statutory requirements for the second type of notice. First, it required the notice to include a filing date and the intended asset transfer date. The Release also simplified the statutory filing requirements by providing that filing with the DOL would be deemed sufficient notice to both the DOL and the Department of the Treasury. ERISA section 101(e) authorizes this information collection. *See* 29 U.S.C. 1021(e).

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by the OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6. The DOL obtains OMB approval for this information collection under Control Number 1210–0084.

OMB authorization for an ICR cannot be for more than three (3) years without renewal, and the current approval for this collection is scheduled to expire on June 30, 2015. The DOL seeks to extend PRA authorization for this information collection for three (3) more years, without any change to existing requirements. The DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on October 15, 2014 (79 FR 61903).

Interested parties are encouraged to send comments to the OMB, Office of Information and Regulatory Affairs at the address shown in the **ADDRESSES** section within thirty (30) days of publication of this notice in the **Federal Register**. In order to help ensure appropriate consideration, comments should mention OMB Control Number 1210–0084. The OMB is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- 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;
- Enhance the quality, utility, and clarity of the information to be collected; 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.

Agency: DOL–EBSA.

Title of Collection: Employee Retirement Income Security Act of 1974 Technical Release 91–1.

OMB Control Number: 1210–0084.

Affected Public: Private sector—businesses or other for-profits.

Total Estimated Number of Respondents: 10.

Total Estimated Number of Responses: 80,015.

Total Estimated Annual Time Burden: 1,668 hours.

Total Estimated Annual Other Costs Burden: $26,898.

Dated: June 5, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–14382 Filed 6–11–15; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Arts Advisory Panel Meetings

AGENCY: National Endowment for the Arts, National Foundation on the Arts and Humanities.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that 20 meetings of the Arts Advisory Panel to the National Council on the Arts will be held by teleconference from the National Endowment for the Arts, Constitution Center, 400 7th St. SW., Washington, DC 20506 as follows (all meetings are Eastern time and ending times are approximate):

DATES:

Visual Arts (review of applications): This meeting will be closed.

Dates: July 1, 2015; 11:30 a.m. to 1:30 p.m.

Visual Arts (review of applications): This meeting will be closed.

Dates: July 1, 2015; 2:30 p.m. to 4:30 p.m.

Theater and Musical Theater (review of applications): This meeting will be closed.

Dates: July 1, 2015; 12:00 p.m. to 2:00 p.m.

Theater and Musical Theater (review of applications): This meeting will be closed.

Dates: July 1, 2015; 3:00 p.m. to 5:00 p.m.

Theater and Musical Theater (review of applications): This meeting will be closed.

Dates: July 9, 2015; 12:00 p.m. to 2:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Dates: July 9, 2015; 12:45 p.m. to 3:00 p.m.

Music (review of applications): This meeting will be closed.

Dates: July 14, 2015; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Dates: July 14, 2015; 3:00 p.m. to 5:00 p.m.

Media Arts (review of applications): This meeting will be closed.

Dates: July 15, 2015; 11:30 a.m. to 1:30 p.m.

Media Arts (review of applications): This meeting will be closed.

Dates: July 15, 2015; 2:30 p.m. to 4:30 p.m.

Arts Education (review of applications): This meeting will be closed.

Dates: July 16, 2015; 1:45 p.m. to 3:30 p.m.

Museums (review of applications): This meeting will be closed.

Dates: July 16, 2015; 2:30 p.m. to 4:30 p.m.

Music (review of applications): This meeting will be closed.

Dates: July 16, 2015; 12:00 p.m. to 2:00 p.m.

Music (review of applications): This meeting will be closed.

Dates: July 16, 2015; 3:00 p.m. to 5:00 p.m.

Presenting and Multidisciplinary Works (review of applications): This meeting will be closed.

Dates: July 16, 2015; 12:00 p.m. to 2:00 p.m.

Museums (review of applications): This meeting will be closed.

Dates: July 17, 2015; 11:30 a.m. to 1:30 p.m.

Museums (review of applications): This meeting will be closed.

Dates: July 17, 2015; 2:30 p.m. to 4:30 p.m.

Music (review of applications): This meeting will be closed.

Dates: July 21, 2015; 3:00 p.m. to 5:00 p.m.

Arts Education (review of applications): This meeting will be closed.

Dates: July 23, 2015; 1:45 p.m. to 3:30 p.m.

Arts Education (review of applications): This meeting will be closed.

Dates: July 24, 2015; 1:45 p.m. to 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Further information with reference to these meetings can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506; *plowitzk@arts.gov*, or call 202/682–5691.

SUPPLEMENTARY INFORMATION: The closed portions of meetings are for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of February 15, 2012, these sessions will be closed to the public pursuant to subsection (c)(6) of section 552b of title 5, United States Code.

Dated: June 9, 2015.

Kathy Plowitz-Worden,

Panel Coordinator, National Endowment for the Arts.

[FR Doc. 2015–14420 Filed 6–11–15; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–206, 50–361, 50–362, and 72–41; NRC–2015–0093]

Southern California Edison Company; San Onofre Nuclear Generating Station, Units 1, 2, and 3, and Independent Spent Fuel Storage Installation

AGENCY: Nuclear Regulatory Commission.

ACTION: Exemption; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is granting exemptions in response to a request from Southern California Edison Company (SCE or the licensee) regarding certain emergency planning (EP) requirements. The exemptions will eliminate the requirements to maintain formal offsite radiological emergency plans and reduce the scope of the onsite EP activities at the San Onofre Nuclear Generating Station (SONGS), Units 1, 2, and 3, and the Independent Spent Fuel Storage Installation (ISFSI), based on the reduced risks of accidents that could result in an offsite radiological release at the decommissioning nuclear power reactors. Provisions would still exist for offsite agencies to take protective actions, using a comprehensive emergency management plan to protect public health and safety, if protective actions were needed in the event of a very unlikely accident that could challenge the safe storage of spent fuel.

ADDRESSES: Please refer to Docket ID NRC–2015–0093 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–2015–0093. 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 that document is available in ADAMS) is provided the first time that a document is referenced.
- NRC's PDR: You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Thomas Wengert, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–4037; email: *Thomas.Wengert@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The SONGS Units 1, 2, and 3, are decommissioning power reactors located in San Diego County, California. The licensee, SCE, is the holder of SONGS Facility Operating License Nos. DPR–13, NPF–10, and NPF–15. The licenses provide, among other things, that the facility is subject to all rules, regulations, and orders of the NRC now or hereafter in effect.

SONGS Unit 1 was permanently shut down in 1993. On June 12, 2013 (ADAMS Accession No. ML131640201), the licensee provided the certifications that SONGS Units 2 and 3, had permanently ceased power operations. On June 28 (ADAMS Accession No. ML13183A391), and July 22, 2013 (ADAMS Accession No. ML13204A304), the licensee provided certifications that all fuel had been permanently removed from the SONGS Units 3 and 2, reactors, respectively. As a permanently shutdown and defueled facility, and pursuant to section 50.82(a)(2) of Title 10 of the *Code of Federal Regulations* (10 CFR), SCE is no longer authorized to operate the reactors or emplace fuel into the reactor vessels, but is still authorized to possess and store irradiated nuclear fuel. Irradiated fuel is currently stored onsite at SONGS in spent fuel pools (SFPs) and in the ISFSI dry casks.

During normal power reactor operations, the forced flow of water through the reactor coolant system (RCS) removes heat generated by the reactor. The RCS, operating at high temperatures and pressures, transfers this heat through the steam generator tubes converting non-radioactive feedwater to steam, which then flows to the main turbine generator to produce electricity. Many of the accident scenarios postulated in the updated safety analysis reports (USARs) for operating power reactors involve failures or malfunctions of systems that could affect the fuel in the reactor core, which in the most severe postulated accidents, would involve the release of some fission products into the environment. With the permanent cessation of reactor operations at SONGS and the permanent removal of the fuel from the reactor vessels, such accidents are no longer possible. The reactors, RCS, and supporting systems are no longer in operation and have no function related to the storage of the irradiated fuel. Therefore, postulated accidents involving failure or malfunction of the reactors, RCS, or supporting systems are no longer applicable.

The EP requirements of 10 CFR 50.47, ''Emergency plans,'' and appendix E to 10 CFR part 50, ''Emergency Planning and Preparedness for Production and Utilization Facilities,'' continue to apply to nuclear power reactors that have permanently ceased operation and have removed all fuel from the reactor vessel. There are no explicit regulatory provisions distinguishing EP requirements for a power reactor that is permanently shut down and defueled from those for a reactor that is authorized to operate. To reduce or eliminate EP requirements that are no longer necessary due to the decommissioning status of the facility, SCE must obtain exemptions from those EP regulations. Only then can SCE modify the SONGS emergency plan to reflect the reduced risk associated with the permanently shutdown and defueled condition of SONGS .

II. Request/Action

By letter dated March 31, 2014 (ADAMS Accession No. ML14092A332), ''Emergency Planning Exemption Request,'' SCE requested exemptions from certain EP requirements of 10 CFR part 50 for SONGS. More specifically, SCE requested exemptions from certain planning standards in 10 CFR 50.47(b) regarding onsite and offsite radiological emergency plans for nuclear power reactors; from certain requirements in 10 CFR 50.47(c)(2) that require establishment of plume exposure and ingestion pathway emergency planning zones for nuclear power reactors; and from certain requirements in 10 CFR part 50, appendix E, Section IV, which establishes the elements that make up the content of emergency plans. In letters dated September 9, October 2, October 7, October 27, November 3, and December 15, 2014 (ADAMS Accession Nos. ML14258A003, ML14280A265, ML14287A228, ML14303A257, ML14309A195, and ML14351A078, respectively), SCE provided responses to the NRC staff's requests for additional information (RAI) concerning the proposed exemptions. In addition, SCE submitted a letter dated October 6, 2014, which contains security-related information, and is therefore withheld from public disclosure. The December 15, 2014, letter is a redacted, publicly-available version of this letter.

The information provided by SCE included justifications for each exemption requested. The exemptions requested by SCE would eliminate the requirements to maintain formal offsite radiological emergency plans, reviewed by the Federal Emergency Management Agency (FEMA) under the requirements of 44 CFR part 350, and reduce the scope of onsite EP activities. The SCE stated that application of all of the standards and requirements in 10 CFR 50.47(b), 10 CFR 50.47(c), and 10 CFR part 50, appendix E is not needed for adequate emergency response capability, based on the substantially lower onsite and offsite radiological consequences of accidents still possible at the permanently shutdown and defueled facility as compared to an operating facility. If offsite protective actions were needed for a very unlikely accident that could challenge the safe storage of spent fuel at SONGS, provisions exist for offsite agencies to take protective actions using a comprehensive emergency management plan (CEMP) under the National Preparedness System to protect the health and safety of the public. A CEMP in this context, also referred to as an emergency operations plan (EOP), is addressed in FEMA's Comprehensive Preparedness Guide 101, ''Developing and Maintaining Emergency Operations Plans.'' Comprehensive Preparedness Guide 101 is the foundation for State, territorial, Tribal, and local EP in the United States. It promotes a common understanding of the fundamentals of

risk-informed planning and decision-making and helps planners at all levels of government in their efforts to develop and maintain viable, all-hazards, all-threats emergency plans. An EOP is flexible enough for use in all emergencies. It describes how people and property will be protected; details who is responsible for carrying out specific actions; identifies the personnel, equipment, facilities, supplies and other resources available; and outlines how all actions will be coordinated. A CEMP is often referred to as a synonym for ''all-hazards planning.''

III. Discussion

In accordance with 10 CFR 50.12, ''Specific exemptions,'' the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when: (1) The exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) any of the special circumstances listed in 10 CFR 50.12(a)(2) are present. These special circumstances include, among other things, that the application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

As noted previously, the current EP regulations contained in 10 CFR 50.47(b) and appendix E to 10 CFR part 50 apply to both operating and shutdown power reactors. The NRC has consistently acknowledged that the risk of an offsite radiological release at a power reactor that has permanently ceased operations and removed fuel from the reactor vessel is significantly lower, and the types of possible accidents are significantly fewer, than at an operating power reactor. However, current EP regulations do not recognize that once a power reactor permanently ceases operation, the risk of a large radiological release from a credible emergency accident scenario is reduced. The reduced risk is largely the result of the low frequency of credible events that could challenge the SFP structure, and the reduced decay heat and reduced short-lived radionuclide inventory due to decay. The NRC's NUREG/CR–6451, ''A Safety and Regulatory Assessment of Generic BWR and PWR Permanently Shutdown Nuclear Power Plants,'' dated August 31, 1997 (ADAMS Accession No. ML082260098) and NUREG–1738, ''Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants,'' dated February 28, 2001 (ADAMS Accession No. ML010430066), confirmed that for permanently shutdown and defueled power reactors bounded by the assumptions and conditions in the reports, the risk of offsite radiological release is significantly less than that for an operating power reactor.

In the past, EP exemptions similar to those requested by SCE, have been granted to licensees of permanently shutdown and defueled power reactors. However, the exemptions did not relieve the licensees of all EP requirements. Rather, the exemptions allowed the licensees to modify their emergency plans commensurate with the credible site-specific risks that were consistent with a permanently shutdown and defueled status. Specifically, for previous permanently shutdown and defueled power reactors, the basis for the NRC staff's approval of the exemptions from certain EP requirements was based on the licensee's demonstration that: (1) The radiological consequences of design-basis accidents would not exceed the limits of the U.S. Environmental Protection Agency's (EPA) Protective Action Guidelines (PAGs) at the exclusion area boundary, and (2) in the unlikely event of a beyond-design-basis accident resulting in a loss of all modes of heat transfer from the fuel stored in the SFP, there is sufficient time to initiate appropriate mitigating actions, and if needed, for offsite authorities to implement offsite protective actions using a CEMP approach to protect the health and safety of the public. Based on precedent exemptions, the site-specific analysis should show that there is sufficient time following a loss of SFP coolant inventory until the onset of fuel damage to implement onsite mitigation of the loss of SFP coolant inventory and if necessary, to implement offsite protective actions. To meet this criterion, the staff accepted in precedent exemptions that the time should exceed 10 hours from the loss of coolant until the fuel temperature reaches 900 degrees Celsius (°C), assuming no air cooling.

The NRC staff reviewed the licensee's justification for the requested exemptions against the criteria in 10 CFR 50.12(a) and determined, as described below, that the criteria in 10 CFR 50.12(a) are met, and that the exemptions should be granted. An assessment of the SCE EP exemptions is described in SECY–14–0144, ''Request by Southern California Edison for Exemptions from Certain Emergency Planning,'' dated December 17, 2014 (ADAMS Accession No. ML14251A554). The Commission approved the NRC staff's recommendation to grant the exemptions in the staff requirements memorandum to SECY–14–0144, dated March 2, 2015 (ADAMS Accession No. ML15061A521). Descriptions of the specific exemptions requested by SCE and the NRC staff's basis for granting each exemption are provided in SECY–14–0144 and summarized in a table at the end of this document. The staff's detailed review and technical basis for the approval of the specific EP exemptions, requested by SCE, are provided in the NRC staff's safety evaluation dated June 4, 2015 (ADAMS Accession No. ML15082A204).

A. Authorized by Law

The licensee has proposed exemptions from certain EP requirements in 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, appendix E, Section IV, which would allow SCE to revise the SONGS Emergency Plan to reflect the permanently shutdown and defueled condition of the station. As stated above, in accordance with 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting of the licensee's proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemptions are authorized by law.

B. No Undue Risk to Public Health and Safety

As stated previously, SCE provided analyses that show the radiological consequences of design-basis accidents will not exceed the limits of the EPA PAGs at the exclusion area boundary. Therefore, formal offsite radiological emergency plans required under 10 CFR part 50 are no longer needed for protection of the public beyond the exclusion area boundary, based on the radiological consequences of design-basis accidents still possible at SONGS.

Although very unlikely, there is one postulated beyond-design-basis accident that might result in significant offsite radiological releases. However, NUREG–1738 confirms that the risk of beyond-design-basis accidents is greatly reduced at permanently shutdown and defueled reactors. The NRC staff's analyses in NUREG–1738 concludes that the event sequences important to risk at permanently shutdown and defueled power reactors are limited to large earthquakes and cask drop events. For EP assessments, this is an important difference relative to operating power reactors, where typically a large number

of different sequences make significant contributions to risk. Per NUREG–1738, relaxation of offsite EP requirements, under 10 CFR part 50, a few months after shutdown resulted in only a small change in risk. The report further concludes that the change in risk due to relaxation of offsite EP requirements is small because the overall risk is low, and because even under current EP requirements for operating power reactors, EP was judged to have marginal impact on evacuation effectiveness in the severe earthquakes that dominate SFP risk. All other sequences including cask drops (for which offsite radiological emergency plans are expected to be more effective) are too low in likelihood to have a significant impact on risk.

Therefore, granting exemptions to eliminate the requirements of 10 CFR part 50 to maintain offsite radiological emergency plans and to reduce the scope of onsite EP activities will not present an undue risk to the public health and safety.

C. Consistent With the Common Defense and Security

The requested exemptions by SCE only involve EP requirements under 10 CFR part 50 and will allow SCE to revise the SONGS Emergency Plan to reflect the permanently shutdown and defueled condition of the facility. Physical security measures at SONGS are not affected by the requested EP exemptions. The discontinuation of formal offsite radiological emergency plans and the reduction in scope of the onsite EP activities at SONGS will not adversely affect SCE's ability to physically secure the site or protect special nuclear material. Therefore, the proposed exemptions are consistent with the common defense and security.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purposes of 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, appendix E, Section IV, are to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, to establish plume exposure and ingestion pathway emergency planning zones for nuclear power plants, and to ensure that licensees maintain effective offsite and onsite radiological emergency plans. The standards and requirements in these regulations were developed by considering the risks associated with operation of a power reactor at its licensed full-power level. These risks include the potential for a reactor accident with offsite radiological dose consequences.

As discussed previously in Section III of this document, because SONGS Units 1, 2, and 3 are permanently shutdown and defueled, there is no longer a risk of offsite radiological release from a design-basis accident and the risk of a significant offsite radiological release from a beyond-design-basis accident is greatly reduced when compared to the risk at an operating power reactor. In a letter dated March 31, 2014 (ADAMS Accession No. ML14092A332), the licensee provided analyses to demonstrate that the radiological consequences of design-basis accidents at SONGS will not exceed the limits of the EPA PAGs at the exclusion area boundary. The NRC staff has confirmed the reduced risks at SONGS by comparing the generic risk assumptions in the analyses in NUREG–1738 to site-specific conditions at SONGS; and has determined that the risk values in NUREG–1738 bound the risks presented by SONGS. In addition, the significant decay of short-lived radionuclides that has occurred since the January 2012 shutdown provides assurance in other ways. As indicated by the results of research conducted for NUREG–1738 and more recently, for NUREG–2161, ''Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor'' (ADAMS Accession No. ML15255A365), while other consequences can be extensive, accidents from SFPs with significant decay time have little potential to cause offsite early fatalities, even if the formal offsite radiological EP requirements were relaxed. The SCE's analysis of a beyond-design-basis accident involving a complete loss of SFP water inventory, where adequate fuel handling building air exchange with the environment and air cooling of the stored fuel is available, shows that by August 31, 2014, air cooling of the spent fuel assemblies was sufficient to keep the fuel within a safe temperature range, indefinitely, without fuel cladding damage or offsite radiological release.

The only analyzed beyond-design-basis accident scenario that progresses to a condition where a significant offsite release might occur, involves the very unlikely event where the SFP drains in such a way that all modes of cooling or heat transfer are assumed to be unavailable, which is postulated to result in an adiabatic heatup of the spent fuel. The SCE's analysis of this beyond-design-basis accident shows that as of October 12, 2014, more than 17 hours would be available between the time the fuel is initially uncovered (at which time adiabatic heatup is conservatively assumed to begin), until the fuel cladding reaches a temperature of 1652 degrees Fahrenheit (°F) (900 °C), which is the temperature associated with rapid cladding oxidation and the potential for a significant radiological release. This analysis conservatively does not include the period of time from the initiating event causing a loss of SFP water inventory until all cooling means are lost.

The NRC staff has verified SCE's analyses and its calculations. The analyses provide reasonable assurance that in granting the requested exemptions to SCE, there is no design-basis accident that will result in an offsite radiological release exceeding the EPA PAGs at the exclusion area boundary. In the unlikely event of a beyond-design-basis accident affecting the SFP that results in a complete loss of heat removal via all modes of heat transfer, there will be well over 10 hours available before an offsite release might occur and, therefore, at least 10 hours to initiate appropriate mitigating actions to restore a means of heat removal to the spent fuel. If a radiological release were projected to occur under this unlikely scenario, a minimum of 10 hours is considered sufficient time for offsite authorities to implement protective actions using a CEMP approach to protect the health and safety of the public.

Exemptions from the offsite EP requirements in 10 CFR part 50 have previously been approved by the NRC when the site-specific analyses show that at least 10 hours are available following a loss of SFP coolant inventory accident with no air cooling (or other methods of removing decay heat) until cladding of the hottest fuel assembly reaches the zirconium rapid oxidation temperature. The NRC staff concluded in its previously granted exemptions, as it does with the SCE-requested EP exemptions, that if a minimum of 10 hours are available to initiate mitigative actions consistent with plant conditions, or if needed, for offsite authorities to implement protective actions using a CEMP approach, then formal offsite radiological emergency plans, required under 10 CFR part 50, are not necessary at permanently shutdown and defueled power reactors.

Additionally, in its letters to the NRC dated October 6, 2014, and December 15, 2014, SCE described the SFP makeup strategies that could be used in

the event of a catastrophic loss of SFP inventory. The multiple strategies for providing makeup water to the SFP include: using existing plant systems for inventory makeup; an internal strategy that relies on installed fire water pumps and service water or fire water storage tanks; or an external strategy that uses portable pumps to initiate makeup flow into the SFPs through a seismic standpipe and standard fire hoses routed to the SFPs or to a spray nozzle. These strategies will continue to be required as a license condition. Considering the very low probability of beyond-design-basis accidents affecting the SFP, these diverse strategies provide defense-in-depth and time to provide additional makeup or spray water to the SFP before the onset of any postulated offsite radiological release.

For all the reasons stated above, the NRC staff concludes that application of certain requirements in 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, appendix E, as summarized in the table at the end of this document, is not necessary to achieve the underlying purpose of these regulations and, therefore, satisfies the special circumstances in 10 CFR 50.12(a)(2)(ii). The staff further concludes that the exemptions granted by this action will maintain an acceptable level of emergency preparedness at SONGS and provide reasonable assurance that adequate offsite protective measures, if needed, can and will be taken by State and local government agencies using a CEMP approach, in the unlikely event of a radiological emergency at the SONGS facility. Since the underlying purposes of the rules, as exempted, would continue to be achieved, even with the elimination of the requirements under 10 CFR part 50 to maintain formal offsite radiological emergency plans and the reduction in the scope of the onsite EP activities at SONGS, the special circumstances required by 10 CFR 50.12(a)(2)(ii) exist.

E. Environmental Considerations

In accordance with 10 CFR 51.31(a), the Commission has determined that the granting of these exemptions will not have a significant effect on the quality of the human environment, as discussed in the NRC staff's Environmental Assessment and Finding of No Significant Impact published on April 17, 2015 (80 FR 21271).

IV. Conclusions

Accordingly, the Commission has determined, pursuant to 10 CFR 50.12(a), that SCE's request for exemptions from certain EP requirements in 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, appendix E, Section IV, and as summarized in the table at the end of this document, are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants SCE exemptions from certain EP requirements of 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, appendix E, Section IV, as discussed and evaluated in detail in the staff's safety evaluation dated June 4, 2015. The exemptions are effective as of June 4, 2015.

Dated at Rockville, Maryland, this 4th day of June, 2015.

For the Nuclear Regulatory Commission.

A. Louise Lund,

Acting Director, Division of Operating Reactor Licensing, Office of Nuclear Reactor Regulation.

TABLE OF EXEMPTIONS GRANTED TO SOUTHERN CALIFORNIA EDISON (SCE)

10 CFR 50.47	NRC staff basis for exemption
10 CFR 50.47(b). The NRC is granting exemption from portions of the rule language that would otherwise require offsite emergency response plans.	In the Statement of Considerations (SOC) for the final rule for emergency planning (EP) requirements for independent spent fuel storage installations (ISFSIs) and for monitor retrievable storage (MRS) facilities (60 FR 32430; June 22, 1995), the Commission responded to comments concerning offsite EP for ISFSIs or an MRS and concluded that, ''the offsite consequences of potential accidents at an ISFSI or an MRS would not warrant establishing Emergency Planning Zones.'' In a nuclear power reactor's permanently defueled state, the accident risks are more similar to an ISFSI or an MRS than an operating nuclear power plant. The EP program would be similar to that required for an ISFSI under Section 72.32(a) of 10 CFR when fuel stored in the spent fuel pool (SFP) has more than 5 years of decay time and would not change substantially when all the fuel is transferred from the SFP to an onsite ISFSI. Exemptions from offsite EP requirements have previously been approved when the site-specific analyses show that at least 10 hours is available from a partial drain-down event where cooling of the spent fuel is not effective until the hottest fuel assembly reaches the zirconium ignition temperature of 900 degrees Celsius (°C). The technical basis that underlies the approval of the exemption request is based partly on the analysis of a time period in which spent fuel stored in the SFP is unlikely to reach the zirconium ignition temperature in less than 10 hours. This time period is based on a heat-up calculation which uses several simplifying assumptions. Some of these assumptions are conservative (adiabatic conditions), while others are non-conservative (no oxidation below 900 °C). Weighing the conservatisms and non-conservatisms, the staff judges that this calculation reasonably represents conditions that may occur in the event of an SFP accident. The staff concluded that if 10 hours were available to initiate mitigative actions, or if needed, offsite protective actions using a comprehensive emergency management plan (CEMP), formal offsite radiological emergency plans are not necessary for these permanently defueled nuclear power reactor licensees.

TABLE OF EXEMPTIONS GRANTED TO SOUTHERN CALIFORNIA EDISON (SCE)—Continued

10 CFR 50.47	NRC staff basis for exemption
	As supported by the licensee's SFP analysis, the staff believes an exemption from the requirements for formal offsite radiological emergency plans is justified for a zirconium fire scenario considering the low likelihood of this event together with time available to take mitigative or protective actions between the initiating event and before the onset of a postulated fire. The SCE analysis has demonstrated that the radiological consequences of design-basis-accidents (DBAs) will not exceed the limits of the U.S. Environmental Protection Agency's (EPA's) Protective Action Guides (PAGs) at the exclusion area boundary. These analyses also show that as of October 12, 2014, in the unlikely event of a beyond DBA where the hottest fuel assembly adiabatic heat-up occurs, 17.8 hours is available to take mitigative or, if needed, offsite protective actions using a CEMP from the time the fuel is uncovered until it reaches the auto-ignition temperature of 900 °C. SCE furnished information to supplement its exemption request concerning its SFP inventory makeup strategies. The multiple strategies for providing makeup to the SFP include: using existing plant systems for inventory makeup; an internal strategy that relies on installed fire water pumps (two motor-driven and one diesel-driven) and service and firewater storage tanks; or an external strategy that uses portable pumps to initiate make-up flow into the pools through a seismic standpipe and standard fire water hoses routed either over the pools' edges or to spray nozzles. SCE further provides that designated on-shift staff is trained to implement such strategies and they have plans in place to mitigate the consequences of an event involving a catastrophic loss-of-water inventory concurrently from both San Onofre Nuclear Generating Station (SONGS), Units 2 and 3 SFPs. It is estimated that it would take approximately 55 minutes to deliver flow to one pool, with an additional 35 minutes to provide water to the second pool without having to relocate the trailer-mounted pump. Relocation of the trailer-mounted pump, if required, would take approximately 30 additional minutes. The SCE will maintain its Mitigating Strategies License Conditions for Units 2 and 3 (2.C(26) for Unit 2 and 2.C(27) for Unit 3). These license conditions require SONGS to maintain its SFP inventory makeup strategies as discussed above.
10 CFR 50.47(b)(1). The NRC is granting exemption from portions of the rule language that would otherwise require the need for Emergency Planning Zones (EPZs).	Refer to basis for 10 CFR 50.47(b).
10 CFR 50.47(b)(3). The NRC is granting exemption from portions of the rule language that would otherwise require the need for an emergency operations facility (EOF).	Decommissioning power reactors present a low likelihood of any credible accident resulting in a radiological release together with the time available to take mitigative or, if needed, offsite protective actions using a CEMP between the initiating event and before the onset of a postulated fire. As such, an EOF would not be required. The ''nuclear island,'' control room, or other onsite location can provide for the communication and coordination with offsite organizations for the level of support required. Also refer to basis for 10 CFR 50.47(b).
10 CFR 50.47(b)(4). The NRC is granting exemption from portions of the rule language that would otherwise require reference to formal offsite radiological emergency response plans.	Decommissioning power reactors present a low likelihood of any credible accident resulting in a radiological release together with the time available to take mitigative or, if needed, offsite protective actions using a CEMP between the initiating event and before the onset of a postulated fire. As such, formal offsite radiological emergency response plans are not required. The Nuclear Energy Institute (NEI) document NEI 99–01, ''Development of Emergency Action Levels for Non-Passive Reactors'' (Revision 6), was found to be an acceptable method for development of emergency action levels (EALs) and was endorsed by the NRC in a letter dated March 28, 2013 (ADAMS Accession No. ML12346A463). NEI 99–01 provides EALs for non-passive operating nuclear power reactors, permanently defueled reactors and ISFSIs. The SCE requested a license amendment to revise its EAL scheme to NEI 99–01, Revision 6 in a letter dated March 31, 2014, ''Permanently Defueled Emergency Action Level Scheme, San Onofre Nuclear Generating Station, Units 1, 2, and 3, Respectively, and Independent Spent Fuel Storage Installation'' (ADAMS Accession No. ML14092A249). Also refer to basis for 10 CFR 50.47(b).

TABLE OF EXEMPTIONS GRANTED TO SOUTHERN CALIFORNIA EDISON (SCE)—Continued

10 CFR 50.47	NRC staff basis for exemption
10 CFR 50.47(b)(5). The NRC is granting exemption from portions of the rule language that would otherwise require early notification of the public and a means to provide instructions to the public within the plume exposure pathway EPZ.	Refer to basis for 10 CFR 50.47(b).
10 CFR 50.47(b)(6). The NRC is granting exemption from portions of the rule language that would otherwise require prompt communications with the public.	Refer to basis for 10 CFR 50.47(b).
10 CFR 50.47(b)(7). The NRC is granting exemption from portions of the rule language that would otherwise require information to be made available to the public on a periodic basis about how they will be notified and what their initial protective actions should be.	Refer to basis for 10 CFR 50.47(b).
10 CFR 50.47(b)(9). The NRC is granting exemption from portions of the rule language that would otherwise require the capability for monitoring offsite consequences.	Refer to basis for 10 CFR 50.47(b).
10 CFR 50.47(b)(10). The NRC is granting exemption from portions of the rule language that would reduce the range of protective actions developed for emergency workers and the public. Consideration of evacuation, sheltering, or the use of potassium iodide will no longer be necessary. Evacuation time estimates (ETEs) will no longer need to be developed or updated. Protective actions for the ingestion exposure pathway EPZ will not need to be developed.	In the unlikely event of an SFP accident, the iodine isotopes, which contribute to an offsite dose from an operating reactor accident, are not present, so potassium iodide distribution would no longer serve as an effective or necessary supplemental protective action. In the SOC for the final rule for EP requirements for ISFSIs and for MRS facilities (60 FR 32430), the Commission responded to comments concerning site-specific EP that includes evacuation of surrounding population for an ISFSI not at a reactor site, and concluded, ''The Commission does not agree that as a general matter emergency plans for an ISFSI must include evacuation planning.'' Also refer to basis for 10 CFR 50.47(b).
10 CFR 50.47(c)(2). The NRC is granting exemption from portions of the rule language that would otherwise require the establishment of a 10-mile radius plume exposure pathway EPZ and a 50-mile radius ingestion pathway EPZ..	Refer to basis for 10 CFR 50.47(b)(10).

10 CFR Part 50, Appendix E, Section IV	NRC staff basis for exemption
10 CFR Part 50, Appendix E, Section IV.1. The NRC is granting exemption from portions of the rule language that would otherwise require onsite protective actions during hostile action.	The EP rule published in the FEDERAL REGISTER (76 FR 72560; November 23, 2011) amended certain requirements in 10 CFR Part 50. Among the changes, the definition of ''hostile action'' was added as an act directed toward a nuclear power plant or its personnel. This definition is based on the definition of ''hostile action'' provided in NRC Bulletin 2005–02, ''Emergency Preparedness and Response Actions for Security-Based Events,'' dated July 18, 2005 (ADAMS Accession No. ML051740058). NRC Bulletin 2005–02 is not applicable to nuclear power reactors that have permanently ceased operations and have certified that fuel has been removed from the reactor vessel. SCE certified that it had permanently ceased operations at SONGS Units 2 and 3 and that all fuel at those units had been removed from the reactor vessels. Therefore, the enhancements for hostile actions required by the 2011 EP Final Rule are not necessary for SONGS in its permanently shut down and defueled status. Additionally, the NRC excluded non-power reactors from the definition of ''hostile action'' at the time of the 2011 rulemaking because, as defined in 10 CFR 50.2, a non-power reactor is not considered a nuclear power reactor and a regulatory basis had not been developed to support the inclusion of non-power reactors in the definition of ''hostile action.'' Similarly, a decommissioning power reactor or ISFSI is not a ''nuclear reactor'' as defined in the NRC's regulations. Like a non-power reactor, a decommissioning power reactor also has a lower likelihood of a credible accident resulting in radiological releases requiring offsite protective measures than does an operating reactor. Although this analysis provides a justification for exempting SONGS from ''hostile action'' related requirements, some EP requirements for security-based events are maintained. The classification of security-based events, notification of offsite authorities and coordination with offsite agencies under a CEMP concept are still required.
10 CFR Part 50, Appendix E, Section IV.2. The NRC is granting exemption from portions of the rule language concerning the evacuation time analyses within the plume exposure pathway EPZ for the licensee's initial application.	Refer to basis for 10 CFR 50.47(b)(10).
10 CFR Part 50, Appendix E, Section IV.3. The NRC is granting exemption from portions of the rule language that would otherwise require use of NRC-approved ETEs and updates to State and local governments when developing protective action strategies.	Refer to basis for 10 CFR Part 50, Appendix E, Section IV.2.

10 CFR Part 50, Appendix E, Section IV	NRC staff basis for exemption
10 CFR Part 50, Appendix E, Section IV.4. The NRC is granting exemption from portions of the rule language that would otherwise require licensees to update ETEs based on the most recent census data and submit the ETE analysis to the NRC prior to providing it to State and local governments for developing protective action.	Refer to basis for 10 CFR Part 50, Appendix E, Section IV.2.
10 CFR Part 50, Appendix E, Section IV.5. The NRC is granting exemption from portions of the rule language that would otherwise require licensees to estimate the EPZ permanent resident population changes once a year between decennial censuses.	Refer to basis for 10 CFR Part 50, Appendix E, Section IV.2.
10 CFR Part 50, Appendix E, Section IV.6. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to submit an updated ETE analysis to the NRC based on changes in the resident population that result in exceeding specific evacuation time increase criteria.	Refer to basis for 10 CFR Part 50, Appendix E, Section IV.2.
10 CFR Part 50, Appendix E, Section IV.A.1. The NRC is granting exemption from the word ''operating'' in the requirement to describe the normal plant organization.	Based on the permanently shut down and defueled status of the reactor, a decommissioning reactor is not authorized to operate under 10 CFR 50.82(a). Because the licensee cannot operate the reactors, the licensee does not have a ''plant operating organization.''
10 CFR Part 50, Appendix E, Section IV.A.3. The NRC is granting exemption from the requirement to describe the licensee's headquarters personnel sent to the site to augment the onsite emergency response organization.	The number of staff at decommissioning sites is generally small but is commensurate with the need to safely store spent fuel at the facility in a manner that is protective of public health and safety. Decommissioning sites typically have a level of emergency response that does not require response by the licensee's headquarters personnel.
10 CFR Part 50, Appendix E, Section IV.A.4. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to identify a position and function within its organization, which will carry the responsibility for making offsite dose projections.	Although the likelihood of events that would result in doses in excess of the EPA PAGs to the public beyond the exclusion area boundary based on the permanently shut down and defueled status of the reactor is extremely low, the licensee is still required to determine if a radiological release is occurring. If a release is occurring, then the licensee staff should promptly communicate that information to offsite authorities for their consideration. The offsite organizations are responsible for deciding what, if any, protective actions should be taken based on a CEMP. Also refer to basis for 10 CFR 50.47(b).
10 CFR Part 50, Appendix E, Section IV.A.5. The NRC is granting exemption from the requirement for the licensee to identify individuals with special qualifications, both licensee employees and non-employees, for coping with emergencies.	SONGS has performed an on-shift staffing analysis, addressing SFP mitigating strategies, including review of collateral duties. The specific event scenario utilized for the staffing analysis involves a catastrophic loss-of-water inventory in one SFP. In addition to the scenario described above, SONGS performed a separate case study to validate that the minimum on-shift staff can perform mitigation efforts in the event that the second SFP is also affected by a catastrophic loss-of-water inventory. Also refer to basis for 10 CFR 50.47(b).
10 CFR Part 50, Appendix E, Section IV.A.7. The NRC is granting exemption from portions of the rule language that would otherwise require a description of the assistance expected from State, local, and Federal agencies for coping with a hostile action.	Refer to basis for 10 CFR Part 50, Appendix E, Section IV.1.
10 CFR Part 50, Appendix E, Section IV.A.8. The NRC is granting exemption from the requirement to identify the State and local officials for ordering protective actions and evacuations..	Offsite emergency measures are limited to support provided by local police, fire departments, and ambulance and hospital services, as appropriate. Due to the low probability of DBAs or other credible events to exceed the EPA PAGs, protective actions such as evacuation should not be required, but could be implemented at the discretion of offsite authorities using a CEMP. Also refer to basis for 10 CFR 50.47(b)(10).
10 CFR Part 50, Appendix E, Section IV.A.9. The NRC is granting exemption from the requirement for the licensee to provide an analysis demonstrating that on-shift personnel are not assigned responsibilities that would prevent performance of their assigned emergency plan functions.	The duties of the on-shift personnel at a decommissioning reactor facility are not as complicated and diverse as those for an operating power reactor. Responsibilities should be well defined in the emergency plan and procedures, regularly tested through drills and exercises audited and inspected by the licensee and the NRC. The staff considered the similarity between the staffing levels at a permanently shut down and defueled reactor and staffing levels at an operating power reactor site. The minimal systems and equipment needed to maintain the spent nuclear fuel in the SFP or in a dry cask storage system in a safe condition require minimal personnel and is governed by Technical Specifications. In the EP final rule published in the FEDERAL REGISTER (76 FR 72560; November 23, 2011), the NRC concluded that the staffing analysis requirement was not necessary for non-power reactor licensees due to the small staffing levels required to operate the facility.

10 CFR Part 50, Appendix E, Section IV	NRC staff basis for exemption
	The staff also examined the actions required to mitigate the very low probability beyond-design-basis events for the SFP. In a letter dated October 1, 2014, ''Docket Nos. 50–361 and 50–362 Supplement 1 to Amendment Applications 266 and 251 Permanently Defueled Technical Specifications San Onofre Nuclear Generating Station, Units 2 and 3'' (ADAMS Accession No. ML14280A264), SCE withdrew the proposed changes to the Mitigating Strategies License Condition for Units 2 and 3 (2.C(26) for Unit 2 and 2.C(27) for Unit 3). This license condition requires SONGS to maintain its SFP inventory makeup strategies as discussed above. SONGS has performed an on-shift staffing analysis, addressing SFP mitigating strategies, including review of collateral duties. The specific event scenario utilized for the staffing analysis involves a catastrophic loss-of-water inventory in one SFP. In addition to the scenario described above, SONGS performed a separate case study to validate that the minimum on-shift staff can perform mitigation efforts in the event that the second SFP is also affected by a catastrophic loss-of-water inventory. Also refer to basis for 10 CFR Part 50, Appendix E, Section IV.1.
10 CFR Part 50, Appendix E, Section IV.B.1. The NRC is granting exemption from portions of the rule language that would otherwise require offsite EALs and offsite protective measures and associate offsite monitoring for the emergency conditions. In addition, the NRC is granting exemption from portions of the rule language that would otherwise require EALs based on hostile action.	NEI 99–01 was found to be an acceptable method for development of EALs. No offsite protective actions are anticipated to be necessary, so classification above the alert level is no longer required, which is consistent with ISFSI facilities. As discussed previously, SCE requested a license amendment to revise its EAL scheme to NEI 99–01, Revision 6 in a letter dated March 31, 2014, ''Permanently Defueled Emergency Action Level Scheme, San Onofre Nuclear Generating Station, Units 1, 2, and 3, respectively, and Independent Spent Fuel Storage Installation'' (ADAMS Accession No. ML14092A249). Before SCE can amend its EAL scheme to reflect the risk commensurate with power reactors that have been permanently shut down and defueled, SCE needs an exemption from the requirement for the site area emergency and general emergency classifications. Also refer to basis for 10 CFR Part 50, Appendix E, Section IV.1.
10 CFR Part 50, Appendix E, Section IV.C.1. The NRC is granting exemption from portions of the rule language that would otherwise require EALs based on operating reactor concerns, such as offsite radiation monitoring, pressure in containment, and the response of the emergency core cooling system. In addition, the NRC is striking language that would otherwise require offsite EALs of a site area emergency and a general emergency.	Containment parameters do not provide an indication of the conditions at a defueled facility and emergency core cooling systems are no longer required. Other indications, such as SFP level or temperature, can be used at sites where there is spent fuel in the SFPs. In the SOC for the final rule for EP requirements for ISFSIs and for MRS facilities (60 FR 32430), the Commission responded to comments concerning a general emergency at an ISFSI and MRS, and concluded that, ''. . . an essential element of a General Emergency is that a release can be reasonably expected to exceed EPA PAGs exposure levels off site for more than the immediate site area.'' The probability of a condition at a defueled facility causing a release of radioactive material offsite necessitating a declaration of a site area or general emergency is very low. In the event of an accident at a defueled facility that meets the conditions for exemption from formal EP requirements, there will be available time for event mitigation and, if necessary, implementation of offsite protective actions using a CEMP. NEI 99–01 was found to be an acceptable method for development of EALs. No offsite protective actions are anticipated to be necessary, so classification above the alert level is no longer required.
10 CFR Part 50, Appendix E, Section IV.C.2. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to assess, classify, and declare an emergency condition within 15 minutes.	In the EP rule published in the November 23, 2011, FEDERAL REGISTER (76 FR 72560), nuclear power reactor licensees were required to assess, classify and declare an emergency condition within 15 minutes. Non-power reactors do not have the same potential impact on public health and safety as do power reactors, and as such, non-power reactor licensees do not require complex offsite emergency response activities and are not required to assess, classify and declare an emergency condition within 15 minutes. An SFP and an ISFSI are also not nuclear power reactors as defined in the NRC's regulations and do not have the same potential impact on public health and safety as do power reactors. A decommissioning power reactor has a low likelihood of a credible accident resulting in radiological releases requiring offsite protective measures. For these reasons, the staff concludes that a decommissioning power reactor should not be required to assess, classify and declare an emergency condition within 15 minutes.

10 CFR Part 50, Appendix E, Section IV	NRC staff basis for exemption
10 CFR Part 50, Appendix E, Section IV.D.1. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to reach agreement with local, State, and Federal officials and agencies for prompt notification of protective measures or evacuations. In addition, the NRC is granting exemption from identifying the associated titles of officials to be notified for each agency within the EPZs.	Refer to basis for 10 CFR 50.47(b) and 10 CFR 50.47(b)(10).
10 CFR Part 50, Appendix E, Section IV.D.2. The NRC is granting exemption from the requirement for the licensee to annually disseminate general information on EP and evacuations within the plume exposure pathway EPZ. In addition, the NRC is granting exemption for the need for signage or other measures to address transient populations in the event of an accident.	Refer to basis for 10 CFR Part 50, Appendix E, Section IV.D.1.
10 CFR Part 50, Appendix E, Section IV.D.3. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to have the capability to make notifications to State and local government agencies within 15 minutes of declaring an emergency.	While the capability needs to exist for the notification of offsite government agencies within a specified time period, previous exemptions have allowed for extending the State and local government agencies' notification time up to 60 minutes based on the site-specific justification provided. SCE's license amendment request to approve its Permanently Defueled Emergency Plan (PDEP) dated March 31, 2014 (ADAMS Accession No. ML14092A314), provides that SONGS will make notifications to the State of California, the local counties (Orange and San Diego), and Marine Corps Base Camp Pendleton within 60 minutes of declaration of an event. Considering the very low probability of beyond-design-basis events affecting the SFP, and with the time available to initiate mitigative actions consistent with plant conditions or, if needed, for offsite authorities to implement appropriate protective measures using a CEMP (all-hazards) approach between the loss of both water and air cooling to the spent fuel and the onset of a postulated zirconium cladding fire, formal offsite radiological response plans are not needed. Therefore, decommissioning reactors are not required to notify State and local governmental agencies within 15 minutes. For similar reasons, the requirement for alerting and providing prompt instructions to the public within the plume exposure pathway EPZ using an alert and notification system is not required. Also refer to basis for 10 CFR 50.47(b) and 10 CFR 50.47(b)(10).
10 CFR Part 50, Appendix E, Section IV.D.4. The NRC is granting exemption from the requirement for the licensee to obtain U.S. Federal Emergency Management Agency (FEMA) approval of its backup alert and notification capability.	Refer to basis for 10 CFR Part 50, Appendix E, Section IV.D.3 regarding the alert and notification system requirements.
10 CFR Part 50, Appendix E, Section IV.E.8.a.(i). The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to have an onsite technical support center (TSC) and EOF.	Due to the low probability of DBAs or other credible events to exceed the EPA PAGs at the site boundary, the available time for event mitigation at a decommissioning power reactor and, if needed, to implement offsite protective actions using a CEMP, an EOF would not be required to support offsite agency response. In addition, an onsite TSC with Part 50, Appendix E requirements would not be needed. SCE proposes in its PDEP that onsite actions would be directed from the Command Center.
10 CFR Part 50, Appendix E, Section IV.E.8.a.(ii). The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to have an onsite operational support center (OSC).	NUREG–0696, ''Functional Criteria for Emergency Response Facilities,'' provides that the OSC is an onsite area separate from the control room and the TSC where licensee operations support personnel will assemble in an emergency. For a decommissioning power reactor, an OSC is no longer required to meet its original purpose of an assembly area for plant logistical support during an emergency. The OSC function can be incorporated into the Command Center, as proposed by SCE.
10 CFR Part 50, Appendix E, Section IV.E.8.b. and subpart Sections IV.E.8.b.(1)–E.8.b.(5). The NRC is granting exemption from the requirements related to an offsite EOF location, space and size, communications capability, access to plant data and radiological information, and access to coping and office supplies.	Refer to basis for 10 CFR 50.47(b)(3).
10 CFR Part 50, Appendix E, Section IV E.8.c. and Sections IV E.8.c.(1)–E.8.c.(3). The NRC is granting exemption from the requirements to have an EOF with the capabilities to obtain and display plant data and radiological information; the capability to analyze technical information and provide briefings; and the capability to support events occurring at more than one site (if the emergency operations center supports more than one site).	Refer to basis for 10 CFR 50.47(b)(3).

10 CFR Part 50, Appendix E, Section IV	NRC staff basis for exemption
10 CFR Part 50, Appendix E, Section IV E.8.d. The NRC is granting exemption from the requirements to have an alternate facility that would be accessible even if the site is under threat of or experiencing hostile action, to function as a staging area for augmentation of emergency response staff.	Refer to basis for 10 CFR Part 50, Appendix E, Section IV.1 regarding hostile action.
10 CFR Part 50, Appendix E, Section IV.E.8.e. The NRC is granting exemption from the requirement regarding the need for the licensee to comply with paragraph 8.b of this section.	Refer to basis for 10 CFR 50.47(b)(3).
10 CFR Part 50, Appendix E, Section IV.E.9.a. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to have communications with contiguous State and local governments that are within the plume exposure pathway EPZ (which is no longer required by the exemption granted to 10 CFR 50.47(b)(10)).	Refer to basis for 10 CFR 50.47(b) and 10 CFR 50.47(b)(10). The State and the local governments in which the nuclear facility is located need to be informed of events and emergencies, so lines of communication are required to be maintained.
10 CFR Part 50, Appendix E, Section IV.E.9.c. The NRC is granting exemption from the requirements for communication and testing provisions between the control room, the onsite TSC, State/local emergency operations centers, and field assessment teams.	Because of the low probability of DBAs or other credible events that would be expected to exceed the EPA PAGs and the available time for event mitigation and, if needed, implementation of offsite protective actions using a CEMP, there is no need for the TSC, EOF, or offsite field assessment teams. Also refer to justification for 10 CFR 50.47(b)(3). Communication with State and local emergency operations centers is maintained to coordinate assistance on site if required.
10 CFR Part 50, Appendix E, Section IV.E.9.d. The NRC is granting exemption from portions of the rule language that would otherwise require provisions for communications from the control room, onsite TSC, and EOF with NRC Headquarters and appropriate Regional Operations Center.	The functions of the control room, EOF, TSC, and OSC may be combined into one or more locations at a permanently shutdown and defueled facility due to its smaller facility staff and the greatly reduced required interaction with State and local emergency response facilities, as compared to an operating reactor. Also refer to basis for 10 CFR 50.47(b).
10 CFR Part 50, Appendix E, Section IV.F.1. and Section IV F.1.viii. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to provide training and drills for the licensee's headquarters personnel, Civil Defense personnel, or local news media.	Decommissioning power reactor sites typically have a level of emergency response that does not require additional response by the licensee's headquarters personnel. Therefore, the staff considers exempting licensee's headquarters personnel from training requirements to be reasonable. Due to the low probability of DBAs or other credible events to exceed the EPA PAGs, offsite emergency measures are limited to support provided by local police, fire departments, and ambulance and hospital services, as appropriate. Local news media personnel no longer need radiological orientation training since they will not be called upon to support the formal Joint Information Center. The term ''Civil Defense'' is no longer commonly used; references to this term in the examples provided in the regulation are, therefore, not needed.
10 CFR Part 50, Appendix E, Section IV.F.2. The NRC is granting exemption from portions of the rule language that would otherwise require testing of a public alert and notification system.	Because of the low probability of DBAs or other credible events that would be expected to exceed the limits of EPA PAGs and the available time for event mitigation and, if necessary, offsite protective actions from a CEMP, the public alert and notification system will not be used and, therefore, requires no testing. Also refer to basis for 10 CFR 50.47(b).
10 CFR Part 50, Appendix E, Section IV.F.2.a. and Sections IV.F.2.a.(i) through IV.F.2.a.(iii). The NRC is granting exemption from the requirements for full participation exercises and the submittal of the associated exercise scenarios to the NRC.	Due to the low probability of DBAs or other credible events that would be expected to exceed the limits of EPA PAGs, the available time for event mitigation and, if necessary, implementation of offsite protective actions using a CEMP, no formal offsite radiological response plans are required. Therefore, the need for the licensee to exercise onsite and offsite plans with full participation by each offsite authority having a role under the radiological response plan is not required. The intent of submitting exercise scenarios at an operating power reactor site is to check that licensees utilize different scenarios in order to prevent the preconditioning of responders at power reactors. For decommissioning power reactor sites, there are limited events that could occur and, as such, the previously routine progression to general emergency in an operating power reactor site scenario is not applicable. The licensee would be exempt from 10 CFR Part 50, Appendix E, Section IV.F.2.a.(i)–(iii) because the licensee would be exempt from the umbrella provision of 10 CFR Part 50, Appendix E, Section IV.F.2.a.
10 CFR Part 50, Appendix E, Section IV.F.2.b. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to submit scenarios for its biennial exercises of its onsite emergency plan. In addition, the NRC is granting exemption from portions of the rule language that requires assessment of offsite releases, protective action decision making, and references to the TSC, OSC, and EOF.	Refer to basis for 10 CFR Part 50, Appendix E, Section IV.F.2.a. The low probability of DBAs or other credible events that would exceed the EPA PAGs, the available time for event mitigation and, if necessary, implementation of offsite protective actions using a CEMP, render a TSC, OSC, and EOF unnecessary. The principal functions required by regulation can be performed at an onsite location that does not meet the requirements of the TSC, OSC or EOF.

10 CFR Part 50, Appendix E, Section IV	NRC staff basis for exemption
10 CFR Part 50, Appendix E, Section IV.F.2.c. and Sections IV F.2.c.(1) through F.2.c.(5). The NRC is granting exemption from the requirements regarding the need for the licensee to exercise offsite plans biennially with full participation by each offsite authority having a role under the radiological response plan. The NRC is also granting exemptions from the conditions for conducting these exercises (including hostile action exercises) if two different licensees have facilities on the same site or on adjacent, contiguous sites, or share most of the elements defining co-located licensees.	Refer to basis for 10 CFR Part 50, Appendix E, Section IV.F.2.a.
10 CFR Part 50, Appendix E, Section IV.F.2.d. The NRC is granting exemption from the requirements to obtain State participation in an ingestion pathway exercise and a hostile action exercise, with each State that has responsibilities, at least once per exercise cycle.	Refer to basis for 10 CFR Part 50, Appendix E, Section IV.2.
10 CFR Part 50, Appendix E, Section IV.F.2.e. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to allow participation exercise in licensee drills by any State and local government in the plume exposure pathway EPZ when requested.	Refer to basis for 10 CFR Part 50, Appendix E, Section IV.2.
10 CFR Part 50, Appendix E, Section IV.F.2.f. The NRC is granting exemption from portions of the rule language that would otherwise require FEMA to consult with the NRC on remedial exercises. The NRC is granting exemption from portions of the rule language that discuss the extent of State and local participation in remedial exercises.	FEMA is responsible for evaluating the adequacy of offsite response during an exercise. Because the NRC is granting exemptions from the requirements regarding the need for the licensee to exercise onsite and offsite plans with full participation by each offsite authority having a role under the radiological response plan, FEMA will no longer evaluate adequacy of offsite response during remedial or other exercises. No action is expected from State or local government organizations in response to an event at a decommissioning power reactor site other than firefighting, law enforcement and ambulance/medical services support. A memorandum of understanding should be in place for those services. Offsite response organizations will continue to take actions on a comprehensive EP basis to protect the health and safety of the public as they would at any other industrial site.
10 CFR Part 50, Appendix E, Section IV.F.2.i. The NRC is granting exemption from portions of the rule language that would otherwise require the licensee to drill and exercise scenarios that include a wide spectrum of radiological release events and hostile action.	Due to the low probability of DBAs or other credible events to exceed the EPA PAGs, the available time for event mitigation and, if needed, implementation of offsite protective actions using a CEMP, the previously routine progression to general emergency in power reactor site scenarios is not applicable to a decommissioning site. Therefore, the licensee is not expected to demonstrate response to a wide spectrum of events. Also refer to basis for 10 CFR Part 50, Appendix E, Section IV.1 regarding hostile action.
10 CFR Part 50, Appendix E, Section IV.F.2.j. The NRC is granting exemption from the requirements regarding the need for the licensee's emergency response organization to demonstrate proficiency in key skills in the principal functional areas of emergency response.. In addition, the NRC is granting exemption during an eight calendar year exercise cycle, from demonstrating proficiency in the key skills necessary to respond to such scenarios as hostile actions, unplanned minimal radiological release, and scenarios involving rapid escalation to a site area emergency or general emergency.	Refer to basis for 10 CFR Part 50, Appendix E, Section IV.F.2.
10 CFR Part 50, Appendix E, Section IV.I The NRC is granting exemption from the requirements regarding the need for the licensee to develop a range of protective actions for onsite personnel during hostile actions.	Refer to basis for 10 CFR Part 50, Appendix E, Section IV.E.8.d.

[FR Doc. 2015–14423 Filed 6–11–15; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0001]

Sunshine Act Meeting Notice

DATE: June 15, 22, 29, July 6, 13, 20, 2015.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Week of June 15, 2015

There are no meetings scheduled for the week of June 15, 2015.

Week of June 22, 2015—Tentative

Tuesday, June 23

9:00 a.m. Briefing on Human Capital and Equal Employment Opportunity (Public Meeting)

(Contact: Dafna Silberfeld, 301–287–0737)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, June 25, 2015

9:00 a.m. Briefing on Proposed Revisions to Part 10 CFR part 61 and Low-Level Radioactive Waste Disposal (Public Meeting)

(Contact: Gregory Suber, 301–415–8087)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of June 29, 2015—Tentative

There are no meetings scheduled for the week of June 29, 2015.

Week of July 6, 2015—Tentative

Tuesday, July 7, 2015

9:00 a.m. Briefing on Inspections, Tests, Analyses, and Acceptance Criteria (Public Meeting)

(Contact: James Beardsley, 301–415–5998)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Thursday, July 9, 2015

9:00 a.m. Briefing on the Mitigation of Beyond Design Basis Events Rulemaking (Public Meeting)

(Contact: Tara Inverso, 301–415–1024)

This meeting will be webcast live at the Web address—*http://www.nrc.gov/.*

Week of July 13, 2015—Tentative

There are no meetings scheduled for the week of July 13, 2015.

Week of July 20, 2015—Tentative

There are no meetings scheduled for the week of July 20, 2015

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The schedule for Commission meetings is subject to change on short notice. For more information or to verify the status of meetings, contact Glenn Ellmers at 301–415–0442 or via email at *Glenn.Ellmers@nrc.gov.*

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The NRC Commission Meeting Schedule can be found on the Internet at: *http://www.nrc.gov/public-involve/public-meetings/schedule.html.*

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The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings, or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.* braille, large print), please notify Kimberly Meyer, NRC Disability Program Manager, at 301–287–0727, by videophone at 240–428–3217, or by email at *Kimberly.Meyer-Chambers@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

* * * * *

Members of the public may request to receive this information electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555 (301–415–1969), or email *Brenda.Akstulewicz@nrc.gov* or *Patricia.Jimenez@nrc.gov.*

Dated: June 10, 2015.

Glenn Ellmers,

Policy Coordinator, Office of the Secretary.

[FR Doc. 2015–14619 Filed 6–10–15; 4:15 pm]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0005]

Information Collection: NRC Form 748, National Source Tracking Transaction Report

AGENCY: Nuclear Regulatory Commission.

ACTION: Renewal of existing information collection; request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) invites public comment on the renewal of Office of Management and Budget (OMB) approval for an existing collection of information. The information collection is entitled, ''NRC Form 748, National Source Tracking Transaction Report.''

DATES: Submit comments by August 11, 2015. Comments received after this date will be considered if it is practical to do so, but the Commission is able to ensure consideration only for comments received on or before this date.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0005. Address questions about NRC dockets to Carol Gallagher; telephone: 301- 3463; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Tremaine Donnell, Office of Information Services, Mail Stop: T–5 F53, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Tremaine Donnell, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–6258; email: *INFOCOLLECTS.Resource@NRC.GOV.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0005 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0005. A copy of the collection of information and related instructions may be obtained without charge by accessing Docket ID NRC–2015–0005 on this Web site.
- *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.* A copy of the collection of information and related instructions may be obtained without charge by accessing ADAMS Accession No. ML15093A418. The supporting statement is available in ADAMS under Accession No. ML15093A493.
- *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 Clearance Officer:* A copy of the collection of information and related instructions may be obtained without charge by contacting NRC's Clearance Officer, Tremaine Donnell, Office of Information Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301- 415–6258; email: *INFOCOLLECTS.Resource@NRC.GOV.*

B. Submitting Comments

Please include Docket ID NRC–2015–0005 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information in comment submissions that you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS,

and the NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Background

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the NRC is requesting public comment on its intention to request the OMB's approval for the information collection summarized below.

1. *The title of the information collection:* NRC Form 748, National Source Tracking Transaction Report.
2. *OMB approval number:* 3150–0202.
3. *Type of submission:* Extension.
4. *The form number, if applicable:* NRC Form 748.
5. *How often the collection is required or requested:* On occasion (at completion of a transaction, and at inventory reconciliation).
6. *Who will be required or asked to respond:* Licensees that manufacture, receive, transfer, disassemble, or dispose of nationally tracked sources.
7. *The estimated number of annual responses:* 20,306 (13,200 online + 480 batch upload + 6,626 NRC Form 748).
8. *The estimated number of annual respondents:* 1,400 (260 NRC Licensees + 1,140 Agreement State Licensees).
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 2,209.7.
10. *Abstract:* In 2006, the NRC amended its regulations to implement a National Source Tracking System (NSTS) for certain sealed sources. The amendments require licensees to report certain transactions involving nationally tracked sources to the NSTS. These transactions include manufacture, transfer, receipt, disassembly, or disposal of the nationally tracked source. This information collection is mandatory and is used to populate the NSTS. National source tracking is part of a comprehensive radioactive source control program for radioactive materials of greatest concern. The NRC and Agreement States use the information provided by licensees in the NSTS to track the life cycle of the nationally tracked source from manufacture through shipment receipt, decay, and burial. NSTS enhances the ability of NRC and Agreement States to conduct inspections and investigations, communicate information to other government agencies, and verify legitimate ownership and use of nationally tracked sources.

III. Specific Requests for Comments

The NRC is seeking comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the estimate of the burden of the information collection accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection on respondents be minimized, including the use of automated collection techniques or other forms of information technology?

Dated at Rockville, Maryland, this 10th day of June 2015.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2015–14497 Filed 6–11–15; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review; Comments Request

AGENCY: Overseas Private Investment Corporation (OPIC).

ACTION: Notice and request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the agency is modifying an existing previously approved information collection for OMB review and approval and requests public review and comment on the submission. Comments are being solicited on the need for the information; the accuracy of OPIC's burden estimate; the quality, practical utility, and clarity of the information to be collected; and ways to minimize reporting the burden, including automated collected techniques and uses of other forms of technology.

DATES: Comments must be received within sixty (60) calendar days of publication of this Notice.

ADDRESSES: Mail all comments and requests for copies of the subject form to OPIC's Agency Submitting Officer: James Bobbitt, Overseas Private Investment Corporation, 1100 New York Avenue NW., Washington, DC 20527. See **SUPPLEMENTARY INFORMATION** for other information about filing.

FOR FURTHER INFORMATION CONTACT: OPIC Agency Submitting Officer: James Bobbitt, (202) 336–8558.

SUPPLEMENTARY INFORMATION: All mailed comments and requests for copies of the subject form should include form number OPIC–129 on both the envelope and in the subject line of the letter. Electronic comments and requests for copies of the subject form may be sent to *James.Bobbitt@opic.gov,* subject line OPIC–129.

Summary Form Under Review

Type of Request: Revision of currently approved information collection.

Title: Sponsor Disclosure Report.

Form Number: OPIC–129.

Frequency of Use: One per investor per project.

Type of Respondents: Business or other institution (except farms); individuals.

Standard Industrial Classification Codes: All.

Description of Affected Public: U.S. companies or citizens investing overseas.

Reporting Hours: 1890 (3 hours per response).

Number of Responses: 630 per year.

Federal Cost: $64,801.80 ($51.43 × 630 × 2)

Authority for Information Collection: Sections 231, 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The information provided in the OPIC–129 is used by OPIC as a part of the Character Risk Due Diligence/background check procedure (similar to a commercial bank's Know Your Customer procedure) that it performs on each party that has a significant relationship (10% or more beneficial ownership, provision of significant credit support, significant managerial relationship) to the projects that OPIC finances. The questions on the form have been updated to improve OPIC's due diligence process and the format has been modified to make it easier for employees to review.

Dated: June 8, 2015.

Nichole Skoyles,

Administrative Counsel, Department of Legal Affairs.

[FR Doc. 2015–14411 Filed 6–11–15; 8:45 am]

BILLING CODE 3210–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2014–2; Order No. 2532]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an amendment to Priority Mail Contract 66 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 15, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

On June 5, 2015, the Postal Service filed notice that it has agreed to an Amendment to the existing Priority Mail Contract 66 negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the Amendment and a certification of compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5.

The Postal Service also filed the unredacted Amendment and supporting financial information under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. *Id.* at 1.

The Amendment concerns price changes.

The Postal Service intends for the Amendment to become effective one business day after the date that the Commission completes its review of the Notice. *Id.* The Postal Service asserts that the Amendment will not impair the ability of the contract to comply with 39 U.S.C. 3633. Notice, Attachment B at 1.

[1] Notice of United States Postal Service of Change in Prices Pursuant to Amendment to Priority Mail Contract 66, June 5, 2015 (Notice).

II. Notice of Filing

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than June 15, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Cassie D'Souza to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2014–2 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Cassie D'Souza to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than June 15, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–14315 Filed 6–11–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2015–54 and CP2015–82; Order No. 2533]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning the addition of Priority Mail Contract 125 to the competitive product list. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 15, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Notice of Commission Action
III. Ordering Paragraphs

I. Introduction

In accordance with 39 U.S.C. 3642 and 39 CFR 3020.30 *et seq.,* the Postal Service filed a formal request and associated supporting information to add Priority Mail Contract 125 to the competitive product list.[1]

The Postal Service contemporaneously filed a redacted contract related to the proposed new product under 39 U.S.C. 3632(b)(3) and 39 CFR 3015.5. *Id.* Attachment B.

To support its Request, the Postal Service filed a copy of the contract, a copy of the Governors' Decision authorizing the product, proposed changes to the Mail Classification Schedule, a Statement of Supporting Justification, a certification of compliance with 39 U.S.C. 3633(a), and an application for non-public treatment of certain materials. It also filed supporting financial workpapers.

II. Notice of Commission Action

The Commission establishes Docket Nos. MC2015–54 and CP2015–82 to consider the Request pertaining to the proposed Priority Mail Contract 125 product and the related contract, respectively.

The Commission invites comments on whether the Postal Service's filings in the captioned dockets are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR part 3015, and 39 CFR part 3020, subpart B. Comments are due no later than June 15, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints James F. Callow to serve as Public Representative in these dockets.

III. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket Nos. MC2015–54 and CP2015–82 to consider the matters raised in each docket.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission to represent

[1] Request of the United States Postal Service to Add Priority Mail Contract 125 to Competitive Product List and Notice of Filing (Under Seal) of Unredacted Governors' Decision, Contract, and Supporting Data, June 5, 2015 (Request).

the interests of the general public in these proceedings (Public Representative).

3. Comments are due no later than June 15, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Shoshana M. Grove,

Secretary.

[FR Doc. 2015–14320 Filed 6–11–15; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75119; File No. SR–ICC–2015–009]

Self-Regulatory Organizations; ICE Clear Credit LLC; Notice of Filing of Proposed Rule Change

June 8, 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 May 28, 2015, ICE Clear Credit LLC (''ICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by ICC. 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 principal purpose of the proposed rule change is to revise the ICC Risk Management Framework to incorporate certain risk model enhancements. These revisions do not require any changes to the ICC Clearing Rules (''Rules'').

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, ICC 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. ICC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of these statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

ICC proposes revising the ICC Risk Management Framework to incorporate risk model enhancements related to the General Wrong Way Risk (''GWWR'') methodology. ICC believes such revisions will facilitate the prompt and accurate clearance and settlement of securities transactions and derivative agreements, contracts, and transactions for which it is responsible. The proposed revisions are described in detail as follows.

The proposed changes to the ICC Risk Management Framework extend the GWWR framework to the portfolio level. Currently, there exists no Clearing Participant-level cumulative GWWR requirement incorporated in the Jump-to-Default calculations. The uncollateralized WWR exposure of a Risk Factor needs to exceed its corresponding WWR threshold in order to trigger WWR collateralization. The proposed enhancement is introduced to account for the potential accumulation of portfolio WWR through Risk Factor specific WWR exposures. Under the proposed approach, if the cumulative uncollateralized exposure exceeds a pre-determined portfolio GWWR threshold, the amount above the threshold is collateralized.

Section 17A(b)(3) of the Act requires, among other things, that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions [3] and to comply with the provisions of the Act and the rules and regulations thereunder.[4] ICC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to ICC, in particular, Section 17(A)(b)(3)(F),[5] because ICC believes that the proposed rule change will promote the prompt and accurate clearance and settlement of securities transactions, derivatives agreements, contracts, and transactions, as the proposed risk model revisions enhance risk policies and are expected to impose more conservative initial margin requirements, which would enhance the financial resources available to ICC and thereby facilitate its ability to promptly and accurately clear and settle its cleared CDS contracts. In addition, the proposed revisions are consistent with the relevant requirements of Rule 17Ad–22.[6] In particular, the amendments to the Risk Management Framework will enhance the financial resources available to ICC, and are therefore reasonably designed to meet the margin and financial resource requirements of Rule 17Ad–22(b)(2–3).[7]

B. Self-Regulatory Organization's Statement on Burden on Competition

ICC does not believe the proposed rule change will have any impact, or impose any burden, on competition. The risk model enhancements apply uniformly across all market participants. Therefore, ICC does not believe the proposed rule change imposes any burden on competition that is inappropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments relating to the proposed rule change have not been solicited or received. ICC will notify the Commission of any written comments received by ICC.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–ICC–2015–009 on the subject line.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78q–1(b)(3)(F).

[4] 15 U.S.C. 78q–1(b)(3)(A).

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] 17 CFR 240.17Ad–22.

[7] 17 CFR 240.17Ad–22(b)(2–3).

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–ICC–2015–009. 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 filings will also be available for inspection and copying at the principal office of ICE Clear Credit and on ICE Clear Credit's Web site at *https://www.theice.com/clear-credit/regulation.*

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–ICC–2015–009 and should be submitted on or before July 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[8]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–14361 Filed 6–11–15; 8:45 am]

BILLING CODE 8011–01–P

[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75053; File No. SR–Phlx–2015–46]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing of Proposed Rule Change To Amend the Amended and Restated Certificate of Incorporation and By-Laws of The NASDAQ OMX Group, Inc.

May 27, 2015.

Correction

In notice document 2015–13175, appearing on pages 31439–31440 in the issue of Tuesday, June 2, 2015, make the following correction:

On page 31440, in the first column, on the last line, ''June 22, 2015.'' should read ''June 23, 2015.''

[FR Doc. C1–2015–13175 Filed 6–11–15; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75120; File No. SR–CBOE–2015–050]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of Proposed Rule Change to Expire CBOE Volatility Index (VIX) Options Every Week

June 8, 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 June 1, 2015, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to amend certain of its rules to expire CBOE Volatility Index (''VIX'') options every week. The text of the proposed rule change is available on the Exchange's Web site *http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In February 2006, CBOE began trading options that expire monthly on the CBOE Volatility Index (''VIX''), which measures a 30-day period of implied volatility. Last year, CBOE introduced weekly expiring options on the CBOE Short-Term Volatility Index (''VXST''), which measures a nine-day implied volatility period.[3] The purpose of this proposed rule change is to expire 30-day VIX options every week.[4] VIX options would continue to trade as they do today and they would be subject to all of the same rules they are subject to today, except as proposed to be modified herein.

In its capacity as the Reporting Authority, CBOE enhanced the VIX Index (cash/spot value) to include P.M.-settled S&P 500 Index End-of-Week expirations (''SPXWs'') in 2014.[5] The inclusion of SPXWs allows the VIX Index to be calculated with SPX option series that most precisely match the 30-day target timeframe for expected volatility that the VIX Index is intended to represent. Using SPX options with more than 23 days and less than 37 days to expiration ensures that the VIX Index will always reflect an interpolation of

[3] *See* Securities Exchange Act Release No. 71764 (March 21, 2014), 79 FR 17212 (March 27, 2014) (Order Granting Approval of Proposed Rule Change to List and Trade CBOE Short-Term Volatility Index Options) (SR–CBOE–2014–003).

[4] CBOE Futures Exchange, LLC (''CFE'') also plans to expire 30-day VIX futures weekly prior to expiring 30-day VIX options weekly on CBOE.

[5] This enhancement did not impact the exercise settlement value for VIX options and futures, which continue to use the same VIX Index formula and the opening prices of standard (*i.e.,* third Friday expiration) S&P 500 Index (''SPX'') option series with 30 days to expiration.

two points along the S&P 500 Index volatility term structure.[6]

Currently, standard VIX options expire once a month. The last trading day for expiring VIX options is the business day immediately prior to their expiration date. The expiration date for VIX options is pegged to the standard (third Friday) SPX option expiration in the subsequent month. Specifically, the expiration date is on the Wednesday that is 30 days prior to the third Friday of the calendar month immediately following the month in which the VIX option expires. This standard Wednesday VIX option expiration is changed if the Friday in the subsequent month is an Exchange holiday to be the business day that is thirty days prior to the Exchange business day immediately preceding that Friday. CBOE (as the Reporting Authority for VIX options) calculates the exercise settlement value for expiring VIX options on their expiration date.[7]

The Exchange proposes to now expire VIX options each Wednesday.[8] These new VIX expirations would be series of the existing VIX option class. Similar to VXST options, however, different types of SPX options would be used to calculate and settle VIX options. Specifically, as today, the standard (monthly) VIX option expirations would be calculated using A.M.-settled SPX options that expire on the third Friday in the subsequent month and the period of implied volatility covered by these contracts would be exactly 30 days. The new VIX option expirations would be calculated using P.M.-settled SPXWs that expire in 30 days and the period of implied volatility by these contracts would be 30 days, plus 390 minutes.[9]

In order to expire 30-day VIX options weekly, CBOE proposes to amend Rule 24.9(a)(5) in several ways. First, the Exchange notes that Rule 24.9(a)(5) is styled, ''Method of Determining Day that Exercise Settlement Value will be Calculated and of Determining Expiration Date and Last Trading Day for Options on Volatility Indexes that Measure a 30-Day Volatility Period (*e.g.,* VIX, RVX, VXD, VXN, Individual Stock or ETF Based Volatility Index) ('Volatility Index options').'' The Exchange proposes to revise this title so that it reads: ''Method of Determining Day that Exercise Settlement Value will be Calculated, Special Opening Quotation and Expiration Date and Last Trading Day for Options on Volatility Indexes that Measure a 30-Day Volatility Period ('Volatility Index options').''[10]

Second, the Exchange proposes to also add the following 3 new subheadings as subparagraphs A, B and C, respectively, to Rule 24.9(a)(5): Method of Determining Day that Exercise Settlement Value will be Calculated, Special Opening Quotation and Expiration Date and Last Trading Day. The Exchange believes that the proposed addition of these subheadings would help to clarify that new subparagraphs B and C would apply to all Volatility index options.

Third, under proposed new subparagraph A, the Exchange proposes to add new subparagraph (i) styled ''Volatility Index Options (Other than VIX Options, *e.g.,* RVX, VXD, VXN, Individual Stock or ETF Based Volatility Index Options) set forth in Rule 24.9(a)(5).[11] This new subparagraph (A)(i) would generally maintain the current rule text language as it applies to standard (monthly) Volatility Index options (other than VIX options). Some non-substantive changes are being proposed to help clarify that this provision applies to standard (monthly) options on 30-day volatility indexes.

Fourth, CBOE proposes to add new subparagraph A(ii) to Rule 24.9(a)(5) styled ''CBOE Volatility Index (''VIX'') Options,'' which would read as follows:

> The exercise settlement value of a VIX option for all purposes under these Rules and the Rules of the Clearing Corporation, shall be calculated on the specific date (usually a Wednesday) identified in the option symbol for the series. If that Wednesday or the Friday that is 30 days following that Wednesday is an Exchange holiday, the exercise settlement value shall be calculated on the business day immediately preceding that Wednesday.

The Exchange notes that Rule 24.9(a)(5) is cross-referenced in Rule 6.2B.08, which sets forth the days on which Modified Opening Procedures are used for Hybrid classes and series that are used to calculated volatility indexes. Rule 24.9(a)(5) is identified in Rule 6.2B.08 in order to determine the specific days on which the Modified Opening Procedures are utilized. Expiring 30-day VIX options weekly would result in the Modified Opening Procedures being used more frequently for the constituent options series used to calculate the exercise settlement values for the proposed new 30-day VIX weekly expirations.

Fifth, the Exchange proposes to amend Rule 24.9(a) by adding an additional paragraph (under proposed new subparagraph B ''Special Opening Quotation'') that provides detailed information about the ''time to expiration'' input. Specifically, the paragraph would provide as a follows:

> The ''time to expiration'' used to calculate the SOQ shall account for the actual number of days and minutes until expiration for the constituent option series. For example, if the Exchange announces that the opening of trading in the constituent option series is delayed, the amount of time until expiration for the constituent option series used to calculate the exercise settlement value would be reduced to reflect the actual opening time of the constituent option series. Another example would be when the Exchange is closed on a Wednesday due to an Exchange holiday, the amount of time until expiration used to calculate the exercise settlement value would be increased to reflect the extra calendar day between the day that the exercise settlement value is calculated and the day on which the constituent option series expire.

In support of this proposed change, the Exchange states that similar language about the above description of the ''time to expiration'' input for VIX options is already set forth in CBOE Regulatory Circular *RG14–005*.[12] Also, similar language is set forth in Rule 24.9(a)(6) when describing the ''time to expiration'' input for VXST options. The Exchange is proposing to take this opportunity to marry up this concept with Rule 24.9(a)(6), as applicable here.

The Exchange also proposes to take this opportunity to make the following minor amendments to Rule 24.9(a)(6): (i) Modification to the title of that Rule, (ii) addition of similar subheadings throughout that Rule, and (iii) revision to the Wednesday holiday example provided under the proposed new subheading ''Special Opening Quotation.'' The Exchange proposes to make these changes in order to conform Rule 24.9(a)(6) with the proposed new structure and formatting of Rule

[6] For a detailed description about the VIX Index methodology, please refer to the VIX White Paper available at: *https://www.cboe.com/micro/vix/vixwhite.pdf.*

[7] *See* CBOE Rule 24.9(a)(5) which sets forth the method of determining the day on which the exercise settlement value will be calculated for VIX options and of determining the expiration date and last trading day for VIX options.

[8] CBOE is making this current filing because CBOE is unable to list weekly VIX options under its other weekly option programs because those programs require that weekly options expire on Fridays and VIX options expire on Wednesdays.

[9] P.M.-settled, expiring SPXWs stop trading at 3:00 p.m. (Chicago time) on their last day of trading. *See* Rule 24.9(e)(4). The additional 390 minutes reflects that these constituent options trade for six and a half hours on their expiration date until 3:00 p.m. (Chicago time).

[10] The Exchange proposes to add ''Special Opening Quotation'' to the title to make it more complete since the Special Opening Quotation is already explained in this provision and applies to all Volatility Index options.

[11] In addition to VIX options, the Exchange lists options on other 30-day volatility indexes, which are covered by this provision too.

[12] The Exchange would revise this circular to layer in weekly VIX option expirations and to make general updates, as needed.

24.9(a)(5). The Exchange believes that it would be beneficial to have parallel structure between these two rule provisions because the rules address the same topics but for different option classes. The Exchange states that the proposed changes to Rule 24.9(a)(6) are non-substantive.

Sixth, as to Rule 24.9(a)(5), the Exchange proposes to add a sentence to address when the last trading day is moved because of an Exchange holiday. Specifically, the sentence would provide that the last trading day would be the day immediately preceding the last regularly scheduled trading day. As with the ''time to expiration'' input proposed addition, this proposed sentence is similar to language that is set forth in Rule 24.9(a)(6). The Exchange is proposing to take this opportunity to marry up Rule 24.9(a)(5) with Rule 24.9(a)(6), as applicable here.

The Exchange is currently permitted to list up to 12 standard (monthly) VIX expirations.[13] The Exchange proposes to maintain the ability to list 12 standard (monthly) VIX expirations and proposes to permit the Exchange to list up to six weekly expirations in VIX options. The six weekly expirations would be for the nearest weekly expirations from the actual listing date and weekly expirations would not be permitted to expire in the same week in which standard (monthly) VIX options expire. Standard (monthly) expirations in VIX options would not be counted as part of the maximum six weekly expirations permitted for VIX options. The below chart illustrates the maximum listing ability under this new proposed revision as of July 30, 2015:

Expiration date	Type of expiration
AUG 5 2015	Weekly (1).
AUG 12 2015	Weekly (2).
AUG 19 2015	Standard (Monthly) (1).
AUG 26 2015	Weekly (3).
SEP 2 2015	Weekly (4).
SEP 9 2015	Weekly (5).
SEP 16 2015	Standard (Monthly) (2).
SEP 23 2015	Weekly (6).
OCT 21 2015	Standard (Monthly) (3).
NOV 18 2015	Standard (Monthly) (4).
DEC 16 2015	Standard (Monthly) (5).
JAN 20 2016	Standard (Monthly) (6).
FEB 17 2016	Standard (Monthly) (7).
MAR 16 2016	Standard (Monthly) (8).
APR 20 2016	Standard (Monthly) (9).
MAY 18 2016	Standard (Monthly) (10).
JUN 15 2016	Standard (Monthly) (11).
JUL 20 2016	Standard (Monthly) (12).

[13] The Exchange calculates the CBOE VVIX Index, which measures the expected volatility of the 30-day forward price of the VIX Index and is calculated using VIX options. Because CBOE calculates a volatility index using VIX options, the Exchange is permitted to list up to 12 expirations at any one time for VIX options.

To effectuate this change, the Exchange proposes to amend Rule 24.9(a)(2) to expressly provide for these VIX expirations. The Exchange also proposes to take this opportunity to clean up and stream line this subparagraph (a)(2) to Rule 24.9. No substantive changes are being proposed by these reorganizational amendments.

Currently, the Exchange may list new series in VIX options up to the fifth business day prior to expiration. The Exchange proposes to amend Rule 24.9(.01)(c) to permit new series to be added up to and including on the last day of trading for an expiring VIX option contract. In support of this change, the Exchange states that this listing ability is similar to the series setting schedule for other types of weekly expirations, including VXST options.[14]

Finally, the Exchange proposes to amend Rule 24.9.01(l) by breaking out VIX options separately from other volatility index options under new subparagraph (ii). New subparagraph (ii) would provide, Notwithstanding paragraphs (a) and (l)(i), the interval between strike prices for CBOE Volatility Index (VIX) options will be $0.50 or greater where the strike price is less than $75, $1 or greater where the strike price is $200 or less and $5 or greater where the strike price is more than $200.

The Exchange notes that the strike setting parameters set forth in the proposed paragraph are already permitted for VIX options.[15] The Exchange believes that separating VIX options from other volatility index options in this section to the CBOE Rulebook would benefit market participants since it would be easier to identify the strike setting parameters for VIX options by breaking them out as proposed.

Capacity

CBOE has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority (''OPRA'') have the necessary systems capacity to handle the additional traffic associated with the listing of new series that would result from the expiring VIX options weekly.

[14] *See* existing Rule 24.9.01(c). *See* also Rules 5.5(d)(4) and 24.9(a)(2)(A)(iv) which permit series to be added up to and including on their expiration date for short-term (weekly) options.

[15] *See* Rule 24.9(l) and Rule 24.9.12, which permits $0.50 and $1 strike price intervals for options that are used to calculate volatility indexes. The Exchange calculates the CBOE VVIX Index, which measures the expected volatility of the 30-day forward price of the VIX Index and is calculated using VIX options.

Because the proposal is limited to a single class, the Exchange believes that the additional traffic that would be generated from the introduction of weekly 30-Day VIX option series would be manageable.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[16] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[17] requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, to remove impediments to and to perfect the mechanism for a free and open market and a national market system, and, in general, to protect investors and the public interest.

Specifically, the Exchange believes that there is an unmet market demand for options that expire each week that measure a 30-day volatility period. By permitting VIX options to expire every week, CBOE hopes to respond to that unmet market demand.

The success of CBOE's VIX options that measure a 30-day period illustrate the prominence that volatility products have taken over the past several years. CBOE seeks to enlarge its suite of volatility offerings by introducing weekly expiring series that would provide investors with a 30-day VIX contract that expires every week. CBOE believes that expiring 30-day VIX options weekly would provide investors with additional opportunities to manage 30-day volatility risk each week.

CBOE has many years of history and experience in conducting surveillance for volatility index options trading to draw from in order to detect manipulative trading in the proposed new 30-day weekly VIX series. Additionally, the Exchange represents that it has the necessary systems capacity to support the addition of weekly 30-day VIX expirations.

The Exchange believes that the proposed non-substantive changes to Rules 24.9(a)(5) and 24.9(a)(6) would be beneficial to market participants and users of CBOE's Rulebook because there would be parallel structure between two rule provisions that address same topics but for different option classes. The Exchange also believes that these proposed changes would generally

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

result in a clearer and more user-friendly presentment of the provisions set forth in CBOE's Rulebook.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, CBOE believes that the permitting 30-day VIX options to expire weekly would enhance competition among market participants and would provide a new weekly expiration that can compete with other weekly options to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. By order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2015–050 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number *SR–CBOE–2015–050.* This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number *SR–CBOE–2015–050* and should be submitted on or before July 6, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–14362 Filed 6–11–15; 8:45 am]

BILLING CODE 8011–01–P

[18] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Announcement of Startup in a Day Competition; Dream Big Model

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: The U.S. Small Business Administration (SBA) announces the 2015 Startup in a Day Competition—Dream Big Model, pursuant to the America Competes Act, to spur the development, implementation, and improvement of online tools that will let entrepreneurs learn about the business startup process in their area, including how to register and apply for all required local licenses and permits—all in one day or less.

DATES: The submission period for entries begins 12:00 p.m. EDT, June 11, 2015 and ends July 13, 2015 at 11:59 p.m. EDT. Winners will be announced no later than August 31, 2015.

ADDRESSES: For further information, please contact the U.S. Small Business Administration, Startup in a Day—IGA, 409 Third Street SW., Washington, DC 20416, (202) 205–7364, *startup@sba.gov.*

SUPPLEMENTARY INFORMATION:

Competition Details

1. *Subject of Competition:* The SBA is seeking to support entrepreneurs who are navigating the requirements to start a business. Currently many of these requirements are in multiple locations and a streamlined approach could help entrepreneurs startup more easily. The Startup in a Day Competition—Dream Big Model is designed to spur the development, implementation, and improvement of online tools that will let entrepreneurs learn about the business startup process in their area, including how to register and apply for all required local licenses and permits, in one day or less. This announcement, the Startup in a Day Competition—Dream Big Model, is specific for cities and Native American Communities that will develop an open source solution that may be freely adopted by localities across the United States. An ''open source'' solution is software that can be freely used, changed, and shared (in modified or unmodified form) by anyone [1] and complies with generally accepted criteria for distribution outlined by the Open Source Initiative (for this criteria, see *http://opensource.org/docs/osd#fields-of-endeavor*). In order to maximize the success of this competition, SBA will work with the National League of Cities (NLC), an advocacy organization representing thousands of municipalities, to establish a formal mechanism by which all Startup in a Day competition winners will be able to collaborate and share best practices.

In conjunction with the Startup in a Day Competition, President Barack Obama is asking cities and Native American Communities across America to take a pledge to support entrepreneurs in their area by making it easier to start a business (for the text of this pledge, see *sba.gov/startup*). While it is not required to enter this Competition, all cities and Native

[1] Open Source Initiative, Welcome to The Open Source Initiative, Palo Alto, CA: Open Source Initiative. Accessed June 2, 2015, *http://opensource.org/.*

American Communities are encouraged to take the pledge. As an additional encouragement, entries submitted by cities and Native American Communities that do take the pledge will receive five (5) bonus points during the evaluation process, as stipulated in Item 3: Part V below. Furthermore, all Startup in a Day Competition—Dream Big Model winners will be required to take the pledge prior to receiving their prizes.

An additional aim of this competition is to stimulate economic development in certain Priority Communities. For purposes of the Startup in a Day Competition—Dream Big Model, Priority Communities are those cities and Native American Communities that fall into one or more of the following categories:

- Rural/Non-Metropolitan: Cities or Native American Communities that have a population of less than 50,000. For cities, please reference *http://quickfacts.census.gov/qfd/index.html.* For Native American Communities, please reference the most appropriate source.
- High Poverty: Cities or Native American Communities where 20 percent or more of residents are below the poverty level. For cities, please reference *http://quickfacts.census.gov/qfd/index.html.* For Native American Communities, please reference the most appropriate source.
- Veterans Economic Community: Being an official participant in the Veterans Economic Communities Initiative. To view the list of participating cities, please go to *http://www.blogs.va.gov/VAntage/20015/va-launches-campaign-increase-veterans-economic-potential/.*
- Promise Zone: Being officially designated as a Promise Zone. To view the list of designated Promise Zones and lead organizations, please go to *www.hud.gov/promisezones.*

2. *Eligibility Rules for Participating in the Competition:* This Competition is open only to the local governments of United States cities (referred to as municipalities and townships by the U.S. Census Bureau [2]) or American Indian, Alaska Native, or Native Hawaiian communities, or their constituent agencies and subdivisions. No city or Native American Community may submit more than one entry to the Startup in a Day Competition—Dream Big Model. However, cities and Native American Communities are allowed to apply to both the Startup in a Day Competition—Dream Big Model and to the Startup in a Day Competition—Start Small Model (see separate announcement). Cities and Native American Communities must submit a separate application for each competition. However, please note that a city or Native American Community cannot win a prize under both announcements. If a city or Native American Community is a finalist for both competitions, the city or Native American Community will be awarded the larger prize. No city or Native American Community that is currently suspended or debarred by the Federal government is eligible to take part in this Competition.

3. *Registration Process for Contestants:* Contestants in the Startup in a Day Competition—Dream Big Model must submit their entries online using the link designated for that purpose on *challenge.gov,* either by filtering search criteria to ''Small Business Administration'' or going to *sba.gov/startup,* where the link will be posted. In addition to the basic details collected in that short application form, contestants must also complete and submit via *challenge.gov* a proposal and attachments that addresses all of the items identified below:

AUTHORIZATION STATEMENT (Not to exceed one (1) page)

- A letter or signed statement by the city or Native American Community representative, council, or equivalent approving or authorizing the entry on behalf of the city or Native American Community.

PROPOSAL (Parts I–III not to exceed two (2) pages)

- Part I: City or Native American Community Description (20 points)

(i) Briefly describe your city or Native American Community and its story (include applicable data from the most current source (*i.e.* U.S. Census Bureau's ACS)). If your city or Native American Community qualifies as a Priority Community as defined in Item 1, also see Part IV below.

(ii) Describe the demand for registering and obtaining permits, resources, etc. for small businesses in your city or Native American Community (include quantitative analysis).

- Part II: Problem(s) and Solution(s) (40 points)

(i) Describe the current process, including the problems/obstacles, an entrepreneur experiences while trying to register and obtain permits, resources, etc. as a small businesses in your city or Native American Community.

(ii) Describe the solution that would solve the problems/obstacles described above, if awarded a prize.

- Part III: Implementation (40 points)

(i) Outline the anticipated timeframe for implementing the solution described above.

(ii) Describe the top five (5) metrics relevant to outputs and outcomes that would measure your city's or Native American Community's success in solving the stated problems/obstacles.

(iii) Describe any additional resources that will need to be leveraged, including partnerships, to fully implement the proposed solution.

OPTIONAL Proposal Addenda (Parts IV and V not to exceed one (1) page for each part)

- Part IV: Service to Priority Communities as Defined in Item 1 (up to 10 bonus points . . . five (5) points for each eligible Priority Community to be served, up to two (2) communities).

(i) State the Priority Community to be served.

(ii) Briefly describe the Priority Community in your city (include applicable data from the most current sources (*i.e.,* U.S. Census Bureau's ACS)).

(iii) Describe the demand from the Priority Community for registering small businesses and/or obtaining permits, resources, etc. in your city or Native American Community (include quantitative analysis).

- Part V: Taking the Startup in a Day Pledge (five (5) bonus points). Cities and Native American Communities that sign the Startup in a Day Pledge (for the text of the pledge, see *sba.gov/startup*) will receive five (5) bonus points. Applicants only need to provide a statement that they agree to the Startup in a Day Pledge.

BUDGET (Part VI not to exceed one (1) page)

- Part VI: Outline a budget for the proposed solution including, but not limited to expenses and any additional funding and/or support required to fully implement the solution.

Proposals may not include any confidential and/or proprietary information and must be formatted as follows:

○ Length: No more than two (2) pages to answer Parts I–III. No more than one (1) page to answer Part IV, one (1) page to answer Part V, and one (1) page to answer Part VI.

○ Spacing: 1.5 lines.

[2] U.S. Census Bureau, Governments Division, *Lists and Structure of Governments,* Washington, DC: U.S. Census Bureau. Accessed May 18, 2015, *http://www.census.gov/govs/go/municipal_township_govs.html.*

○ Paper Size: 8.5 x 11 with three-quarter (.75) inch margins on all sides.

○ Font and Font Size: Calibri, 11 point.

4. *Prizes for Winners:* SBA will award up to $250,000 and up to two (2) prizes under this announcement to cities and Native American Communities that are selected as winners.

Because the subject of this competition is not just the development of online tools to streamline the business startup process, but also the implementation and improvement of such tools, prizes will be disbursed in three payments. The first payment, equal to 60 percent of a winner's total prize amount, will be disbursed once all initial requirements (*i.e.* taking the Startup in a Day pledge, etc.) have been met. The second payment, equal to 20 percent of a winner's total prize amount, will be disbursed after a winner has presented a demonstration of its open source solution to SBA and Agency staff has deemed that solution satisfactory. This demonstration must be presented within six (6) months of the date of the award unless otherwise specified by the SBA. The remaining 20 percent of the total prize amount will be disbursed after a winner submits a written assessment that includes, but is not limited to, the outcomes and outputs of its Startup in a Day activities as measured by the metrics outlined in its proposal, a summary of any lessons learned and best practices, and suggestions for any improvements to the design or implementation of similar competitions in the future. Winners must base this assessment on a period of live operation of their Startup in a Day Web tools that is at least six (6) months and no more than twelve (12) months in length.

Regardless of the length of the period of operation on which they are based, the written assessment must be submitted to SBA no later than 15 months after a winner receives its first prize payment. The written assessments, or portions thereof, may be made public. Further guidance regarding the format and means of submission of these assessments will be provided to winners prior to their acceptance of prizes.

All prizes will be paid via the Automated Clearing House (ACH) and winners will be required to create an account in the System for Award Management (SAM) in order to receive their prizes.

5. *Selection of Winners:* Competition entries will be evaluated by a review committee that may be comprised of SBA officials, employees of other Federal agencies, and/or private sector experts. Winners will be selected based on the quality, clarity, completeness, and feasibility of their proposals in addressing the issues outlined in Item 3 of this Competition announcement. In addition, in order to achieve nationwide distribution of prizes for the purpose of assisting business startups across the entire United States, SBA may take into account contestants' geographic locations and areas of service when selecting winners. For the announcement of winners, any travel or related expenses to attend an event will be the responsibility of the winner and may not be paid with prize funds.

6. *Applicable Law:* This Competition is being conducted by SBA pursuant to the America Competes Act (15 U.S.C. 3719) and is subject to all applicable federal laws and regulations. By participating in this Competition, each contestant gives its full and unconditional agreement to the Official Rules and the related administrative decisions described in this notice, which are final and binding in all matters related to the Competition. A contestant's eligibility for a prize award is contingent upon their fulfilling all requirements identified in this notice. Publication of this notice is not an obligation of funds on the part of SBA. SBA reserves the right to modify or cancel this Competition, in whole or in part, at any time prior to the award of prizes.

7. *Conflicts of Interest:* No individual acting as a judge at any stage of this Competition may have personal or financial interests in, or be an employee, officer, director, or agent of any contestant or have a familial or financial relationship with a contestant.

8. *Intellectual Property Rights:* All entries submitted in response to this Challenge will remain the sole intellectual property of the individuals or organizations that developed them. By registering and entering a submission, each contestant represents and warrants that it is the sole author and copyright owner of the submission, and that the submission is an original work of the contestant, or if the submission is a work based on an existing application, that the contestant has acquired sufficient rights to use and to authorize others to use the submission, and that the submission does not infringe upon any copyright or upon any other third party rights of which the contestant is aware.

9. *Publicity Rights:* By registering and entering a submission, each contestant consents to SBA's and its agents' use, in perpetuity, of its name, likeness, photograph, voice, opinions, and/or hometown and state information for promotional or informational purposes through any form of media, worldwide, without further payment or consideration.

10. *Liability and Insurance Requirements:* By registering and entering a submission, each contestant agrees to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in this Competition, whether the injury, death, damage, or loss arises through negligence or otherwise. By registering and entering a submission, each contestant further represents and warrants that it possesses sufficient liability insurance or financial resources to cover claims by a third party for death, bodily injury, or property damage or loss resulting from any activity it carries out in connection with its participation in this Competition, or claims by the Federal Government for damage or loss to Government property resulting from such an activity. Competition winners should be prepared to demonstrate proof of insurance or financial responsibility in the event SBA deems it necessary.

11. *Record Retention and Disclosure:* All submissions and related materials provided to SBA in the course of this Competition automatically become SBA records and cannot be returned. Contestants should identify any confidential commercial information contained in their entries at the time of their submission.

Award Approving Official: Christopher L. James, Associate Administrator, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Authority: 15 U.S.C.§ 3719.

Dated: June 8, 2015.

Christopher L. James,

Associate Administrator, Small Business Administration.

[FR Doc. 2015–14340 Filed 6–11–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Announcement of Startup in a Day Competition—Start Small Model

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: The U.S. Small Business Administration (SBA) announces the 2015 Startup in a Day Competition—Start Small Model, pursuant to the

America Competes Act, to spur the development, implementation, and improvement of online tools that will let entrepreneurs learn about the business startup process in their area, including how to register and apply for all required local licenses and permits—all in one day or less.

DATES: The submission period for entries begins 12:00 p.m. EDT, June 11, 2015 and ends July 13, 2015 at 11:59 p.m. EDT. Winners will be announced no later than August 31, 2015.

ADDRESSES: For further information, please contact the U.S. Small Business Administration, Startup in a Day—IGA, 409 Third Street SW., Washington, DC 20416, (202) 205–7364, *startup@sba.gov.*

SUPPLEMENTARY INFORMATION:

Competition Details

1. *Subject of Competition:* The SBA is seeking to support entrepreneurs who are navigating the requirements to start a business. Currently many of these requirements are in multiple locations and a streamlined approach could help entrepreneurs startup more easily. The Startup in a Day Competition—Start Small Model is designed to spur the development, implementation, and improvement of online tools that will let entrepreneurs learn about the business startup process in their area, including how to register and apply for all required local licenses and permits, in one day or less. In order to maximize the success of this Competition, SBA will work with the National League of Cities (NLC), an advocacy organization representing thousands of municipalities, to establish a formal mechanism by which all Startup in a Day Competition winners will be able to collaborate and share best practices.

In conjunction with the Startup in a Day Competition, President Barack Obama is asking cities and Native American Communities across America to take a pledge to support entrepreneurs in their area by making it easier to start a business (for the text of this pledge, see *sba.gov/startup*). While it is not required to enter this Competition, all cities and Native American Communities are encouraged to take the pledge. As an additional encouragement, entries submitted by cities and Native American Communities that do take the pledge will receive five (5) bonus points during the evaluation process, as stipulated in Item 3: Part V below. Furthermore, all Startup in a Day Competition—Start Small Model winners will be required to take the pledge prior to receiving their prizes.

An additional aim of this competition is to stimulate economic development in certain Priority Communities. For purposes of the Startup in a Day Competition—Start Small Model, Priority Communities are those cities that fall into one or more of the following categories (**Note:** Under the Startup in a Day Competition—Start Small Model, prizes for Native American Communities are being funded and scored separately and are not eligible for Priority Community consideration. However, both cities and Native American Communities are eligible for additional points for agreeing to the Startup in a Day Pledge. See Item 3: Part V below for more details.):

- Rural/Non-Metropolitan: Cities having a population of less than 50,000. Please reference *http://quickfacts.census.gov/qfd/index.html.*
- High Poverty: Cities where 20 percent or more of residents are below the poverty level. Please reference *http://quickfacts.census.gov/qfd/index.html.*
- Veterans Economic Community: Being an official participant in the Veterans Economic Communities Initiative. To view the list of participating cities, please go to *http://www.blogs.va.gov/VAntage/20015/va-launches-campaign-increase-veterans-economic-potential/.*
- Promise Zone: Being officially designated as a Promise Zone. To view the list of designated Promise Zones and lead organizations, please go to *www.hud.gov/promisezones.*

2. *Eligibility Rules for Participating in the Competition:* This Competition is open only to the local governments of United States cities (referred to as municipalities and townships by the U.S. Census Bureau [1]) or American Indian, Alaska Native, or Native Hawaiian communities, or their constituent agencies and subdivisions. No city or Native American Community may submit more than one entry to the Startup in a Day Competition—Start Small Model. However, cities and Native American Communities are allowed to apply to both the Startup in a Day Competition—Start Small Model and to the Startup in a Day Competition—Dream Big Model (see separate announcement). Cities and Native American Communities must submit a separate application for each competition. However, please note that a city or Native American Community cannot win a prize under both announcements. If a city or Native American Community is a finalist for both competitions, the city or Native American Community will be awarded the larger prize. No city or Native American Community that is currently suspended or debarred by the Federal government is eligible to take part in this Competition.

3. *Registration Process for Contestants:* Contestants in the Startup in a Day Competition—Start Small Model must submit their entries online using the link designated for that purpose on *challenge.gov,* either by filtering search criteria to ''Small Business Administration'' or going to *sba.gov/startup,* where the link will be posted. In addition to the basic details collected in that short application form, contestants must also complete and submit via *challenge.gov* a proposal and attachments that addresses all of the items identified below:

Authorization Statement (Not to exceed one (1) page)

- A letter or signed statement by the city or Native American Community representative, council, or equivalent approving or authorizing the entry on behalf of the city or Native American Community.

Proposal (Parts I–III not to exceed two (2) pages)

- Part I: City or Native American Community Description (20 points)

(i) Briefly describe your city or Native American Community and its story (include applicable data from the most current source (*i.e.* U.S. Census Bureau's ACS)). If your city qualifies as a Priority Community as defined in Item 1, also see Part IV below.

(ii) Describe the demand for registering and obtaining permits, resources, etc. for small businesses in your city or Native American Community (include quantitative analysis).

- Part II: Problem(s) and Solution(s) (40 points)

(i) Describe the current process, including the problems/obstacles, an entrepreneur experiences while trying to register and obtain permits, resources, etc. as a small businesses in your city or Native American Community.

(ii) Describe the solution that would solve the problems/obstacles described above, if awarded a prize.

- Part III: Implementation (40 points)

(i) Outline the anticipated timeframe for implementing the solution described above.

(ii) Describe the top five (5) metrics relevant to outputs and outcomes that

[1] U.S. Census Bureau, Governments Division, *Lists and Structure of Governments,* Washington, DC: U.S. Census Bureau. Accessed May 18, 2015, *http://www.census.gov/govs/go/municipal_township_govs.html.*

would measure your city's or Native American Community's success in solving the stated problems/obstacles.

(iii) Describe any additional resources that will need to be leveraged, including partnerships, to fully implement the proposed solution.

Optional Proposal Addenda (Parts IV and V not to exceed one (1) page for each part)

- Part IV: Service to Priority Communities as Defined in Item 1 (up to 10 bonus points . . . five (5) points for each eligible Priority Community to be served, up to two (2) communities)

(i) State the Priority Community to be served.

(ii) Briefly describe the Priority Community in your city (include applicable data from the most current sources (*i.e.,* U.S. Census Bureau's ACS)).

(iii) Describe the demand from the Priority Community for registering small businesses and/or obtaining permits, resources, etc. in your city (include quantitative analysis).

- Part V: Taking the Startup in a Day Pledge (five (5) bonus points). Cities and Native American Communities that agree to the Startup in a Day Pledge (for the text of the pledge, see *sba.gov/startup*) will receive five (5) bonus points. Applicants only need to provide a statement that they agree to the Startup in a Day Pledge.

Proposals may not include any confidential and/or proprietary information and must be formatted as follows:

- Length: No more than two (2) pages to answer Parts I–III. No more than one (1) page to answer Part IV and one (1) page to answer Part V.
- Spacing: 1.5 lines
- Paper Size: 8.5 × 11 with three-quarter (.75) inch margins on all sides
- Font and Font Size: Calibri, 11 point

4. *Prizes for Winners:* In total, SBA will award up to $1.35 million in prizes under this announcement. SBA will award up to $1.25 million and no more than 25 prizes of up to $50,000 each to cities that are selected as winners. Due to the use of additional funding sources with different constraints, SBA will also separately award no more than two (2) prizes of up to $50,000 each to winning entries submitted by Native American Communities.

Because the subject of this competition is not just the development of online tools to streamline the business startup process, but also the implementation and improvement of such tools, prizes will be disbursed in two payments. The first payment, equal to 80 percent of a winner's total prize amount, will be disbursed once all initial requirements (*i.e.* taking the Startup in a Day pledge, etc.) have been met. The remaining 20 percent of the total prize amount will be disbursed after a winner submits a written assessment that includes, but is not limited to, the outcomes and outputs of its Startup in a Day activities as measured by the metrics outlined in its proposal, a summary of any lessons learned and best practices, and suggestions for any improvements to the design or implementation of similar competitions in the future. Winners must base this assessment on a period of live operation of their Startup in a Day Web tools that is at least six (6) months and no more than twelve (12) months in length.

Regardless of the length of the period of operation on which they are based, the written assessment must be submitted to SBA no later than 15 months after a winner receives its first prize payment. The written assessments, or portions thereof, may be made public. Further guidance regarding the format and means of submission of these assessments will be provided to winners prior to their acceptance of prizes.

All prizes will be paid via the Automated Clearing House (ACH) and winners will be required to create an account in the System for Award Management (SAM) in order to receive their prizes.

5. *Selection of Winners:* Competition entries will be evaluated by a review committee that may be comprised of SBA officials, employees of other Federal agencies, and/or private sector experts. Winners will be selected based on the quality, clarity, completeness, and feasibility of their proposals in addressing the issues outlined in Item 3 of this Competition announcement. In addition, in order to achieve nationwide distribution of prizes for the purpose of assisting business startups across the entire United States, SBA may take into account contestants' geographic locations and areas of service when selecting winners. For the announcement of winners, any travel or related expenses to attend an event will be the responsibility of the winner and may not be paid with prize funds.

6. *Applicable Law:* This Competition is being conducted by SBA pursuant to the America Competes Act (15 U.S.C. 3719) and is subject to all applicable federal laws and regulations. By participating in this Competition, each contestant gives its full and unconditional agreement to the Official Rules and the related administrative decisions described in this notice, which are final and binding in all matters related to the Competition. A contestant's eligibility for a prize award is contingent upon their fulfilling all requirements identified in this notice. Publication of this notice is not an obligation of funds on the part of SBA. SBA reserves the right to modify or cancel this Competition, in whole or in part, at any time prior to the award of prizes.

7. *Conflicts of Interest:* No individual acting as a judge at any stage of this Competition may have personal or financial interests in, or be an employee, officer, director, or agent of any contestant or have a familial or financial relationship with a contestant.

8. *Intellectual Property Rights:* All entries submitted in response to this Challenge will remain the sole intellectual property of the individuals or organizations that developed them. By registering and entering a submission, each contestant represents and warrants that it is the sole author and copyright owner of the submission, and that the submission is an original work of the contestant, or if the submission is a work based on an existing application, that the contestant has acquired sufficient rights to use and to authorize others to use the submission, and that the submission does not infringe upon any copyright or upon any other third party rights of which the contestant is aware.

9. *Publicity Rights:* By registering and entering a submission, each contestant consents to SBA's and its agents' use, in perpetuity, of its name, likeness, photograph, voice, opinions, and/or hometown and state information for promotional or informational purposes through any form of media, worldwide, without further payment or consideration.

10. *Liability and Insurance Requirements:* By registering and entering a submission, each contestant agrees to assume any and all risks and waive claims against the Federal Government and its related entities, except in the case of willful misconduct, for any injury, death, damage, or loss of property, revenue, or profits, whether direct, indirect, or consequential, arising from their participation in this Competition, whether the injury, death, damage, or loss arises through negligence or otherwise. By registering and entering a submission, each contestant further represents and warrants that it possesses sufficient liability insurance or financial resources to cover claims by a third party for death, bodily injury, or property damage or loss resulting from any activity it carries out in connection with its

participation in this Competition, or claims by the Federal Government for damage or loss to Government property resulting from such an activity. Competition winners should be prepared to demonstrate proof of insurance or financial responsibility in the event SBA deems it necessary.

11. *Record Retention and Disclosure:* All submissions and related materials provided to SBA in the course of this Competition automatically become SBA records and cannot be returned. Contestants should identify any confidential commercial information contained in their entries at the time of their submission.

Award Approving Official: Christopher L. James, Associate Administrator, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416.

Authority: 15 U.S.C. 3719.

Dated: June 8, 2015.

Christopher L. James,

Associate Administrator, Small Business Administration.

[FR Doc. 2015–14347 Filed 6–11–15; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Environmental Impact Statement: Norfolk International Airport, Norfolk, VA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of intent.

SUMMARY: The FAA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for proposed improvements to the Norfolk International Airport (ORF).

In October 2008, the Norfolk Airport Authority (NAA), owner and operator of ORF, prepared a Master Plan Update (MPU) to document changes occurring ''in Airport facilities and activity that have taken place since the 1995 Master Plan Update,'' to ''provide the Authority with a development plan for the Airport through 2024,'' and to address compliance shortfalls with published safety standards. Following the MPU, NAA prepared technical documents that focused on the potential construction of a replacement secondary runway. The first was the December 2008 Supplemental Technical Analyses for the Proposed Secondary Runway at Norfolk International Airport and the second was the December 2009 Justification for Proposed Runway 5R/23L. In 2008 NAA also developed an Airport Layout Plan (ALP) that evaluated and noted future development needs at ORF. The ALP included a Capital Improvement Program (CIP) for the Airport to address Federal Aviation Administration (FAA) design standards for the Airport's existing crosswind Runway 14/32. During its planning process, NAA explored a number of alternatives to meet FAA design standards while also providing the flexibility needed to operate without interruption during various conditions. These alternatives included the potential construction of a replacement secondary runway as well as improvements to the existing crosswind Runway 14/32. The FAA will evaluate and consider the Airport's MPU, ALP, and associated planning efforts when considering reasonable and feasible alternatives for the ORF EIS.

Based on these previous planning efforts, the primary components of NAA's proposed project at ORF include:

- Decommissioning and demolition of Runway 14/32
- Constructing a relocated secondary runway parallel to and separated by 876 feet from the existing Runway 5/23. The proposed Runway 5R/23L would be 6,500 feet long by 150 feet wide.

The purpose of the proposed project is:

- To meet relevant FAA airfield safety standards and enhance airfield safety without reducing runway availability. Relevant airfield safety standards include:
  - Runway Safety Area, which is designed to provide additional safety in the event an aircraft leaves the runway;
  - Runway Protection Zone, which is area at ground level prior to the threshold or beyond the runway end to enhance the safety and protection of people and property on the ground; and
  - Runway Object Free Area, which is designed to provide an area clear of objects surrounding a runway.
- To enhance operational efficiency and maintain airfield utility while considering surrounding airspace and ORF's critical design aircraft.
- To provide a safe, efficient southern vehicular access, on Airport property, to the Airport's terminal area.

The proposed project is needed to address the following four primary areas of deficiency at ORF:

- Runway 14/32 does not meet the FAA design standards discussed above for several reasons, including, but not limited to, the location of Robin Hood Road and Lake Whitehurst near the Runway 14 end.
- The current airfield configuration limits operational efficiency, safety and flexibility due to secondary runway length and challenges in taxiing from the airfield layout.
- Provide a flexible two-runway airfield system for aircraft operators and air traffic controllers. Incremental changes over time have severely decreased ORF's ability to remain flexible with increasing airspace conflicts from surrounding military facilities.
- Robin Hood Road, the secondary (southern) access to the Airport, has safety and functional deficiencies. Specifically, several curves in the on-airport section of Robin Hood Road can be improved through a redesign of the roadway.

FOR FURTHER INFORMATION CONTACT: Marcus Brundage, Project Manager, Federal Aviation Administration, Washington Airports District Office, 23723 Air Freight Lane, Suite 210, Dulles, Virginia 20166.

Telephone (703) 661–1365.

SUPPLEMENTARY INFORMATION: The FAA, in consultation with the NAA, will prepare an EIS for the proposed project. The EIS will evaluate a range of alternatives to address FAA design standards for the secondary Runway 14/32. The alternatives to be considered will include the No Build Alternative and a variety of build alternatives, including NAA's proposed alternative as detailed in the 2008 Master Plan Update. The EIS would also evaluate any alternatives identified during the Scoping process to address the project need.

The FAA intends to use the preparation of this EIS to comply with Section 106 of the National Historic Preservation Act of 1966, as amended, Section 7 of the Endangered Species Act, and Section 404 of the Clean Water Act, and any other applicable laws that include public involvement requirements.

The FAA intends to conduct a Scoping process to gather input from all interested parties to help identify any issues of concern associated with the proposed project. In addition to this notice, Federal, state, and local agencies, that have legal jurisdiction and/or special expertise with respect to any potential environmental impacts associated with the proposed project, will be notified by letter of an Agency Scoping Meeting to be held on July 22, 2015 in Norfolk, Virginia.

The general public will be notified of the Scoping process through a legal notice, describing the proposed project. The Notice will be placed in

newspapers that have general circulation in the project area. The newspaper notice will notify members of the public that open house style Scoping Meetings will be held to provide the opportunity for the public to offer its input concerning the proposed project. The Public Scoping Meetings are scheduled for the evenings of July 22 & 23, 2015 from 5 p.m. to 8 p.m. at the following locations in Southside Hampton Roads:

- July 22, 2015, 5 p.m.–8 p.m.: Bayside High School, 4960 Haygood Road, Virginia Beach, VA
- July 23, 2015, 5 p.m.–8 p.m.: Holiday Inn Norfolk Airport, 1570 N. Military Highway, Norfolk, Virginia

The Public Scoping Meetings will be open house format with project information displayed and representatives from the FAA and the Airport available to answer questions. Written and oral comments will be accepted at each of the meetings. The public comment period on this Scoping phase of the EIS will end on August 3, 2015.

The purpose of the Scoping Process, as stated above, is to receive input from the public, as well as from Federal, state, and local agencies, that have legal jurisdiction and/or special expertise with respect to any potential environmental impacts associated with the proposed project. During this process, questions regarding the scope and process related to the EIS will be answered. More information about the sponsor's proposed project and the scoping meetings can be found at: *www.orf-eis.com.*

Comments should be addressed to the listed contact person, or by email to *orf-eis@vhb.com.* The Scoping comment period is from June 12, 2015 through August 3, 2015.

Issued in Jamaica, New York, June 4, 2015.

Eleanor Scorcia,

Acting Manager, Planning and Programming Branch, Airports Division, Eastern Region.

[FR Doc. 2015–14202 Filed 6–11–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in Minnesota

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitations on claims for Judicial Reviews by FHWA.

SUMMARY: This notice announces actions taken by FHWA and other Federal Agencies that are final in the meaning of 23 U.S.C. 139(l)(1). The actions relate to a proposed highway project corridor connecting Trunk Highway 169 and United States Highway 212 in the vicinity of Trunk Highway 41 in the Counties of Scott and Carver, State of Minnesota. The Federal decisions of a tiered environmental review process under the National Environmental Policy Act, 42 U.S.C. 4321–4351 (NEPA), and implementing regulations on tiering, 40 CFR 1502.20 and 40 CFR 1508.28, determined certain issues relating to the proposed action. Those Tier I decisions will be used by Federal agencies in subsequent proceedings, including decisions whether to grant licenses, permits, and approvals for highway project(s).

DATES: By this notice, FHWA is advising the public of the final agency actions subject to 23 U.S.C. 139(l)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before November 9, 2015. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such a claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For FHWA: Philip Forst, Environmental Specialist, FHWA, Minnesota Division, 380 Jackson Street, Suite 500, Saint Paul, MN 55101, *phil.forst@dot.gov,* Phone: (651) 291–6100. For the Minnesota Department of Transportation, Diane Langenbach, Project Manager, Minnesota Department of Transportation, Metro District, 1500 West County Road B2, Roseville, MN 55113, Phone: (651) 234–7721.

SUPPLEMENTARY INFORMATION: Notice is hereby given that FHWA has issued at Tier I Record of Decision (ROD) in connection with a proposed highway project in the State of Minnesota: Construction of a new Trunk Highway (TH) 41 Minnesota River crossing connecting Trunk Highway 169 and United States (US) Highway 212 in the vicinity of the existing Trunk Highway 41. A modified Alternative C–2 corridor was the selected alternative in the Tier I FEIS. The selected alternative is an approximately 3 mile long, 300-foot wide corridor to accommodate a new four-lane east-west regional freeway connection between US 169 and US 212 that will improve regional accessibility and alleviate traffic congestion. Approximately six corridor alternatives were evaluated in the Tier I process. The selected alternative is the only corridor build alternative to be carried forward into a future Tier II EIS.

The Tier I final Federal agency decisions, and the laws under which such actions were taken, are described in the Tier I Final Environmental Impact Statement (FEIS), approved on November 12, 2014, in the Record of Decision (ROD) issued on March 16, 2015, and in other documents in the project records. The FEIS, ROD, and other documents in the project file are available by contacting the Minnesota Division of the FHWA or the Minnesota Department of Transportation at the addresses provided above. The FEIS and ROD can be viewed on the project Web site at *http://www.dot.state.mn.us/metro/projects/hwy41bridge/documents.html,* or obtained by contacting the individuals listed above.

This notice applies to all Federal agency decisions that are final in the meaning of 23 U.S.C. 139(l)(1) as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to:

1. General: National Environmental Policy Act (NEPA) [42 U.S.C. 4321–4351]; Federal-Aid Highway Act [23 U.S.C. 109 and 23 U.S.C. 128].
2. Land: Section 4(f) of the Department of Transportation Act of 1966 [49 U.S.C. 303; 23 U.S.C. 138].
3. Historic and Cultural Resources: Section 106 of the National Historic Preservation Act of 1966, as amended [16 U.S.C. 470f]; Archeological Resources Protection Act of 1977 [16 U.S.C. 470aa–470mm]; Archeological and Historic Preservation Act [16 U.S.C. 469–469c].
4. Social and Economic: Farmland Protection Policy Act (FPPA) [7 U.S.C. 4201–4209]
5. Wetlands and Water Resources: Clean Water Act (Section 404, Section 401, Section 319) [33 U.S.C. 1251–1387]; Land and Water Conservation Fund (LWCF) [16 U.S.C. 4601–4604]; Wetlands Mitigation [23 U.S.C. 119(g) and 133(b)(14)]; Wild and Scenic Rivers Act [16 U.S.C. 1271–1287].
6. Executive Orders: E.O. 11990 Protection of Wetlands; E.O. 11988 Floodplain Management; E.O. 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations; E.O. 11593 Protection and Enhancement of Cultural Resources.

(Catalog of Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(l)(1).

Issued on: May 26, 2015.

Arlene Kocher,

Division Administrator.

[FR Doc. 2015–14080 Filed 6–11–15; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION [4910–EX–P]

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0283]

Hours of Service of Drivers: Agricultural and Food Transporters Conference (AFTC); Granting of Renewal of Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of renewal of exemption; request for comments.

SUMMARY: FMCSA announces its decision to renew an exemption from the 30-minute rest break provision of the Agency's hours-of-service (HOS) regulations for commercial motor vehicle (CMV) drivers transporting livestock. The Agricultural and Food Transporters Conference (AFTC) of the American Trucking Associations (ATA) requested that the exemption, granted on behalf of several associations of agricultural transporters, be renewed to enable these drivers to continue to safeguard the health of certain livestock during long-haul deliveries by not having to take the rest break. The Agency has determined that it is appropriate to renew this exemption for a period of two years to ensure the well-being of the Nation's livestock during interstate transportation by CMV. The exemption, subject to the terms and conditions imposed, will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved absent such exemption.

DATES: This exemption is effective June 12, 2015, through June 12, 2017. Comments must be received on or before July 13, 2015.

ADDRESSES: You may submit comments bearing the Federal Docket Management System (FDMS) Docket ID FMCSA–2013–0283 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *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., ET, Monday through Friday, except Federal Holidays.
- *Fax:* 1–202–493–2251.

Each submission must include the Agency name and the docket number for this notice. Note that DOT posts all comments received without change to *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 *www.regulations.gov* at any time or visit Room W12–140 on the ground level of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal holidays. The online 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 acknowledgment 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: Mr. Robert Schultz, Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards, FMCSA; Telephone: 202–366–2718. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Legal Basis

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews the safety analyses and the public comments, and determines whether granting or renewal of the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reason for the grant or denial, and, if granted, the specific person or class of persons receiving the exemption, and the regulatory provision or provisions from which exemption is granted. The notice must also specify the effective period of the exemption (up to 2 years), and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Background

On December 27, 2011, FMCSA published a final rule amending its HOS regulations for drivers of property-carrying CMVs. The final rule included a provision requiring drivers to take a rest break during the workday under certain circumstances. Drivers may drive a CMV only if a period of 8 hours or less has passed since the end of their last off-duty or sleeper-berth period of at least 30 minutes. FMCSA did not specify when drivers must take the minimum 30-minute break, but the rule requires that they wait no longer than 8 hours after the last off-duty or sleeper-berth period of that length or longer to take the break. This new requirement, as amended by a subsequent decision of the United States Court of Appeals for the DC Circuit,[1] is codified at 49 CFR 395.3(a)(3)(ii).

Exemption

On June 19, 2013, the National Pork Producers Council (NPPC) on behalf of itself and 12 trade associations, including ATA's Agricultural and Food Transporters Conference, requested a limited two-year exemption from the rest-break requirement for drivers of CMVs engaged in the transportation of livestock. A copy of the request is included in the docket referenced at the beginning of this notice.

The NPPC stated that complying with the 30-minute rest break rule would cause livestock producers and their drivers irreparable harm, place the health and welfare of the livestock at risk, and provide no apparent benefit to public safety, while forcing the livestock industry and its drivers to choose

[1] *American Trucking Associations, Inc.,* v. *Federal Motor Carrier Safety Administration,* 724 F.3d 243 (D.C. Cir. 2013).

between the humane handling of animals or compliance with the rule.

FMCSA analyzed the request and on June 11, 2014, granted, subject to specific terms and conditions, an exemption from the rest break requirement for drivers transporting livestock. The term of the exemption ends on June 11, 2015. The exemption period was limited to one year in order to gather additional data about the highway safety of operations under the exemption. Carriers utilizing the exemption were required to report any accidents, as defined in 49 CFR 390.5, to FMCSA. As of May 1, 2015, no accidents had been reported.

Population of Drivers and Carriers Engaged in Livestock Transportation

As of May 13, 2015, FMCSA's Motor Carrier Management Information System (MCMIS) listed 65,872 motor carriers that identified livestock as a type (though not necessarily the only type) of cargo they transport. These carriers operate 220,481 vehicles. The carriers employ 277,782 drivers, but approximately 145,000 drivers qualify as ''short-haul'' drivers and thus are exempt from the 30-minute break requirement. Therefore, fewer than 135,000 CMV drivers could utilize this exemption.

Data in the docket show that the temperature inside a stopped livestock trailer can rise rapidly during hot summer days, and can drop rapidly on winter days, especially in windy conditions. Substandard transportation of livestock elevates the risk that the food derived therefrom may be unsafe for human consumption. Industry guidelines describe stops of up to 30 minutes as problematic for many animals, even in favorable weather, and encourage drivers of livestock to keep the CMV moving ''if at all possible.'' Livestock drivers take breaks, but generally of much shorter duration than 30 minutes.

As noted below, carriers utilizing the exemption are required to report any accidents, as defined in 49 CFR 390.5, to FMCSA. Since the granting of this exemption on June 11, 2014, the FMCSA has not received any such reports.

FMCSA Determination

In consideration of the above, FMCSA has determined that it is appropriate to renew this exemption from the 30-minute break requirement for a period of two years, subject to the following terms and conditions:

Extent of the Exemption

This exemption is limited to drivers engaged in the interstate transportation of livestock by CMV. The exemption from the 30-minute rest-break requirement is applicable during the transportation of livestock and does not cover the operation of the CMVs after the livestock are unloaded from the vehicle.

This exemption is only available to drivers transporting livestock as defined in the Emergency Livestock Feed Assistance Act of 1988, as amended (the 1988 Act) [7 U.S.C. 1471(2)]. The term ''livestock'' as used in this exemption means ''cattle, elk, reindeer, bison, horses, deer, sheep, goats, swine, poultry (including egg-producing poultry), fish used for food, and other animals designated by the Secretary [of Agriculture] that (A) are part of a foundation herd (including dairy producing cattle) or offspring; or (B) are purchased as part of a normal operation and not to obtain additional benefits under [the 1988 Act].'' The exemption is further limited to motor carriers that have a ''satisfactory'' safety rating or are ''unrated''; motor carriers with ''conditional'' or ''unsatisfactory'' safety ratings are prohibited from utilizing this exemption.

Accident Reporting

Motor carriers must notify FMCSA by email addressed to *MCPSD@DOT.GOV* with 5 business days of any accident (as defined in 49 CFR 390.5) that occurs while its driver is operating under the terms of this exemption. The notification must include:

a. Name of the motor carrier and USDOT number,

b. Date of the accident,

c. City or town, and State, in which the accident occurred, or closest to the accident scene,

d. Driver's name and license number,

e. Vehicle number and state license number,

f. Number of individuals suffering physical injury,

g. Number of fatalities,

h. The police-reported cause of the accident,

i. Whether the driver was cited for violation of any traffic laws, motor carrier safety regulations, and

j. The total driving time and total on-duty time prior to the accident.

Period of the Exemption

This exemption from the 30-minute break requirement [49 CFR 395.3(a)(3)(ii)] is effective during the period June 12, 2015, through June 12, 2017, unless withdrawn or restricted sooner.

Safety Oversight of Carriers Operating Under the Exemption

FMCSA expects each motor carrier operating under the terms and conditions of this exemption to maintain its safety record. However, should safety deteriorate or credible and substantial public comment in opposition to the exemption be received, FMCSA will, consistent with the statutory requirements of 49 U.S.C. 31315, take all steps necessary to protect the public interest. Authorization of the exemption is discretionary, and FMCSA will immediately revoke the exemption of any motor carrier or driver for failure to comply with the terms and conditions of the exemption.

Preemption

During the period the exemption is in effect, no State may enforce any law or regulation that conflicts with or is inconsistent with this exemption with respect to a person or entity operating under the exemption [49 U.S.C. 31315(d)].

Issued on: June 4, 2015.

T.F. Scott Darling, III,

Chief Counsel.

[FR Doc. 2015–14277 Filed 6–11–15; 8:45 am]

BILLING CODE 4910–EXP

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Safety Advisory 2015–03]

Operational and Signal Modifications for Compliance With Maximum Authorized Passenger Train Speeds and Other Speed Restrictions

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of safety advisory.

SUMMARY: FRA is issuing Safety Advisory 2015–03 to stress to passenger railroads and railroads that host passenger service and their employees the importance of compliance with Federal regulations and applicable railroad rules governing applicable passenger train speed limits. This safety advisory makes recommendations to these railroads to ensure that compliance with applicable passenger train speed limits is addressed by appropriate railroad operating policies and procedures and signal systems.

FOR FURTHER INFORMATION CONTACT: Ron Hynes, Director, Office of Safety Assurance and Compliance, Office of Railroad Safety, FRA, 1200 New Jersey

Avenue SE., Washington, DC 20590, telephone (202) 493–6404.

SUPPLEMENTARY INFORMATION: The overall safety of railroad operations has improved in recent years. However, two fatal passenger train accidents in the last 18 months in which serious overspeed events occurred highlight the need to ensure train speed limit compliance, as mandated by existing Federal railroad safety regulations and railroad operating rules.

Amtrak Derailment

On Tuesday, May 12, 2015, Amtrak passenger train 188 (Train 188) was traveling timetable east (northbound) from Washington, DC, to New York City. Aboard the train were five Amtrak crew members, three Amtrak employees, and 250 passengers. Train 188 consisted of a locomotive in the lead and seven passenger cars trailing. Shortly after 9:20 p.m., the train derailed while traveling through a curve at Frankford Junction in Philadelphia, Pennsylvania. As a result of the accident, eight persons were killed, and a significant number of persons were seriously injured.

The National Transportation Safety Board (NTSB) has taken the lead role conducting the investigation of this accident under its legal authority. 49 U.S.C. 1101 *et seq.;* 49 CFR 831.2(b). As is customary, FRA is participating in the NTSB's investigation and also investigating the accident under its own authority. While NTSB has not yet issued any formal findings, the information released to date indicates that train speed was a factor in the derailment. As Train 188 approached the curve from the west, it traveled over a straightaway with a maximum authorized passenger train speed of 80 mph. The maximum authorized passenger train speed for the curve was 50 mph. NTSB determined that the train was traveling approximately 106 mph within the curve's 50-mph speed restriction, exceeding the maximum authorized speed on the straightaway by 26 mph, and 56 mph over railroad's maximum authorized speed for the curve.[1]

In response to the derailment, FRA issued Emergency Order No. 31 (EO 31; 80 FR 30534, May 28, 2015). EO 31 requires Amtrak to take the following actions to ensure the safe operation of passenger trains on the Northeast Corridor:[2]

- Immediately implement code changes to Amtrak's Automatic Train Control (ATC) System to enforce the passenger train speed limit ahead of the curve at Frankford Junction in Philadelphia, Pennsylvania where the fatal derailment occurred.
- Survey its Northeast Corridor system and identify each main track curve where there is a reduction of more than 20 mph from the maximum authorized approach speed to that curve for passenger trains, and provide a list of each curve location to FRA within 5 days after EO 31 was issued.
- Submit an action plan for FRA approval within 20 days identifying modifications to its ATC System (or other signal systems) that Amtrak will make to enable warning and enforcement of applicable passenger train speeds at the identified curves. If such modifications would interfere with the timely implementation of a Positive Train Control (PTC) system or are not otherwise feasible, Amtrak's plan must describe alternative procedures that it will adopt at the identified curves to ensure compliance with applicable passenger train speed limits. Amtrak's plan must contain milestones and target dates for completion of action plan items.
- Within 30 days of issuance of the Order, Amtrak must begin to install additional wayside signage alerting engineers and conductors of the maximum authorized passenger train speed throughout its Northeast Corridor system, with particular emphasis on additional signage at the curve locations where significant speed reductions occur. Amtrak must identify the locations where it intends to install the additional wayside speed limit signs in its action plan, and must notify FRA when installation of the signs is completed.

Metro-North Derailment

In addition to the recent Amtrak passenger train derailment discussed above, in December 2013 a New York State Metropolitan Transportation Authority Metro-North Commuter Railroad Company (Metro-North) train derailed as it approached the Spuyten Duyvil Station in Bronx, New York. The train traveled over a straightaway with a maximum authorized passenger train speed of 70 mph before reaching a sharp curve in the track with a maximum authorized speed of 30 mph. NTSB's investigation of the Metro-North accident determined the train was traveling approximately 82 mph as it entered the curve's 30-mph speed restriction before derailing. That derailment resulted in four fatalities and at least 61 persons being injured. The Metro-North accident is similar to the recent Amtrak accident in that it involved a serious overspeed event in a sharp curve in the track. As a result of the derailment, FRA issued Emergency Order No. 29 (78 FR 75442, Dec. 11, 2013) requiring Metro-North to take certain actions to control passenger train speeds. FRA also issued Safety Advisory 2013–08, which recommended that all railroads in the United States:

(1) Review the circumstances of the December 1, 2013, Spuyten Duyvil derailment with each of their operating employees.

(2) Provide instruction to their employees during training classes and safety briefings on the importance of compliance with maximum authorized train speed limits and other speed restrictions. This training should include discussion of the railroad's absolute speed limits, speed restrictions based on physical characteristics, temporary speed restrictions, and any other restrictions commonly encountered.

(3) Remind their employees that Federal railroad safety regulation, at 49 CFR 240.305(a)(2) and 242.403(e)(2), prohibits the operation of a locomotive or train at a speed which exceeds the maximum authorized speed by at least 10 mph.

(4) Evaluate quarterly and 6-month reviews of operational testing data as required by 49 CFR 217.9. A railroad should consider increasing the frequency of operational testing where its reviews show any non-compliance with maximum authorized train speeds. A significant number of operational tests should be conducted on trains that are required to reduce speed by more than 20 mph from the maximum authorized train speed. Operational tests should use the reliable methods available, such as reviewing locomotive event recorder data and testing by radar to verify compliance with maximum authorized speeds.

(5) Reinforce the importance of communication between train crewmembers located in the controlling locomotive, particularly during safety critical periods when multiple tasks are occurring (*e.g.,* copying mandatory directives, closely approaching or passing fixed signals and/or cab signals at a reduced speed, approaching locations where the train's movement authority is being restricted, during radio conversations with other

[1] FRA regulations provide, in part, that it is unlawful to ''[o]perate a train or locomotive at a speed which exceeds the maximum authorized limit by at least 10 miles per hour.'' 49 CFR 240.305(a)(2).

[2] EO 31's requirements will not apply where Amtrak's Positive Train Control System (Advanced Civil Speed Enforcement System (ACSES)) is already in use on the Northeast Corridor. Among other features, ACSES enforces civil speed restrictions that are in place at locations such as curves and bridges.

employees or job briefings about track characteristics) and during extended periods of inactivity.

Overspeed Prevention

FRA recognizes that passenger rail transportation is generally extremely safe. However, these two recent accidents, which both involved overspeed events and resulted in numerous passenger fatalities, highlight the need to remain vigilant in ensuring employee compliance with operational speed limits and restrictions for passenger trains. As required by 49 U.S.C. 20157, railroads operating scheduled intercity and commuter passenger service in this country are required to implement PTC Systems by December 31, 2015. By statute a PTC system must be designed to prevent the type of overspeed events that occurred in the derailments discussed above, as well as train-to-train collisions, incursions into roadway work zone limits, and the movement of a train over a switch left in the wrong position. Amtrak has indicated that it intends to meet the statutory deadline to install PTC on the Northeast Corridor. FRA understands that other passenger railroads in this country have concerns about their ability to meet the December 31, 2015 deadline to install PTC. FRA intends to enforce the December 31, 2015 deadline to ensure that PTC is in use as quickly, safely, and efficiently as possible.

Until PTC is in use across the passenger railroad systems in this country, and due to the significant safety concerns presented by the two accidents described above, FRA believes all passenger railroads and railroads that host passenger service need to evaluate their systems and take immediate actions to prevent future catastrophic overspeed events from occurring.

Some railroads have ATC or cab signal systems [3] that may be modified to prevent overspeed events at critical locations such as curves, bridges, and stations, similar to what FRA required of Amtrak at the May 12, 2015 derailment location in EO 31. Where such signal system modifications are appropriate and would not interfere with the timely implementation of PTC,[4] FRA recommends that railroads make such modifications after identifying critical main track locations. Where such modifications to the signal system to slow trains at critical locations are not viable or would interfere with PTC implementation (or on railroads where no cab signal or ATC system is installed or operative), FRA encourages railroads to take other operational actions to prevent overspeed events, such as requiring additional qualified employees to occupy the controlling locomotive of a train to identify and communicate the applicable passenger train speed limits and restrictions, or by requiring additional crew communications regarding applicable passenger train speed limits and restrictions.

FRA will continue to focus on ensuring passenger railroad compliance with maximum authorized train speeds and relevant temporary and permanent speed restrictions in the coming months, including stepped up enforcement actions. These actions will include, but will not be limited to, on-board inspections, radar speed monitoring at locations of significant permanent or temporary speed restrictions, monitoring of railroad officers who conduct operational tests, and comprehensive reviews of a railroad's implementation of their operational tests and inspection program.

FRA strongly encourages railroads and other industry members to re-emphasize the importance of compliance with maximum authorized train speeds and any applicable speed restrictions, and to conduct operational testing at a level that will ensure compliance with all posted speed restrictions.

Recommended Railroad Action: In light of the accidents discussed above, and in an effort to ensure the safety of the Nation's railroads, their employees, and the general public, FRA recommends that passenger railroads and railroads that host passenger service [5] do each of the following:

(1) Review and implement the recommendations made in FRA Safety Advisory 2013–08, which are discussed above.

(2) Review the circumstances of the fatal May 12, 2015, Philadelphia derailment with their operating employees.

(3) Survey their entire systems, or the portions on which passenger service is operated, and identify main track locations where there is a reduction of more than 20 mph from the approach speed to a curve or bridge and the maximum authorized operating speed for passenger trains at that curve or bridge (identified locations).

(4) If the railroad utilizes an ATC, cab signal, or other signal system capable of providing warning and enforcement of applicable passenger train speed limits, make modifications to those systems where appropriate to ensure compliance with applicable speed limits at the identified locations. If the railroad is required to implement PTC at the identified locations, implement these recommended signal system changes in the interim.

(5) If the railroad does not utilize an ATC, cab signal, or other signal system capable of providing warning and enforcement of applicable passenger train speed limits (or if a signal system modification would interfere with the implementation of PTC or is otherwise not viable) all passenger train movements at the identified locations be made with a second qualified crew member in the cab of the controlling locomotive, or with constant communication between the locomotive engineer and an additional qualified and designated crewmember in the body of the train. If the railroad is required to implement PTC at the identified locations, implement these recommended changes in the interim.

(6) Install additional wayside signage alerting engineers and conductors of the maximum authorized passenger train speed throughout the passenger railroad's system or the portions of its system in which passenger service is operated, with particular emphasis on additional signage at the identified locations.

FRA encourages all railroad industry members to take actions consistent with the preceding recommendations. FRA may modify this Safety Advisory 2015–03, issue additional safety advisories, or take other appropriate action necessary to ensure the highest level of safety on the Nation's railroads, including pursing other corrective measures under its rail safety authority.

Issued in Washington, DC on June 9, 2015.

Sarah Feinberg

Acting Administrator.

[FR Doc. 2015–14394 Filed 6–11–15; 8:45 am]

BILLING CODE 4910–06–P

[3] FRA regulations require that "[p]rior to December 31, 2015, where any train is permitted to operate at a speed of 80 or more miles per hour, an automatic cab signal, automatic train stop, or automatic train control system complying with the provisions of this part [part 236] shall be installed, unless an FRA approved PTC system meeting the requirements of this part [part 236] for the subject speed and other operating conditions, is installed." 49 CFR 236.0(d)(1).

[4] FRA recommends that railroads consult with FRA if they believe a modification would interfere with PTC implementation.

[5] This Safety Advisory only applies to the portions of the railroad's system over which passenger service is operated.

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Docket No. AB 290 (Sub-No. 354X)]

The Cincinnati, New Orleans and Texas Pacific Railway Company—Discontinuance of Service Exemption—in Scott County, Tenn

The Cincinnati, New Orleans and Texas Pacific Railway Company (CNOTP), a wholly owned subsidiary of Norfolk Southern Railway Company, has filed a verified notice of exemption under 49 CFR pt. 1152 subpart F–*Exempt Abandonments and Discontinuances of Service* to discontinue service over approximately 3.09 miles of rail line from milepost NR 215.61 near Helenwood to milepost NR 218.7 at New River in Scott County, Tenn. (the Line). The Line traverses United States Postal Service Zip Code 37755.

CNOTP originally filed its notice of exemption on January 15, 2015, and supplemented the filing on January 29, 2015. In its Notice, CNOTP had stated that ''Further Board approval is required for CNOTP to abandon service on the Line.'' In the supplement, CNOTP corrects that statement. CNOTP explains that the underlying track and structures on the Line are owned by the City of Cincinnati, Ohio through an instrumentality known as Cincinnati Southern Railway (CSR), not by CNOTP. CNOTP states that CSR is not, and has never been, a common carrier subject to the Board's regulations. CNOTP states that, following discontinuance, CSR, as owner of the track, has agreed to sell the track to KT Group, L.L.C., who intends to salvage the track, but not the ties.

Because the discontinuance is over track that is owned by an entity that is not subject to Board jurisdiction, CNOTP's discontinuance would allow CSR to salvage track without seeking further Board authority, including the preparation of environmental documentation. In light of these circumstances, on March 3, 2015, CNOTP filed a request to hold the proceeding in abeyance so that it could complete environmental and historic reports in connection with the discontinuance. In a decision served on March 9, 2015, the Board held in abeyance the publication of the notice in the **Federal Register** and the effectiveness of the exemption pending completion and filing of an environmental and historic report.

OEA served a draft Environmental Assessment (EA) on May 8, 2015. OEA solicited public comments, but no comments in response to the EA were received by the May 22, 2015 due date. OEA issued a Final EA on May 22, 2015. No environmental or historic preservation issues have been raised by any party or identified by OEA, and no environmental conditions have been recommended by OEA. The Board will issue a separate decision finding that the proposed transaction will not significantly affect either the quality of the human environment or the conservation of energy resources.

CNOTP has certified that: (1) No local traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years, and if there were any, it could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) to subsidize continued rail service has been received, this exemption will become effective on July 12, 2015, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA to subsidize continued rail service under 49 CFR 1152.27(c)(2),[1] must be filed by June 22, 2015.[2] Petitions to reopen must be filed by July 2, 2015, with the Surface Transportation Board, 395 E Street SW., Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to CNOTP's representative: William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW., Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void *ab initio.*

Board decisions and notices are available on our Web site at ''*www.stb.dot.gov.*''

Decided: June 8, 2015.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

Brendetta S. Jones,

Clearance Clerk.

[FR Doc. 2015–14452 Filed 6–11–15; 8:45 am]

BILLING CODE 4915–01–P

[1] Each OFA must be accompanied by the filing fee, which is currently set at $1,600. *See* 49 CFR 1002.2(f)(25).

[2] Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate.

FEDERAL REGISTER

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Part II

Securities and Exchange Commission

17 CFR Parts 200, 210, 230, *et al.*

Investment Company Reporting Modernization; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 200, 210, 230, 232, 239, 240, 249, 270, 274

[Release Nos. 33–9776; 34–75002; IC–31610; File No. S7–08–15]

RIN 3235–AL42

Investment Company Reporting Modernization

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing new rules and forms as well as amendments to its rules and forms to modernize the reporting and disclosure of information by registered investment companies. The Commission is proposing new Form N–PORT, which would require certain registered investment companies to report information about their monthly portfolio holdings to the Commission in a structured data format. In addition, the Commission is proposing amendments to Regulation S–X, which would require standardized, enhanced disclosure about derivatives in investment company financial statements, as well as other amendments. The Commission is also proposing new rule 30e–3, which would permit but not require registered investment companies to transmit periodic reports to their shareholders by making the reports accessible on a Web site and satisfying certain other conditions. The Commission is proposing new Form N–CEN, which would require registered investment companies, other than face amount certificate companies, to annually report certain census-type information to the Commission in a structured data format. Finally, the Commission is proposing to rescind current Forms N–Q and N–SAR and to amend certain other rules and forms. Collectively, these amendments would, among other things, improve the information that the Commission receives from investment companies and assist the Commission, in its role as primary regulator of investment companies, to better fulfill its mission of protecting investors, maintaining fair, orderly and efficient markets, and facilitating capital formation. Investors and other potential users could also utilize this information to help investors make more informed investment decisions.

DATES: Comments should be received on or before August 11, 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*);
- Send an email to *rule-comments@sec.gov*. Please include File No. S7–08–15 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 Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–08–15. 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/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 10:00 a.m. and 3:00 p.m. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information 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 Commission'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: Daniel K. Chang, Senior Counsel, J. Matthew DeLesDernier, Senior Counsel, Jacob D. Krawitz, Senior Counsel, Andrea Ottomanelli Magovern, Senior Counsel, Michael C. Pawluk, Branch Chief, or Sara Cortes, Senior Special Counsel, at (202) 551–6792, Investment Company Rulemaking Office, Alan Dupski, Assistant Chief Accountant, Chief Accountant's Office, at (202) 551–6918, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission (the ''Commission'') is proposing for comment new Form N–PORT [referenced in 17 CFR 274.150], new Form N–CEN [referenced in 17 CFR 274.101] under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] (''Investment Company Act''); new rules 30a–4 [17 CFR 270.30a–4], 30b1–9 [17 CFR 270.30b1–9] and 30e–3 [17 CFR 270.30e–3] under the Investment Company Act; rescission of rules 30b1–1 [17 CFR 270.30b1–1], 30b1–2 [17 CFR 270.30b1–2], 30b1–3 [17 CFR 270.30b1–3], and 30b1–5 [17 CFR 270.30b1–5] under the Investment Company Act; amendments to rules 8b–16 [17 CFR 270.8b–16], 8b–33 [17 CFR 270.8b–33], 10f–3 [17 CFR 270.10f–3], 30a–1 [17 CFR 270.30a–1], 30a–2 [17 CFR 270.30a–2], 30a–3 [17 CFR 270.30a–3], and 30d–1 [17 CFR 270.30d–1] under the Investment Company; amendments to Forms N–1A [referenced in 17 CFR 274.11A], N–2 [referenced in 274.11a–1], N–3 [referenced in 274.11b], N–4 [referenced in 17 CFR 274.11c], and N–6 [referenced in 17 CFR 274.11d] under the Investment Company Act and the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] (''Securities Act''); amendments to rule 498 [17 CFR 230.498] and Form N–14 [referenced in 17 CFR 239.23] under the Securities Act; rescission of Form N–SAR [referenced in 17 CFR 274.101 and Form N–Q [referenced in 17 CFR 274.130] and amendments to Form N–CSR [referenced in 17 CFR 274.128] under the Investment Company Act and Securities Exchange Act of 1934 [15 U.S.C. 78a *et seq.*] (''Exchange Act''); amendments to rules 10A–1 [17 CFR 240.10A–1], 12b–25 [17 CFR 240.12b–25], 13a–10 [17 CFR 240.13a–10], 13a–11 [17 CFR 240.13a–11], 13a–13 [17 CFR 240.13a–13], 13a–16 [17 CFR 240.13a–16], 14a–16 [17 CFR 240.14a–16]; 15d–10 [17 CFR 240.15d–10], 15d–11 [17 CFR 240.15d–11], 15d–13 [17 CFR 240.15d–13], and 15d–16 [17 CFR 240.15d–16] under the Exchange Act; rescission of section 332 [17 CFR 249.332] and amendments to sections 322 [17 CFR 249.322] and 330 [17 CFR 249.330] of 17 CFR part 249; amendments to Article 6 [17 CFR 210.6–01 *et seq.*] and Article 12 [17 CFR 210.12–01 *et seq.*] of Regulation S–X [17 CFR 210]; amendments to section 800 of 17 CFR part 200 [17 CFR 200.800]; and amendments to rules 105 [17 CFR 232.105], 301 [17 CFR 232.301], and 401 [17 CFR 232.401] of Regulation S–T [17 CFR 232].

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I. Background

A. Changes in the Industry and Technology

As the primary regulator of the asset management industry, the Commission relies on information included in reports filed by registered investment companies (''funds'') [1] and investment advisers for a number of purposes, including monitoring industry trends, informing policy and rulemaking, identifying risks, and assisting Commission staff in examination and enforcement efforts. Over the years, however, as assets under management and complexity in the industry have grown, so too has the volume and complexity of information that the Commission must analyze to carry out its regulatory duties.

Commission staff estimates that there were approximately 16,619 funds registered with the Commission, as of December 2014.[2] Commission staff further estimates that there were about 11,500 investment advisers registered with the Commission, along with another 2,845 advisers that file reports with the Commission as exempt reporting advisers, as of January 2015.[3] At year-end 2014, assets of registered investment companies exceeded $18 trillion, having grown from about $4.7 trillion at the end of 1997.[4] At the same time, the industry has developed new product structures, such as exchange-traded funds (''ETFs'') [5], new fund types, such as target date funds with asset allocation strategies,[6] and increased its use of derivatives and

[1] For purposes of the preamble of this release, we use ''funds'' to mean registered investment companies other than face amount certificate companies and any separate series thereof—*i.e.,* management companies and unit investment trusts. In addition, we use the term ''management companies'' or ''management investment companies'' to refer to registered management investment companies and any separate series thereof. We note that ''fund'' may be separately and differently defined in each of the proposed new forms or rules, or proposed rule or form amendments.

[2] Based on data obtained from the Investment Company Institute. *See www.ici.org/research/* stats.

[3] Based on Investment Adviser Registration Depository system data. In 2010, Congress charged the Commission with implementing new reporting and registration requirements for certain investment advisers to private funds (known as ''exempt reporting advisers''). *See* Public Law 111–203, 124 Stat. 1376, 1570–80.

Form ADV is used by registered investment advisers to register with the Commission and with the states and by exempt reporting advisers to report information to the Commission. Information on Form ADV is available to the public through the Investment Adviser Public Disclosure System, which allows the public to access the most recent Form ADV filing made by an investment adviser and is available at *http://www.adviserinfo.sec.gov*. Today, in a contemporaneous release, we are proposing a limited set of amendments to Form ADV and certain rules under the Advisers Act to fill certain data gaps and to enhance current reporting requirements, to incorporate ''umbrella registration'' for private fund advisers, and to make clarifying, technical and other amendments. *See* Amendments to Form ADV and Investment Advisers Act Rules, Investment Advisers Act Release No. 4091 (May 20, 2015).

[4] *See* Investment Company Institute, 2015 Investment Company Fact Book 9 (55th ed., 2015) (''2015 ICI Fact Book''), *available at http://www.ici.org/research/stats/factbook*.

[5] *See generally* Exchange-Traded Funds, Securities Act Release No. 8901 (Mar. 11, 2008) [73 FR 14618, 14619 (Mar. 18, 2008)] (''ETF Proposing Release''); *see also http://www.ici.org/etf_resources/research/etfs_03_15* (discussing March 2015 statistics on ETFs). As of March 2015, there were over 1400 ETFs with over $2 trillion in assets. In the period of March 2014 to March 2015, assets of ETFs increased $352.43 billion or 20.6%. *See id.*

[6] *See generally* Investment Company Advertising: Target Date Retirement Fund Names and Marketing, Securities Act Release No. 9126 (June 16, 2010) [75 FR 35920 (June 23, 2010)] (''Investment Company Advertising Release'').

other alternative strategies.[7] These products and strategies can offer greater opportunities for investors to achieve their investment goals, but they can also add complexity to funds' investment strategies, amplify investment risk, or have other risks, such as counterparty credit risk.

While these changes have been taking place in the fund industry, there has also been a significant increase in the use of the Internet as a tool for disseminating information and advances in the technology that can be used to report and analyze information. As discussed below, we have allowed the use of the Internet as a platform for providing required disclosure to investors. We have also started to use structured and interactive data formats to collect, aggregate, and analyze data reported by registrants and other filers. These data formats for information collection have enabled us and other data users, including investors and other industry participants, to better collect and analyze reported information and have improved our ability to carry out our regulatory functions.

We have historically acted to modernize our forms and the manner in which information is filed with the Commission and disclosed to the public in order to keep up with changes in the industry and technology. For example, in 1985, the Commission replaced five different reporting forms with Form N–SAR, which was designed to require reporting of data in a structured manner so that the Commission could construct a comprehensive database of information about the fund industry.[8] In 2000, we adopted new rules and rule amendments under the Investment Advisers Act of 1940 (''Advisers Act'') to require advisers registered with the Commission to make filings under the Advisers Act with the Commission electronically through the Investment Adviser Registration Depository (IARD).[9] In 2007, we sought to enhance the ability of investors to make informed voting decisions and to expand the use of the Internet to ultimately lower the costs of proxy solicitations by requiring Internet availability of proxy materials.[10]

In 2009, we amended Form N–1A, the registration form for open-end funds, to enhance the information provided to investors by requiring these funds to include a summary of key information in the front of their prospectuses.[11] The 2009 amendments to Form N–1A also sought to harness the benefits of technological advances and increased Internet usage by allowing mutual funds to satisfy their prospectus delivery obligations by delivering a summary prospectus to investors and posting the statutory prospectus and other materials on an Internet Web site.

Also in 2009, the Commission sought to take advantage of new technology by adopting amendments requiring open-end funds to file their prospectus risk/return summaries in eXtensible Business Reporting Language (''XBRL'').[12] In doing so, the Commission noted that this interactive data format would make ''risk/return summary information easier for investors to analyze [and] assist in automating regulatory filings and business information processing.'' Additionally, in 2010, the Commission adopted Form N–MFP, which requires money market funds to report detailed portfolio holdings information on a monthly basis in Extensible Markup Language (''XML'').[13] Because these disclosures and reports are filed in a structured data format using XBRL or XML, Commission staff, investors and other potential users are able to aggregate and analyze the data in a much less labor-intensive manner than plain text or hypertext filing formats would allow. The Commission also now uses the XML data format to collect and analyze certain information from advisers to private funds on Form PF[14] and has modernized the reporting of securities holdings by institutional investment managers on Form 13F,[15] which we believe resulted in efficiencies for data users.[16]

[7] *See generally* Use of Derivatives by Investment Companies Under the Investment Company Act of 1940, Investment Company Act Release No. 29776 (Aug. 31, 2011) [76 FR 55237 (Sept. 7, 2011)] (''Derivatives Concept Release''); International Swaps and Derivatives Association (''ISDA'') Study, *Size and Uses of the Non-Cleared Derivatives Market* (Apr. 2014), *available at http://www2.isda.org/attachment/NjQ0MA==/FINAL%20-%20Size%20and%20Uses%20of%20the%20Non-Cleared%20Derivatves%20Market.pdf* (noting increases in the use of inflation swaps by asset managers and other investors); ISDA Research Study, *Dispelling Myths: End-User Activity in OTC Derivatives* (Aug. 2014), *available at http://www2.isda.org/attachment/Njc2Nw==/ISDA-Dispelling%20myths-final.pdf* (noting levels of derivative usage by surveyed American and French asset managers of 27% in 2011 and 53% in 2013, respectively, with 98% of total gross notional exposure of surveyed UK hedge funds related to derivatives in 2013; Sam Diedrich, *'Alternative' or 'Hedged' Mutual Funds: What Are They, How Do They Work, and Should You Invest?,* (Feb. 28, 2014), *available at http://www.forbes.com/sites/samdiedrich/2014/02/28/alternative-or-hedged-mutual-funds-what-are-they-how-do-they-work-and-should-you-invest/* (noting that ''alternative mutual fund products grew at a neck-breaking 43% [in 2013]. . . .'').

[8] *See* Semi-Annual Report Form for Registered Investment Companies, Exchange Act Release No. 21633 (Jan. 4, 1985) [50 FR 1442 (Jan. 11, 1985)]. Reports on Form N–SAR are publicly available on the Commission's EDGAR Web site.

[9] *See* Electronic Filing by Investment Advisers; Amendments to Form ADV, Investment Advisers Act Release No. 1897 (Sept. 12, 2000) [65 FR 57438 (Sept. 22, 2000)].

[10] *See* Shareholder Choice Regarding Proxy Materials, Investment Company Act Release No. 27911 (July 26, 2007) [72 FR 42222 (Aug. 1, 2007)].

[11] *See* Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Investment Company Act Release No. 28584 (Jan. 13, 2009) [74 FR 4546 (Jan. 26, 2009)].

[12] *See* Interactive Data for Mutual Fund Risk/Return Summary, Investment Company Act Release No. 28617 (Feb. 11, 2009) [74 FR 7748 (Feb. 19, 2009)]. Just prior to adopting the XBRL requirements for mutual fund risk/return summaries, the Commission also adopted amendments requiring operating companies to provide their financial statement information in XBRL format. *See* Interactive Data to Improve Financial Reporting, Securities Act Release No. 33–9002 (Jan. 30, 2009) [74 FR 6776 (Feb. 10, 2009)]. In adopting these requirements, the Commission noted that ''[i]n this format, financial statement information could be downloaded directly into spreadsheets, analyzed in a variety of ways using commercial off-the-shelf software, and used within investment models in other software formats.'' *Id.*

[13] *See* Money Market Fund Reform, Investment Company Act Release No. 29132 (Feb. 23, 2010) [75 FR 10060, 10082 (Mar. 4, 2010)] (''Money Market Fund Reform 2010 Release''); *see also* Money Market Fund Reform; Amendments to Form PF, Investment Company Act Release No. 31166 (July 23, 2014) [79 FR 47736 (Aug. 14, 2014)] (''Money Market Fund Reform 2014 Release'') (adopting amendments to Form N–MFP). The information in Form N–MFP allows the Commission, investors, and other potential users to monitor compliance with rule 2a–7 and to better understand and monitor the underlying risks of money market fund portfolios. Additionally, pursuant to the 2010 and 2014 amendments, money market funds are required to disclose certain information, including portfolio holdings, on their Web sites.

[14] *See* Reporting by Investment Advisers to Private Funds and Certain Commodity Pool Operators and Commodity Trading Advisors on Form PF, Investment Advisers Act Release No. 3308 (Oct. 31, 2011) [76 FR 71228 (Nov. 16, 2011)] (''Form PF Adopting Release'').

[15] *See* Adoption of Updated EDGAR Filer Manual, Securities Act Release No. 9403 (May 14, 2013) [78 FR 29616 (May 21, 2013)].

[16] The Commission has also proposed and adopted XML data reporting requirements in other contexts. *See, e.g.,* Mandated Electronic Filing and Web site Posting For Forms 3, 4 and 5, Securities Act Release No. 8230 (May 7, 2003) [68 FR 27588 (May 13, 2003)]; Electronic Filing and Revision of Form D, Securities Act Release No. 8891 (Feb. 6, 2008) [73 FR 10592 (Feb. 27, 2008)]; Electronic Filing of Transfer Agent Forms, Securities Exchange Act Release No. 54864 (Dec. 4, 2006) [71 FR 74698 (Dec. 12, 2006)]; Asset-Backed Securities Disclosure and Registration, Securities Act Release No. 9638 (Sept. 4, 2014) [79 FR 57184 (Sept. 24, 2014)]; Crowdfunding Securities Act Release No. 9470 (Oct. 23, 2013) [78 FR 66428 (Nov. 5, 2013)]; Proposed Rule Amendments for Small and Additional Issues Exemptions Under Section 3(b) of the Securities Act, Securities Act Release No. 9497 (Dec. 18, 2013) [79 FR 3926 (Jan. 23, 2014)]. *See generally* Recommendations of the Investor Advisory Committee Regarding the SEC and the Need for the Cost Effective Retrieval of Information by Investors (July 25, 2013), *available at http://www.sec.gov/spotlight/investor-advisory-committee-2012/data-tagging-resolution-72513.pdf.*

As these industry changes and technological advances have occurred over the years, we recognize a need to improve the type and format of the information that funds provide to us and to investors. We also recognize the need to improve the information that the Commission receives from funds in order to improve the Commission's monitoring of the fund industry in its role as the primary regulator of funds and investment advisers. As discussed below, today we are proposing a set of reporting and disclosure reforms designed to take advantage of the benefits of advanced technology and to modernize the fund reporting regime in order to help the Commission, investors, and other market participants better assess different fund products and to assist us in carrying out our mission to protect investors, maintain fair, orderly, and efficient markets, and facilitate capital formation. Our proposed reforms seek to (1) increase the transparency of fund portfolios and investment practices both to the Commission and to investors, (2) take advantage of technological advances both in terms of the manner in which information is reported to the Commission and how it is provided to investors and other potential users, and (3) where appropriate, reduce duplicative or otherwise unnecessary reporting burdens on the industry.

We also note that in December 2014, the Financial Stability Oversight Council (''FSOC'') issued a notice requesting comment on aspects of the asset management industry, which includes, among other entities, registered investment companies.[17] The notice included requests for comment on additional data or information that would be helpful to regulators and market participants. Although this rulemaking proposal is independent of FSOC, several commenters responding to the notice discussed issues concerning data that are relevant to the rules we are proposing today, including data regarding derivatives, global identifiers, and securities lending activities and are cited in the discussions below, as relevant.[18]

B. Changes to Current Reporting Regime

1. Form N–PORT, Amendments to Regulation S–X, and Option for Web Site Transmission of Shareholder Reports

Currently, management investment companies (other than small business investment companies (''SBICs'')) are required to report their complete portfolio holdings to the Commission on a quarterly basis.[19] These funds are required to provide this information in reports on Form N–Q under the Investment Company Act and the Exchange Act as of the end of each first and third fiscal quarter,[20] and in reports on Form N–CSR under those Acts as of the end of each second and fourth fiscal quarter.[21]

As discussed in Parts II.A and II.B of this release, we propose to rescind Form N–Q and adopt a new portfolio holdings reporting form, Form N–PORT, which would be filed by all registered management investment companies and unit investment trusts (''UITs'') that operate as ETFs,[22] other than money market funds and SBICs.[23] We are proposing that reports on Form N–PORT would be filed with the Commission on a monthly basis, with every third month available to the public 60 days after the end of the fund's fiscal quarter. The reports on Form N–PORT would include a fund's complete portfolio holdings in a structured data format. Additionally, as discussed below, proposed Form N–PORT would include additional information concerning fund portfolio holdings that are not currently provided on Forms N–Q and N–CSR, but that would facilitate risk analyses and other Commission oversight. For example, Form N–PORT would require reporting of additional information relating to derivative investments. It would also include certain risk metric calculations that would measure a fund's exposure and sensitivity to changing market conditions, such as changes in asset prices, interest rates, or credit spreads.

We believe that more timely and frequent reporting of portfolio holdings information, as well as the additional information we are proposing to require, would enable the Commission to further its mission to protect investors by assisting the Commission and Commission staff in carrying out its regulatory responsibilities related to the asset management industry. These responsibilities include its examination, enforcement, and monitoring of funds, the Commission's formulation of policy, and the staff's review of fund registration statements and disclosures.

While Form N–PORT is primarily designed to assist the Commission and Commission staff, we believe that information in Form N–PORT would be beneficial to investors and other potential users. In particular, we believe that both sophisticated institutional investors and third-party users that provide services to investors may find the information we propose to require on Form N–PORT useful. For example, Form N–PORT's structured format would allow the Commission, investors, and other potential users to better collect and analyze portfolio holdings information. The portfolio holdings information currently filed on Form N–Q, in contrast, is filed in a plain text or hypertext format, which often requires labor-intensive manual reformatting by Commission staff and other potential users in order to prepare the reported data for analysis. While we do not anticipate that many individual investors would analyze data using Form N–PORT, although some may, we believe that individual investors would benefit indirectly from the information collected on reports on Form N–PORT, through enhanced Commission monitoring and oversight of the fund industry and through analyses prepared by third-party service providers.

In addition, we are proposing amendments to Regulation S–X that would require standardized enhanced derivatives disclosures in fund financial statements, as well as other amendments. Currently, Regulation S–X does not prescribe specific information for most types of derivatives, including swaps, futures, and forwards. While we recognize that many fund groups provide disclosures regarding the terms

[17] Financial Stability Oversight Council, Notice Seeking Comment on Asset Management Products and Activities, Docket No. FSOC–2014–0001 (''FSOC Notice''), *available at http://www.treasury.gov/initiatives/fsoc/rulemaking/Documents/Notice%20Seeking%20Comment%20on%20Asset%20Management%20Products%20and%20Activities.pdf*.

[18] Comments submitted in response to the FSOC Notice are available at *http://www.regulations.gov/#!docketDetail;D=FSOC-2014-0001*. We also note that, in addition to commenters that argued for additional specific disclosures by funds, several commenters asserted, as a general matter, that registered funds are currently subject to robust disclosure requirements. *See, e.g.,* Comment Letter of the Investment Company Institute to the FSOC Notice (Mar. 25, 2015); Comment Letter of Federated Investors, Inc. to the FSOC Notice (Mar. 10, 2015); Comment Letter of the Capital Group Companies to the FSOC Notice (Mar. 25, 2015).

[19] *See* Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies, Securities Act Release No. 8393 (Feb. 27, 2004) [69 FR 11244 (Mar. 9, 2004)] (''Quarterly Portfolio Holdings Adopting Release'').

[20] Rule 30b1–5 under the Investment Company Act [17 CFR 270.30b1–5]. While SBICs file reports on Form N–CSR, SBICs are not required to file reports on Form N–Q.

[21] *See* rule 30b2–1 under the Investment Company Act [17 CFR 270.30b2–1].

[22] Under the proposal, all ETFs would be required to file reports on Form N–PORT, regardless of whether they are organized as management companies or UITs. UITs are a type of investment company which (a) are organized under a trust indenture contract of custodianship or agency or similar instrument, (b) do not have a board of directors, and (c) issue only redeemable securities. *See* section 4(2) of the Investment Company Act.

[23] Money market funds file reports on Form N–MFP on a monthly basis and, thus, would not be required to file reports on Form N–PORT.

of their derivatives contracts, the lack of standard disclosure requirements has resulted in inconsistent disclosures in fund financial statements.

We believe our proposed amendments to Regulation S–X to enhance and standardize derivatives disclosures in financial statements would allow comparability among funds and help all investors better assess funds' use of derivatives. We are proposing to require reports on Form N–PORT to contain similar derivatives disclosures to facilitate analysis of derivatives investments across funds. Because Form N–PORT is not primarily designed for individual investors, the proposed amendments to Regulation S–X would require disclosures concerning the fund's investments in derivatives, as well as other disclosures related to liquidity and pricing of investments, in the financial statements that are provided to investors. We have endeavored to mitigate burdens on the industry by conforming the derivatives disclosures that would be required by both Regulation S–X and Form N–PORT.

Finally, we are also proposing a rule that would provide funds with an optional method to satisfy shareholder report transmission requirements by posting such reports online if they meet certain conditions. In order to rely on the rule, funds would be required to make the report and other required materials publicly accessible and free of charge at a Web site address specified in a notice to shareholders, and meet certain conditions relating to shareholder consent, and notice to shareholders of the Web site availability of shareholder reports and of the methods by which shareholders would be able to request a paper copy of the materials. This optional method is intended to modernize the manner in which periodic information is transmitted to shareholders, which we believe would improve the information's overall accessibility while reducing burdens such as the costs associated with printing and mailing shareholder reports.

2. Form N–CEN

Currently, the Commission collects census-type information on management investment companies and UITs on reports on Form N–SAR.[24] As discussed above, Form N–SAR was adopted in 1985 and, at that time, was intended to reduce reporting burdens and better align the information that was required to be reported with the characteristics of the fund industry. While Commission staff has indicated that the census-type information reported on Form N–SAR is useful in its support of the Commission's regulatory functions, staff has also indicated that in the thirty years since Form N–SAR's adoption, changes in the industry have reduced the utility of some of the currently required data elements. Additionally, the filing format that is required for reports on Form N–SAR limits our ability to use the reported information for analysis. Commission staff also believes that obtaining certain additional census-type information not currently collected by Form N–SAR would improve the staff's ability to carry out regulatory functions, including risk monitoring and analysis of the industry.

Accordingly, we are proposing to rescind Form N–SAR and replace it with Form N–CEN, a new form on which funds will report census-type information to the Commission. Form N–CEN would include many of the same data elements as Form N–SAR, but, in order to improve the quality and utility of information reported, would replace those items that are outdated or of limited usefulness with items that we believe to be of greater relevance today. Where possible, we are also proposing to eliminate items that are reported on other Commission forms, or are available elsewhere. In addition, we are proposing to require that reports on Form N–CEN be filed in a structured XML format, which, we believe, could reduce reporting burdens for current Form N–SAR filers and yield data that can be used more effectively by the Commission and other potential users. Finally, we are proposing that reports on new Form N–CEN be filed annually, rather than semi-annually as is required for reports on Form N–SAR by management companies, which would further reduce current burdens on funds.

II. Discussion

A. Form N–PORT

As discussed above, we are proposing to create a new monthly portfolio reporting form, Form N–PORT. Our proposal would require registered management investment companies and ETFs organized as UITs, other than money market funds and SBICs, to electronically file with the Commission monthly portfolio investments information on new Form N–PORT in an XML format no later than 30 days after the close of each month.[25] As discussed below in Part II.A.4, only information reported for the third month of each fund's fiscal quarter on Form N–PORT would be publicly available, and that information would not be made public until 60 days after the end of the fiscal quarter.[26]

As the primary regulator of the fund industry, the Commission relies on information that funds file with us, including their registration statements, shareholder reports, and various reporting forms such as Form N–SAR, Form N–CSR, and Form N–Q. The Commission and its staff use this information to understand trends in the fund industry and carry out regulatory responsibilities, including formulating policy and guidance, reviewing fund registration statements, and assessing and examining a fund's regulatory compliance with the federal securities laws and Commission rules thereunder.

Information on fund portfolios is currently filed with the Commission quarterly with up to a 70-day delay.[27] Moreover, the reports are currently filed in a format that does not allow for efficient searches or analyses across portfolios, and even limits the ability to search or analyze a single portfolio. Based on staff experience with data analysis of funds, including staff experience using Form N–MFP, we believe that more frequent and timely information concerning fund portfolios than we currently receive through registration statements, shareholder reports on Form N–CSR, and reports on Form N–Q will assist the Commission in

[24] *See* rules 30a–1 and 30b1–1 under the Investment Company Act [17 CFR 270.30a–1 and 17 CFR 270.30b1–1].

[25] *See* proposed rule 30b1–9.

[26] As used throughout this section, the term ''fund'' generally refers to investment companies that would file reports on Form N–PORT.

[27] Funds currently file with the Commission portfolio schedules for the fund's first and third fiscal quarters on Form N–Q, and shareholder reports, including portfolio schedules for the fund's second and fourth fiscal quarters, on Form N–CSR. These reports are available to the public and the Commission with either a 60- or 70-day delay. *See* rule 30b1–5 (requiring management companies, other than SBICs, to file reports on Form N–Q no more than 60 days after the close of the first and third quarters of each fiscal year); rule 30b2–1 (requiring management companies to file reports on Form N–CSR no later than 10 days after the transmission to stockholders of any report required to be transmitted to stockholders under rule 30e–1). *See also* rules 30e–1 and 30e–2 under the Investment Company Act [17 CFR 270.30e–1 and 17 CFR 270.30e–2] (requiring management companies and certain UITs to transmit to stockholders semi-annual reports containing, among other things, the fund's portfolio schedules, no more than 60 days after the close of the second and fourth quarters of each fiscal year). These reports include portfolio holdings information as required by Regulation S–X. *See* rule 12–12 of Regulation S–X [17 CFR 210.12–12], *et seq.*

its role as the primary regulator of funds, as discussed further below.

The information we are proposing to collect on Form N–PORT would be important to the Commission in analyzing and understanding the various risks in a particular fund, as well as risks across specific types of funds and the fund industry as a whole. These risks can include the investment risk that the fund is undertaking as part of its investment strategy, such as interest rate risk, credit risk, volatility risk, other market risks, or risks associated with specific types of investments, such as emerging market debt or commodities. Additionally, the information is helpful to understanding liquidity risks and counterparty risks, and determining whether a fund's exposure to price movements is leveraged, either through borrowings or the use of derivatives. We believe that information we are proposing to require on Form N–PORT will assist the Commission in better understanding each of these risks in the fund industry. We believe that the ability to understand the risks that funds face will help our staff better understand and monitor risks and trends in the fund industry as a whole, facilitating our informed regulation of the fund industry.

We also believe that information obtained from Form N–PORT filings would facilitate our oversight of funds and assist Commission staff in examination, enforcement, and monitoring, as well as in formulating policy and in its review of fund registration statements and disclosures. In this regard, we expect that Commission staff would use the data reported on Form N–PORT for many of the same purposes as Commission staff has used data reported on Form N–MFP by money market funds. The data received on Form N–MFP has been used extensively by Commission staff, including for purposes of assessing regulatory compliance, identifying funds for examination, and risk monitoring. Form N–MFP data has also informed Commission policy; for example, staff used Form N–MFP data in analyses that informed the Commission's considerations when it proposed and adopted money market fund reform rules in 2013 and 2014.[28]

We recognize that, unlike money market funds, which as cash management vehicles generally share common investment objectives and strategies and thus invest in a relatively small number of common security types, other funds invest in a much more diverse manner. Accordingly, Form N–PORT, as proposed, would require reporting of additional information relative to Form N–MFP, in order to facilitate understanding and analysis of the investment strategies that funds pursue, as well as the large variety of securities, commodities, currencies, derivatives, and other investments that funds may invest in.

In addition to assisting the Commission in its regulatory functions, we believe that investors and other potential users could benefit from the periodic public disclosure of the information reported on Form N–PORT. Proposed Form N–PORT is primarily designed for use by the Commission and its staff, and not for disclosing information directly to individual investors. This is because the form's structured format, while needed for quantitative analysis within a fund and across funds, is not an easily human-readable format. Additionally, the information we are proposing to require on Form N–PORT is more voluminous than on a schedule of investments. We believe, however, that some investors, particularly institutional investors, could directly use the data from the information on proposed Form N–PORT for their own quantitative analysis of funds, including to better understand the funds' investment strategies and risks, and to better compare funds with similar strategies. Additionally, we believe that entities providing services to investors, such as investment advisers, broker-dealers, and entities that provide information and analysis for fund investors, could also utilize and analyze the information that would be required by proposed Form N–PORT to help all investors make more informed investment decisions. Accordingly, whether directly or through third parties, we believe that the periodic public disclosure of the information on proposed Form N–PORT could benefit all fund investors. As discussed further below, in order to mitigate the risk that the information on Form N–PORT could be used in ways that might ultimately result in investor harm, we are proposing to limit the public availability of Form N–PORT reports to those reports filed as of quarter end, as well as delay public availability of those reports by 60 days after quarter end.

We intend to increase transparency of fund investments through proposed Form N–PORT in several ways. First, N–PORT would improve reporting of fund derivative usage. As the Commission has previously noted, we have observed significant increases in the use of derivatives by funds, which have highlighted the need for more robust and standardized derivatives disclosures.[29] Additionally, funds that are considered ''alternative'' funds, which often use derivatives for implementing their investment strategy, are becoming increasingly popular among investors.[30] Although Regulation S–X establishes general disclosure requirements for financial statements in fund registration statements, based on staff review of fund filings, the lack of standardized requirements as to the terms of derivatives that must be reported has sometimes led to inconsistent approaches to reporting derivatives information and, in some cases, insufficient information concerning the terms and underlying reference assets of derivatives to allow the Commission or investors to understand the investment. This hinders both an analysis of a particular fund's investments, as well as comparability among funds.[31] The information requested in Form N–PORT would create a more detailed, uniform, and structured reporting regime. This would allow the Commission and investors to better analyze and compare

[28] *See, e.g.,* Money Market Fund Reform; Amendments to Form PF, Investment Company Act Release No. 30551 (June 5, 2013) [78 FR 36834 (June 19, 2013)]; Money Market Fund Reform 2014 Release, *supra* note 13 at n.502 and accompanying text (citing use of Form N–MFP data in discussing the Commission's decision to require basis point rounding); and at n.651 and accompanying text (citing use of Form N–MFP data in discussing the Commission's decision regarding the size of the non-government securities basket for government money market funds).

[29] *See* Derivatives Concept Release, *supra* note 7, at n.7 and accompanying text.

[30] While there is no clear definition of ''alternative'' in the fund industry, an alternative fund is generally understood to be a fund whose primary investment strategy falls into one or more of the three following categories: (1) Non-traditional asset classes (for example, currencies); (2) non-traditional strategies (such as long/short equity positions); and/or (3) less liquid assets (such as private debt).

At the end of December 2014, alternative mutual funds had almost $200 billion in assets. Although alternative mutual funds only accounted for 1.19% of the mutual fund market as of December 2014, the almost $20.1 billion of inflows into these funds in 2014 represented 4.3% of the inflows for the entire mutual fund industry in that year. These statistics were obtained from staff analysis of Morningstar Direct data, and are based on fund categories as defined by Morningstar.

[31] *See, e.g.,* rule 12–13 of Regulation S–X [17 CFR 210.12–13] (requiring funds to generally disclose derivatives together with ''other'' investments); rule 6–03 of Regulation S–X [17 CFR 210.6–03] (applying articles 1–4 of Regulation S–X to investment companies, but not specifying where derivative disclosures should be made for funds); ASC 815, Disclosures about Derivative Instruments and Hedging Activities (discussing general derivative disclosure) (''ASC 815''); ASC 820, Fair Value Measurements (requiring disclosure of valuation information for major categories of investments) (''ASC 820''). *See also* Part II.C.

funds' derivatives investments and the exposures they create, which can be important to understanding funds' investment strategies, use of leverage, and potential for risk of loss.

Furthermore, as discussed further below, proposed Form N–PORT would require funds to report certain risk metrics that would provide measurements of a fund's exposure to changes in interest rates, credit spreads and asset prices, whether through investments in debt securities or in derivatives. Financial statement information provides historical information over a particular time period (*e.g.,* a statement of operations), or information about values of assets at a particular point in time (*e.g.,* a balance sheet including, for funds, a schedule of investments). Risk metrics, on the other hand, measure the change in value of an investment in response to small changes in the underlying reference asset of an investment, whether the underlying reference asset is a security (or index of securities), commodity, interest rate, or credit spread over an interest rate. Based on staff experience, as well as staff outreach to asset managers and entities that provide risk management services to asset managers, discussed further below, we believe that fund portfolio managers and risk managers commonly calculate these risk metrics to analyze the exposures in their portfolios.[32] The Commission believes that staff can use these risk measures to better understand the exposures in the fund industry, thereby facilitating better monitoring of risks and trends in the fund industry as a whole.

Form N–PORT would also require information about certain fund activities such as securities lending, repurchase agreements, and reverse repurchase agreements, including information regarding the counterparties to which the fund is exposed in those transactions, as well as in over-the-counter derivatives transactions. Such information would increase transparency concerning these activities and would provide better information regarding counterparty information, which would be useful in assessing both individual and multiple fund exposures to a single counterparty.[33]

Proposed Form N–PORT also requires information that would assist the Commission in assessing fund liquidity risk by, for example, requiring funds to provide information about the market liquidity and pricing of portfolio investments, as well as information regarding fund flows, which is helpful to understanding the liquidity pressures a fund might experience due to investor redemption activity.

Finally, as discussed further below, Form N–PORT would be filed electronically in a structured, XML format. This format would enhance the ability of the Commission, as well as investors and other potential users, to analyze portfolio data both on a fund-by-fund basis and also across funds. As a result, although we are proposing to collect certain information on Form N–PORT that may be similarly disclosed or reported elsewhere (*e.g.,* portfolio investments would continue to be included as part of the schedules of investments contained in shareholder reports, and filed on a semi-annual basis with the Commission on Form N–CSR), we believe that it is appropriate to also collect this information in a structured format for analysis by our staff as well as investors and other potential users.

1. Who Must File Reports on Form N–PORT

Our proposal would require a report on Form N–PORT to be filed by each registered management investment company and each ETF organized as a UIT.[34] Registrants offering multiple series would be required to file a report for each series separately, even if some information is the same for two or more series. Money market funds and SBICs would not be required to file reports on Form N–PORT.[35]

As indicated above, our proposal would require all ETFs to file reports on Form N–PORT, regardless of their form of organization. Although most ETFs today are structured as open-end management investment companies, there are several ETFs that are organized as UITs.[36] ETFs organized as UITs have significant numbers of investors who we believe could benefit from the disclosures required in Form N–PORT.[37]

We request comment on the entities that would be required to file reports on Form N–PORT.

- Should any funds that we are proposing to require to file reports on Form N–PORT not be required to do so? If so, what types of funds?
- Should we require SBICs to file reports on Form N–PORT? How useful would the information reported on Form N–PORT be for investors?
- Our proposal would allow investors in different types of ETFs to compare their portfolio investments by means of identical disclosures on reports on Form N–PORT, regardless of whether an ETF was organized as an open-end management investment company or as a UIT. Should ETFs organized as UITs not be required to file reports on Form N–PORT? If so, why?

2. Information Required on Form N–PORT

Form N–PORT would require a fund to report certain information about the fund and the fund's portfolio investments as of the close of the preceding month, including: (a) General information about the fund; (b) assets and liabilities; (c) certain portfolio-level metrics, including certain risk metrics; (d) information regarding securities lending counterparties; (e) information regarding monthly returns; (f) flow information; (g) certain information regarding each investment in the portfolio; (h) miscellaneous securities (if any); (i) explanatory notes (if any), and (j) exhibits. Each of these is discussed in more detail below.

a. General Information and Instructions

Part A of Form N–PORT would require general identifying information about the fund, including the name of the registrant, name of the series, and relevant file numbers.[38] Funds would

[32] *See generally* John C. Hull, Options, Futures, and Other Derivatives, Seventh Edition (2009) (discussing, for example, the function of duration, convexity, delta, and other calculations used for measuring changes in the value of bonds or derivatives as a result in changes in underlying asset prices or interest rates); Sheldon Natenberg, Option Volatility and Pricing (1994) (same).

[33] *See, e.g.,* Report by Task Force on Tri-Party Repo Infrastructure, May 17, 2010 (concluding that insufficient transparency of the tri-party repurchase agreement market contributed to the build-up of exposures and the lack of prior concerted action to address the issues that led to financial turmoil during 2007–2009). The Task Force on Tri-Party Repo Infrastructure was formed in September 2009 under the purview of the Payments Risk Committee, a private sector body sponsored by the Federal Reserve Bank of New York. The Task Force membership includes representatives from multiple types of market participants that participate in the tri-party repo market, as well as relevant industry associations. Federal Reserve and Commission staff participated in meetings of the Task Force as observers and technical advisors.

[34] *See* proposed rule 30b1–9.

[35] Money market funds already file their monthly portfolio investments with the Commission. *See* Form N–MFP. SBICs are unique investment companies that operate differently than other management investment companies. They are ''privately owned and managed investment funds, licensed and regulated by [the Small Business Administration (''SBA'')], that use their own capital plus funds borrowed with an SBA guarantee to make equity and debt investments in qualifying small businesses.'' *See* SBIC Program Overview *available at https://www.sba.gov/content/sbic-program-overview.* As of December 31, 2014, only one SBIC had publicly offered securities outstanding.

[36] There are currently eight ETFs organized as UITs that have registered with the Commission.

[37] Commission staff estimates that as of December 2014, ETFs organized as UITs represented 14% of all assets invested in ETFs. This analysis is based on data from Morningstar Direct.

[38] *See* Form N–PORT, Items A.1 and A.2. Funds would provide the name of the registrant, the

also report the date of their fiscal year end, the date as of which information is reported on the form, and indicate if they anticipated that this would be their final filing on Form N–PORT.[39] This information would be used to identify the registrant and series filing the report, track the reporting period, and identify final filings.

Additionally, we are proposing that funds provide the Legal Entity Identifier (''LEI'') number of the registrant and series.[40] The LEI is a unique identifier associated with a single corporate entity and is intended to provide a uniform international standard for identifying counterparties to a transaction.[41] Fees are not imposed for the usage of or access to LEIs, and all of the associated reference data needed to understand, process, and utilize the LEIs are widely and freely available and not subject to any usage restrictions. Funds or registrants that have not yet obtained an LEI would be required to obtain one, which would entail a modest fee.[42] The inclusion of LEI information on Form N–PORT, however, would facilitate the ability of investors and the Commission to link the data reported on Form N–PORT with data from other filings or sources that is or will be reported elsewhere as LEIs become more widely used by regulators and the financial industry.[43]

Form N–PORT would also include general filing and reporting instructions, as well as definitions of specific terms referenced in the form.[44] These instructions and definitions are intended to provide clarity to funds and to assist them in filing reports on Form N–PORT.[45]

We seek comment on these proposed disclosures and instructions.

- Is there any additional or alternative information that should be required to facilitate identification of funds and analysis of the reported information with information from other filings or otherwise available elsewhere?
- Should the Commission require funds to obtain LEIs? Is it appropriate for the Commission to require LEIs, which are only available through the global LEI system? Why or why not? In the case of funds that have not obtained an LEI, will those funds seek to obtain an LEI in the future absent any regulatory requirement to do so? In addition to the fees for obtaining and maintaining an LEI, would there be other costs associated with funds obtaining LEIs?[46]
- Are there any instructions or definitions that should be revised? If so, how? Should any instructions or definitions be added to provide additional clarity, or deleted to avoid confusion with conflicting instructions, definitions, or industry practices?

b. Information Regarding Assets and Liabilities

Part B of proposed Form N–PORT would seek certain portfolio level information about the fund. Part B would include questions requiring funds to report their total assets, total liabilities, and net assets.[47] Funds would separately report certain assets and liabilities, as follows. First, funds would report the aggregate value of any ''miscellaneous securities'' held in their portfolios.[48] Currently, Regulation S–X permits funds to report an aggregate amount not exceeding five percent of the total value of the portfolio investments in one amount as ''Miscellaneous securities,'' provided that securities so listed are not restricted, have been held for not more than one year prior to the date of the related balance sheet, and have not previously been reported by name to the shareholders, or set forth in any registration statement, application, or annual report or otherwise made available to the public, and, as discussed further below, we are proposing the same conditions for Form N–PORT.[49]

Funds would also report any assets invested in a controlled foreign corporation for the purpose of investing in certain types of investments (''controlled foreign corporation'' or ''CFC'').[50] Some funds use CFCs for making certain types of investments, particularly commodities and commodity-linked derivatives, often for tax purposes. Our proposal would require funds to disclose each underlying investment in a CFC, rather than just the investment in the CFC itself, which would increase transparency on fund investments through CFCs.[51] These disclosures would allow investors to look through CFCs and understand the specific underlying holdings that they are

Investment Company Act and CIK file numbers for the registrant, and the address and telephone number of the registrant. Funds would also provide the name of and EDGAR identifier for the series.

[39] *See* Form N–PORT, Items A.3 and A.4.

[40] *See* Form N–PORT, Items A.1.d and A.2.c. The Commission has begun to require disclosure of the LEI in other contexts. *See, e.g.,* Form PF Adopting Release, *supra* note 14; Regulation SBSR-Reporting and Dissemination of Security-Based Swap Information, Securities Exchange Act Release No. 74244 (Feb. 11, 2015) [80 FR 14438 (Mar. 19, 2015)] (''Regulation SBSR Adopting Release'').

[41] The global LEI system operates under an LEI Regulatory Oversight Committee (''ROC'') that currently includes members that are official bodies from over 40 jurisdictions. The Commission is a member of the ROC and currently serves on its Executive Committee. The Commission notes that it would expect to revisit the proposed requirement to report LEIs if the operation of the LEI system were to change significantly.

[42] As of December 26, 2014, the cost of obtaining an LEI from the Global Markets Entity Identifier (''GMEI'') Utility in the United States was $200, plus a $20 surcharge for the LEI Central Operating Unit. The annual cost of maintaining an LEI from the GMEI Utility was $100, plus a $20 surcharge for the LEI Central Operating Unit. *See https://www.gmeiutility.org/frequentlyAskedQuestions.jsp.*

[43] *See, e.g.,* Press Release: Commodities Futures Trading Commission (''CFTC'') Announces Mutual Acceptance of Approved Legal Entity Identifiers, CFTC (Oct. 30, 2013), *available at http://www.cftc.gov/PressRoom/PressReleases/pr6758-13*; Letter from Kenneth Bentsen, President & CEO of SIFMA to Jacob Lew, Chairman of FSOC re: Adoption of the Legal Entity Identifier, SIFMA (Apr. 11, 2014), *available at http://www.sifma.org/issues/item.aspx?id=8589948488;* Regulation SBSR Adopting Release, *supra* note 40.

Commenters to the FSOC Notice expressed support for regulatory acceptance of LEI identifiers. *See, e.g.,* Joint Comment Letter of SIFMA/Investment Adviser Association (Mar. 25, 2015) (''SIFMA/IAA FSOC Notice Comment Letter'') (expressing support for the LEI initiative, and noting that the use of LEIs has already enhanced the industry's ability to identify and monitor global market participants); Comment Letter of Fidelity to FSOC Notice (Mar. 25, 2015) (expressing the need to develop analytics to make data intelligible, such as the ability to map exposures across the financial system, such as through the use of LEIs).

[44] *See* Form N–PORT, General Instructions A (Rule as to Use of Form N–PORT), B (Application of General Rules and Regulations), C (Filing of Reports), D (Paperwork Reduction Act Information), E (Definitions), F (Public Availability), G (Responses to Questions), and H (Signature and Filing of Report).

[45] *See id.* For example, General Instructions A, B, C, G, and H provide specific filing and reporting instructions (including how to report entity names, percentages, monetary values, numerical values, and dates), General Instructions D and F provide information about the Paperwork Reduction Act and the public availability of information reported on Form N–PORT, and General Instruction E provides definitions for specific terms referenced in Form N–PORT.

[46] *See supra* note 42 (discussing the costs of obtaining and maintaining an LEI identifier in the United States). The Commission has further estimated the one-time burden associated with obtaining an LEI is one hour, with ongoing administration of an LEI corresponding to one hour per year. *See* SBSR Adopting Release, *supra* note 40, at nn. 1109–1111 and accompanying text.

[47] *See* Form N–PORT, Item B.1.

[48] *See* Form N–PORT, Items B.1.a and B.2.a. As discussed further below, we are proposing that funds would also report information about miscellaneous securities on an investment-by-investment basis, although such information would be nonpublic and would be used for Commission use only. We also request comment below on whether funds should continue to be permitted to categorize investments as ''miscellaneous securities.'' *See infra* note 151 and accompanying text.

[49] *See* rule 12–12 of Regulation S–X.

[50] *See* Form N–PORT, Instruction E (providing that ''controlled foreign corporation'' has the meaning defined in section 957 of the Internal Revenue Code [26 U.S.C. 957]) and Item B.2.b (requiring funds to report assets invested in controlled foreign corporations).

[51] *See* Form N–PORT, Part B Instruction (''Report the following information for the Fund and its consolidated subsidiaries.'').

investing in, which would in turn allow investors to better analyze their fund holdings and risk associated with CFC investments, and hence enable investors to make more informed investment decisions. In addition, as discussed further below in Part II.E.4, we believe it would be beneficial for the Commission to have certain information about funds' use of CFCs. The information we are proposing to obtain in Form N–PORT, combined with additional information we are proposing to require on Form N–CEN regarding CFCs, discussed below, would help the Commission better monitor funds' compliance with the Investment Company Act and assess funds' use of CFCs, including the extent of their use by reporting of total assets in CFCs.[52]

Second, we are proposing to require that funds report the amount of certain liabilities, in particular: (1) Borrowings attributable to amounts payable for notes payable, bonds, and similar debt, as reported pursuant to rule 6–04(13)(a) of Regulation S–X [17 CFR 210.6–04(13)(a)]; (2) payables for investments purchased either (i) on a delayed delivery, when-delivered, or other firm commitment basis, or (ii) on a standby commitment basis; and (3) liquidation preference of outstanding preferred stock issued by the fund.[53] This information would allow Commission staff, as well as investors and other potential users, to better understand a fund's borrowing activities and payment obligations for assets that have been already received, which would facilitate analysis of the fund's use of financial leverage, as well as the fund's liquidity and ability to meet redemptions, which are important to understanding the risks such borrowings might create.

We request comment on the reporting of assets and liabilities proposed on Form N–PORT.

- As discussed above, our proposal would require funds to disclose each underlying investment in a CFC. Should we consider modifying the information we propose to require, or require additional information? How commonly do funds invest in CFCs that in turn invest their assets in underlying investments? Should we provide instructions to clarify how funds should report investments in this situation? If so, should the Commission permit funds to disclose only the ultimate underlying investments, or should the Commission require disclosure of each layer of investment?
- Are there other methods of reporting the assets (including assets in CFCs) and liabilities described above that we should consider?
- Are there other assets and liabilities that funds should be required to separately report? If so, why? For example, should the Commission require funds to separately break out categories of assets and liabilities similar to what is currently required by Form N–SAR?[54] What would be the costs associated with providing such information on a monthly basis?

c. Portfolio Level Risk Metrics

One of the purposes of Form N–PORT is to provide the Commission with information regarding fund portfolios to help us better monitor trends in the fund industry, including investment strategies funds are pursuing, the investment risks that funds undertake, and how different funds might be affected by changes in market conditions. As discussed above, the Commission uses information from fund filings, including a fund's registration statement and reports on Form N–CSR (which includes the fund's shareholder report) and Form N–Q, to inform its understanding and regulation of the fund industry. Additionally our staff reviews fund disclosures—including registration statements, shareholder reports, and other documents—both on an ongoing basis as well as retroactively every three years.[55]

The disclosures in a fund's registration statement about its investment objective, investment strategies, and risks of investing in the fund, as well as the fund's financial statements, are fundamental to understanding a fund's implementation of its investment strategies and the risks in the fund. However, the financial statements and narrative disclosures in fund registration statements and shareholder reports do not always provide a complete picture of a fund's exposure to changes in asset prices, particularly as fund strategies and fund investments become more complex. The financial statements, including a fund's schedule of portfolio investments, provide data regarding investments' values as of the end of the reporting period—a ''snapshot'' of data at a particular point in time—or, in the case of the statement of operations, for example, historical data over a specified time period. By contrast, based on staff experience and outreach to funds, we understand that funds commonly internally use multiple risk metrics that provide calculations that measure the change in the value of fund investments assuming a specified change in the value of underlying assets or, in the case of debt instruments and derivatives that provide exposure to interest rates and debt instruments, changes in interest rates or in credit spreads above the risk-free rate.

Accordingly, we believe it is appropriate to propose requiring funds to report quantitative measurements of certain risk metrics that would provide information beyond the narrative, often qualitative disclosures about investment strategies and risks in the fund's registration statement, as well as a fund's historical financial statement disclosures. Monthly reporting on these risk measures, in particular, would help provide the Commission with more current information on how funds are implementing their investment strategies through particular exposures. Receiving this information on a monthly basis could help the Commission, for example, more efficiently analyze the potential effects of a market event on funds.

Specifically, we are proposing to require certain funds to provide portfolio level measures on Form N–PORT that will help Commission staff better understand and monitor funds' exposures to changes in interest rates and credit spreads across the yield curve. As discussed in Part II.A.2.g below, we are also proposing to require risk measures at the investment level for options and convertible bonds. We believe that the staff can use these measures, for example, to determine whether additional guidance or policy measures are appropriate to improve disclosures in order to help investors better understand how changes in interest rate or credit spreads might affect their investment in a fund.

Additionally, as we discussed above, we believe that institutional investors, as well as entities that provide services to both institutional and individual investors, would be able to use these risk metrics to conduct their own analyses in order to help them better understand fund composition, investment strategy, and interest rate

[52] *See infra* note 467 and accompanying and following text.

[53] *See* Form N–PORT, Items B.2.c to B.2.e.

[54] *See* Form N–SAR, Item 74 (requiring funds to report consolidated balance sheet data, including cash, repurchase agreements, debt-securities, preferred stock, common stock, options, other investments, receivables, other assets, total assets, payables for portfolio instruments purchased, amounts owed to affiliated persons, senior long-term debt, other liabilities, senior equity, net assets of common shareholders, number of shares outstanding, net asset value per share, total number of shareholder accounts, and total value of assets in segregated accounts).

[55] *See, e.g.,* section 408 of the Sarbanes-Oxley Act of 2002, Pub. L. 107–204, 116 Stat. 745 (2002) (requiring the Commission to engage in enhanced review of periodic disclosures by certain issuers every three years).

and credit spread risk the fund is undertaking. This would complement the risk disclosures that are contained in the registration statement, thereby potentially helping all investors to make more informed investment choices. We believe that our proposal to require these funds to publicly disclose these measures quarterly, like other information in the schedule of investments, will also help provide investors with more specific, quantitative information regarding the nature of a fund's exposure to particular asset classes than they do currently. Providing this more specific and current information through periodic public disclosure of such risk metrics could be especially important for investors with respect to funds that continuously offer new shares to the public, because such funds are generally required to maintain an updated or ''evergreen'' prospectus that must precede or accompany delivery of those securities.[56]

In particular, for funds that invest in debt instruments, or in derivatives that provide exposure to debt or debt instruments, we believe it is important for the Commission staff, investors, and other potential users to have measures that would help them analyze how portfolio values might change in response to changes in interest rates or credit spreads.[57] To improve the ability of the Commission staff, investors, and other potential users to analyze how changes in interest rates and credit spreads might affect a fund's portfolio value, we are proposing that a fund that invests in debt instruments, or derivatives that provide exposure to debt instruments or interest rates, representing at least 20% of the fund's notional exposure, provide a portfolio level calculation of duration and spread duration across the applicable maturities in the fund's portfolio.

We are proposing to limit this requirement to funds that invest in debt instruments or derivatives that provide exposure to debt instruments or interest rates that represent at least 20% of the fund's notional value as of the reporting date.[58] We are proposing the 20% threshold because we believe that at this level, the Commission would still receive measurements of duration and spread duration from funds that make investments in debt instruments as a significant part of their investment strategy, while providing an appropriate threshold so that funds that do not invest in debt to achieve their investment strategy would not have to monitor each month whether they trigger the requirement for making such calculations. Funds that primarily invest in assets other than debt instruments, such as equities, might have some level of investments in debt instruments for cash management or other purposes. We do not believe that requiring such funds to provide monthly calculations of duration or spread duration would be helpful for understanding such funds' investment strategy or risk exposures, and we believe that the 20% threshold will provide a *de minimis* level to relieve the burden of calculating these measures for such funds. We believe that information would be most useful from funds that actually use debt exposures as part of their investment strategy. Based on staff experience, we believe that such funds have a debt exposure of at least 20%, and commonly greater than that. As discussed below, we request comment on the proposed *de minimis* threshold.

For duration, we are proposing to require that a fund calculate the change in value in the fund's portfolio from a 1 basis point change in interest rates (commonly known as DV01) for each applicable key rate along the risk-free interest rate curve, *i.e.,* 1 month, 3 month, 6 month, 1 year, 2 year, 3 year, 5 year, 7 year, 10 year, 20 year, and 30 year interest rate, for each applicable currency in the fund. We realize that funds might not have exposures for every applicable key rate. For example, a short-term bond fund is unlikely to have debt exposures with longer maturities. Accordingly, a fund would only report the key rates that are applicable to the fund. Funds would report zero for maturities to which they have no exposure.[59] For exposures outside of the range of listed maturities listed on Form N–PORT (*i.e.,* maturities shorter than one month or longer than 30 years), funds would be instructed to include those exposures in the nearest maturity.

We believe that requiring funds to provide further detail about their exposures to interest rate changes along the risk-free rate curve would provide the Commission with a better understanding of the risk profiles of funds with different strategies for achieving debt exposures. For example, funds targeting an effective duration of five years could achieve that objective in different ways—one fund could invest predominantly in intermediate-term debt; another fund could create a long position in longer-term bonds, matched with a short position in shorter-term bonds. While both funds would have an intermediate-term duration, the risk profiles of these two funds, that is, their exposures to changes in long-term and short-term interest rates, are different. Having the proposed DV01 calculations along the risk-free interest rate curve would clarify this difference. The Commission staff could use this information to better understand how funds are achieving their exposures to interest rates, and use this information to perform analysis across funds with similar strategies to identify outliers for potential further inquiry, as appropriate.

Additionally, we are proposing to require that the same funds provide a measure of spread duration (commonly known as SDV01) at the portfolio level for each of the same maturities listed above, aggregated by non-investment grade and investment grade exposures.[60] This would measure the fund's sensitivity to changes in credit spreads, *i.e.,* a measure of spread above the risk-free interest rate. This is helpful for analyzing shifts in credit spreads for non-investment grade and investment grade debt, respectively, over the yield curve, as credit spreads for investment grade and non-investment grade debt do not always shift in parallel or in lock

[56] *See* section 5(b)(2) of the Securities Act.

[57] As discussed further below, the Commission also believes that there would be a benefit to collecting risk measures for derivatives that provide exposure to certain assets, such as equities and commodities. Due to the nature of these instruments, however, we believe that such information should be provided on an instrument-by-instrument basis, instead of as a portfolio level calculation.

[58] Specifically, we are proposing to calculate notional value as the sum of the absolute values of: (i) The value of each debt security, (ii) the notional amount of each swap, including, but not limited to, total return swaps, interest rate swaps credit default swaps, for which the underlying reference asset or assets are debt securities or an interest rate; and (iii) the delta-adjusted notional amount of any option for which the underlying reference asset is an asset described in clause (i) or (ii). *See* Form N–PORT, Item B.3, Instruction.

The delta-adjusted notional value of options is needed to have an accurate measurement of the exposure that the option creates to the underlying reference asset. *See, e.g.,* Comment Letter of Morningstar (Nov. 7, 2011) (''Morningstar Derivatives Concept Release Comment Letter'') (submitted in response to the Derivatives Concept Release, *supra* note 7, which sought comment regarding the use of derivatives by management investment companies).

[59] For funds with exposures that fall between any of the listed maturities in the form, funds would be instructed to use linear interpolation to approximate exposure to each maturity listed above.

[60] Form N–PORT would include instructions stating that ''Investment Grade'' refers to an investment that is sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time and is subject to no greater than moderate credit risk, and ''Non-Investment Grade'' refers to an investment that is not Investment Grade. *See* Form N–PORT, General Instruction E. These instructions are consistent with the definitions of ''Investment Grade'' and ''Non-Investment Grade'' used in Form PF.

step, particularly during times of market stress.[61] Because credit spreads can also vary based on the maturity of the bonds, we believe that providing credit spread measures for the key rates along the yield curve, as with DV01, would help the Commission better analyze credit spreads of investments in funds.[62] Again, similar to the example above regarding the potential use of the DV01 metric, SDV01 can provide more precise information regarding funds' exposures to credit spreads when they engage in a strategy investing in investment-grade or non-investment grade debt.

In determining the methodology for the proposed measures of duration and spread duration, staff engaged in outreach to asset managers and risk service providers that provide risk management and other services to asset managers and institutional investors. The methodology proposed is both based on staff experience in using duration and spread duration, as well as this outreach to better understand common fund practices for calculating such measures. The Commission recognizes that particular funds might currently vary their methodology for calculating duration and spread duration by, for example, only providing a single measure of duration or spread duration or by only reporting key rate durations for particular maturities. Based on staff experience and outreach, the Commission believes that the proposed methodologies for reporting duration and spread duration will allow for better comparability across funds.

Also, based on outreach, Commission staff believes that service providers that provide risk management services to funds generally use a ''bottom up'' approach to calculating duration and spread duration, meaning that such measures are first calculated at the position level and then aggregated at the portfolio level. Accordingly, we believe that providing the specific methodology for aggregation of duration and spread duration would not significantly increase the burden of calculating such metrics by funds, even if funds analyze such measures at the portfolio level using a methodology different from what we are proposing. As discussed below, however, we request comment on the proposed methodologies, including whether such methodologies should be modified.

For both duration and spread duration, we are proposing to require that funds provide the change in value in the fund's portfolio from a 1 basis point change in interest rates or credit spreads, rather than a larger change, such as 5 basis points or 25 basis points. Based on staff's outreach, we believe that a 1 basis point change is the methodology that many funds currently use to calculate these risk measures at the position level for internal risk monitoring and would provide sufficient information to assist the Commission in analyzing fund exposures to changes in interest rate or credit spreads. We believe that requiring funds to calculate such measures based on a larger basis point change could require more customized calculations, and therefore increase costs to funds, relative to the approach proposed. We request comment on this aspect of the proposed methodology.

While the Commission is proposing that funds provide a calculation of each of these measures at a portfolio level, the Commission has considered whether to propose, instead, that funds report these risk metrics for each debt instrument or derivative that has an interest rate or credit exposure. This would provide more precise data for analysis of various movements in interest rates and credit spreads. Additionally, as discussed above, the Commission believes that most funds currently calculate these risk metrics at a position level; however, we recognize that even if such calculations are available at a position level, reporting these metrics could cause funds to make additional systems changes to collect such position-level data for reporting, as well as potential burdens related to increased review time and quality control in submitting the reports. Based on staff's outreach and staff's experience, the Commission believes that requiring funds to provide this information for each maturity at the portfolio level would provide a sufficient level of granularity for purposes of Commission staff analysis. Finally, we believe that there would be certain efficiencies for the Commission, investors, and other potential users to having funds report the portfolio-level calculations relative to reporting position-level calculations, as this could allow for more timely and efficient analysis of the data by not requiring the Commission or other potential users to calculate the portfolio-level measures from the position-level measures. We request comment below on the relative burdens and benefits of providing portfolio level and position level data.

The Commission also considered whether to require funds to report a portfolio level measure (or, for the same reasons discussed immediately above in connection with how risk measures are calculated, position level measures) for convexity, which facilitates more precise measurement of the change in a bond price with larger changes in interest rates.[63] We have preliminarily determined not to require reporting of this metric, however, because we believe, based on staff outreach, that funds more commonly analyze non-linear changes to interest rates through stress testing, rather than through calculating convexity. We request comment, however, on whether requiring funds to report a portfolio-level measure of convexity would be useful to the Commission, investors, and other potential users, and the relative burdens and benefits of reporting convexity.

We request comment on the proposed requirements to provide risk measures at the portfolio level.

- We are proposing a 20% threshold because, based on staff experience, we believe that this would require funds that use debt and exposure to debt or interest rate changes as part of their investment strategy to provide those metrics, while providing a minimum threshold so that funds that invest in debt for cash management or other purposes unrelated to implementing their investment strategy would not be required to collect, calculate, or report such data. Given this objective, is 20% the appropriate threshold for determining which funds must provide these risk metrics? Should this threshold be lower, such as 5% or 10% or higher, such as 30% or 35%? Are there alternative methodologies that the Commission should consider for determining which funds should be required to provide this information? Should we, instead, base the threshold directly on the net asset value (''NAV'') of the fund's debt securities and interest rate investments, rather than the fund's notional exposure to debt securities or interest rates as a percentage of the fund's NAV?
- We are proposing to require reporting information on DV01 and SDV01 at the portfolio level because we believe that this can provide the

[61] *See, e.g.,* Frank K. Reilly, David J. Wright, and James A. Gentry, *Historic Changes in the High Yield Bond Market,* Journal of Applied Corporate Finance, Volume 21, No. 3, 65–79 (Summer 2009) (discussing the historical performance, including the credit spreads of the high yield bond market compared to the investment grade bond market).

[62] The delineation between non-investment grade and investment grade debt is similar to information regarding private fund exposures gathered on Form PF, which could be helpful for comparing and analyzing credit spreads between public and private funds. *See, e.g.,* Item 26 of Form PF.

[63] More specifically, convexity measures the non-linearities in a bond's price with respect to changes in interest rates. *See* Frank J. Fabozzi, The Handbook of Fixed Income Securities 149–152 (8th ed. 2012).

Commission and investors with useful information regarding funds' exposures to changes in interest rate and credit spreads, without imposing a potential burden that might be involved in providing such risk metrics at a position level. We believe, however, based on staff outreach that funds or their service providers generally do calculate such information at a position level. We request comment on the relative burdens and benefits of requiring funds to report portfolio level calculations of duration and spread duration, as opposed to providing those for each relevant instrument in the portfolio. What, if any, would be the added costs and burdens associated with adapting systems in order to centrally collect and report such information? What would be the benefits to the Commission, investors, and other potential users to having more precise information in order to evaluate such exposures? Conversely, are there benefits to having funds report these measures at the portfolio level rather than the position level, even if reporting at the position level would not significantly increase costs?

- To what extent would the values reported for these risk metrics be affected by the inputs and assumptions underlying the methodologies by which funds would calculate these metrics, including assumptions regarding the valuation of the investments or underlying securities of investments, particularly for investments that have pre-payment options, such as mortgage-backed securities? Specifically, how would the comparability of information reported by different funds be affected if funds used different inputs and assumptions in their methodologies? Do funds have concerns regarding reporting measures that include such assumptions, such as proprietary or liability concerns? Are there ways the Commission could improve the standardization of the calculation of these risk metrics? If so, how?
- To the extent that funds are calculating such measures using a methodology other than what the Commission is proposing, what would the associated costs and other burdens be for funds to calculate and report these measures according to a different methodology than that typically used by the fund?
- Are there any alternatives or modifications to the methodologies that the Commission is proposing that the Commission should consider? [64] For example, should the Commission require, or permit, funds to report duration and spread duration only for the maturities that represent the highest exposures in the fund, such as the top three or the top five (or another quantity)? Should the Commission require, or permit, funds to report duration and spread duration based on a larger change in interest rates or credit spreads, such as 5 basis points or 25 basis points? How would these methodologies affect the burden on funds of reporting duration and credit spread duration? Are there more efficient ways for the Commission to collect information to increase the transparency of funds' duration and spread duration?
- Should we provide a *de minimis* amount for exposure to different currencies, under which level a fund would not have to report the DV01 or SDV01 for exposures in that currency? For example, should we only require funds with exposure to a currency equal to 5% or more of the fund's NAV to provide a DV01 and SDV01 calculation for such currency? If we were to provide a *de miminis,* should the threshold be higher or lower?

d. Securities Lending

To increase the rate of return on their portfolios, some funds engage in securities lending activities whereby a fund lends certain of its portfolio securities to other financial institutions such as broker-dealers. In return for the security lent, funds receive collateral and sometimes a fee. To protect the fund from the risk of borrower default, the borrower generally posts collateral with the fund in an amount at least equal to the value of the borrowed securities, and this amount of collateral is adjusted daily as the value of the borrowed securities is marked to market.[65] Funds generally receive cash as collateral. A fund will typically invest cash collateral that it receives in short-term, highly liquid instruments, such as money market funds or similar pooled investment vehicles, or directly in money market instruments.[66]

The fund's income from these activities may come from fees paid by the borrowers to the fund and/or from the reinvestment of collateral. Many funds engage an external service provider—commonly called a ''securities lending agent''—to administer the securities lending program. The securities lending agent is typically compensated by being paid a share of the fund's securities lending revenue after the counterparty has been paid any rebate due to it.[67]

Securities lending implicates certain provisions of the Investment Company Act, and funds that engage in securities lending do so in reliance on Commission staff no-action letters, and in some circumstances, exemptive orders.[68] These letters and orders address a number of areas, including loan collateralization and termination, fees and compensation, board approval and oversight, and voting of proxies.

Currently, the information that funds are required to report about securities lending activity, whether in a structured format or otherwise, is limited. For example, funds disclose on Form N–SAR whether they are permitted under their investment policies to, and whether they did engage during the reporting period in, securities lending activities.[69] Funds generally also disclose additional information regarding their securities lending programs in their registration statements.[70] In addition, consistent with current industry practices, many funds voluntarily identify particular securities that are on loan in their schedules of portfolio investments prepared pursuant to Regulation S–X. These requirements do not address other pertinent considerations, such as

[64] As discussed further below, we separately propose and request comment on additional and alternative risk metrics. *See, e.g., infra* note 127 and accompanying and following text (proposing that funds report delta for certain derivative contracts), text following note 142 (requesting comment on vega, gamma, and other risk metrics), and Part II.A.4.k (generally requesting comment on additional risk measures).

[65] *See* Securities Industry and Financial Markets Association, Master Securities Loan Agreement (2000 Version) §§ 4, 9, *available at http://www.sifma.org/services/standard-forms-and-documentation/. See also* Division of Investment Management, Securities and Exchange Commission, *Securities Lending by U.S. Open-End and Closed-End Investment Companies* (''Securities Lending Summary''), *available at http://www.sec.gov/divisions/investment/securities-lending-open-closed-end-investment-companies.htm.*

[66] Lending funds and borrowers may negotiate the collateral that the borrower posts to the lender, and a cash collateral fee, commonly called a ''rebate,'' that the lender pays to the borrower. The rebate is negotiated and can be negative (*i.e.,* a fee paid from the borrower to the lender) when demand for the loan of a particular security is especially great or its supply especially constrained. *See id.* at § 5.

[67] *See* Securities Lending Summary, *supra* note 65.

[68] For example, the transfer of a fund's portfolio securities to a borrower implicates section 17(f) of the Investment Company Act, which generally requires that a fund's portfolio securities be held by an eligible custodian. A fund's obligation to return collateral at the termination of a loan implicates section 18 of the Investment Company Act, which governs the extent to which a fund may incur indebtedness. *See id.*

[69] Item 70.N of Form N–SAR.

[70] *See, e.g.,* Form N–1A, Items 9(c) (disclosures regarding risks), 16(b) (disclosures of investment strategies and risks), 17(f) (disclosures of proxy voting policy), and 28(h) (exhibits of other material contracts).

the extent to which a fund lends its portfolio securities, the counterparties to which the fund is exposed, the fees and revenues associated with those activities, and the significance of securities lending revenue to the investment performance of the fund.

To address these data gaps and provide additional information to the Commission, investors, and other potential users regarding a fund's securities lending activities, we are proposing that funds report certain counterparty information and position-level information monthly on Form N–PORT.[71] Also, as to other information for which annual reporting would be sufficient because it is unlikely to change on a frequent basis (*e.g.,* name and other identifying information for a fund's securities lending agent), we are proposing that funds report this information annually on Form N–CEN as discussed below in Part II.E. We are also proposing, as discussed below in Part II.C.5, to require that certain information about the income from and fees paid in connection with securities lending activities, and the monthly average of the value of portfolio securities on loan, be disclosed as part of the notes to funds' financial statements.[72]

Our proposals today are intended, in part, to increase the transparency of information available related to the lending and borrowing of securities with respect to funds as a subset of the universe of market participants engaged in securities lending activities.[73]

Counterparty Information. One risk that funds engaging in securities lending are exposed to is counterparty risk because borrowers could fail to return the loaned securities. In this event, the lender would keep the collateral. Collateral is generally posted in cash and, in practice, the loan is generally over-collateralized. The collateral requirements thereby mitigate the extent of a fund's counterparty risk. In some cases, this risk is further mitigated for the fund if the fund's securities lending agent indemnifies the fund against default by the borrower.

While we believe there is value to having information concerning securities lending counterparties to monitor risk, as well as to monitor compliance with conditions set forth in staff no-action letters and exemptive orders,[74] we are proposing to require that funds report, for each of their securities lending counterparties as of the reporting date, the full name and LEI of the counterparty (if any), as well as the aggregate value of all securities on loan to the counterparty, rather than at the loan level.[75] We believe that disclosure of counterparty information at an aggregate portfolio level would provide the Commission and investors with information to better understand the level of potential counterparty risk assumed as part of the fund's securities lending program, with a lower relative burden on funds than requesting such information on a per loan level.

We request comment on the portfolio level securities lending information requirements we are proposing.

- As discussed above, Form N–PORT would require funds to disclose the aggregate value of all securities on loan to each securities lending counterparty and the name and LEI (if any) of the counterparty. Should we instead require funds to report this information on a loan-by-loan or security-by-security basis? To what extent, if any, would such information be used by investors and other potential users? What, if any, additional issues would funds face in tracking and reporting such information on a loan-by-loan or security-by-security basis? Do funds currently track or have the ability to readily determine their counterparty exposure on a loan-by-loan or security-by-security basis? If securities lending counterparty information should be reported on a loan-by-loan or security-by-security basis, is there any additional or alternative information we should require funds to report, such as the rebate or compensation to the securities lending agent?
- Instead of requiring funds to report the aggregate value of all securities on loan to each securities lending counterparty, should we limit such disclosures to counterparties to which the fund has the greatest exposure, such as the top five or top ten counterparties?[76] Alternately, should we require funds to report aggregate exposure to a given counterparty only if such exposure constitutes more than a certain percentage of the NAV of the fund (*e.g.,* one percent)? Would either approach more appropriately consider the costs of tracking and reporting such information and the benefits that increased transparency would provide to the Commission and other potential users?
- Alternately, or in addition, should the Commission request information regarding other types of counterparty exposures? For example, should the Commission require funds to report counterparty exposures based on the amount of unsettled trades with each counterparty? If so, should such information be reported in terms of aggregate or net exposure, and why?

e. Return Information

We are proposing to require funds to provide monthly total returns for each of the preceding three months.[77] If the fund is a multiple class fund, it would report returns for each class.[78] Funds with multiple classes would also report their class identification numbers.[79] Funds would calculate returns using the same standardized formulas required for calculation of returns as reported in the performance table contained in the risk-return summary of the fund's prospectus and in fund sales materials.[80]

We are proposing to require this information on Form N–PORT because we believe it would be useful to have such information in a structured format to facilitate comparisons across funds. For example, analysis of return information over time among similar funds could reveal outliers that might merit further inquiry by Commission staff. Additionally, performance that appears to be inconsistent with a fund's investment strategy or other benchmarks

[71] *See infra* text following note 74 (discussing the reporting of counterparty information); Part II.A.2.g (discussing the proposed requirements regarding position-level information). Commenters to the FSOC Notice also suggested that enhanced securities lending disclosures could be beneficial to investors and counterparties. *See, e.g.,* SIFMA/IAA FSOC Notice Comment Letter, *supra* note 43 (''Disclosures related to securities lending practices, if appropriately tailored, could potentially assist investors and counterparties in making informed choices about where they deploy their assets and how they engage in lending practices.''); Comment Letter of the Vanguard Group, Inc. (Mar. 25, 2015) (''Vanguard FSOC Notice Comment Letter'') (asserting that securities lending as a whole suffers from a lack of readily available data, and supporting further efforts to gather data and study the practice of securities lending).

[72] *See infra* text following note 276 (discussing proposed disclosures in the notes to funds' financial statements that would allow investors to better understand the income generated from, as well as the expenses associated with, securities lending activities).

[73] *See, e.g.,* section 984(b) of the Dodd-Frank Act, Pub. L. No. 111–203, 124 Stat. 1376 (2010) (directing the Commission to promulgate rules designed to increase the transparency of information available to brokers, dealers, and investors, with respect to the loan or borrowing of securities).

[74] *See generally* Securities Lending Summary, *supra* note 65.

[75] Form N–PORT, Item B.4.

[76] *Cf.* Form PF, Section 1c, Item 22 (requiring advisers to private funds to report exposures to the five counterparties to which the reporting fund has the greatest mark-to-market net counterparty credit exposure).

[77] *See* Form N–PORT, Item B.5.a.

[78] *See id.*

[79] *See* Form N–PORT, Item B.5.b.

[80] *See* Form N–1A, Item 26(b)(1); Form N–2, Item 4, Instruction 13; Form N–3, Item 26(b)(i).

can form a basis for further inquiry and monitoring.[81]

Because only quarter-end reports on Form N–PORT would be made public, we are proposing that funds provide return information for each of the preceding three months.[82] This would provide investors and other potential users with monthly return information, so that they would have access to each month's return on a quarterly basis. Otherwise, we are concerned that investors might potentially confuse the month's disclosed return as representing the return for the full quarter.

We are also proposing that funds report, for each of the preceding three months, monthly net realized gain (or loss) and net change in unrealized appreciation (or depreciation) attributable to derivatives for each of the following categories: Commodity contracts, credit contracts, equity contracts, foreign exchange contracts, interest rate contracts, and other derivatives contracts.[83] This item is modeled after disclosure requirements in Financial Accounting Standards Board (''FASB'') Accounting Standards Codification (''ASC'') 815, which governs the accounting disclosure for derivatives and hedging. This information would help the Commission staff, investors, and other potential users better understand how a fund is using derivatives in accomplishing its investment strategy and the impact of derivatives on the fund's returns. In order to provide a point of comparison, we are also proposing that funds report, for each of the last three months, monthly net realized gain (or loss) and net change in unrealized appreciation (or depreciation) for investments other than derivatives.[84]

We request comment on the return information we are proposing in Form N–PORT.

- Should the Commission consider, as an alternative, requiring funds to provide monthly return information annually on Form N–CEN, rather than on Form N–PORT? Would this significantly reduce the burden of reporting such information?
- We are proposing to require that funds report three months of returns so that investors and other potential users, who would only observe reports on Form N–PORT on a quarterly basis, would still receive return data for each month of the year. Do commenters agree that such disclosure of monthly returns would be helpful to investors? Are there preferable alternatives for providing such information to investors? Are there potential negative consequences of reporting monthly returns? For example, could the availability of this information cause investors to emphasize short-term returns?
- We request comment on alternative requirements for fund reporting of return information. For example, the Commission requests comment on whether to require reporting by funds of gross returns. Would gross information, with or without accompanying fee information for each class, be confusing for investors? If so, are there ways to mitigate the risk of investor confusion? Instead of requiring reporting of returns for all classes, should the Commission, for example, require funds to report return information for a single class, such as the class with the highest expense ratio or the largest share class in terms of assets under management? What would be the relative benefits and burdens of only requiring disclosure of a single class?
- Are there alternative methods that the Commission should consider for requiring funds to report the effect of derivatives on the return of the fund? For example, should the Commission require that funds report the monthly net realized gain or loss and net change in unrealized appreciation or depreciation attributable to derivatives by type of derivative (*i.e.,* forward, future, option, swap), rather than by category of exposure? What would be the burden and benefits of reporting such information relative to the proposed requirement?

f. Flow Information

Form N–PORT would require funds to separately report, for each of the preceding three months, the total net asset value of: (1) Shares sold (including exchanges but excluding reinvestment of dividends and distributions); (2) shares sold in connection with reinvestments of dividends and distributions; and (3) shares redeemed or repurchased (including exchanges).[85] This information is similar to what is currently reported on Form N–SAR, and would be generally reported subject to the same guidelines that currently govern reporting of flow information on that form.[86] We propose to require this information on Form N–PORT because we believe that this information would be more helpful if reported on a monthly basis rather than retrospectively on an annual basis on Form N–CEN.

We believe that having flow information reported to us monthly will help us better monitor trends in the fund industry. For example, it could help us analyze types of funds that are becoming more popular among investors and areas of high growth in the industry. It could help us better examine investor behavior in response to market events. Finally, in combination with other information reported on Form N–PORT regarding liquidity of fund positions, it could also help us identify funds that might be at risk of experiencing liquidity stress due to increased redemptions.

- What would be the costs and burdens of providing flow information on a monthly basis on Form N–PORT? Should the Commission consider, as an alternative, requiring funds to provide monthly flow information annually on Form N–CEN, rather than on Form N–PORT?
- To what extent would the usefulness of the flow information be

[81] Similar risk analytics were used in the Commission's Aberrational Performance Inquiry, an initiative by the Division of Enforcement's Asset Management Unit to identify hedge funds with suspicious returns. *See, e.g.,* Press Release, SEC Charges Hedge Fund Adviser and Two Executives with Fraud in Continuing Probe of Suspicious Fund Performance (Oct. 17, 2012), *available at http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171485332.*

[82] *See* Form N–PORT, Item B.5.a. Although generally only information reported on Form N–PORT for the third month of each fund's fiscal quarter would be publicly available, the concerns associated with more frequent public disclosure are related to the disclosure of portfolio holdings information and would not apply to the disclosure of fund return information. *See generally* note 170 and accompanying and following text (discussing the risks of predatory trading practices such as front-running and the ability of outside investors to reverse engineer and copycat fund's investment strategies).

[83] *See* Form N–PORT, Item B.5.c.

[84] *See* Form N–PORT, Item B.5.d. Our proposal would also amend Regulation S–X to require funds to report similar information in their financial statements, although Regulation S–X would require such information to be aggregated by type of derivative contract, rather than by category of exposure as required by Form N–PORT. We discuss below our reasons for proposing information to be reported based on contract type on Regulation S–X. *See infra* Part II.C.

[85] *See* Form N–PORT, Item B.6.

[86] Similar to Form N–SAR, Form N–PORT would instruct funds to report amounts after any front-end sales loads had been deducted and before any deferred or contingent deferred sales loads or charges had been deducted. Shares sold would include shares sold by the fund to a registered UIT. Funds would also include as shares sold any transaction in which the fund acquired the assets of another investment company or of a personal holding company in exchange for its own shares. Funds would include as shares redeemed any transaction in which the fund liquidated all or part of its assets. Exchanges would be defined as the redemption or repurchase of shares of one fund or series and the investment of all or part of the proceeds in shares of another fund or series in the same family of investment companies. *Cf.* Form N–PORT, Item B.6 and Item 28 of Form N–SAR (requiring reporting of monthly sales and repurchases of the Registrant's/Series' shares for the past six months).

affected by the fact that omnibus accounts, which generally have significant amounts of purchases and redemptions, typically net their transactions prior to executing with the funds' transfer agents? Should the Commission revise the proposed flow disclosures to address this issue and, if so, how?

• Form N–SAR currently also requires funds to report flow information related to ''other'' shares sold (*i.e.,* other than through new sales and exchanges and reinvestments of dividends and distributions).[87] Should the Commission also require funds to report this category of flow information on Form N–PORT? What would be the utility of requesting flow information to be separately reported in this additional category?

• Should we require that flow information be reported as to each class of the fund? Would such additional information be helpful to investors and other potential users? What would be the burdens to funds with multiple classes of reporting such information?

g. Schedule of Portfolio Investments

Part C of proposed Form N–PORT would require funds to report certain information on an investment-by-investment basis about each investment held by the fund and its consolidated subsidiaries as of the close of the preceding month. Funds would respond to certain questions that would apply to all investments (*i.e.,* the investment's identification, amount, payoff profile, asset and issuer type, country of investment or issuer, and fair value level, and whether the investment was a restricted security or illiquid asset). Funds would also respond, if relevant, to additional questions related to specific types of investments (*i.e.,* debt securities, repurchase and reverse repurchase agreements, derivatives, and securities lending).

Funds would have the option of identifying any investments that are ''miscellaneous securities.'' [88] Unless otherwise indicated, funds would not report information related to those investments in Part C, but would instead report such information in Part D.[89]

i. Information for All Investments

Proposed Form N–PORT would require funds to report certain basic information about each investment. In particular, funds would report the name of the issuer and title of issue or description of the investment, as they are currently required to do on their reported schedules of investments.[90]

To facilitate analysis of fund portfolios, it is important for Commission staff to be able to identify individual portfolio securities, as well as the reference instruments of derivative investments through the use of an identifying code or number, which is not currently required to be reported on the schedule of investments. Fund shareholders and potential investors that are analyzing fund portfolios or investments across funds could similarly benefit from the clear identification of a fund's portfolio securities across funds. The staff has found that some securities reported by funds lack a securities identifier, and this absence has reduced the usefulness of other information reported.[91]

To address this issue, we propose to require that funds report additional information about the issuer and the security. Funds would report certain securities identifiers, if available.[92] For example, for swaps and security-based swaps, funds could report the product identification number used for reporting such instrument to a swap data repository or securities-based swap data repository, if available.[93] If a unique identifier is reported, funds would also indicate the type of identifier used.[94] Such an identifier may be internally generated by the fund or provided by a third party, but should be consistently used across the fund's filings for reporting that investment so that the Commission, investors, and other potential users of the information can track the investment from report to report.

We also propose to require funds to report the amount of each investment as of the end of the reporting period, as is currently required under Regulation S–X.[95] Funds would report the number of units or principal amount for each investment, as well as the value of each investment at the close of the period, and the percentage value of each investment when compared to the net assets of the fund.[96] Funds would also report the currency in which the investment was denominated, and, if not denominated in U.S. dollars, the exchange rate used to calculate value.

Our proposal would also require funds to report the payoff profile of the investment, indicating whether the investment is held long, short, or N/A, which would serve the same purpose as the current requirement in Regulation S–X to disclose investments sold short.[97] Funds would respond N/A for derivatives and would respond to relevant questions that indicated the payoff profile of each derivative in the derivatives portion of the form. These disclosures would identify short positions in investments held by funds.

Funds would also report the asset type for the investment: Short-term investment vehicle (*e.g.,* money market fund, liquidity pool, or other cash management vehicle), repurchase agreement, equity-common, equity-preferred, debt, derivative-commodity, derivative-credit, derivative-equity, derivative-foreign exchange, derivative-interest rate, structured note, loan, ABS-mortgage backed security, ABS-asset backed commercial paper, ABS-collateralized bond/debt obligation, ABS-other, commodity, real estate, other) and issuer type (corporate, U.S. Treasury, U.S. government agency, U.S. government sponsored entity, municipal, non-U.S. sovereign, private fund, registered fund, other).[98] We have based these categories in part on staff review of how funds currently categorize investments on their schedule of investments, and in part on the categories of investments required by private funds under Form PF.[99] These disclosures would allow the Commission, investors, and other potential users to assess the composition of fund portfolios in terms of asset and issuer types and also

[87] *See id.*

[88] *See* Form N–PORT, Part D. *See also supra* note 49 and accompanying text.

[89] *See infra* note 150 and accompanying and following text.

[90] *See* Form N–PORT, Items C.1.a and C.1.c.

[91] Our inability to identify specific securities has limited our ability in other contexts to compare ownership of the securities across multiple funds and monitor issuer exposure. For example, during the month of February 2013, money market funds reported 6,821 securities without CUSIPs (approximately 10% of all securities reported on Form N–MFP).

[92] *See* Form N–PORT, Item C.1.b and C.1.d to C.1.e (requiring reporting of identifiers such as LEI of the issuer, CUSIP, ISIN, ticker or other unique identifier).

[93] *See infra* notes 138–140 (discussing product identifiers for security-based swaps and swaps, as addressed in rulemakings by the Commission and Commodity Futures Trading Commission, respectively).

[94] *See* Form N–PORT, Item C.1.e.iii.

[95] *See* Form N–PORT, Item C.2. *See* rule 12–12 of Regulation S–X.

[96] *See* Form N–PORT, Item C.2.a to C.2.d. For derivatives, as appropriate, funds would provide the number of contracts.

[97] *See* Form N–PORT, Item C.3. *See* rule 12–12A of Regulation S–X.

[98] *See* Form N–PORT, Item C.4.a and C.4.b.

[99] *See, e.g.,* Form PF, Item 26 (requiring filers to report exposures by asset type); Form N–Q, Item 1 (requiring filers to report the schedules of investments required by sections 210.12–12 to 12–14 of Regulation S–X); Form N-CSR, Item 1 (requiring filers to attach a copy of the report transmitted to shareholders, which would include schedules of investments required by sections 210.12–12 to 12–14 of Regulation S–X).

facilitate comparisons among similar types of investments.

Our proposal would also require funds to report, for each investment, whether the investment is a restricted security and whether the investment is an illiquid asset.[100] These disclosures would provide investors and the Commission staff with more information about liquidity risks associated with the fund's investments.

Each fund would also report whether the investment is categorized by the fund as a Level 1, Level 2, or Level 3 fair value measurement in the fair value hierarchy under U.S. Generally Accepted Accounting Principles (''U.S. GAAP'').[101] Commission staff could use this information to identify and monitor investments that may be more susceptible to increased valuation risk and identify potential outliers that warrant additional monitoring or inquiry.[102] In addition, Commission staff would be better able to identify anomalies in reported data by aggregating all fund investments industry-wide into the various level categories. Currently, funds are required to evaluate the fair value level measurement of each investment as part of the fair value level hierarchy disclosure in their financial statements.[103] We believe that based on this requirement, funds should have pricing information available to determine the categorization of their portfolio investments as Level 1, Level 2, or Level 3 within the fair value hierarchy.

Form N–PORT would also require funds to report the country that corresponds to the country of investment or issuer based on the concentrations of the risk and economic exposure of the investment. Additionally, funds would be required to report the country in which the issuer is organized if that is different from the country of risk and economic exposure.[104]

These disclosures would provide the Commission staff and investors with more information about country-specific exposures associated with the fund's investments. Specifically, the Commission believes that providing both the country based on concentrations of risk and economic exposure and also the country in which the issuer is organized would assist the Commission, investors, and other potential users in understanding the country-specific risks associated with such investments. For example, knowing the country of risk and economic exposure is important for understanding the effect of such investments in a portfolio when that country might be going through times of economic or political stress, regardless of whether the investment is issued in a different country. Knowing the country in which the issuer is organized would be important information for analyzing the effect of any events that could affect the country in which the issuer is organized, such as sanctions or monetary controls, as this could affect the ability of the fund to liquidate the investment.

We request comment on our proposed disclosure requirements.

- Our proposal would require funds to report certain identifiers for their investments. Should the Commission include additional specific identifiers in Form N–PORT, such as the Financial Instrumental Global Identifier (''FIGI'') or other similar identifier, if available?[105] If so, which identifier or identifiers would be expected to be reported? Are there any special considerations relating to the use of any identifiers (*e.g.,* licensing fees associated with certain identifiers, the prevalence of a particular identifier as adopted by the marketplace, etc.) that could be addressed through these reporting requirements? If so, how should the requirements be restructured to address those considerations while still providing the Commission and investors the necessary identifying information?
- We request comment on our proposal to require funds to provide other unique identifiers for investments that do not have ISIN or ticker identifiers. Should the Commission require, in certain circumstances, specific identifiers to be reported as other unique identifiers? For example, in the case of security-based swaps, should the Commission require funds to report unique product identifiers?[106] If so, why?
- How, if at all, should we modify our proposed disclosures for the amount of each investment at the end of the reporting period (as well as the currency in which it is denominated)? Likewise, should we modify our proposed disclosures for the payoff profile of each investment and the restricted/illiquid nature of securities? If so, why?
- Would our proposed asset and issuer categories allow funds to readily categorize the investments typically held in fund portfolios? Should we include additional or alternative categories, and if so why? For example, are there any specific asset subcategories with sufficiently unique features as to warrant their own asset category? To the extent that funds currently are not categorizing their investments as proposed in Form N–PORT, what costs would be associated with providing such information?
- Should any of these disclosures be aggregated and reported on a portfolio

[100] *See* Form N–PORT, Items C.6 and C.7. ''Restricted security'' would have the definition provided in rule 144(a)(3) under the Securities Act [17 CFR 230.144(a)(3)]. *See* Form N–PORT, General Instruction E. *See also* proposed rule 12–13, nn.6 and 8 of Regulation S–X, which would require similar disclosures in funds' schedules of investments to identify securities that are restricted or illiquid.

Form N–PORT would define ''illiquid asset'' as ''an asset that cannot be sold or disposed of by the Fund in the ordinary course of business within seven calendar days, at approximately the value ascribed to it by the Fund.'' *See* Form N–PORT, General Instruction E. This definition is the same definition used in the liquidity guidance issued by the Commission for open-end funds. *See* Revisions of Guidelines to Form N–1A, Investment Company Act Release No. 18612 (Mar. 12, 1992) [57 FR 9829 (Mar. 20, 1992)] (''1992 Release''). As recently stated by Chair Mary Jo White, the Division of Investment Management is considering a recommendation that the Commission update liquidity standards for open-end funds and ETFs, which may result in updated guidance on this issue. *See* Speech by Securities and Exchange Commission Chair Mary Jo White (Dec. 11, 2014), *available at http://www.sec.gov/News/Speech/Detail/Speech/1370543677722.*

[101] *See* ASC 820. An investment is categorized in the same level of the fair value hierarchy as the lowest level input that is significant to its fair value measurement. Level 1 inputs include quoted prices (unadjusted) for identical investments in an active market (*e.g.,* active exchange-traded equity securities). Level 2 inputs include other observable inputs, such as: (i) Quoted prices for similar securities in active markets; (ii) quoted prices for identical or similar securities in non-active markets; and (iii) pricing models whose inputs are observable or derived principally from or corroborated by observable market data through correlation or other means for substantially the full term of the security. Level 3 inputs are unobservable inputs. We are proposing amendments to Regulation S–X to require that funds identify level 3 securities in their schedules of investments. *See infra* Part II.C.3.

[102] For a discussion of some of the challenges regulators may face with respect to Level 3 accounting, *see, e.g.,* Konstantin Milbradt, *Level 3 Assets: Booking Profits and Concealing Losses,* in 25 Rev. Fin. Stud. 55–95 (2011).

[103] ASC 820–10–50–2 requires for each class of assets and liabilities measured at fair value, the level of the fair value hierarchy within which the fair value measurements are categorized in their entirety (Level 1, 2, or 3).

[104] *See* Form N–PORT, Item C.5. Currently, funds are required to report the related industry, country, or geographic region of the investment in their schedules of investments. As discussed below, we are proposing to amend Regulation S–X to require funds to report the industry and the country or geographic region of the investment. *See infra* Part II.C.3.

[105] Information about the FIGI is available on the Object Management Group's Web site, a not-for-profit technology standards consortium. *See generally* Object Management Group, Documents Associated With Financial Industry Global Identifier (FIGI) Version 1.0—Beta 1, *available at http://www.omg.org/spec/FIGI/1.0/Beta1/.*

[106] *See infra* note 139 and accompanying and following text.

basis, rather than at an individual investment level? Alternately, should any of the proposed portfolio level information be reported on an individual investment level?

• We request comment on the incremental burden of reporting this information for each investment held by the fund, relative to the current burden of reporting the total value of each class of investments categorized in each level of the fair value hierarchy, as currently required by U.S. GAAP. Are there other ways in which a fund could identify and disclose investments that do not have readily available market quotations or observable inputs as an alternative to disclosing each investment's categorization as a Level 1, Level 2, or Level 3 measurement?

• Are there additional items that should be included on Form N–PORT in order to improve the transparency regarding the liquidity and valuation of investments? For example, should the Commission require additional disclosure regarding the fund's valuation of its investments, such as the primary pricing source used (*e.g.,* exchange, broker quote, third-party pricing service, internal fair value), the name of any third-party pricing source, or whether an independent consultant or appraiser assisted with development of internal fair value? If so, should such information be disclosed on an individual security basis? Would such information increase the transparency of the pricing of thinly traded securities? Would investors benefit from such information and, if so, how? What costs and burdens would be associated with providing such information?

• Should the Commission require funds to report both the country in which the issuer is organized and also the country with the greatest concentrations of risk and economic exposure of the investments? What is the burden of reporting both elements, if different? Should the Commission provide specific guidance or instructions for determining the country with the greatest concentration of risks and economic exposure? Should funds have the option of reporting more than one country of economic risk, or a geographic region of economic risk?

• Should funds not be required to report country codes for U.S. investments? Would such an exclusion result in reduced burdens for funds that held only domestic securities? On the other hand, would such an exclusion result in investor confusion or complicate data validation efforts, by, for example, rendering it unclear whether an investment with N/A reported for its country code was a U.S. investment or was instead a foreign investment for which a country code had not been properly reported?

ii. Debt Securities

In addition to the information required above, Form N–PORT would require additional information about each debt security held by the fund in order to gain transparency into the payment flows and convertibility into equity of such investments, as such information can be used to better understand the payoff profile and credit risk of these investments. First, funds would report the maturity date and coupon (reporting annualized rate and indicating whether fixed, floating, variable, or none).[107] Funds would also indicate whether the security is currently in default, whether interest payments for the security are in arrears or whether any coupon payments have been legally deferred by the issuer, as well as whether any portion of the interest is paid in kind.[108]

Finally, we are proposing to require additional information for convertible securities, to indicate whether the conversion is mandatory or contingent.[109] We are also proposing to require funds to disclose for each convertible security the conversion ratio, information about the asset into which the debt is convertible, and the delta, which is the ratio of the change in the value of the option to the change in the value of the asset into which the debt is convertible. This reflects the sensitivity of the debt's value to changes in the price of the asset into which the debt is convertible. The proposed requirement to provide the delta would also be required for options, as discussed further below, because convertible securities have optionality.[110] For similar reasons discussed below regarding options, the Commission believes that providing the delta for convertible securities is important to understand the extent of both the credit exposure of the debt portion of the convertible bond as well as the market price exposure relative to the underlying security into which it can be converted or exchanged.

We request comment on our proposed disclosure requirements for debt securities.

• Are there additional or alternative characteristics of debt securities that we should require to be disclosed to assist the Commission, investors, or other potential users in understanding the nature and risks of a fund's debt security investments? For example, would disclosure of which debt securities are guaranteed, the nature of such guarantee (*e.g.,* guarantee insurance or letter of credit), and the identity of the guarantor, be useful to investors? Alternately, or in addition, should the Commission require disclosure regarding the frequency of coupon payments, principal payback schedule, priority in security structure (*e.g.,* senior, subordinated, etc.), embedded options (if any), insurance wrapper (if any), and whether the debt is secured?

• We request comment on our proposed disclosure requirements for convertible securities. With regard to the delta, to what extent would the inputs and assumptions underlying the methodology by which funds calculate price changes affect the values reported? Are there liability or other concerns associated with the reporting of such measures with such inputs and assumptions? How would the comparability of information reported between funds be affected if funds used different inputs and assumptions in calculating delta, such as different assumptions regarding the values of the funds' portfolios? Are there ways the Commission could improve the standardization of the calculation of delta? If so, how? What would the associated costs and other burdens be for funds to calculate and report these measures according to a different methodology than that typically used by the fund?

iii. Repurchase and Reverse Repurchase Agreements

In addition to the information required above for all investments, Form N–PORT would require each fund to report additional information for each repurchase and reverse repurchase agreement held by the fund. The fund would report the category that reflects the transaction from the perspective of the fund (repurchase, reverse repurchase), whether the transaction is cleared by a central counterparty—and if so the name of the central counterparty—or if not the name and LEI (if any) of the over-the-counter counterparty, repurchase rate, whether the repurchase agreement is tri-party (to distinguish from bilateral transactions), and the maturity date.[111] Funds would also report the principal amount and value of collateral, as well as the

[107] *See* Form N–PORT, Items C.9.a and C.9.b.

[108] *See* Form N–PORT, Items C.9.c to C.9.e.

[109] *See* Form N–PORT, Item C.9.f.

[110] *See* text accompanying and following note 127 (discussing information required for options, including delta).

[111] *See* Form N–PORT, Items C.10.a to C.10.e.

category of investments that most closely represents the collateral.[112]

These disclosures would enhance the information currently reported regarding funds' use of repurchase agreements and reverse repurchase agreements. Information regarding repurchase agreements would be comparable to similar disclosures currently required to be made by money market funds on Form N–MFP. The categories used for reporting collateral would track the categories currently used to report tri-party repurchase agreement information to the Federal Reserve Bank of New York. We believe that conforming the categories that would be used in Form N–PORT to categories used in other reporting contexts would ease reporting burdens and enhance comparability.[113]

We request comment on our proposed disclosure requirements above.

- As discussed above, the reporting requirements contained in Form N–PORT would be comparable to similar disclosures currently required to be made by money market funds on Form N–MFP concerning repurchase agreements. Should we collect different or additional information? For example, should the proposed reporting requirements be revised to encompass characteristics of bilateral repurchase and reverse repurchase agreements, which are not typically held by money market funds but we understand are more commonly held by funds that would be reporting on Form N–PORT? If so, how? Should the categories used for reporting collateral, which as proposed would track the categories currently used to report tri-party repurchase agreement information to the Federal Reserve Bank of New York, be revised? If so, how and why?
- We believe that funds already track the characteristics of their repurchase and reverse repurchase agreements that we would require to be reported on Form N–PORT. To the extent this is true, what would be the incremental cost and burden of reporting such information to the Commission?
- Are there additional or alternative disclosures that we should require to be reported to assist investors in understanding counterparty and other risks associated with the fund's repurchase and reverse repurchase agreements?

iv. Derivatives

As discussed above, the current reporting regime for derivatives has led to inconsistent approaches to reporting derivatives information and, in some cases, insufficient information concerning the terms and underlying reference assets of derivatives to allow the Commission or investors to understand the investment. Additionally, as discussed further below, for options, the Commission believes that it would be important to have a measurement of ''delta,'' a measure not reported in the financial statements or schedule of investments, to better understand the exposure to the underlying reference asset that the options produce in the portfolio. Currently, the Commission and investors are sometimes unable to accurately assess funds' derivatives investments and the exposures they create, which can be important to understanding funds' investment strategies, use of leverage, and risk of loss. Our proposal is intended to increase transparency into funds' derivatives investments by requiring funds to disclose certain characteristics and terms of derivative contracts that are important to understand the payoff profile of a fund's investment in such contracts, as well as the exposures they create or hedge in the fund. This would include, for example, exposures to currency fluctuations, interest rate shifts, prices of the underlying reference asset, and counterparty credit risk. As discussed further below, we are also amending Regulation S–X to make similar changes to the reporting regime for derivatives disclosures in fund financial statements.

Consequently, in addition to the information required above for all investments, Form N–PORT would require additional information about each derivative contract in the fund's portfolio. Funds would report the category of derivative that most closely represents the investment (*e.g.,* forward, future, option, etc.).[114] Funds would also report the name and LEI (if any) of the counterparty (including a central counterparty).[115] This identifying information should assist the Commission, investors, and other potential users in better identifying and monitoring the categories of derivatives held by funds and the associated counterparty risks.[116]

Form N–PORT would also require funds to report terms and conditions of each derivative investment that are important to understanding the payoff profile of the derivative.[117] For options and warrants, including options on a derivative (*e.g.,* swaptions), funds would report the type (*e.g.,* put), payoff profile (*e.g.,* written), number of shares or principal amount of underlying reference instrument per contract, exercise price or rate, expiration date, and the unrealized appreciation or depreciation of the option or warrant.[118]

[112] *See* Form N–PORT, Item C.10.f. Funds would report the category of investments that most closely represents the collateral, selected from among the following (asset-backed securities; agency collateralized mortgage obligations; agency debentures and agency strips; agency mortgage-backed securities; private label collateralized mortgage obligations; corporate debt securities; equities; money market; U.S. Treasuries (including strips); other instrument). If ''other instrument,'' funds would also include a brief description, including, if applicable, whether it is a collateralized debt obligation, municipal debt, whole loan, or international debt.

[113] *See* Money Market Fund Reform 2014 Release, *supra* note 13, at nn.1515–1518 and accompanying text (discussing comment letter stating that the categories used to report collateral for tri-party repurchase agreements to the Federal Reserve Bank of New York would allow for regular and efficient comparison of current and historical risk factors regarding repurchase agreements on a standardized basis).

[114] *See* Form N–PORT, Item C.11.a. Funds would report the category of derivative that most closely represents the investment, selected from among the following (forward, future, option, swaption, swap, warrant, other). If ''other,'' funds would provide a brief description.

[115] *See* Form N–PORT, Item C.11.b.

[116] Commenters to the FSOC Notice indicated that counterparty data for derivative disclosures is not often available and discussed the need to have more transparency in this regard. *See, e.g.,* Comment Letter of Americans for Financial Reform (Mar. 27, 2015) (''Americans For Financial Reform FSOC Notice Comment Letter'') (asserting that counterparty data in derivative disclosures is not often available); Comment Letter of the Systemic Risk Council (Mar. 25, 2015) (''Systemic Risk Council FSOC Notice Comment Letter'') (discussing the need to have information about investment vehicles that hold bank liabilities).

[117] We are proposing to require similar information on a fund's schedule of investments. *See* Part II.C.2. Commenters to the FSOC Notice were supportive of enhanced derivatives disclosures. *See, e.g.,* Systemic Risk Council FSOC Notice Comment Letter, *supra* note 116 (''While most managed funds do not employ leverage to the same degree that banks do, we encourage regulators to consider carefully whether there are potential improvements to the current data collection regime (*e.g.,* for registered investment advisers) that would allow regulators to track the presence and concentration of leverage in the asset management industry, particularly as it arises from use of derivatives. . . .''); Americans for Financial Reform FSOC Notice Comment Letter, *supra* note 116 (stating that regulatory oversight should include ensuring appropriate transparency of fund positions to both investors and regulators, asserting that current derivatives disclosure requirements for registered investment companies ''appear very poor,'' noting the deficiency of just current accounting values and expressing the need for risk and exposure metrics that show the potential losses or gains to the fund if market prices change, and suggesting that new disclosures should require derivatives data to be sufficiently granular such that regulators and market participants could perform their own independent calculations of risk exposure, rather than relying on aggregated metrics of total risk); Vanguard FSOC Notice Comment Letter, *supra* note 71 (asserting that regulators would benefit by better understanding how and why mutual funds use derivatives).

[118] *See* Form N–PORT, Item C.11.c. The type of warrant or option would be selected from among

Continued

Form N–PORT would require funds to provide a description of the reference instrument, including name of issuer, title of issue, and relevant securities identifier.[119]

We recognize that some derivatives have underlying assets that are indices of securities or other assets or a ''custom basket'' of assets, the components of which are not publicly available. We are proposing requirements to ensure that the Commission, investors, and other potential users are aware of the components of such indices or custom baskets. If the reference instrument is an index for which the components are publicly available on a Web site and are updated on that Web site no less frequently than quarterly, funds would identify the index and provide the index identifier, if any.[120] We are proposing to require at least quarterly public disclosure for the components of the index because it matches the frequency with which funds are currently required and, as proposed in this release, would continue to be required, to disclose their portfolio holdings.[121] If the index's components are not publicly available as provided above, and the notional amount of the derivative represents 1% or less of the NAV of the fund, the fund would provide a narrative description of the index.[122] If the index's components are not publicly available in that manner, and the notional amount of the derivative represents more than 1% of the NAV of the fund, the fund would provide the name, identifier, number of shares or notional amount or contract value as of the trade date (all of which would be reported as negative for short positions), value, and unrealized appreciation or depreciation of every component in the index.[123]

We are proposing this requirement because we believe that it is important for the Commission, investors, and other potential users to have transparency into all exposures to assets that the fund has, regardless of whether the fund directly holds investments in those assets or chooses to create those exposures through a derivatives contract.[124] We are proposing the 1% notional amount threshold based on our experience with the summary schedule of investments, which requires funds to disclose investments for which the value exceeds 1% of the fund's NAV in that schedule.[125] We believe that, similar to this threshold in the summary schedule of investments, providing a 1% *de minimis* for disclosing the components of a derivative with nonpublic reference assets considers the need for the Commission, investors, and other potential users to have transparency into the exposures that derivative contracts create while not requiring extensive disclosure of multiple components in a non-public index for instruments that represent a small amount of the fund's overall value.

If the reference instrument is a derivative, funds would indicate the category of derivative (*e.g.,* swap) and would provide all information required to be reported on Form N–PORT for that type of derivative.[126]

We are also proposing to require funds to report the delta of the option, which is the ratio of the change in the value of the option to the change in the value of the reference instrument.[127] This measure reflects the sensitivity of the option's value to changes in the price of the reference instrument. Disclosure of delta for options and warrants would provide the Commission, investors, and other potential users a more accurate measure of a fund's full exposure to the reference instrument than the option's notional amount, which we would otherwise not be able to determine. Accordingly, having the measurement of delta for options is important for the Commission, as well as investors and other potential users, to measure the impact, on a fund or group of funds that holds options on an asset, of a change in such asset's price. Also, as the Commission has previously observed, funds can use options as a form of obtaining a leveraged position in an underlying reference asset.[128] Having a measurement of exposures created through this type of leverage can help the Commission, investors, and other potential users better understand the risks that the fund faces as asset prices change, since the use of this type of leverage can magnify losses or gains in assets.

For futures and forwards (other than foreign exchange forwards, which share similarities with foreign exchange swaps and should be reported accordingly as discussed below), Form N–PORT would require funds to report a description of the reference instrument, the payoff profile (*i.e.,* long or short), expiration date, aggregate notional amount or contract value as of the trade date, and unrealized appreciation or depreciation.[129] The description of the reference instrument would conform to the same requirements as the description of reference instruments for warrants and options.[130]

For foreign exchange forwards and swaps, funds would report the amount and description of currency sold, amount and description of currency purchased, settlement date, and unrealized appreciation or depreciation.[131]

For swaps (other than foreign exchange swaps), funds would report the description and terms of payments necessary for a user of financial information to understand the nature and terms of payments to be paid and received, including, as applicable: a description of the reference instrument, obligation, or index; financing rate to be paid or received; floating or fixed rates to be paid and received; and payment frequency.[132] The description of the reference instrument would conform to the same requirements as the description of reference instruments for forwards and futures.[133] Funds would also report upfront payments or receipts, unrealized appreciation or

the following (put or call). The payoff profile of the warrant or option would be selected from among the following (written or purchased). Funds would respond N/A for warrants for both type and payoff profile. As discussed above, funds would report the number of option contracts in Item C.2.a of Form N–PORT. *See supra* note 96 and accompanying text.

[119] *See* Form N–PORT, Items C.11.c.iii.2 and C.11.c.iii.3. For the securities identifier, funds would report, if available, CUSIP of the reference asset, ISIN (if CUSIP is not available), ticker (if CUSIP and ISIN is not available), or other unique identifier (if CUSIP, ISIN, and ticker are not available). *See also supra* note 92 and accompanying and following text.

[120] *See* Form N–PORT, Item C.11.c.iii.2.

[121] *See infra* Part II.A.4 (discussing proposed rules concerning the public disclosure of reports on Form N–PORT).

[122] *See supra* note 120.

[123] *See id.* Short positions in the index, if any, would be reported as negative numbers. The identifier for each index component would include CUSIP, ISIN (if CUSIP is not available), ticker (if CUSIP and ISIN are not available), or other identifier (if CUSIP, ISIN, and ticker are not available. If other identifier is provided, the fund would indicate the type of identifier used.

[124] We are also proposing to modify Regulation S–X to require similar disclosures. *See infra* Part II.C.2.a (discussing proposed rule 12–13, n.3 of Regulation S–X).

[125] *See* rule 12–12C, n.3 of Regulation S–X.

[126] *See* Form N–PORT, Item C.11.c.iii.1. Funds would report the category of derivative that most closely represents the investment, selected from among the following (forward, future, option, swaption, swap, warrant, other). If ''other,'' funds would provide a brief description.

[127] *See* Form N–PORT, Item C.11.c.vii.

[128] *See* Derivatives Concept Release, *supra* note 7.

[129] *See* Form N–PORT, Item C.11.d.

[130] *See* Form N–PORT, Item C.11.d.ii. *See also supra* notes 119–126 and accompanying text.

[131] *See* Form N–PORT, Item C.11.e.

[132] *See* Form N–PORT, Item C.11.f.i. Funds would separately report the description and terms of payments to be paid and received. The description of the reference instrument, obligation, or index would include the information required to be reported for the descriptions of reference instruments for warrants, options, futures, or forwards.

[133] *See id. See also supra* note 130 and accompanying text.

depreciation, termination or maturity date, and notional amount.[134]

Finally, for derivatives that do not fall into the categories enumerated in Form N–PORT, funds would provide a description of information sufficient for a user of financial information to understand the nature and terms of the investment. This description would include, as applicable, currency, payment terms, payment rates, call or put features, exercise price, and a description of the reference instrument, among other things.[135] The description of the reference instrument would conform to the same requirements as the description of reference instruments for swaps.[136] Funds would also report termination or maturity (if any), notional amount(s), unrealized appreciation or depreciation, and the delta (if applicable).[137] We recognize that new derivative products will continue to evolve, and thus the disclosures for this category are intended to be flexible enough to encompass the changing needs and products that may emerge.

We request comment on our proposed disclosure requirements for derivatives.

- Is there additional or alternative information about derivative contracts that we should be requiring? Should we modify the information we are proposing to require for any derivatives contracts? Should other terms and conditions, categories of derivatives, payoff profiles, or identifiers be included in Form N–PORT so that all material elements of derivatives contracts can be reported?
- For options, should funds be required to identify the option exercise type (*e.g.,* American, European, Bermudan, Asian, other) or report any additional information for more exotic option exercise types (*e.g.,* rainbow, barrier, lookback, etc.)?
- We recently adopted Regulation SBSR, which will require one of the parties to security-based swap transactions to report certain information to registered security-based swaps data repositories or the Commission.[138] The reporting party will report certain identifying information, including unique product identifiers to identify each security-based swap, as well as certain primary and secondary trade information, including the terms of any standardized fixed or floating rate payments, the frequency of any such payments, and any additional data elements included in the agreement between the counterparties that are necessary for a person to determine the market value of the transaction.[139] The Commodities Futures Trading Commission has engaged in similar efforts with regards to unique product identifiers that would be reported with regards to swaps.[140] Are there methods the Commission should consider to harmonize the SBSR reporting requirements with the proposed reporting requirements on Form N–PORT? For example, should we consider ways to allow a fund to import the data reported to swap and security-based swap data repositories automatically into the fund's reports on Form N–PORT? How would this affect investors' ability to analyze this data for swaps and security-based swaps held by funds? Should we require funds to report the product identifiers or any other data we are not currently proposing to require on Form N–PORT that will be required to be reported for swaps or security-based swaps? If so, why?
- Proposed Form N–PORT would require funds to list all underlying reference assets unless the underlying reference asset is an index whose components are publicly available on a Web site and are updated on that Web site no less frequently than quarterly, in which case funds would identify the index and publisher of the index, or unless the notional amount of the derivative represents 1% or less of the NAV of the fund, in which case funds would provide a narrative description of the index.[141] To the extent such indices are proprietary or subject to licensing agreements, what would be the effect of this requirement? For example, would funds incur costs for amending licensing agreements? Would index providers be willing to amend existing licensing agreements? If not, how would this impact funds that make such investments and the marketplace of fund options available to investors generally? Are there other concerns about disclosing the components of proprietary indices? Should we alter this requirement, and if so how? For example, should we not require funds to report underlying index components for derivatives unless the derivative's notional amount represents at least 5%, or some other percentage, of the NAV of the fund? Alternatively, should we limit the required disclosure of index components to the top 50 components and/or components that represent more than 1% of the index? If the reference asset is a modified version of an index whose components are publicly available on a Web site, for example a version that is customized to exclude certain issuers that the fund is restricted from owning, would requiring a narrative of those modifications be preferable to funds and investors rather than requiring each holding of the modified index to be listed? If so, should such narrative disclosure be reported in the ''explanatory notes'' section of Form N–PORT?[142]
- How, if at all, should we modify the proposed requirement to report delta? To what extent would the inputs and assumptions underlying the methodology by which funds calculate this measure affect the value reported? Are there potential liability or other concerns associated with the reporting of such measures according to such inputs and assumptions? For example, how would the comparability of information reported between funds be affected if funds used different inputs and assumptions in their methodologies?
- Are there additional or alternative metrics that we should consider requiring to be reported? Would the disclosure of risk metrics such as vega—which measures the amount that an option contract's price changes in relation to a 1% change in the volatility of the underlying asset—or gamma—which measures the sensitivity of delta in response to price changes in the underlying instrument—enhance the utility of the derivatives information reported in Form N–PORT? What would be the costs and burdens to funds and benefits to investors and other potential users of requiring funds to report such additional or alternative metrics? How would the comparability of information reported by different funds be affected if funds used different inputs and assumptions in their methodologies, such as different assumptions regarding the values of the funds' portfolios?
- We believe that funds already track the characteristics of their derivatives that we would require to be reported on Form N–PORT. To the extent this is correct, what would be the incremental

[134] *See* Form N–PORT, Items C.11.f.ii to C.11.f.v.

[135] *See* Form N–PORT, Item C.11.g.1.

[136] *See* Form N–PORT, Item C.11.f.i. *See also supra* note 133 and accompanying text.

[137] *See* Form N–PORT, Items C.11.g.ii to C.11.g.v.

[138] *See* Regulation SBSR Adopting Release, *supra* note 40 (requiring the reporting of certain information for each registered security-based swap transaction to registered security-based swap data repositories or to the Commission, including unique product identifiers and transaction identifiers).

[139] *See* rule 901 of Regulation SBSR [17 CFR 242.901].

[140] *See generally* Q&A—Swap Data Recordkeeping and Reporting Requirements, CFTC, *available at http://www.cftc.gov/ucm/groups/public/@newsroom/documents/file/sdrr_qa.pdf.*

[141] *See, e.g., supra* notes 120–123.

[142] *See infra* note 155 and accompanying and following text.

cost and burden of reporting such information to the Commission?

v. Securities on Loan and Cash Collateral Reinvestment

As discussed above, our proposal would require funds to report on Form N–PORT, for each of their securities lending counterparties as of the reporting date, the full name and LEI of the counterparty (if any), as well as the aggregate value of all securities on loan to the counterparty.[143] We are also proposing that funds report on Form N–PORT, on an investment-by-investment level, information about securities on loan and the reinvestment of cash collateral that secures the loans. For each investment held by the fund, a fund would report: (1) Whether any portion of the investment was on loan by the fund, and, if so, the value of the securities on loan;[144] (2) whether any amount of the investment represented reinvestment of the cash collateral and, if so, the dollar amount of such reinvestment;[145] and (3) whether any portion of the investment represented non-cash collateral received to secure loaned securities and, if so, the value of the securities representing such non-cash collateral.[146]

These disclosures would provide information about how funds reinvest the cash collateral received from securities lending activity and should allow for more accurate determination of the value of collateral securing such loans. This could improve the ability of Commission staff, as well as investors, brokers, dealers, and other market participants to assess collateral reinvestment risks and associated potential liquidity and loss risks, as well as better understand leverage creation through the reinvestment of collateral.[147] These disclosures could also help identify those investments that one or more funds might have to sell or redeem in the event of widespread termination or default by borrowers. More generally, this information could help to address concerns expressed by industry participants about the lack of transparency in funds' securities lending transactions.[148]

We request comment on our proposed disclosure requirements for securities loans and cash collateral reinvestment.

- Should the Commission require funds to report information about securities on loan or reinvestment of cash collateral at the portfolio level, rather than at the individual security level? If so, what categories should be used to report such reinvestment? For example, would it be appropriate to use the same collateral categories for securities lending that we are proposing to be used for repurchase and reverse repurchase agreements?
- As discussed, Form N–PORT would require funds to indicate, for each investment, whether any portion of the investment represented non-cash collateral received to secure loaned securities. To what extent would this information be helpful to brokers, dealers, and investors? To what extent do funds receive collateral other than cash?
- Is there additional or alternative information regarding securities lending transactions that the Commission should require to be disclosed in reports on Form N–PORT?
- We believe that funds already track the characteristics of their securities lending and cash collateral reinvestment transactions that we would require to be reported on Form N–PORT. Is this belief correct? What would be the burden of reporting such information to the Commission?

h. Miscellaneous Securities

In Part D of Form N–PORT, as currently permitted by Regulation S–X, funds would have the option of identifying and reporting certain investments as ''miscellaneous securities.''[149] Funds electing to separately report miscellaneous securities would use the same Item numbers and report the same information that would be reported for each investment if it were not a miscellaneous security.[150] Consistent with the disclosure regime established by Regulation S–X, all such responses regarding miscellaneous securities would be nonpublic and would be used for Commission use only, notwithstanding the fact that all other information reported for the third month of each fund's fiscal quarter on Form N–PORT would otherwise be publicly available.[151] Keeping information related to these investments nonpublic may serve to guard against the premature release of those securities positions and thus deter front-running and other predatory trading practices, while still allowing the Commission to have a complete record of the portfolio for monitoring, analysis, and checking for compliance with Regulation S–X.[152] The only information publicly reported for miscellaneous securities would be their aggregate value, which would be consistent with current practice as permitted by Regulation S–X.[153]

- Should funds continue to be allowed to use the category of miscellaneous securities, either on Form N–PORT or in publicly disclosed schedules of investments pursuant to instruction 1 to rule 12–12 and instruction 5 to rule 12–12C of Regulation S–X? To what extent do funds currently use ''miscellaneous securities'' as a line item in their schedule of investments, as opposed to disclosing all investments in securities of unaffiliated issuers? For what purposes? Should we continue to allow funds to exclude the full disclosures of such securities from funds' schedules of investments? Alternatively, should we consider lowering the threshold, such as to two percent or one percent of the total value of securities of unaffiliated issuers?

i. Explanatory Notes

In Part E of Form N–PORT, funds would have the option of providing explanatory notes relating to the filing, if any.[154] Any notes provided in public reports on Form N–PORT (*i.e.,* reports on Form N–PORT for the third month of the fund's fiscal quarter) would be publicly available, whereas notes provided in nonpublic filings of Form N–PORT would remain nonpublic.[155] Funds would also report, as applicable, the Item number(s) to which the notes are related.[156]

These notes, which would be optional, could be used to explain assumptions that funds made in responding to specific items in Form N–PORT. Funds could also provide context for anomalous responses or discuss issues that could not be adequately addressed elsewhere given the constraints of the form. Similar

[143] *See supra* note 75 and preceding, accompanying, and following text.

[144] *See* Form N–PORT, Item C.12.c.

[145] *See* Form N–PORT, Item C.12.a.

[146] *See* Form N–PORT, Item C.12.b.

[147] As discussed above, commenters to the FSOC Notice suggested that enhanced securities lending disclosures could be beneficial to investors and counterparties. *See supra* note 71.

[148] *See, e.g.,* Transcript of Securities and Exchange Commission Securities Lending and Short Sale Roundtable (Sept. 29, 2009), *available at http://www.sec.gov/news/openmeetings/2009/roundtable-transcript-092909.pdf* (discussing, among other things, the lack of publicly available information to market participants about securities lending transactions).

[149] *See generally supra* note 49 and accompanying text.

[150] *See* Form N–PORT, Part D.

[151] *See* rule 12–12 of Regulation S–X.

[152] *See, e.g.,* Quarterly Portfolio Holdings Adopting Release, *supra* note 19, at n.64 and accompanying text.

[153] *See supra* notes 48–49 and accompanying text.

[154] *See* Form N–PORT, Part E. *Cf.* Form PF, Item 4 (providing advisers to private funds the option of explaining any assumptions that they made in responding to any questions in the form).

[155] *See infra* Part II.A.4 of this release.

[156] *See* Form N–PORT, Part E.

information in other contexts has assisted Commission staff in better understanding the information provided by funds, and we expect that explanatory notes provided on Form N–PORT would do the same.[157]

We request comment on our proposed disclosure requirements.

- Would the format outlined above for the explanatory notes allow funds to adequately discuss their responses on Form N–PORT? If not, how should the format be modified?
- Should explanatory notes in publicly available filings of Form N–PORT be nonpublic? If so, why?

j. Exhibits

In Part F of Form N–PORT, for reports filed for the end of the first and third quarters of the fund's fiscal year, a fund would also attach the fund's complete portfolio holdings as of the close of the period covered by the report. These portfolio holdings would be presented in accordance with the schedules set forth in §§ 210.12–12 to 12–14 of Regulation S–X.

As discussed further below in Part B, we are proposing to rescind Form N–Q because reports on Form N–PORT for the first and third fiscal quarters would make similar reports on Form N–Q unnecessarily duplicative. While we recognize that the quarterly, publicly disclosed reports on Form N–PORT will provide structured data to investors and other potential users, we recognize that the amount and structured format of the data contained in those reports are not primarily designed for individual investors. We believe that such investors might prefer that portfolio holdings schedules for the first and third quarters continue to be presented using the form and content specified by Regulation S–X, which investors are accustomed to viewing in reports on Form N–Q and in shareholder reports. Therefore, we are proposing to require that, for reports on Form N–PORT for the first and third quarters of a fund's fiscal year, the fund would attach its complete portfolio holdings for that fiscal quarter, presented in accordance with the schedules set forth in §§ 210.12–12 to 12–14 of Regulation S–X.

Requiring funds to attach these portfolio holdings schedules to reports on Form N–PORT would provide the Commission, investors, and other potential users with access to funds' current and historical portfolio holdings for those funds' first and third fiscal quarters. Our proposal would also consolidate these disclosures in a central location, together with other fund portfolio holdings disclosures in shareholder reports and reports on Form N–CSR for funds' second and fourth fiscal quarters.

Under our proposal, and consistent with current practice, funds would have until 60 days after the end of their second and fourth fiscal quarters to transmit reports to shareholders containing portfolio holdings schedules prepared in accordance with Regulation S–X for that reporting period.[158] In contrast, under our proposal, funds would have 30 days after the end of their first and third fiscal quarters to file reports on Form N–PORT that would include portfolio holdings schedules prepared in accordance with Regulation S–X, although such reports would not be required to be made public until 60 days after the close of the reporting period. Although our proposal would require funds to prepare Regulation S–X compliant portfolio holdings schedules for their first and third fiscal quarters 30 days more rapidly than they do currently, we believe that this would be reasonable given the significant overlap with information that would be required to be reported on Form N–PORT, and the fact that funds would be required to file reports on Form N–PORT within 30 days after the end of each month. In addition, the portfolio schedules attached to Form N–PORT would be neither audited nor certified, which we believe would significantly reduce the time required for preparation and validation. We request comment below on the timing of preparing this attachment.

As discussed below, we are proposing to allow funds to transmit reports to shareholders by posting online those reports, together with the funds' complete portfolio holdings for the first and third fiscal quarters presented in accordance with the schedules set forth in §§ 210.12–12 to 12–14 of Regulation S–X disclosures.[159] We recognize that there would be duplication between the portfolio schedules posted online for funds relying upon proposed rule 30e–3 and the portfolio schedules for funds attached on reports on Form N–PORT. However, we believe that requiring the Regulation S–X schedules to be filed as exhibits to Form N–PORT reports would serve the purpose of making the schedules permanently available on the Commission's Electronic Data Gathering, Analysis, and Retrieval System (''EDGAR'') (even when such schedules are no longer required to be maintained online pursuant to proposed rule 30e–3).

We request comment on our proposed exhibits.

- Should funds be required to attach portfolio holdings schedules to reports on Form N–PORT? Is there an alternative that would be better for funds and investors in terms of informing investors' investment decisions with regards to current and historical portfolio holdings?
- As discussed above, the attached portfolio holdings schedules are intended for investors, but would not be required to be made publicly available to investors until 60 days after the close of the reporting period; however, as proposed, funds would be required to prepare and file this attachment within 30 days of the end of the reporting period. Should funds be allowed to file reports on Form N–PORT for the first and third fiscal quarters without Regulation S–X compliant schedules, but then be required to amend those reports on Form N–PORT to attach Regulation S–X compliant schedules no later than 60 days after the end of the reporting period?
- Should the portfolio schedules attached to Form N–PORT, which are similar to reports funds are providing currently on Form N–Q, be certified, as is currently required by Form N–Q?

k. General Request for Comments Regarding the Information on Form N–PORT

In addition to the requests for comment above, we request general comment on feasible alternatives to the information we would be requiring funds to report on Form N–PORT that would minimize the reporting burdens on funds while maintaining the anticipated benefits of the reporting and disclosure.[160] We also request comment on the utility of the information proposed to be included in reports to the Commission, investors, and the public in relation to the costs to funds of providing the reports.[161]

[157] *See, e.g.,* Form N–MFP, Item 43 (''Explanatory notes. Disclose any other information that may be material to other disclosures related to the portfolio security.'').

[158] *See supra* note 27 (discussing current requirements to transmit reports to shareholders); *infra* Part II.C (discussing our proposed amendments to Regulation S–X).

[159] *See supra* Part II.D.3.

[160] *See* section 30(c)(2)(A) of the Investment Company Act [15 U.S.C. 80a–29(c)(2)(A)] (requiring Commission to consider and seek public comment on feasible alternatives to the required filing of information that minimize reporting burdens on funds).

[161] *See* section 30(c)(2)(B) of the Investment Company Act (requiring Commission to consider and seek public comment on the utility of information, documents and reports to the Commission in relation to the associated costs).

• Would Form N–PORT, as proposed, appropriately consider the usefulness of the information to the Commission, investors, and other potential users of the required information and the costs that would be associated with reporting this information? If not, which data points or items should be enhanced or scaled back? Are there any proposed items in Form N–PORT that should be revised to avoid duplication of reporting requirements in different Commission rules or forms? If so, please explain. On the other hand, are there any elements in Form N–PORT that the Commission should carry over to other Commission forms or rules?

• Are there specific items that the proposed form would require that are unnecessary or otherwise should not be required in the manner that we propose? Alternately, is there different or additional information that we have not identified that could be useful to us or investors in monitoring funds? For example, to the extent there are fund-specific, sector-specific, or industry-wide risks that would not be addressed by the information we are proposing to collect today, should we require additional or alternative information that would be relevant to an evaluation of the risk characteristics of the fund and its portfolio investments? Likewise, is there any investment- or entity-specific information that should be included in Form N–PORT to facilitate analysis of the information that would be reported? Should the manner in which information would be reported in Form N–PORT be revised to improve the clarity of disclosures or reduce reporting burdens?

• We believe that the information we are proposing to require would be readily available to funds as a matter of general business practice. Do commenters agree with this assumption? For example, do fund accounting or financial reporting systems, or those of a fund's custodian, generally contain the investment information that we are requesting in our proposal? What is the feasibility and burden of requiring funds to report information that is not contained in such systems? To the extent that any items that we have requested are not contained in fund accounting or financial reporting systems, are there other types of readily available data that would provide us with similar information?

3. Reporting of Information on Form N–PORT

As discussed above, the Commission proposes that funds would report information on Form N–PORT in XML, so that Commission staff, investors, and other potential users could create databases of fund portfolio information to be used for data analysis. Forms N–CSR and N–Q are not currently filed in a structured format, which results in reports that are comprehensible to a human reader, but are not suitable for automated processing, and generally require filers to reformat the required information from the way it is stored for normal business uses.[162] By contrast, requiring that reports on Form N–PORT be structured would allow the Commission and other potential users to combine information from more than one report in an automated way to, for example, construct a data base of fund portfolio investments without additional formatting. Based upon our experiences with Forms N–MFP and PF, both of which require filers to report information in an XML format, we believe that requiring funds to report information on Form N–PORT in an XML format would provide the information that we seek in the most timely and cost-effective manner.[163] As discussed further below in the economic analysis, the XML format may also improve the quality of the information disclosed by imposing constraints on how the information would be provided, by providing a built-in validation framework of the data in the reports.[164]

• What would be the costs to funds of providing data conforming to a Form N–PORT XML Schema? How would costs be affected, if at all, by the size of the funds and fund complexes reporting this data? How would this affect smaller fund companies?

• Should the Commission allow or require the form to be provided in an XML Schema derived from existing XML based languages, such as Financial products Markup Language (''FpML'') or XBRL? FpML is an industry standard created by ISDA for exchanging and reporting the terms and conditions of derivatives contracts. XBRL is another industry standard used by the Commission for many reporting forms.

• Is there another structured format that would allow investors and analysts to easily download and analyze the data?

The Commission is considering whether reports on Form N–PORT should be submitted through EDGAR or another electronic filing system, either maintained by the Commission or by a third-party contractor. If reports on Form N–PORT were required to be submitted through EDGAR, the electronic filing requirements of Regulation S–T would apply.[165]

We request comment on this aspect of our proposal.

• Are there specific other capabilities that the Commission should consider in developing or selecting an electronic filing system? For example, should the system have the capability to cross-check information reported to other electronic filing systems, such as the Investment Adviser Registration Depository (where registration forms for investment advisers are filed)? If so, which platforms and why?

• Is EDGAR the optimal vehicle for filing reports on Form N–PORT with the Commission? If not, what vehicle would be optimal for filing reports and why? Should the Commission allow the filing of documents in electronic media other than on EDGAR? If so, please make specific recommendations.

• Are there any particular concerns with filing such reports on EDGAR as opposed to a third party system or vice versa? If so, what are those concerns and what are potential remedies for such concerns? For example, as discussed further below, as proposed, reports on Form N–PORT for the first and second month of each fiscal quarter would not be made public. Accordingly, any filing would need to have confidentiality protections to keep the information on such Forms non-public. How should EDGAR or an alternative filing platform best address the confidentiality of this information?

• How important to investors and other interested parties is the fact that EDGAR currently serves as the filing system for fund filings with the Commission, and thus serves as a single repository where investors may examine historical filings by a given fund on related forms and generally compare reports made by other funds? To what extent, if at all, could investors become confused by the use of a new filing system for Form N–PORT and the use of EDGAR for other fund filings? How should any such investor confusion be mitigated by funds and the Commission?

[162] Forms N–CSR and N–Q are required to be filed in HTMA or ASCII/SGML. *See* rule 301 of Regulation S–T; EDGAR Filer Manual (Volume II) version 27 (June 2014) at 5–1.

[163] We anticipate that the XML interactive data file would be compatible with a wide range of open source and proprietary information management software applications. Continued advances in interactive data software, search engines, and other web-based tools may further enhance the accessibility and usability of the data. *See, e.g.,* Money Market Fund Reform 2010 Release, *supra* note 13, at n.341.

[164] *See infra* Part IV.B.b.

[165] *See generally* 17 CFR 232 (governing the electronic submission of documents filed with the Commission).

Our proposal would require funds to report information on Form N–PORT no later than 30 days after the close of each month.[166] We request comment on this aspect of our proposal.

• Would 30 days be sufficient for funds to gather and report this information to the Commission? If not, what amount of time would be required and why? Conversely, could funds easily and reliably gather and report this information in less than 30 days, which would provide the Commission staff with more timely data?[167] If so, what amount of time would be appropriate? To what extent, if at all, should this determination be affected by the fact that funds would have 60 days to report their schedule of investments in their financial statements prepared pursuant to Regulation S–X?

As an alternative to monthly reports filed on Form N–PORT, should the Commission require quarterly reports that include portfolio information for each month of that quarter? How would the viability of this alternative be affected, if at all, by the technological challenges and inadvertent disclosure risks associated with combining in a single form nonpublic portfolio information relating to the first two months of each quarter with public portfolio information relating to the third month of that quarter? We note that this alternative would eliminate many of the benefits of monthly reporting, such as the ability of monthly data to address the staleness of quarterly data and to assist in monitoring funds by decreasing the delay between reports. However, this alternative would still provide twelve data points per year, which should improve the Commission staff's ability to perform analyses of portfolios, and would discourage various forms of portfolio manipulation, as discussed above. What, if any, other factors should the Commission consider in evaluating this alternative?

4. Public Disclosure of Information Reported on Form N–PORT

We are proposing that funds report information on Form N–PORT on a monthly basis, no later than 30 days after the close of each month.[168] For reasons discussed below, and consistent with current disclosure practices, only information reported for the third month of each fund's fiscal quarter would be publicly available, and such information would not be made public until 60 days after the end of the third month of the fund's fiscal quarter.[169]

The quarterly portfolio reports that the Commission currently receives on Forms N–Q and N–CSR can quickly become stale due to the turnover of portfolio securities and fluctuations in the values of portfolio investments. Monthly portfolio reporting would decrease the delay between reports, which should prove useful to the Commission for fund monitoring, particularly in times of market stress. This would also triple the number of data points reported to the Commission in a given year, as well as ensure that the Commission has current information, which should in turn enhance the ability of Commission staff to perform analyses of funds in the course of monitoring for industry trends, or identifying issues for examination or inquiry.

As discussed above, the Commission generally believes that public availability of information, including the types of information that would be collected on Form N–PORT that may not currently be reported or disclosed by funds, can benefit investors by assisting them in making more informed investment decisions. Although Form N–PORT is not primarily designed for disclosing information to individual investors, we believe that many investors, particularly institutional investors, as well as academic researchers, financial analysts, and economic research firms, could use the information reported on Form N–PORT to evaluate fund portfolios and assess the potential for returns and risks of a particular fund. Accordingly, whether directly or through third parties, we believe that the periodic public disclosure of the information on proposed Form N–PORT could benefit all fund investors.

The Commission, however, recognizes that more frequent portfolio disclosure could potentially harm fund shareholders by expanding the opportunities for professional traders to exploit this information by engaging in predatory trading practices, such as trading ahead of funds, often called ''front-running.''[170] Similarly, the Commission is sensitive to concerns that more frequent portfolio disclosure may facilitate the ability of outside investors to ''free ride'' on a mutual fund's investment research, by allowing those investors to reverse engineer and ''copycat'' the fund's investment strategies and obtain for free the benefits of fund research and investment strategies that are paid for by fund shareholders.[171] Both front-running and copycatting can reduce the returns of shareholders who invest in actively managed funds.[172]

We discussed these concerns when we first proposed and adopted Form N–MFP, and made the determination to make each monthly report on Form N–MFP public, with a 60 day delay.[173] In that release, however, we noted that, due to the short-term and restricted nature of money market fund securities, and because shares of money market funds are ordinarily purchased and redeemed at a stable share price, we believed opportunities for such activities were curtailed.[174] By contrast, funds other than money market funds can pursue a variety of investment strategies and invest in a variety of securities and other investments. Accordingly, we do not believe that the factors that mitigated our concerns about the potential for front running or free-riding in money market funds are as equally applicable to mutual funds.

Empirical studies indicate that the portfolio holdings information that investment companies disclose to the Commission and to shareholders contains information that can be used by other investors to front-run and

[166] In contrast, one commenter to the FSOC Notice suggested that funds should report information to the Commission on a real-time basis. *See* Comment Letter of Occupy the SEC to the FSOC Notice (Mar. 25, 2015) (suggesting that asset managers should be required to provide real-time data, and that the Commission have the capability to monitor all funds' transactions on a real-time basis).

[167] *See, e.g.,* Money Market Fund Reform 2014 Release, *supra* note 13 (requiring money market funds to report their holdings and other information to the Commission within five days after the end of each month).

[168] Commission staff understands that certain funds currently report their investments to shareholders as of the last business day of the reporting period, while other funds report their investments as of the last calendar day of the reporting period. In recognition of this fact, and in an effort to avoid disruptions to current fund operations, the information reported on Form N–PORT may reflect the fund's investments as of the last business day, or last calendar day, of the month for which the report is filed.

[169] As discussed above, portfolio schedules are currently available to the public in reports that are mailed to shareholders or filed with the Commission either 60 or 70 days following the end of each reporting period. *See supra* note 27 and accompanying text.

[170] *See, e.g.,* Quarterly Portfolio Holdings Adopting Release, *supra* note 19, at n.128 and accompanying text.

[171] *See, e.g., id.* at n.129 and accompanying text.

[172] *See The Potential Effects of More Frequent Portfolio Disclosure on Mutual Fund Performance,* 7 Investment Company Institute Perspective No. 3 (June 2001), *available at http://www.ici.org/pdf/per07-03.pdf* (''Potential Effects of More Frequent Disclosure'').

[173] *See* Money Market Fund Reform 2010 Release, *supra* note 13 (adopting Form N–MFP with a 60 day delay for public disclosure). In 2014, the Commission eliminated the 60 day delay in the public disclosure of Form N–MFP. *See* Money Market Fund Reform 2014 Release, *supra* note 13.

[174] *See* Money Market Fund Reform 2010 Release, *supra* note 13, at text following n.573.

copycat the positions of reporting funds.[175] Based on these studies, as well as experience and discussions with fund groups and market participants, the Commission is sensitive to the possibility that increasing the frequency of public portfolio disclosures to a monthly basis could further enable others to discern trading strategies of the funds, potentially subjecting registered investment companies to such predatory trading practices, resulting in competitive harms to the fund and its investors.

We recognize that some free-riding and front running activity can occur even with quarterly disclosure, with the potential for investor harm. Conversely, however, investors previously petitioned for quarterly disclosures, noting numerous benefits that quarterly disclosure of portfolio schedules could provide, including allowing investors to better monitor the extent to which their funds' portfolios overlap, and hence enabling investors to make more informed asset allocation decisions, and providing investors with greater information about how a fund is complying with its stated investment objective.[176] The Commission cited many of these benefits when it adopted Form N–Q, and based on staff experience and outreach, believes that the current practice of quarterly portfolio disclosures provides benefits to investors, notwithstanding the opportunities for front-running and reverse engineering it might create.

Our proposal is intended to appropriately consider the benefits to the Commission, investors, and other potential users of public portfolio disclosures, including the reporting of such disclosures in a structured format and additional portfolio information that would be required on proposed Form N–PORT and the potential costs associated with making that information available to the public, which could be ultimately borne by investors. Accordingly, in an attempt to minimize these potential costs and harms, we propose to require public disclosure of fund reports on Form N–PORT once each quarter, rather than monthly, thereby maintaining the status quo regarding the frequency of public portfolio disclosure. As discussed above, funds are currently required to disclose their portfolio investments quarterly, via public filings with the Commission and semi-annual reports distributed to shareholders. Consequently, the Commission is not currently proposing to make public the information reported for the first and second months of each fund's fiscal quarter on Form N–PORT. Only information reported for the third month of each fund's fiscal quarter on Form N–PORT would be made publicly available, and such information would not be made public until 60 days after the end of the third month of the fund's fiscal quarter. We believe that maintaining the status quo with regard to the frequency and the time lag of portfolio reporting would allow the Commission, the fund industry, and the marketplace to assess the impact of the structured and more detailed data reported on Form N–PORT on the mix of information available to the public, and the extent to which these changes might affect the potential for predatory trading, before determining whether more frequent or more timely public disclosure would be, beneficial to investors in funds.

We are proposing to maintain the status quo of public disclosure of quarterly information based upon each fund's fiscal quarters, rather than calendar quarters, to ensure that public disclosure of information filed on Form N–PORT would be the same as the portfolio disclosures reported on a semi-annual fiscal year basis on Form N–CSR. We believe that such overlap would minimize the risks of predatory trading, because otherwise funds with fiscal year-ends that fall other than on a calendar quarter- or year-end would have their portfolios publicly available more frequently than funds with fiscal year-ends that fall on a calendar quarter- or year-end, thus increasing the risks to those funds discussed above related to potential front-running or reverse engineering.

We request comment on the proposed frequency and delay of public disclosure of information reported on Form N–PORT.

- Should we require information on Form N–PORT reported for the first and second month of each fund's fiscal quarter be made public? Are the concerns about front-running or other possible harms discussed above warranted given the 60-day delay? Would a different combination of public disclosure frequency and delay better protect funds and their investors from the risks of predatory trading, while still providing timely and regular information to investors? To what extent would investors benefit from receiving monthly data as opposed to quarterly data?
- Are there alternatives we should consider to provide investors and other potential users with the information reported on Form N–PORT for the first and second months of each quarter? For example, would the potential harms discussed above be mitigated if reports on Form N–PORT for the first and second months were made public 60 days (or a shorter or longer time period) after the end of each quarter, or 60 days (or a shorter or longer time period) after the end of each fund's fiscal year, thereby increasing the time lag of such information? If monthly information were to be provided quarterly or annually, how would that affect the benefits of such information to investors and other potential users?
- Would Form N–PORT contain the type of information that, if disclosed on a monthly basis, could reveal information that a fund would consider proprietary or confidential or that could place the fund at a competitive disadvantage? If so, please explain and provide examples, as applicable.
- Would restricting public disclosure of the information reported on Form N–PORT to information reported for the third month of each fund's fiscal quarter alleviate concerns about front-running or other possible harms that might be caused by making the monthly information reported on Form N–PORT public? Should we instead provide that all or a portion of the requested information on Form N–PORT be submitted in nonpublic reports to the Commission? If so, please identify the specific items that should remain nonpublic and explain why.
- Do commenters believe that our proposed 60-day delay in making the information public would be helpful in protecting against possible front running or free riding? Would a shorter delay (*e.g.,* 45 or 30 days) or a longer delay (*e.g.,* 70 days) be more appropriate? If so, why? For example, should we provide for a longer delay to prevent investors other than shareholders from trading along with the fund, to the possible detriment of the fund and its shareholders? Alternately, would a shorter delay, for example 30 days, better serve the needs of shareholders

[175] *See infra* notes 663–667 and accompanying and following text.

[176] *See* Quarterly Portfolio Holdings Adopting Release, *supra* note 19, at n.32 and accompanying text (discussing prior investor petitions for rulemaking). Investors that petitioned for quarterly disclosure also argued that increasing the frequency of portfolio disclosure would expose ''style drift'' (when the actual portfolio holdings of a fund deviate from its stated investment objective) and shed light on and prevent several potential forms of portfolio manipulation, such as ''window dressing'' (buying or selling portfolio securities shortly before the date as of which a fund's holdings are publicly disclosed, in order to convey an impression that the manager has been investing in companies that have had exceptional performance during the reporting period) and ''portfolio pumping'' (buying shares of stock the fund already owns on the last day of the reporting period, in order to drive up the price of the stocks and inflate the fund's performance results).

and potential fund investors while still appropriately protecting the interests of funds?

• Should information be reported on Form N–PORT as of the third month of each fund's fiscal year, as proposed, or should we instead require a uniform public reporting schedule for all funds to facilitate comparison of information reported on Form N–PORT (*e.g.,* March 31, June 30, September 30, and December 31)? To what extent would a uniform public disclosure schedule increase burdens to funds, given that one of the purposes for selecting fiscal year-ends that vary from calendar year-ends is to spread out filing burdens throughout the year for fund complexes?

B. Rescission of Form N–Q and Amendments to Certification Requirements of Form N–CSR

1. Rescission of Form N–Q

Along with our proposal to adopt new Form N–PORT, we are proposing to rescind Form N–Q. Management companies other than SBICs are currently required to report their complete portfolio holdings as of the end of their first and third fiscal quarters on Form N–Q. Because the data reported on proposed Form N–PORT would include the portfolio holdings information contained in reports on Form N–Q, we believe that Form N–PORT, if adopted, would render reports on Form N–Q unnecessarily duplicative. Therefore, we believe it is appropriate to rescind Form N–Q rather than require funds to report similar information to the Commission on two separate forms.

However, as noted earlier, we believe that individual investors and other potential users might prefer that portfolio holdings schedules for the first and third quarters continue to be presented using the form and content specified by Regulation S–X, which investors are accustomed to viewing in reports on Form N–Q and in shareholder reports. Therefore, we are proposing to require that, for reports on Form N–PORT for the first and third quarters of a fund's fiscal year, the fund would attach its complete portfolio holdings for that fiscal quarter, presented in accordance with the schedules set forth in §§ 210.12–12 to 12–14 of Regulation S–X [17 CFR 210.12–12—12–14]. Also, as discussed below, proposed new rule 30e–3 would allow funds to satisfy requirements to transmit reports to shareholders by posting on a Web site those shareholder reports and these same portfolio schedules for the funds' first and third quarters.[177]

2. Amendments to Certification Requirements of Form N–CSR

In connection with the Commission's implementation of the Sarbanes-Oxley Act of 2002, Form N–Q and Form N–CSR require the principal executive and financial officers of the fund to make quarterly certifications relating to (1) the accuracy of information reported to the Commission, and (2) disclosure controls and procedures and internal control over financial reporting.[178] Rescission of Form N–Q would eliminate certifications as to the accuracy of the portfolio schedules reported for the first and third fiscal quarters.

Under today's proposal, the certifications as to the accuracy of the portfolio schedules reported for the second and fourth fiscal quarters on Form N–CSR would remain. However, we are proposing to amend the form of certification in Form N–CSR to require each certifying officer to state that he or she has disclosed in the report any change in the registrant's internal control over financial reporting that occurred during the most recent fiscal half-year, rather than the registrant's most recent fiscal quarter as currently required by the form.[179] Lengthening the look-back of this certification to six months, so that the certifications on Form N–CSR for the semi-annual and annual reports would cover the first and second fiscal quarters and third and fourth fiscal quarters, respectively, would fill the gap in certification coverage that would otherwise occur once Form N–Q is rescinded. To the extent that certifications improve the accuracy of the data reported, removing such certifications could have negative effects on the quality of the data reported. Likewise, if the reduced frequency of the certifications affects the process by which controls and procedures are assessed, requiring such certifications semi-annually rather than quarterly could reduce the effectiveness of the fund's disclosure controls and procedures and internal control over financial reporting are assessed. However, we expect such effects, if any, to be minimal because certifying officers would continue to certify portfolio holdings for the fund's second and fourth fiscal quarters and would further provide semi-annual certifications concerning disclosure controls and procedures and internal control over financial reporting that would cover the entire year.

3. Request for Comment

We request comments on the proposed rescission of Form N–Q and related rule and form amendments.

• Should we rescind Form N–Q, as we have proposed? Should we instead retain Form N–Q, and not require Regulation S–X compliant schedules to be attached to reports for the first and third fiscal quarters on Form N–PORT? Why or why not?

• Would the proposed amendments to the certification requirements in Form N–CSR be an appropriate substitute for the certification requirements in Form N–Q? Would the change from quarterly to semiannual certifications have an effect on the quality of funds' internal controls or on other costs associated with certifications? If so, are those changes appropriate?

C. Amendments to Regulation S–X

1. Overview

As part of our larger effort to modernize the manner in which funds report holdings information to investors, today we are proposing amendments to Regulation S–X, which prescribes the form and content of financial statements required in registration statements and shareholder reports.[180] As discussed above, many of the proposed amendments to Regulation S–X, particularly the amendments to the disclosures concerning derivative contracts, are similar to the proposed requirements concerning disclosures of derivatives that would be required on reports on proposed Form N–PORT. The proposed amendments to Regulation S–X would, among other things, require similar disclosures in a fund's financial

[177] *See infra* Part II.D.

[178] *See* Item 3 of Form N–Q (certification requirement); Form N–Q Adopting Release, *supra* note 152; Item 12 of Form N–CSR (certification requirement); Certification of Management Investment Company Shareholder Reports and Designation of Certified Shareholder Reports as Exchange Act Periodic Reporting Forms; Disclosure Required by Sections 406 and 407 of the Sarbanes-Oxley Act of 2002, Investment Company Act Release No. 24914 (Jan. 27, 2003) [68 FR 5348 (Feb. 3, 2003)] (adopting release for Form N–CSR).

[179] Proposed Item 11(b) of Form N–CSR; proposed paragraph 5(b) of certification exhibit of Item 11(a)(2) of Form N–CSR.

[180] *See* rule 1–01, *et seq* of Regulation S–X [17 CFR 210.1–01, *et seq*]. While ''funds'' are defined in the preamble as registered investment companies other than face amount certificate companies and any separate series thereof—*i.e.,* management companies and UITs—we note that our proposed amendments to Regulation S–X apply to both registered investment companies and BDCs. *See infra* notes 264 and 265. Therefore, throughout this section, when discussing fund reporting requirements in the context of our proposed amendments to Regulation S–X, we are also including changes to the reporting requirements for BDCs.

statements in its shareholder reports and, as applicable, Web site disclosures in order to provide investors, particularly individual investors, with clear and consistent disclosures across funds concerning fund investments in derivatives in a human-readable format, as opposed to the structured format of proposed Form N–PORT.

As outlined below, we are proposing amendments to Articles 6 and 12 of Regulation S–X that would: (1) Require new, standardized disclosures regarding fund holdings in open futures contracts, open forward foreign currency contracts, and open swap contracts,[181] and additional disclosures regarding fund holdings of written and purchased option contracts; (2) update the disclosures for other investments, as well as reorganize the order in which some investments are presented; and (3) amend the rules regarding the general form and content of fund financial statements. Our amendments would also require prominent placement of disclosures regarding investments in derivatives in a fund's financial statements, rather than allowing such schedules to be placed in the notes to the financial statements. Finally, our amendments would require a new disclosure in the notes to the financial statements relating to a fund's securities lending activities.

As discussed above, the proposed rules will renumber the current schedules in Article 12 of Regulation S–X and break out the disclosure of derivatives currently reported on Schedule 12–13 into separate schedules. These changes are summarized in Figure 1, below.

PROPOSED CHANGES TO ARTICLE 12 OF REGULATION S–X

Current rules	Proposed rules
12–12 (Investments in securities of unaffiliated issuers)	12–12 (Investments in securities of unaffiliated issuers).
12–12A (Investments—securities sold short)	12–12A (Investments—securities sold short).
12–12B (Open option contracts written)	12–13 (Open option contracts written).*
12–12C (Summary schedule of investments in securities of unaffiliated issuers).	12–12B (Summary schedule of investments in securities of unaffiliated issuers).*
12–13 (Investments other than securities)	12–13A (Open futures contracts).*
	12–13B (Open forward foreign currency contracts).*
	12–13C (Open swap contracts).*
	12–13D (Investments other than those presented in §§ 210.12–12, 12–12A, 12–12B, 12–13, 12–13A, 12–13B, and 12–13C)*
12–14 (Investments in and advances to affiliates)	12–14 (Investments in and advances to affiliates).

* Denotes new or renumbered schedules.

Figure 1

We believe the proposed amendments will assist comparability among funds, and increase transparency for investors regarding a fund's use of derivatives and the liquidity of certain investments. We have endeavored to mitigate burdens on the industry by proposing to require similar disclosures both on Form N-PORT and in a fund's financial statements.[182] As a further consideration, we believe that the amendments we are proposing today are generally consistent with how many funds are currently reporting investments (including derivatives), and other information according to current industry practices.

2. Enhanced Derivatives Disclosures

In 2011, as part of a wider effort to review the use of derivatives by management investment companies, we issued a concept release and request for comment on a range of issues.[183] We received comment letters from a variety of stakeholders, including investors, fund groups, and third-party users of the information, who commented on a number of issues. Several commenters noted that holdings of derivative investments are not currently reported by funds in a consistent manner.[184] Commenters also suggested that more disclosure on underlying risks was necessary, including more information on counterparty exposure and reporting relating to the notional amount of certain derivatives.[185] Another commenter specifically requested that we revise Regulation S–X in order to keep ''financial reporting current with developments in the financial markets.'' [186]

While the rules under Regulation S–X establish general requirements for portfolio holdings disclosures in fund financial statements, they do not prescribe standardized information to be included for derivative instruments

[181] We recognize that under the federal securities laws, certain derivatives fall under the definition of securities notwithstanding, for purposes of our proposals to Regulation S–X, we expect funds to adhere to the requirements of the disclosure schedules for the relevant derivative investment, regardless of how it would be defined under the federal securities laws. *See, e.g.,* proposed rule 12–13C of Regulation S–X (Open swap contracts).

[182] *See* discussion *supra* Part II.A.2.g.iv.

[183] Derivatives Concept Release, *supra* note 7.

[184] Comments submitted in response to the Derivatives Concept Release are available at *http://www.sec.gov/comments/s7-33-11/s73311.shtml. See* Morningstar Derivatives Concept Release Comment Letter, *supra* note 58 (''This is because fund companies are not reporting derivative holdings in a consistent manner and are not reporting derivative holdings in a manner that identifies the underlying risk exposure.''); Comment Letter of Rydex|SGI (Nov. 7, 2011) (''Rydex|SGI Derivatives Concept Release Comment Letter'') (''However, the quality and extent of such derivatives disclosure still varies greatly from registrant to registrant.''). Commenters to the FSOC Notice made similar observations. *See, e.g.,* Americans for Financial Reform FSOC Notice Comment Letter, *supra* note 116 (''While full position-level data on securities portfolios is available periodically for registered funds, current derivatives disclosure requirements appear very poor.''); Systematic Risk Council FSOC Notice Comment Letter, *supra* note 116 (''While most managed funds do not employ leverage to the same degree that banks do, we encourage regulators to consider carefully whether there are potential improvements to the current data collection regime [ ] that would allow regulators to track the presence and concentrations of leverage in the asset management industry, particularly as it arises from the use of derivatives . . . .'').

[185] *See* Morningstar Derivatives Concept Release Comment Letter, *supra* note 58 (''Notional exposure . . . is a better measure of risk''); Comment Letter of Oppenheimer Funds to Derivatives Concept Release (Nov. 7, 2011) (''Instead, counterparty risks incurred through the investments in derivatives . . . should be considered in a new SEC rulemaking that is primarily disclosure based.''); Rydex|SGI Derivatives Concept Release Comment Letter, *supra* note 184 (recommending that funds that invest in derivatives should disclose notional exposure for non-exchanged traded derivatives and a fund's exposure to counterparties). Commenters to the FSOC Notice made similar observations relating to counterparty disclosures. *See, e.g.,* Americans for Financial Reform FSOC Notice Comment Letter, *supra* note 116 (''Counterparty data is also often not available.''); Systematic Risk Council Comment Letter, *supra* note 116 (discussing the need to have information about investment vehicles that hold bank liabilities).

[186] Comment Letter of Stephen A. Keen to Derivatives Concept Release (Nov. 8, 2011).

other than options. Currently, rule 12–13 of Regulation S–X (Investments other than securities) requires limited information on the fund's investments other than securities—that is, the investments not disclosed under rules 12–12, 12–12A, 12–12B, and 12–14.[187] Thus, under Regulation S–X, a fund's disclosures of open futures contracts, open forward foreign currency contracts, and open swap contracts are generally reported in accordance with rule 12–13.

To address issues of inconsistent disclosures and lack of transparency as to derivative instruments, we are proposing to amend Regulation S–X by proposing new schedules for open futures contracts, open forward foreign currency contracts, and open swap contracts. We are also proposing to modify the current disclosure requirements for purchased and written option contracts. Finally, we are proposing to include certain instructions regarding the presentation of derivatives contracts that are generally consistent with instructions that are currently included, or that we are proposing to add, in either rule 12–12 (Investments in securities of unaffiliated issuers) or rule 12–13 (Investments other than securities).[188]

a. Open Option Contracts Written—Rule 12–13 (Current Rule 12–12B) and Options Purchased

Our proposed rule would modify the current disclosure of written option contracts.[189] First, we are adding new columns to the schedule for written option contracts that would require a description of the contract (replacing the current column for name of the issuer), the counterparty to the transaction,[190] and the contract's notional amount.[191] Thus, under the new rule 12–13, for each open written options contract, funds would be required to disclose: (1) Description; (2) counterparty; (3) number of contracts; (4) notional amount; (5) exercise price; (6) expiration date; and (7) value.[192] Second, we are proposing to add an instruction to current rule 12–12, which is the schedule on which purchased options are required to be disclosed, that would require funds to provide all information required by proposed rule 12–13 for written option contracts.[193]

We are also proposing for options where the underlying investment would otherwise be presented in accordance with another provision of rule 12–12 or proposed rules 12–13 through 12–13D that the presentation of that investment must include a description, as required by those provisions.[194] Thus, if another investment contains some sort of optionality (*e.g.,* put or call features), the investment's disclosure must include both a description of the optionality (as required by proposed rule 12–13), and a description of the underlying investments, as required by the applicable provisions of proposed rules 12–12, 12–12A, and 12–13 through 12–13D. For example, reporting for a swaption would include the disclosures required under both the swaps rule (proposed rule 12–13C) and the options rule (proposed rule 12–13).

As required in proposed Form N–PORT,[195] in the case of an option contract with an underlying investment that is an index or basket of investments whose components are publicly available on a Web site as of the fund's balance sheet date,[196] or if the notional amount of the holding does not exceed one percent of the fund's NAV as of the close of the period, we are proposing that the fund provide information sufficient to identify the underlying investment, such as a description.[197] If the underlying investment is an index whose components are not publicly available on a Web site as of the fund's balance sheet date, or is based upon a custom basket of investments, and the notional amount of the option contract exceeds one percent of the fund's NAV as of the close of the period, the fund would list separately each of the investments comprising the index or basket of investments.[198] We believe that disclosure of the underlying investments of an option contract is an important element to assist investors in understanding and evaluating the full risks of the investment. We are also proposing to include a similar instruction for swap contracts.[199] The disclosures in proposed instruction 3 would provide investors with more transparency into both the terms of the underlying investment and the terms of the option.

We are also proposing several instructions to rule 12–13 and the other rules we are proposing concerning derivatives holdings (*e.g.,* open futures contracts, open swap contracts) in order to maintain consistency with the disclosures required by current rule 12–13. Current rule 12–13 contains an instruction requiring identification of ''each investment not readily marketable.'' [200] We are proposing to modify this requirement in proposed rule 12–13 and the other rules concerning derivatives holdings in order to increase transparency into the marketability of, and observability of valuation inputs for, a fund's investments by requiring separate identification of investments that are restricted securities, as well as those investments that were fair valued using significant unobservable inputs. Thus, we are proposing to require funds to indicate if an investment cannot be sold because of restrictions or conditions applicable to the investment.[201] We are also proposing to require funds to indicate if a security's fair value was

[187] The schedule to rule 12–13 requires disclosure of: (1) Description; (2) balance held at close of period—quantity; and (3) value of each item at close of period. *See* rule 12–13 of Regulation S–X.

[188] *See, e.g.,* proposed rule 12–12, n.2 of Regulation S–X (instructions for categorizing investments); n.10 (disclosure of illiquid securities); n.12 (disclosure of costs basis for Federal income tax purposes); *see also* rule 12–13, n.7 of Regulation S–X (current requirement for disclosure of costs basis for Federal income tax purposes).

[189] Under current rule 12–12B, funds are required to report, for open option contracts, the name of the issuer, number of contracts, exercise price, expiration date, and value. *See* rule 12–12B of Regulation S–X [17 CFR 210.12–12B].

[190] *See supra* note 116. This information should assist investors in identifying and monitoring the counterparty risks associated with a fund's investments in over-the-counter derivatives.

[191] While rule 12–13 is specific to open option contracts written, the same disclosures also apply for purchased options as required by proposed instruction 3 to rule 12–12. *See also* proposed rule 12–12B, n.5 of Regulation S–X.

[192] *See* proposed rule 12–13 of Regulation S–X.

[193] *See* proposed rule 12–12, n.3 of Regulation S–X.

[194] *See* proposed rules 12–12, n.3; 12–12B, n.5; and 12–13, n.3 of Regulation S–X.

[195] *See* Item C.11.c.iii of proposed Form N–PORT.

[196] Under the proposal, the components would be required to be publicly available on a Web site as of the fund's balance sheet date at the time of transmission to stockholders for any report required to be transmitted to stockholders under rule 30e–1. The components would be required to remain publicly available on a Web site as of the fund's balance sheet date until 70 days after the fund's next fiscal year-end. For example, components of an index underlying an option contract for a fund's 12/31/14 annual report must be made publicly available on a Web site as of 12/31/14 by the time that the 12/31/14 annual report is transmitted to stockholders. The components must remain publicly available until 3/10/16.

[197] *See* proposed rule 12–13, n.3 of Regulation S–X. *See supra* note 120 and accompanying text (discussing the rationale for similar proposed requirements in Form N–PORT).

[198] *See id.*

[199] *See* proposed rule 12–13C, n.3 of Regulation S–X.

[200] *See* rule 12–13, n.4 of Regulation S–X (''The term 'investment not readily marketable' shall include investments for which there is no independent publicly quoted market and investments which cannot be sold because of restrictions or conditions applicable to the investment or the company.'').

[201] *See* proposed rule 12–13, n.6 of Regulation S–X; *see also* proposed rules 12–13A, n.4; 12–13B, n.2; 12–13C, n.5; and 12–13D, n.6 of Regulation S–X.

determined using significant unobservable inputs.[202]

Current rule 12–13 likewise contains an instruction to include tax basis disclosures for investments other than securities.[203] We are extending this requirement to proposed rule 12–13, as well as the other rules concerning derivatives holdings.[204] We believe that this type of tax basis information is important to investors in investment companies, which are generally pass-through entities pursuant to Subchapter M of the Internal Revenue Code.[205]

In order to provide greater transparency to investors into which investments are deemed illiquid, we are also proposing to require funds to identify illiquid investments.[206] Liquidity is an important consideration for a fund's investors in understanding the risk exposure of a fund. For example, in times of market stress, illiquid investments may not be readily sold at their approximate value. Indicating which investments are illiquid would allow an investor to understand which holdings in a fund are likely to be sold at a discount if a portion of the fund's investments must be sold to meet cash needs, such as redemptions or distributions.

Proposed rule 12–13 would also include other new instructions.[207]

b. Open Futures Contracts—New Rule 12–13A

We are proposing new rule 12–13A, which would require standardized reporting of open futures contracts.[208] For open futures contracts, funds are currently required to report under rule 12–13 a description of the futures contract (including its expiration date), the number of contracts held (under the balance held—quantity column), and any unrealized appreciation and depreciation (under the value column).[209] In order to allow investors to better understand the economics of a fund's investment in futures contracts, our proposal would also require funds to report notional amount and value.[210] Therefore, under the proposal, funds with open futures contracts would report: (1) Description; (2) number of contracts; (3) expiration date; (4) notional amount; (5) value; and (6) unrealized appreciation and depreciation.[211] In addition, instruction 7 would include the new requirement that funds should reconcile the total of Column F (unrealized appreciation/depreciation) to the total variation margin receivable or payable on the related balance sheet.[212] We believe that proposed instruction 7 would improve transparency by linking the information in the schedule of open futures contracts with the related balance sheet.

As discussed above, our proposal also contains certain new instructions for rule 12–13A that are generally the same across all of the schedules for derivatives contracts.[213] Based on staff review of disclosures of open futures contracts of funds, we believe that these proposed disclosures are generally consistent with current industry practice.[214]

c. Open Forward Foreign Currency Contracts—New Rule 12–13B

We are also proposing new rule 12–13B, which would require standardized disclosures for open forward foreign currency contracts.[215] Currently, under rule 12–13, funds are required to report a description of the contract (including a description of what is to be purchased and sold under the contract and the settlement date), the amount to be purchased and sold on settlement date (under the balance held—quantity column), and any unrealized appreciation or depreciation (under the value column).[216] In order to allow investors to better understand counterparty risk for forward foreign currency contracts, our proposal would additionally require funds to disclose the counterparty to each transaction.[217] As proposed, funds holding open forward foreign currency contracts would therefore report the: (1) Amount and description of currency to be purchased; (2) amount and description of currency to be sold; (3) counterparty; (4) settlement date; and (5) unrealized appreciation/depreciation.[218] Based on staff review of disclosures of open forward foreign currency contracts of funds, we believe that these proposed disclosures are generally consistent with current industry practice. Our proposal would also include certain new instructions to the schedule that are similar to the other derivatives disclosure requirements we are proposing today.[219]

[202] *See* proposed rule 12–13, n.7 of Regulation S–X; *see also* proposed rules 12–13A, n.5; 12–13B, n.3; 12–13C, n.6; and 12–13D, n.7 of Regulation S–X. These instructions would require funds to identify each investment categorized in Level 3 of the fair value hierarchy in accordance with ASC Topic 820. *See* ASC 820–10–20 (defining ''level 3 inputs'' as ''unobservable inputs for the asset or liability''); *see also* ASC 820–10–35–37A (''In some cases, the inputs used to measure the fair value of an asset or a liability might be categorized within different levels of the fair value hierarchy. In those cases, the fair value measurement is categorized in its entirety in the same level of the fair value hierarchy as the lowest level input that is *significant* to the entire measurement.'') (emphasis added); *see also* discussion *supra* note 101.

[203] *See* rule 12–13, n.7 of Regulation S–X.

[204] *See* proposed rule 12–13, n.10 of Regulation S–X; *see also* proposed rules 12–13A, n.8; 12–13B, n.6; 12–13C, n.9; and 12–13D, n.11 of Regulation S–X.

[205] *See* 26 U.S.C. 851, *et seq.*

[206] *See* proposed rule 12–13, n.8 of Regulation S–X; *see also* proposed rules 12–13A, n.6; 12–13B, n.4; 12–13C, n.7; and 12–13D, n.8 of Regulation S–X. *See generally* 1992 Release, *supra* note 100. As previously stated, the staff is reviewing possible recommendations to the Commission for rulemaking to update liquidity standards for mutual funds and ETFs, which may result in changes to the Commission's current guidance on this issue. *See supra* note 100.

[207] Instruction 2 would add ''description'' and ''counterparty'' to the organizational categories of options contracts that must be listed separately. *See* proposed rule 12–13, n.2 of Regulation S–X. Instruction 4 would clarify that the fund need not include counterparty information for exchange-traded options. *See* proposed rule 12–13, n.4 of Regulation S–X.

[208] *See* proposed rule 12–13A of Regulation S–X.

[209] *See* rule 12–13 of Regulation S–X.

[210] *See* proposed rule 12–13A, columns D and E of Regulation S–X.

[211] *See* proposed rule 12–13A of Regulation S–X.

[212] *See* proposed rule 12–13A, n.7 of Regulation S–X.

[213] Instruction 1 would require funds to organize long purchases of futures contracts and futures contracts sold short separately. *See* proposed rule 12–13A, n.1 of Regulation S–X. Instruction 2 would require funds to list separately futures contracts where the descriptions or expiration dates differ. *See* proposed rule 12–13A, n.2 of Regulation S–X. Instruction 3 would clarify that the description should include the name of the reference asset or index. *See* proposed rule 12–13A, n.3 of Regulation S–X. Instruction 4 would require the fund to indicate each investment which cannot be sold because of restrictions or conditions applicable to the investment. *See* proposed rule 12–13A, n.4 of Regulation S–X. Instruction 5 would require the fund to indicate each investment whose fair value was determined using significant unobservable inputs. *See* proposed rule 12–13A, n.5 of Regulation S–X. Instruction 6 would require the fund to identify each illiquid investment. *See* proposed rule 12–13A, n.6 of Regulation S–X. Instruction 8 would extend current rule 12–13's tax basis disclosure to disclosures of open futures contracts. *See* proposed rule 12–13A, n.8 of Regulation S–X.

[214] We understand that many funds disclose either value or notional amount for open futures contracts, but may not disclose both. Our proposal would require disclosure of both value and notional amount.

[215] *See* proposed rule 12–13B of Regulation S–X.

[216] *See* rule 12–13 of Regulation S–X.

[217] *See* proposed rule 12–13B, column C of Regulation S–X.

[218] *See* proposed rule 12–13B of Regulation S–X.

[219] Instruction 1 would require the fund to separately organize forward foreign currency contracts where the description of currency purchased, currency sold, counterparties, or settlement dates differ. *See* proposed rule 12–13B, n.1 of Regulation S–X. Instruction 2 would require the fund to indicate each investment which cannot be sold because of restrictions or conditions applicable to the investment. *See* proposed rule 12–13B, n.2 of Regulation S–X. Instruction 3 would require the fund to indicate each investment whose fair value was determined using significant unobservable inputs. *See* proposed rule 12–13B, n.3 of Regulation S–X. Instruction 4 would require the fund to identify each illiquid investment. *See* proposed rule 12–13B, n.4 of Regulation S–X. Instruction 5 would clarify that Column E (unrealized appreciation/depreciation) should be totaled and agree with the total of correlative amounts shown on the related balance sheet. *See*

d. Open Swap Contracts—New Rule 12–13C

We are also proposing new rule 12–13C, which would require standardized reporting of fund positions in open swap contracts.[220] Under rule 12–13, funds currently report description (including a description of what is to be paid and received by the fund and the contract's maturity date), notional amount (under balance held—quantity column), and any unrealized appreciation or depreciation (under the value column).[221] Our proposal would additionally require funds to report the counterparty to each transaction (except for exchange-traded swaps), the contract's value, and any upfront payments or receipts.[222] This additional information would allow investors to both better understand the economics of the transaction, as well as its associated risks.[223] Thus, as proposed, funds would report for each swap the: (1) Description and terms of payments to be received from another party; (2) description and terms of payments to be paid to another party; (3) counterparty; (4) maturity date; (5) notional amount; (6) value; (7) upfront payments/receipts; and (8) unrealized appreciation/depreciation.[224] We are proposing these categories of information in an effort to increase transparency of swap contracts, while maintaining enough flexibility for the variety of swap products that currently exist and future products that might come to market.[225]

While instruction 3 of proposed rule 12–13C provides specific examples for the more common types of swap contracts (*e.g.,* credit default swaps, interest rate swaps, and total return swaps), we recognize that other types of swaps exist (*e.g.,* currency swaps, commodity swaps, variance swaps, and subordinated risk swaps).[226] For example, a cross-currency swap has two notional amounts, one for the currency to be received and one for the currency to be paid. For a cross-currency swap, funds would report for purposes of Column A of proposed rule 12–13C, a description of the interest rate to be received and the notional amount that the calculation of interest to be received is based upon. Column B of proposed rule 12–13C would include a description of the interest rate to be paid and the notional amount that the calculation of interest to be paid is based upon. Column E would include both notional amounts and the currency in which each is denominated, or the same information could be presented in two separate columns.

As required in our proposed disclosures for open option contracts [227] and in proposed Form N–PORT,[228] in the case of a swap with a referenced asset that is an index whose components are publicly available on a Web site as of the fund's balance sheet date, or if the notional amount of the holding does not exceed one percent of the fund's NAV as of the close of the period, we are proposing that the fund provide information sufficient to identify the referenced asset, such as a description.[229] If the referenced asset is an index whose components are not publicly available on a Web site as of the fund's balance sheet date, or is based upon a custom basket of investments, and the notional amount of the holding exceeds one percent of the fund's NAV as of the close of the period, the fund would list separately each of the investments comprising the referenced assets.[230] As with underlying investments for option contracts, we believe that disclosure of the underlying referenced assets of a swap would assist investors in better understanding and evaluating the full risks of investments in swaps.

For swaps which pay or receive financing payments, funds would disclose variable financing rates in a manner similar to disclosure of variable interest rates on securities in accordance with instruction 4 to proposed rule 12–12.[231] Our proposal would also include other instructions to this rule that are similar across all of our proposed rules for derivatives contracts.[232]

e. Other Investments — Rule 12–13D (Current Rule 12–13)

We are also proposing to amend current rule 12–13 and, for organization and consistency, renumber it as proposed rule 12–13D. Proposed rule 12–13D is intended to continue, as is currently required by rule 12–13, to be the schedule by which funds report investments not otherwise required to be reported pursuant to Article 12.[233] As proposed, rule 12–13D would require reporting of: (1) Description; (2) balance held at close of period-quantity; and (3) value of each item at close of period.[234] We expect that funds would report, among other holdings, investments in physical holdings, such as real estate or commodities, pursuant to proposed rule 12–13D. As discussed above, our proposal would also modify current rule 12–13's requirement that funds disclose ''each investment not readily marketable'' [235] in favor of disclosures concerning whether an investment is restricted and if an investment's fair value was determined using significant unobservable inputs.[236] Our proposal would also include certain new instructions to the schedule that are generally the same across all the schedules for derivatives contracts.[237]

proposed rule 12–13B, n.5 of Regulation S–X. Instruction 6 would extend current rule 12–13's tax basis disclosure to disclosures of open forward foreign currency contracts. *See* proposed rule 12–13B, n.6 of Regulation S–X.

[220] *See* proposed rule 12–13C of Regulation S–X.

[221] *See* rule 12–13 of Regulation S–X.

[222] *See* proposed rule 12–13C, columns C, F, and G of Regulation S–X.

[223] For example, upfront payments disclose whether cash was paid or received when entering into a swap contract, allowing investors to better understand the initial cost of the investment, if any.

[224] *See* proposed rule 12–13C of Regulation S–X. The description and terms of payments to be paid and received (and other information) to and from another party should reflect the investment owned by the fund and allow an investor to understand the full nature of the transaction.

[225] *See id.* at n.1 (requiring the fund to list each major category of swaps by descriptive title); n.2 (requiring the fund to list separately each swap where description, counterparty, or maturity dates differ within each major category).

[226] *See* proposed rule 12–13C, n.3 of Regulation S–X.

[227] *See* proposed rule 12–13, n.3 of Regulation S–X.

[228] *See* Item C.11.f.i of proposed Form N–PORT.

[229] *See* proposed rule 12–13C, n.3 of Regulation S–X.

[230] *See id.*

[231] *See* proposed rule 12–13C, n.3; and 12–12, n.4 of Regulation S–X.

[232] Instruction 4 would clarify that the fund need not list counterparty for exchange traded swaps. *See* proposed rule 12–13C, n.4 of Regulation S–X. Instruction 5 would require the fund to indicate each investment which cannot be sold because of restrictions or conditions applicable to the investment. *See* proposed rule 12–13C, n.5 of Regulation S–X. Instruction 6 would require the fund to indicate each investment whose fair value was determined using significant unobservable inputs. *See* proposed rule 12–13C, n.6 of Regulation S–X. Instruction 7 would require funds to identify each illiquid investment. *See* proposed rule 12–13C, n.7 of Regulation S–X. Instruction 8 would require that columns F (value), G (upfront payments/receipts), and H (unrealized appreciation/depreciation) be totaled and agree with the totals of their respective amounts shown on the related balance sheet. *See* proposed rule 12–13C, n.8 of Regulation S–X. Instruction 9 would extend current rule 12–13's tax basis disclosure to disclosures of swap contracts. *See* proposed rule 12–13C, n.9 of Regulation S–X.

[233] *See* proposed rule 12–13D of Regulation S–X.

[234] *Id.*

[235] *See* rule 12–13, n.4 of Regulation S–X.

[236] *See* proposed rule 12–13D, n.6 of Regulation S–X (requiring the fund to indicate each investment which cannot be sold because of restrictions or conditions applicable to the investment); n.7 (requiring the fund to indicate each issue of securities whose fair value was determined using significant unobservable inputs).

[237] Instruction 1 would require the fund to organize each investment separately where any portion of the description differs. *See* proposed rule 12–13D, n.1 of Regulation S–X. Instruction 2 would require the fund to categorize the schedule by the type of investment, and related industry, country,

Continued

We request comment on our proposed amendments to rules 12–13 through 12–13D of Regulation S–X:

• Many of our proposed portfolio holdings disclosure requirements in Article 12 conform with similar requirements on proposed Form N–PORT. Are our proposed amendments to Article 12 appropriate for fund financial statements? Is there information that is currently proposed in Form N–PORT, but not in Article 12, that would benefit investors? For example, to the extent that proposed Form N–PORT instructs filers to report the country code that corresponds to the country of investment or issuer based on the concentrations of the risk and economic exposure of the investments, or, if different, the country where the issuer is organized, should those same instructions be integrated into Regulation S–X to standardize how funds report that information in their financial statements and in Form N–PORT? [238]

• Are there other categories of investments not specifically covered in Article 12 that should be specifically addressed in a new rule or directly addressed in rule 12–13D?

• To what extent are proposed rules 12–13 through 12–13D consistent with industry practices? How are our proposed amendments different? Are there other industry practices that we should include in our proposal with respect to the disclosure of derivative investments?

• The schedules to rules 12–13 through 12–13D use the term ''description'' to require funds to disclose the information sufficient for a user of financial information to identify the investment. Should the instructions to any of those rules be enhanced or modified to clarify what is meant by the term ''description?'' If so, how should these be enhanced or modified?

• The schedules to rules 12–13 (Open option contracts written), 12–13B (Open forward foreign currency contracts), 12–13C (Open swap contracts), and 12–13D (Other investments) would require disclosure of the counterparty to the transaction for non-exchange traded instruments. Should we, as proposed, require disclosure of the counterparty to certain transactions? Should the exchange or clearing member be disclosed for exchange-traded derivatives? Are there any additional counterparty or exchange risks that should be disclosed? If so, why? Are there any confidentiality or other concerns with requiring the disclosure of counterparties?

• We request comment on our proposed amendments to rule 12–13 (Open option contracts written). Should we require different or additional information about these contracts? Should any of the proposed information requirements be excluded? Is it appropriate to require disclosure of ''notional amount'' for option contracts? Is this metric useful to investors? Should we require the disclosures of open option contracts written to be grouped or subtotaled? For example, should we require over-the-counter option contracts to be grouped by counterparty?

• As proposed, rule 12–13 would require disclosure of each option contract with an underlying investment that is an index or basket of investments whose components are not publicly available on a Web site and the notional amount of the holding exceeds one percent of the NAV of the fund. Are there better alternatives to disclose the underlying investments for an options contract if it consists of a custom basket of securities? If so, what alternatives and why? To the extent such indices are proprietary or subject to licensing agreements, what would be the effect of this requirement? For example, would funds incur costs for amending licensing agreements? Would index providers be unwilling to amend existing licensing agreements? If so, how would this impact funds that make such investments and the marketplace generally? Are there other concerns about disclosing the components of proprietary indices? Should we alter this requirement, and if so how? Is our exceeding one percent of the NAV disclosure threshold appropriate? Should there be a different disclosure threshold applied to an option contract's underlying investments? If so, what threshold and why? For example, should there be a disclosure threshold applied to individual holdings (*e.g.,* if the notional amount of a single underlying investment in a custom basket is less than a certain percentage of a fund's net assets)? Should we use a different percentage for the disclosure threshold, such as exceeding five percent of the NAV? Alternatively, would summary disclosure be adequate to inform investors, similar to instruction 3 of rule 12–12C, which requires disclosure of the 50 largest issues and any other issue the value of which exceeded one percent of net asset value of the fund as of the close of the period? If so, how should such a disclosure be handled? If the reference asset is a modified version of an index whose components are publicly available on a Web site as of the fund's balance sheet date, for example a version that is customized to exclude certain issuers that the fund is restricted from owning, would requiring a narrative of those modifications be preferable to funds and investors rather than requiring each holding of the modified index to be listed?

• We request comment on proposed rule 12–13A (Open futures contracts). Should we require different or additional information about these contracts? Should any of the proposed information requirements be excluded? Our proposed rule would require disclosure of notional amount and value on open futures contracts. Should we require disclosure of notional amount for futures contracts? Should we require disclosure of value for futures contracts? Should we require the disclosures of open futures contracts to be grouped or subtotaled? If so, how? For example, should we require open futures contracts to be organized by country of issuance?

• We request comment on proposed rule 12–13B (Open forward foreign currency contracts). Should we require different or additional information about these contracts? Should any of the proposed information requirements be excluded? Rule 12–13B, as proposed, is limited to forward foreign currency contracts. Are there other types of forwards that should be addressed in this section that would not otherwise be presented as other derivative investments, such as swaps? Should we require the disclosures of open forward foreign currency contracts to be grouped or subtotaled? If so, how? For example, should we require open forward foreign currency contracts to be organized by currency or type of transaction (*e.g.,* purchased or sold U.S. dollars)?

• We request comment on proposed rule 12–13C (Open swap contracts). Should we require different or additional information about these contracts? Should any of the proposed information requirements be excluded? Instruction 1 to proposed rule 12–13C requires the schedule to be organized by descriptive title (*e.g.,* credit default swaps, interest rate swaps). Should we require additional subgrouping of the schedules beyond what is already required? For example, should we

or geographic region, as applicable. *See* proposed rule 12–13D, n.2 of Regulation S–X. Instruction 3 would require that the description of the asset include information sufficient for a user to understand the nature and terms of the investment. *See* proposed rule 12–13D, n.3 of Regulation S–X. Instruction 8 would require the fund to identify each illiquid investment. *See* proposed rule 12–13D, n.8 of Regulation S–X.

[238] *See supra* note 104 and accompanying and following text (discussing how funds would report country codes for portfolio investments on Form N–PORT).

require over-the-counter swaps to be grouped by counterparty?

• Instruction 3 of proposed rule 12–13C contains examples of information that could be included for credit default swaps, interest rate swaps, and total return swaps. Is the example contained in proposed rule 12–13C adequate? Is there any other information that should be disclosed as part of the description for credit default swaps, interest rate swaps, and total return swaps? Are there other types of swaps that should be included as examples within proposed rule 12–13C? If so, what information should be included in the example?

• As proposed, rule 12–13C would require disclosure of each investment with a referenced asset that is an index whose components are not periodically publicly available on a Web site and the notional amount of the holding exceeds one percent of the NAV of the fund. Are there better alternatives to disclose the underlying assets of a swap if it consists of a custom basket of securities? If so, what alternative and why? To the extent such indices are proprietary or subject to licensing agreements, what would be the effect of this requirement? For example, would funds incur costs for amending licensing agreements? Would index providers be unwilling to amend existing licensing agreements? If so, how would this impact funds that make such investments and the marketplace generally? Are there other concerns about disclosing the components of proprietary indices? Should we alter this requirement, and if so how? Is our exceeding one percent of the NAV disclosure threshold appropriate? Should there be a different disclosure threshold applied to a swap's referenced assets? If so, what threshold and why? For example, should there be a disclosure threshold applied to individual holdings (*e.g.,* if the notional amount of a single underlying investment in a custom basket is less than a certain percentage of a fund's net assets)? Should we use a different percentage for the disclosure threshold, such as exceeding five percent of the NAV? Alternatively, would summary disclosure be adequate to inform investors, similar to instruction 3 of rule 12–12C, which requires disclosure of the 50 largest issues and any other issue the value of which exceeded one percent of net asset value of the fund as of the close of the period? If so, how should such a disclosure be handled? Should we include this disclosure requirement for other investments? For example, should we require funds to disclose the referenced asset for futures contracts or forward foreign currency contracts if their underlying investments are composed of an index or custom basket of securities?

• We request comment on our proposed amendments in rule 12–13D (Investments other than those presented in rules 12–12, 12–12A, 12–12B, 12–13, 12–13A, 12–13B, and 12–13C). Should we require different or additional information about these contracts? Should any of the proposed information requirements be excluded?

• We request comment on our proposed requirements in rules 12–13 through 12–13D that the fund identify investments which cannot be sold because of restrictions or conditions applicable to the investment. Is this requirement appropriate? Why or why not? Would this requirement assist investors and other interested parties with understanding the marketability of an investment? Why or why not?

• We request comment on our proposed requirements in rules 12–13 through 12–13D that the fund identify investments whose fair value was determined using significant unobservable inputs. Is this requirement appropriate? Why or why not? Would this requirement assist investors and other interested parties with understanding risks associated with valuation?

• Should we propose a disclosure relating to ''investments not readily marketable'' as is currently required by rule 12–13? Why or why not?

• We request comment on our proposed requirements in rules 12–13 through 12–13D that the fund identify investments that are considered to be illiquid. Is this requirement appropriate? Why or why not? What are the costs and benefits associated with this requirement? Will independent accountants be able to audit this disclosure?

• We request comment on our proposed disclosures based on cost for Federal income tax purposes under proposed rule 12–12A and rules 12–13 through 12–13D. Do these disclosures provide meaningful information for investors in addition to tax basis disclosures required under U.S. GAAP? What are the costs and benefits associated with providing this disclosure? Should our proposed disclosures be reported in a separate stand-alone disclosure or, as proposed, as a note to each separate schedule? Should we eliminate the current disclosure requirement to present tax-basis cost and unrealized appreciation and depreciation in both semi-annual and annual shareholder reports? Why or why not? As an alternative, should we make the tax-basis disclosure an annual requirement?

3. Amendments to Rules 12–12 Through 12–12C

While we are not proposing changes to the schedules for rules 12–12, 12–12A, and 12–12C, we are proposing certain additional rule instructions that would include new disclosures, as well as certain clarifying changes, including renumbering several of the schedules.

We are proposing several modifications to the instructions to rule 12–12, the rule concerning disclosure of investments in securities of unaffiliated issuers. We are proposing to modify instruction 2 to rule 12–12 (and the corresponding instructions to proposed rules 12–12A, 12–12B, 12–13D, and 12–14) which would require funds to categorize the schedule by type of investment, the related industry, and the related country, or geographic region.[239] U.S. GAAP requires investment companies that are nonregistered investment partnerships to categorize investments in securities by type, country or geographic region, and industry.[240] In order to provide more transparency into the industry and the country or geographic region of a fund's investments in securities, we believe that the disclosures provided by funds should provide investors with the same categorization as nonregistered investment partnerships. We also believe that disclosure of both the industry and the country or geographic region would be particularly beneficial for investors in global and international funds, where currently funds are only required to categorize their schedule by industry, country, *or* geographic region, as it would provide additional transparency into the investments owned by the fund.

In order to provide more transparency to a fund's investments in debt securities, we are proposing an instruction to rule 12–12 requiring the fund to indicate the interest rate or preferential dividend rate and maturity rate for certain enumerated debt instruments.[241] When disclosing the interest rate for variable rate securities, we are proposing that the fund describe the referenced rate and spread.[242] In proposing disclosures for variable rate securities, we considered other alternatives, such as period-end interest rate (*e.g.* the investment's interest rate in effect at the end of the period).

[239] *See* proposed rule 12–12, n.2 of Regulation S–X; *see also* proposed rules 12–12A, n.2; 12–12B, n.2; 12–13D, n.2; and 12–14, n.2 of Regulation S–X.

[240] *See* ASC 946–210–50–6, Financial Services—Investment Companies (''ASC 946'').

[241] *See* proposed rule 12–12, n.4 of Regulation S–X.

[242] *See id.*

However, we believe that disclosure of both the referenced rate and spread allow investors to better understand the economics of the fund's investments in variable rate debt securities, such as the effect of a change in the reference rate on the security's income. This proposal is intended to result in more consistency across funds in disclosures of the interest rate for variable rate securities. For securities with payments-in-kind, we are proposing that the fund provide the rate paid in-kind in order to provide more transparency to investors when the fund is generating income that is not paid in cash.[243]

Our proposal would modify the current instruction to rule 12–12 [244] that requires a fund to identify each issue of securities held in connection with open put or call option contracts and loans for short sales, by adding the requirement to also indicate where any portion of the issue is on loan.[245] We believe that this disclosure would increase the transparency of the fund's securities lending activities. We are also proposing to modify current instruction 3 of rule 12–12 concerning the organization of subtotals for each category of investments, making the instructions consistent with those in proposed rule 12–12B (current rule 12–12C), Summary schedule of investments in securities of unaffiliated issuers.[246]

As in our proposed derivatives disclosures,[247] in order to increase transparency into the observability of inputs used in determining the value of individual investments, we are adding the requirement for funds to disclose those investments whose fair value was determined using significant unobservable inputs.[248] Here, as in our proposed derivatives disclosures, we would expect funds to identify each investment categorized in Level 3 of the fair value hierarchy in accordance with ASC Topic 820. We are also extending this requirement to proposed rules 12–12A and 12–12B.[249]

As in proposed rules 12–13 through 12–13D,[250] proposed instruction 10 to rule 12–12 would contain a requirement to identify each issue of illiquid securities.[251] Like other proposed rules, we believe that this requirement would provide investors with greater transparency and understanding of the liquidity of a fund's investments.[252]

Likewise, we are proposing several modifications to rule 12–12A regarding the presentation of securities sold short, in order to conform the instructions to proposed rule 12–12.[253]

Funds are permitted to include in their reports to shareholders a summary portfolio schedule, in lieu of a complete portfolio schedule, so long as it conforms with current rule 12–12C (Summary schedule of investments in securities of unaffiliated issuers).[254] In order to maintain numbering consistency and organization throughout the regulation, we are proposing to rename current rule 12–12C (Summary schedule of investments in securities of unaffiliated issuers) as rule 12–12B. As in rule 12–12 and 12–12A, we are not proposing to modify the schedule of proposed rule 12–12B (current rule 12–12C), but again added similar changes to its instructions.[255]

We request comment on our amendments to proposed rules 12–12 through 12–12B of Regulation S–X:

- Are our proposed amendments to rule 12–12 through 12–12B appropriate? Are there other amendments to rules 12–12 through 12–12B that should be made to improve disclosures regarding the investments that would be reported under the rules? If so, what amendments and why?
- We request comment on proposed amendments to rule 12–12 (Investments in securities of unaffiliated issuers). For variable rate securities, we propose to require disclosure of a description of the reference rate and spread (*e.g.,* USD LIBOR 3-month + 2%). Is this requirement appropriate? Should we alternatively require disclosure of the period end interest rate?
- We request comment on instruction 2 to proposed rule 12–12 (and the corresponding instructions to rules 12–12A, 12–12B, and 12–14) which would require funds to categorize the schedule by type of investment, the related industry, and the related country, or geographic region. Should we include this instruction in our proposed rules? What are the costs or benefits associated with such a requirement?
- We request comment our proposed modifications in rules 12–12 and 12–12B that would require a fund to indicate where any portion of the issue is on loan. Should we include this requirement in our proposed rules? Why or why not?
- We request comment on instruction 4 to proposed rule 12–12. Should we require funds to disclose the interest rate or preferential dividend rate and maturity rate for certain debt instruments? Are there any types of securities that should (or should not) be included in instruction 4's list of applicable debt instruments?
- We request comment on our proposal to require a fund to disclose each issue of illiquid securities. Should we include this requirement in our proposed rules? Why or why not? Would the fund's independent accountants be able to audit this disclosure?
- We request comment on our proposed requirements in rules 12–12, 12–12A, and 12–12B that the fund identify investments whose fair value

[243] *Id.*

[244] *See* rule 12–12, n.7 of Regulation S–X.

[245] *See* proposed rule 12–12, n.11 of Regulation S–X; *see also* proposed rule 12–12B, n.14 of Regulation S–X.

[246] *See* rule 12–12, n.3 of Regulations S–X; *see also* proposed rule 12–12B, n.2 of Regulation S–X.

[247] *See* proposed rules 12–13, n.7; 12–13A, n.5; 12–13B, n.3; 12–13C, n.6; and 12–13D, n.7 of Regulation S–X.

[248] *See* proposed rule 12–12, n.9 of Regulation S–X.

[249] *See* proposed rules 12–12A, n.6 and 12–12B, n.12 of Regulation S–X.

[250] *See* proposed rules 12–13, n.8; 12–13A, n.6; 12–13B, n.4; 12–13C, n.7; and 12–13D, n.8 of Regulation S–X.

[251] *See* proposed rule 12–12, n.10 of Regulation S–X.

[252] *See supra* note 206 and accompanying text.

[253] Instruction 2 would require the fund to organize the schedule in rule 12–12A in the same manner as is required by instruction 2 of rule 12–12. *See* proposed rule 12–12A, n.2. Instruction 3 would require the fund to identify the interest rate or preferential dividend rate and maturity rate as required by instruction 4 of proposed rule 12–12. *See* proposed rule 12–12A, n.3 of Regulation S–X. Instruction 4 would require the subtotals for each category of investments be subdivided both by investment type and business grouping or instrument type, and be shown together with their percentage value compared to net assets, in the same manner as is required by proposed instruction 5 of rule 12–12. *See* proposed rule 12–12A, n.4 of Regulation S–X. Instruction 6 would require the fund to identify each issue of securities whose fair value was determined using significant unobservable inputs. *See* proposed rule 12–12A, n.6 of Regulation S–X. Instruction 7 would require the fund to identify each issue of securities held in connection with open put or call option contracts in the same manner as required by proposed instruction 11 of rule 12–12. *See* proposed rule 12–12A, n.7 of Regulation S–X. Instruction 8 would extend rule 12–12's tax basis disclosure to securities sold short. *See* proposed rule 12–12A, n.8 of Regulation S–X.

[254] *See* rule 6–10(c)(2) of Regulation S–X [17 CFR 210.6–10(c)(2)]; *see also* Quarterly Portfolio Holdings Adopting Release, *supra* note 19.

[255] Instruction 2 would add ''type of investment'' to the current subtotal requirements for the summary schedule. *See* proposed rule 12–12B, n.2 of Regulation S–X. Instruction 3 would extend rule 12–12's proposed requirement that funds indicate the interest rate or preferential dividend rate and maturity rate for certain enumerated securities. *See* proposed rule 12–12B, n.3 of Regulation S–X. Instruction 5 would require for options purchased all information that would be required by rule 12–13 for written option contracts. *See* proposed rule 12–12B, n.5 of Regulation S–X. Instruction 12 would require the fund to indicate each issue of securities whose fair value was determined using significant unobservable inputs. *See* proposed rule 12–12B, n.12 of Regulation S–X. Instruction 13 would require the fund to identify illiquid securities. *See* proposed rule 12–12B, n.13 of Regulation S–X. Instruction 14 would extend rule 12–12's requirement that the fund indicate where any portion of the issue is on loan. *See* proposed rule 12–12B, n.14 of Regulation S–X.

was determined using significant unobservable inputs. Is this requirement appropriate? Why or why not? Would this requirement assist investors and other interested parties with understanding risks associated with valuation?

• Are our amendments to proposed rules 12–12 through 12–12B consistent with industry practices? If not, how are our amendments different and what would be the costs and benefits associated with such differences? Are there other industry practices that we should include in our proposal?

4. Investments In and Advances to Affiliates

We are proposing amendments to rule 12–14 (Investments in and advances to affiliates).[256] Rule 12–14 requires a fund to make certain disclosures about its investments in and advances to any ''affiliates'' or companies in which the investment company owns 5% or more of the outstanding voting securities.[257] The rule currently requires that a fund disclose the ''amount of equity in net profit and loss for the period'' for each controlled company, but does not require disclosure of realized or unrealized gains or losses. Based upon staff experience, we believe that the presentation of realized gains or losses and changes in unrealized appreciation or depreciation would assist investors with better understanding the impact of each affiliated investment on the fund's statement of operations. As a result, we are proposing to modify column C of the schedule to rule 12–14 to require ''net realized gain or loss for the period,'' [258] and column D to require ''net increase or decrease in unrealized appreciation or depreciation for the period'' for each affiliated investment.[259]

Likewise, in instruction 6(e) and (f), we are proposing to require disclosure of total realized gain or loss and total net increase or decrease in unrealized appreciation or depreciation for affiliated investments in order to correlate these totals to the statement of operations.[260] Disclosure of realized gains or losses and changes in unrealized appreciation or depreciation, in addition to the current requirement to disclose the amount of income, would allow investors to understand the full impact of an affiliated investment on a fund's statement of operations.

Additionally, we are proposing a new instruction 7 in order to make the categorization of investments in and advances to affiliates consistent with the method of categorization used in proposed rules 12–12, 12–12A, and 12–12B.[261] We are also proposing several other modifications to the instructions to rule 12–14 in order to, in part, conform the rule to our proposed disclosure requirements in rules 12–12 and 12–13.[262]

We request comment on our proposed amendments to rule 12–14 of Regulation S–X:

• Are our proposed amendments to rule 12–14 appropriate? Are there other amendments to rule 12–14 that should be made to improve disclosures regarding the investments that would be reported under the rule? If so, what amendments and why?

• In proposed rule 12–14, we are no longer requiring information about the fund's equity in the profit or loss of each controlled portfolio company. Instead, we are proposing to require the realized gain or loss and change in unrealized appreciation or depreciation for all affiliated investments. Is this change appropriate? Is it still important to understand the equity in the profit or loss of each controlled company in addition to the controlled portfolio company's effect on the fund's statement of operations? Would the presentation of realized gains or losses and changes in unrealized appreciation or depreciation assist investors with better understanding the impact of each affiliated investment on the fund's statement of operations? Why or why not? Are there other changes to the disclosure of affiliated transactions that would better assist investors with understanding the impact of affiliated investments on the fund's statement of operations?

• In addition to those discussed above, what are the costs and benefits associated with the proposed changes? Would the proposed changes under rule 12–14 reduce any burdens on filers? If so, how?

• Are our amendments to proposed rule 12–14 consistent with industry practices? If not, how are our amendments different? Are there other industry practices that we should include in our proposal with respect to the disclosure of affiliated investments?

5. Form and Content of Financial Statements

Finally, we are proposing revisions to Article 6 of Regulation S–X, which prescribes the form and content of financial statements filed for funds. Many of the revisions we are proposing today are intended to conform Article 6 with our proposed changes to Article 12 and update other financial statement requirements.[263] As part of these changes, we are proposing to modify the title and description of Article 6 from ''Registered Investment Companies'' to ''Registered Investment Companies and Business Development Companies'' to clarify that BDCs are subject to Article 6 of Regulation S–X.[264] This does not

[256] *See* proposed rule 12–14 of Regulation S–X.

[257] *See* rule 12–14 of Regulation S–X.

[258] *See* proposed rule 12–14, column C of Regulation S–X. Column C of current rule 12–14 requires disclosure of the ''amount of equity in net profit and loss for the period,'' which is derived from the controlled company's income statement and does not directly translate to the impact to a fund's statement of operations. We are proposing to replace this requirement with ''net realized gain or loss for the period.''

[259] *See id.* at column D.

[260] *See* proposed rule 12–14, nn.6(e) and (f) of Regulation S–X.

[261] *See id.* at n.7; *see also* proposed rule 12–12, n.5, 12–12A. n.4, 12–12B, n.2 of Regulation S–X.

[262] Instruction 1 would delete the instruction to segregate subsidiaries consolidated in order to make the disclosures under rule 12–14 consistent with the fund's balance sheet. *See* proposed rule 12–14, at n.1 of Regulation S–X. Instruction 2 would require the fund to organize the schedule to rule 12–14 in the same manner as is required by instruction 2 of rule 12–12. *See* proposed rule 12–14, at n.2 of Regulation S–X. Instruction 3 would require the fund to identify the interest rate or preferential dividend rated and maturity rate, as applicable. *See* proposed rule 12–14, at n.3 of Regulation S–X. Instruction 4 would add column F to the columns to be totaled and update the instruction to state that Column F should agree with the correlative amount shown on the related balance sheet. *See* proposed rule 12–14, at n.4 of Regulation S–X. Instruction 5 would update the reference to instruction 8 of rule 12–12 and reference to rule 12–13 to reflect the changes in the numbering of the instructions for those rules. *See* proposed rule 12–14, at n.5 of Regulation S–X. Instruction 6(a) and (b) would update references to column D to reference Column E in order to reflect our proposed changes to rule 12–14's schedule. *See* proposed rule 12–14, at nn.6(a) and (b) of Regulation S–X. Instruction 6(d), which proposes to add clarifying language from instruction 7 of rule 12–12, would provide the fund with more detail on the definition of non-income producing securities. *See* proposed rule 12–14, at n.6(d) of Regulation S–X. Instruction 8 would require the fund to identify each issue of securities whose fair value was determined using significant unobservable inputs. *See* proposed rule 12–14, at n.8 of Regulation S–X. Instruction 9 would require the fund to identify illiquid securities. *See* proposed rule 12–14, at n.9 of Regulation S–X. Instruction 10 would require the fund to indicate each issue of securities held in connection with open put or call option contracts, loans for short sales, or where any portion of the issue is on loan, as required by note 11 to rule 12–12. *See* proposed rule 12–14, at n.10 of Regulation S–X. Instruction 11 would extend rule 12–12's tax basis disclosure to investments in and advances to affiliates. *See* proposed rule 12–14, at n.11 of Regulation S–X.

[263] We are also proposing to amend the reference in rule 6–03(c) to § 210.3A–05, as that section of Regulation S–X was rescinded in 2011. *See* Rescission of Outdated Rules and Forms, and Amendments to Correct References, Securities Act Release No. 33–9273 (Nov. 4, 2011) [76 FR 71872 (Nov. 21, 2011)].

[264] *See* proposed rules 6–01; 6–03; 6–03(c)(1); 6–03(d); 6–03(i); 6–04; and 6–07 of Regulation S–X.

A BDC is a closed-end fund that is operated for the purpose of making investments in small and developing businesses and financially troubled businesses and that elects to be regulated as a BDC.

Continued

change existing requirements for BDCs.[265]

In order to allow a more uniform presentation of investment schedules in a fund's financial statements, we are proposing to rescind subparagraph (a) of rule 6–10 under Regulation S–X, regarding which schedules are to be filed.[266] We believe that a fund and its consolidated subsidiaries should present their consolidated investments for each applicable schedule, without indicating which are owned directly by the fund or which are owned by the consolidated subsidiaries.

Moreover, current rule 6–10(a) provides that if the information required by any schedule (including the notes thereto) is shown in the related financial statement or in a note thereto without making such statement unclear or confusing, that procedure may be followed and the schedule omitted.[267] We believe that some funds may have interpreted this guidance as allowing presentation of some Article 12 schedules (*e.g.,* rules 12–13 and 12–14) in the notes to the financial statements, as opposed to immediately following the schedules required by rules 12–12, 12–12A, and 12–12C, and are therefore proposing to eliminate rule 6–10(a). In light of the increased use of derivatives by funds, we believe that all schedules required by rule 6–10 should be presented together within a fund's financial statements, and not in the notes to the financial statements. We recognize that our proposal would change current practice for some funds but believe that, coupled with more detailed disclosure rules for derivatives, this amendment would provide more consistent disclosure and improve the usability of financial statements for investors.[268]

We are also proposing changes to rules 6–03 and 6–04 to specifically reference the investments required to be reported on separate schedules in amended Article 12.[269] Additionally, we are proposing to eliminate current rule 6–04.4, which requires disclosure of ''Total investments'' on the balance sheet under ''Assets,'' recognizing that investments reported under proposed rules 12–13A through 12–13D could potentially be presented under both assets and liabilities on the balance sheet.[270] For example, a fund may hold a forward foreign currency contract with unrealized appreciation and a different forward foreign currency contract with unrealized depreciation. The fund presents on its balance sheet an asset balance for the contract with unrealized appreciation and a liability balance for the contract with unrealized depreciation. Totaling the amounts of investments reported under assets could be misleading to investors in this example, or in other examples where a fund holds derivatives in a liability position (*e.g.,* unrealized depreciation on an interest rate swap contract). A ''Total investments'' amount in the Assets section of the fund's balance sheet would include the fund's investments in securities and derivatives that are in an appreciated position, but it would not include the unrealized depreciation on the interest rate swap contract, which would be classified under the Liabilities section of the fund's balance sheet. Given the increasing use of derivatives by funds, we believe eliminating current rule 6–04.4 would provide more complete information to investors. We are also proposing a corresponding change in rule 6–03(d) to remove the reference to ''total investments reported under [rule 6–04.4].''[271]

We are also proposing to amend rule 6–04 to refer individually to our derivatives disclosures in proposed rules 12–13A through 12–13C.[272] As is currently the case, these proposed amendments are not meant to require gross presentation where netting is allowed under U.S. GAAP.[273] For example, if a fund held a forward foreign currency contract which had unrealized appreciation and another forward foreign currency contract which had unrealized depreciation, the fact that forward foreign currency contracts are mentioned in proposed rules 6–04.3(b) and 6–04.9(d) is not meant to require both contracts to be presented gross on the balance sheet if netting were allowed under U.S. GAAP.

Proposed rule 6–05.3 would also specifically require presentation of items relating to investments other than securities in the notes to financial statements.[274] Current rule 6–05.3 only requires presentation in the notes to financial statements of disclosure required by rules 6–04.10 through 6–04.13, which include information relating to securities sold short and open option contracts written.[275] Our proposal would also amend rule 6–05.3 to require fund financial statements to reflect all unaffiliated investments other than securities presented on separate schedules under Article 12.[276]

We are also proposing to add new disclosure requirements that are designed to increase transparency to investors about certain investments and activities. First, we are proposing to add new subsection (m) to rule 6–03 that would require funds to make certain disclosures in connection with a fund's securities lending activities and cash collateral management.[277] Specifically, we are proposing to require disclosure of (1) the gross income from securities lending, including income from cash collateral reinvestment; (2) the dollar amount of all fees and/or compensation paid by the registrant for securities lending activities and related services, including borrower rebates and cash collateral management services; (3) the net income from securities lending activities; (4) the terms governing the compensation of the securities lending agent, including any revenue sharing split, with the related percentage split between the registrant and the securities lending agent, and/or any fee-for-service, and a description of services included; (5) the details of any other fees paid directly or indirectly, including any fees paid directly by the registrant for cash collateral management and any management fee deducted from a pooled investment vehicle in which cash collateral is invested; and (6) the monthly average of the value of portfolio securities on loan.[278] We believe that these proposed disclosures would allow investors to better understand the income generated from, as well as the expenses associated with, securities lending activities. Second, our proposal would also amend rule 6–07 to require funds to make a separate disclosure for income from

See section 2(a)(48) of the Investment Company Act (defining BDCs). BDCs are not subject to periodic reporting requirements under the Investment Company Act, although they must comply with periodic reporting requirements under the Exchange Act.

[265] *See* Instruction 1.a to Item 6.c of Form N–2 (''A business development company should comply with the provisions of Regulation S–X generally applicable to registered management investment companies. (*See* section 210.3–18 [17 CFR 210.3–18] and sections 210.6–01 through 210.6–10 of Regulation S–X [17 CFR 210.6–01 through 210.6–10]).'').

[266] *See* proposed rule 6–10 of Regulation S–X.

[267] *See* rule 6–10 of Regulation S–X.

[268] Additionally, in order to conform proposed rule 6–10(b) with the new requirements under Article 12, we added schedules corresponding to our proposed new schedules of derivatives investments.

[269] *See* proposed rules 6–03(d), 6–04.3 and 6–04.9 of Regulation S–X.

[270] *See* rule 6–04.4 of Regulation S–X [17 CFR 210.6–04.4].

[271] *See* proposed rule 6–03(d) of Regulation S–X.

[272] *See* proposed rules 6–04.3; 6–04.6; and 6–04.9 of Regulation S–X.

[273] *See* ASC 210, Balance Sheet (''ASC 210'') and ASC 815.

[274] *See* proposed rule 6–05.3 of Regulation S–X.

[275] *See* rule 6–05.3 of Regulation S–X [17 CFR 210.6–05.3].

[276] *See* proposed rule 6–05.3 of Regulation S–X.

[277] *See supra* note 71 and accompanying text.

[278] *See* proposed rule 6–03(m) of Regulation S–X.

non-cash dividends and payment-in-kind interest on the statement of operations.[279] Our proposed amendment to rule 6–07 is intended to increase transparency for investors in order to allow them to better understand when fund income is earned, but not received, in the form of cash.

We are proposing to amend rule 6–07.7(a) in order to conform statement of operations disclosures of the net realized gains or losses from investments to include our additional derivatives disclosures in proposed rules 12–13A through 12–13C.[280] Likewise, we are proposing similar changes to proposed 6–07.7(c) (current rule 6–07.7(d)) in order to conform statement of operations disclosures of the net increase or decrease in the unrealized appreciation or depreciation of investments to include our new derivatives disclosures.[281] We recognize that Regulation S–X, which organizes net realized gains and losses (and net increases or decreases in the unrealized appreciation or depreciation) by investment type, diverges from our approach in proposed Form N–PORT, which organizes net realized gain or loss and net change in unrealized appreciation or depreciation attributable to derivatives by each instrument's primary underlying risk exposure.[282] While we believe that organizing these disclosures by exposure type, which are derived from ASC Topic 815, are appropriate for Form N–PORT; we also believe that it is more appropriate for statement of operations disclosures to be organized by major types of investment transactions, as doing so would be consistent with the types of investments requiring separate schedules in Article 12 and allow investors to relate the disclosures in the schedule of investments with the statement of operations.[283]

We are also proposing to eliminate Regulation S–X's requirement for specific disclosure of written options activity under current rule 6–07.7(c).[284] This provision was adopted prior to FASB adopting disclosures generally applicable to derivatives, including written options, now required by ASC Topic 815.[285] We are proposing that the requirement for specific disclosures for written options activity be removed because they are generally duplicative of the requirements of ASC Topic 815, which include disclosure of the fair value amounts of derivative instruments, gains and losses on derivative instruments, and information that would enable users to understand the volume of derivative activity.[286]

We are also proposing to eliminate the exception in Schedule II of current rule 6–10 which does not require reporting under current rule 12–13 if the investments, at both the beginning and end of the period, amount to one percent or less of the value of total investments.[287] We believe that it is appropriate to propose eliminating this exception, because a fund may have significant notional amount in its portfolio that could be valued at one percent or less of the value of total investments. Accordingly, removing this exception would provide more transparency to investors regarding a fund's derivatives activity.

We request comment on our proposed changes to Article 6 of Regulation S–X.

- Are our proposed amendments to Article 6 of Regulation S–X appropriate? If not, which amendments are not appropriate and why? Are there other amendments to Article 6 of Regulation S–X that we should propose? If so, what amendments and why?
- Are there alternative methods of presentation of derivatives that we should consider, rather than the proposed requirement that all schedules be presented in the same location? If so, what method and why is it preferable?
- As we discussed above, among others, our basis for proposing to eliminate rule 6–10(a) was our belief that a fund and its consolidated subsidiaries should present their consolidated investments for each applicable schedule, without indicating which are owned directly by the fund and which are owned by the consolidated subsidiaries. Is this proposed change appropriate? Why or why not? Should we require different or additional information about consolidated investments?
- We request comment on our proposal to eliminate rule 6–04.4, which requires disclosure of ''Total investments'' on the balance sheet under ''Assets,'' and the corresponding reference to rule 6–04.4 in rule 6–03(d). Are these proposed changes appropriate? Why or why not? Would eliminating current rule 6–04.4 provide more complete information to investors?
- We request comment on our proposal to amend rule 6–05.3 to specifically require presentation of items relating to investments other than securities in the notes to the financial statements, as well as require fund financial statements to reflect all unaffiliated investments presented on separate schedules under Article 12. Are our proposed changes appropriate? Why or why not?
- Would the disclosure required under proposed rule 6.03(m) concerning income and expenses in connection with securities lending activities provide meaningful information to investors or other potential users? For example, would the disclosures regarding compensation and other fee and expense information relating to the securities lending agent and cash collateral manager be useful to fund boards in evaluating their securities lending arrangements? Would these disclosures be sufficient for this purpose, or would additional information be necessary, for example, to put the fee and expense information in context (*e.g.,* the nature of the services provided by the securities lending agent and cash collateral manager)? Should the Commission instead require that these or other similar disclosures, be provided elsewhere in the fund's financial statements (*e.g.,* the Statement of Operations), or provided as part of other disclosure documents (*e.g.,* the Statement of Additional Information) or reporting forms (*e.g.,* proposed Form N–CEN)? Why or why not?
- Is the proposed disclosure under rule 6–07.1 for non-cash dividends and payment-in-kind interest on the statement of operations meaningful to investors or other potential users of the fund's financial statements? Should all non-cash interest be disclosed, including amortization and accretion, or should just payment-in-kind interest be disclosed?
- Do our proposed amendments to rules 6–07.7(a) and 6–07.7(c) omit any classifications of gains or loss or changes in unrealized appreciation or

[279] *See* proposed rule 6–07.1 of Regulation S–X.

[280] *See* proposed rule 6–07.7(a) of Regulation S–X.

[281] *See* proposed rule 6–07.7(c) of Regulation S–X.

[282] *See* Item B.5.c of proposed Form N–PORT.

[283] *See* ASC 815.

[284] *See* rule 6–07.7(c) of Regulation S–X [17 CFR 210.6–07.7(c)].

[285] *See* ASC 815.

[286] *Id.* Rule 6–07.7(c) requires disclosure in a note to the financial statements of the number and associated dollar amounts as to option contracts written: (i) At the beginning of the period; (ii) during the period; (iii) expired during the period; (iv) closed during the period; (v) exercised during the period; (vi) balance at end of the period. The balances at the beginning of the period and end of the period are available in the prior period-end and current period-end schedules of open option contracts written, respectively. By eliminating the written options roll-forward, investors would no longer have information regarding the number of contracts expired, closed, or exercised during the period. However, disclosures required by ASC 815 provide gains and losses on derivative instruments, including written options, along with information that would enable users to understand the volume of derivative activity during the period.

[287] *See* rule 6–10(c)(1) Schedule II of Regulation S–X; *see also* proposed rule 6–10(b)(1) Schedule II of Regulation S–X.

depreciation that should be disclosed? If so, which categories and why?

• We request comment on our proposal to eliminate Regulation S–X's requirements for specific disclosure of written options activity under rule 6–07.7(c). Does the current requirement for specific disclosure of written options activity under rule 6–07.7(c) provide a user of financial statements with sufficient incremental benefit to merit retaining this disclosure in addition to the disclosures required by ASC Topic 815? Why or why not?

• Proposed rule 6–10(b) would no longer allow funds to omit the schedule of investments other than securities if the investments, other than securities, at both the beginning and end of the period amount to one percent or less of the value of total investments. Is this change appropriate? Are there any costs associated with this change? If so, what are they?

• Are our amendments to Article 6 of Regulation S–X generally consistent with industry practices, except where specifically noted in the discussion above? If not, how are our amendments different? Are there other industry practices that we should include in our proposal with respect to the form and content of financial statements?

D. Option for Web Site Transmission of Shareholder Reports

1. Overview

The Commission is proposing new rule 30e–3 under the Investment Company Act, which would, if adopted, permit, but not require, a fund to satisfy requirements under the Act and rules thereunder to transmit reports to shareholders if the fund makes the reports and certain other materials accessible on its Web site. Reliance on the rule would be subject to certain conditions, including conditions relating to (1) the availability of the shareholder report and other required information, (2) prior shareholder consent, (3) notice to shareholders of the availability of shareholder reports, and (4) shareholder ability to request paper copies of the shareholder report or other required information.

This new option is intended to modernize the manner in which periodic information is transmitted to shareholders. We believe it would improve the information's overall accessibility while reducing burdens such as printing and mailing costs borne by funds, and ultimately, by fund shareholders. As described below, today's proposal draws on the Commission's experience with use of the Internet as a medium to provide documents and other information to investors. The proposal is supported by recent Commission investor testing efforts and other empirical research concerning investors' preferences about report transmission methods and use of the Internet for financial and other purposes generally. At the same time, the Commission recognizes that empirical research, discussed below, demonstrates that some investors continue to prefer to receive paper reports. The proposal therefore incorporates a set of protections intended to avoid investor confusion and protect the ability of investors to choose their preferred means of communication.

Reliance on the rule would be optional. Funds that do not maintain Web sites or that otherwise wish to transmit shareholder reports in paper or pursuant to the Commission's existing electronic delivery guidance would continue to be able to satisfy transmission requirements by those transmission methods. Furthermore, under the rule as proposed, a fund relying on the rule to satisfy shareholder report transmission obligations with respect to certain shareholders would not be precluded from transmitting shareholder reports to other shareholders pursuant to the Commission's electronic delivery guidance. We expect that funds would continue to rely on the Commission's guidance to electronically transmit reports to shareholders who have elected to receive reports electronically, and rely on the rule with respect to shareholders who have not so elected (*i.e.,* those who currently receive printed shareholder reports by mail).

2. Discussion

Funds are generally required to transmit reports to shareholders on a semiannual basis.[288] Historically, these reports have been printed and mailed to shareholders. With advances in technology and, in particular, the increasing use of the Internet as a medium through which information, financial or otherwise, is made accessible, we have previously issued guidance describing the circumstances under which transmission of disclosure documents may be effected through electronic means.[289] Under that guidance, funds may transmit documents electronically provided that a number of conditions related to shareholder notice, access, and evidence of delivery are met.[290]

Recent investor testing and Internet usage trends have highlighted that preferences about electronic delivery of information have evolved, and that many investors would prefer enhanced availability of fund information on the Internet. For example, investor testing sponsored by the Commission and conducted in 2011 [291] suggested that an

[288] *See* section 30(e) of the Investment Company Act [15 U.S.C. 80a–29(e)]; rule 30e–1 (reports to stockholders of management companies); rule 30e–2 (reports to shareholders of unit investment trusts substantially all the assets of which consist of securities issued by a management company).

[289] *See generally* Use of Electronic Media for Delivery Purposes, Investment Company Act Release No. 21399 (Oct. 6, 1995) [60 FR 53458 (Oct. 13, 1995)] (''1995 Release'') (providing Commission views on the use of electronic media to deliver information to investors, with a focus on electronic delivery of prospectuses, annual reports to security holders and proxy solicitation materials under the federal securities laws); Use of Electronic Media by Broker-Dealers, Transfer Agents, and Investment Advisers for Delivery of Information, Investment Company Act Release No. 21945 (May 9, 1996) [61 FR 24644 (May 15, 1996)] (''1996 Release'') (providing Commission views on electronic delivery of required information by broker-dealers, transfer agents and investment advisers); Use of Electronic Media, Investment Company Act Release No. 24426 (Apr. 28, 2000) [65 FR 25843 (May 4, 2000)] (''2000 Release'') (providing updated interpretive guidance on the use of electronic media to deliver documents on matters such as telephonic and global consent; issuer liability for Web site content; and legal principles that should be considered in conducting online offerings).

More recently, the Division of Investment Management published guidance stating the staff's position that electronic delivery of a notice pursuant to rule 19a–1 under the Investment Company Act, consistent with the Commission's electronic delivery guidance, would satisfy the purposes and policies underlying the rule. *See* Division of Investment Management, Securities and Exchange Commission, *Shareholder Notices of the Sources of Fund Distributions—Electronic Delivery,* IM Guidance Update No. 2013–11 (Nov. 2013), *available at http://www.sec.gov/divisions/investment/guidance/im-guidance-2013-11.pdf* (''2013–11 IM Guidance Update'').

[290] *See id.*

[291] In 2011, the Commission engaged a consultant to conduct investor testing regarding shareholder reports. We have placed the consultant's report concerning that testing (''Investor Testing of Mutual Fund Shareholder Reports'') in the comment file for the proposed rule (available at *www.sec.gov/comments/s7-08-15/s70815.shtml*). Separately, Commission staff prepared a study of investor financial literacy pursuant to section 917 of the Dodd-Frank Act. Materials relating to this study, including the staff's report, are available at *http://www.investor.gov/publications-research-studies/sec-research.*

Also, in 2007, the Commission engaged a consultant to conduct focus group interviews and a telephone survey concerning investors' views and opinions about various disclosure documents filed by companies, including mutual funds. We have placed the consultant's report concerning the focus group testing and related transcripts in the comment file for the proposed rule (available at *www.sec.gov/comments/s7-08-15/s70815.shtml*). The consultant's report concerning the telephone survey (''Telephone Survey Report'') is available at *http://www.sec.gov/pdf/disclosuredocs.pdf.* Respondents to the telephone survey who had received a mutual fund shareholder report, for example, were asked about their preferences for a mode of delivery of the information contained in a

investor looking for a fund's annual report is most likely to seek it out on the fund's Web site, rather than request it by mail or phone or by retrieving it from the Commission's EDGAR system.[292] Many investors indicated that they would prefer that fund information be made available in both electronic and print versions, with a plurality of respondents preferring electronic transmission by email with the option to easily request a print copy of a particular report, though a significant minority indicated that they would still prefer to receive a print copy through the mail.[293]

In the time since this investor testing was conducted, access to and use of the Internet has continued to increase significantly, including among demographic groups that have previously been less apt to use the Internet. For example, a study conducted by the Pew Research Center's Internet & American Life Project in 2013 found that only 15% of American adults ages 18 and older do not use the Internet or email—falling from 26% in 2011, when our investor testing was conducted, and from 39% a decade before in 2001.[294] These researchers also found that for the first time in 2012, more than half of adults over the age of 64 used the Internet, a figure that climbed to 59% in 2013.[295]

These trends have also extended to use of the Internet for financial purposes. For example, a recent survey by the Investment Company Institute found that in 2014, 94% of U.S. households owning mutual funds had Internet access (up from 68% in 2000), with widespread use among various age groups, education levels and income levels.[296] The year before, the Investment Company Institute found that 82% of U.S. households owning mutual funds used the Internet for financial purposes.[297]

Given the evolving preferences and trends in Internet usage, in particular with regard to the delivery of financial information, we believe that it is appropriate to propose a rule that would permit the Web site transmission of fund shareholder reports, while maintaining the ability of shareholders who prefer to receive reports in paper to receive reports in that form. Funds and their shareholders would benefit from the reductions in related printing and mailing costs. Also, the rule, as proposed, would consolidate current and historical portfolio holdings information in one location (*i.e.,* a particular Web site, as opposed to having some information on one Web site and other information on EDGAR), whereas currently, funds are not required to transmit or otherwise make accessible to investors holdings information as to the first and third fiscal quarters.[298]

Although we believe the proposed rule would benefit many investors, we recognize that there are concerns associated with how some investors may be affected. For example, as discussed above, investor testing suggests that a significant minority of investors prefer to receive paper reports and that some demographic groups of investors may be less likely to use the Internet. Some of these investors might not fully understand the actions they would need to take under the proposed rule to continue to receive their reports in paper. We believe that it is critical that these investors continue to receive disclosure in a means that is convenient and accessible for them. In addition, there is a risk that even some investors that prefer to use the Internet might be less likely to review reports electronically than they would in paper. We also believe it is critical that the proposed rule communicate the importance of the information that would be made available on the Web site.

Accordingly, as discussed below, the proposed rule would include certain safeguards for investors who wish to continue to receive shareholder reports in paper, by requiring prior consent of investors, and continuing to make shareholder reports and other required information available in paper upon request. The proposed rule would also include requirements intended to emphasize the importance of the information available on the Web site. These protections are intended to maintain the ability of investors who prefer to receive reports in paper to continue to do so without confusion, as well as to provide to investors clear and prominent printed notifications each time a new shareholder report is made available online. We request comment below on the potential concerns articulated above, as well as the steps we are proposing to address them while capturing the potential benefits for investors and funds of electronic communication.

3. Rule 30e–3

As proposed, new rule 30e–3 would provide that a fund's annual or semiannual report to shareholders would be considered transmitted to a shareholder of record if certain conditions set forth in the rule are satisfied as to (a) availability of the report and other materials, (b) shareholder consent, (c) notice to shareholders, and (d) delivery of materials upon request of the shareholder.[299] As discussed below, these conditions are generally consistent with similar conditions in other rules adopted by the Commission, including its rules regarding the use of a summary prospectus, internet delivery of proxy materials, and ''householding'' of certain disclosure documents.

a. Availability of Report and Other Materials

Under the rule as proposed, the fund's report to shareholders under rule 30e–1 or 30e–2 would be required to be publicly accessible, free of charge, at a

shareholder report, and ''an Internet Web site'' received the highest ratings (with 49% rating it 7 or above on a 10 point scale), compared with 42% of respondents who rated ''a paper copy'' 7 or above. *See* Telephone Survey Report at 96.

[292] *See* Investor Testing of Mutual Fund Shareholder Reports, *supra* note 291, at 72. When asked ''If you wanted to see a mutual fund annual report, how would you access/obtain the report? Please check all that apply.,'' 59.5% of respondents selected ''look on the mutual fund company's Web site,'' compared with 33.3% who selected ''ask my financial advisor,'' 24.5% who selected ''request by mail,'' 21.0% who selected ''do a web search (Google, etc.),'' 18.8% who selected ''request by phone,'' 12.3% who selected ''check with my employer's HR or employee benefits representative,'' 11.3% who selected ''look on the SEC's Web site or on EDGAR,'' and 2.3% who selected ''other.'' *Id.*

[293] *See id.* at 185. When asked ''How would you prefer to receive information about your mutual fund investments?,'' 25.8% of respondents selected ''online through a link provided in an email, with the option to request a print version,'' compared with 19.5% of respondents who selected ''in print through the mail, with a web address provided for an online version,'' 18.5% who selected ''online through a link provided in an email,'' 16.5% who selected ''a print summary of the key information through the mail, with a web address provided for a complete online version,'' 13.8% who selected ''in print through the mail,'' and 6.0% who selected ''I don't have a preference.'' *Id.*

[294] *See* Pew Research Center, *Who's Not Online and Why,* at 2 (Sept. 25, 2013), *available at http://pewinternet.org/Reports/2013/Non-internet-users.aspx.*

[295] *See* Pew Research Center, *Older Adults and Technology Use,* at 1 (Apr. 3, 2014), *available at http://www.pewinternet.org/2014/04/03/older-adults-and-technology-use/.*

[296] *See* 2015 ICI Fact Book, at 129, *supra* note 4. For example, the study found the following with respect to Internet access in mutual fund owning households: (1) Head of household age 65 or older, 86% have access, (2) education level of high school diploma or less, 84% have access, and (3) household income of less than $50,000, 84% have access.

[297] *See* 2014 Investment Company Fact Book, Investment Company Institute, at 115–17, *available at http://www.ici.org/pdf/2014_factbook.pdf.*

[298] Currently, funds report their complete portfolio holdings as of the first and third fiscal quarters on Form N–Q, which is accessible only through EDGAR. There is no separate requirement for funds to transmit or otherwise make this information available to shareholders.

[299] Proposed rule 30e–3(a).

specified Web site address.[300] The report would need to be accessible beginning no later than the date of the transmission in reliance on this option, and ending no earlier than the date when the fund next ''transmits'' a report required by rule 30e–1 or 30e–2.[301] This requirement is intended to provide shareholders with the opportunity for ongoing access from the date of intended transmission until the date that the fund transmits its next shareholder report.[302]

In addition to the most current shareholder report, the rule as proposed would require that the fund post on its Web site (1) any previous shareholder report transmitted to shareholders of record within the last 244 days,[303] and (2) in the case of a fund that is not a money market fund or an SBIC, the fund's complete portfolio holdings as of the close of its most recent first and third fiscal quarters, if any, after the date on which its registration statement became effective.[304] In addition, a fund that is not a money market fund or an SBIC would be required to make its portfolio holdings as of the end of the next fiscal quarter accessible in the same manner within 60 days after the close of that period.[305] We are proposing exceptions to the posting requirement of first and third fiscal quarter portfolio holdings schedules for money market funds and SBICs because money market funds are currently required to post certain portfolio holdings and other information on their Web sites pursuant to rule 2a–7,[306] and because SBICs are neither currently required to file reports on Form N–Q,[307] nor would SBICs be required to file reports on proposed Form N–PORT.[308]

These materials would also be required to be publicly accessible in the same manner and for the same time period as the current shareholder report.[309] We are proposing this requirement so that shareholders have access to a complete year of portfolio holdings information in one location (*i.e.,* the Web site on which the report transmitted under the proposed rule is made accessible), rather than have to separately access portfolio holdings information for the first and third quarters by accessing the fund's reports on Form N–PORT for those periods.

To conform the form and content of the portfolio holdings schedules for the first and third quarters to those schedules presented in the fund's shareholder reports for the second and fourth quarters, the proposed rule would require the schedules for the first and third quarters to be presented in accordance with the schedules set forth in §§ 210.12–12—12–14 of Regulation S–X [17 CFR 210.12–12—12–14], which need not be audited.[310] As discussed above, we have also proposed to require that these materials be filed as exhibits to Form N–PORT, regardless of whether the fund intends to rely on the rule to satisfy its shareholder report transmission obligations.[311]

These Web site portfolio disclosure requirements would be generally consistent with funds' current disclosure obligations under Regulation S–X for reports filed on Forms N–Q and N–CSR.[312] Accordingly, we anticipate that most funds would have established procedures in place to report and validate such disclosures, and that funds would be familiar with these disclosure requirements. These Web site portfolio disclosure requirements are also intended to provide disclosures that would be easily understood and familiar to investors, because these disclosures would contain similar information and would be presented in a similar manner as those currently included in shareholder reports.

Proposed rule 30e–3 would require compliance with certain conditions designed to ensure the accessibility of shareholder reports and other required materials.[313] First, the Web site address on which the shareholder reports and other required portfolio information are made accessible could not be the Commission's Web site address for electronic filing.[314] Second, the materials required to be posted on the Web site would have to be presented in a format that is convenient for both reading online and printing on paper, and persons accessing the materials would have to be able to permanently retain (free of charge) an electronic copy of the materials in this format.[315] These conditions are designed to ensure that shareholder reports and other information posted on a fund's Web site pursuant to the proposed rule are user-friendly and allow shareholders the same ease of reference and retention abilities they would have with paper copies of the information.

Third, the rule as proposed would include a safe harbor provision that would allow a fund to continue relying on the rule even if it did not meet the posting requirements of the rule for a temporary period of time.[316] In order to rely on this safe harbor, a fund would be required to have reasonable procedures in place to ensure that the required materials are posted on its Web site in the manner required by the rule and take prompt action to correct noncompliance with these posting requirements.[317] We are proposing this safe harbor because we recognize that there may be times when, due to events beyond a fund's control, such as system outages or other technological issues, natural disasters, acts of terrorism, pandemic illnesses, or other circumstances, a fund is temporarily not

[300] Proposed rule 30e–3(b)(1).

[301] *Id.*

[302] *See* 1995 Release, *supra* note 289 (noting that to satisfy access requirements under the Commission's electronic delivery guidance, ''as is the case with a paper document, a recipient should have the opportunity to retain the information or have ongoing access equivalent to personal retention).

[303] Proposed rule 30e–3(b)(1)(ii). Thus, for example, a fund with a December 31 fiscal year end wishing to rely on rule 30e–3 to transmit its annual report to shareholders would also be required to ensure that its semiannual report as of June 30 is similarly accessible. Only those annual and semiannual reports that are required under rule 30e–1 or rule 30e–2 are required to be accessible in order to rely on rule 30e–3. Thus, for example, if a fund is transmitting a report for its first operational semiannual period, the fund could rely on rule 30e–3 to transmit that report, despite not having made a previous report publicly accessible provided that it meets the other required conditions.

[304] *See* proposed rule 30e–3(b)(1)(iii).

[305] *See* proposed rule 30e–3(b)(2). For example, a fund with a December 31 fiscal year end wishing to rely on rule 30e–3 to transmit its annual report to shareholders would also be required to ensure that its complete portfolio holdings for the first quarter of the next year is similarly available.

[306] *See* rule 2a–7(h)(10). In 2014, we adopted certain amendments to the Web site disclosure requirements for money market funds under rule 2a–7. The compliance date for these amendments is April 14, 2016. *See* Money Market Fund Reform 2014 Release, *supra* note 13, at sections III.E.9 and III.N.4.

[307] *See* rule 30b1–5.

[308] *See* proposed rule 30b1–9.

[309] Proposed rules 30e–3(b)(1) and (b)(2).

[310] *Id.*

[311] *See supra* Part II.A.2.j.

[312] *See generally supra* note 27.

[313] These requirements are largely similar to the accessibility requirements of rule 498 under the Securities Act, which allows funds to use a summary prospectus, and rule 14a–16 under the Securities Exchange Act, which requires issuers and other soliciting persons to furnish proxy materials by posting these materials on a public Web site and notifying shareholders of the availability of these materials and how to access them.

[314] *See* proposed rule 30e–3(b)(3). Currently, the Commission's electronic filing system for fund documents is EDGAR.

[315] *See* proposed rules 30e–3(b)(4) and (5).

[316] *See* proposed rule 30e–3(b)(6). The rule provides that the conditions in paragraphs (b)(1) through (b)(5) of the rule (*i.e.,* the posting requirements) shall be deemed to be met, notwithstanding the fact that the materials required by paragraph (b)(1) of the rule are not available for a period of time in the manner required by the posting requirements, so long as certain conditions are met. *See id.*

[317] *See* proposed rules 30e–3(b)(6)(i) and (ii). The rule would require prompt action ''as soon as practicable following the earlier of the time at which it knows or reasonably should have known'' that the required documents are not available in the manner prescribed by the posting requirements of the rule.

in compliance with the Internet posting requirements of the rule.[318]

b. Shareholder Consent

While we believe that many investors would prefer electronic transmission of shareholder reports based on investor testing and Internet usage trends, we also acknowledge that there likely will be investors that may continue to prefer receiving shareholder reports in paper.[319] To maintain the ability of those shareholders to receive paper copies of their shareholder reports, the rule as proposed would require that a fund obtain shareholder consent prior to relying on the rule to satisfy transmission obligations with respect to a particular shareholder.[320] Specifically, rule 30e–3 as proposed would permit electronic transmission of shareholder report to a particular shareholder only if the shareholder has either previously consented to this method of transmission,[321] or has been determined to have provided implied consent under certain conditions specified in the rule.[322] Under the proposed rule, each series of a registrant offering multiple series would need to obtain separate consent as to a shareholder, regardless of whether consent was obtained from that shareholder by other series offered by that registrant.[323]

To obtain implied consent as to a shareholder, the fund would be required to transmit to the shareholder a separate written statement (''Initial Statement''), at least 60 days before it begins to rely on the rule, notifying the shareholder of the fund's intent to make future shareholder reports available on the fund's Web site until the shareholder revokes consent.[324] As proposed, the Initial Statement must be written using plain English principles so that it will be easily understood by most investors [325] and:

- State that future shareholder reports will be accessible, free of charge, at a Web site; [326]
- explain that the fund will no longer mail printed copies of shareholder reports to the shareholder unless the shareholder notifies the fund that he or she wishes to receive printed reports in the future; [327]
- include a toll-free telephone number and be accompanied by a reply form that is pre-addressed with postage-paid and that includes the information that the fund would need to identify the shareholder, and explain that the shareholder can use either of those two methods at any time to notify the fund that he or she wishes to receive printed reports in the future; [328]
- state that the fund will mail printed copies of future shareholder reports within 30 days after the fund receives notice of the shareholder's preference; [329] and
- contain a prominent legend in bold-face type that states: ''How to Continue Receiving Printed Copies of Shareholder Reports.'' [330]

The Initial Statement is designed to permit funds to infer that a shareholder has consented to electronic transmission of future shareholder reports by alerting the shareholder to the fact that the shareholder will no longer receive printed copies in the future unless the shareholder notifies the fund that he or she wishes to receive print copies of such reports in the future. Because of the importance of this information, in addition to the required prominent legend on the envelope in which the Initial Statement is delivered or on the Initial Statement itself, the proposed rule would require certain conditions intended to ensure that the Initial Statement is not obscured by other materials. Specifically, the proposed rule would require that the Initial Statement could not be incorporated into or combined with another document,[331] nor could it be sent along with other shareholder communications (with the exception of the fund's current summary prospectus, statutory prospectus, statement of additional information, or Notice of Internet Availability of Proxy Materials under rule 14a–16 under the Exchange Act).[332]

If the fund does not receive the reply form or other notification indicating that a particular shareholder wishes to continue to receive paper reports by mail within 60 days after the fund sends the Initial Statement, then the fund may begin to transmit shareholder reports to that shareholder electronically, provided that it meets the other conditions of the rule.[333]

c. Notice

Proposed rule 30e–3 would require funds relying on the rule with respect to a shareholder who has consented to electronic transmission pursuant to the conditions of paragraph (c)(1) of the rule to send a notice (''Notice'') within 60 days of the close of the fiscal period to which the report relates.[334] The proposed requirements for a Notice largely mirror the notice requirements under the Commission's rules mandating the posting of proxy materials online.[335]

As proposed, the Notice, like the Initial Statement, would be required to

[318] *Compare* rule 498(e)(4) of the Securities Act (providing a similar safe harbor under the summary prospectus rule for the same reasons).

[319] *See supra* notes 291–296 and accompanying text.

[320] These conditions are substantially similar to certain of the conditions relating to the Commission's rules on ''householding'' prospectuses, shareholder reports, and proxy statements and information statements to investors who share an address. *See, e.g.,* rule 154 under the Securities Act [17 CFR 230.154] (permitting householding of prospectuses); rules 30e–1 and 30e–2 under the Investment Company Act (permitting householding of fund shareholder reports); rules 14a–3 and 14c–3 under the Exchange Act (permitting householding of proxy statements and information statements). *See generally* Delivery of Disclosure Documents to Households, Investment Company Act Release No. 24123 (Nov. 4, 1999) [64 FR 62540 (Nov. 16, 1999)] (adopting householding rules with respect to prospectuses and shareholder reports); Delivery of Proxy Statements and Information Statements to Households, Investment Company Release No. 24715 (Oct. 27, 2000) [65 FR 65736 (Nov. 2, 2000) (adopting householding rules with respect to proxy statements and information statements). For purposes of the householding rules, consent may be written or implied.

[321] While the householding rules require that consent be ''in writing,'' we are not proposing a similar ''in writing'' requirement as, consistent with the Commission's guidance on electronic delivery, consent may be provided in a number of ways, including in writing, electronically, or telephonically. *See* 1995 Release, *supra* note 289 (noting that one method for satisfying evidence of delivery is to obtain informed consent from an investor to receive information through a particular medium); 1996 Release, *supra* note 289 (stating that informed consent should be made by written or electronic means); 2000 Release, *supra* note 289 (stating Commission's view that an issuer or market intermediary may obtain an informed consent telephonically, as long as a record of that consent is retained).

[322] Proposed rule 30e–3(c).

[323] *See id.*

[324] *See* proposed rule 30e–3(c)(1). For purposes of the rule, ''Initial Statement'' would be defined as the notice described in paragraph (c)(1) of the rule. *See* proposed rule 30e–3(h)(2).

[325] *See* proposed rules 30e–3(c)(1) and (e). *See also* A Plain English Handbook, Securities and Exchange Commission, *available at https://www.sec.gov/pdf/handbook.pdf.*

[326] Proposed rule 30e–3(c)(1)(i).

[327] Proposed rule 30e–3(c)(1)(ii).

[328] Proposed rule 30e–3(c)(1)(iii).

[329] Proposed rule 30e–3(c)(1)(iv).

[330] Proposed rule 30e–3(c)(1)(v). This legend would be required to appear on the envelope on which the Initial Statement is delivered, or alternatively, if the Initial Statement is delivered separately from other communications to investors, the legend may appear either on the Initial Statement or on the envelope in which the Initial Statement is delivered.

[331] *See* proposed rule 30e–3(c)(2).

[332] *See* proposed rule 30e–3(c)(3). For purposes of the proposed rule, (1) ''summary prospectus'' would mean the summary prospectus described in paragraph (b) of rule 498, (2) ''statutory prospectus'' would mean a prospectus that satisfies the requirements of section 10(a) of the Securities Act, and (3) ''statement of additional information'' means the statement of additional information required by Part B of the registration form applicable to the fund. *See* proposed rule 30e–3(h).

[333] Proposed rule 30e–3(c)(4).

[334] *See* proposed rule 30e–3(d). For purposes of the rule, ''Notice'' would be defined as the notice described in paragraph (d) of the rule. *See* proposed rule 30e–3(h)(3).

[335] *See* rule 14a–16 under the Exchange Act [17 CFR 240.14a–16].

be written using plain English principles so that it will be easily understood by most investors.[336] and:

- Contain a prominent legend in bold-face type stating that an important report to shareholders is available online and in print by request; [337]
- state that each shareholder report contains important information about the fund, including its portfolio holdings, and is available on the Internet or, upon request, by mail, and encouraging shareholders to access and review the report; [338]
- include a Web site address that leads directly to each report the fund is transmitting to the recipient shareholder in reliance on rule 30e–3; [339]
- include the Web site address where the shareholder report and other required portfolio information is posted; [340]
- provide instructions on how a shareholder may request, at no charge, a paper copy of the shareholder report or other materials required to be made accessible online, and an indication that the shareholder will not receive a paper copy of the report unless requested; [341] and
- include a toll-free telephone number and must be accompanied by a reply form that is pre-addressed with postage-paid and that includes the information that the fund would need to identify the shareholder, and explain that the shareholder can use either of those two methods at any time to notify the fund that he or she wishes to receive printed reports in the future.[342]

The proposed Notice is designed to alert shareholders to the availability of a shareholder report online and to provide shareholders with information on how to obtain a paper copy of the report if they should want one. We believe it is important to limit the information in the Notice and the other materials sent along with the Notice in order to ensure that shareholders are made aware of the availability of a shareholder report and so that the availability of the report does not become obscured. Therefore, the rule as proposed would limit the information contained in the Notice to the information required by the rule.[343] The Notice also could not be incorporated into or combined with another document,[344] nor could it be sent along with other shareholder communications (with the exception of the fund's current summary prospectus, prospectus, statement of additional information, or Notice of Internet Availability of Proxy Materials under rule 14a–16 under the Exchange Act).[345]

Similar to the Commission's rules on householding prospectuses, shareholder reports, and proxy statements and information statements,[346] proposed rule 30e–3 also would allow funds to send one Notice to shareholders who share an address so long as the fund addresses the Notice to the shareholders individually or as a group.[347] In addition, the proposed rule would require funds to file a form of the Notice with the Commission not later than 10 days after the Notice is sent to shareholders.[348] This filing would occur on a new EDGAR submission type which would be created by the Commission. We believe the Notice filing requirement would assist us in overseeing compliance with the rule.

d. Delivery Upon Request

Proposed rule 30e–3 would also require, as a condition to reliance on the rule to transmit shareholder reports electronically, that the fund (or a financial intermediary through which shares of the fund may be purchased or sold) must send, at no cost to the requestor and by U.S. first class mail or other reasonably prompt means, a paper copy of any of the materials discussed above—*viz.,* the fund's most recent annual and semiannual reports, and the fund's portfolio holdings as of its most recent first and third fiscal quarters—to any person requesting such a copy within three business days after receiving a request for a paper copy.[349] This requirement is intended to allow for investors to receive shareholder reports and portfolio information in print format, if they so prefer, even if they have consented to electronic transmission without revoking the consent.[350]

e. Prospectuses and Statements of Additional Information Transmitted Under Rule 30e–1(d)

Rule 30e–1(d) under the Investment Company Act permits an open-end management investment company to transmit a copy of its prospectus or statement of additional information in place of its shareholder report, if it includes all of the information that would otherwise be required to be contained in the shareholder report.[351] We recognize that the nature and purpose of the fund prospectus is different from that of fund shareholder reports. Accordingly, at this time, we are not proposing to permit a similar regime for fund prospectus delivery obligations under the Securities Act. As a result, we do not believe that it would be appropriate to permit the transmission of statutory prospectuses in the manner provided under the proposed rule. Therefore, the proposed rule would not be available to a fund seeking to transmit a copy of its currently effective statutory prospectus or statement of additional, or both, as permitted by paragraph (d) of rule 30e–1.[352]

4. Use of Summary Schedule of Investments

Under the current rules, in lieu of providing a complete schedule of portfolio investments as part of the financial statements included in its shareholder report, a fund may provide a summary schedule of portfolio investments (''Summary Schedule'').[353] Pursuant to Rule 12–12C of Regulation S–X, the Summary Schedule generally must list separately the 50 largest issues and any other issue the value of which

[336] *See* proposed rules 30e–3(d)(1) and (e).

[337] Proposed rule 30e–3(d)(1)(i). The rule as proposed would also require that the legend include the specific fund name to which the Notice relates, or the fund complex name.

[338] Proposed rule 30e–3(d)(1)(ii).

[339] Proposed rule 30e–3(d)(1)(iii). A fund could send a joint Notice with other funds held by the same shareholder in a fund complex; however, the Notice would have to include a link to each of those funds' shareholder reports. A fund may also send a separate Notice if it so wishes.

[340] Proposed rule 30e–3(d)(1)(iv). The Web site address would have to be specific enough to lead investors directly to the documents that are required to be posted online under the rule. The Web site address could be a central site with prominent links to each document, but could not be a home page or section of the Web site other than where the documents are posted. *See id.*

[341] Proposed rule 30e–3(d)(1)(v).

[342] Proposed rule 30e–3(d)(1)(vi).

[343] *See* proposed rule 30e–3(d)(3).

[344] *See* proposed rule 30e–3(d)(2).

[345] *See* proposed rule 30e–3(d)(4).

[346] *See, e.g.,* rule 154 under the Securities Act (permitting householding of prospectuses); rules 30e-1 and 30e-2 under the Investment Company Act (permitting householding of fund shareholder reports); rules 14a–3 and 14c–3 under the Exchange Act (permitting householding of proxy statements and information statements).

[347] *See* proposed rule 30e–3(d)(5).

[348] *See* proposed rule 30e–3(d)(6).

[349] Proposed rule 30e–3(f).

[350] *See, e.g.,* 1995 Release, *supra* note 289 (stating the Commission's belief that ''as a matter of policy, where a person has a right to receive a document under the federal securities laws and chooses to receive it electronically, that person should be provided with a paper version of the document if any consent to receive documents electronically were revoked or the person specifically requests a paper copy (regardless of whether any previously provided consent was revoked.'').

[351] *See* rule 30e–1(d).

[352] Proposed rule 30e–3(g).

[353] *See, e.g.,* Instruction 1 to Item 27(b)(1) of Form N–1A (permitting the inclusion of Schedule VI—Summary schedule of investments in securities of unaffiliated issuers under Rule 12–12C of Regulation S–X in lieu of Schedule 1 — Investments of securities of unaffiliated issuers under Rule 12–12 of Regulation S–X.

exceeded one percent of the net asset value of the fund at the close of the period.[354]

We believe that use of the summary schedule may be unnecessary,[355] and in particular, may be potentially confusing or cumbersome to investors seeking to access the fund's complete portfolio holdings.[356] For these reasons, we are proposing amendments to our registration forms that would restrict funds relying on proposed rule 30e–3 from providing a Summary Schedule in their shareholder reports in lieu of a complete schedule.[357]

5. Related Disclosure Amendments

We are also proposing some related amendments to certain of our rules and forms. First, we are proposing to amend rule 498 under the Securities Act, which concerns the use of a summary prospectus,[358] to require funds relying on proposed rule 30e–3 to include as part of the legend on the cover page of the fund's summary prospectus the Web site address required to be included in the Notice.[359] As proposed, the Web site address that leads to shareholder report information could be the same as the Web site address that leads to prospectus information, provided that the other conditions of each rule are met, but funds would also be permitted to use different Web site addresses for each type of material and provide both addresses in the legend.[360] This requirement is intended to provide investors an additional reminder of the availability of shareholder report and related portfolio holdings information on the fund's Web site.

Second, we are proposing to amend rule 498 under the Securities Act and rule 14a–16 under the Exchange Act to include an Initial Statement or Notice that would be required by proposed rule 30e–3 among the materials that are permitted to accompany and have equal or greater prominence than the summary prospectus prepared in reliance on rule 498 and a notice of Internet availability of proxy materials.[361] These amendments are intended to permit a fund's Initial Statement and Notice to be sent with its summary prospectus or notice of Internet availability of proxy materials if the fund wishes to send them in that manner.[362]

6. Requests for Comment

We request comments on our proposal that would permit electronic transmission of shareholder reports.

- To what extent are funds currently relying on the Commission's guidance on the use of electronic media to deliver or transmit disclosure documents and other information to shareholders? To what extent have shareholders elected to receive disclosure documents and other information in general, and shareholder reports in particular, through electronic means? In the case of shareholders who have elected electronic delivery of disclosure documents in general, and delivery of shareholder reports in particular, to what extent are those shareholders accessing those materials online? Please provide supportive data to the extent available.
- If proposed rule 30e–3 is adopted, to what extent would funds (i) choose to rely on the rule, and (ii) continue to rely on guidance concerning electronic transmission that we have already issued?
- Would availability of the rule change in any way current industry practices on transmitting shareholder reports electronically? For example, we expect that funds would continue to rely on the Commission's guidance to electronically transmit reports to shareholders who have elected to receive reports electronically, and rely on the rule with respect to shareholders who have not so elected. For administrative or other purposes, would funds discontinue their reliance on the Commission's guidance and instead rely on the rule to transmit reports electronically with respect to their entire shareholder base? If so, why? What impact, if any, would the proposed rule have on the transmission of reports to shareholders of UITs required to transmit reports pursuant to rule 30e–2 under the Investment Company Act? What impact, if any, would the proposed rule have on the transmission of reports to shareholders holding fund shares through financial intermediaries or other omnibus type arrangements? Should we permit funds that rely on rule 30e–3 to continue to rely on prior electronic transmission guidance for certain of their shareholders? Why or why not?
- If rule 30e–3 is adopted as proposed, in the case of funds relying on the rule to transmit reports electronically to one or more shareholders, would funds nonetheless seek shareholder consent to transmit reports to those shareholders pursuant to the Commission's electronic guidance in lieu of the rule? Why or why not?
- Should we, as we have proposed, allow funds to transmit reports to shareholders electronically by making them accessible on a Web site? Would investors prefer that these materials be transmitted in this manner? What would be the effect of proposed rule 30e–3 on the ability of investors to access shareholder reports? Would the shareholder report information be more useful or less useful if transmitted in the manner proposed? Would investors be more aware or less aware of the availability of the information if transmitted in reliance on the proposed rule?
- Would any positive or negative effect of the proposed rule on investors be disproportionately greater for certain investors than for others? If so, which investors would be disproportionately affected, to what extent, and how would such effects manifest? What, if any, additional measures could help mitigate any such disproportionate effects? Please provide supportive data to the extent available.
- Rule 30e–3 as proposed contains a number of conditions to be satisfied for reliance on the rule. Are the proposed conditions appropriate? Are there conditions that should be added or are any of the proposed conditions inappropriate? If so, state the conditions and the reasons why.
- The rule as proposed would require that the materials required to be accessible online be publicly accessible, free of charge, at the Web site specified in the Notice, and does not expressly require that the Web site be the fund's Web site. Should the rule require that the materials be accessible at the fund's Web site? Why or why not?
- What materials should be required to be accessible in order for a fund to rely on the rule? For example, we have proposed that a fund relying on the rule would be required to make accessible the shareholder report, the shareholder report for the prior period, and in the case of a fund that is a management

[354] *See* rule 12–12C, n.3 Regulation S–X [17 CFR 210.12–12C].

[355] For example, a fund using the summary schedule for considerations relating to printing and mailing costs would likely have fewer such concerns if the report is posted on its Web site in reliance on the proposed rule.

[356] For example, a shareholder consenting to electronic transmission that wishes to view the complete portfolio holdings would, pursuant to the rule as proposed, first receive a notice of the availability of the report, then take the step to access the report on the fund's Web site, only to have to take a subsequent step to request or otherwise access the full schedule.

[357] *See* proposed amendments to Item 27(b) of Form N–1A; Item 24, Instruction 7 of Form N–2; and Item 28(a), Instruction 7(i) of Form N–3.

[358] *See* rule 498 under the Securities Act [17 CFR 230.498].

[359] *See* rule 498(b)(1)(v)(A) under the Securities Act.

[360] *See id.*

[361] *See* proposed rules 498(f)(2) under the Securities Act and 14a–16(f)(2)(iii) under the Exchange Act.

[362] *See* proposed rule 30e–3(d)(4).

company other than a money market fund or an SBIC, the complete portfolio holdings for the most recent first and third fiscal quarters. Is it appropriate to require funds to post holdings information covering a full year? Should we require information be posted covering a longer period or a shorter period? If so, why? Should money market funds and SBICs relying on the rule be required to post complete portfolio holdings for the first and third quarters? Why or why not?

• The rule as proposed would require that the materials made accessible on the Web site be presented in a format or formats that are convenient for both reading online and printing on paper. Is the proposed format requirement appropriate? Are there liability or other concerns that would arise in connection with meeting a fund's obligation to transmit shareholder reports under Section 30(e) and the rules thereunder? Should we instead require that the materials be presented in a format or formats that are human-readable and capable of being printed on paper in human-readable format? Why or why not?

• How soon should each of the materials be required to be accessible, and how long should each be required to remain accessible?

• The proposed rule would contain a safe harbor for instances in which the materials required to be made accessible are not available for a temporary period of time. Is the safe harbor as proposed appropriate, or should it be modified? For example, should the rule be more proscriptive as to the period of time in which action must be taken to resolve any issues?

• Should we require the Web site on which the proposed rule's required materials are made accessible to incorporate safeguards to protect the anonymity of its visitors? For example, should we require similar conditions to those provided in rule 14a–16 under the Exchange Act relating to Internet availability of proxy materials? Why or why not? If so, what specific requirements should we consider?

• Should the proposed rule require that a shareholder consent to electronic transmission of shareholder reports before a fund begins to rely on the rule? Should we permit funds to obtain implied consent, as proposed, or should we require funds to receive express consent? Are there certain circumstances in which funds should not be permitted to obtain implied consent? For example, if an investor upon opening a new account does not opt-in to electronic delivery of documents, should the fund be permitted nonetheless to seek to rely on the proposed rule as to that shareholder? Why or why not?

• Under the proposed rule, each series of a registrant offering multiple series would need to obtain separate consent as to a shareholder, regardless of whether consent was obtained from that shareholder by other series offered by that registrant. If a fund has obtained implied consent from a shareholder as to a particular series, and subsequently the shareholder invests in one or more other series offered by the fund, should the fund be required to obtain consent as to those other series, or should the fund be permitted to infer consent as to all series offered by the fund? Why or why not? Should the fund be permitted to infer consent as to only other series offered by the registered investment company, or should the fund be permitted to infer consent as to other funds within the fund complex? What, if any, are the special considerations relating to investors who invest through intermediaries?

• Under the proposed rule, to obtain implied consent as to a shareholder, the fund would be required to transmit to the shareholder an Initial Statement, at least 60 days before it begins to rely on the rule. Are the proposed disclosures for the Initial Statement appropriate? Should a fund be required to provide to a shareholder other disclosures before inferring consent to electronic transmission?

• Should the rule require funds to provide multiple written statements (*i.e.,* in addition to the Initial Statement) prior to inferring consent to electronic transmission? If so, how many additional statements and how long after the Initial Statement should they be provided? What period of time after a fund transmits the Initial Statement should we permit the fund to infer consent? Is 60 days an appropriate time? Why or why not?

• What methods should shareholders be permitted to use to deny or revoke consent to electronic transmission?

• Should we permit the Initial Statement to be incorporated into, or combined with, one or more other documents? If so, which documents should we permit the Initial Statement to be incorporated into or combined with?

• The rule as proposed would require that the Initial Statement must be sent separately from other types of communications and may not accompany any other document or materials except the fund's current summary prospectus, statutory prospectus, statement of additional information, or Notice of Internet Availability of Proxy Materials. Is this requirement appropriate? Should we permit the Initial Statement to accompany one or more other documents? If so, which documents?

• Should we, as we have proposed for the Notice, permit the Initial Statement to be sent in a ''householded'' manner?

• Should we require that the Initial Statement not contain any additional information other than that specified in the rule? Why or why not? Absent any requirement specified by rule, what other information would funds generally include in the Initial Statement? For example, would funds provide information on how shareholders could elect to receive the shareholder report and other documents and information electronically by satisfying the conditions contained in the Commission's guidance on use of electronic media relating to notice, access, and evidence of delivery?

• Should the rule permit funds to obtain implied consent from shareholders who have previously revoked consent? If so, should the rule prescribe a minimum period of time after consent was revoked before re-attempting to obtain implied consent from a shareholder? What period should that be and why?

• Should each fund be required to send a shareholder a Notice each time it transmits a shareholder report electronically under the proposed rule? Why or why not?

• We anticipate that the Notice would be sent in paper and mailed to shareholders. Should we permit the Notice to be sent by email if the shareholder has provided an email address? Why or why not? For example, are there any concerns that under such an approach, while a shareholder may have provided an email address (*e.g.,* as part of opening an account), the shareholder may nonetheless neither prefer nor expect to receive documents or other information through that medium? To what extent are funds and intermediaries, pursuant to regulatory requirements or otherwise, maintaining up-to-date email addresses for investors? Would an investor be more likely to view a Notice delivered by one method versus another (*i.e.,* print versus electronically)? Would an investor be more likely to access the related shareholder report and other required materials when notified by one method or the other?

• Are the proposed disclosures for the Notice appropriate? Should we require that the disclosure in the Notice concerning a shareholder's ability to indicate a preference for paper transmission in the future be preceded

by an additional bold-face legend or otherwise made more prominent?

• Should we permit the Notice to be incorporated into, or combined with, one or more other documents? If so, which documents should we permit the Notice to be incorporated into or combined with?

• The rule as proposed would require that the Notice must be sent separately from other types of communications and may not accompany any other document or materials except the fund's current summary prospectus, statutory prospectus, statement of additional information, or Notice of Internet Availability of Proxy Materials. Is this requirement appropriate? Should we permit the Notice to accompany one or more other documents? If so, which documents? For example, in the case of a Notice sent to a shareholder for the first time, should we permit or require the Notice to be accompanied with materials explaining the new transmission regime? Why or why not?

• Should we, as proposed, permit funds to either send separate Notices for each fund or send combined Notices for more than one fund held by a particular shareholder, or should the rule require one or the other of those approaches?

• Should we require that the Notice not contain any additional information other than that specified in the rule? Why or why not? Absent any restriction by rule, what other information would funds generally include in the Notice? For example, would funds provide information on how shareholders could elect to receive the shareholder report and other documents and information electronically by satisfying the conditions contained in the Commission's guidance on use of electronic media relating to notice, access, and evidence of delivery?

• In the case of management companies that are not SBICs, should we require such funds to send a notice each time the fund makes accessible its complete portfolio holdings for the first or third fiscal quarters? Why or why not?

• Should we, as proposed, permit the Notice to be sent in a ''householded'' manner?

• We are proposing that funds would file a form of the Notice with the Commission not later than 10 days after it is sent to shareholders. Is 10 days sufficient to meet this proposed filing requirement, or should some other filing period be required? If so, what time period and why?

• We anticipate that the form of Notice would be filed with the Commission on EDGAR pursuant to a separate EDGAR submission type. Should we instead require that the form of Notice be filed as an exhibit to a report filed with the Commission? For example, should we require that the form of Notice be filed as part of the fund's report on Form N–CSR or Form N–CEN? Why or why not?

• Should we require, as proposed, that funds send a paper copy of a shareholder report upon request? If so, how soon should a fund be required to send the report after receiving a request?

• Should we restrict funds relying on the proposed rule from using the summary schedule of investments? Why or why not? Are there considerations relating to the use of the summary schedule of investments other than those relating to printing and mailing costs that would make the summary schedule an important option for funds to provide portfolio holdings disclosures? Should we restrict funds from using the summary schedule only in reports transmitted pursuant to the rule, and permit funds to use the summary schedule in printed reports that are mailed to shareholders? Would funds prefer this additional flexibility? Why or why not?

• Are the proposed amendments to rule 498 and the registration forms regarding Web site availability of documents appropriate? Should we also, for example, specifically require funds relying on the rule to disclose on the cover page or elsewhere in the summary prospectus or statutory prospectus its reliance on the rule and what specific documents are made available on the Web site?

• To what extent would the proposed rule reduce burdens such as printing and mailing costs borne by funds? Would these burden reductions ultimately accrue to fund shareholders in the form of lower total fund operating expenses? For example, would these reductions ultimately accrue to shareholders in funds with arrangements that permit or limit payments to service providers or intermediaries such as broker-dealers in connection with the printing and mailing of shareholder reports? Please provide supportive data to the extent available.

• In addition to allowing funds to electronically transmit reports to shareholders, should we also consider options for permitting similar delivery of summary or statutory prospectuses? Why or why not?

E. Form N–CEN and Rescission of Form N–SAR

1. Overview

We are proposing to amend the framework by which registered investment companies report census-type information to the Commission by rescinding Form N–SAR and replacing it with a new form—Form N–CEN.[363] Form N–SAR was adopted by the Commission in 1985 and requires that funds report a wide variety of census information to the Commission, including information relating to a fund's organization, service providers, fees and expenses, portfolio strategies and investments, portfolio transactions, and share transactions. Funds generally must file reports on Form N–SAR semi-annually, except for UITs, which file annually.[364] By contrast, as discussed further below, we are proposing to have all funds file reports on Form N–CEN annually.[365]

In recent years, Commission staff has found that the utility of the information reported on Form N–SAR has become increasingly limited. We believe there are two primary reasons for this limited utility. First, in the past two decades, we have not substantively updated the information reported on the form to reflect new market developments, products, investment practices, or risks. Second, the technology by which funds file reports on Form N–SAR has not been updated and limits the Commission staff's ability to extract and analyze the data reported. Accordingly, we believe that by updating the content and format requirements for census reporting, as discussed below, the Commission will be better able to carry out its regulatory functions, while at the same time reducing burdens on filers.

Proposed Form N–CEN would gather similar census information about the fund industry that funds currently report on Form N–SAR, which could be aggregated and analyzed by Commission staff to better understand industry trends, inform policy, and assist with the Commission's examination program. However, in order to improve the quality and utility of information reported, proposed Form N–CEN would streamline and update information reported to the Commission to reflect current Commission staff information

[363] We are proposing to rescind Form N–SAR and replace it with a new census reporting form, Form N–CEN, rather than to amend Form N–SAR in order to avoid technical difficulties that could arise with filing reports on an amended Form N–SAR (*e.g.,* difficulties related to changes to filing format and form specifications).

[364] *See* rules 30b1–1 and 30a–1.

[365] *See* proposed amendments to rule 30a–1.

needs and developments in the industry.[366] Additionally, where possible, we have endeavored to exclude items from proposed Form N–CEN that are disclosed or reported pursuant to other Commission forms, or are otherwise available; however, in some limited cases, we are proposing to collect information that may be similarly disclosed or reported elsewhere, but that the staff would benefit from collecting in a structured format.

In order to improve the utility of the information reported to the Commission, we are also proposing that reports on Form N–CEN be structured in an XML format.[367] By requiring reports on Form N–CEN to be filed in XML format, filers will no longer be required to use outdated technology for census reporting. Additionally, requiring reports on Form N–CEN to be filed in an updated structured format will allow reported information to be more efficiently and effectively validated, retrieved, searched, and analyzed through automated means and, therefore, more useful to end users.[368]

2. Who Must File Reports on Form N–CEN

We are proposing to require that all registered investment companies, except face amount certificate companies,[369] file reports on Form N–CEN.[370] Funds offering multiple series would be required to report information in Part C of the form as to each series separately, even if some information is the same for two or more series.[371]

Like Form N–SAR, the sections of Form N–CEN that a fund is required to complete would depend on the type of registrant in order to better tailor the disclosure requirements.[372] All funds would be required to complete Parts A and B, and file any attachments required under Part G. In addition, funds would complete the following Parts as applicable:

- All management companies, other than SBICs, would complete Part C;
- closed-end funds and SBICs would complete Part D;
- ETFs (including those that are UITs) would complete Part E; [373] and
- UITs would complete Part F.[374]

We request comment on who must file Form N–CEN.

- Should we require any other types of investment companies to file reports on Form N–CEN? For example, should face-amount certificate companies be required to file reports on Form N–CEN?
- Should funds offering multiple series be required to file a report for each series separately, rather than one report covering multiple series, as proposed?

3. Frequency of Reporting and Filing Deadline

Management investment companies currently file reports on Form N–SAR semi-annually,[375] and UITs file such reports annually.[376] To reduce reporting burdens, we are proposing that reports on Form N–CEN be filed annually, regardless of type of filer.[377] Form N–CEN would require census-type information, which in our experience does not change as frequently as, for example, portfolio holdings information. Accordingly, we believe that an annual filing requirement would be sufficient for purposes of review by Commission staff, as well as investors and other market participants that might use this information.[378]

We are proposing a filing period of 60 days after the end of the fiscal year for funds to file reports on Form N–CEN.[379] This is the same filing period that management companies currently have to file reports on Form N–SAR.[380] As with Form N–SAR, and having considered the amount and nature of the information that would be requested in proposed Form N–CEN, we continue to believe that a sixty-day filing period would appropriately balance the staff's need for timely information against the time necessary for a fund to collect, verify, and report the required information to the Commission.

Rule 30b1–3 under the Investment Company Act currently requires a fund to file a transition report on Form N–SAR when a fund's fiscal year

[366] We are proposing to streamline our data collection, in part, through the use of yes/no questions in order to flag certain information for follow-up, if necessary, by Commission staff. *See, e.g.,* Item 11 and Item 30.a of proposed form N–CEN. For example, staff of our Office of Compliance Inspections and Examinations may rely on responses to flag questions in Form N–CEN to indicate areas for follow-up discussion or to request additional information.

[367] The Commission has adopted a number of other forms that are structured in an XML format, including Form N–MFP. Reports on Form N–SAR, by contrast, are filed with an outdated filing application.

[368] *See supra* Part II.A.3 (discussing benefits to the use of XML for reports on Form N–PORT).

[369] Face-amount certificate companies are investment companies which are engaged or propose to engage in the business of issuing face-amount certificates of the installment type, or which have been engaged in in such businesses and have any such certificates outstanding. *See* section 4(1) of the Investment Company Act [15 U.S.C. 80a–4(1)]. Face amount certificate companies are not currently required to file reports on Form N–SAR. *See* General Instruction A to Form N–SAR. Face amount certificate companies would continue to file periodic reports pursuant to section 13 or section 15(d) of the Exchange Act.

[370] *See* proposed amendments to rule 30a–1. Consistent with Form N–SAR, BDCs, which are not registered investment companies, would not be required to file reports on Form N–CEN.

[371] Proposed General Instruction A. Unlike Form N–PORT where separate reports would be filed for each series, registrants would file one report on Form N–CEN covering all series (as is currently done with reports on Form N–SAR). We are proposing this framework for Form N–CEN to help minimize reporting burdens, as much of the information that would be required by Form N–CEN (for example, the information reported pursuant to Parts A and B) would be the same across a fund's various series. We note that Form N–SAR's approach to series information is slightly different than that of proposed Form N–CEN, in that Form N–SAR allows registrants to indicate instances where the information is the same across all series, rather than requiring repetitive information. *See* General Instruction D(8) of Form N–SAR. Unlike Form N–SAR, however, we have sought to organize the information requested in proposed Form N–CEN so that information that is the same for all series is reported in Parts A and B of the form, with Part C, the part of the form that requires each series to respond separately, requesting information that is more likely to differ between series. Accordingly, we anticipate the need to report repetitive information should be limited.

[372] *See* General Instruction A (Rule as to Use of Form N–CEN) to proposed Form N–CEN. As reflected in General Instruction A, registrants would be required to respond to each item in their required sections. To the extent an item in a required section is inapplicable to a registrant, the registrant would respond ''N/A'' to that item. Registrants would not, however, have to provide responses to items in sections they are not required to fill out.

[373] Certain investment products known as ''exchange-traded managed funds'' would also be required to complete Part E: of proposed Form N–CEN.

[374] Management companies that are registered on Form N–3 would also complete certain items in Part F as directed by Item 7.c.i of proposed Form N–CEN. *See* General A to proposed Form N–CEN.

[375] *See* rule 30b1–1.

[376] *See* rule 30a–1.

[377] *See* proposed amendments to rule 30a–1.

[378] As discussed above, certain items that are currently reported on Form N–SAR that would be helpful to have updated on a more frequent basis would be moved to proposed Form N–PORT. For example, item 28 of Form N–SAR requires the fund to provide its monthly sales and repurchases of the Registrant's/Series' shares. In order to increase the timeliness of the information reported to the staff for funds flows, certain information relating to monthly flows would be reported on item B.6 of proposed Form N–PORT, if adopted.

[379] Management companies are currently required to file Form N–SAR reports no more than 60 days after the close of their fiscal year and fiscal second quarter. *See* rule 30b1–1 under the Investment Company Act [17 CFR 270.30b1–1]. Accordingly, we anticipate that management companies, which would constitute the largest number of funds filing reports on proposed Form N–CEN, generally will already have processes in place for reporting census-type information at the end of their fiscal years. Thus, we believe requiring reports on proposed Form N–CEN after the close of a fund's fiscal year, rather than calendar year, would be the least burdensome approach for most funds.

[380] *See* rule 30b1–1 under the Investment Company Act [17 CFR 270.30b1–1]; *but see* rule 30a–1 under the Investment Company Act [17 CFR 270.30a–1] (requiring UITs to file annual reports on Form N–SAR no more 60 days after the close of the calendar year).

changes.[381] Because reports on Form N–CEN would be filed annually rather semi-annually, we believe that a rule outlining the requirements for a transition report would no longer be necessary as transition report filing requirements for fiscal year changes involve less complexity in the case of reports required to be filed once a year rather than twice a year. Consequently, we are proposing to rescind rule 30b1–3. We are, however, proposing to require that reports on Form N–CEN not cover a period of more than 12 months.[382] Thus, if a fund changes its fiscal year, a report filed on Form N–CEN may cover a period shorter than 12 months, but would not be permitted to cover a period longer than 12 months or a period that overlaps with a period covered by a previously filed report.[383]

In addition, a fund would be able to file an amendment to a previously filed report on proposed Form N–CEN at any time, including an amendment to correct a mistake or error in a previously filed report.[384] A fund that files an amendment to a previously filed report on the form would provide information in response to all items of Form N–CEN, regardless of why the amendment is filed.[385]

We request comment on the proposed frequency of reporting and proposed reporting deadline:

- Should reports on Form N–CEN be filed more frequently than annually, as proposed? Should we require management companies to file reports on Form N–CEN semi-annually and UITs to file reports annually, as is currently required by Form N–SAR? Are certain information items on Form N–CEN of a nature that they may change frequently or such that more frequent information about them should be reported to the Commission? If so, should any information items in proposed Form N–CEN be reported on proposed Form N–PORT or another form instead? If so, what items and on which forms?
- Consistent with the treatment of Form N–SAR filings for management companies, we are proposing that reports be filed 60 days after the end of the fund's fiscal year. Should we require a different filing period? If so, what period should we require and why? How long would it take funds to collect, verify, and file reports covering the information required by proposed Form N–CEN? Would the burdens associated with reports on proposed Form N–CEN be greater or less than those associated with reports on Form N–SAR?
- We have proposed that reports on Form N–CEN be filed as of the end of the fund's fiscal year. We understand that funds have other filing requirements that are tied to their fiscal-year end. Should we require some other period end date, such as end of calendar year? Should UITs be required to file reports as of the end of their fiscal year, as proposed, or should they file reports as of the end of their calendar year as they currently do with reports on Form N–SAR?
- We are proposing to eliminate rule 30b1–3 under the Investment Company Act. Should we instead retain the rule? Are the general instructions to Form N–CEN, as proposed, sufficiently clear as to the filing requirements when a fund changes its fiscal year end? If not, how should the general instructions be revised, or in the alternative, should a transition period rule be provided in connection with Form N–CEN? If so, how should a transition period be defined and what deadlines or timeframes should such a rule address?
- Should a fund be required to file an amendment to its Form N–CEN report or file a current report within a certain period of time if previously reported information changes? If so, what types of changes should trigger an amendment requirement? What filing period should be required for such an amendment requirement?

4. Information Required on Form N–CEN

a. Part A—General Information

Part A of Form N–CEN, which would be completed by all funds, would collect information about the reporting period covered by the report. It would require funds to report the fiscal-year end date and indicate if the report covers a period of less than 12 months.[386]

We request comment on the information items proposed to be reported in Part A.

b. Part B—Information About The Registrant

Part B of Form N–CEN, which would also be completed by all funds, would require certain background and other identifying information about the fund. In the case of funds offering multiple series, if the response to an item in Part B of the form differs between series, the fund would be instructed to provide a response for each series, as applicable, and label the response with the name and series identification number of the series to which a response relates.[387] This background information would allow the staff to quickly categorize filers by fund type and will assist with our oversight of funds.

Included in this background information would be the fund's name,[388] Investment Company Act filing number,[389] and other identifying information, such as its CIK[390] and LEI.[391] In addition, the form would require the fund's address, telephone number, and public Web site (if any),[392] and the location of the fund's books and records.[393] While the fund's name, address, and filing number are currently required by Form N–SAR,[394] some of the additional information, such as the fund's CIK, LEI, public Web site and location of books and records would be new. As discussed in the Form N–PORT section above, information such as the CIK and LEI would assist the Commission with organizing the data received by the Commission and allow the staff to cross-reference the data reported on Form N–CEN with data received from other sources.[395] For tracking purposes, the proposed form would require information relating to whether the filing was the initial or final filing.[396]

As discussed above, funds would be required to include the location of their books and records in reports on proposed Form N–CEN. We note that books and records information is currently required by fund registration forms;[397] however, this information is not filed with us in a structured format. We believe that having books and records information in a structured format would increase our efficiency in preparing for exams as well as our ability to identify current industry trends and practices and, thus, we are

[381] *See* rule 30b1–3.

[382] *See* General Instruction C of proposed Form N–CEN.

[383] *Id.*

[384] *See* General Instruction E of proposed Form N–CEN. Pursuant to section 34(b) of the Investment Company Act, we expect that funds would correct a material mistake in a Form N–CEN report by filing an amendment to that report.

[385] *Id.*

[386] Item 1 of proposed Form N–CEN.

[387] *See* Instruction to Part B: of proposed Form N–CEN.

[388] Item 2.a of proposed Form N–CEN.

[389] Item 2.b of proposed Form N–CEN.

[390] Item 2.c of proposed Form N–CEN.

[391] Item 2.d of proposed Form N–CEN; *see also supra* note 43 (discussing comment letters received on the FSOC Notice supporting the use of LEIs).

[392] Item 3 of proposed Form N–CEN.

[393] Item 4 of proposed Form N–CEN.; *see also infra* notes 397–399 and accompanying text.

[394] Items 1 and 2 of Form N–SAR.

[395] *See supra* Part II.A.2.a. As discussed above, commenters to the FSOC Notice expressed support for the regulatory acceptance of LEI identifiers. *See supra* note 43.

[396] Item 5 of proposed Form N–CEN.

[397] *See* Item 33 of Form N–1A, Item 32 of Form N–2, Item 36 of Form N–3, Item 30 of Form N–4, and Item 31 of Form N–6.

proposing to include this information in proposed Form N–CEN.[398] In addition, so as not to create unnecessary burdens, we are proposing to amend Forms N–1A, N–2, N–3, N–4, and N–6 to exempt funds from those forms' respective books and records disclosure requirements if the information is provided in a fund's most recent report on proposed Form N–CEN.[399]

Similar to Form N–SAR,[400] Form N–CEN would require information regarding whether the fund is part of a ''family of investment companies.'' The form, which would include a substantially similar definition as Form N–SAR,[401] would define a ''family of investment companies'' to mean, except with respect to insurance company separate accounts, any two or more registered investment companies that (i) share the same investment adviser or principal underwriter; and (ii) hold themselves out to investors as related companies for purposes of investment and investor services.[402] This item would assist Commission staff with analyzing multiple funds across the same family of investment companies.

Similar to Form N–SAR, proposed Form N–CEN would also require the fund to provide its classification (*e.g.,* open-end fund, closed-end fund).[403] In addition, unlike Form N–SAR, the proposed form would specifically ask whether the fund issues a class of securities registered under the Securities Act.[404] These questions are intended to elicit background information on the fund, which will assist us in our monitoring and oversight functions (for example, identifying those funds that have not issued securities registered under the Securities Act).

Under proposed Form N–CEN, a management company would report information about its directors, including each director's name, whether they are an ''interested person'' (as defined by section 2(a)(19) of the Investment Company Act), and the Investment Company Act file number of any other registered investment company for which they serve as a director.[405] Although this information is reported in a management company's Statement of Additional Information and provided in annual reports to shareholders, providing this information to the Commission in a structured format will allow the Commission and other potential users to sort and analyze the data more efficiently.[406] In addition, the fund would be required to provide the chief compliance officer's (''CCO's'') name, CRD number (if any), address, and phone number,[407] as well as indicate if the CCO has changed since the last filing.[408] If the fund's CCO is compensated or employed by any person other than the fund, or an affiliated person of the fund, for providing CCO services, the fund would also be required to report the name and Employer Identification Number of the person providing such compensation.[409] Although some funds provide information relating to their CCO in their registration statements, not all funds do.[410] This new requirement would provide staff with information on all fund CCOs and would allow the staff to contact a fund's CCO directly.

Part B would also include an item regarding matters that have been submitted to a vote of security holders during the relevant period.[411] Information regarding submissions of matters to a vote of securities holders is currently reported in Form N–SAR by management companies in the form of an attachment with multiple reporting requirements.[412] In order to alleviate the burden on filers, we are proposing to reduce the information to be reported regarding votes of security holders to a yes/no question that is primarily meant to allow staff to quickly identify funds with such votes, so that they can follow up as appropriate, such as by reviewing more detailed information required by other filings.[413] Like Form N–SAR, the proposed form would also include an item relating to material legal proceedings during the reporting period.[414]

Form N–SAR currently requires management companies to report a number of data points relating to fidelity bond and errors and omissions insurance policy coverage.[415] In order to limit the number of items to those most useful to the Commission staff and reduce burdens on filers, we are proposing to limit this request to two separate items in Form N–CEN. One item would ask if any claims were filed under the management company's fidelity bond and the aggregate dollar amount of any such claims.[416] The other item would ask if the management company's officers or directors are covered under any directors and officers/errors and omissions insurance policy and, if so, whether any claims were filed under the policy during the

[398] Additionally, by including books and records information in Form N–CEN, we may receive more frequently updated books and records information from closed-end funds. Closed-end funds do not update their registration statements as regularly as open-end funds and, thus, the information regarding their books and records may not always be up-to-date.

[399] Funds that have not yet filed a report on proposed Form N–CEN would have to continue to include this information in their registration statement filings.

[400] Items 19, 94 and 116 of Form N–SAR; *see also* General Instruction H of Form N–SAR (defining ''family of investment companies'').

[401] *See id.; see also* instruction 1 to Item 17 of Form N–1A.

[402] Instruction to Item 6 of proposed Form N–CEN. The instruction, like the definition of ''family of investment companies'' in Form N–SAR, would also clarify that insurance company separate accounts that may not hold themselves out to investors as related companies (products) for purposes of investment and investor services should consider themselves part of the same family if the operational or accounting or control systems under which these entities function are substantially similar. *See* General Instruction H to Form N–SAR.

[403] Item 7 of proposed Form N–CEN; *see also* Items 5, 6, 27, 58, 59 and 117 of Form N–SAR. If the registrant is an open-end fund, proposed Form N–CEN would also require information on the total number of series of the registrant and, if a series of the registrant was terminated during the reporting period, information regarding that series. Item 7.a.i–Item 7.a.ii of proposed Form N–CEN. In addition, registrants that indicate they are management companies registered on Form N–3 are directed by Item 7 to respond to certain additional items in Part F of the form that relate to insurance company separate accounts. Item 7.c.i of proposed Form N–CEN.

[404] Item 8 of proposed Form N–CEN.

[405] Item 9 of proposed Form N–CEN.

[406] *See, e.g.,* Items 17 and 27(b)(5) of Form N–1A.

[407] Because we expect that funds will provide the CCO's direct phone number in response to this information request, the CCO's phone number would be a non-public field in all Form N–CEN filings.

[408] Item 10 of proposed Form N–CEN.

[409] Item 10.j of proposed Form N–CEN.

[410] *See, e.g.,* Item 17 of Form N–1A (requesting information regarding fund officers). For example, Form N–1A defines the term ''officer'' to mean ''the president, vice-president, secretary, treasurer, controller, or any other officer who performs policy-making functions.'' It is our understanding that in some fund complexes, the CCO does not fit within the category of officers covered by this definition (*i.e.,* the CCO does not perform a policy-making function), and therefore, information as to their CCO is not provided pursuant to the item.

[411] *See* Item 11 of proposed Form N–CEN.

[412] *See* Item 77.C of Form N–SAR; *see also* Instruction to Specific Items for Item 77C.

[413] This information request would apply to UITs as well as management companies. The Form N–SAR requirement applies only to management companies. *See id.* We believe it is important for the Commission to have information for all registered investment companies on matters submitted for security holder vote in order to assist us in our oversight and examination functions.

[414] Item 12 of proposed Form N–CEN. As in Form N–SAR Item 77.E, if there were any material legal proceedings, or if a proceeding previously reported had been terminated, the registrant would file an attachment as required by Part G: Of proposed Form N–CEN. *See* Item 79.a.i of proposed Form N–CEN. We note that Form N–CEN, unlike Form N–SAR, would require UITs to respond to the information request related to material legal proceedings. For the same reasons discussed above with respect to matters submitted for security holder vote, we believe it is important to have information on material legal proceedings of all registered investment companies. *See supra* n.413.

[415] Form N–SAR Items 80–85 and 105–110.

[416] Item 13 of proposed Form N–CEN; *cf.* Item 83 of Form N–SAR.

reporting period with respect to the registrant.[417] These questions will help alert Commission staff to insurance claims made by the fund or its officers and directors as a result of legal issues related to the fund.[418]

In order to better understand instances when funds receive financial support from an affiliated entity, our proposal would also require new information regarding the provision of such financial support.[419] We recently adopted disclosure requirements relating to fund sponsors' support of money market funds as part of our money market reform amendments in 2014, including a new requirement that money market funds file reports on Form N–CR disclosing, among other things, the receipt of financial support.[420] As with money market funds, we believe that it is important that the Commission understand the nature and extent that a fund's sponsor provides financial support to a fund, and are therefore proposing to extend this requirement to all funds that would file reports on Form N–CEN. Although we believe it is an infrequent practice, based on staff experience, non-money market funds have received sponsor support in the past and we believe this item would allow Commission staff to readily identify any funds that have received such support for further analysis and review, as appropriate. For consistency, Form N–CEN would include a substantially similar definition of ''financial support'' as provided by Form N–CR.[421] In addition, the definition in Form N–CEN would also explicitly exclude certain routine transactions from the definition of financial support, as is the case for money market funds.[422] If the fund received financial support, it would also be required to provide more detailed information in the form of an attachment as required by Part G of Form N–CEN.[423]

In addition, Form N–CEN would include a new item requiring reporting as to whether the fund relied on orders from the Commission granting the fund an exemption from one or more provisions of the Investment Company Act, Securities Act or Securities Exchange Act during the reporting period.[424] Funds would identify any such order by release number.[425] We are proposing to collect this information in a structured format to better monitor fund reliance on exemptive orders, which will assist us with our oversight functions.

As with Form N–SAR,[426] proposed Form N–CEN would require identifying information for the fund's principal underwriters [427] and independent public accountants,[428] including, as applicable, name, SEC file number, CRD number, PCAOB number, LEI (if any), state or foreign country, and whether a principal underwriter was hired or terminated or if the independent public accountant changed since the last filing.[429] If the independent public accountant changed since the last filing, the fund would have to provide a detailed narrative attachment to Form N–CEN.[430]

We are proposing to include for all funds several other accounting and valuation related items that are currently required for management companies by Form N–SAR, and that provide important information to the Commission regarding possible accounting and valuation issues related to a fund. These items include a question relating to material changes in the method of valuation of the fund's assets.[431] However, unlike reports on Form N–SAR, proposed Form N–CEN would not require a separate attachment detailing the circumstances surrounding a change in valuation methods.[432] Instead, to facilitate review of this information in a structured format, our proposal would include specific items in the form itself, including the date of change, explanation of change, type of investment, statutory or regulatory basis for the change, and the fund(s) involved.[433] We would also carry over to proposed Form N–CEN the requirement from Form N–SAR [434] that the fund identify whether there have been any changes in accounting principles or practices, and, if any, to provide more detailed information in a narrative attachment to the form.[435]

Form N–CEN would also require, like Form N–SAR, that management companies, other than SBICs, file a copy of their independent public accountant's report on internal control as an attachment to their reports on the form.[436] However, Form N–CEN would also include a new question that asks whether the report on internal control found any material weaknesses.[437] Form N–CEN would also contain a new requirement that the fund disclose if the certifying accountant issued an opinion other than an unqualified opinion with respect to its audit of the fund's

[417] Item 14 of proposed Form N–CEN; *cf.* Item 85 of Form N–SAR.

[418] For example, a fund is required to provide and maintain a fidelity bond against larceny and embezzlement, which in general covers each officer and employee of the fund who has access to securities or funds. *See* rule 17g–1(a) under the Investment Company Act [17 CFR 270.17g–1].

[419] Item 15 of proposed Form N–CEN.

[420] *See* Money Market Fund Reform 2014 Release, *supra* note 13.

[421] *See* Instruction to Item 15 of proposed Form N–CEN; *see also* Part C of Form N–CR.

[422] *See id.*

[423] Item 79.a.ii of proposed Form N–CEN. This requirement would not apply to money market funds, as money market funds currently provide this information through reports on Form N–CR.

[424] Item 16 of proposed Form pN–CEN. Form N–SAR currently requires funds to attach information required to be reported on Form N–1Q pursuant to an existing exemptive order. *See* Instructions to Specific Items 77P and 102O of Form N–SAR. Form N–CEN would require the fund to file as an attachment any information required to be filed pursuant to exemptive orders issued by the Commission and relied on by the fund. Instruction to Item 79.a.vi of proposed Form N–CEN.

[425] *See* Item 16.a.i of proposed Form N–CEN.

[426] Items 11, 13, 77.K, 91, 102.J, 114, 115 of Form N–SAR.

[427] Item 17 of proposed Form N–CEN.

[428] Item 18 of proposed Form N–CEN.

[429] Item 17 and Item 18 of proposed Form N–CEN.

[430] Item 79.a.iii of proposed Form N–CEN.

[431] Item 21 of proposed Form N–CEN. Valuation methodologies are approved by fund directors for use by funds to determine, in good faith, the fair value of portfolio securities (and other assets) for which market quotations are not readily available. For example, valuation methodology changes may include, but are not limited to, changing from use of bid price to mid price for fixed income securities or changes in the trigger threshold for use of fair value factors on international equity securities.

[432] *See* Item 77.J and Item 102.I of Form N–SAR. Also unlike Form N–SAR, this requirement would apply to UITs as well as management investment companies. We believe it is important for the Commission to have information on accounting and valuation for all registered investment companies in order to assist us in our oversight and examination functions.

[433] *Compare* Item 77.J of Form N–SAR *with* Item 21 of proposed Form N–CEN. An instruction to Item 21 of proposed Form N–CEN would clarify that we do not expect responses to this item to include changes to valuation techniques used for individual securities (*e.g.,* changing from market approach to income approach for a private equity security). Form N–SAR does not elaborate on the type of information it is seeking by asking for changes in the method of valuation of the registrant's assets. We are proposing to include this instruction to provide clarity for filers and because we believe that responding to Item 21 of proposed Form N–CEN for individual securities may be overly burdensome for filers.

[434] *See* Item 77.L and Item 102.K of Form N–SAR.

[435] Item 22 and Item 79.a.v of proposed Form N–CEN. Like the information requested regarding changes in valuation methods, Form N–SAR only requests information from management companies regarding changes in accounting principles and practices. Unlike Form N–SAR, Form N–CEN would require this information from UITs as well, for the same reasons as discussed above with respect to changes in valuation methods. *See supra* n.432

[436] *See* Item 77.B of Form N–SAR; Item 79.a.iv of proposed Form N–CEN. As noted above, management companies (other than SBICs) are currently required to file a copy of the independent public accountant's report on internal control with their reports on Form N–SAR. We continue to believe that a copy of the management company's report on internal control should be filed with the Commission and thus are proposing to carry over the filing requirement to Form N–CEN.

[437] Item 19 of proposed Form N–CEN.

financial statements.[438] These questions will elicit information on potential accounting issues identified by a fund's accountant.

Unlike Form N–SAR, proposed Form N–CEN would also include an item relating to whether, during the reporting period, an open-end fund made any payments to shareholders or reprocessed shareholder accounts as a result of an NAV error.[439] Proposed Form N–CEN would also require information from management companies regarding payments of dividends or distributions that required a written statement pursuant to section 19(a) of the Investment Company Act and rule 19a–1 thereunder.[440] These questions will assist the staff in monitoring valuation of fund assets and the calculation of the fund's NAV, as well as compliance with distribution requirements under section 19(a) and rule 19a–1.

We request comment on the proposed information items to be reported in Part B:

- Should any additional information regarding the fund be requested? Should any of the information that would be requested by proposed Form N–CEN be excluded? Should any of the information requested for all Registrants be limited to only certain Registrants?
- Should any other identifying number other than file number and LEI be requested?
- Should another definition or term be used to capture affiliations across related funds rather than ''family of investment companies''? Should a broader term, such as ''fund complex'' as defined by instruction 1(b) to Item 17 of Form N–1A, be used instead? If so, why would a broader definition be better?
- Should Form N–CEN request any additional information concerning the board of directors or individual directors? For example, should Form N–CEN request information about the length of service of directors?
- Should Form N–CEN request information regarding a fund's CCO, as proposed? Should we, as proposed, make the CCO's phone number a non-public data field on all Form N–CEN filings? Are there any privacy concerns with the other information that would be requested? Would these concerns still exist if the information is reported in a non-public data field? Are there any other concerns with the information that would be requested? Is there other information we should request in lieu of information that presents such concerns?
- The current proposal eliminates Form N–SAR's attachment regarding matters submitted to a vote of security holders. Should we retain this requirement in Form N–CEN? Why or why not? Are there any costs to eliminating Form N–SAR's attachment in Item 77C in favor of yes/no type questions? Should the item regarding votes submitted to security holders apply to UITs?
- We request comment on Item 12 of proposed Form N–CEN. Should this item apply to UITs? Should ''legal proceedings'' be defined? Should it include administrative, mediated, or arbitrated matters? Are there any other litigation matters that should be deemed inherently material besides those enumerated in the instructions to the item? Is there any additional information that should be requested regarding material legal proceeding matters?
- Should Form N–CEN request information about the fidelity bond beyond what has been proposed (*e.g.,* bond amount, the cost of the bond, or the number of insured persons)? Should any additional information regarding claims filed or that could have been filed under the fidelity bond be requested? For example, should dates of claims filed or that could have been filed be requested? Should the nature of the claim be disclosed?
- Is the term ''errors and omissions insurance'' clear or should the form include a definition? In addition to requesting information on whether any errors and omissions insurance claim was made as proposed, should dates of insurance claims and amounts of claims be requested? Should Form N–CEN permit funds to exclude the advancement of expenses under a policy from disclosure as a claim?
- The definition of ''financial support'' in proposed Form N–CEN would include a non-exclusive list of examples of actions that would (and would not) be deemed ''financial support.'' Money market funds currently report this information in reports on Form N–CR. Should the definition in proposed Form N–CEN be further expanded or limited from our definition in Form N–CR, and if so, how and why? For example, should we include a requirement to report information relating to inter-fund lending? Should we require non-money market funds to report receipt of financial support on a more timely basis? For example, should we require non-money market funds to file reports on Form N–CR or a similar form if they receive financial support?
- Should any additional information concerning exemptive or other orders be requested?
- We also considered whether to require funds to disclose reliance on no-action letters. If we were to require this information, should we limit it to certain no-action letters and, if so, which ones?
- Should we request additional information regarding fund accounting and valuation? If so, what information? Should the items relating to changes in valuation methods and changes in accounting principles and practices apply to UITs, as proposed?
- We request comment on Items 23 and 24 of proposed Form N–CEN. Should we request information regarding NAV errors and/or dividend and distribution payments that required a written statement pursuant to section 19(a) and rule 19a–1? Why or why not? Is there additional information we should request?

c. Part C—Items Relating to Management Investment Companies

i. Background and Classification of Funds

Part C of Form N–CEN would be completed by management investment companies other than SBICs. For management companies offering multiple series, this information would be completed separately as to each series.[441] The proposed information requirements in this section are intended to provide the Commission and its staff with background information on the fund industry and to assist us in meeting our legal and regulatory requirements, such as requirements under the Paperwork Reduction Act. Additionally, certain demographic information would allow the Commission to better identify particular types of management companies for monitoring and analysis if, for example, an issue arose with respect to a particular fund type.

Similar to Form N–SAR, proposed Form N–CEN would include general identifying information on management companies and any series thereof, including the full name of the fund, the fund's series identification number and LEI, and whether it is the fund's first

[438] Item 20 of proposed Form N–CEN.

[439] Item 23 of proposed Form N–CEN.

[440] Item 24 of proposed Form N–CEN. Section 19(a) of the Investment Company Act generally prohibits a fund from making a distribution from any source other than the fund's net income, unless that payment is accompanied by a written statement that adequately discloses the source or sources of the payment. *See* 15 U.S.C. 80a–19(a). Rule 19a–1 under the Investment Company Act specifies the information required to be disclosed in the written statement. *See* 17 CFR 270.19a–1; *see also* 2013–11 IM Guidance Update, *supra* note 289.

[441] General Instruction A to proposed Form N–CEN.

time filing the form.[442] Unlike Form N–SAR, we are proposing to request specific information on the classes of open-end management companies, including information relating to the number of classes authorized, added, and terminated during the relevant period.[443] Form N–CEN would also include a new requirement to specifically provide identifying information for each share class outstanding, including the name of the class, the class identification number, and ticker symbol.[444]

Pursuant to proposed Form N–CEN, a management company also would be required to identify if it is any of the following types of funds: [445] ETF or exchange-traded managed fund (''ETMF''); [446] index fund; [447] fund seeking to achieve performance results that are a multiple of a benchmark, the inverse of a benchmark, or a multiple of the inverse of a benchmark; interval fund; [448] fund of funds; [449] master-feeder fund; [450] money market fund; target date fund; [451] and underlying fund to a variable annuity or variable life insurance contract. ETFs and ETMFs, index funds and master-feeder funds would also be required to provide the additional information discussed below.[452]

First, proposed Form N–CEN would require a management company to further indicate if it is an ETF or an ETMF.[453] Second, index funds would be required to report certain standard industry calculations of relative performance. In particular, index funds would be required to report a measure of the difference between the index fund's total return during the reporting period [454] and the index's return both before and after fees and expenses—commonly called the ''tracking difference''— [455] and also a measure of the volatility of the day-to-day tracking difference over the course of the reporting period—commonly called the fund's ''tracking error.'' [456]

Specifically, the proposed tracking difference data item would equal the annualized difference between the index fund's total return during the reporting period and the index's return during the reporting period, and the proposed tracking error data item would equal the annualized standard deviation of the daily difference between the index fund's total return and the index's return during the reporting period.[457] Reporting of these measures will help data users, including the Commission, investors, and other potential users, evaluate the degree to which particular index funds replicate the performance of the target index.[458] In addition, tracking difference and tracking error before fees and expenses [459] would allow data users to better understand the effect of factors other than fees and expenses on the degree to which the

[442] Item 25 of proposed Form N–CEN; *see also* supra n.43 (discussing comment letters received on the FSOC Notice supporting the use of LEIs). The proposed requirements relating to the name of the fund and if this is the first filing with respect to the fund are currently required by Form N–SAR. *See* Items 3 and 7.C of Form N–SAR.

[443] Item 26.a–Item 26.c of proposed Form N–CEN.

[444] Item 26.d of proposed Form N–CEN.

[445] Item 27 of proposed Form N–CEN. As discussed herein, many of the types of funds listed in Item 27 are defined in proposed Form N–CEN. With the exception of ''index fund'' and ''money market fund,'' these terms are not currently defined in Form N–SAR. *See* General Instruction H and Item 69 of Form N–SAR.

[446] For purposes of reporting on proposed Form N–CEN, we propose to define ''exchange-traded fund'' as an open-end management investment company (or series or class thereof) or UIT, the shares of which are listed and traded on a national securities exchange at market prices, and that has formed and operates under an exemptive order under the Investment Company Act granted by the Commission or in reliance on an exemptive rule under the Act adopted by the Commission. We also propose to defined ''exchange-traded managed fund'' as an open-end management investment company (or series or class thereof) or UIT, the shares of which are listed and traded on a national securities exchange at NAV-based prices, and that has formed and operates under an exemptive order under the Investment Company Act granted by the Commission or in reliance on an exemptive rule under the Act adopted by the Commission. General Instruction F of proposed Form N–CEN. We believe these are appropriate definitions as they are similar to the one used for determining the applicability of ETF registration statement disclosure requirements for open-end funds. *See* General Instruction A to Form N–1A. Currently, all ETFs and exchange-traded managed funds rely on relief from certain provisions of the Investment Company Act that is granted by Commission order. *See* ETF Proposing Release, *supra* note 5; Eaton Vance Management, et al.; Notice of Application, Investment Company Act Release No. 31333 (Nov. 6, 2014) [79 FR 67471 (Nov. 13, 2014)] (Notice); Eaton Vance Management, et al.; Order, Investment Company Act Release No. 31361 (Dec. 2, 2014) (Order). The Commission has, however, proposed to codify the exemptive relief previously granted to ETFs by order. *See* ETF Proposing Release, *supra* note 5 (proposing rule 6c–11).

[447] For purposes of reporting on proposed Form N–CEN, we propose to define ''index fund'' as an investment company, including an ETF, which seeks to track the performance of a specified index. *See* Instruction 2 of Item 27 of proposed Form N–CEN. We believe this is an appropriate definition as it is substantively similar to the definition of ''index fund'' in Form N–SAR, but also takes into account the emergence of ETFs. *See* Instruction to Item 69 of Form N–SAR. Additionally, the proposed definition is largely similar to the definition of ''index fund'' in rule 2a19–3 under the Investment Company Act. *See* 17 CFR 270.2a19–3 (referring to an index fund for purposes of the rule as a fund that has ''an investment objective to replicate the performance of one or more broad-based securities indices. . . .'').

[448] For purposes of reporting on proposed Form N–CEN, we propose to define ''interval fund'' as a closed-end management company that makes periodic repurchases of its shares pursuant to rule 23c–3 under the Investment Company Act. *See* Instruction 3 of Item 27 of proposed Form N–CEN. We believe this is an appropriate definition because the term ''interval fund'' is commonly used to refer to funds that rely on rule 23c–3. *See* 17 CFR 270.23c–3.

[449] For purposes of reporting on proposed Form N–CEN, we propose to define ''fund of funds'' as a fund that acquires securities issued by another investment company in excess of the amounts permitted under section 12(d)(1)(A) of the Investment Company Act. *See* 15 U.S.C. 80a–12(d)(1)(A); Instruction 1 of Item 27 of proposed Form N–CEN. We believe this is an appropriate definition because ''funds of funds'' is a term typically used to refer to funds that invest in other funds beyond the limits of the Investment Company Act. Additionally, the proposed definition of ''fund of funds'' largely tracks FINRA's definition of ''fund of funds'' in its rules. *See* FINRA Code of Conduct Rule 2830(b)(11) (defining ''fund of funds'').

[450] For purposes of reporting on proposed Form N–CEN, we propose to define ''master-feeder fund'' as a two-tiered arrangement in which one or more funds holds shares of a single fund in accordance with section 12(d)(1)(E) of the Investment Company Act. *See* Instruction 4 of Item 27 of proposed Form N–CEN. We believe this is an appropriate definition as it is the same definition as used for purposes of Form N–1A. *See* General Instruction A to Form N–1A.

[451] For purposes of reporting on proposed Form N–CEN, we propose to define ''target date fund'' as an investment company that has an investment objective or strategy of providing varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures that changes over time based on an investor's age, target retirement date, or life expectancy. *See* Instruction 5 of Item 27 of proposed Form N–CEN. We believe this is an appropriate definition as it is the same definition as proposed by the Commission in our 2010 proposing release relating to target date funds. *See* Investment Company Advertising Release, *supra* note 6.

[452] *See* Item 27.a; Item 27.b; and Item 27.f of proposed Form N–CEN.

[453] *See* Item 27.a.i and Item 27.a.ii.

[454] With respect to index funds that are ETFs, we would expect a fund to use its NAV-based total return, rather than market-based total return, in responding to Items 27.b.i. and ii.

[455] Item 27.b.i of proposed Form N–CEN. The tracking difference is the return difference between the fund and the index it is following, annualized. Johnson, Ben, et al., On the Right Track: Measuring Tracking Efficiency in ETFs, Morningstar ETF Research, at 29 (Feb. 2013), *available at http://media.morningstar.com/uk/MEDIA/Research_Paper/Morningstar_Report_Measuring_Tracking_Efficiency_in_ETFs_February_2013.pdf* (''Morningstar Paper''), at 29. Thus, tracking difference = $(1 + R_{NAV}—R_{INDEX})^{1/N}—1$, where R_{NAV} is the total return for the fund over the reporting period, R_{INDEX} is the total return for the index for the reporting period, and N is the length of the reporting period in years. N will equal to 1 if the reporting period is the fiscal year. *Id.*

[456] *See* Item 27.b.ii of proposed Form N–CEN. Tracking error is commonly understood as the standard deviation of the daily difference in return between the fund and the index it is following, annualized. Morningstar Paper, *supra* note 455, at 29. Thus, tracking error = std $(R_{NAV} - R_{INDEX}) \times \sqrt{n}$, where R_{NAV} is the daily return for the fund, R_{INDEX} is the daily return for the index, std(•) represents the standard deviation function, and n is the number of trading days in the fiscal year. *Id.*

[457] *See* Morningstar Paper, *supra* note 455, at 29.

[458] *See* Morningstar Paper, *supra* note 455, at 5. We believe this information would help data users understand which funds are best tracking their target indices and could highlight outlier funds.

[459] *See* Item 27.b.i.1 and Item 27.b.ii.1 of proposed Form N–CEN.

index fund replicates the performance of the target index.[460]

Finally, master funds would be required to provide identifying information with respect to each feeder fund, including information on unregistered feeder funds (*i.e.,* feeder funds not registered as investment companies with the Commission), such as offshore feeder funds.[461] Similarly, a feeder fund would provide identifying information of its master fund.[462]

Proposed Form N–CEN would also require the management company to report if it seeks to operate as a non-diversified company, as defined in section 5(b)(2) of the Investment Company Act.[463] Form N–SAR, however, asks if the management company was a diversified investment company at any time during the period or at the end of the reporting period.[464] We are proposing to require reporting on the non-diversified status of a management company, rather than the diversified status, because it is less common for funds to be non-diversified.[465] Additionally, the question in proposed Form N–CEN is forward looking rather than backward looking as in Form N–SAR. This change is intended to include as part of the universe of non-diversified funds those funds that seek to operate as non-diversified companies even if they should happen to meet the definition of a ''diversified company'' as of the end of a particular reporting period.[466] We believe this change will allow our staff to more accurately pinpoint the universe of non-diversified funds and, thus, better able the staff to assist us in our analysis and inspection functions.

We request comment on the Part C questions relating to the fund's background and classification:

- Should additional identifying information be requested with regard to series or classes of management investment companies? Should any of the information proposed to be included in proposed Form N–CEN be excluded?
- We request comment on our list of types of fund. Are there any types of funds that we should add to or remove from the list? If so, which ones and why? Should we include additional categories based on investment strategy, as proposed? If so, which categories? Are the definitions in proposed Form N–CEN of the type of funds listed appropriate? Should any different definitions be used for types of funds? If so, what definitions and why? Are any terms that are not defined sufficiently clear or should we provide definitions? If so, what terms and what definitions?
- We request comment on the information to be required for index funds. Should we require the difference between the fund's total return during the reporting period and the index's return during the reporting period? Is this a meaningful methodology? Is there a better methodology for calculating tracking difference or tracking error?
- Should the form solicit information about the intent of a management company to operate as a non-diversified fund or should it request information about past operations during the reporting period?

ii. Investments in Certain Foreign Corporations

We are also proposing to require a management company to identify if it invests in a controlled foreign corporation for the purpose of investing in certain types of instruments, such as commodities, including the name and LEI of such corporation, if any.[467] As discussed *supra* Part II.A.2.b, some funds use CFCs for making certain investments, particularly in commodities and commodity-linked derivatives, often for tax purposes. Information regarding assets invested in a controlled foreign corporation for the purpose of investing in certain types of instruments would provide investors greater insight into special purpose entities, such as CFCs, that may have certain legal, tax, and country-specific risks associated with them. Combined with the information that we are proposing to collect in Form N–PORT, Commission staff would likewise benefit from this information by better understanding the use of CFCs and other similar entities, which could allow for more efficient collaboration with foreign regulatory authorities to the extent the Commission may need books and records or other information for specific funds or general inquiries related to CFCs.

We request comment on the Part C questions relating to the fund's investments in certain foreign corporations:

- Should we request additional information on whether the management company invested in a foreign corporation or subsidiary, including CFCs? For example, should we request information on the types of investing activities the CFCs engage in or certain balance sheet items from the CFC?

iii. Securities Lending

As discussed above, we are proposing that funds provide certain securities lending information in reports on Form N–PORT to help inform the Commission, investors and other market participants about the scale of securities lending activity by funds and their collateral reinvestments.[468] Additionally, we are proposing to require that funds include in their financial statements certain information concerning their income and expenses associated with securities lending activities in order to increase the transparency of this information to investors and other potential users.[469] We believe, however, that some important information concerning securities lending activity by funds should be reported in a structured format, but on a less frequent basis than reports on proposed Form N–PORT. In this regard, we believe an annual reporting requirement on Form N–CEN may yield sufficiently timely data and may more appropriately balance the requirements' benefits with their associated costs than would additional monthly reporting requirements on Form N–PORT.

Accordingly, we propose to require that each management company report annually on new Form N–CEN, in addition to whether it is authorized to engage in securities lending transactions and whether it loaned securities during the reporting period,[470] information about the fees associated with securities lending activity and information about the management company's relationship with certain securities-lending-related service providers. First, we propose to require that management companies that loaned any securities during the reporting period disclose certain information that would illuminate the commonality of borrower default. Specifically, we propose to require that those management companies disclose annually whether any borrower of securities had defaulted on its

[460] *See* Morningstar Paper, *supra* note 455, at 9.

[461] Item 27.f.i of proposed Form N–CEN.

[462] Item 27.f.ii of proposed Form N–CEN.

[463] Item 28 of proposed Form N–CEN.

[464] *See* Item 60 of Form N–SAR.

[465] Based on Form N–SAR data between July 2014–December 2014, 74% of funds were diversified during the reporting period.

[466] For example, if a fund generally operates as a non-diversified fund, but as a result of market conditions or other reasons, happens to meet the definition of ''diversified fund'' as of the end of the reporting period, it would still be required to indicate that it was a non-diversified fund for purposes of this item.

[467] Item 29 of proposed Form N–CEN. An instruction to Item 29 of proposed Form N–CEN would define ''controlled foreign corporation'' as having the meaning provided in section 957 of the Internal Revenue Code.

[468] *See supra* Parts II.A.2.d and II.A.2.g.v.

[469] *See* proposed rule 6–03(m) of Regulation S–X.; *see also supra* Parts II.C.3 and II.C.5.

[470] Item 30.a–Item 30.b of proposed Form N–CEN.

obligations to the management company to return loaned securities or return them on time in connection with a security on loan during that period.[471]

Under proposed Form N–CEN, management companies would also be required to disclose whether a securities lending agent or any other entity indemnifies the fund against borrower default on loans administered by the agent and certain identifying information about the entity providing indemnification if not the securities lending agent.[472] Together, these reporting requirements would yield data that would allow the Commission, investors, and other potential users to assess the counterparty risks associated with borrower default in the securities lending market and the extent to which those risks are mitigated by—or concentrated in—third parties that provide indemnification against default.[473]

Because management companies sometimes engage external service providers as securities lending agents or cash collateral managers, we believe that some of the risks associated with securities lending activities by management companies could be impacted by these service providers and the nature of their relationships with the management companies and one another. Accordingly, we propose to require that management companies report some basic identifying information about each securities lending agent and cash collateral manager.[474] In addition, we propose to require that funds disclose whether each of these service providers is a first- or second-tier affiliated person of the management company,[475] which data would highlight those funds that might be expected to rely on Commission exemptive relief with respect to those transactions.[476] We also propose to require each management company to disclose whether it has made each of several specific types of payments, including a revenue sharing split, non-revenue sharing split (other than an administrative fee), administrative fee, cash collateral reinvestment fee, and indemnification fee, to one or more securities lending agents or cash collateral managers during the reporting period.[477] These disclosures will allow the Commission, investors and other management company boards of directors to understand better the type of fees a management company pays in connection with securities lending activities and whether, for example, the revenue sharing split that the company pays to a securities lending agent includes compensation for other services such as administration or cash collateral management.[478] Finally, our proposed disclosure of whether the cash collateral manager is a first- or second-tier affiliate of the securities lending agent[479] could alert the Commission, investors, and other market participants to potential conflicts of interest when an entity managing a cash collateral reinvestment portfolio is affiliated with a securities lending agent that is compensated with a share of revenue generated by the cash collateral reinvestment pool. Together, the data that these proposed requirements would yield would allow the Commission to monitor the interaction of these service providers with management companies. In addition to informing the Commission's risk analysis and, potentially, future policymaking concerning securities lending activity by management companies, we believe that this information could also help inform other data users about the use of, and possible risks associated with, the lending of portfolio securities by management companies.

We request comment on the Part C questions relating to the management company's securities lending activities:

- Should management companies be required to report any or all of the proposed information concerning securities lending activity? If not, which items should not be required, and why? Should we collect any additional information?
- Should we require, as proposed, that management companies disclose annually whether any borrower of securities defaulted on its obligations to the management company? Why or why not? Should we instead, or additionally, require management companies to report monthly on Form N–PORT whether any borrower of securities defaulted on its obligations to the management company?
- Should we require, as proposed, that management companies report certain information about each securities lending agent and each cash collateral manager? Why or why not? Should we require that these funds disclose whether each of these external service providers is a first- or second-tier affiliate of the fund?
- In addition to requiring management companies to report whether they made each of the proposed types of payments associated with securities lending, should the Commission also require disclosure of

[471] Item 30.b.i of proposed Form N–CEN.

[472] Item 30.c.iv and Item 30.c.v.1–Item 30.c.v.2 of proposed Form N–CEN.

[473] As discussed above, commenters to the FSOC Notice suggested that enhanced securities lending disclosures could be beneficial to investors and counterparties. *See supra* note 71.

[474] Item 30.c.i–Item 30.c.ii and Item 30.d.i–Item 30.d.ii of proposed Form N–CEN.

[475] Item 30.c.iii and Item 30.d.iv of proposed Form N–CEN.

[476] Section 17(d) of the Investment Company Act makes it unlawful for first- and second- tier affiliates, among others, acting as principal, to effect any transaction in which the fund, or a company it controls, is a joint or a joint and several participant in contravention of Commission rules. 15 U.S.C. 80a–17(d). Rule 17d–1(a) prohibits first- and second-tier affiliates of a registered fund, among others, acting as principal from participating in or effecting any transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan in which the fund (or any company it controls) is a participant unless an application or arrangement or plan has been filed with the Commission and has been granted. 17 CFR 270.17d–1. These provisions would prohibit a fund from compensating a securities lending agent that is a first- or second-tier affiliate with a share of loan revenue or lending to a borrower that is a first- or second-tier affiliate without an exemptive order, and generally from investing cash collateral in a first- or second-tier affiliated liquidity pool unless the fund satisfies the conditions in rule 12d1–1 under the Investment Company Act, which provides exemptive relief for fund investments in an affiliated registered money market fund and pooled investment vehicle that would be an investment company but for sections 3(c)(1) and 3(c)(7) of the Investment Company Act and that operate in compliance with money market fund regulations subject to certain conditions. A management company that has a service agreement with an affiliated securities lending agent, under which compensation is not based on a share of loan revenue generated by the lending agent's efforts, generally is not a joint enterprise or other joint arrangement or profit-sharing plan and, thus, does not need an exemptive order. *See* Norwest Bank Minnesota, N.A., SEC Staff No-action Letter (pub. avail. May 25, 1995) *available at http://www.sec.gov/divisions/investment/noaction/1995/norwest052595.pdf.*

[477] Item 30.e of proposed Form N–CEN. Management companies that report that other payments were made to one or more securities lending agents or cash collateral managers during the reporting period would also be required to describe the type or types of other payments. Item 30.e.vi of proposed Form N–CEN.

[478] In evaluating the fees and services of any securities lending agent, the board of directors of a management company that engages in securities lending may be assisted by reviewing and comparing information on securities lending agent fee arrangements of other management companies. *See, e.g.,* SIFE Trust Fund, SEC No-action Letter (publ. avail. Feb. 17, 1982) (management company's board of directors determines that the securities lending agent's fee is reasonable and based solely on the services rendered); Neuberger Berman Equity Funds, et al., Investment Company Act Release No. 25880 (Jan. 2, 2003) (notice), Investment Company Act Release No. 25916 (Jan. 28, 2003) (order) (management company's board of directors, including a majority of independent directors, will determine initially and review annually, among other things, that (i) the services to be performed by the affiliated securities lending agent are appropriate for the lending fund, (ii) the nature and quality of the services to be provided by the agent are at least equal to those provided by others offering the same or similar services; and (iii) the fees for the agent's services are fair and reasonable in light of the usual and customary charges imposed by others for services of the same nature and quality).

[479] Item 30.d.iii of proposed Form N–CEN.

specific rates and/or amounts paid during the reporting period of each enumerated type of compensation, similar to the disclosures we are proposing to require in the financial statements concerning the terms governing the compensation of the securities lending agent and collateral manager? Would that additional information be useful in proposed Form N–CEN in a structured format for risk monitoring and use by investors or other market participants, including other management company boards of directors that are evaluating securities lending agent services?

- Would the proposed reporting requirements regarding securities lending yield beneficial information? If not, what information should the Commission collect instead to conduct appropriate risk monitoring of securities lending activity by management companies? How should this information be collected?
- Would the proposed reporting requirements concerning securities lending activity be burdensome?
- Should proposed Form N–CEN include a specific definition for ''securities lending agent''? Why or why not? If so, how should the term be defined? Should the form include a specific definition for ''cash collateral manager''? Why or why not? If so, how should the term be defined?
- Are there other reporting requirements that the Commission should adopt for securities lending activity? If so, would these additional reporting requirements assist with Commission risk monitoring, inform the public, or both?

iv. Reliance on Certain Rules

Like Form N–SAR, proposed Form N–CEN would include a requirement that management companies report whether they relied on certain rules under the Investment Company Act during the reporting period.[480] However, proposed Form N–CEN would require this information with respect to additional rules not currently covered by Form N–SAR.[481] We are proposing to collect information on these additional rules to better monitor reliance on exemptive rules and to assist us with our accounting, auditing and oversight functions, including, for some rules, compliance with the Paperwork Reduction Act. For example, reporting of reliance on rules 15a–4 and 17a–8 under the Investment Company Act will allow the staff to monitor significant events relating to interim investment advisory agreements and affiliated mergers, respectively.

In addition, we are proposing to amend rule 10f–3 to eliminate the requirement that funds provide the Commission with reports on Form N–SAR regarding any transactions effected pursuant to the rule.[482] Rule 10f–3 currently requires funds to maintain and preserve certain information—the same information also required to be filed pursuant to Form N–SAR—in its records regarding rule 10f–3 transactions.[483] Our proposed amendments to rule 10f–3 would eliminate the requirement to periodically report this information,[484] but would not alter the requirement to maintain and preserve it. The Commission believes it is unnecessary for funds to continue to file this information because Commission staff can request the information in connection with staff inspections, examinations and other inquiries.[485]

We request comment on the Part C questions relating to the management company's reliance on certain exemptive rules and orders:

- Should any additional information concerning exemptive or other rules be requested?
- We request comment on our proposal to eliminate the requirement under rule 10f–3 that funds provide the Commission with periodic reports on Form N–SAR. Should we eliminate this requirement or continue it under Form N–CEN? Why or why not? Are there any costs or benefits associated with eliminating this requirement?

v. Expense Limitations

As in Form N–SAR,[486] Form N–CEN would require information regarding expense limitations.[487] The requirements in Form N–CEN, however, would be modified from Form N–SAR by requiring information on whether the management company had an expense limitation arrangement in place, whether any expenses of the fund were waived or reduced pursuant to the arrangement, whether the waived fees are subject to recoupment, and whether any expenses previously waived were recouped during the period.[488] We believe that more specific questions relating to management company expense limitation arrangements would reduce burdens and limit uncertainty for management companies when responding to these items.

We request comment on the Part C questions relating to the management company's expense limitations and fee waivers:

- Are the proposed Form N–CEN items relating to expense limitations appropriate? Is there any additional information that we should request on the management company's expense limitations? If so, what items and why?

vi. Service Providers

Similar to Form N–SAR,[489] Form N–CEN would collect identifying information on the management company's service providers, including its advisers and sub-advisers,[490] transfer agents,[491] custodians (including sub-

[480] Item 31 of proposed Form N–CEN.

[481] *Compare id.* (requiring management companies to identify if they relied upon any of the following rules: rule 10f-3 (exemption for the acquisition of securities during the existence of an underwriting or selling syndicate), rule 12d1–1 (exemptions for investments in money market funds), rule 15a–4 (temporary exemption for certain investment advisers), rule 17a–6 (exemption for transactions with portfolio affiliates), rule 17a–7 (exemption of certain purchase or sale transactions between an investment company and certain affiliated persons thereof), rule 17a–8 (mergers of affiliated companies), rule 17e–1 (brokerage transactions on a securities exchange), rule 22d–1 (exemption from section 22(d) to permit sales of redeemable securities at prices which reflect sales loads set pursuant to a schedule), rule 23c–1 (repurchase of securities by closed-end companies), rule 32a–4 (independent audit committees)) *with* Items 40, 77.N, 77.O, 102.M, 102.N of Form N–SAR (requiring information regarding rules 2a–7 (money market funds), 10f–3 (see above for description) and 12b–1 (distribution of shares by registered open-end management investment company).

[482] *See* proposed amendments to rule 10f–3.

[483] *See* rule 10f–3(c)(12) under the Investment Company Act [17 CFR 270.10f–3(c)(12)].

[484] *See* rule 10f–3(c)(9).

[485] Similar exemptive rules take this approach and do not require filings with the Commission. *See* rule 17a–7 under the Investment Company Act [17 CFR 270.17a–7] and rule 17e–1 under the Investment Company Act [17 CFR 270.17e–1]. We note that we previously proposed deleting this filing requirement from rule 10f–3 in 1996. *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting Syndicate, Investment Company Act Release No. 21838 (Mar. 21, 1996) [61 FR 13620 (Mar. 27, 1996)]. We chose not to adopt it in light of the other amendments to the rule at that time, including the increase in the percentage limit on the principal amount of an offering that an affiliated fund could purchase. *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting of Selling Syndicate, Investment Company Act Release No. 22775 (July 31, 1997) [62 FR 42401 (Aug. 7, 1997].

[486] *See* Items 53.A–C of Form N–SAR (requiring the fund to identify if expenses of the Registrant/Series were limited or reduced during the reporting period by agreement, and, if so, identify if the limitation was based upon assets or income).

[487] Item 32 of proposed Form N–CEN.

[488] *Id.* Proposed Form N–CEN would also include an instruction that filers should provide information in response to the item concerning any direct or indirect limitations, waivers or reductions, on the level of expenses incurred by the fund during the reporting period. The instructions would also provide an example of how an expense limit may be applied—when an adviser agrees to accept a reduced fee pursuant to a voluntary fee waiver or for a temporary period such as for a new fund in its start-up phase. *See* Instruction to Item 32 of proposed Form N–CEN.

[489] *See* Items 8 and 10–15 of Form N–SAR.

[490] Item 33 of proposed Form N–CEN.

[491] Item 34 of proposed Form N–CEN. Form N–SAR equates a ''shareholder servicing agent'' with

custodians),[492] shareholder servicing agents,[493] third-party administrators,[494] and affiliated broker-dealers.[495] We are also proposing new requirements that the management company provide information on whether the service provider was hired or terminated during the reporting period and whether it is affiliated with the fund or its adviser(s).[496] In addition, like Form N–SAR, Form N–CEN would ask custodians to indicate the type of custody, but would expand upon the types of custody listed.[497] Together, these items would assist the Commission in analyzing the use of third-party service providers by management companies, as well as identify service providers that service large portions of the fund industry.

Based on staff experience, management companies and their boards often rely on pricing agents to help price securities held by the fund. Therefore, we are proposing a new requirement that management companies provide identifying information on persons that provided pricing services during the reporting period,[498] as well as persons that formerly provided pricing services to the management company during the current and immediately prior reporting period that no longer provide services to that company.[499] This would assist the Commission in assessing the use of pricing services by the fund industry and the role they play in valuing fund investments.

Part C would also require identifying information on the ten entities that, during the reporting period, received the largest dollar amount of brokerage commissions from the management company [500] and with which the management company did the largest dollar amount of principal transactions.[501] Form N–SAR also requests identifying information on these entities [502]—information that is not available elsewhere in a structured format. Moreover, we continue to believe that brokerage commission and principal transaction information provides valuable information to Commission staff about management company brokerage practices, and would assist the staff in identifying the types of broker-dealers who service management company clients, monitoring for changes in business practices, and assessing the types of trading activities in which funds are engaged. Finally, similar to Form N–SAR, we are proposing to ask whether the management company paid commissions to broker-dealers for ''brokerage and research services'' within the meaning of section 28(e) of the Exchange Act.[503]

We request comment on the Part C questions relating to the fund's service providers:

- Are the proposed Form N–CEN items relating to service providers appropriate? Should any of the service providers or information regarding the service providers included in proposed Form N–CEN be excluded from the form? Are there other service providers for which we should require information? For example, should we request information on index providers and, in particular, affiliated index providers?
- Are the service providers identified in proposed Form N–CEN sufficiently clear or should we provide definitions for each provider? If so, what definitions should we use and why?
- Should additional information be requested regarding advisers or sub-advisers? Should the form provide a definition of the term sub-adviser?
- Should any additional specific service provider information be requested? Is there any proposed service provider information that should not be requested? Should proposed Form N–CEN request information on whether the service provider was hired or terminated, or on the affiliation of the service provider, as proposed?
- In addition to requesting service provider city and state or foreign country information as proposed, should street address, phone or email information be requested? Would inclusion of this additional information in proposed Form N–CEN raise any privacy or other concerns?
- Should the form request information regarding sub-transfer agents or other shareholder servicers?
- Should any additional information on service provider fees be requested? For example, should custodian, audit, or administrator fees be requested? Is certain service provider fee information unnecessary as redundant with financial statements?
- Is the use of the term ''pricing service'' appropriate as proposed? Should the form provide a definition of ''pricing service''?
- Should we, as proposed, include custody pursuant to rules 17f–6 and 17f–7 under the Investment Company Act (types of custody not currently listed in Form N–SAR) on the list of types of custody in proposed Form N–CEN?
- Is there additional information regarding broker-dealers that should be requested? Should we use a different methodology other than largest amount of brokerage commissions or collect information for a larger or smaller number of brokers?
- Is there additional information regarding payments by the management companies to brokers or dealers for ''brokerage and research services'' that should be requested?

We request comment on Part C, generally:

- Are there any additional questions regarding management companies that we should include in proposed Form N–CEN?

d. Part D—Closed-End Management Companies and Small Business Investment Companies

Proposed Form N–CEN would, as Form N–SAR does, recognize that closed-end funds and SBICs have particular characteristics that warrant questions targeted specifically to them.[504] Like Form N–SAR, Form N–CEN would require additional

a ''transfer agent.'' *See* Instruction to Item 12 of Form N–SAR.

[492] Item 37 of proposed Form N–CEN.

[493] Item 38 of proposed Form N–CEN.

[494] Item 39 of proposed Form N–CEN.

[495] Item 40 of proposed Form N–CEN.

[496] *See, e.g.,* Items 33.a.vii, b and c.vii; 34.a.vi and b of proposed Form N–CEN.

[497] *Compare* Items 15.E and 18 of Form N–SAR *with* Item 37.a.vii.6–Item 37.a.vii.7 of proposed Form N–CEN.

[498] Item 35 of proposed Form N–CEN.

[499] Item 36 of proposed Form N–CEN.

[500] Item 41 of proposed Form N–CEN.

[501] Item 42 of proposed Form N–CEN.

[502] Items 20–23 of Form N–SAR. Form N–SAR includes an instruction designed to help filers distinguish between agency and principal transactions for purposes of reporting information regarding brokerage commissions and principal transactions. *See* Instruction to Items 20–23 of Form N–SAR. A substantially similar instruction would be included in Form N–CEN. *See* Instructions to Item 41-Item 42 of proposed Form N–CEN.

[503] Item 43 of proposed Form N–CEN; *see also* Item 26.B of Form N–SAR (requiring disclosure if the fund's receipt of investment research and statistical information from a broker or dealer was a consideration which affected the participation of brokers or dealers or other entities in commissions or other compensation paid on portfolio transactions of Registrant). Section 28(e) of the Exchange Act establishes a safe harbor that allows money managers to use client funds to purchase ''brokerage and research services'' for their managed accounts under certain circumstances without breaching their fiduciary duties to clients. *See* 15 U.S.C. 78bb(e); *see also* Commission Guidance Regarding Client Commission Practices Under Section 28(e) of the Securities Exchange Act of 1934, Release No. 33–54165 (July 18, 2006) [71 FR 41978 (July 24, 2006)]. We continue to believe that an item indicating whether a fund uses soft dollars will assist our staff in their examinations and provide census data as to the number and type of funds that rely on the safe harbor provided by section 28(e).

[504] *See* Items 86–88 of Form N–SAR (relating specifically to closed-end funds) and Items 89–110 of Form N–SAR (relating specifically to SBICs).

information to be reported by closed-end funds in Part D of the form and would also treat SBICs differently than other management investment companies, requiring them to complete Part D of the form in lieu of Part C.[505] The information requested in Part D would provide us with information that is particular to closed-end funds and SBICs and, thus, would assist us in monitoring the activities of these funds and our examiners in their preparation for exams of these funds.

Similar to Form N–SAR, we are proposing to require in Part D of proposed Form N–CEN information on the securities that have been issued by the closed-end fund or SBIC, including the type of security issued (common stock, preferred stock, warrants, convertible securities, bonds, or any security considered ''other''), title of each class, exchange where listed, and ticker symbol.[506] We are also proposing to require new information relating to rights offerings[507] and secondary offerings by the closed-end fund or SBIC,[508] including whether there was such an offering during the reporting period and if so, the type of security involved.[509] Together, this information will allow the staff to quickly identify and track the securities and offerings of closed-end funds and SBICs when monitoring and examining these funds.

Like Form N–SAR,[510] we are also proposing to require that each closed-end fund or SBIC report information on repurchases of its securities during the reporting period.[511] However, unlike Form N–SAR, which requires information on the number of shares or principal amount of debt and net consideration received or paid for sales and repurchases for common stock, preferred stock, and debt securities, Form N–CEN would only require the closed-end fund or SBIC to indicate if it repurchased any outstanding securities issued by the closed-end fund or SBIC during the reporting period and indicate which type of security.[512]

We are also proposing to carry over Form N–SAR's requirements[513] relating to default on long-term debt[514] and dividends in arrears.[515] However, unlike Form N–SAR, which requires an attachment stating detailed information on defaults and arrears on senior securities,[516] we are proposing that Form N–CEN only require a yes/no question and text-based responses directly in the form.[517] We are similarly proposing to carry over the Form N–SAR requirement[518] regarding modifications to the constituent's instruments defining the rights of holders.[519] Similar to Form N–SAR, if a closed-end fund or SBIC made modifications to such an instrument, it would also be required to file an attachment in Part G of Form N–CEN with a more detailed description of the modification.[520] This item provides the Commission with information on and copies of documents reflecting changes to shareholders' rights.

Part G of proposed Form N–CEN would also require closed-end funds or SBICs to file attachments regarding material amendments to organizational documents,[521] new or amended investment advisory contracts,[522] information called for by Item 405 of Regulation S–K,[523] and, for SBICs only, senior officer codes of ethics.[524] Where possible, we sought to eliminate the need to file attachments with the census reporting form in order to simplify the filing process and maximize the amount of information we receive in a data tagged format. However, the attachments proposed to be required with reports on Form N–CEN, provide us with information that is not otherwise updated or filed with the Commission and, thus, we believe they should continue to be filed in attachment form. All of the attachments in proposed Form N–CEN that are specific to closed-end funds and SBICs are also currently required by Form N–SAR.[525]

Similar to Form N–SAR, we are proposing to require other census-type information relating to management fees and net operating expenses. Closed-end funds would be required to report the fund's advisory fee as of the end of the reporting period as a percentage of net assets.[526] Additionally, closed-end funds and SBICs would both be required to report the fund's net annual operating expenses as of the end of the reporting period (net of any waivers or reimbursements) as a percentage of net assets.[527] Unlike open-end funds, which provide management fee and net expense information to the Commission in a structured format,[528] such information is not reported to or updated with the Commission in a structured format by closed-end funds or SBICs. This information would allow the Commission to track industry trends relating to fees. Like Form N–SAR, proposed Form N–CEN also would

[505] As discussed above, SBICs are unique investment companies that operate differently than other management investment companies. *See supra* note 35.

[506] Item 44 of proposed Form N–CEN; *cf.* Items 87–88 and 96 of Form N–SAR (requesting information on the title and ticker of each class of securities issued on an exchange and information regarding certain specific types of securities). An instruction to Item 44 of proposed Form N–CEN would indicate that the fund should provide the ticker symbol for any security not listed on an exchange, but that has a ticker symbol.

[507] Item 45 of proposed Form N–CEN.

[508] Item 46 of proposed Form N–CEN.

[509] *See* Item 45 and Item 46 of proposed Form N–CEN. Item 45.c of proposed Form N–CEN would also ask for the percentage of participation in a primary rights offering and an accompanying instruction to this item would address the method of calculating such percentage.

[510] *See* Items 86 and 95 of Form N–SAR.

[511] Item 47 of proposed Form N–CEN.

[512] We note that, with respect to closed-end funds, financial information relating to monthly sales and repurchases of shares would be reported monthly on proposed Form N–PORT. *See* Item B.6 of proposed Form N–PORT (requiring the aggregate dollar amounts for sales and redemptions/repurchases of fund shares during each of the last three months).

[513] *See* Items 77.G and 102.F of Form N–SAR.

[514] Item 48 of proposed Form N–CEN.

[515] Item 49 of proposed Form N–CEN.

[516] Items 77.G and 102.F of Form N–SAR.

[517] Item 48 of proposed Form N–CEN would require, with respect to any default on long-term debt, the nature of the default, the date of the default, the amount of the default per $1000 face amount, and the total amount of default. An instruction to this item would define ''long-term debt'' to mean a debt with a period of time from date of initial issuance to maturity of one year or greater. Item 49 of proposed Form N–CEN would require, with respect to any dividends in arrears, the title of the issue and the amount per share in arrears. This item would define ''dividends in arrears'' to mean dividends that have not been declared by the board of directors or other governing body of the fund at the end of each relevant dividend period set forth in the constituent instruments establishing the rights of the stockholders.

[518] Items 77.I and 102.H of Form N–SAR.

[519] Item 50 of proposed Form N–CEN.

[520] Item 79.b.ii of proposed Form N–CEN.

[521] Item 79.b.i of proposed Form N–CEN.

[522] Item 79.b.iii of proposed Form N–CEN.

[523] Item 79.b.iv of proposed Form N–CEN.

[524] Item 79.b.v of proposed Form N–CEN. This item applies only to SBICs because other management investment companies, including closed-end funds, provide this information in filings on Form N–CSR. *See* Items 2 and 3 of Form N–CSR; *see also* rule 30d–1 under the Investment Company Act [17 CFR 270.30d–1].

[525] *Compare* Item 79.b of proposed Form N–CEN *with* Items 77.Q.1, 77.Q.2, 102.P.1, 102.P.2, and 102.P.3 of Form N–SAR; *see also* Instructions to Specific Items 77Q1(a), 77Q1(e), 77Q2, 102P1(a), 102P1(e), 102P2, and 102P3 of Form N–SAR.

[526] Item 51 of proposed Form N–CEN; *cf.* Items 47–52 and 72.F of Form N–SAR (requesting advisory fee information for management companies, including closed-end funds). Whereas Form N–SAR requests information regarding the advisory fee rate and the dollar amount of gross advisory fees, an instruction to Item 51 of proposed Form N–CEN would explain that the management fee reported should be based on the percentage of amounts incurred during the reporting period.

[527] Item 52 of proposed Form N–CEN; *cf.* Items 72.X and 97.X of Form N–SAR (requesting total expenses in dollars for closed-end funds and SBICs).

[528] Management fee information for open-end funds is currently tagged in XBRL format in the fund's risk return summary and is therefore not required by proposed Form N–CEN. *See* General Instruction C.3.G of Form N–1A.

require, for the end of the reporting period, the market price per share [529] and NAV per share [530] of the fund's common stock.

Finally, like Form N–SAR, proposed Form N–CEN would require information regarding an SBIC's investment advisers, transfer agents, and custodians.[531] This information is the same as what would be reported by open-end and closed-end funds in Part C of proposed Form N–CEN, but SBICs would not be required to fill out Part C of the proposed form. As noted above, proposed Form N–CEN, like Form N–SAR, would recognize that SBICs have particular characteristics that warrant questions targeted specifically to them. The majority of questions in Part C of proposed Form N–CEN would be inapplicable to SBICs or otherwise request information that would not be helpful to us in carrying out our regulatory functions with respect to SBICs. Accordingly, we propose to except SBICs from filling out Part C of the form and instead would include certain service provider questions from Part C in Part D of the form as response items for SBICs.

We request comment on the following information requirements relating to closed-end funds and SBICs:

- Are the proposed Form N–CEN items relating to closed-end funds and SBICs appropriate? Are there other information items relating to closed-end funds and SBICs that we should require? If so, what information and why? Are there any items relating to closed-end funds and SBICs in proposed Form N–CEN that should be excluded from the form?
- Is there additional information regarding trading in closed-end fund or SBIC securities that should be requested?
- Is there additional information regarding repurchases that should be requested?
- Should the form provide specific instructions on the calculation of management fees?
- Should net annual operating expenses be defined? Should they include amortization and depreciation expenses?
- Should the management fee for closed-end funds be requested as proposed or should other information such as the absolute amount of fees be requested?

Should we request this information for SBICs? Should the form request information on what the fee is based upon, such as a percentage of income or performance? Should breakpoints used in calculating the management fee be reported at each breakpoint level or should an average management fee be provided? Should the management fee information requested be forward-looking or should it be backward looking, as proposed, providing a management fee based on fees charged during the reporting period and, if so, which NAV (*e.g.,* year-end or average) should be used?

- If a closed-end fund or SBIC pays a performance fee, should the form provide instructions regarding how they should calculate the fees to be disclosed?
- In connection with defaults, is reference to a $1,000 face amount appropriate? Would this requirement appropriately provide meaningful information not only on the amount of principal default but default on interest payments? Should the form also require information on the amount of debt outstanding to provide additional context and information related to the default?
- Regarding dividends in arrears, should the form request per share amounts as proposed or should it request the aggregate amount in arrears?

e. Part E—Exchange-Traded Funds and Exchange-Traded Managed Funds

We are proposing to include a section in Form N–CEN related specifically to ETFs—Part E—which ETFs would complete in addition to Parts A, B, and G, and either Part C (for open-end funds) or Part F (for UITs). For purposes of Form N–CEN, an ETF is a special type of investment company that is registered under the Investment Company Act as either an open-end fund or a UIT. Unlike other open-end funds and UITs, an ETF does not sell or redeem its shares except in large blocks (or ''creation units'') and with broker-dealers that have contractual arrangements with the ETF (called ''authorized participants'').[532] However, national securities exchanges list ETF shares for trading, which allows investors to purchase and sell individual shares throughout the day in the secondary market. Thus, ETFs possess characteristics of traditional open-end funds and UITs, which issue redeemable shares, and of closed-end funds, which generally issue shares that trade at negotiated prices on national securities exchanges and that are not redeemable.[533]

Currently, ETFs are subject to the same comprehensive information reporting requirements on Form N–SAR as are other open-end funds or UITs, and they are not required to report additional, more specialized information because Form N–SAR predates the introduction of ETFs to the market and has not been amended to address ETFs' distinct characteristics. In 2009, the Commission amended its registration statement disclosure requirements for ETFs [534] that are open-end funds to better meet the needs of investors who purchase those ETF shares in secondary market transactions.[535] We believe that it is appropriate—and accordingly propose—to similarly tailor some of the comprehensive information reporting requirements in proposed new Form N–CEN to the special characteristics of ETFs. Funds and UITs meeting the definition of ''exchange-traded fund'' in Form N–CEN would be required to disclose information pursuant to the items in Part E of the form, as would certain similar investment products known as ''exchange-traded managed funds.'' [536]

Some of the new reporting requirements for ETFs that we are proposing today as part of Form N–CEN relate to an ETF's (or its service provider's) interaction with authorized participants. These entities have an important role to play in the orderly distribution and trading of ETF shares and are significant to the ETF marketplace.[537]

Because of the importance of authorized participants, we are proposing new reporting requirements

[529] Item 53 of proposed Form N–CEN; *see* Items 76 and 101 of Form N–SAR.

[530] Item 54 of proposed Form N–CEN; *see* Items 74.V.1 and 99.V of Form N–SAR.

[531] Item 55–Item 57 of proposed Form N–CEN.

[532] For purposes of Form N–CEN, ''creation unit'' is defined as ''a specified number of Exchange-Traded Fund or Exchange-Traded Managed Fund shares that the fund will issue to (or redeem from) an authorized participant in exchange for the deposit (or delivery) of specified securities, cash, and other assets.'' Instruction 8 to Item 60 of proposed Form N–CEN. For purposes of Form N–CEN, ''authorized participant'' is defined as ''a broker-dealer that is also a member of a clearing agency registered with the Commission, and which has a written agreement with the Exchange-Traded Fund or Exchange-Traded Managed Fund or one of its designated service providers that allows it to place orders to purchase or redeem creation units of the Exchange-Traded Fund or Exchange-Traded Managed Fund.'' Instruction to Item 59 of proposed Form N–CEN.

[533] *See generally* Actively Managed Exchange-Traded Funds, Investment Company Act Release No. 25258 (Nov. 8, 2001) [66 FR 57614 (Nov. 15, 2001)]; ETF Proposing Release, *supra* note 446.

[534] *See* General Instruction A to Form N–1A (defining ''exchange-traded fund'').

[535] *See* Enhanced Disclosure and New Prospectus Delivery Option for Registered Open-End Management Investment Companies, Securities Act Release No. 8998 (Jan. 13, 2009) [74 FR 4546, 4558 (Jan. 26, 2009)].

[536] General Instruction A to proposed Form N–CEN; *see also supra* note 446.

[537] *See* ETF Proposing Release, *supra* note 446, at 14620–21.

concerning these entities. Currently, the information we have regarding reliance by ETFs on particular authorized participants is limited, and we believe that collecting information concerning these entities on an annual basis would allow us to understand and better assess the size, capacity, and concentration of the authorized participant framework and also inform the public about certain characteristics of the ETF primary markets. Accordingly, we propose to require each ETF to report identifying information about its authorized participants [538] and the dollar value of the ETF shares the authorized participant purchased and redeemed from the ETF during the reporting period.[539] More specifically, proposed Form N–CEN would require an ETF to report the name of each of its authorized participants (even if the authorized participant did not purchase or redeem any ETF shares during the reporting period),[540] certain other identifying information,[541] the dollar value of the ETF's shares that the authorized participant purchased from the ETF during the reporting period,[542] and the dollar value of the ETF's shares that the authorized participant redeemed during the reporting period.[543] Collection of this additional information may allow the Commission staff to monitor how ETF purchase and redemption activity is distributed across authorized participants and, for example, the extent to which a particular ETF—or ETFs as a group—may be reliant on one or more particular authorized participants.

Other proposed new reporting requirements relate to certain characteristics of ETF creation units—the large blocks of shares that authorized participants may purchase from or redeem to the ETF. In the primary market, ETF shares, bundled in creation units, are sold or redeemed either primarily ''in kind''—*i.e.,* in the form of the ETF's constituent portfolio securities—or primarily in cash. When transacting in kind or in cash, the particular authorized participant wishing to purchase (or redeem) shares typically bears, in the form of a fixed fee, the transactional costs associated with assembling (or disassembling) creation units. Those costs, therefore, are not mutualized to non-transacting shareholders. When an authorized participant purchases (or redeems) ETF shares all or partly in cash, absent a countervailing effect, the ETF would experience additional costs (*e.g.,* brokerage, taxes) involved with buying the securities with cash or selling portfolio securities to satisfy a cash redemption. Therefore, in order to ensure that the purchasing or redeeming party bears these costs rather than the non-transacting shareholders, the ETF may charge a ''variable'' fee, so called because it is often computed as a percentage of the value of the creation unit. We understand that such variable fees also can take the form of a dollar amount.

In order to better understand the capital markets implications of different creation unit requirements, primary market transaction methods, and transaction fees, we are proposing to require that ETFs annually report summary information about these characteristics of creation units and primary market transactions. ETFs are not currently required to report the information discussed below in a structured format, and public availability of many of the proposed data items is limited and indeterminable. To better understand the commonality of different transaction methods and the degree to which it varies across ETFs and over time, we propose to require that ETFs report the total value (i) of creation units that were purchased by authorized participants primarily in exchange for portfolio securities on an in-kind basis; [544] (ii) of those that were redeemed primarily on an in-kind basis; [545] (iii) of those purchased by authorized participants primarily in exchange for cash; [546] and (iv) of those that were redeemed primarily on a cash basis.[547] For purposes of these proposed reporting requirements concerning transaction methods and transaction fees, ''primarily'' would mean greater than 50% of the value of the creation unit.[548] To better understand the effects of primary market transaction fees on ETF pricing and trading and to better inform the public about such fees, we also propose to require that ETFs report applicable transactional fees—including each of ''fixed'' and ''variable'' fees—applicable to the last creation unit purchased and the last creation unit redeemed during the reporting period of which some or all of the creation unit was transacted on a cash basis, as well as the same figures for the last creation unit purchased and the last creation unit redeemed during the reporting period of which some or all of the creation unit was transacted on an in-kind basis.[549]

We also propose to require ETFs to report the number of ETF shares required to form a creation unit as of the last business day of the reporting period,[550] which we believe would also allow the Commission and other data users to better analyze any effects that ETFs' creation unit size requirements may have on ETF pricing and trading. We are proposing that this information be as of the last business day of the reporting period because we understand that these fees sometimes vary over the course of the reporting period, and the fee level information is likely to be most current if provided as of the last business day of the period. In addition to information about authorized participants and creation units, we propose to require that ETFs, like closed-end funds, disclose the exchange on which the ETF is listed so that Commission staff may be better able to quickly gather information as to which ETFs may be effected should an idiosyncratic risk or market event arise in connection with a particular exchange.[551]

Finally, with respect to ETFs that are UITs, we ask for information regarding tracking difference and tracking error.[552] This information is requested of open-end index funds in Item 27(b) and, for the same reasons discussed in Part II.E.4.c.i of this release, the proposed form would request this information of ETFs that are UITs.

Taken together, we believe that, in addition to informing the Commission's risk analysis and, potentially, future policymaking concerning ETFs, the information these proposed requirements would yield could also help inform the interested public about the operation of, and possible risks associated with, these funds.

We request comment on the proposed reporting requirements for ETFs and ETMFs:

- Should ETFs be required to report the proposed additional information in Part E of proposed Form N–CEN that other funds would not be required to report?
- Should ETFs that are UITs and ETFs that are open-end funds be subject to the same special reporting requirements, or should the requirements be different from one

[538] Item 59.a–Item 59.d of proposed Form N–CEN.
[539] Item 59.e–Item 59.f of proposed Form N–CEN.
[540] Item 59.a of proposed Form N–CEN.
[541] Item 59.b–Item 59.d of proposed Form N–CEN.
[542] Item 59.e of proposed Form N–CEN.
[543] Item 59.f of proposed Form N–CEN.
[544] Item 60.a of proposed Form N–CEN.
[545] Item 60.c of proposed Form N–CEN.
[546] Item 60.b of proposed Form N–CEN.
[547] Item 60.d of proposed Form N–CEN.
[548] Instruction 9 to Item 60 of proposed Form N–CEN.
[549] Item 60.e–Item 60.h of proposed Form N–CEN.
[550] Item 60 of proposed Form N–CEN.
[551] Item 58 of proposed Form N–CEN.
[552] Item 61 of proposed Form N–CEN.

another? If so, how? Should ETFs and ETMFs be subject to the same special reporting requirements, or should the requirements be different from one another? If so, how and why?

• Should the proposed items concerning authorized participants be required? Why or why not? Should we require additional information about authorized participants? For example, should we require funds to report the volume of shares purchased and redeemed in each month of the reporting period by each authorized participant, in order to better understand how primary market transactions are distributed across authorized participants and over the course of the reporting period? Should we require funds to report information on purchases and redemptions by each authorized participant on days when the most primary or secondary market activity is observed, which could be used to better understand how primary market activity responds to periods of unusual activity? Why or why not? If so, what specific information should be required?

• Should the proposed items concerning creation unit characteristics and primary market transactions be required? Why or why not?

• Should the ETFs and ETMFs that are subject to the proposed special reporting requirements be defined as proposed? If not, how should the group be defined? Are there certain entities that are not included in the proposed definitions that should be? Are there certain entities that are included in the proposed definitions that should not be?

• Would the proposed reporting requirements yield beneficial information? If not, what information should the Commission collect instead to conduct appropriate risk monitoring of ETFs? How should this information be collected?

• Would any of the proposed reporting requirements conflict with agreements between private parties, such as ETFs and authorized participants, to keep information confidential? If so, should the information nonetheless be required to be disclosed?

• How might the proposed reporting requirements concerning ETF primary market transaction fees be used by others outside the Commission, if at all? Are the proposed fee categories (*viz.,* fixed fees and variable fees) appropriate, or would alternative categories be more suitable? If so, what should those categories be?

• How costly would the proposed reporting requirements for ETFs be? In addition to reporting and recordkeeping costs, are there competitive or other costs that should be considered in connection with these proposed requirements?

• Are there other reporting requirements that the Commission should adopt for ETFs? If so, would these additional reporting requirements assist with Commission risk monitoring, inform the public, or both?

f. Part F—Unit Investment Trusts

Part F of Form N–CEN would require information specific to UITs. Like Form N–SAR, proposed Form N–CEN would recognize that UITs have particular characteristics that warrant questions targeted specifically to them.[553] The information requested in Part F would inform us further about the scope and composition of the UIT industry and, thus, would assist us in monitoring the activities of UITs and our examiners in their preparation for exams of UITs. Accordingly, similar to Form N–SAR,[554] proposed Form N–CEN would require certain identifying information relating to a UIT's service providers and entities involved in the formation and governance of UITs, including its depositor,[555] sponsor,[556] trustee,[557] and third party administrator.[558]

Proposed Form N–CEN would also ask whether a UIT is a separate account of an insurance company.[559] Depending on a UIT's response to this item, it would proceed to answer certain additional questions in Part F.[560] While Form N–SAR generally does not differentiate between UITs that are and are not separate accounts of insurance companies, proposed Form N–CEN would make this distinction. We believe that by distinguishing between these different types of UITs, the form will allow us to better target the information requests in the form appropriate to the type of UIT. We also believe this new approach will allow filers to better understand the information being requested of them because it will be more reflective of their operations and should thus improve the consistency of the information reported.

Accordingly, similar to Form N–SAR,[561] a UIT that is not a separate account of an insurance company would provide the number of series existing at the end of the reporting period that had securities registered under the Securities Act[562] and, for new series, the number of series for which registration statements under the Securities Act became effective during the reporting period[563] and the total value of the portfolio securities on the date of deposit.[564] Proposed Form N–CEN would also carry over from Form N–SAR[565] requirements relating to the number of series with a current prospectus,[566] the number of existing series (and total value) for which additional units were registered under the Securities Act,[567] and the value of units placed in portfolios of subsequent series.[568] Our proposal would also require that a UIT that is not a separate account of an insurance company provide the total assets of all series combined as of the reporting period,[569] which is also currently required by Form N–SAR.[570]

As proposed, Form N–CEN would also require certain new information to be reported by separate accounts offering variable annuity and variable life insurance contracts. Specifically, if the UIT is a separate account of an insurance company, proposed Form N–CEN would require disclosure of its series identification number[571] and, for each security that has a contract identification number assigned pursuant to rule 313 of Regulation S–T, the number of individual contracts that are in force at the end of the reporting period.[572]

With respect to insurance company separate accounts, our proposal would also require new identifying and census information for each security issued

[553] *See* Items 111–133 of Form N–SAR (relating specifically to UITs).

[554] *See* Items 111 (depositor information), 112 (sponsor information), 113 (trustee information), and 114 (principal underwriter information) of Form N–SAR.

[555] Item 62 of proposed Form N–CEN.

[556] Item 65 of proposed Form N–CEN (only applies to UITs that are not insurance company separate accounts).

[557] Item 66 of proposed Form N–CEN (only applies to UITs that are not insurance company separate accounts).

[558] Item 63 of proposed Form N–CEN. Form N–SAR does not request information about a UIT's third-party administrator.

[559] Item 64 of proposed Form N–CEN; *see* Item 117.A of Form N–SAR.

[560] If a UIT answers ''yes'' to this item, it would proceed to answer Items 73 through 78 of the form. However, if a UIT answers ''no'' to this item, it would proceed to Items 65 through 72, and 78. *Id.*

[561] *See* Items 118–120 of Form N–SAR (all UITs are required to complete these items).

[562] Item 67 of proposed Form N–CEN.

[563] Item 68.a of proposed Form N–CEN.

[564] Item 68.b of proposed Form N–CEN.

[565] *See* Items 121–124 of Form N–SAR (all UITs are required to complete these items).

[566] Item 69 of proposed Form N–CEN.

[567] Item 70 of proposed Form N–CEN.

[568] Item 71 of proposed Form N–CEN.

[569] Item 72 of proposed Form N–CEN.

[570] *See* Item 127.L of Form N–SAR (all UITs are required to complete this item). Proposed Form N–CEN would not require UITs to report certain assets held by a UIT as required by Item 127 of Form N–SAR. *See* Items 127.A–K of Form N–SAR.

[571] Item 73 of proposed Form N–CEN.

[572] Item 74 of proposed Form N–CEN.

through the separate account.[573] This requirement would include the name of the security,[574] contract identification number,[575] total assets attributable to the security,[576] number of contracts sold,[577] gross premiums received,[578] and amount of contract value redeemed.[579] This item would also require additional information relating to section 1035 exchanges, including gross premiums received pursuant to section 1035 exchanges,[580] number of contracts affected in connection with such premiums,[581] amount of contract value redeemed pursuant to section 1035 redemptions [582] and the number of contracts affected by such redemptions.[583] In addition, insurance company separate accounts would be required to provide information on whether they relied on rules 6c–7 [584] and 11a–2 [585] under the Investment Company Act. This information, which is specific to UITs that are separate accounts of insurance companies and is either not otherwise filed with the Commission or is not filed in a structured format, will further assist the Commission in its oversight of UITs, including monitoring trends in the variable annuity and variable life insurance markets.

Finally, Form N–CEN would carry over the Form N–SAR [586] requirement that a UIT provide certain information relating to divestments under section 13(c) of the Investment Company Act.[587] Thus, if a UIT intends to avail itself of the safe harbor provided by section 13(c) with respect to its divestment of certain securities, it will continue to make the following disclosures on Form N–CEN: Identifying information for the issuer, total number of shares or principal amount divested, date that the securities were divested, and the name of the statute that added the provisions of section 13(c) in accordance with which the securities were divested.[588] If the UIT holds any securities of the issuer on the date of the filing, it would also provide the ticker symbol, CUSIP number, and total number of shares or, for debt securities, the principal amount held on the date of the filing.[589]

We request comment on the following information requirements relating to UITs:

- Is there any additional information regarding series of UITs that should be requested? For example, are there other special UIT account types that should also be included in the form? Is there any information regarding UITs that is included in proposed Form N–CEN that should be excluded from the form?
- Is there any additional information regarding those involved in the formation and governance of the UIT and service providers to the UIT that should be requested? Should the form provide instructions or a definition regarding depositor or sponsor?
- Is there any additional information regarding the number of series that should be requested?
- We request comment on the requirement to provide asset information for the UIT. Is there any other information regarding the series' assets that should be provided? Form N–SAR item 127 contains a detailed list of asset types held by the UIT. The requirement in Form N–CEN is limited to total assets. Should we require more granular asset information in Form N–CEN, as we did in Form N–SAR item 127? If so which items should we include?
- We request comment on our items relating specifically to insurance company separate accounts. Should we include items relating solely to insurance company separate accounts? Are there any UIT items that insurance company separate accounts should be subject to that they would not be subject to under our proposal? Is there any other information that we should require for insurance company separate accounts?

g. Part G—Attachments

Like Form N–SAR,[590] we are proposing that Part G of Form N–CEN require some descriptive attachments to the filing in order to provide the staff with more granular information regarding certain key issues.[591] Where possible, we sought to eliminate the need to file attachments with the census reporting form in order to simplify the filing process and maximize the amount of information we receive in a data tagged format.[592] Accordingly, we have attempted to limit the number of attachments to the form to those that are most useful to the staff, either because of investor protection issues or because the information is not available elsewhere. Moreover, all except one of the proposed attachments to Form N–CEN are current requirements in Form N–SAR.[593]

Thus, all funds that would be required to file Form N–CEN would, where applicable, be required to file attachments regarding legal proceedings,[594] provision of financial support,[595] changes in the fund's independent public accountant,[596] independent public accountant's report on internal control,[597] and changes in accounting principles and practices.[598] In addition, all funds would be

[573] Item 75 of proposed Form N–CEN.

[574] Item 75.a of proposed Form N–CEN.

[575] Item 75.b of proposed Form N–CEN.

[576] Item 75.c of proposed Form N–CEN.

[577] Item 75.d of proposed Form N–CEN.

[578] Item 75.e of proposed Form N–CEN.

[579] Item 75.h of proposed Form N–CEN.

[580] Item 75.f of proposed Form N–CEN.

[581] Item 75.g of proposed Form N–CEN.

[582] Item 75.i of proposed Form N–CEN.

[583] Item 75.j of proposed Form N–CEN.

[584] Item 76 of proposed Form N–CEN. Rule 6c–7 under the Investment Company Act provides exemptions from certain provisions of sections 22(e) and 27 of the Act for registered separate accounts offering variable annuity contracts to participants in the Texas Optional Retirement Program. *See* 17 CFR 270.6c–7.

[585] Item 77 of proposed Form N–CEN. Rule 11a–2 under the Investment Company Act relates to offers of exchange by certain registered separate accounts or others, the terms of which do not require prior Commission approval. *See* 17 CFR 270.11a–2.

[586] Item 133 of Form N–SAR. Section 13(c) of the Investment Company Act provides a safe harbor for registered investment companies and its employees, officers, directors and investment advisers, based solely upon the investment company divesting from, or avoiding investing in, securities issued by persons that the investment company determines, using credible information that is available to the public, engage in certain investment activities in Iran or Sudan. The safe harbor, however, provides that this limitation on actions does not apply unless the investment company makes disclosures about the divestments in accordance with regulations prescribe by the Commission. *See* 15 U.S.C. 80a–13(c)(2)(B). Management investment companies are required to provide the disclosure on Form N–CSR, pursuant to Item 6(b) of the form, and UITs are required to provide the disclosure on Form N–SAR, pursuant to Item 133 of the form. *See* Technical Amendments to Forms N–CSR and N–SAR in Connection With the Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Exchange Act Release No. 34–63087 (Oct. 13, 2010) [75 FR 64120 (Oct. 19, 2010)].

[587] Item 78 of proposed Form N–CEN.

[588] Item 78.a of proposed Form N–CEN.

[589] Item 78.b of proposed Form N–CEN. An instruction to Item 78 would address when the UIT should report divestments pursuant to this item.

[590] *See* Items 77.E, 77.I, 77.K, 77.L, 77.N, 77.P, 77.Q.1, 77.Q.2, 102.D, 102.H, 102.J, 102.K, 102.M, 102.O, 102.P.1, 102.P.2, and 102.P.3 of Form N–SAR.

[591] Form N–SAR requires only management companies to file attachments to reports on the form, whereas proposed Form N–CEN would require certain attachments for all Registrants.

[592] With respect to certain attachments currently in Form N–SAR, we propose to integrate the data requirements into the form itself, rather than keep the attachment requirements. *See, e.g.,* Items 77.G and 102.F of Form N–SAR; Item 48 and Item 49 of proposed Form N–CEN. However, not all of the attachments currently required by Form N–SAR lend themselves to integration into the form, either because of the amount of information reported in the attachment or because the attachment is a standalone document (*e.g.,* the accountant's report on internal control).

[593] *But see supra* note 591.

[594] Item 79.a.i of proposed Form N–CEN.

[595] Item 79.a.ii of proposed Form N–CEN.

[596] Item 79.a.iii of proposed Form N–CEN.

[597] Item 79.a.iv of proposed Form N–CEN. As noted in Item 79.a.iv, this item would only apply to management companies, other than SBICs.

[598] Item 79.a.v of proposed Form N–CEN.

required, where applicable, to provide attachments relating to information required to be filed pursuant to exemptive orders,[599] and other information required to be included as an attachment pursuant to Commission rules and regulations.[600] Moreover, closed-end funds and SBICs would also be required, where applicable, to provide attachments relating to material amendments to organizational documents,[601] instruments defining the rights of the holders of any new or amended class of securities,[602] new or amended investment advisory contracts,[603] information called for by Item 405 of Regulation S–K,[604] and, for SBICs only, senior officer codes of ethics.[605] Each attachment proposed to be required by Form N–CEN includes instructions describing the information that should be provided in the attachment.[606]

As noted earlier, all of the attachments, except one, are currently required by Form N–SAR.[607] The new attachment relates to the provision of financial support and would be filed by a fund if an affiliate, promoter or principal underwriter of the fund, or affiliate of such person, provided financial support to the fund during the reporting period. As discussed in Part II.E.4.b, we are proposing to include this requirement in Form N–CEN because we believe that it is important that the Commission understand the nature and extent that a fund's sponsor provides financial support to a fund.

We request comment on the following information requirements relating to attachments to the Form:

- Should any additional attachments be required to be attached to Form N–CEN? Are any proposed attachments unnecessary and, if so, why? Should any of the attachments requested for all Registrants be limited to only certain Registrants?
- Should we require that the information be reported as attachments to the form or in narrative text-boxes embedded in the form?
- Should attachment requirements concerning copies of all constituent instruments defining the rights of the holders of any new class of securities and of any amendments to constituent instruments be limited to closed-end funds and SBICs as proposed? Should such requirements apply to all funds?
- Should the attachments regarding material amendments to organizational documents and new or amended advisory contracts apply only to closed-end funds and SBICs as proposed? Should these requirements apply to all funds? Should the advisory contract requirement apply only to advisory contracts to which the fund is a party or should it include all advisory contracts, including subadvisory contracts?
- Should any of the attachment filing requirements without materiality qualifiers be limited by materiality qualifiers?
- With Form N–CEN, we are proposing to eliminate a number of attachments currently required by items 77 and 102 of Form N–SAR. Are there any attachments to Form N–SAR, that are proposed to be eliminated, that should be included in Form N–CEN? Which attachments and why? Are there any costs associated with eliminating these attachments?

5. Items Required by Form N–SAR That Would Be Eliminated by Form N–CEN

As we discussed above, with proposed Form N–CEN, we seek to improve the information that we collect in order to reflect changes in the fund industry since Form N–SAR's adoption in 1985. With that in mind, we are proposing to eliminate certain items from Form N–SAR that we believe are no longer needed by Commission staff or are outdated in their current form. For example, we are proposing not to include Form N–SAR's requirement relating to considerations which affected the participation of brokers or dealers or other entities in commissions or other compensation paid on portfolio transactions.[608]

Form N–CEN would similarly eliminate a number of Form N–SAR items where the information is (or would be, under our proposed reforms) reported elsewhere—for example, items relating to fees and expenses, including front-end and deferred/contingent sales loads, redemption and account maintenance fees, rule 12b-1 fees, and advisory fees.[609] Many of the fee and expense items required by Form N–SAR are already disclosed, in a structured format, in the risk-return summary required by Form N–1A for open-end funds, as well as in an unstructured format in other places in fund registration statements.[610] For other fee and expense items, the information is either not frequently used by Commission staff or we believe that the benefit of having such information is minimal while the burden to funds of reporting such information is costly.[611] For similar reasons as above, we are also proposing not to require other information in proposed Form N–CEN, including information relating to adjustments to shares outstanding by stock split or stock dividend, minimum initial investments, investment practices, portfolio turnover, number of shares outstanding, number of shareholder accounts, average net assets, and certain other condensed balance sheet data items.[612]

We are also proposing to eliminate certain information requirements specifically relating to SBICs and UITs that we no longer believe are necessary to collect on a census form because, much like the items discussed above, the benefit of having such information

[599] Item 79.a.vi of proposed Form N–CEN.

[600] Item 79.a.vii of proposed Form N–CEN.

[601] Item 79.b.i of proposed Form N–CEN. Unlike open-end funds, closed-end funds and SBICs do not otherwise update or file the information requested by this item with the Commission and, thus, we believe the information should continue to be filed as an attachment to the census reporting form.

[602] Item 79.b.ii of proposed Form N–CEN.

[603] Item 79.b.iii of proposed Form N–CEN. Unlike open-end funds, closed-end funds and SBICs do not otherwise update or file the information requested by this item with the Commission and, thus, we believe the information should continue to be filed as an attachment to the census reporting form.

[604] Item 79.b.iv of proposed Form N–CEN.

[605] Item 79.b.v of proposed Form N–CEN.

[606] For example, the instructions to Item 79.b.v require SBICs to attach detailed information regarding the senior officer code of ethics and certain information regarding the audit committee. The instructions also require SBICs to meet certain requirements regarding the availability of their senior office code of ethics.

[607] *See supra* note 593 and accompanying text.

[608] Item 26 of Form N–SAR. Proposed Form N–CEN does, however, contain information relating to funds that paid commissions to brokers and dealers for research services. *See* Item 43 of proposed Form N–CEN.

[609] *See generally* Items 29–44, 47–52 of Form N–SAR. Proposed Form N–CEN does, however, contain items relating to information regarding expense limitations, reductions, and waivers. *See* Item 32 of proposed Form N–CEN. As discussed above, proposed Form N–CEN would also require information on management fees and net operating expenses for closed-end funds, as that information is not available elsewhere in a structured format. *See* Item 51 and Item 52 of proposed Form N–CEN; *see also supra* Part II.E.4.d.

[610] *See* General Instruction C.3.G of Form N–1A; *see generally* Form N–1A, Form N–2, Form N–4, Form N–5, Form N–6.

[611] We acknowledge that some of the information reported in reports on Form N–SAR related to loads paid to captive or unaffiliated broker-dealers has been used by interested third-parties, including researchers. *See, e.g.,* Susan E. K. Christoffersen, Richard Evans, and David K. Musto, 2013. *What do Consumers' Fund Flows Maximize? Evidence from Their Brokers' Incentives.* The Journal of Finance, Vol. 68(1), 201–235 (2013). While this is evidence of a discrete instance where such information has been useful to a third party, based on staff experience with this information and Form N–SAR information generally, we believe that no longer requiring funds to gather and report this information appropriately balances the burden on funds of providing this information and the overall utility of the information to the Commission, investors and third parties. As noted below, we request comment generally on whether any information items not currently being proposed to be carried over from Form N–SAR should be included on Form N–CEN.

[612] *See generally* Items 57, 61, and 70–75 of Form N–SAR.

is minimal to the Commission's oversight and examination functions while the burdens to these funds of reporting such information is costly.[613] Additionally, with respect to the Form N–SAR[614] item relating to closed-end fund monthly sales and repurchases of shares, this information would be reported on proposed Form N–PORT,[615] rather than proposed Form N–CEN.

The full list of items from Form N–SAR that would be included in Form N–CEN, as proposed, or would be eliminated is listed in Figure 2 below.

INCLUSION OF FORM N–SAR DATA ITEMS IN PROPOSED FORM N–CEN

Form N–SAR Item No.	Description	Included without change	Included but modified	Similar data would be available through other sources *	No longer required to be reported by all funds
1	Registrant information	✓			
2	Registrant address	✓			
3	First filing	✓			
4	Final filing	✓			
5	SBIC identification	✓			
6	UIT information	✓			
7	Series or multiple portfolio company		✓		
All Management Investment Companies Except SBICS					
8	Investment adviser	✓			
10 **	Administrator	✓			
11	Principal underwriter	✓			
12	Shareholder servicing agent	✓			
13	Independent public accountant	✓			
14	Broker or dealer which is an affiliated person	✓			
15	Custodian arrangements	✓			
18 **	Central depository or book-entry system		✓		
19	Family of investment companies		✓		
20	Brokerage commissions paid on portfolio transactions		✓		
21	Aggregate brokerage commissions	✓			
22	Portfolio transactions with entities acting as principal		✓		
23	Aggregate principal purchase/sale transactions		✓		
24	Holding of securities of registrant's regular brokers or dealers.			✓	
25	Holding of securities of registrant's regular brokers or dealers.			✓	
26	Considerations affecting participation of brokers or dealers				✓
27	Open-end investment company	✓			
28	Monthly sales and repurchases of registrant's/series' shares			✓	
29	Registrant/series imposing a front-end sales load			✓	
30	Total front-end sales load collected by underwriters and sales load rates.				✓
31	Net sales loads retained and paid out by underwriters				✓
32	Net amount paid to unaffiliated dealers				✓
33	Net amount paid to retail sales force				✓
34	Deferred or contingent deferred sales loads			✓	
35	Deferred or contingent deferred sales loads collected				✓
36	Deferred or contingent deferred sales loads retained				✓
37	Redemption fees			✓	
38	Redemption fees collected				✓
39	Account maintenance fees			✓	
40	Registrant/series using its assets directly to make payments under a 12b–1 plan.			✓	
41	Direct use of assets under 12b–1 plan			✓	
42	Percentage of payments under the 12b–1 plan			✓	
43	Payments under the 12b–1 plan			✓	
44	Unreimbursed payments under the 12b–1 plan				✓
45	Advisory contract		✓		
46	More than one investment adviser		✓		
47	Advisory fee based on percentage of assets			✓	
48	Contractual advisory fee rate			✓	
49	Advisory fee based on percentage of income			✓	
50	Advisory fee based on percentage of income and assets			✓	
51	Performance based advisory fee			✓	
52	Advisory fee based on assets, income or performance			✓	
53	Expense limitations or reductions		✓		
54	Services supplied by investment advisers or administrators				✓

[613] *See* Items 86, 93, 95, 97–100, 103–104, 109, 125–132 of Form N–SAR.

[614] *See* Item 86 (closed-end funds) of Form N–SAR; *see also* Item 28 (management investment companies generally) of Form N–SAR.

[615] *See* Item B.6 of proposed Form N–PORT.

INCLUSION OF FORM N–SAR DATA ITEMS IN PROPOSED FORM N–CEN—Continued

Form N–SAR Item No.	Description	Included without change	Included but modified	Similar data would be available through other sources *	No longer required to be reported by all funds
55	Overdrafts and bank loans				✓
56	Advisory clients			✓	
57	Stock splits or stock dividends				✓
58	Fund classifications		✓		
59	Management investment company		✓		
60	Diversified investment company		✓		
61	Minimum required investment			✓	
62	Percentage of portfolio in various debt securities			✓	
63	Dollar weighted average maturity			✓	
64	Insured or guaranteed securities				✓
65	Insured or guaranteed securities attributed to value used in computing NAV.				✓
66	Classification of funds investing in equity securities			✓	
67	Registrant/series investing primarily and regularly in a balanced portfolio of debt and equity securities.			✓	
68	Investments in issuers engaged in production or distribution of precious metals or located outside the United States.			✓	
69	Registrant/series as an index fund	✓			
70	Investment policies and practices			✓	
71	Portfolio purchases, sales, monthly average value, and turnover rate.			✓	
72	Income and expenses			✓	
73	Dividends and distributions			✓	
74	Assets, liabilities, net assets			✓	
75	Computation of average net assets			✓	
76	Market price per share for closed-end investment companies.	✓			
77	Attachments		✓		
78	Wholly-owned subsidiaries consolidated in report			✓	
79	"811" numbers for wholly-owned investment company subsidiaries consolidated in report.				✓
80	Fidelity bonds in effect			✓	
81	Joint fidelity bond			✓	
82	Fidelity bond deductible			✓	
83	Fidelity bond claims	✓			
84	Losses that could have been filed as a claim under the fidelity bond.				✓
85	Errors and omissions insurance policy	✓			
	Closed-End Management Investment Companies Except SBICs				
86	Sales, repurchases, and redemptions of securities		✓		
87	Securities of registrant registered on a national securities exchange or listed on NASDAQ.		✓		
88	Senior securities		✓		
	SBICs				
89	Investment adviser		✓		
90	Transfer agent	✓			
91	Independent public accountant	✓			
92	Custodian arrangements		✓		
93	Advisory clients other than investment companies			✓	
94	Family of investment companies		✓		
95	Sales, repurchases, and redemptions of securities		✓		
96	Securities of registrant registered on a national securities exchange or listed on NASDAQ.		✓		
97	Income and expenses				✓
98	Dividends and distributions				✓
99	Assets, liabilities and shareholders' equity				✓
100	Computation of average net assets				✓
101	Market price per share	✓			
102	Attachments		✓		
103	Wholly-owned subsidiaries consolidated in report				✓
104	"811" numbers for wholly-owned investment company subsidiaries consolidated in report.				✓
105	Fidelity bonds in effect			✓	
106	Joint fidelity bond			✓	
107	Fidelity bond deductible			✓	

INCLUSION OF FORM N–SAR DATA ITEMS IN PROPOSED FORM N–CEN—Continued

Form N–SAR Item No.	Description	Included without change	Included but modified	Similar data would be available through other sources *	No longer required to be reported by all funds
108	Fidelity bond claims		✓		
109	Losses that could have been filed as a claim under the fidelity bond.				✓
110	Errors and omissions insurance policy	✓			
	UITs				
111	Depositor	✓			
112	Sponsor		✓		
113	Trustee		✓		
114	Principal underwriter	✓			
115	Independent public accountant	✓			
116	Family of investment companies		✓		
117	Separate account of an insurance company		✓		
118	Series having effective registration statements	✓			
119	New series having effective registration statements	✓			
120	Value of new series that became effective	✓			
121	Series for which a current prospectus existed at the end of the period.	✓			
122	New units of existing series	✓			
123	Value of new securities deposited in existing series	✓			
124	Value of units of prior series placed in portfolio of subsequent series.	✓			
125	Amount of sales loads collected				✓
126	Amount of sales loads collected from secondary market operations.				✓
127	Classification of series and assets			✓	
128	Insured or guaranteed securities				✓
129	Insured or guaranteed securities				✓
130	Insured or guaranteed securities				✓
131	Total expenses			✓	
132	811 number of series included in filing			✓	
133	Divestment of securities	✓			

* While not available in proposed Form N–CEN, similar data is or would be available through other sources, such as proposed Form N–PORT or a fund's prospectus, statement of additional information, or financial statements.

** Items 9, 16, and 17 are reserved in Form N–SAR.

We request comment on the information requirements relating to items required in Form N–SAR, but not required in proposed Form N–CEN, including the following:

- Should proposed Form N–CEN require more detailed information relating to the fund's 12b–1 plan, as required by items 40 through 44 of Form N–SAR, considering detailed information regarding the fund's 12b–1 plan is otherwise disclosed in response to other reporting requirements?
- Should proposed Form N–CEN include financial information or balance sheet items, such as those required by item 72 of Form N–SAR?
- Despite the fact that certain items relating to fee information are required by other forms, should we include fee information in proposed Form N–CEN? If so, what specific information and why?
- Should proposed Form N–CEN include information relating to number of shares outstanding, total number of shareholder accounts, or average net assets during the reporting period as required by Items 74.U.1, 74.X, and 75 of Form N–SAR?
- Are there any other items currently in Form N–SAR that are proposed to be eliminated, which should be included in Form N–CEN? Which items and why? Are there any costs associated with eliminating these items?

F. Technical and Conforming Amendments

We are also proposing technical and conforming amendments to various rules and forms. As discussed above, our proposal would rescind Form N–Q and create new Form N–PORT. In order to implement this proposed change, we propose to revise Forms N–1A, N–2, and N–3 to refer to the availability of portfolio holdings schedules attached to reports on Form N–PORT and posted on fund Web sites rather than on reports on Form N–Q.[616] In addition, we propose to rescind 17 CFR 249.332 and revise the following rules to remove references to Form N–Q: 17 CFR 232.401, 17 CFR 270.8b–33, 17 CFR 270.30a–2, 17 CFR 270.30a–3, and 17 CFR 270.30d–1.

Our proposal would also rescind Form N–SAR and replace it with new Form N–CEN. In order to implement this proposed change, we propose to revise the following rules and sections to remove references to Form N–SAR and replace them with references to Form N–CEN: 17 CFR 232.301, 17 CFR 240.10A–1, 17 CFR 240.12b–25, 17 CFR 249.322, 17 CFR 249.330, 17 CFR 270.8b–16, 270.30d–1, and 17 CFR 274.101.[617]

[616] *See* Form N–1A, Item 16(f), Instruction 3(b) (we would remove references to Form N–Q) and Item 27(d), Instruction 4 (we would replace references to portfolio schedules reported on Form N–Q with references to portfolio schedules attached to reports on Form N–PORT or posted on fund Web sites); Form N–2, Item 24, Instruction 6.b (same); Form N–3, Instruction 6(ii) to Item 28(a) (same).

[617] Although we are proposing to delete references to Form N–SAR in 17 CFR 232.301, we are not proposing to replace them with references to Form N–CEN because the references in that section relate to specific portions of the EDGAR

Currently, reports on Form N–SAR are filed semi-annually by management investment companies as required by 17 CFR 270.30b1–1, and annually by UITs as required by 17 CFR 270.30a–1. Because our proposal would require reports on Form N–CEN to be filed annually by all registered investment companies, we propose to rescind 17 CFR 270.30b1–1 and revise 17 CFR 270.30a–1 to require all registered investment companies to file reports on Form N–CEN. We also propose to revise the following rules to remove references to 17 CFR 270.30b1–1 and add references to proposed rule 17 CFR 270.30a–1: 17 CFR 240.13a–10, 17 CFR 240.13a–11, 17 CFR 240.13a–13, 17 CFR 240.13a–16, 17 CFR 240.15d–10, 17 CFR 240.15d–11, 17 CFR 240.15d–13, and 17 CFR 240.15d–16.

In addition, as a result of the proposed new annual reporting requirement that would apply to all registered investment companies, we propose to rescind 17 CFR 270.30b1–2—which currently permits wholly-owned management investment company subsidiaries of management investment companies to not file Form N–SAR under certain circumstances—and propose new rule 17 CFR 270.30a–4—which would permit wholly-owned management investment company subsidiaries of management investment companies to not file Form N–CEN under those same circumstances. We also propose to amend 17 CFR 200.800 to display control numbers assigned to information collection requirements for Forms N–PORT and N–CEN by the Office of Management and Budget pursuant to the Paperwork Reduction Act. As discussed further below, 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.[618]

Our proposed amendments to Regulation S–X would, among other things, require management investment companies to report new schedules for certain derivatives holdings.[619] To implement these changes, we propose to renumber the sections for schedules required to be reported by management investment companies and renumber the list of schedules provided in 17 CFR 210.6–10, which outlines the schedules to be reported by investment companies.[620] We propose conforming changes to references to Regulation S–X in the following forms: Form N–1A, Form N–2, Form N–3, and Form N–14.[621]

We also propose to amend Form N–CSR to delete instructions addressing how certifications as to changes in the registrant's internal control over financial reporting should be handled during the transition period when certifications were being implemented on Form N–Q, because those instructions are no longer applicable.[622]

We also propose to remove paragraph (a) of 17 CFR 232.105, which currently requires electronic filers to submit Forms N–SAR and 13F in ASCII, and redesignate paragraphs (b) and (c) as (a) and (b), respectively. Our proposal would rescind Form N–SAR, and Form 13F has been submitted by electronic filers in XML, rather than ASCII, since 2013.[623]

We request comment on these technical and conforming amendments.

G. Compliance Dates

Currently, we anticipate the following compliance dates for our proposed amendments, as set forth below.

1. Form N–PORT, Rescission of Form N–Q, and Amendments to the Certification Requirements of Form N–CSR

Given the nature and frequency of filings on proposed Form N–PORT, if Form N–PORT is adopted, the Commission expects to provide for a tiered set of compliance dates based on asset size. Specifically, for larger entities—namely, funds that together with other investment companies in the same ''group of related investment companies'' [624] have net assets of $1 billion or more as of the end of the most recent fiscal year—we are proposing a compliance date of 18 months after the effective date to comply with the new reporting requirements. For these larger entities, we expect that eighteen months would provide an adequate period of time for funds, intermediaries, and other service providers to conduct the requisite operational changes to their systems and to establish internal processes to prepare, validate, and file reports on proposed new Form N–PORT with the Commission.[625]

For smaller entities (*i.e.,* funds that together with other investment companies in the same ''group of related investment companies'' have net assets of less than $1 billion as of the end of the most recent fiscal year),[626] we are

Filer Manual that would not be relevant to Form N–CEN.

[618] *See infra* Part V.

[619] Our proposal would require new schedules to be filed to report open futures contracts, open forward foreign currency contracts, and open swap contracts. *See* proposed new rules 12–13A, B, and C of Regulation S–X.

[620] Among other things, our proposed amendments would renumber the CFR for open option contracts and the summary schedule of investments in unaffiliated issuers from 17 CFR 210.12–12B and 17 CFR 210.12–12C to 17 CFR 210.12–13 and 17 CFR 210.12–B, respectively. These amendments would group the schedule for open option contracts written together with the new schedules for open futures contracts, open forward foreign currency contracts, and open swap contracts, and would list the summary schedule sequentially after the investments in securities of unaffiliated issuers. We would also amend 17 CFR 210.6–10 to, among other things, add new schedules V, VI, and VII for open futures contracts, open forward foreign currency contracts, and open swap contracts, respectively, and renumber schedule II for investments other than securities and schedule VI for summary of investments in securities of unaffiliated issuers as schedules VIII and IX, respectively. *See* proposed rule 6–10 of Regulation S–X (listing the schedules required to be filed by management investment companies, UITs, and face-amount certificate companies).

[621] *See* Form N–1A, Item 27(b)(1) (reference to Schedule VI would be changed to Schedule IX and reference to schedule I would be corrected to cite to the appropriate CFR section); Form N–2, Instruction 7 to Item 24 (we would update references to schedule VI); Form N–3, Instruction 7(i) and (ii) to Item 28(a) (we would update references to schedule VI).

[622] Form N–CSR, Item 12 (the instruction to paragraph (a)(2) of that item would be removed).

[623] *See* Notice to EDGAR Form13 Filers, *available at http://www.sec.gov/divisions/investment/imannouncements/notice-form-13f-im.htm* (requiring funds to file Form 13F according to EDGAR XML Technical Specifications beginning on April 29, 2013).

[624] For these purposes, we expect that the threshold would be based on the definition of ''group of related investment companies,'' as such term is defined in rule 0–10 under the Investment Company Act. Rule 0–10 defines the term as ''two or more management companies (including series thereof) that: (i) Hold themselves out to investors as related companies for purposes of investment and investor services; and (ii) Either: (A) Have a common investment adviser or have investment advisers that are affiliated persons of each other; or (B) Have a common administrator; and (2) In the case of a unit investment trust, the term group of related investment companies shall mean two or more unit investment trusts (including series thereof) that have a common sponsor.'' We believe that this broad definition would encompass most types of fund complexes and therefore is an appropriate definition for compliance date purposes.

[625] We believe that an eighteen month compliance period for larger groups of investment companies is an adequate amount of time for funds to implement proposed new Form N–PORT and make the necessary system and operational changes. We adopted a nine month compliance periods when we first required money market funds to report their portfolio holdings to the Commission on a monthly basis on Form N–MFP. Based upon our Form N–MFP compliance experience, and the larger number of non-money market fund filers, we believe that doubling the Form N–MFP compliance period to eighteen months for filing reports on Forms N–PORT is appropriate. *See* Money Market Fund Reform 2010 Release, *supra* note 13, at 10087.

[626] Based on staff analysis of data obtained from Morningstar Direct, as of March 31, 2015, we estimate that a $1 billion assets threshold would provide an extended compliance period to more than 66% of the fund groups, but only 0.6% of all

Continued

proposing to provide for an extra 12 months (or 30 months after the effective date) to comply with the new reporting requirements. We believe that smaller groups would benefit from this extra time to comply with the filing requirements for Form N–PORT and would potentially benefit from the lessons learned by larger investment companies and groups of investment companies during the adoption period for Form N–PORT.[627]

2. Form N–CEN and Rescission of Form N–SAR

If Form N–CEN and the related proposals are adopted, we are proposing a compliance date of 18 months after the effective date to comply with the new reporting requirements. We expect that eighteen months would provide an adequate period of time for funds, intermediaries, and other service providers to conduct the requisite operational changes to their systems and to establish internal processes to prepare, validate, and file reports on proposed Form N–CEN with the Commission. We are proposing the same compliance date for the related amendments to other rules and forms we are proposing today.[628]

Unlike Form N–PORT, we do not expect to provide for a tiered compliance date based on asset size. We believe that it is less likely that smaller fund complexes would need additional time to comply with the requirements to file Form N–CEN because the requirements are similar to the current requirements to file Form N–SAR, and we expect that filers will prefer the updated, more efficient filing format of Form N–CEN. We are therefore proposing to require all funds, regardless of size, to file reports on Form N–CEN with the same compliance period.

3. Option for Web Site Transmission of Shareholder Reports

Proposed rule 30e–3, if adopted, would permit (but not require) a fund to satisfy requirements under the Act and rules thereunder to transmit reports to shareholders if the fund makes the reports and certain other materials accessible on its Web site. As reliance on the rule would be optional, we believe a compliance period would not be necessary. Therefore, we expect that funds would be able to rely on the rule immediately after the effective date.

4. Regulation S–X and Related Amendments

As discussed above, our proposed amendments to Regulation S–X are largely consistent with existing fund disclosure practices. As such, we do not expect that fund, intermediaries, or service providers would require significant amounts of time to modify systems or establish internal processes to prepare financial statements in accordance with our proposed amendments to Regulation S–X. Accordingly, we are proposing a compliance date for our proposed amendments to Regulation S–X of eight months after the effective date. We expect the same compliance date would apply to conforming amendments related to our proposed amendments to Regulation S–X, including the related amendment we are proposing today.

5. Request for Comment

We request comment on the compliance dates discussed above.

- How, if at all, should the proposed compliance dates be modified? What factors should we consider when setting the compliance dates for the proposed rules and forms?
- We request comment on our proposed tiered compliance dates for filings on Form N–PORT. Is a threshold of $1 billion based on the net assets of funds together with other investment companies in the same ''group of related investment companies'' as of the end of the most recent fiscal year appropriate? Should the threshold be higher or lower?[629] Should the threshold include aggregation of net assets with other investment companies in the same ''group of related investment companies?'' Why or why not? In lieu of ''group of related investment companies,'' should aggregation be based on a different set of related companies? For example, should aggregate assets be based on ''family of investment companies,'' as such term defined in instruction 1(a) to Item 17 of Form N–1A or ''fund complex'' as defined in instruction 1(b) to Item 17 of Form N–1A? Should we require administrator-sponsored funds to aggregate assets for purposes of this threshold regardless of whether the individual funds (or series thereof) do not hold themselves out to investors as related companies for purposes of investment and investor services? Why or why not?
- With respect to Form N–PORT, is our compliance date of eighteen months for larger filers appropriate? If not, what length of time would be appropriate for compliance with Form N–PORT? Would a shorter or longer compliance date be appropriate? For example, would a compliance date of 15 months be sufficient? Conversely, would funds need more time to comply, such as 20 months? Is our 12 month extension of the compliance period for smaller entities appropriate? If not, what length of time would be appropriate for compliance with Form N–PORT? Would a shorter or longer extension, such as 9 months or 15 months, be appropriate? How do we appropriately consider the benefits and costs to receiving the information more quickly and the potential costs and benefits associated with a shorter or longer compliance period?
- Should the Commission consider the implementation of reporting on Form N–PORT initially through a voluntary pilot program? If so, what length of time would be needed for funds and their service providers to appropriately test their reporting procedures?
- Is our eighteen-month compliance period for Form N–CEN appropriate? If not, what length of time would be appropriate? Would a shorter or longer compliance date be appropriate? For example, would a compliance date of 15 months be sufficient? Conversely, would funds need more time to comply, such as 20 months? Should the compliance period for Form N–CEN mirror that for Form N–PORT, or should we consider different compliance periods? Should we adopt a tiered compliance period for Form N–CEN? Why or why not?
- We are proposing to not have a compliance period for the option for Web site transmission of shareholder reports under proposed rule 30e-3. Is this appropriate?
- Is our eight-month compliance period for our proposed amendments to Regulation S–X adequate? If not, what length of time would be adequate and why?

III. General Request for Comment

We request and encourage any interested person to submit comments

fund assets. We therefore believe that the $1 billion threshold would appropriately balance the need to provide smaller groups of investment companies with more time to prepare for the initial filing of reports on Form N–PORT, while still including the vast majority of fund assets in the initial compliance period.

[627] We likewise intend to rescind Form N–Q (referenced in 17 CFR 274.130) and the amendments to the certification requirements of Form N–CSR (referenced in 17 CFR 274.128) with a timing that is consistent with this proposal.

[628] We similarly intend to rescind Form N–SAR (referenced in 17 CFR 274.101) with a timing that is consistent with this proposal.

[629] Based on staff analysis of data obtained from Morningstar Direct, as of March 31, 2015, we estimate that a threshold of $100 million would include 38% of fund firms and 0.1% of all fund assets. A threshold of less than $3 billion would include 76.9% of fund firms and 1.5% of fund assets.

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

IV. Economic Analysis

A. Introduction

The Commission is sensitive to the economic effects, including the benefits and costs and the effects on efficiency, competition, and capital formation that will result from the proposed changes to the current reporting regime. Changes to the current reporting regime include proposed Form N–PORT, the rescission of Form N–Q, amendments to the certification requirements for Form N–CSR, amendments to Regulation S–X, the proposed rule governing electronic transmission of shareholder reports, proposed Form N–CEN, and the rescission of Form N–SAR. The economic effects of the proposed changes are discussed below.

The Commission is proposing to modernize the content and format requirements of reports and disclosures by funds, and the manner in which information is filed with the Commission and disclosed to the public. The intent of the proposal is to enhance the Commission's ability to effectively oversee and monitor the activities of investment companies in order to better carry out its regulatory functions and to aid investors and other market participants to better assess the benefits, costs, and risks of investing in different fund products. In summary, and as discussed in greater detail in Part II above, the Commission is proposing the following changes to its rules and forms:

- We propose to require registered management investment companies and ETFs organized as UITs, other than money market funds or SBICs, to report monthly portfolio information in a structured data format on a proposed new form, Form N–PORT.
- Because we believe that monthly portfolio reports on Form N–PORT would render quarterly portfolio reports on current Form N–Q unnecessarily duplicative, we are proposing to rescind Form N–Q. We also propose to lengthen the look-back for Sarbanes-Oxley certifications on Form N–CSR to six months to cover the gap in certification coverage that would otherwise occur once Form N–Q is rescinded.
- We propose to revise Regulation S–X to require new, standardized enhanced disclosures regarding fund holdings in certain derivatives instruments; update the disclosures for other investments; and amend the rules regarding the general form and content of fund financial statements.
- We propose new rule 30e–3 under the Investment Company Act, which would allow funds to satisfy shareholder report transmission requirements by posting such reports on their own Web sites if they meet certain conditions, including posting quarterly portfolio holdings on their Web sites and notifying investors of its availability.
- We propose to rescind Form N–SAR, the form on which funds currently report census-type information on a semi-annual basis, and replace it with Form N–CEN, which would require the annual reporting of similar and additional information in an updated, structured format.

The current disclosure of information by funds serves as the baseline against which the costs and benefits as well as the impact on efficiency, competition, and capital formation of this proposal are discussed. The baseline includes the current set of requirements for funds to file reports on Forms N–CSR, N–Q, and N–SAR with the Commission and the content of such reports, including Regulation S–X, and in particular, its schedule of investments. The baseline also includes guidance from Commission staff and other industry groups that has established industry practices for the disclosure of a fund's schedule of investments and financial statements, and includes Commission guidance that permits funds to transmit these materials electronically today provided that certain other conditions are met. Lastly, the baseline includes the current practice of some funds to voluntarily disclose additional information. For example, some funds disclose monthly or quarterly portfolio investment information on their Web sites or to third-party information providers, and disclose additional information (*e.g.,* particular information on derivative positions) in fund financial statements that is not currently required under Regulation S–X. The parties that would be affected by the proposed amendments are funds that have registered or will register with the Commission; the Commission; and other current and future users of fund information including investors, third-party information providers, and other potential users; and other market participants that could be affected by the change in fund disclosures.

We discuss separately below the economic effects of each part of the proposal: the introduction of Form N–PORT, rescission of Form N–Q, amendments to the certification requirements for Form N–CSR, amendments to Regulation S–X, the electronic transmission of shareholder reports, and the introduction of Form N–CEN and the rescission of Form N–SAR. We identify for each part of the proposal the baseline from which the economic effects will be discussed and the parties most likely to be affected.

As noted above, the assets of registered investment companies exceeded $18 trillion at year-end 2014, having grown from about $4.7 trillion at the end of 1997.[630] In addition, approximately 90 million individuals own mutual funds, representing 53.2 million or 43.3% of U.S. households.[631] Among investment companies, we estimate that, as of December 2014, there were 3,146 investment companies registered with the Commission, of which 1,636 were open-end funds, 780 were closed-end funds (including one SBIC), and 727 were UITs.[632] We further estimate that those registered funds included 16,619 series thereof, of which 1,411 were exchange-traded funds, 528 were money market funds, 5,381 were UITs, and 9,299 were other funds.[633] The following table summarizes the entities likely to be affected by the proposed forms, rescissions, and amendments.

[630] *See supra* note 4.

[631] *See id.*

[632] Based on data obtained from registrants' filings with the Commission on Form N–SAR.

[633] Based on data obtained from the Investment Company Institute. *See http://www.ici.org/research/stats.*

FIGURE 3—AFFECTED PARTIES

		Funds			UITS
		Money market funds	SBICs	Other funds	ETFs
Current:					
Form N–SAR	✓	✓	✓	✓	✓
Form N–CSR	✓	✓	✓		
Form N–Q	✓		✓		
As proposed:					
Form N–PORT			✓	✓	
Form N–CEN	✓	✓	✓	✓	✓
Form N–CSR	✓	✓	✓		
Form N–SAR	Rescinded				
Form N–Q	Rescinded				

Figure 3

The Commission relies on information included in reports filed by funds to monitor trends, identify risks, inform policy and rulemaking, and assist Commission staff in examination and enforcement efforts of the asset management industry. An essential factor to the Commission's ability to carry out its regulatory functions is regular, timely information about portfolio holdings and general, census information about funds. In general, this proposal would modernize the fund reporting regime and, among other effects, would result in an increased transparency of fund portfolios and investment practices. The increased transparency would improve the ability of the Commission to fulfill its regulatory functions. These functions include the development of policy and guidance, the staff's review of fund registration statements and disclosures, and the Commission's examination and enforcement programs. The increased transparency would also improve the ability of investors to select funds for investment, and therefore improve their ability to allocate capital across funds and other investments to more closely reflect their investment risk preferences. Increased transparency would also enhance competition among funds to attract investors.

At the outset, the Commission notes that, where possible, it has sought to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from each part of the proposal and its reasonable alternatives. As discussed in further detail below, in many cases the Commission is unable to quantify the economic effects because it lacks the information necessary to provide a reasonable estimate.

The economic effects of the proposal depend upon a number of factors that we cannot estimate or quantify, such as the extent to which investor protection would increase along with the ability of the Commission to oversee the fund industry; the amount of new information that would become available as a result of requiring such information in regulatory filings (as opposed to information that is provided voluntarily); the increase in the availability of the information to all investors, institutional and individual, as a result of the improved structured format of the information; and the extent to which investors are able to use the information to make more informed investment decisions either through direct use or through third-party service providers. Therefore, much of the discussion below is qualitative in nature although we try to describe where possible the direction of these effects.

B. Form N–PORT, Rescission of Form N–Q, and Amendments to Form N–CSR

a. Introduction and Economic Baseline

Form N–PORT, as proposed, would require registered management investment companies and ETFs organized as UITs, other than money market funds or SBICs, to report portfolio investment information to the Commission on a monthly basis. As discussed, only information reported for the last month of each fiscal quarter would be made available to the public in order to minimize potential costs associated with making the information public, including front-running or reverse engineering of a fund's investment strategies. Reports would be filed in a structured format using XML to allow for easier aggregation and manipulation of the data. As discussed above, we are also proposing to rescind Form N–Q but require that funds attach their complete portfolio holdings to Form N–PORT for the first and third fiscal quarters in accordance to Regulation S–X. We are also proposing to amend the form of certification in Form N–CSR to require each certifying officer to state that he or she has disclosed in the report any change in the registrant's internal control over financial reporting that occurred during the most recent fiscal half-year to fill the gap in certification coverage that would otherwise occur once Form N–Q is rescinded.[634]

The current set of requirements under which registered management investment companies (other than money market funds and SBICs) and ETFs organized as UITs publicly report their complete portfolio investments to the Commission on a quarterly basis and certain other information on a semi-annual basis,[635] as well as the current practice of some investment companies to voluntarily disclose portfolio investment information either on their Web sites or to third-party information providers on a more frequent basis, is the baseline from which we will discuss the economic effects of new Form N–PORT.[636] The parties that could be affected by the introduction of Form N–PORT are registered management investment companies (other than money market funds and SBICs) and ETFs organized as UITs, that have registered or will register with the

[634] Proposed Item 11(b) of Form N–CSR; proposed paragraph 5(b) of certification exhibit of Item 11(a)(2) of Form N–CSR.

[635] Form N–PORT would also require information that is currently being reported on Form N–SAR such as information on fund flows, assets, and liabilities. The current requirement to report this information as part of Form N–SAR is also part of this baseline. The baseline also includes the current obligation of Form N–Q filers to make certifications regarding (1) the accuracy of the portfolio holdings information reported on that form, and (2) the fund's disclosure controls and procedures and internal control over financial reporting.

[636] Additionally, many funds currently provide additional information concerning derivatives investments, based on industry guidance and practices. *See* discussion *supra* Part II.C.2.

Commission; the Commission; and other current and future users of investment company portfolio investment information including investors, third-party information providers, other interested potential users; and other market participants that could be affected by the change in fund disclosure of portfolio investment information.

Currently, the Commission requires registered management investment companies (other than money market funds and SBICs) to report their complete portfolio investments to the Commission on a quarterly basis.[637] These funds are required to provide this information in reports on Form N–Q as of the end of the first and third fiscal quarters of each year[638] and in reports on Form N–CSR as of the end of the second and fourth fiscal quarters of each year.[639] Both forms require that the reported schedule of portfolio investments conform to the requirements of Regulation S–X, and the schedule for the close of the fiscal year must be audited (but those schedules for the other three fiscal quarters need not be).[640] These reports are generally required to be filed on the EDGAR system and are made publicly available upon receipt.[641] Reports on Form N–CSR may be filed up to 70 days after the end of the reporting period,[642] and reports on Form N–Q may be filed up to 60 days after the end of the reporting period.

Forms N–CSR and N–Q are required to be filed in HTML or ASCII/SGML format.[643] In order to prepare reports in HTML and ASCII/SGML, reporting persons generally need to reformat information from the way the information is stored for normal business use.[644] The resulting format, when rendered in an end user's web browser, is comprehensible to a human reader, but it is not suitable for automated processing. These formats do not allow the Commission or other interested data users to combine information from more than one report in an automated way to, for example, construct a database of fund portfolio positions without additional formatting.

The economic effects from the introduction of new Form N–PORT would largely result from the disclosure of portfolio investment information in a structured format, as well as the additional information that investment companies would report. The economic effects would depend on the extent to which the portfolios and investment practices of investment companies become more transparent as a result of the increase in the amount and availability of portfolio investment information, and the ability of Commission staff and all investors to utilize the structured data. The current reporting requirements for investment companies, however, reduce the ability of Commission staff to evaluate the potential economic effects. For example, the non-structured format of reported portfolio investment information, the absence of information to identify securities, and reporting inconsistencies between investment companies all reduce the ability of Commission staff to aggregate information across the fund industry and to evaluate the economic effects of the proposal.

The proposal would increase the amount of portfolio investment information available for some investment companies more so than others. For example, investment companies that utilize derivatives as part of their investment strategy, or that otherwise engage in alternative strategies, would have more information become available describing their businesses than other investment companies. Information from Form N–SAR provides some indication as to the current use of derivatives by investment companies. Form N–SAR requires investment companies to identify permitted investment policies, and if permitted, investment policies engaged in during the reporting period. As of the second half of 2014, on average 75.4% of investment companies reported as permitted investment policies involving the writing or investing in options or futures, and on average 5.2% of investment companies reported engaging in each one of these policies during the report period.[645] In addition, the total net assets of alternative funds from which more information would become available were as of year-end 2014 approximately $200 billion or 1.2% of the total net assets of the mutual fund market.[646] Although the percentage of net assets of alternative funds relative to the mutual fund market is currently small, the percentage of flows to alternative funds was 10.2% in 2013 and 4.3% in 2014.[647]

b. Benefits

As discussed, Form N–PORT would improve the information that registered management investment companies and ETFs organized as UITs (other than money market funds and SBICs) disclose to the Commission. The increase in the reporting frequency, the update to the structure of the information that reporting funds would disclose, and the additional information not currently disclosed, discussed in further detail below, would improve the ability of the Commission to understand, analyze, and monitor the fund industry. We believe that the information we receive on these reports would facilitate the oversight of funds and would assist the Commission, as the primary regulator of such funds, to better effectuate its mission to protect investors, maintain fair, orderly and efficient markets, and facilitate capital formation, through better informed policy decisions, more specific guidance and comments in the disclosure review process, and more targeted examination and enforcement efforts.

To the extent that monthly portfolio investment information is not currently available, the requirement that all investment companies make available

[637] *See* General Instruction A to Form N–CSR; Item 6 of Form N–CSR; General Instruction A to Form N–Q; Quarterly Portfolio Holdings Adopting Release, *supra* note 19.

[638] Item 1 of Form N–Q.

[639] Item 6 of Form N–CSR.

[640] Instruction to Item 6(a) of Form N–CSR; Item 1 of Form N–Q.

[641] *See* rule 101(a)(i) of Regulation S–T [17 CFR 232.101(a)(i)].

[642] Form N–CSR must be filed within 10 days after the shareholder report is sent to shareholders, and the shareholder report must be sent within 60 days after the end of the reporting period. Rule 30b2–1(a); rule 30e–1(c).

[643] *See* rule 301 of Regulation S–T; EDGAR Filer Manual (Volume II) version 27 (June 2014), at 5–1.

[644] In so doing, reporting persons typically strip out incompatible metadata (*i.e.,* syntax that is not part of the HTML or ASCII/SGML specification) that their business systems use to ascribe meaning to the stored data items and to represent the relationships among different data items.

[645] *See* Item 70 of Form N–SAR for a list of permitted investment policies, and if permitted, the investment policies engaged in during the reporting period. The percentages are calculated from the percentage of funds that report affirmatively to either of the two parts for Items 70.B though 70.I. There is little difference in the proportion of investment companies that reported as permitted the investment practices relating to Items 70.B through 70.I. The greatest proportion of funds reported engaging in writing or investing in stock index futures (13.1%) and engaging in writing or investing in interest rate futures (12.0%), and the smallest proportion of funds reported engaging in writing or investing in other commodity futures (1.7%) and engaging in writing or investing in options on stock index futures (0.9%). Aggregate condensed balance sheet information reported on Form N–SAR indicates that funds held $2.6 billion in options on equities and options on all futures (Items 74.G and 74.H) or 0.013% of net assets from the second half of 2014. Aggregate condensed balance sheet information reported on Form N–SAR from the second half of 2014 also indicates that funds had $55.9 billion in short sales (Item 74.R.(2)) and $4.2 billion in written options (Item 74.R.(3)), or 0.285% and 0.021% of net assets, respectively. The estimates are approximate.

[646] *See supra* note 30. These statistics were obtained from staff analysis of Morningstar Direct data, and are based on fund categories as defined by Morningstar.

[647] *See id.*

portfolio investment information on a monthly basis to the Commission would improve the ability of the Commission to oversee investment companies by increasing the timeliness of the information available, and by providing a larger number of data points, would increase the ability of Commission staff to identify trends in investment strategies and fund products as well as industry outliers.[648] As discussed above, the quarterly portfolio reports that the Commission currently receives on Forms N–Q and N–CSR could become stale due to the turnover of portfolio securities and fluctuations in the values of the portfolio's investments. Requiring monthly reports on Form N–PORT would decrease the delay between fund reports, so that the Commission would have more timely information than it has currently; portfolio investment information that is more timely would improve the ability of Commission staff to identify risks a fund is facing, particularly during times of market stress.

The ability of Commission staff to effectively use the information reported in Form N–PORT is dependent on the ability of staff to compile and aggregate information into a single database that can then be utilized to conduct industry-wide analyses. Otherwise, the information would only improve the ability of staff to analyze a single or a small number of funds at any one time. The structuring of the information in an XML format would improve the ability of the Commission to compile and aggregate information across all funds, and to analyze individual funds, a subset of funds, or the fund industry as a whole, and would increase the overall efficiency of staff to analyze the information. For example, the ability to compare portfolio investment information across reporting funds or for a single fund across report dates would improve the ability of the Commission to identify funds for examination and to identify trends in the fund industry.

The structuring of portfolio investment information may also improve the quality of the information disclosed by imposing constraints on how the information would be provided. A feature of XML is a built-in validation framework that can provide precise constraints as to how the information could be provided. These data checks, which are not available in the current formats for Form N–CSR and Form N–Q, are important to ensure that the reports contain information that is accurate and consistent across filings, and therefore usable by Commission staff. An improved, structured format may also promote additional efficiency among investment companies to the extent that the new reporting requirements encourage an update and integration of systems, and standardized formats for the disclosure and transmission of filings.

Form N–PORT would require information that is not currently required to be reported to the Commission, including portfolio and position level risk-sensitivity measures and additional information describing derivatives, securities lending activities, repurchase and reverse repurchase agreements, the pricing and liquidity of securities, and information regarding fund returns and flows. The information would increase the ability of Commission staff to understand the use of these products and activities as part of a fund's investment strategy, as well as the risks of a particular fund, a group of funds, and the fund industry.

The proposed requirement to report portfolio- and position-level risk sensitivity measures would provide Commission staff with a set of estimates that summarizes the risk exposures of a fund. The risk sensitivity measures improve the ability of Commission staff to efficiently analyze information for all funds and identify those funds not only with specific risk exposures but also risk exposures that appear to be outliers among peer funds. An ability to efficiently identify funds based on exposure to certain risks would improve the Commission's ability to analyze fund industry trends, monitor funds, and, as appropriate, engage in further inquiry or timely outreach in case of a market or other event. Commission staff could also use these measures to determine whether additional guidance or policy measures are appropriate to improve disclosures.

The calculation of portfolio- or position-level measures of risk for some derivatives, including derivatives with unique or complicated payoff structures, sometimes requires time-intensive computational methods or additional information that Form N–PORT would not require. As discussed above, based on staff experience and outreach, we understand that most funds calculate risk measures for such securities. Accordingly, we believe that requiring funds to provide these measures is more efficient than requiring funds to provide all of the information that might be necessary for the Commission, investors, or other potential users to calculate these measures. The requirement for investment companies to provide risk measures for derivatives, at the position-level and at the portfolio-level, would therefore improve the ability of staff to efficiently identify the risk exposures of funds regardless of the types of derivatives held or that could be introduced to the marketplace. In addition, the requirement for investment companies to provide portfolio-level measures of risk would also improve the ability of staff to efficiently identify interest rate and credit spread exposures at the fund level and conduct analyses without first aggregating position-level measures.

Form N–PORT would require funds to provide the contractual terms for debt securities and many of the more common derivatives including options, futures, forwards, and swaps; the reference instrument for all convertible debt securities and derivatives, and information describing the size of the position. The information would provide Commission staff an ability to identify funds with interest rate risk exposure or exposure to other risks such as those pertaining to a company, industry, or region.

As discussed, for securities lending activities and reverse repurchase agreements, Form N–PORT would require counterparty identification information, contractual terms, and information describing the collateral and reinvestment of the collateral. The additional information could improve the ability of Commission staff to assess fund compliance with the conditions that they must meet to engage in securities lending, as well as better analyze the extent to which funds are exposed to the creditworthiness of counterparties, the loss of principal of the reinvested collateral, and leverage creation through the reinvestment of collateral.

Form N–PORT would also require additional identification information regarding the reporting fund, the issuers of fund investments, and the investments themselves, including the reference instruments for convertible debt securities and derivatives investments. The additional

[648] *See, e.g., supra* text following note 169. Although likely not a significant effect, the increase in the frequency of portfolio investment disclosure to the Commission could also reduce the ability of investment companies to alter or ''window-dress'' portfolio investments in an attempt to disguise investment strategies and risk profiles that are not consistent with the disclosures in registration statements and shareholder reports. The incentives for managers to window-dress in an attempt to mislead investors would not change because the frequency of public disclosure of portfolio investment information would remain the same. *See, e.g.,* Vikas Agarwal, Gerald D. Gay, and Leng Ling, *Window Dressing in Mutual Funds,* The Review of Financial Studies, Vol. 27(11), 3133–3170 (2014).

identification information would benefit the Commission by improving the ability of staff to link the information from Form N–PORT with information from other sources, such as Form N–CEN, that also identify market participants and investments with these identifiers. The additional identification information would be especially important to identify the issuers of fund investments and the investments themselves. The information would improve the ability of Commission staff, from the current requirement to provide just the issuer name, to identify and compare funds that have exposures to particular investments or issuers regardless of the whether the exposure is direct or indirect such as through a derivative security.

Investors, third-party information providers, and other potential users would also experience benefits from the introduction of Form N–PORT. While the frequency of public disclosure of portfolio information would not change, we believe that the structured format of this information would allow investors and other potential users to more efficiently analyze portfolio information. Investors and other potential users would also have quarterly disclosure of additional information that is currently not included in the schedule of investments reported on Form N–Q and Form N–CSR. The additional information as well as the structure of the information would increase the transparency of funds' investment strategies and improve the ability of investors and other potential users to more efficiently identify the risk exposures of the fund.

Form N–PORT would benefit investors, to the extent that they use the information, to better differentiate investment companies based on their investment strategies and other activities. For example, investors would be able to more efficiently identify funds that use derivatives and the extent to which they use derivatives as part of their investment strategies.[649] In general, we expect that institutional investors and other market participants would directly use the information from Form N–PORT more so than individual investors. As discussed, the format of Form N–PORT is not designed to be human readable and the amount of information could result in reports that are voluminous. The Commission therefore has endeavored to mitigate the potential loss of information to individual investors from the rescission of From N–Q through the additional disclosure requirements for investment companies as part of this proposal, including the requirement for investment companies to attach to Form N–PORT complete portfolio holdings in accordance with Regulation S–X for the first and third fiscal quarters.[650] Individual investors, however, could indirectly benefit from the information in Form N–PORT to the extent that third-party information providers and other interested parties are able to obtain, aggregate, provide, and report on the information. Individual investors could also indirectly benefit from the information in Form N–PORT to the extent that other entities, including investment advisers and broker-dealers, utilize the information to help investors make more informed investment decisions.

Portfolio investment information that investment companies report to the Commission is informative in describing the ongoing investment strategy of the fund,[651] and investors could use the information to select funds based on security selection, industry focus, level of diversification, and the use of leverage and derivatives.[652] An increase in the ability of investors to differentiate investment companies would allow investors to allocate capital across reporting funds more in line with their risk preferences and increase the competition among funds for investor capital. In addition, by improving the ability of investors to understand the risks of investments and hence their ability to allocate capital across funds and other investments more efficiently, the introduction of Form N–PORT could promote capital formation.

Rescission of Form N–Q, along with its certifications of the accuracy of the portfolio schedules reported for each fund's first and third fiscal quarters, may result in some cost savings by funds in terms of administrative or filing costs. However, we expect any such savings, if any, to be minimal, because under our proposal each fund would still be required to file portfolio schedules prepared in accordance with §§ 210.12–12 to 12–14 of Regulation S–X for the fund's first and third fiscal quarters, by attaching those schedules as attachments to its reports on Form N–PORT for those reporting periods.

c. Costs

Form N–PORT, as proposed, would require registered management investment companies and ETFs organized as UITs, other than money market funds or SBICs, to incur one-time and ongoing costs to comply with the new filing requirements. Funds would incur additional ongoing costs to report portfolio investment information on a monthly basis on Form N–PORT instead of a quarterly basis as currently reported on Forms N–Q and N–CSR. Funds that voluntarily provide information to third-party information providers and on its Web site, including monthly portfolio investments, and additional information in fund financial statements, including additional information regarding derivatives similar to the requirements that we are proposing today, would bear fewer costs as a result of the proposal than those that do not.[653] The Commission is aware that these funds would nonetheless likely incur additional costs on reports on proposed Form N–PORT than on voluntary submissions, such as validation and signoff processes, given that reports on Form N–PORT would be a required regulatory filing and would possibly require different data than the funds are currently providing to third-party information providers. Over time, the filings could become highly automated and could involve fewer costs.[654]

[649] Form N–PORT would also eliminate the reporting gap between money market funds, which report portfolio investment information in an XML format on Form N–MFP, and funds engaging in similar investment strategies such as ultra-short bond funds, which would be required to file reports on Form N–PORT.

[650] *See* discussion *supra* Part II.A.2.j.

[651] Academic research indicates that the portfolio investment information funds provide to the Commission, such as on Form N–CSR and Form N–Q, has value even though the information is publicly available only after a time-lag. *See infra* notes 664–667. Just as investors can use the information to front-run or copycat/reverse engineer the investment strategy of a reporting fund, investors of funds can also use the information to identify funds for investment.

[652] Empirical research shows that fund flows are sensitive to many factors including past fund performance and investor search costs. *See, e.g.,* Erik R. Sirri and Peter Tufano, *Costly Search and Mutual Fund Flows,* The Journal of Finance, Vol. 53(5), 1589–1622 (1998); Zoran Ivković and Scott Weisbenner, *Individual Investor Mutual Fund Flows,* Journal of Financial Economics, Vol. 92, 223–237 (2009); George D Cashman, *Convenience in the Mutual Fund Industry,* Journal of Corporate Finance, Vol. 18, 1326–1336 (2012).

[653] Monthly portfolio investment information is available for approximately 45% of funds covered by The CRSP Survivor-Bias-Free US Mutual Fund Database as of the third quarter of 2014. The database covers more than 9,000 open-ended mutual funds during this time period. This estimate suggests that a large proportion of funds already report monthly portfolio investment information, although it is unclear whether monthly information is reported following each month or if information relating to several months is periodically reported at a later date. Calculated based on data from The CRSP Survivor-Bias-Free US Mutual Fund Database © 2015 Center for Research in Security Prices (CRSP®), The University of Chicago Booth School of Business.

[654] Costs related to such processes are included in the estimate below of the paperwork costs related to Form N–PORT, discussed below.

Funds would also incur costs to file reports on Form N–PORT in a structured format. Based on staff experience with other XML filings, however, these costs are expected to be minimal given the technology that would be used to structure the data.[655] XML is a widely used data format, and based on the Commission's understanding of current practices, most reporting persons and third party service providers have systems already in place to report schedules of investments and other information. Systems would be able to accommodate an alternative format such as XML without significant costs, and large-scale changes would likely not be necessary to output structured data files. In an effort to reduce some of the potential burdens on smaller entities, we are proposing to extend the compliance period to begin filing reports on Form N–PORT to thirty months after the effective date for groups of funds with assets under $1 billion.[656] The additional time could increase the ability of these investment companies to comply with the filing requirements by providing more time for system and operation changes and from observing larger fund groups.

Form N–PORT would also require the disclosure of certain information that is not currently required by the Commission. In some instances, such as in the case of increased disclosures regarding derivatives investments and information concerning the pricing and liquidity of investments, the Commission is proposing to require parallel disclosures in the fund's schedule of investments; accordingly, we expect funds would generally incur one set of costs to adhere to the reporting of new information on Form N–PORT and in its schedule of investments. For other information, such as the reporting of particular asset classifications, identification of investments and reference instruments, and risk measures, the information would be disclosed on Form N–PORT only.

To the extent that our proposal would require information to be reported that is not currently contained in fund accounting or financial reporting systems, funds would bear one-time costs to update systems to adhere to the new filing requirements. The one-time costs would depend on the extent to which investment companies currently report the information required to be disclosed. The one-time costs would also depend on whether an investment company would need to implement new systems, such as to calculate and report risk-sensitivity measures, and to integrate information maintained in separate internal systems or by third parties to comply with the new requirements. Based on staff outreach to funds, we believe that, at a minimum, funds would incur systems or licensing costs to obtain a software solution or to retain a service provider in order to report data on risk metrics, as risk metrics are not required to be reported on the fund financial statements. Our experience with and outreach to funds indicates that the types of systems funds use for warehousing and aggregating data, including data on risk metrics, varies widely.

To the extent possible, we have attempted to quantify these costs. As discussed below, we estimate that funds would incur certain annual paperwork costs associated with preparing, reviewing, and filing reports on Form N–PORT.[657] Assuming that 35% of funds (3,749 funds) would choose to license a software solution to file reports on Form N–PORT, we estimate an upper bound on the initial annual costs to funds choosing this option of $55,970 per fund[658] with annual ongoing costs of $46,745 per fund.[659] We further assume that 65% of funds (6,962 funds) would choose to retain a third-party service provider to provide data aggregation and validation services as part of the preparation and filing of reports on Form N–PORT, and we estimate an upper bound on the initial costs to funds choosing this option of $54,821 per fund[660] with annual ongoing costs of $38,746 per fund.[661] In total, we estimate that funds would incur initial annual costs of $515,537,918 and ongoing annual costs of $444,996,657.[662]

Although under the proposal there would be no change to the frequency or time-lag for which investment company security position information is publicly disclosed, the increase in the amount of publicly available information and the greater ability to analyze the information as a result of its structure may facilitate activities such as ''front-running,'' ''predatory trading,'' and ''copycatting/reverse engineering of trading strategies'' by other investors. For example, Form N–PORT would result in the disclosure of additional information, such as pertaining to derivatives and securities lending activities, which could more clearly reveal the investment strategy of reporting funds and its risk exposures. The structured format of portfolio investments disclosure could also improve the ability of other investors to obtain and aggregate the data, and identify specific funds to front-run or predatory trade. These activities could reduce the profitability from developing new investment strategies, and therefore could reduce innovation and impact competition in the fund industry.

Investors that trade ahead of funds could reduce the profitability of funds by increasing the price of fund purchases and by decreasing the price of fund sales. These activities can reduce the returns to shareholders who invest

[655] *See, e.g.,* Form PF Adopting Release, *supra* note 14, at text following n.357 (discussing the costs to advisers to private funds of filing Form PF in XML format); Money Market Fund Reform 2010 Release, *supra* note 13, at nn.341–344 and accompanying text (discussing the costs to money market funds of filing reports on Form N–MFP in XML format).

[656] *See supra* Part II.G.1.

[657] *See infra* Part V.A.1.

[658] *See infra* notes 736–739, 749 and accompanying text. This estimate is based upon the following calculations: $55,970 = $4,805 in external costs + $51,165 in internal costs ($51,165 = 15 hours × $303/hour for a senior programmer) + (39 hours × $312/hour for a senior database administrator) + (30 hours × $266/hour for a financial reporting manager) + (30 hours × $198/hour for a senior accountant) + (30 hours × $157/hour for an intermediate accountant) + (30 hours × $301/hour for a senior portfolio manager) + (24 hours × $283/hour for a compliance manager)). The hourly wage figures in this and subsequent footnotes are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[659] *See infra* notes 740, 749 and accompanying text. This estimate is based upon the following calculations: $46,745 = $4,805 in external costs + $41,940 in internal costs ($41,940 = (30 hours × $266/hour for a financial reporting manager) + (30 hours × $198/hour for a senior accountant) + (30 hours × $157/hour for an intermediate accountant) + (30 hours × $301/hour for a senior portfolio manager) + (24 hours × $283/hour for a compliance manager) + (24 hours × $312/hour for a senior database administrator)).

[660] *See infra* notes 743–745, 750 and accompanying text. This estimate is based upon the following calculations: $54,821 = $11,440 in external costs + $43,481 in internal costs ($43,481 = (30 hours × $303/hour for a senior programmer) + (46.5 hours × $312/hour for a senior database administrator) + (16.5 hours × $266/hour for a financial reporting manager) + (16.5 hours × $198/hour for a senior accountant) + (16.5 hours × $157/hour for an intermediate accountant) + (16.5 hours × $301/hour for a senior portfolio manager) + (16.5 hours × $283/hour for a compliance manager)).

[661] *See infra* notes 746, 750 and accompanying text. This estimate is based upon the following calculations: $38,746 = $11,440 in external costs + $27,306 in internal costs ($27,306 = (18 hours × $266/hour for a financial reporting manager) + (18 hours × $198/hour for a senior accountant) + (18 hours × $157/hour for an intermediate accountant) + (18 hours × $301/hour for a senior portfolio manager) + (18 hours × $283/hour for a compliance manager) + (18 hours × $312/hour for a senior database administrator)).

[662] These estimates are based upon the following calculations: $591,495,332 = (3,749 funds × $55,970 per fund) + (6,962 funds × $54,821 per fund). $444,996,657 = (3,749 funds × $46,745 per fund) + (6,962 funds × $38,746 per fund).

in actively managed funds, making actively managed funds less attractive investment options.[663] Portfolio investment information, along with flow information, can also create opportunities for other market participants to front-run the sales of funds that experience large outflows and the purchases of funds that experience large inflows,[664] or create opportunities for other market participants to engage in predatory trading that could lead to further fund distress.[665]

A trading strategy that follows the publicly reported holdings of actively managed funds can also earn similar if not higher after expense returns.[666] An implication of this finding is that the public disclosure of portfolio investment information could induce free-riding by investors that use the information and reduce the potential benefit from developing new investment strategies and engaging in proprietary market research. The effect of free-riding would reduce the ability of an investment companies with longer investment horizons to benefit from researching investment opportunities and developing new strategies more so than investment companies with shorter investment horizons because of the increased likelihood that the disclosed portfolio investment information would reveal their long-term investment strategies.[667]

A comparison can be made between the economic effects from the introduction of Form N–PORT and the economic effects from the introduction of Form N–Q in May 2004 which increased the reporting frequency of portfolio investment information to the Commission from semiannual to quarterly. The introduction of Form N–Q resulted in an increase in the amount of information that could have been acted upon by other investors. For example, evidence indicates that the ability of copycat funds to outperform actively managed funds increased after the introduction of Form N–Q,[668] and additional evidence indicates that the performance of those funds with better previous performance or that invest in low-information stocks decreased following the introduction of Form N–Q.[669] The increase in the frequency of portfolio investment information as a result of Form N–Q resulted in an increase in the amount of portfolio investment information available. Although Form N–PORT would not increase the frequency of public disclosure, Form N–PORT would increase the amount of portfolio investment information available. In addition, Form N–PORT, unlike Form N–Q, would also increase the accessibility of the information as a result of its structured format.

We have endeavored to mitigate the potential for front-running, predatory trading, and copycatting/reverse engineering by other market participants by proposing to maintain the status quo for the frequency and timing of disclosure of publicly available portfolio information. In addition, much, though not all, of the information that Form N–PORT would require, is already disclosed by reporting funds on Form N–CSR and Form N–Q.[670] The additional information and the structure of the information that would be required under Form N–PORT, however, would improve the ability of investors to obtain, aggregate, and analyze all fund investments. Thus, Form N–PORT could negatively affect actively managed funds by increasing the ability of other investors to copycat or front-run investment strategies, and in particular could negatively affect those funds that would have more additional information disclosed, such as funds that use derivatives as part of their investment strategies. The Commission has considered the needs of the Commission, investors, and other users of portfolio investment information and the potential that other investors may use the information to the detriment of the reporting funds.

Form N–PORT would require the disclosure of information that is currently nonpublic that could result in additional costs to funds and market participants. For example, Form N–PORT would require a fund to report the identities and weights of each of the individual components comprising the reference instruments underlying the fund's derivative investments, unless the reference instrument is an index whose components are publicly available on a Web site and are updated on that Web site no less frequently than quarterly, or the notional amount of the derivative represents 1% or less of the net asset value of the fund.[671] We understand that many indices used as reference instruments in derivative investments are proprietary to index providers, and are subject to licensing agreements between the index provider and the fund. Disclosing the components of a non-public index could result in costs to both the index provider, whose proprietary indexing strategy could be imitated, and the fund, whose investments could be front-run.[672] Moreover, disclosing the underlying components of such an index could subject the fund to one-time costs associated with renegotiating licensing agreements and the ongoing payment of fees in order to obtain the rights to disclose the components of the index.[673] Additionally, the increased transparency in proprietary indexes could ultimately decrease the incentives of index providers to license the use of such indices to funds as well as fund demand for securities products that incorporate these indices. Likewise, Form N–PORT, as well as the proposed amendments to regulation S–X, would require funds to report certain information regarding fees and financing terms for certain derivatives contracts, particularly OTC swaps, which are not currently required to be publicly disclosed. The increased transparency could increase the competition among swap and security-based swap dealers to offer favorable fees and financing terms, as the fees and financing terms offered to one fund

[663] *See, e.g.,*

[664] *See, e.g.,* Joshua Coval and Erik Stafford, *Asset Fire Sales (and Purchases) in Equity Markets,* Journal of Financial Economics, Vol. 86, 479–512 (2007).

[665] *See, e.g.,* Markus K. Brunnermeier and Lasse Heje Pedersen, *Predatory Trading,* The Journal of Finance, Vol. 60(4), 1825–1864 (2005).

[666] *See, e.g.,* Mary Margaret Frank, James M. Poterba, Douglas A. Shackelford, and John B. Shoven, *Copycat Funds: Information Disclosure Regulation and the Returns to Active Management in the Mutual Fund Industry,* The Journal of Law and Economics, Vol. 47(2), 515–541 (2004).

[667] *See, e.g.,* Vikas Agarwal, Kevin Andrew Mullaly, Yuehua Tang, and Baozhong Yang, *Mandatory Portfolio Disclosure, Stock Liquidity, and Mutual Fund Performance,* The Journal of Finance, (''Agarwal *et al''*), forthcoming (*available at http://onlinelibrary.wiley.com/doi/10.1111/jofi.12245/pdf*); Marno Verbeek and Yu Wang, *Better than the Original? The Relative Success of Copycat Funds,* Journal of Banking and Finance, Vol. 37, 3454–3471 (2013) (''Verbeek and Wang'').

[668] *See* Verbeek and Wang, *supra* note 667.

[669] *See* Agarwal *et al., supra* note 667. Low information stocks include stocks with smaller market capitalization, less liquidity, and less analyst coverage. The authors also find that the liquidity of stocks with higher fund ownership increased following the introduction of Form N–Q. Although the increase in liquidity would benefit investors by reducing trading costs, this benefit stems as a result of the costly disclosure of potential investment opportunities.

[670] *See supra* note 27 and accompanying text.

[671] *See supra* note 123 and accompanying text.

[672] *See* Antti Petajisto, *The Index Premium and its Hidden Cost for Index Funds,* Journal of Empirical Finance, Vol. 18, 271–288 (2011). Petajisto finds evidence that mechanically induced demand changes to demand, such as index fund rebalancing, can result in price effects. If predictable, then other investors could take advantage of the changes to the proprietary indexes by front-running future trades.

[673] The Commission does not have information available to provide a reliable estimate of the increased costs of such licensing agreements because funds are currently not required to disclose the agreements or the components of the index.

would be known to other funds negotiating the terms of such contracts.

As discussed above, although our proposal would rescind Form N–Q, it would also require funds to file portfolio schedules prepared in accordance with §§ 210.12–12 to 12–14 of Regulation S–X for the fund's first and third fiscal quarters, by attaching those schedules as attachments to its reports on Form N–PORT for those reporting periods. Although the schedules attached to Form N–PORT would be largely identical to the information currently reported on Form N–Q, under our proposal funds would have 30 days to prepare and file the attachments to Form N–PORT, as opposed to the 60 days that funds currently have to prepare, certify, and file reports on Form N–Q. The faster turnaround time may result in increased costs to funds, but we expect these costs may be mitigated by removing the requirement that funds certify this information.

Rescission of Form N–Q would also eliminate certifications of the accuracy of the portfolio schedules reported for the first and third fiscal quarters, and would also result in funds providing certifications regarding their disclosure controls and procedures and internal control over financial reporting semi-annually rather than quarterly. To the extent that such certifications improve the accuracy of the data reported, removing such certifications could have negative effects on the quality of the data reported. Likewise, if the reduced frequency of the certifications affects the process by which controls and procedures are assessed, requiring such certifications semi-annually rather than quarterly could reduce the effectiveness of the fund's disclosure controls and procedures and internal control over financial reporting are assessed. However, we expect such effects, if any, to be minimal because certifying officers would continue to certify portfolio holdings for the fund's second and fourth fiscal quarters and would further provide semi-annual certifications concerning disclosure controls and procedures and internal control over financial reporting that would cover the entire year.

C. Amendments to Regulation S–X

a. Introduction and Economic Baseline

The proposed amendments to Regulation S–X would require new, standardized disclosures regarding fund holdings in open futures contracts, open forward foreign currency contracts, and open swap contracts, and additional disclosures regarding fund holdings of written and purchased option contracts; update the disclosures for other investments with conforming amendments, as well as reorganize the order in which some investments are presented; and amend the rules regarding the general form and content of fund financial statements, including requiring prominent placement of investments in derivative investments in a fund's financial statements, rather than allowing such schedules to be placed in the notes to the financial statements.[674] Finally, our amendments would require a new disclosure in the notes to the financial statements relating to a fund's securities lending activities.

The current set of requirements under Regulation S–X, as well as the current practice of many funds [675] to voluntarily disclose additional portfolio investment information in fund financial statements and to follow industry guidance and other industry practices, is the baseline from which we discuss the economic effects of amendments to Regulation S–X.[676] The parties that could be affected by the proposed amendments to Regulation S–X include funds that file or would file reports with the Commission and update or would update registration statements on file with the Commission, the Commission, current and future investors of investment companies, and other market participants that could be affected by the increase in the disclosure of portfolio investment information.

Regulation S–X prescribes the form and content of financial statements required in shareholder reports and registration updates. Today, Regulation S–X does not prescribe specific information to be disclosed under Regulation S–X for many investments in derivatives, which could result in inconsistent reporting between funds and reduced transparency of the information reported, and in some cases could result in insufficient information concerning the terms and underlying reference assets of derivatives to allow investors to understand the investment.

Many of the economic effects from the proposed amendments to Regulation S–X would largely result from an increase in investor ability to make investment decisions dependent on more transparent disclosure in shareholder reports and in the financial statements of registration statements. As discussed above, the economic effects would depend on the extent to which the portfolios and investment practices of investment companies become more transparent, and the ability of investors, and in particular individual investors, to utilize shareholder reports to make investment decisions. The economic effects would also depend on the extent to which investment companies already voluntarily provide disclosures that would be required by the proposed amendments. As a result of these factors, some of which are difficult to quantify or unquantifiable, the discussion below is largely qualitative although certain one-time and ongoing costs associated with the proposed amendments are quantified below.

b. Benefits

The amendments to Regulation S–X could benefit investors by updating the information funds disclose in the financial statements of registration statements and shareholder reports. Our proposed amendments could benefit investors through increased transparency into a fund's investments, particularly for individual investors that we would not expect to use the information in Form N–PORT because of its structured format. In particular, the additional information that Regulation S–X would require for open option contracts both written and purchased, open futures contracts, open forward foreign currency contracts, open swap contracts, and other investments would increase the transparency of the fund's portfolio investments and risk exposures.

Other amendments would also improve the transparency into the fund's investments. For example, we are proposing to require funds to identify each investment whose fair value was determined using significant unobservable inputs.[677] Likewise, we

[674] *See supra* Part II.C. As discussed above, rule 12–13 of Regulation S–X requires limited generic information on the fund's investments other than securities. To address issues of inconsistent disclosures and lack of transparency, our proposal would standardize a fund's disclosures of open futures contacts, foreign currency forward contracts, and swaps. In addition, while many of the proposed amendments to Regulation S–X are similar to the proposed disclosures in Form N–PORT (*e.g.*. enhanced derivatives disclosures), the amendments to Regulation S–X would be investor-friendly, as the financial statements and schedule of investments are human-readable (as opposed to proposed Form N–PORT's structured data).

[675] As we discussed *supra* note 180, while ''funds'' are defined in the preamble as registered investment companies other than face amount certificate companies and any separate series thereof—*i.e.,* management companies and UITs, we note that our proposed amendments to Regulation S–X apply to both registered investment companies and BDCs. *See supra* notes 264 and 265. Therefore, when discussing fund reporting requirements in the context of our proposed amendments to Regulation S–X, we are also including changes to the reporting requirements for BDCs.

[676] *See* discussion *supra* Part II.C.

[677] *See, e.g.,* proposed rule 12–13, n.7 of Regulation S–X; *see also* proposed rules 12–13A,

are proposing a requirement that funds identify illiquid securities,[678] as well as to separately identify investments that are restricted.[679] As discussed above, we believe that the effect of these proposed amendments would be to increase transparency into the liquidity of investments and help investors better understand how fund investments are valued.[680]

In certain circumstances, we are also requiring funds to separately list each of the investments comprising the referenced assets underlying swap[681] and option contracts.[682] We believe that increased disclosure of the investments underlying a referenced asset could benefit investors by making it easier for them to understand and evaluate the specific risk exposures of a fund from certain swap and option contracts.

We also believe that our proposed changes to the form and content of financial statements in Article 6 of Regulation S–X will similarly benefit investors, particularly individual investors, through greater transparency in a fund's financial statements. For example, we are proposing to require funds to disclose their investments in derivatives in the financial statements, as opposed to in the notes to the financial statements.[683] To the extent funds do not do this already, we believe that more prominent placement of investments in derivatives in the financial statements (immediately following the schedules for investments in securities of unaffiliated investors and securities sold short), would benefit investors through increased visibility of fund investments in derivatives. Likewise, we are proposing to eliminate the financial statement disclosure of ''Total investments'' on the balance sheet under ''Assets''.[684] As we discuss in more detail in Part II.C.5, recognizing that investments in derivatives could be presented under both assets and liabilities on the balance sheet, eliminating this disclosure would benefit investors by providing a more accurate representation of the effect of these investments on a fund's balance sheet.[685]

Other parties that would be affected by the amendments to Regulation S–X include the Commission and other market participants that would use shareholder reports and registration statements to obtain fund information. Although the amendments to Regulation S–X would primarily benefit investors and particularly individual investors, the Commission and other market participants could use the information reported in a fund's shareholder report such as the proposed notes to financial statement relating to income and expenses from securities lending activities, as well as the terms governing the compensation of securities lending agents, and would benefit from an increase in transparency into a fund's investments and financial statements during examinations. Commission staff believes that a large number of funds currently adhere to industry practices from which the amendments to Regulation S–X are derived. The proposal to amend Regulation S–X, therefore, would effectively standardize the information that all funds disclose in financial statements, and make the schedule of investments and financial statement disclosures consistent and thus more comparable across funds. Similar to the introduction of Form N–PORT, the amendments to Regulation S–X, to the extent that it increases the transparency of shareholder reports, could improve the ability of investors, particularly individual investors, to differentiate investment companies and make investment decisions. An increase in the ability of investors to differentiate investment companies and allocate capital across reporting funds closer to their risk preferences would increase the competition among funds for investor capital. In addition, by improving the ability of investors to understand investment risks and hence their ability to allocate capital across funds and other investments more efficiently, the introduction of Form N–PORT could also promote capital formation.

c. Costs

We believe that registrants on average will likely incur minimal costs from our proposed amendments to Regulation S–X because, as discussed above, based upon staff experience, we believe that a majority of funds are already providing the information that would be required by the proposed amendments to Regulation S–X in their financial statements.[686] The costs to a fund of complying with the proposed rules would depend upon the extent to which funds are already making such disclosures voluntarily. As discussed above, the Commission is proposing to require parallel disclosures in Form N–PORT, and funds would incur one set of costs, both one-time and ongoing, to obtain the information that would be disclosed in Form N–PORT and in shareholder reports and registration statements. In addition, other costs that relate to the disclosure of portfolio investment information, including the ability of other investors to front-run or copycat the investment strategies of funds, would primarily relate to Form N–PORT because of the additional ability of other interested third-parties and market participants to efficiently obtain, aggregate, and analyze the information as a result of its structured format as compared to the non-structured format of reported portfolio investment information in shareholder reports.

For example, similar to our disclosures proposed in Form N–PORT,[687] proposed rules 12–13 and 12–13C of Regulation S–X would, under certain circumstances, require funds to list separately each of the investments comprising referenced assets underlying swap[688] and option contracts,[689] such as when the referenced asset is an index whose components are not periodically publicly available on a Web site. We understand that many indexes are the proprietary property of an index provider, and may be subject to licensing agreements between the index provider and the fund. Disclosing the underlying components of an index could subject the fund to costs associated with negotiating or renegotiating licensing agreements in order to publicly disclose the components of the index. The Commission does not have information available to provide a reliable estimate of the increased costs of licensing agreements because funds currently are not required to disclose the agreements or the components of the index. In addition, disclosing the components of a non-public index may include costs to both the index provider, whose proprietary indexing strategy could be

n.5; 12–13B, n.3; 12–13C, n.6; and 12–13D, n.7 of Regulation S–X.

[678] *See, e.g.,* proposed rule 12–13, n.8 of Regulation S–X; *see also* proposed rules 12–13A, n.6; 12–13B, n.4; 12–13C, n.7; and 12–13D, n.8 of Regulation S–X.

[679] *See* proposed rule 12–13, n.6 of Regulation S–X; *see also* proposed rules 12–13A, n.4; 12–13B, n.2; 12–13C, n.5; and 12–13D, n.6 of Regulation S–X.

[680] *See* Part II.C.2.a

[681] *See* proposed rule 12–13C, n.3 of Regulation S–X; *see also* discussion *supra* Part II.C.2.d.

[682] *See* proposed rule 12–13, n.3 of Regulation S–X; *see also* discussion *supra* Part II.C.2.a.

[683] *See* proposed rule 6–10(a) of Regulation S–X; *see also* discussion *supra* Part II.C.5.

[684] *See* proposed rule 6–04 of Regulation S–X; *see also* discussion *supra* Part II.C.5.

[685] *See id.*

[686] In order to reduce burdens on funds, we also endeavored, where appropriate, to require consistent derivatives holdings disclosures between Form N–PORT and Regulation S–X.

[687] *See* Item C.11.c.iii and Item C.11.f.i of proposed Form N–PORT.

[688] *See* proposed rule 12–13C, n.3 of Regulation S–X; *see also* discussion *supra* Part II.C.2.d.

[689] *See* proposed rule 12–13, n.3 of Regulation S–X.; *see also* discussion *supra* Part II.C.2.a.

reverse engineered, and the fund, whose rebalancing trades could be front-run.[690] However, the underlying components may be more accessible in Form N–PORT as a result of its structured format as compared to the non-structured format of the information in shareholder reports, and the costs of disclosing the information would therefore primarily relate to Form N–PORT.

As another example, the proposal includes an instruction to disclose the variable financing rates for swaps which pay or receive financing payments.[691] It is our understanding that variable financing rates for swap contracts are often commercial terms of a deal that are negotiated between the fund and the counterparty to the swap. Disclosure of favorable variable financing rates could result in costs to the fund in the form of less favorable variable financing rates for future transactions, but may also improve the ability of other funds to negotiate more favorable terms. Similar to the introduction of Form N–PORT, the increased transparency could increase the competition among swap and security-based swap dealers to offer favorable fees and financing terms. As with the disclosure of the components of an index, we believe that the majority of the costs associated with disclosures of variable financing rates, including the increase in competition for favorable fees and terms, would instead derive from the similar requirements in proposed Form N–PORT.[692]

Funds would incur one-time and ongoing costs to comply with the amendments to Regulation S–X in addition to the costs attributable to new Form N–PORT. For the amendments to Regulation S–X, funds would incur one-time and ongoing costs to obtain the additional information that would be disclosed on shareholder reports and registration statements, and that would also not be disclosed on Form N–PORT; and funds would also incur one-time costs to format for presentation all additional information that would be disclosed on shareholder reports and registration statements. In addition, our proposal would require funds, to the extent they do not already do so, to present the schedules associated with rules 12–13 through 12–13D and 12–14 in the financial statements, as opposed to in the notes to the financial statements.[693] Funds that do not currently present their schedule of investments in this manner would incur a one-time cost of modifying the presentation of their financial statements to conform to our proposal.

To the extent possible, we have attempted to quantify these costs. As discussed below, we estimate that management investment companies would incur certain one-time additional paperwork and other costs associated with preparing, reviewing, and filing semi-annual reports in accordance with our proposed amendments to Regulation S–X in the amount of approximately $2,417 per fund[694] and $27,142,910 in the aggregate.[695] We similarly estimate that management investment companies would incur certain ongoing paperwork and other costs associated with preparing, reviewing, and filing semi-annual reports in accordance with our proposed amendments to Regulation S–X in the amount of approximately $806 per fund[696] and $9,051,380 in the aggregate.[697] Likewise, we estimate that UITs would incur certain one-time additional paperwork and other costs associated with preparing, reviewing, and filing semi-annual reports in accordance with our proposed amendments to Regulation S–X in the amount of approximately $2,417 per fund[698] and $1,757,159 in the aggregate.[699] We similarly estimate that UITs would incur certain ongoing paperwork and other costs associated with preparing, reviewing, and filing semi-annual reports in accordance with our proposed amendments to Regulation S–X in the amount of approximately $806 per fund[700] and $585,962 in the aggregate.[701]

D. Option for Web Site Transmission of Shareholder Reports

a. Introduction and Economic Baseline

As discussed above, the Commission is proposing new rule 30e–3 under the Investment Company Act, which would permit, but not require, a fund to satisfy requirements under the Act and rules thereunder to transmit reports to shareholders if the fund meets certain requirements. These requirements include making the reports and certain other materials accessible on its Web site and periodically notifying investors of the materials' availability.[702] Funds that do not maintain Web sites or that otherwise wish to transmit shareholder reports in paper or pursuant the Commission's existing electronic delivery guidance would continue to be able to satisfy the transmission requirements by those transmission methods.

The current set of requirements under which funds transmit shareholder reports to investors is the baseline from which we will discuss the economic effects of proposed rule 30e–3. The baseline also includes the current practice of many funds to make some or all of these reports—or other materials listing portfolio investment information such as reports on Form N–Q—accessible on their own Web sites. The baseline also reflects that some funds transmit these materials electronically today, pursuant to Commission guidance that permits such a transmission method on a shareholder-by-shareholder ''opt in'' basis, provided that certain other conditions are met.[703]

[690] *See supra* note 672 and accompanying and following text.

[691] *See* proposed rule 12–13C, n.3 of Regulation S–X.

[692] *See* Item C.11.f.i of proposed Form N–PORT; *see also* discussion *supra* Part II.A.2.g.iv.

[693] *See* proposed rule 6–10 of Regulation S–X; *see also* discussion *supra* Part II.C.5.

[694] *See infra* note 778 and accompanying text. The estimate is based upon the following calculations: ($2,417 = ($707 = 4.5 hours × $157/hour for an Intermediate Accountant) + ($1,710 = 4.5 hours × $380/hour for an Attorney)). The hourly wage figures in this and subsequent footnotes are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[695] *See infra* note 777 and accompanying text. These estimates are based upon the following calculations: $27,142,910 = (11,230 funds × $2,417 per fund).

[696] *See infra* note 779 and accompanying text. The estimate is based upon the following calculations: ($806 = ($236 = 1.5 hours × $157/hour for an Intermediate Accountant) + ($570 = 1.5 hours × $380/hour for an Attorney). The hourly wage figures in this and subsequent footnotes are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[697] *See infra* note 777 and accompanying text. These estimates are based upon the following calculations: $9,051,380 = (11,230 funds × $806 per fund).

[698] *See infra* note 790 and accompanying text. The estimate is based upon the following calculations: ($2,417 = ($707 = 4.5 hours × $157/hour for an Intermediate Accountant) + ($1,710 = 4.5 hours × $380/hour for an Attorney)). The hourly wage figures in this and subsequent footnotes are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[699] *See infra* note 789 and accompanying text. These estimates are based upon the following calculations: $1,757,159 = (727 UITs × $2,417 per UIT).

[700] *See infra* note 791 and accompanying text. The estimate is based upon the following calculations: ($806 = ($236 = 1.5 hours × $157/hour for an Intermediate Accountant) + ($570 = 1.5 hours × $380/hour for an Attorney). The hourly wage figures in this and subsequent footnotes are from SIFMA's Management & Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[701] *See infra* note 789 and accompanying text. These estimates are based upon the following calculations: $585,962 = (727 UITs × $806 per UIT).

[702] *See supra* Part II.D.

[703] *See supra* note 289 and accompanying text.

The parties that could be affected by new rule 30e–3 are funds that currently are or would be required to transmit shareholder reports under rule 30e–1 or 30e–2, and other current and future users of fund portfolio investment information, including investors and third-party information providers.

Today, most funds are required to disclose their portfolio holdings on a quarterly basis, with holdings as of the end of the second and fourth fiscal quarters disclosed in the fund's semiannual and annual reports, respectively, and holdings as of the end of the first and third fiscal quarters disclosed in reports on Form N–Q. Funds are generally required to transmit reports to shareholders on a semiannual basis, and these reports have historically been paper copies mailed to shareholders.[704] As of December 31, 2014, about 11,957 funds could rely on proposed rule 30e–3 if it were in effect.[705] As discussed in detail below, we estimate that these funds—and their shareholders—bear aggregate annual paperwork expenses of about $616 million in connection with the required preparation and transmission of shareholder reports (or about $51,539 for each portfolio).[706] Of those estimated expenses, we estimate that about $116 million are associated with the printing and mailing of shareholder reports.[707] Reports on Form N–Q are available on EDGAR.[708] Some funds choose to make some or all of these reports—or other materials listing portfolio holdings at particular times—accessible on their own Web sites, but funds do not do so uniformly.

As technology has developed, so has the need to modernize the manner in which shareholder reports and portfolio investment information are delivered to investors. As discussed above, recent investor testing and Internet usage trends have highlighted that investor preferences about electronic delivery of information have evolved, and that many investors would prefer enhanced availability of fund information on the Internet.[709] In addition, investor testing has suggested that fund investors are much more likely to seek out fund information on the fund's own Web site than they are to seek it out on EDGAR.[710] Moreover, searching for and retrieving individual reports on Form N–Q on EDGAR may, in many cases, be more difficult than navigating a Web site with which the investor is likely to be already familiar. We therefore believe that many investors may not view the information that is available in reports on Form N–Q. Shareholders also pay, *pro rata,* the expenses associated with printing and mailing reports by default to shareholders, who may nonetheless prefer electronic transmission.

The economic effects of proposed rule 30e–3 are dependent on a number of factors, including the number of funds that would rely on the rule, the number of funds which currently rely on Commission guidance to transmit shareholder reports electronically, and the extent to which shareholders become more aware of the availability of portfolio investment information, view the information, and use the information to make investment decisions. Due to the optionality of the rule, we would expect that, in general, each fund would only rely on the rule if the benefits to that fund exceeded the costs. We have provided estimates of the costs associated with printing and mailing shareholder reports. However, information that would allow the Commission to quantify the other economic effects of the rule, such as how the availability of shareholder reports online will affect investors' use of the information, is not known to us.

Funds can transmit shareholder reports electronically today pursuant to Commission guidance. However, funds wishing to rely on this Commission guidance must satisfy certain conditions, including that shareholders agree to electronic transmission on a shareholder-by-shareholder ''opt in'' basis. We recognize that express shareholder consent can be difficult to obtain even for practices that many shareholders may prefer.[711] The number of funds that transmit shareholder reports electronically today is unclear to us, because funds are not required to report their reliance on the Commission's electronic delivery guidance or the number of investors that have given opt-in consent to receive electronic delivery. Commission staff is also not aware of information that describes the prevalence of electronic delivery of disclosure documents and other information. In addition, although survey evidence describes certain investor preferences regarding electronic delivery of shareholder report information,[712] we are not aware of information that would describe the effect of this rule on investor ability to choose between funds and allocate capital across all investments. For these reasons, much of the discussion below is qualitative in nature.

b. Benefits

The proposed rule, to the extent that it is relied upon by funds and alters the current transmission of reports, would increase the accessibility of portfolio investment information including information from the first and third fiscal quarters that might otherwise be only available on EDGAR. The proposed rule would thereby increase the awareness of fund shareholders of the availability of portfolio investment information, and therefore also increase the likelihood that fund investors review portfolio investment information. The proposed rule would also increase the likelihood that fund shareholders view the portfolio

[704] *See supra* note 288 and accompanying text.

[705] *See infra* note 799 and accompanying text.

[706] As discussed below, we previously estimated 994,960 aggregate annual internal burden hours associated with rules 30e–1 and 30e–2. *See infra* notes 853 and 855 (estimating 903,000 hours for rule 30e–1 and 91,960 hours for rule 30e–2). The Commission estimates the wage rate associated with these burden hours based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figure is based on published rates for attorneys and intermediate accountants, modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding an effective hourly rate of $268.50. This estimate is based upon the following calculation: ($380 per hour for Attorneys × 0.5) + ($157 per hour for Intermediate Accountants × 0.5) = $268.50. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013. Based on the Commission's estimate of 994,960 burden hours per year and the estimated wage rate of about $268.50 per hour, the total annual paperwork expenses for funds associated with the internal hour burden of rules 30e–1 and 30e–2 are approximately $267,146,760. This estimate is based upon the following calculation: 994,960 hours × $268.50 per hour = $267,146,760. We have also estimated aggregate annual external cost burden of $349,105,750 associated with rules 30e–1 and 30e–2. *See infra* notes 854 and 856 (estimating $333,905,750 for rule 30e–1 and $15,200,000 for rule 30e–2). Therefore, we estimate that the total estimated aggregate annual paperwork expenses associated with rules 30e–1 and 30e–2 are $616,252,510. This estimate is based upon the following calculation: $267,146,760 expenses associated with internal burden hours + $349,105,750 external cost burden = $616,252,510. Using this estimate and our prior estimate of 11,957 funds, we estimate that annual paperwork expenses associated with rules 30e–1 and 30e–2 are about $51,539 on a per-portfolio basis. This estimate is based upon the following calculation: $616,252,510 aggregate annual paperwork expenses ÷ 11,957 funds = $51,539.

[707] We estimate that one-third of the external costs attributed to rules 30e–1 and 30e–2 relate to printing and mailing expenses. *See infra* notes 857–858. Therefore, we estimate aggregate annual printing and mailings costs associated with those rules of about $116,368,583. This estimate is based upon the following calculation: $349,105,750 aggregate external cost burden ÷ 3 = $116,368,583.33.

[708] *See supra* notes 637–642 and accompanying text.

[709] *See supra* note 292 and accompanying text.

[710] *See supra* note 292 and accompanying text.

[711] *See* Investment Company Act Release No. 22884 (Nov. 13, 1997) [62 FR 61933, 61935 (Nov. 20, 1997)] (concerning implied consent to delivery of disclosure documents to households).

[712] *See supra* note 292 and accompanying text.

investment information in their preferred format, and thereby increase their use of the information to make investment decisions.[713] Similar to the introduction of Form N–PORT and the amendments to Regulation S–X, greater investor use of shareholder reports could result in more informed investment decisions, particularly for individual investors, and an increase in competition among funds for investor capital. A greater understanding of the investment strategy of the fund, its portfolio composition, and its investment risks could also result in a more efficient allocation of capital across funds and other investments, and could thereby promote capital formation.

Funds and their shareholders would also benefit from a reduction in expenses related to the physical distribution of shareholder reports. Although the proposed rule would not have much of an effect, if any, on the expenses associated with the preparation of reports, we expect that the expenses associated with printing and mailing of shareholder reports would be substantially reduced if the rule is adopted. As discussed in detail below, of the estimated $116 million in annual paperwork expenses associated with the printing and mailing of shareholder reports,[714] we estimate that about $105 million would be eliminated if the proposed rule were adopted.[715] The actual reduction in paperwork expenses would depend, in part, upon reliance on the proposed rule by funds and the extent of shareholder consent to electronic transmission of reports, each of which is uncertain.

The expected benefits would not necessarily be distributed uniformly across funds and across a fund's shareholders. Some funds already transmit materials electronically to some or all of their shareholders, and these funds would experience fewer benefits from electing to rely on the proposed rule. Some funds, such as funds that do not currently maintain Web sites, may choose not to rely on the proposed rule.

c. Costs

Although we believe that permitting electronic delivery ''by default'' would improve overall alignment of transmission method with investor preferences,[716] there may be some investors who would prefer to receive print copies that do not notify their fund of that preference and may be others that would benefit from print copies even though they prefer electronic transmission. These investors, depending on their ability and preference to access shareholder reports and portfolio investment information electronically, could overlook electronic deliveries or otherwise experience a reduction in their ability to access portfolio investment information, and could result in a decrease in their ability to efficiently allocate capital across funds and other investments. We have endeavored, through the consent and notice provisions of the proposed rule, to mitigate the potential costs associated with this possibility by requiring a fund wishing to rely on the proposed rule to alert an investor before beginning to transmit reports electronically and to notify the investor around the time each report is made accessible on the Web site. Although, as discussed above, an increase in investor use of shareholder reports could increase competition among funds for investor capital, funds that do not rely on the rule could be placed at a competitive disadvantage depending on whether investors choose funds based on their preference for Web site transmission.

As discussed above, reliance on proposed rule 30e–3 would be optional, and funds that rely on the rule would incur costs to adhere to the rule. Relying funds would incur paperwork expenses associated with satisfying the conditions of the proposed rule, such as making the materials publicly accessible; preparing, reviewing, and transmitting a notice to shareholders; soliciting the consent of each shareholder by sending them an initial statement; and printing and mailing shareholder reports and other materials upon request. As discussed in detail below, we estimate that these paperwork expenses would be, in the aggregate, about $32 million each year.[717] Relying funds would also incur

[713] *See supra* notes 291–296 and accompanying text (concerning investor Internet usage statistics and transmission method preferences).

[714] *See supra* notes 706–707 and accompanying text.

[715] We estimate that about 90% of the $116,368,583 in paperwork expenses associated with printing and mailing shareholder reports pursuant to rules 30e–1 and 30e–2 would be eliminated if rule 30e–3 were adopted. *See supra* note 707; *infra* notes 857–858. Therefore, we estimate that about $104,731,725 of annual paperwork expenses associated with rules 30e–1 and 30e–2 would be eliminated if rule 30e–3 were adopted. This estimate is based upon the following calculation: $116,368,583 in aggregate annual printing and mailing expenses × 0.90 proportion eliminated = $104,731,724.70 eliminated annual printing and mailing expenses.

[716] *See supra* note 292. We believe that the change from requiring shareholders to ''opt-in'' if they wish to receive electronic instead of print copies of shareholder reports, to—as under the proposed rule—''opt-out'' if they wish to receive print copies instead of electronic copies would increase the ability of funds to transmit shareholder reports electronically. Although the preferences of shareholders would not change dependent on the form of consent, behavioral economic theory and empirical evidence suggest the likelihood that shareholders receive electronic transmissions of fund reports would be greater under opt-out consent rather than opt-in consent. *See, e.g.,* Richard H. Thaler and Shlomo Bernatzi, *Save More Tomorrow™: Using Behavioral Economics to Increase Employee Saving,* Journal of Political Economy, Vol. 112:1, S164–S187 (2004); Richard H. Thaler and Cass R. Sunstein, *Libertarian Paternalism,* The American Economic Review, Vol. 93:2, 175–179 (2003). Thaler and Sunstein argue that a ''status quo'' bias results in the continuance of existing arrangements even if better options are available. The authors illustrate their argument with higher rates of initial enrollments in employee savings plans when enrollment is automatic as compared to when employees must first complete an enrollment form.

[717] Below, we estimate that 10,761 funds would choose to rely on proposed rule 30e–3. *See infra* note 799 and accompanying text. Below, we estimate that funds that elect to rely on rule 30e–3 will, on average, incur 0.76 burden hours per fund per year to comply with the Web site accessibility conditions of rule 30e–3. *See infra* note 808 and accompanying text. Therefore, in the aggregate, we estimate that such funds would incur about 8,178 burden hours to comply with these requirements. This estimate is based upon the following calculation: 0.76 burden hours per fund × 10,761 funds expected to rely on rule 30e–3 = 8,178.36 hours. The Commission estimates the wage rate associated with these burden hours based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figure is based on published rates for senior programmers, modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding an effective hourly rate of $303. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013. Based on the Commission's estimate of 8,178 burden hours per year and the estimated wage rate of about $303 per hour, the total annual paperwork expenses for funds associated with the internal hour burden imposed by the Web site accessibility conditions of rule 30e–3 are approximately $2,477,934. This estimate is based upon the following calculation: 8,178 hours × $303 per hour = $2,477,934.

Below, we also estimate that funds that elect to rely on proposed rule 30e–3 would incur average annual external costs of $500 per fund in connection with the requirement to provide a complete shareholder report upon request of a shareholder. *See infra* note 816 and accompanying text. We estimate that aggregate external costs to funds in connection with this requirement would therefore be about $5,380,500. This estimate is based upon the following calculation: $500 per fund × 10,761 funds = $5,380,500.

Below, we also estimate that funds that elect to rely on proposed rule 30e–3 would incur about 0.38 annual burden hours in connection with the initial statement conditions of the rule. *See infra* note 829 and accompanying text. Therefore, in the aggregate, we estimate that such funds would incur about 4,089 burden hours to comply with these requirements. This estimate is based upon the following calculation: 0.38 burden hours per fund × 10,761 funds expected to rely on rule 30e–3 = 4,089.18 hours. The Commission estimates the wage rate associated with these burden hours based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association. The estimated wage figure is based on published rates for compliance attorneys, modified to account for an 1,800-hour work-year

initial one-time costs associated with establishing systems and procedures for compliance. We estimate that these expenses would be, in the aggregate, about $16 million.[718]

We have endeavored to mitigate the costs associated with compliance with the rule's conditions by, for example, requiring that the required schedule of portfolio investment information as of the end of the first and third fiscal quarters be presented consistent with the reporting requirements of Regulation S–X. Most funds would have established procedures in place to prepare and review such disclosures and would be familiar with the disclosure requirements. Because reliance on the proposed rule would be optional, a particular fund would not be expected to rely on the proposed rule if the costs of the rule to that fund would exceed its benefits. Funds that do not rely on the proposed rule would therefore not incur compliance costs.

E. Form N–CEN and Rescission of Form N–SAR

a. Introduction and Economic Baseline

Form N–CEN, as proposed, would require funds to report census information to the Commission on an annual basis. Although Form N–CEN would include many of the same data elements as the current census-type reporting form, Form N–SAR, it would replace items that are outdated or no longer informative with items of greater importance. Form N–CEN would also eliminate certain items that are reported to the Commission in other forms. Reports would also be filed in a structured, XML format to allow for easier aggregation and manipulation of the data. Form N–SAR would be rescinded.

The current set of requirements—management companies must file reports on Form N–SAR semi-

and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, yielding an effective hourly rate of $334. *See* Securities Industry and Financial Markets Association, Report on Management & Professional Earnings in the Securities Industry 2013. Based on the Commission's estimate of 4,089 burden hours per year and the estimated wage rate of about $334 per hour, the total annual paperwork expenses for funds associated with the internal hour burden imposed by the initial statement conditions of rule 30e–3 are approximately $1,365,726. This estimate is based upon the following calculation: 4,089 hours × $334 per hour = $1,365,726. Below, we also estimate that these funds will incur annual cost burden of about $216 per fund to comply with the initial statement conditions. This estimate is based upon the following calculation: $49 per fund per year for services of outside counsel + $333 per year per fund to print and mail initial statements = $382 per fund per year. *See infra* notes 837 and 844. Such funds would therefore incur about $4,110,702 in aggregate annual cost burden to comply with the initial statement conditions. This estimate is based upon the following calculation: $382 per fund per year × 10,761 funds = $4,110,702 per year. Thus the total estimated annual paperwork expenses associated with the initial statement conditions are $5,476,428. This estimate is based upon the following calculation: $1,365,726 associated with internal burden + $4,110,702 external cost burden = $5,476,428.

Below, we also estimate that funds that elect to rely on proposed rule 30e–3 would incur about 1.5 annual burden hours in connection with the notice conditions of the rule. *See infra* note 832 and accompanying text. Therefore, in the aggregate, we estimate that such funds would incur about 16,142 burden hours to comply with these requirements. This estimate is based upon the following calculation: 1.5 burden hours per fund × 10,761 funds expected to rely on rule 30e–3 = 16,141.5 hours. Based on the Commission's estimate of 16,142 burden hours per year and the estimated wage rate of about $334 per hour, the total annual paperwork related expenses for funds associated with the internal hour burden imposed by the Web site accessibility conditions of rule 30e–3 are approximately $5,391,428. This estimate is based upon the following calculation: 16,142 hours × $334 per hour = $5,391,428. Below, we also estimate that these funds will incur annual cost burden of about $1,190 per fund to comply with the notice conditions. This estimate is based upon the following calculation: $190 per fund per year for services of outside counsel + $1,000 per fund per year to print and mail notices = $1,190 per fund per year. *See infra* notes 840 and 845 and accompanying text. Such funds would therefore incur about $12,805,590 in aggregate annual cost burden to comply with the notice conditions. This estimate is based upon the following calculation: $1,190 per fund per year × 10,761 funds = $12,805,590 per year. Thus the total estimated annual paperwork expenses associated with the notice conditions are $12,816,518. This estimate is based upon the following calculation: $5,391,428 associated with internal burden + $12,805,590 external cost burden = $18,197,018.

Thus, we estimate that the total annual paperwork expenses associated with satisfying the conditions of proposed rule 30e–3 would be $31,531,880. This estimate is based upon the following calculation: $2,477,934 associated with Web site accessibility conditions + $5,380,500 associated with provision of print report upon request condition + $5,476,428 associated with initial statement condition + $18,197,018 associated with notice condition = $31,531,880.

[718] Below, we estimate that funds that elect to rely on rule 30e–3 will, on average, incur an additional 0.08 one-time burden hours per fund in the first year to comply with Web site accessibility conditions. *See infra* notes 807–808 and accompanying text. Therefore, in the aggregate, we estimate that such funds would incur about 861 one-time burden hours to comply with these requirements. This estimate is based upon the following calculation: 0.08 hours per fund × 10,761 funds = 860.88 hours. Based on the Commission's estimate of 861 one-time burden hours and the estimated wage rate of about $303 per hour for senior programmers, the total annual paperwork expenses for funds associated with the internal hour burden imposed by the Web site accessibility conditions of rule 30e–3 are approximately $260,883. This estimate is based upon the following calculation: 861 hours × $303 per hour = $260,883. Below, we also estimate that about 113 funds that wish to rely on proposed rule 30e–3 but that do not currently have a Web site will incur one-time cost burden of $2,000 per fund to comply with the Web site accessibility conditions. *See infra* notes 804 and 811 and accompanying text. Such funds would therefore incur about $226,000 in aggregate one-time cost burden to comply with the Web site accessibility conditions. $2,000 per fund × 113 funds = $226,000. Thus the total estimated one-time paperwork expenses associated with the Web site accessibility conditions are $486,883. This estimate is based upon the following calculation: $260,883 associated with internal burden + $226,000 external cost burden = $486,883.

Below, we also estimate that funds that elect to rely on rule 30e–3 will, on average, incur an additional 0.92 one-time burden hours per fund in the first year to comply with the initial statement conditions. *See infra* notes 828–829 and accompanying text. Therefore, in the aggregate, we estimate that such funds would incur about 9,900 one-time burden hours to comply with these requirements. This estimate is based upon the following calculation: 0.92 hours per fund × 10,761 funds = 9,900.12 hours. Based on the Commission's estimate of 9,900 one-time burden hours and the estimated wage rate of about $334 per hour, the total annual administrative expenses for funds associated with the internal hour burden imposed by the initial statement conditions of proposed rule 30e–3 are approximately $3,306,600. This estimate is based upon the following calculation: 9,900 hours × $334 per hour = $3,306,600. Below, we also estimate that these funds will incur one-time cost burden of $762 per fund to comply with the initial statement conditions. This estimate is based upon the following calculation: $95 per fund for the services of outside counsel + $667 per fund to print and mail initial statements = $762 per fund. *See* notes 836–843 and accompanying text. Such funds would therefore incur about $8,199,882 in aggregate one-time cost burden to comply with the initial statement conditions. This estimate is based upon the following calculation: $762 per fund × 10,761 funds = $8,199,882. Thus the total estimated one-time paperwork expenses associated with the initial statement conditions are $11,506,482. $3,306,600 associated with internal burden + $8,199,882 external cost burden = $11,506,482.

Below, we also estimate that funds that elect to rely on rule 30e–3 will, on average, incur an additional 0.8 one-time burden hours per fund in the first year to comply with the notice conditions. *See infra* notes 831–832 and accompanying text. Therefore, in the aggregate, we estimate that such funds would incur about 8,609 one-time burden hours to comply with these requirements. This estimate is based upon the following calculation: 0.8 hours per fund × 10,761 funds = 8,608.8 hours. Based on the Commission's estimate of 8,609 one-time burden hours and the estimated wage rate of about $334 per hour, the total annual paperwork expenses for funds associated with the internal hour burden imposed by the notice conditions of proposed rule 30e–3 are approximately $2,875,406. This estimate is based upon the following calculation: 8,609 hours × $334 per hour = $2,875,406. Below, we also estimate that these funds will incur one-time cost burden of $95 per fund to comply with the notice conditions. *See infra* notes 839–840 and accompanying text. Such funds would therefore incur about $1,022,295 in aggregate one-time cost burden to comply with the initial statement conditions. This estimate is based upon the following calculation: $95 per fund × 10,761 funds = $1,022,295. Thus the total estimated one-time paperwork expenses associated with the notice conditions are $3,897,701. This estimate is based upon the following calculation: $2,875,406 associated with internal burden + $1,022,295 external cost burden = $3,897,701.

Thus, we estimate that the total one-time paperwork expenses associated with satisfying the conditions of proposed rule 30e–3 would be $15,891,066. This estimate is based upon the following calculation: $486,883 associated with Web site accessibility conditions + $11,506,482 associated with initial statement condition + $3,897,701 associated with notice condition = $15,891,066.

annually,[719] and UITs file such reports annually [720]—is the baseline from which we discuss the economic effects of Form N–CEN. The parties that could be affected by the rescission of Form N–SAR and the introduction of Form N–CEN include funds that currently file reports on Form N–SAR and funds that would file reports on Form N–CEN; the Commission; and, other current and future users of fund census information including investors, third-party information providers, and other interested potential users.

At the time it was adopted, Form N–SAR was intended to reduce reporting burdens and better align the information reported with the characteristics of the fund industry. As the fund industry has developed, including the development of new products, so has the need to update the information the Commission requires in order to improve its ability to monitor the compliance and risks of reporting funds. The format in which information is reported in Form N–SAR is also outdated, which reduces the ability of Commission staff to obtain and aggregate the information. The technology in which Form N–CEN would be filed allows for both the sender and recipient to validate the information against identical definitions, thereby increasing the accuracy of the information and therefore the ability of Commission staff to compare the information across funds.

The economic effects from the introduction of new Form N–CEN and the rescission of Form N–SAR would largely result from an update to the format of the information reported, as well as the update to the census information that investment companies would report. The economic effects would therefore depend on the extent to which investment companies become more transparent, and the ability of Commission staff and investors to utilize the updated disclosures. Form N–CEN would require census information about the fund industry reported in a structured format. However, while Form N–SAR is also reported in a structured format, Form N–CEN would modernize the information funds report and the required format of the filings. Therefore, although the introduction of Form N–CEN would increase the transparency of the fund industry, we do not know the extent to which the transparency would increase or the significance of its economic implications.

b. Benefits

As discussed above, the Commission is proposing to rescind Form N–SAR and replace it with new Form N–CEN in order to improve the quality and utility of the information reported to the Commission. The improvement in the quality and utility of the information would allow Commission staff to better understand industry trends, inform policy, and assist with the Commission's examination program.

Similar to Form N–PORT, the ability of the Commission to most effectively use the information is dependent on the ability of staff to compile and aggregate the information into a single database. The structuring of the information in an XML format would improve the ability and efficiency of Commission staff to obtain and analyze the information. An improved structured format could also promote additional efficiency to the extent that the new reporting requirements encourage modernization of internal systems and standardization for the disclosure and transmission of information. An XML format would also improve its accuracy by providing sophisticated constraints as to how information could be provided and by allowing for built-in validation.

Form N–CEN would also modernize the census information that funds provide and increase its utility to Commission staff, investors, and other interested parties by reflecting the changes to the fund industry. The Commission would use the information in Form N–CEN to improve its understanding of fund industry trends and practices, and assist with the Commission's examination program. Commission staff has identified specific information that could improve its ability to effectively oversee funds including identifying information, when applicable, about the fund's service providers, information describing financial support by an affiliated entity, classification of fund type, and information describing investments in CFCs.

Along with the additional information, Form N–CEN would add new requirements for information specifically relating to the ETF primary markets, including more detailed information on authorized participants and creation unit requirements.[721] We believe that our proposed additional information on ETFs allows the Commission to better understand and assess the ETF market and also inform the public about certain characteristics of the ETF primary markets.

Additionally, Form N–CEN, like Form N–SAR, has particular sections for closed-end funds, SIBCs, and UITs in order to obtain information about the particular characteristics of these entities to assist us in monitoring the activities of these funds and our examiners in their preparation for exams of these funds.

Form N–CEN would also add new requirements for information relating to a management company's securities lending activities, including information concerning the management company's securities lending agents and cash collateral managers.[722] Together with the requirements on securities lending activities in proposed Form N–PORT, this information would benefit the Commission's oversight abilities and, potentially, future policymaking concerning securities lending. Moreover, we believe that this information could inform investors and other interested parties about the use of and potential risks associated with a management company's securities lending activities.

We expect funds to also benefit from replacing Form N–SAR with Form N–CEN through reduced expenses. First, we estimate that N–CEN has a lower cost per filing than Form N–SAR, as a result of filing in an XML format, as opposed to the outdated format of Form N–SAR, and the elimination of certain information items on Form N–SAR that funds would not be required to report on Form N–CEN. Second, funds that are management investment companies would experience reduced paperwork related costs from decreasing the reporting frequency of census information from semi-annual to annual. We estimate that filers would have an aggregate annual paperwork related expenses of $12,395,064 for reports on Form N–CEN.[723] By contrast, we estimate that the ongoing paperwork related expenses of filing Form N–SAR is $25,299,092 annually.[724]

[719] *See* rule 30b1–1.

[720] *See* rule 30a–1.

[721] *See* discussion *supra* Part II.E.4.e.

[722] *See* Item 30 of proposed Form N–CEN.; *see also* discussion *supra* Part II.E.4.c.iii.

[723] This estimate is based on annual ongoing burden hour estimate of 32,294 burden hours for management companies (2,419 management companies × 13.35 hours per filing) plus 6,623 burden hours for UITs (727 UITs × 9.11 burden hours per filing), for a total estimate of 38,917 burden ongoing hours. This was then multiplied by a blended hourly wage of $318.50 per hour, $303 per hour for Senior Programmers and $334 per hour for compliance attorneys, as we believe these employees would commonly be responsible for completing reports on proposed Form N–CEN ($318.50 × 38,917 = $12,395,064.50). *See infra* Part V.B.1.

[724] This estimate is based on an assumption of annual ongoing burden hour estimate to file Form N–SAR of 74,263 burden hours for management investment companies (2,419 management

Accordingly, we estimate the annual paperwork related cost savings to funds associated with the adoption of Form N–CEN, compared to Form N–SAR, would be $12,904,028. We recognize that these ongoing annual cost savings would be offset by a one-time cost in the first year to file reports on N–CEN, estimated at $20,040,020.[725]

The rescission of Form N–SAR and the introduction of Form N–CEN, to the extent relevant, could provide similar benefits to investors, to third-party information providers, and to other potential users from an update to the census information that investment companies report and from an update to its structured format. Similar to Form N–PORT, we expect that institutional investors and other market participants could use the information from Form N–CEN more so than individual investors, and that the format of the data may make the information difficult for individual investors to understand. However, individual investors may indirectly benefit from the increase in information to the extent that it becomes available through third-party information providers. For the investors and other potential users that would obtain and use the information reported in Form N–CEN, the update to the structure of the information would improve their ability to efficiently aggregate the information collected on Form N–CEN across all investment companies.

The changes to the reporting of census information, including the reporting of the information in a modern structured format, could improve the ability of investors to differentiate investment companies and could therefore lead to an increase in competition among funds for investor capital. These changes would not significantly relate to the ability of investors to understand the investment risks of investment companies, and therefore would not significantly improve the ability of investors to efficiently allocate capital. Consequently, the reporting changes would not significantly promote capital formation.

c. Costs

As discussed above, we expect the adoption of N–CEN and rescission of Form N–SAR would result in reduced costs to funds in the form of lower expenses related to filing Form N–CEN relative to Form N–SAR. ETFs and closed-end funds, however, may have higher expenses in filing reports on Form N–CEN relative to other investment companies, as they will generally be required to provide more information. There could, however, be costs as a result of the change in the disclosure of census information. For example, the Commission would receive census information on an annual instead of semi-annual basis, and therefore the information would be more dated than if the information was reported to the Commission on a semi-annual basis.[726] As discussed above, we believe that the costs related to reducing the frequency of the information received on Form N–SAR is not significant as this information is unlikely to change frequently. Also, some of the information from Form N–SAR would not be included in Form N–CEN.[727] However, we have attempted to mitigate the potential cost relating to the loss of information by eliminating only that information which is either available elsewhere, not frequently used by Commission staff, or provides little benefit.

Form N–CEN could impose costs on investors and other potential users of the information to obtain the information from a new or additional source, including the information that would not be included on Form N–CEN but would be available through other filings. The information that would not be included on Form N–CEN and that would not be available elsewhere would impose costs on investors and other potential users from a loss of information to the extent that the information is found to be useful.[728] ≤

F. Alternatives to the Reporting Requirements

The Commission has explored ways to modernize and improve the utility and the quality of the information that funds provide to the Commission and to investors. Commission staff examined how information reported to the Commission could be improved to assist the Commission in its rulemaking, inspection, examination, policymaking, and risk-monitoring functions, and how technology could be used to facilitate those ends. Commission staff also examined enhancements that would benefit investors and other potential users of this information, including updating the reporting obligations of funds to keep pace with the changes in the fund industry.

In formulating our proposal, we have considered many alternatives to the individual elements contained in our proposal, and those alternatives are outlined above in the sections discussing each of the five parts of our proposal, and we have requested comment on these alternatives.[729] The following discussion addresses significant alternatives to our proposal, which involve broader issues than the more granular alternatives to the individual elements contained in each part of our proposal, as discussed above.

We considered the frequency at which Commission staff believed it to be important to receive information from investment companies. A possible alternative to the monthly reporting of portfolio investment information in Form N–PORT is a quarterly reporting of the information, with the quarterly reports containing information for each month in the quarter. The quarterly reporting of portfolio investment information could decrease the ongoing burden of the proposal on investment companies. We do not believe, however, that the quarterly reporting of portfolio investment information would be as useful for Commission staff to oversee investment companies on an ongoing basis given the increase in alternative strategies and the use of derivatives, as this information, even if broken out into monthly data, would result in the Commission receiving the information with a longer time lag. For example, a longer time lag for the Commission to receive portfolio investment information could reduce its effectiveness to analyze the effect of a market or other event on the fund industry.

Likewise, a possible alternative to the annual reporting of census information in Form N–CEN is a semiannual

companies × 15.35 hours per filing × 2 filings per year) and 5,169 burden hours for UITs (727 UITs × 7.11 burden hours per filing) for a total estimate of 79,432 ongoing burden hours. This was then multiplied by a blended hourly wage of $318.50 per hour ($318.50 × 79,432 = 25,299,092). *See infra* Part V.B.2.

[725] This estimate is based on an estimate of 20 initial burden hours per filer, multiplied by a blended hourly wage of $318.50 (20 hours × 3,146 filers × $318.50 = $20,040,020).

[726] However, as discussed *supra* note 378, this cost is mitigated, in part, by the fact that certain items that the Commission staff has deemed necessary on a more frequent basis would be included instead in reports on proposed Form N–PORT. In addition, the static nature of the information that would be reported on Form N–CEN increases the likelihood that the information remains current.

[727] *See* discussion *supra* Part II.E.5.

[728] Some of the information that would no longer be requested, such as loads paid to captive or unaffiliated brokers, has been found by interested third-parties, including researchers, to be important in their analysis of the fund industry. *See, e.g.,* Susan E.K. Christoffersen, Richard Evans, and David K. Musto, *What do Consumers' Fund Flows Maximize? Evidence from Their Brokers' Incentives,* The Journal of Finance, Vol. 68(1), 201–235 (2013). We are proposing to eliminate certain items from Form N–SAR that are either infrequently used by the Commission, provide minimal benefits, or costly for funds to provide. We request comment on the items required by Form N–SAR that would be eliminated by Form N–CEN. *See* discussion *supra* Part II.E.5.

[729] *See generally supra* Parts II and II.G.5.

reporting of the information similar to Form N–SAR. However, as we discussed above, the census-type nature of the information that we would collect from funds in Form N–CEN should not change frequently. Requiring management companies to report census information semi-annually would therefore place a burden on funds without a commensurate increase in the value of the information received by the Commission.

We also considered alternatives to extend or shorten the filing period of Form N–PORT from thirty days and Form N–CEN from sixty days. While a shorter filing period would provide more timely information to the Commission, it would also place a burden on funds that need time to collect, verify, and report the required information to the Commission. Conversely, a longer filing period would give funds more time to report the information and would decrease the potential costs to front-running or copycatting by other investors, but would decrease the utility of the information for the Commission. We therefore believe that the thirty-day filing period for Form N–PORT and the sixty-day filing period for Form N–CEN would appropriately balance the staff's need for timely information against the appropriate amount of time for funds to collect, verify, and report information to the Commission.

Other significant alternatives relate to the public dissemination of information reported on Form N–PORT. Alternatives to the proposal include making more of the portfolio and other information reported on the form either non-public or public, including making all or none of the information reported on Form N–PORT each month publicly available, and increasing or decreasing the lag from the date funds would file this information to when the information would be publicly released. Making more of the portfolio and other information reported on the form non-public or increasing the time-lag to release the information would reduce the amount of information investors have access to when making investment decisions. However, as discussed above, making more of the portfolio and other information reported on the form public or decreasing the time-lag could increase the risk of front-running, predatory trading, and copycatting/reverse engineering of trading strategies by other investors.[730] We believe the current proposal strikes an appropriate balance of providing more usable information to investors and other third-parties while mitigating the risk of potential investor harm that could occur from more frequent disclosure of portfolio information.

Other alternatives relate to the information that the Commission could require when determining the specific items to include and exclude on From N–PORT and Form N–CEN. The Commission considered what information it believes to be important for the Commission's oversight activities and to the public, and the costs to investment companies to provide the information. In particular, the Commission considered the benefits and costs of the information already disclosed in Form N–CSR, Form N–Q, and Form N–SAR, and that could be required on Form N–PORT and Form N–CEN. Commission staff believes that the benefits of the information currently disclosed by investment companies that would be reported on Form N–PORT and Form N–CEN, especially in a structured format, justify the costs to investment companies to report the information in these forms.

The Commission also considered the information that would be required on Form N–PORT as compared to the information on Form N–CEN. Commission staff considered the benefits to having the information more frequently updated as well as the cost to funds to report the information. Although the costs to report information on a more frequent basis imposes additional costs on funds, Commission staff believes the information that would be reported more frequently on Form N–PORT, relative to the annual reporting on Form N–CEN, is necessary for the Commission's oversight activities and could be important to other interested third-parties.

The Commission also considered the benefits and costs of the new information that would be required on Form N–PORT and Form N–CEN. The new information that would be required includes contractual terms for debt securities and derivatives, a description of reference instruments, if any, and information describing securities lending and repurchase and reverse repurchase agreements. A reasonable alternative would be to not require some of the new information, and another reasonable alternative would be to require information in addition to what is currently proposed.

As discussed, the Commission would require information which provides staff an ability to identify investment risks and engage in further outreach as necessary, and not requiring the information would substantially reduce the ability of the Commission to oversee the fund industry. In addition, the information would be important to investors to differentiate investment companies. Although the new information that would be reported on Form N–PORT and Form N–CEN could increase the initial and ongoing reporting costs for investment companies, and increase the likelihood of front-running or copycatting by other investors, Commission staff believes that the information is important to fully describe a fund's investments.

The Commission is also proposing to require risk-sensitivity measures at the portfolio and position level on Form N–PORT. These measures would aid Commission staff to efficiently understand the risk exposures of investment companies, especially those funds that invest in debt securities and derivatives. The portfolio risk-sensitivity measures, DV01 and SDV01, and the position level risk-sensitivity measure, delta, would improve the ability of Commission staff to efficiently approximate the risk exposures of reporting funds.

A reasonable alternative is to require additional portfolio and position level risk-sensitivity measures that would provide Commission staff a more precise approximation of the risk exposures of reporting funds for larger changes in the value of the reference instrument. For example, Form N–PORT could require at the portfolio level measures that describe the sensitivity of a reporting fund to a 50 or 100 basis point change in interest rates and credit spreads, and a measure of convexity; and Form N–PORT at the position level could require gamma.[731] These measures could improve the ability of Commission staff to monitor the fund industry when large changes in prices and rates occur. The Commission could also require other risk measures including vega. While potentially valuable, requiring these additional risk-sensitivity measures could increase the burden on funds, and the additional precision might not significantly improve the ability of Commission staff to monitor the fund industry in most market environments. Another reasonable alternative is to not require any risk-sensitivity measures, or limit the requirement to certain derivatives such as those traded over-the-counter. Although the burden to investment companies to provide the information would be less if fewer or no risk-

[730] *See* Part IV.C.c.

[731] Other risk-sensitivity measures that the Commission could request include portfolio-level duration measures at the position level, or additional position level risk sensitivity measures such as vega.

sensitivity measures were required by the Commission, staff believes that the benefits from requiring the measures, including the ability to efficiently identify and size specific investment risks, justify the costs to investment companies to provide the measures.

The Commission is proposing a tiered compliance for filing reports on Form N–PORT—funds that together with other investment companies in the same group of related investment companies with assets over $1 billion would have eighteen months to file reports, and smaller groups of related investment companies with assets less than $1 billion would have thirty months to file reports. An alternative would be to not allow for tiered compliance and require all investment companies to begin filing reports on Form N–PORT within eighteen months. We believe it is appropriate to tier the compliance period to improve the ability of smaller fund complexes to make the system and internal process changes necessary to prepare reports on Form N–PORT. Although the Commission, investors, and other interested parties would potentially not have access to structured portfolio investment information for the smaller fund complexes until thirty months after the effective date, information similar to the proposed requirements concerning disclosures of derivatives that would be required on reports on proposed Form N–PORT would be available elsewhere, such in the fund's financial statements as a result of amendments to Regulation S–X. Although another alternative would be to tier the compliance period for our proposed amendments to Regulation S–X, we believe that it is less likely that smaller fund complexes would benefit from additional time to modify systems to adhere to the amendments to Regulation S–X because the proposed amendments are largely consistent with current disclosure practices and would therefore be unnecessary. Likewise, we could propose a tiered compliance period for reports on proposed Form N–CEN. However, as discussed above, we believe that it is less likely that smaller fund complexes would need additional time to comply with the requirements to file Form N–CEN because the requirements are similar to the current requirements to file Form N–SAR, and we expect that filers will prefer the updated, more efficient filing format of Form N–CEN. Commission staff also considered requiring funds to continue to report Form N–Q, and to amend Form N–SAR instead of replacing it with Form N–CEN. Commission staff believes, however, that the new reporting requirements for portfolio investment information, including the amendments to the certification requirements of Form N–CSR, would cause Form N–Q to become redundant if not outdated, and therefore impose costs on funds to file reports that would result in little benefit. Although requiring that certifying officers state that they have disclosed in the report any change in the registrant's internal control over financial reporting that occurred during the most recent fiscal half-year would increase the burden of filing Form N–CSR, these certifications are necessary to ensure that the information reported continues to be accurate. The Commission also believes that the technology associated with Form N–SAR required the introduction of a new form in order to increase the benefits from the changes made to the reporting of census information. One effect of the amendments to Regulation S–X would be to provide investors with more transparency in a fund's investments. For example, as discussed above, we are proposing to require funds, under certain circumstances, to disclose the components of a custom index underlying swaps or option contracts. As an alternative, we could require funds to only disclose a brief description of the index or require a different threshold for identifying the components of the swap or options contract, such as a custom basket that represents a larger portion of the fund's assets under management. Although these alternatives would attenuate the information disclosed and reduce the potential costs to funds and index providers, these alternatives would result in less transparency for investors into the assets underlying a swap or options contract and any related risks associated with these investments.

The accessibility of information about a fund's investments would also increase as a result of the new option for transmission of shareholder reports and other portfolio investment information. In general, the requirements of proposed rule 30e–3 are designed to allow funds to take advantage of the cost efficiencies from the advancements in technology and to more closely align the transmission format to investor preferences, while at the same time ensuring that shareholders would have an opportunity to view reports in their desired form and have an opportunity to view portfolio investment information in a central and more familiar location. One alternative would be to require different notice and consent procedures, and another alternative would be for funds to report different portfolio investment information on their Web sites. We believe that the requirements of rule 30e–3, as proposed, provide investors an ability to receive shareholder reports in their desired format and become aware of the availability of portfolio investment information, while at the same time providing funds an opportunity to take advantage of advancements in technology and reduce burdens.

Lastly, the Commission is proposing that investment companies file Form N–PORT and Form N–CEN in an XML structured format. One alternative is to not structure the information. As discussed, the ability of Commission staff investors, third-party information providers, and other potential users to utilize the information is dependent on the efficiency in which the information investment companies provide can be compiled and aggregated. Commission staff believes that the affected parties to this proposal would experience substantially less benefit from the reporting of investment company information if the information is not structured. In addition, based on the Commission's understanding of current practices, it is likely that investment companies and third party service providers have systems in place to accommodate the use of XML. Therefore, requiring information in a format such as XML should impose minimal costs. The proposal would require funds to file certain attachments to their reports on Form N–PORT and Form N–CEN, and these attachments would not be required in a structured format. Commission staff believes that only marginal benefits would result from requiring funds to file these attachments in a structured, XML format due to the narrative format of the information provided.

The technology used to structure the data could affect the benefits and costs associated with the proposed rules, and we have therefore considered alternative formats for structuring the data, such as XBRL. Sending a data file from a sender to a recipient requires many conditions to be satisfied, and one of crucial importance to regulatory data collection is the need for validation. XML provides for a built-in validation framework, and is supported in all modern programming languages. Other data formats can achieve validation but through custom software. The nature of the information we are collecting also lends itself to an XML format due to the non-complex requirements to structure the information, and does not necessitate

the need for a more robust framework such as XBRL.

G. Request for Comments

Throughout this release, we have discussed the anticipated benefits and costs of the proposed rules and their potential impact on efficiency, competition, and capital formation. While the Commission does not have comprehensive information on all aspects of asset management industry reporting, the Commission is using the data currently available in considering the effects of the proposals. The Commission requests comment on all aspects of this initial economic analysis, including on whether the analysis has: (1) Identified all benefits and costs, including all effects on efficiency, competition, and capital formation; (2) given due consideration to each benefit and cost, including each effect on efficiency, competition, and capital formation; and (3) identified and considered reasonable alternatives to the proposed new rules and rule amendments. We request and encourage any interested person to submit comments regarding the proposed rules, our analysis of the potential effects of the rules and other matters that may have an effect on the proposed rules. The Commission requests that commenters identify sources of data and information as well as provide data and information to assist the Commission in analyzing the economic consequences of the proposed rules. We are also interested in comments on the qualitative benefits and costs we have identified and any benefits and costs we may have overlooked. We urge commenters to be as specific as possible.

Comments on the following questions are of particular interest.

- To what extent would the monthly public reporting or the quarterly public reporting of monthly portfolio investment information aid in the ability of other investors to front-run, predatory trade, or copycat/reverse engineer the investment strategy of reporting funds? To what extent would the monthly public reporting or the quarterly public reporting of monthly portfolio investment information reduce the incentives of fund companies to develop new or alternative strategies, and what would be the effect on fund competition? How would investors benefit from the public reporting of portfolio investment information in the first and second month of each fiscal quarter as compared to the public reporting of the third month only? Would investors benefit from the quarterly public reporting of monthly portfolio investment information? Why?
- To what extent would the additional information required on Form N–PORT, especially with respect to the contractual terms for debt securities and derivatives, including information describing reference instruments, if any, and to securities lending and repurchase and reverse repurchase result in additional front-running, predatory trading, or copycatting/reverse engineering by other investors? Does this raise any confidentiality or other concerns?
- What are the benefits, costs, and other economic effects from funds providing portfolio investment information in a structured XML format? In particular, what are the effects of structured portfolio investment information on the ability of other investors to front-run, predatory trade, or copycat/reverse engineer the investment strategy of reporting funds? How would the effect of structured portfolio investment information differ between funds that engage in alternative strategies or utilize derivatives as part of its investment strategy and those funds that do not? To what extent would portfolio investment information that is structured reduce the incentives of fund companies to develop new or alternative strategies, and what would be the effect on fund competition? Also, would the public reporting of portfolio investment information in an XML format result in a decrease in the costs to investors from obtaining the information?
- What are the operational benefits and costs to investment companies to file Form N–PORT and Form N–CEN in a structured format? What are the costs to funds from adapting systems to the new filing requirements? To what extent would the fund industry benefit from a standard format to report information?
- Is there additional information that Form N–PORT and Form N–CEN, as proposed, could require that would aid in the ability of the Commission to oversee the fund industry or that could be beneficial to other potential users? Are any of the proposed information requirements duplicative or unnecessary? What are the benefits and costs of reporting this additional information? Is there information that Form N–PORT and Form N–CEN, as proposed, would require that does not aid in the ability of the Commission to oversee the fund industry and would not benefit other potential users? What are the benefits and costs of not reporting this information?
- What are the costs, benefits, and other economic effects from investment companies reporting risk-sensitivity measures on Form N–PORT? What is the current availability of the measures to investment companies, in particular for more complex or exotic derivatives? Are there competitive or other economic effects from the reporting of risk-sensitivity measures? Would the public reporting of the risk-sensitivity measures disclose information relating to proprietary risk management practices of investment companies?
- To what extent would the proposal affect the ability of investors to understand the investment risks of investment companies as a result of the proposal and to efficiently allocate capital? Would investors be more likely to allocate additional capital to investment companies? What would be the effect on fund competition for investor capital?
- Under what circumstances and to what extent would funds choose to rely on proposed rule 30e–3 by making shareholder reports publicly accessible on a Web site and satisfying the other conditions of the rule? Would allowing funds that choose to rely on the proposed rule to transmit shareholder reports to their investors ''by default'' result in more investors viewing shareholder reports in a format that the investors prefer, or would the need for each investor who wishes to receive a printed report to affirmatively ''opt-out'' of electronic delivery reduce the number of shareholders that receive reports in the format that they prefer? Why or why not? What is the likelihood that investors would mistakenly opt-out and consent to Web site posting? Lastly, to what extent do investors compare portfolio investment information between fiscal quarters, and would investors benefit from the requirement that a fund's shareholder reports as well as its complete portfolio holdings from its most recent first and third fiscal quarters be publicly accessible on a Web site?
- What are the costs, benefits, and other economic effects to other market participants including third-party information providers, index providers, and swap dealers? For instance, what would be the economic effects of structured data on the cost to service providers to offer aggregated information to investors? Are there other market participants that would be affected by the proposal that are not discussed above? What are the benefits and costs to these other market participants?
- What are the benefits and costs of providing an additional twelve months for smaller entities to comply with the requirements to file Form N–PORT? Are there potential costs from smaller fund

complexes potentially not providing structured portfolio investment information during the additional twelve months? Are the potential costs, if any, from a loss of disclosed portfolio investment information from small fund complexes mitigated by the amendments to Regulation S–X? Are there other alternatives to the current compliance dates that would be more beneficial or that would be less costly, including with respect to other parts of the proposal? Which alternatives and why?

• What are the costs associated with rescinding N–Q and replacing Form N–SAR? How reliant are investors, third-party information providers, and other interested parties on the data reported on these forms? What are the costs to investors, third-party information providers, and other interested parties to obtain the information from alternative sources? What are the benefits from the amendments to certification requirements of Form N–CSR? What are the costs?

• Are there alternatives to the proposal that the Commission did not consider that would result in a more robust disclosure regime for investment companies? What are the costs associated with those alternatives? Similarly, are there alternatives to the proposal that would result in the same benefits but that would be less costly? Which alternatives and why?

V. Paperwork Reduction Act

Proposed new forms, Form N–CEN and Form N–PORT, and proposed new rule 30e–3 contain ''collections of information'' within the meaning of the Paperwork Reduction Act of 1995 (''PRA'').[732] In addition, the proposed amendments to Articles 6 and 12 of Regulation S–X would impact the collections of information under rules 30e–1 and 30e–2 of the Investment Company Act,[733] and the proposed amendments to Forms N–1A, N–2, N–3, N–4 and N–6 under the Investment Company Act and Securities Act would impact the collections of information under those forms. Furthermore, the proposals would rescind Forms N–Q and N–SAR, thus eliminating the collections of information associated with those forms.

The titles for the existing collections of information are: ''Form N–Q–Quarterly Schedule of Portfolio Holdings of Registered Management Investment Company'' (OMB Control No. 3235–0578);[734] ''Form N–SAR under the Investment Company Act of 1940, Semi-Annual Report for Registered Investment Companies'' (OMB Control No. 3235–0330); Rule 30e–1 under the Investment Company Act of 1940, Reports to Stockholders of Management Companies'' (OMB Control No. 3235–0025); ''Rule 30e–2 pursuant to Section 30(e) of the Investment Company Act of 1940. Reports to Shareholders of Unit Investment Trusts'' (OMB Control No. 3235–0494); ''Form N–CSR under the Securities Exchange Act of 1934 and under the Investment Company Act of 1940, Certified Shareholder Report of Registered Management Investment Companies'' (OMB Control No. 3235–0570); ''Form N–1A under the Securities Act of 1933 and under the Investment Company Act of 1940, Registration Statement of Open-End Management Investment Companies'' (OMB Control No. 3235–0307); ''Form N–2 under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Closed-End Management Investment Companies'' (OMB Control No. 3235–0026); ''Form N–3 Under the Securities Act of 1933 and Under the Investment Company Act of 1940, Registration Statement of Separate Accounts Organized as Management Investment Companies'' (OMB Control No. 3235–0316); ''Form N–4 (17 CFR 239.17b) Under the Securities Act of 1933 and (17 CFR 274.11c) Under the Investment Company Act of 1940, Registration Statement of Separate Accounts Organized as Unit Investment Trusts'' (OMB Control No. 3235–0318); and ''Form N–6 (17 CFR 239.17c) Under the Securities Act of 1933 and (17 CFR 274.11d) Under the Investment Company Act of 1940, Registration Statement of Separate Accounts Organized as Unit Investment Trusts that Offer Variable Life Insurance Policies'' (OMB Control No. 3235–0503). We are also submitting new collections of information for proposed new forms, Form N–CEN and Form N–PORT and proposed new rule 30e–3 under the Investment Company Act. The titles for these new collections of information would be: ''Form N–CEN Under the Investment Company Act, Annual Report for Registered Investment Companies;'' ''Form N–PORT Under the Investment Company Act, Monthly Portfolio Investments Report;'' ''Rule 30e–3 Under the Investment Company Act, Web site Transmission of Shareholder Reports.'' The Commission is submitting these collections of information to the OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

The Commission is proposing new forms, Form N–CEN and Form N–PORT, new rule 30e–3, and amendments to Regulation S–X and the relevant registration forms, as well as the rescission of Forms N–Q and Form N–SAR as part of a set of reporting and disclosure reforms. These reforms are designed to harness the benefits of advanced technology and to modernize the fund reporting regime in order to help investors and other market participants better assess different fund products and to assist the Commission in carrying out our regulatory functions. We discuss below the collection of information burdens associated with these reforms.

A. Portfolio Reporting

1. Form N–PORT

Under our proposal, certain funds would be required to file an electronic monthly report on proposed Form N–PORT within thirty days after the end of each month. Proposed Form N–PORT is intended to improve transparency of information about funds' portfolio holdings and facilitate oversight of funds. The information required by proposed Form N–PORT would be data-tagged in XML format. The respondents to proposed Form N–PORT would be management investment companies (other than money market funds and small business investment companies) and UITs that operate as ETFs. Compliance with proposed Form N–PORT would be mandatory for all such funds. Responses to the reporting requirements would be kept confidential for reports filed with respect to the first two months of each quarter; the third month of the quarter would not be kept confidential, but made public sixty days after the quarter end.

[732] 44 U.S.C. 3501 through 3521.

[733] The paperwork burden from Regulation S–X is imposed by the rules and forms that relate to Regulation S–X and, thus, is reflected in the analysis of those rules and forms. To avoid a PRA inventory reflecting duplicative burdens and for administrative convenience, we have previously assigned a one-hour burden to Regulation S–X.

[734] Currently, there is a collection of information associated with rule 30b1–5 under the Investment Company Act. *See* rule 30b1–5, 'Quarterly Report' Originally submitted and approved as Proposed Rule 30b1–4 under the Investment Company Act of 1940, 'Quarterly Report'" (OMB Control No. 3235–0577). Rule 30b1–5 is the rule that requires certain funds to file Form N–Q. Among other things, today's proposals would rescind Form N–Q and require certain funds to file proposed Form N–PORT pursuant to proposed rule 30b1–9. If proposed rule 30b1–9 is adopted, we anticipate discontinuing the information collection for rule 30b1–5.

We estimate that 10,710 funds [735] would be required to file, on a monthly basis, a complete report on proposed Form N–PORT reporting certain information regarding the fund and its portfolio holdings. Based on our experience with other interactive data filings, we estimate that funds would prepare and file their reports on proposed Form N–PORT by either (1) licensing a software solution and preparing and filing the reports in house, or (2) retaining a service provider to provide data aggregation, validation and/or filing services as part of the preparation and filing of reports on proposed Form N–PORT on behalf of the fund. We estimate that 35% of funds (3,749 funds) would license a software solution and file reports on proposed Form N–PORT in house.[736] We further estimate that each fund that files reports on proposed Form N–PORT in house would require an average of approximately 44 burden hours to compile (including review of the information), tag, and electronically file a report on proposed Form N–PORT for the first time [737] and an average of approximately 14 burden hours for subsequent filings.[738] Therefore, we estimate the per fund average annual hour burden associated with proposed Form N–PORT for 3,749 fund filers is 198 hours for the first year [739] and 168 hours for each subsequent year.[740] Amortized over three years, the average aggregate annual hour burden would be 178 hours per fund.[741]

We estimate that 65% of funds (6,962 funds) would retain the services of a third party to provide data aggregation, validation and/or filing services as part of the preparation and filing of reports on proposed Form N–PORT on the fund's behalf.[742] Because reports on Form N–PORT would be filed in a structured format and more frequently than current portfolio holdings reports (*i.e.,* Form N–CSR and Form N–Q), we anticipate that funds and their third-party service providers will move to automate the aggregation and validation process to the extent they do not already use an automated process for portfolio holdings reports. For these funds, we estimate that each fund would require an average of approximately 60 burden hours to compile and review the information with the service provider prior to electronically filing the report for the first time [743] and an average of approximately 9 burden hours for subsequent filings.[744] Therefore, we estimate the per fund average annual hour burden associated with proposed Form N–PORT for 6,962 funds would be 159 hours for the first year [745] and 108 hours for each subsequent year.[746] Amortized over three years, the average aggregate annual hour burden would be 125 hours per fund.[747] In sum, we estimate that filing reports on proposed Form N–PORT would impose an average total annual hour burden of 1,537,572 on applicable funds.[748]

In addition to the costs associated with the hour burdens discussed above, funds would also incur other external costs in connection with reports on proposed Form N–PORT. Based on our experience with other interactive data filings, we estimate that funds that would file reports on proposed Form N–PORT in house would license a third-party software solution to assist in filing their reports at an average cost of $4,805 per fund per year.[749] In addition, we

[735] This estimate includes 8,731 mutual funds (excluding money market funds), 1,411 ETFs and 568 closed-end funds and is based on ICI statistics as of December 31, 2014 *available at http://www.ici.org/research/stats.*

[736] *See* Money Market Fund Reform 2014 Release, *supra* note 13, at 47945 (adopting amendments to Form N–MFP and noting that approximately 35% of money market funds that report information on Form N–MFP license a software solution from a third party that is used to assist the funds to prepare and file the required information).

[737] We anticipate that these funds would use the same software that was used to generate reports on Form N–Q and that the software vendor offering the Form N–Q software would likely offer an update to that software to handle reports on Form N–PORT. Accordingly, we estimate the burden associated with information that is currently filed on Form N–Q and that would also be filed on Form N–PORT to generally be the same—10.5 hours per filing. With respect to new data that would be required by Form N–PORT that was not required by Form N–Q, we generally estimate that it would initially take up to 10 hours to connect the software to the new data points. However, because we understand risk metrics data may be located on a different system than portfolio holdings data and because current reporting requirements do not require funds to have a process in place for these two systems to work together, with respect to the new risk metrics data that would be required by Form N–PORT, we estimate that it would initially take up to 15 hours to connect the risk metrics data to the software and that, once connected, it would take 5 hours to program the risk metrics software to output the required data to the Form N–PORT software. Additionally, we added another 3.5 hours to our estimated initial burden to account for the increased amount of information that would be required to be reported on Form N–PORT, but that is not currently required by Form N–Q. *See infra* note 738 (discussing the additional 30% burden added to the current Form N–Q estimate). We also note that funds that are part of a larger fund complex may realize certain economies of scale when preparing and filing reports on proposed Form N–PORT. For purposes of our analysis, we do not account for such economies of scale.

[738] We anticipate that most of the burden associated with licensing a software solution, as discussed above, will be a one-time burden. Accordingly, we estimate approximately 14 hours per fund for subsequent filings. This estimate is based on the 10.5 hours currently estimated for filings on Form N–Q, plus 30% to account for the amount of additional information that would be required to be filed on Form N–PORT. Additionally, because we believe that the required information is generally maintained by funds pursuant to other regulatory requirements or in the ordinary course of business, for the purposes of our analysis, we have not ascribed any time to collecting the required information. *See also supra* note 737 (noting that our estimates do not account for economies of scale).

[739] The estimate is based on the following calculation: (1 filing × 44 hours) + (11 filings × 14 hours) = 198 burden hours in the first year.

[740] This estimate is based on the following calculation: 12 filings × 14 hours = 168 burden hours in each subsequent year.

[741] The estimate is based on the following calculation: (198 + (168 × 2))/3 = 178.

[742] *See* Money Market Fund Reform 2014 Release, *supra* note 13, at 47945 (adopting amendments to Form N–MFP and noting that approximately 65% of money market funds that report information on Form N–MFP retain the services of a third party to provide data aggregation and validation services as part of the preparation and filing of reports on Form N–MFP).

[743] In order to be able to automate the process of communicating data to a third-party service provider so that it can be reported on Form N–PORT, we estimate that it will initially take a fund 60 hours to either procure software and integrate it into its systems or, alternatively, to write its own software. For those funds that already have an automated portfolio reporting process in place, we estimate that they would initially incur the same burden as those funds that license a software solution and file reports on proposed Form N–PORT in house. For these latter funds, however, we are using the higher burden hours estimated for using a third party service provider in order to be conservative in our estimates because we lack data on the number of funds that currently have an automated portfolio reporting process in place. *See supra* note 737 (discussing the burdens associated with licensing a software solution and filing reports on proposed Form N–PORT in house); *see also supra* note 737 (noting that our estimates do not account for economies of scale).

[744] We anticipate that most of the burden associated with third-party aggregation and validation will be the result of creating an automated process, as discussed above, and thus will be a one-time burden. Accordingly, we estimate approximately 9 hours per fund for subsequent filings. This estimate is based on the 10.5 hours currently estimated for filings on Form N–Q, plus 30% to account for the amount of additional information that would be required to be filed on Form N–PORT, and subtracting 5 hours in recognition of the use of a third-party service provider to assist in the preparation and filing of reports on the form. Additionally, because we believe that the required information is generally maintained by funds pursuant to other regulatory requirements or in the ordinary course of business, for the purposes of our analysis, we have not ascribed any time to collecting the required information. *See also supra* note 737 (noting that our estimates do not account for economies of scale).

[745] The estimate is based on the following calculation: (1 filing × 60 hours) + (11 filings × 9 hours) = 159 burden hours per year.

[746] The estimate is based on the following calculation: 12 filings × 9 hours = 108.

[747] The estimate is based on the following calculation: (159 + (108 × 2))/3 = 125.

[748] The estimate is based on the following calculation: (3,749 × 178 hours) + (6,962 × 125 hours) = 1,537,572.

[749] We estimate that money market funds that file reports on Form N–MFP in house license a third-party software solution for approximately $3,696 per fund per year. Due to the increased volume and

estimate that funds that would use a service provider to prepare and file reports on proposed Form N–PORT would pay an average fee of $11,440 per fund per year for the services of that third-party provider.[750] In sum, we estimate that all applicable funds would incur on average, in the aggregate, external annual costs of $97,674,221.[751]

2. Rescission of Form N–Q

Our proposed reforms would rescind Form N–Q in order to eliminate unnecessarily duplicative reporting requirements. The proposed rescission of Form N–Q would affect all management investment companies required to file reports on the form.

We currently estimate that each fund requires an average of approximately 21 hours per year to prepare and file two reports on Form N–Q annually, for a total estimated annual burden of 219,513 hours.[752] Accordingly, we estimate that, in the aggregate, our proposed rescission would eliminate the 219,513 annual burden hours associated with filing Form N–Q. Additionally, we currently estimate that there are no external costs associated with the certification requirement or with preparation of reports on Form N–Q in general.

B. Census Reporting

1. Form N–CEN

As proposed, amended rule 30a–1 would require all funds to file reports on proposed Form N–CEN with the Commission on an annual basis.[753] Similar to current Form N–SAR, proposed Form N–CEN would require reporting with the Commission of certain census-type information. However, unlike Form N–SAR, which requires semi-annual reporting for all management investment companies, proposed Form N–CEN would require annual reporting.[754] Proposed Form N–CEN would be a collection of information under the PRA, and is designed to facilitate the Commission's oversight of funds and its ability to monitor trends and risks. This new collection of information would be mandatory for all funds, and responses would not be kept confidential.

The staff estimates that the Commission would receive an average of 3,146 reports per year, based on the number of existing Form N–SAR filers.[755] We estimate that management investment companies would each spend as much as 13.35 hours annually, preparing and filing reports on proposed Form N–CEN.[756] The Commission further estimates that UITs, including separate account UITs, would each spend as much as 9.11 hours annually, preparing and filing reports on proposed Form N–CEN, since a UIT would be required to respond to fewer items.[757]

As discussed below, we currently estimate that management investment companies spend as much as 15.35 hours preparing and filing each report on Form N–SAR. We have generally sought with proposed Form N–CEN, where appropriate, to simplify and decrease the census-type reporting burdens placed on registrants by current Form N–SAR. For example, proposed Form N–CEN would reduce the number of attachments that may need to be filed with the reports and largely eliminate financial statement-type information from the reports. Additionally, we believe that reports in XML on proposed Form N–CEN will be less burdensome to produce than the reports on Form N–SAR currently required to be filed using outdated technology. Accordingly, for management investment companies we believe the estimated hour burden for filing reports on proposed Form N–CEN should be a reduced burden from the hour burden associated with Form N–SAR.[758] As such, we estimate that the annual hour burden for management companies will be 13.35 per report on proposed Form N–CEN, down from 15.35 hours per report for Form N–SAR.

UITs may, however, experience an increase in the hour burden associated with census-type reporting if proposed Form N–CEN is adopted because UITs would be required to respond to more items in the form than they are currently required to respond to under Form N–SAR. For example, UITs would be required to provide certain background information and attachments in their reports on proposed Form N–CEN, which they are not currently required to provide in their reports on Form N–SAR. As a result, we have increased the annual hour burden for UITs from 7.11 hours in the currently approved collection for Form N–SAR to 9.11 hours for proposed Form N–CEN.

The Commission also believes that, in the first year reports on the form are filed, funds may require additional time to prepare and file reports. We estimate that, for the first year, funds would require 20 additional hours.[759] Accordingly, we estimate that management investment companies would require 33.35 annual burden hours in the first year[760] and 13.35 annual burden hours in each subsequent year for preparing and filing reports on proposed Form N–CEN. Additionally, we estimate that UITs would require 29.11 annual burden hours in the first year[761] and 9.11 annual burden hours in each subsequent year for preparing and filing reports on proposed Form N–CEN.

We estimate that the average annual hour burden per response for proposed Form N–CEN for the first year would be 32.37 hours[762] and 12.37 hours in subsequent years.[763] Amortizing the

complexity of the information that would be filed in reports pursuant to proposed Form N–PORT, we have increased our external cost estimate for funds filing in house on proposed Form N–PORT by 30% (or $1,109).

[750] We estimate that money market funds that file reports on Form N–MFP through a third-party service provider pay approximately $8,800 per fund per year. Due to the increased volume and complexity of the information that would be filed in reports pursuant to proposed Form N–PORT, we have increased our estimate for funds filing through a third-party service provider on proposed Form N–PORT by 30% (or $2,640).

[751] This estimate is based on the following calculation: (3,749 funds that would file reports on proposed Form N–PORT in house × $4,809 per fund, per year) + (6,962 funds that would file reports on proposed Form N–PORT using a third-party service provider × $11,440 per fund, per year) = $97,674,221.

[752] Management investment companies are required to file a quarterly report on Form N–Q after the close of the first and third quarters of each fiscal year.

[753] For purposes of the PRA analysis, the burdens associated with amended rule 30a–1, as proposed, are included in the collection of information estimates of Form N–CEN.

[754] UITs are only required to file Form N–SAR on an annual basis. *See* rule 30a–1.

[755] This estimate is based on 2,419 management companies and 727 UITs filing reports on Form N–SAR as of December 31, 2014.

[756] Our estimate includes the hourly burden associated with registering/maintaining LEIs for the registrant/funds, which would be required to be included in reports on Form N–CEN.

[757] *See id.*

[758] We note that reports on Form N–CEN would be filed annually, rather than semi-annually as in the case of reports on Form N–SAR. Thus, while we estimate that the burden associated with each report on Form N–CEN for management companies would be two hours less than the burden associated with each report on Form N–SAR, we estimate that the annual Form N–CEN burden for management companies would actually be 17.35 hours less than that associated with Form N–SAR. This estimate is based on the following calculation: (15.35 Form N–SAR burden hours × 2 reports) − 13.35 Form N–CEN burden hours = 17.35 hours.

[759] This additional time may be attributable to, among other things, reviewing and collecting new or revised data pursuant to the Form N–CEN requirements or changing the software currently used to generate reports on Form N–SAR in order to output similar data in a different format.

[760] This estimate is based on the following calculation: 13.35 hours for filings + 20 additional hours for the first filing = 33.35 hours.

[761] This estimate is based on the following calculation: 9.11 hours for filings + 20 additional hours for the first filing = 29.11 hours.

[762] This estimate is based on the following calculation: ((2,419 management investment companies × 33.35 hours) + (727 UITs × 29.11 hours))/3,146 total funds = 32.37 hours.

[763] This estimate is based on the following calculation: ((2,419 management investment

Continued

burden over three years, we estimate that the average annual hour burden per fund per year would be 19.04 [764] and the total average annual hour burden would be 59,900.[765]

With respect to the initial filing of a report on Form N–CEN, we estimate an external cost of $220 per fund and, with respect to subsequent filings, we estimate an annual external cost of $120 per fund.[766] We estimate the amortized annual external cost per fund would be $153.[767] We currently estimate that no external cost burden is associated with Form N–SAR. External costs include the cost of goods and services, which with respect to reports on Form N–CEN, would include the costs of registering and maintaining an LEI for the registrant/funds.[768] In sum, we estimate that all applicable funds would incur, in the aggregate, external annual costs of $1,748,637.[769]

2. Rescission of Form N–SAR

Our proposed reforms would rescind Form N–SAR in order to eliminate unnecessarily duplicative reporting requirements. The proposed rescission would affect all management investment companies and UITs.

We currently estimate that the weighted average annual hour burden per response for Form N–SAR is 14.25 hours,[770] with a total annual hour burden for all respondents of approximately 82,223 hours. Accordingly, we estimate that, in the aggregate, our proposed rescission would eliminate the 82,223 annual burden hours associated with filing Form N–SAR. Additionally, we currently estimate that there are no external costs associated with preparation of reports on Form N–SAR.

C. Amendments to Regulation S–X

1. Rule 30e–1

Section 30(e) of the Investment Company Act requires every registered investment company to transmit to its stockholders, at least semiannually, reports containing such information and financial statements or their equivalent, as of a reasonably current date, as the Commission may prescribe by rules and regulations.[771] Rule 30e–1 generally requires management investment companies to transmit to their shareholders, at least semi-annually, reports containing the information that is required to be included in such reports by the fund's registration statement form under the Investment Company Act.[772] Pursuant to this rule and Forms N–1A and N–2, management investment companies are required to include the financial statements required by Regulation S–X in their shareholder reports.[773]

Rule 30e–1 also permits, under certain conditions, delivery of a single shareholder report to investors who share an address (''householding'').[774] Specifically, rule 30e–1 permits householding of annual and semi-annual reports by management companies to satisfy the transmission requirements of rule 30e–1 if, in addition to the other conditions set forth in the rule, the management company has obtained from each applicable investor written or implied consent to the householding of shareholder reports at such address. The rule requires management companies that wish to household shareholder reports with implied consent to send a notice to each applicable investor stating, among other things, that the investors in the household will receive one report in the future unless the investors provide contrary instructions. In addition, at least once a year, management companies relying on the householding provision must explain to investors who have provided written or implied consent how they can revoke their consent.

Compliance with the disclosure requirements of rule 30e–1 is mandatory. Responses to the disclosure requirements are not be kept confidential.

Based on staff conversations with fund representatives, we currently estimate that it takes approximately 84 hours per fund to comply with the collection of information associated with rule 30e–1, including the householding requirements. This time is spent, for example, preparing, reviewing, and certifying the reports. The current total estimated annual hour burden of responding to rule 30e–1 is approximately 903,000 hours.[775]

As discussed above, we are proposing certain amendments to Articles 6 and 12 of Regulation S–X. As outlined in Part II.C. above, the amendments would: (1) Require new, standardized disclosures regarding fund holdings in open futures contracts, open forward foreign currency contracts, and open swap contracts, and additional disclosures regarding fund holdings of written and purchased options; (2) update the disclosures for other investments, as well as reorganize the order in which some investments are presented; (3) amend the rules regarding the general form and content of fund financial statements; and (iv) require a new disclosure in the notes to the financial statements relating to a fund's securities lending activities.[776]

We estimate that that there are 11,230 management companies that would have to comply with these amendments.[777] In addition, we estimate that these amendments would likely increase the time spent preparing, reviewing and certifying reports, if adopted. The extent to which a fund's burden would increase as a result of the proposed amendments would depend on the extent to which the fund invests in the instruments covered by many of the amendments. We estimate that, on an annual basis, funds generally will incur an additional 9 burden hours in the first year [778] and an additional 3

companies × 13.35 hours) + (727 UITs × 9.11 hours))/3,146 = 12.37 hours.

[764] This estimate is based on the following calculation: (32.37 + (12.37 × 2))/3 = 19.04.

[765] This estimate is based on the following calculation: 3,146 × 19.04 = 59,900.

[766] *See supra* note 46 (discussing the costs associated with registering and maintaining an LEI).

[767] This estimate is based on the following calculation: $220 + (2 years × $120)/3 = $153.

[768] *See* Items 2.d. and 25.c. of Form N–CEN (requiring LEI for the registrant and each management company).

[769] This estimate is based on the following calculation: $153 × 11,429 funds = $1,748,637; *see infra* note 799 (explaining the calculation of 11,429 funds).

[770] This weighted estimate accounts for management companies filing reports on Form N–SAR twice a year and UITs filing reports on Form N–SAR once a year.

[771] Section 30(e).

[772] Rule 30e–1.

[773] *See* Item 27 of Form N–1A and Item 24 of Form N–2.

[774] *See* rule 30e–1(f).

[775] This estimate is based on the following calculation: 84 hours per fund × 10,750 funds (the estimated number of portfolios the last time the rule's information collections were submitted for PRA renewal in 2012) = 903,000 hours.

[776] Our amendments would also require prominent placement of disclosures regarding investments in derivatives in a fund's financial statements, rather than allowing such schedules to be placed in the notes to the financial statements. *See supra* Part II.C.

[777] This estimate includes 9,259 mutual funds (including money market funds), 1,403 ETFs (1,411 ETFs—8 UIT ETFs) and 568 closed-end funds and is based on internal SEC data as well as ICI statistics as of December 31, 2014 *available at http://www.ici.org/research/stats*.

[778] With respect to the amendments to Article 6 of Regulation S–X, we estimate that each fund would spend an average of five hours to initially comply with the amendments. For example, amendments to Article 6–07.1 would likely require funds to identify non-cash income and put a process in place to capture it in the financial statements. In addition, some funds would also likely move their schedules from financial statement notes to the financial statements themselves. With respect to the amendments requiring disclosure of the components of a custom basket/index, some funds voluntarily provide this disclosure now, but others do not; we recognize that funds would be affected by this requirement differently depending on their investments.

With respect to the amendments to article 12 of Regulation S–X, we estimate each fund would

burden hours for filings in subsequent years in order to comply with the proposed amendments.[779] Amortized over three years, the average annual hour burden associated with the amendments for Regulation S–X would be 5 hours per fund.[780] Accordingly, the estimated total annual average hour burden associated with the amendments would be 56,150.[781]

We estimate that the annual external cost burden of compliance with the information collection requirements of rule 30e–1, which is currently $31,061 per fund, will not change as a result of the proposed amendments to Regulation S–X.[782] We further estimate that the total annual external cost burden for rule 30e–1 would be $348,815,030.[783] External costs include, for example, the costs for funds to prepare, print, and mail the reports.

2. Rule 30e–2

Rule 30e–2 requires registered UITs that invest substantially all of their assets in shares of a management investment company to send their unitholders annual and semiannual reports containing financial information on the underlying company.[784] Specifically, rule 30e–2 requires that the report contain all the applicable information and financial statements or their equivalent, required by rule 30e–1 under the Investment Company Act to be included in reports of the underlying fund for the same fiscal period.[785] Rule 30e–2 also permits UITs to rely on the householding provision in rule 30e–1 to transmit a single shareholder report to investors who share an address.[786]

Compliance with the disclosure requirements of rule 30e–2 is mandatory. Responses to the disclosure requirements are not kept confidential.

The Commission currently estimates that the annual burden associated with rule 30e–2, including the householding requirements, is 121 hours per respondent. The Commission currently estimates that the total hour burden is approximately 91,960 hours.[787]

As discussed above, we are proposing certain amendments to Articles 6 and 12 of Regulation S–X that, if adopted, would likely increase the time spent preparing, reviewing and certifying reports.[788] The extent to which a UIT's burden increases as a result of the proposed amendments would depend on the extent to which an underlying fund invests in the instruments covered by many of the amendments. We estimate that there are 727 UITs that may be subject to the proposed amendments.[789] We also estimate that, on an annual basis, UITs generally will incur an additional 9 burden hours in the first year[790] and an additional 3 burden hours for filings in subsequent years in order to comply with the proposed amendments.[791] Amortized over three years, we estimate that the average annual hour burden associated with the proposed amendments would be 5 hours per fund.[792] Accordingly, we estimate that the total average annual hour burden associated with the proposed amendments to Regulation S–X would be 3,635 hours.[793]

In addition, we estimate that the annual external cost burden of compliance with the information collection requirements of rule 30e–2, which are currently $20,000 per respondent, will not change as a result of the proposed amendments to Regulation S–X.[794] We further estimate that the total annual external cost burden for rule 30e–2 would be $14,540,000.[795] External costs include, for example, the costs for the funds to prepare, print, and mail the reports.

D. Option for Web Site Transmission of Shareholder Reports

We are also proposing new rule 30e–3, which would permit, but not require, a fund to transmit its reports to shareholders by posting them on its Web site, as long as the fund meets certain other conditions of the rule regarding (a) availability of the report and other materials, (b) shareholder consent, (c) notice to shareholders, and (d) delivery of materials upon request of the shareholder.[796] Reliance on the rule would be voluntary; however, compliance with the rule's conditions is mandatory for funds relying on the rule. Responses to the information collections would not be kept confidential.

1. Availability of Report and Other Materials and Delivery Upon Request

Proposed rule 30e–3 would provide that a fund's annual or semiannual report to shareholders would be considered transmitted to a shareholder of record if certain conditions set forth in the rule are satisfied. Among these conditions are the requirements that (i) the fund's shareholder report, any previous shareholder report transmitted to shareholders of record within the last 244 days, and in the case of a fund that is not an SBIC, the fund's complete portfolio holdings as of the close of its most recent first and third fiscal quarters, be publicly accessible, free of charge, at a specified Web site

spend an average of four hours to initially comply with the amendments. For example, while accounting guidance already requires funds to identify the level of each security (such as Level 3 securities), we estimate there will be an increased burden in adding another note to the financial statements. This increased burden would vary depending on the information already reported by funds in their financial statements. Likewise, while many funds voluntarily identify illiquid securities in their schedule of investments, the funds that do not make this disclosure would bear an initial burden to comply with these amendments.

[779] With respect to the amendments to Article 6 of Regulation S–X, we estimate each fund would require two hours to comply with the requirements in each subsequent year. We likewise estimate that each fund would require one hour to comply with the requirements of the proposed amendments to Article 12 in each subsequent year.

[780] The estimate is based on the following calculation: (9 hours + (3 hours × 2))/3 = 5.

[781] The estimate is based on the following calculation: 5 hours × 11,230 management investment companies = 56,150.

[782] Because the proposed amendments would largely reorganize information currently reported by funds in their financial statements, either voluntarily or because it is required, we do not believe the external costs, such as printing and mailing costs, will increase as a result of the amendments.

[783] This estimate is based on the following calculation: 11,230 funds ×$31,061 = $348,815,030. The current total annual cost burden of rule 30e–1 is $333,905,750, which reflects the higher estimated number of funds subject to rule 30e–1 at the time of the last renewal for the rule. *See supra* note 775.

[784] Rule 30e–2.

[785] As discussed above, rule 30e–1 (together with Forms N–1A and N–2) essentially requires management investment companies to transmit to their shareholders, at least semi-annually, reports containing the financial statements required by Regulation S–X.

[786] *See* rule 30e–2(b); *see also supra* note 774 and accompanying text.

[787] 760 UITs (the estimated number of UITs the last time the rule's information collections were submitted for PRA renewal in 2012) × 121 hours per UIT = 91,960.

[788] As discussed above, the amendments would: (1) Require new, standardized disclosures regarding fund holdings in open futures contracts, open forward foreign currency contracts, and open swap contracts, and additional disclosures regarding fund holdings of written and purchased options; (2) update the disclosures for other investments, as well as reorganize the order in which some investments are presented; (3) amend the rules regarding the general form and content of fund financial statements; and (iv) require a new disclosure in the notes to the financial statements relating to a fund's securities lending activities. In addition, our amendments would also require prominent placement of disclosures regarding investments in derivatives in a fund's financial statements, rather than allowing such schedules to be placed in the notes to the financial statements.

[789] This estimate is based on the number of UITs that filed Form N–SAR with the Commission as of December 31, 2014.

[790] *See supra* note 778.

[791] *See supra* note 779.

[792] The estimate is based on the following calculation: (9 hours + (3 hours × 2))/3 = 5.

[793] The estimate is based on the following calculation: 5 hours × 727 UITs = 3,635.

[794] *See supra* note 782.

[795] This estimate is based on the following calculation: 727 UITs × $20,000 = $14,540,000. The current total annual cost burden of rule 30e–2 is $15,200,000, which reflects the higher estimated number of UITs at the time of the last renewal for the rule. *See supra* note 787.

[796] *See* proposed rule 30e–3.

address,[797] and (ii) the fund (or a financial intermediary through which shares of the fund may be purchased or sold) must send a paper copy of any of the materials discussed in (i) above to a shareholder upon request.[798]

We estimate that 11,957 funds could rely on proposed new rule 30e–3.[799] Of these funds, we estimate that 90% of all funds (or 10,761 funds) would rely on proposed rule 30e–3.[800] Of this 10,761, we estimate 9,634 are funds relying on the summary prospectus rule (rule 498 under the Securities Act) and, thus, currently posting annual and semiannual shareholder reports on their Web sites. Accordingly, with respect to these funds, we estimate that annual compliance with the posting requirements of proposed rule 30e–3 will require a half hour burden per fund.[801]

Of the remaining funds estimated to rely on proposed rule 30e–3, we further estimate that approximately 90% of those funds[802] (or 1,014 funds) already have a Web site.[803] With respect to these funds, we estimate that the posting requirements of proposed rule 30e–3 will require a one and half hour burden per fund to post the required documents online, both in the first year and annually thereafter. For the remaining 10% of funds (or 113 funds) that we estimate will rely on the proposed rule but that do not have a Web site,[804] we estimate initial compliance with the posting requirements will require approximately 24 hours per fund of internal fund staff time to develop a Web page and post the required documents on the Web page.[805] In addition, we estimate that each of these funds would spend approximately four hours of professional time to maintain and update a Web page with the required information on a quarterly basis.[806]

Accordingly, we estimate that the posting requirements will result in an average annual hour burden of 0.84 hours per fund in the first year of compliance[807] and 0.76 hours per fund for each of the next two years.[808] Amortized over three years, the average annual hour burden would be 0.79 hours per fund.[809] In sum, we estimate that the posting requirements of proposed rule 30e–3 would impose an average total annual hour burden of 8,447 hours on applicable funds.[810]

In addition, with respect to those funds that would rely on proposed rule 30e–3 but that do not currently have a Web site, we estimate that the posting requirements of the proposed rule will result in an external cost burden of $2000 per fund in the first year to develop a Web site,[811] but no cost burden in subsequent years.[812] We further estimate that the amortized annual external cost burden associated with developing a Web site would be $667.[813] In the aggregate, we estimate that the annual total external cost burden with respect to these funds would be $75,371.[814] With respect to those funds that currently have Web sites, we estimate that the posting requirements of the proposed rule will not result in any external costs.[815] The external cost burden is the cost of goods and services purchased in connection with complying with the rule, which, with respect to the posting requirements, would include costs associated with development of a Web site.

Furthermore, we also estimate that funds may incur external costs in connection with the requirement to provide a complete shareholder report upon request of a shareholder. We estimate that the annual costs associated with printing and mailing these reports would be $500 per fund.[816]

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[797] Proposed rule 30e–3(b)(1)(i)–(iii).

[798] Proposed rule 30e–30(e).

[799] This estimate includes 9,259 mutual funds (including money market funds), 1,403 ETFs (1,411 ETFs—8 UIT ETFs), 568 closed-end funds, and 727 UITs (including UIT ETFs) based on ICI statistics, Form N–SAR filings, and internal SEC data as of December 31, 2014. *See* ICI statistics *available at http://www.ici.org/research/stats*.

[800] Open-end funds relying on the summary prospectus rule, rule 498 under the Securities Act, are required to post their annual and semi-annual reports online. *See* rule 498(e)(1). In 2014, 9,634 funds filed a summary prospectus, which amounts to 90% of all open-end funds (9,634/(9,259 mutual funds + 1,403 ETFs (not including UITs))). Because these funds are already posting their shareholder reports online, we estimate that they will rely on proposed rule 30e–3 to transmit their reports. Based on the percentage of funds that rely on the summary prospectus rule, which, like proposed rule 30e–3, requires posting of documents online while also reducing printing and mailing costs for funds, we estimate that 90% of closed-end funds and UITs (or 1,166 funds ((568 closed-end funds + 727 UITs) × 90%) will rely on proposed rule 30e–3. Accordingly, we estimate that 90% of all funds ((9,634 open-end funds + 1,166 other funds)/11,957 funds) would also rely on proposed rule 30e–3.

[801] Because each of these funds is already required to have a Web site and to post its annual and semiannual shareholder reports on this Web site, we estimate that proposed rule 30e–3 will only result in each of these funds incurring a half hour burden per year to post their first and third quarter portfolio holdings on their Web sites, including in the first year of compliance with the rule.

[802] *See* Money Market Fund Reform 2010 Release, *supra* note 13, at 10092 (estimating that 20% of money market funds would have to develop a Web site in connection with new Web site posting requirements). Because five years have passed since we estimated 80% of money market funds had Web sites, and given the increased use of the Internet, we believe it is appropriate to estimate that 90% of funds currently have Web sites.

[803] This estimate is based on the following calculation: (10,761 funds—9,634 open-end funds relying on the summary prospectus rule) × 90% = 1,014 funds.

[804] This estimate is based on the following calculation: (10,761 funds—9,634 open-end funds relying on the summary prospectus rule) × 10% = 113 funds.

[805] *See* Money Market Fund Reform 2010 Release, *supra* note 13, at 10092 (estimating 24 hours of internal staff time to develop a Web page). Funds that are part of a larger fund complex may realize certain economies of scale in connection with creating a Web site. For purposes of our analysis, we do not account for such economies of scale.

[806] *See id.* (estimating 4 hours of professional time to maintain and update a Web page with the required money market fund information on a monthly basis). Funds that are part of a larger fund complex may realize certain economies of scale in connection with maintaining and updating a Web site. For purposes of our analysis, we do not account for such economies of scale.

[807] This estimate is based on the following calculations: 9,634 open-end funds relying on the summary prospectus rule × .5 hours = 4,817 hours; 1,014 funds with a Web site but not relying on the summary prospectus rule × 1.5 hours = 1,521 hours; 113 funds without a Web site × 24 hours in the first year = 2,712 hours; 4,817 hours + 1,521 hours + 2,712 hours = 9,050; 9,050/10,761 = 0.84 hours.

[808] This estimate is based on the following calculations: 9,634 open-end funds relying on the summary prospectus rule × .5 hours = 4,817 hours; 1,014 funds with a Web site but not relying on the summary prospectus rule × 1.5 hours = 1,521 hours; 113 funds without a Web site × (4 hours × 4 quarters) = 1,808 hours; 4,817 + 1,521 + 1,808 = 8,146; 8,146/10,761= 0.76 hours.

[809] The estimate is based on the following calculation: (0.84 + (0.76 × 2))/3 = 0.79 hours.

[810] This estimate is based on the following calculations: 9,050 hours for the first year + (8,146 hours × the 2 following years) = 25,342; 25,342/3 = 8,447.

[811] *See, e.g., How Much Should a Web Design Cost, Budgeting for a Professional Design for a Small Business Web site, available at http://webdesign.about.com/od/beforeyoustartaWebsite/a/how-much-should-a-web-design-cost.htm* (suggesting that a fairly basic Web site would cost $1250–$1500); *What Does a Web site Cost? Web site Development Costs, available at http://www.atilus.com/what-does-a-Website-cost-Website-development-costs/* (suggesting a basis Web site can be created for $2000–$5000). We believe that a Web site developed for purposes of proposed rule 30e–3 could be fairly basic considering the Web site would only need to accommodate posting of the required documents.

[812] We believe the collection of information burden in subsequent years will be handled internally and have, therefore, accounted for this burden in our estimate of the hourly burden for subsequent years. *See supra* note 806.

[813] This estimate is based on the following calculation: $2000/3 = $667.

[814] This estimate is based on the following calculation: 113 funds × $667 = $75,371.

[815] Because these funds maintain their Web sites for reasons other than compliance with proposed rule 30e–3, we do not attribute any costs related to such maintenance to proposed rule 30e–3.

[816] As noted above, we estimate the external costs associated with rules 30e–1 and 30e–2 (the rules relating to shareholder reports) to be $31,061 and $20,000, respectively. These costs account for preparation and transmission of complete shareholder reports twice a year in paper to shareholders. We estimate that one-third of these external costs are attributed to printing and mailing shareholder reports. Additionally, we estimate that 5% of shareholders may request paper copies of shareholder reports transmitted via Web site pursuant to proposed rule 30e–3. In this regard, we

Accordingly, we estimate that the aggregate annual external costs associated with printing and mailing shareholder reports upon request would be $5,380,500.[817] Together with the external costs for those funds that would rely on proposed rule 30e–3 but that do not currently have a Web site, we estimate that the posting and shareholder request requirements of the proposed rule will result in an annual external cost burden of $5,455,871.[818]

2. Shareholder Consent and Notice

Proposed rule 30e–3 would permit electronic transmission of a shareholder report to a particular shareholder only if the shareholder has either previously consented to this method of transmission or has been determined to have provided implied consent under certain conditions specified in the rule.[819] One of the conditions for implied consent requires that the fund transmit to the shareholder an Initial Statement, at least 60 days before it begins to rely on the rule, notifying the shareholder of the fund's intent to make future shareholder reports available on the fund's Web site until the shareholder revokes consent. Additionally, proposed rule 30e–3 would require funds relying on the rule with respect to a shareholder who has consented to electronic transmission to send a Notice containing certain information to the shareholder within 60 days of the close of the fiscal period to which the report relates.[820] The proposed rule would also require funds to file a form of the Notice with the Commission not later than 10 days after the Notice is sent to shareholders.[821]

As discussed in Part V.D.1. above, we estimate that 90% of all eligible funds (or 10,761 funds) will choose to rely on proposed rule 30e–3.[822] For those funds relying on the rule, we estimate that it will take each fund one and a half hours to prepare the Initial Statement in the first year of compliance with the rule.[823] We further estimate that each fund will incur a half hour burden in subsequent years to the extent the fund has shareholders that have not previously consented to Web site transmission of the fund's shareholder reports.[824] We also estimate that each fund will incur two hours to prepare and file the first Notice in the first year[825] and an hour for each subsequent notice.[826] Additionally, with respect to both the Initial Statement and the Notice, we estimate that 75% of the annual hour burden would be incurred by the fund and that 25% of the burden would be incurred by outside counsel retained by the fund.[827]

Accordingly, we estimate that the Initial Statement will result in an average hourly burden per fund of 1.3 hours in the first year[828] and 0.38 hours in each subsequent year.[829] Amortized over three years, the average annual hour burden associated with the Initial Statement would be 0.69 hours per fund.[830] In addition, we estimate that the Notice will result in an average annual hour burden of 2.3 hours per fund in the first year[831] and 1.5 hours per fund in each subsequent year.[832] Amortized over three years, the average annual hour burden associated with the Notice would be 1.8 hours per fund.[833] In sum, we estimate that the shareholder consent and Notice requirements of proposed rule 30e–3 would impose an average total annual hour burden of 8,932 hours on applicable funds.[834]

In addition, we estimate that funds will incur external costs if they rely on proposed rule 30e–3. The external cost burden is the cost of goods and services purchased in connection with complying with the rule, which, with respect to the Initial Statement and Notice, we estimate would include the costs associated with outside counsel and printing and mailing costs.

We estimate outside counsel retained by the fund will incur 25% of the hourly burden associated with each of the Initial Statement and Notice at a rate of $380 per hour.[835] Accordingly, we estimate that outside counsel costs associated with the Initial Statement will result in an average cost burden per fund of $144 in the first year,[836] $49 in subsequent years, [837] and amortized over three years, $81.[838] Additionally, we estimate that outside counsel costs associated with the Notice will result in

note that shareholders preferring paper copies of shareholder reports will also have the ability to return the postage-paid, pre-addressed reply card that all shareholders will receive with their Initial Statement to indicate that they want to opt-out of Web site transmission. *See* Part II.D.3.b. above (discussing the Initial Statement). Accordingly, we believe that only a small percentage of shareholders whose shareholder reports are transmitted via Web site will request paper copies. In order to be conservative in our estimates, we have multiplied 5% by $10,000, which is approximately one-third of the external costs associated with management companies' shareholder reports ($31,061/3 = $10,354), which are higher than the external costs associated with UITs' shareholder reports. Thus, we estimate that the external costs associated with providing complete shareholder reports upon request would be $500 (5% × $10,000).

[817] This estimate is based on the following calculation: $500 × 10,761 funds = $5,380,500.

[818] This estimate is based on the following calculation: $5,380,500 + $75,371 = $5,455,871.

[819] *See* proposed rule 30e–3(c).

[820] *See* proposed rule 30e–3(d).

[821] *See* proposed rule 30e–3(d)(7).

[822] *See supra* note 800 and accompanying text.

[823] *See* Internet Availability of Proxy Materials, Exchange Act Release No. 55146 (Jan. 22, 2007) [72 FR 4148, 4161 (Jan. 29, 2007)] (''Proxy Notice Release'') (estimating the annual burden for an issuer or other soliciting person to prepare a notice of Internet availability of proxy materials (''proxy notice'') to be approximately one and half hours). We estimate that the length and breadth of the Initial Statement would be similar to that of a proxy notice.

[824] Based our initial hour burden estimate for the Initial Statement, and given that a fund will only have to provide the Initial Statement in subsequent years to those shareholders who have not previously consented, we believe the subsequent hour burden will be minimal. Accordingly, we have estimated a half hour burden per fund in subsequent years.

[825] *See supra* note 823. We estimate that the length and breadth of the Notice would be similar to that of a proxy notice. However, under proposed rule 30e–3, a Notice would also have to be separately filed with the Commission. Accordingly, we have increased the initial estimated hour burden for the Notice to two hours versus the hour and half estimated hour burden for the proxy notice. In addition, a fund relying on the proposed rule would have to prepare and send a notice to relevant shareholders, and file the notice with the Commission, twice a year—once for the annual shareholder report and once for the semiannual shareholder report. In the first year of compliance with the rule, we estimate that the fund would need two hours to prepare and file the first notice and one hour to prepare and file the second notice, for a total of three hours in the first year of compliance.

[826] Based our initial hour burden estimate for the Notice, and given that a fund will likely use its original Notice as a template for subsequent notices but will also have to file each Notice with the Commission, we believe one hour burden per fund per subsequent filing is an appropriate estimate. As noted above, a fund would have to prepare and file a Notice twice a year. As such, we estimate the hour burden for each fund in subsequent years would be two hours.

[827] *See* Proxy Notice Release, *supra* note 823 (estimating 75% of the proxy notice burden would be prepared by the issuer and that 25% of the burden would be prepared by outside counsel retained by the issuer).

[828] The estimate is based on the following calculation: 1.5 hours × 75% = 1.3 hours.

[829] The estimate is based on the following calculation: 0.5 hours × 75% = 0.38 hours.

[830] The estimate is based on the following calculation: (1.3 hours + (2 years × 0.38 hours))/3 years = 0.69 hours.

[831] The estimate is based on the following calculation: (2 hours + 1 hour) × 75% = 2.3 hours.

[832] The estimate is based on the following calculation: (1 hour + 1 hour) × 75% = 1.5 hours.

[833] The estimate is based on the following calculation: (2.3 hours + (2 years × 1.5 hours))/3 years = 1.8 hours.

[834] This estimate is based on the following calculations: (0.69 hours for the Initial Statement × 10,761 funds) + (1.8 hours for the Notice × 10,761 funds) = 26,795; 26,795 hours/3 years = 8,932.

[835] This estimate is based on the rate for attorneys in SIFMA's Management and Professional Earnings in the Securities Industry 2013, modified by Commission staff to account for an 1800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead.

[836] The estimate is based on the following calculation: 1.5 hours associated with × 25% = 0.38 hours; 0.38 hours × $380 = $144.

[837] The estimate is based on the following calculation: 0.5 hours × 25% = 0.13 hours; 0.13 hours × $380 = $49.

[838] The estimate is based on the following calculation: ($144 + (2 years × $49))/3 = $81.

an average cost burden per fund of $285 in the first year,[839] $190 in subsequent years, [840] and amortized over three years, $222.[841] In sum, we estimate that the outside counsel costs related to the shareholder consent and Notice requirements of proposed rule 30e–3 would impose an annual average total cost burden of $3,260,583 on applicable funds.[842]

We also estimate that, in the first year, each fund will incur approximately $1000 in printing and mailing costs related to each of the first Initial Statement and Notice.[843] In subsequent years, we estimate each fund will incur $333 in printing and mailing costs related to the Initial Statement[844] and $1000 with respect to each Notice.[845] Amortized over three years, we estimate that the Initial Statement will result in $555 annual cost burden per fund[846] and the Notice will result in a $2000 annual cost burden per fund.[847] In sum, we estimate that the printing and mailing costs related to the shareholder consent and Notice requirements of proposed rule 30e–3 would impose an average annual total cost burden of $27,494,355 on applicable funds.[848] Accordingly, together with the costs associated with outside counsel, we estimate that the shareholder consent and Notice requirements of the proposed rule would impose an average annual total cost burden of $30,754,938.[849]

In total, proposed rule 30e–3 would impose an average total annual hour burden of 17,379 hours on applicable funds[850] and a total annual external cost burden of $36,210,809 on applicable funds.[851]

3. Impact on Information Collections for Rules 30e–1 and 30e–2

As discussed in Sections V.C.1. and 2. above, rule 30e–1 under the Investment Company Act requires management companies to transmit semi-annual reports to their shareholders and rule 30e–2 under the Investment Company Act requires certain UITs to similarly transmit semi-annual reports to their unitholders.[852] Also as discussed above, we currently estimate, with respect to rule 30e–1, that each fund incurs an annual hourly burden of 84 hours [853] and an annual external cost burden of $31,061 per fund.[854] Additionally, with respect to rule 30e–2, we currently estimate that each UIT respondent incurs an annual hourly burden of 121 hours per fund [855] and an annual external cost burden of $20,000 per fund.[856]

As discussed above, we estimate that 90% of all funds will rely on proposed rule 30e–3. In addition, we estimate that a fund's hourly burden associated with rule 30e–1 or rule 30e–2 will not change as result of proposed rule 30e–3. However, we estimate that, for those funds that rely on proposed rule 30e–3, the fund's external cost burden would decrease. In this regard, we estimate that for 90% of funds relying on rule 30e–3, their annual cost burden related to rule 30e–1 would decrease from $31,061 to $20,707.[857] Additionally, we estimate that for the 90% of funds relying on rule 30e–3, their annual cost burden related to rule 30e–2 would decrease from $20,000 to $13,333.[858] Accordingly, if proposed rule 30e–3 is adopted, we estimate that for 90% of management companies the total annual external cost burden for rule 30e–1 would be $209,285,649 [859] and the total annual external cost burden for all management companies under rule 30e–1 would be $244,167,152.[860] Additionally, if proposed rule 30e–3 is adopted, we estimate that for 90% of UITs the total annual external cost burden for rule 30e–2 would be $8,719,782 [861] and the total annual external cost burden for all UITs under rule 30e–2 would be $10,179,782.[862]

[839] The estimate is based on the following calculation: (2 hours + 1 hour) × 25% = 0.75 hours; 0.75 hours × $380 = $285.

[840] The estimate is based on the following calculation: (1 hour + 1 hour) × 25% = 0.5 hours; 0.5 hours × $380 = $190.

[841] The estimate is based on the following calculation: ($285 + (2 years × $190))/3 = $222.

[842] This estimate is based on the following calculations: ($81 for the Initial Statement × 10,761 funds) + ($222 for the Notice × 10,761) = $3,260,583.

[843] As noted above, we estimate the external costs associated with rules 30e–1 and 30e–2 (the rules relating to shareholder reports) to be $31,061 and $20,000, respectively. These costs account for preparation and transmission of complete shareholder reports twice a year in paper to shareholders. We estimate that one-third of these external costs are attributed to printing and mailing shareholder reports. We estimate that the Initial Statement and Notice would require significantly less be spent on printing and mailing costs given the significantly smaller size of the documents. Accordingly, we estimate that each of the Initial Statement and Notice would require 10% of the printing and mailing costs associated with complete shareholder reports. We also estimate that there would be no other external costs attributable to the Initial Statement or Notice. In order to be conservative in our estimates, we have multiplied 10% by $10,000, which is approximately one-third of the external costs associated with management companies' shareholder reports ($31,061/3 = $10,354), which are higher than the external costs associated with UITs' shareholder reports. Thus, we estimate that the initial printing and mailing costs associated with each of the Initial Statement and Notice would be $1000 (10% × $10,000). Additionally, however, with respect to the Notice, we note that a fund would send two Notices a year—one for each shareholder report. Accordingly, we estimate that the printing and mailing costs associated with the Notice would be $2000 ($100 × 2 Notices) in the first year.

[844] Given that funds will only have to send the Initial Statement to shareholders who have not yet consented (*e.g.,* new shareholders), we estimate that the external cost burden in subsequent years would only be one-third the cost of the first Initial Statement ($1000/3 = $333).

[845] We do not believe the external costs associated with printing and mailing the Notice will be different in subsequent years because proposed rule 30e–3 specifies the information to be included in the Notice, which must be sent each time a shareholder report is transmitted. As noted above, funds would send two Notices a year—one for each shareholder report. Accordingly, we estimate that the printing and mailing costs associated with the Notice would be $2000 ($1000 × 2 Notices) in each subsequent year.

[846] This estimate is based on the following calculation: ($1000 + (2 years × $333))/3 = $555.

[847] This estimate is based on the following calculation: ($2000 per year × 3 years)/3 = $2000.

[848] This estimate is based on the following calculations: ($555 for the Initial Statement × 10,761 funds) + ($2000 for the Notice × 10,761) = $27,494,355.

[849] This estimate is based on the following calculations: $3,260,583+ $27,494,355 = $30,754,938.

[850] This estimate is based on the following calculation: 8,447 hours for the posting requirements + 8,932 hours for the written shareholder consent statement and Notice requirements = 17,379 hours.

[851] This estimate is based on the following calculation: $5,455,871 + $30,754,938 = $36,210,809.

[852] *See supra* notes 784 and 785 and accompanying text.

[853] As discussed in Part V.C.1., the current estimated total annual hourly burden for all funds is 903,000 hours. *See supra* note 775.

[854] As discussed in Part V.C.1., the current total estimated annual cost burden for all funds is $333,905,750. *See supra* note 783.

[855] As discussed in Part V.C.2., the current estimated total annual hourly burden for all UIT respondents is 91,960 hours. *See supra* note 787.

[856] As discussed in Part V.C.2., the current total estimated annual cost burden for all UIT respondents is $15,200,000. *See supra* note 795.

[857] As discussed above, we estimate that one-third of the external costs currently attributed to rule 30e–1 relate to printing and mailing costs, which would not be applicable to management companies relying on proposed rule 30e–3. Accordingly, our estimate is based on the following calculation: $31,061/3 = $10,354; $31,061—$10,354 = $20,707.

[858] As discussed above, we estimate that one-third of the external costs currently attributed to rule 30e–2 relate to printing and mailing costs, which would not be applicable to UITs relying on proposed rule 30e–3. Accordingly, our estimate is based on the following calculation: $20,000/3 = $6,667; $20,000—$6,667 = $13,333.

[859] This estimate is based on the following calculation: 11,230 funds × 90% = 10,107; 10,107 funds × $20,707 = $209,285,649. *See also* note 777 (estimating the number of management companies subject to rule 30e–1 as 11,230).

[860] This estimate is based on the following calculation: 11,230 funds—10,107 funds = 1,123 funds; 1,123 funds × $31,061 = $34,881,503; $209,285,649 + $34,881,503 = $244,167,152.

[861] This estimate is based on the following calculation: 727 UITs × 90% = 654; 654 UITs × $13,333 = $8,719,782; *see also* note 789 (estimating the number of UITs subject to rule 30e–2 as 727).

[862] This estimate is based on the following calculation: 727 UITs—654 UITs = 73 UITs; 73 UITs × $20,000 = $1,460,000; $8,719,782 + $1,460,000 = $10,179,782.

E. Amendments to Certification Requirements of Form N–CSR

In connection with the rescission of Form N–Q, we are proposing to amend Form N–CSR, the reporting form used by management companies to file certified shareholder reports under the Investment Company Act and the Exchange Act. Form N–Q currently requires principal executive and financial officers of the fund to make certifications for the first and third fiscal quarters relating to (1) the accuracy of information reported to the Commission, and (2) disclosure controls and procedures and internal control over financial reporting.[863] Rescission of Form N–Q would eliminate these certifications.

Form N–CSR requires similar certification with respect to the fund's second and fourth fiscal quarters. As a result of the proposed rescission of Form N–Q, we are proposing to amend the form of certification in Form N–CSR to require each certifying officer to state that he or she has disclosed in the report any change in the registrant's internal control over financial reporting that occurred during the most recent fiscal half-year, rather than the registrant's most recent fiscal quarter as currently required by the form.[864] Lengthening the look-back of this certification to six months, so that the certifications on Form N–CSR for the semi-annual and annual reports would cover the first and second fiscal quarters and third and fourth fiscal quarters, respectively, would fill the gap in certification coverage that would otherwise occur once Form N–Q is rescinded.

Compliance with the amended certification requirements would be mandatory and responses would not be kept confidential.

We currently estimate that the annual burden associated with Form N–CSR is 14.42 hours per fund[865] and that the current total annual time burden for Form N–CSR is 177,799 hours.[866] We note that the amount and content of the information contained in the reports filed on Form N–CSR would not change as the result of the proposed amendments and the funds likely already have policies and procedures in place to assist officers in their certifications of this information. Accordingly, we estimate that the proposed amendments to Form N–CSR would not change the annual hour burden associated with Form N–CSR and, thus, we continue to estimate the annual hour burden associated with Form N–CSR to be 14.42 hours per fund. With respect to the total annual hour burden, however, we estimate 161,937 hours.[867] This decrease in the current total annual hour burden is a result of the decrease in the number of funds estimated to file Form N–CSR.

In addition, we currently estimate that the annual cost of outside services associated with Form N–CSR is approximately $129 per fund.[868] External costs include the cost of goods and services purchased to prepare and update filings on Form N–CSR. We do not believe that these costs will change as a result of the proposed amendments to Form N–CSR and, thus, continue to estimate an external cost burden of $129 per fund to file Form N–CSR. We further estimate that the total annual external cost burden for Form N–CSR would be $2,897,340.[869]

F. Amendments to Registration Statement Forms

We are also proposing to amend Forms N–1A, N–2, N–3, N–4, and N–6 to exempt funds from those forms' respective books and records disclosures if the information is provided in a fund's most recent report on Form N–CEN.[870] The books and records disclosures required by these registration statement forms are not provided in a structured format. We believe that having this information in a structured format would increase our efficiency in preparing for exams as well as our ability to identify current industry trends and practices and, therefore, are proposing it be reported on proposed Form N–CEN.

Currently, we estimate the following total hour burden for each of the relevant forms: (i) Form N–1A—1,579,974 hours; (ii) Form N–2—86,533 hours; (iii) Form N–3—2,173 hours; (iv) Form N–4—256,835 hours; and (v) Form N–6—34,349 hours. We estimate the total hour burden, as discussed above, for each respective form will not change as result of the proposed amendments. Additionally, we do not believe the total cost burden for any of the relevant forms would change as a result of the proposed amendments and, therefore, we continue to estimate the following total cost burden for each of the respective forms: (i) Form N–1A—$124,820,197; (ii) Form N–2—$5,488,048; (iii) Form N–3—$139,300; (iv) Form N–4—$26,609,241; and (v) Form N–6—$3,820,447.

G. Request for Comments

We request comment on whether our estimates for burden hours and any external costs as described above are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The agency has submitted the proposed collection of information to OMB for approval. Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them 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. S7–08–15. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this

[863] *See supra* note 178 and accompanying text.

[864] Proposed Item 11(b) of Form N–CSR; proposed paragraph 5(b) of certification exhibit of Item 11(a)(2) of Form N–CSR.

[865] This estimate accounts for two filings per year. In addition, we note that our current estimate does not separately account for the certifications on Form N–CSR.

[866] This estimate is based on the following calculation: 14.42 hours × 12,330 funds (the estimated number of funds the last time the rule's information collections were submitted for PRA renewal in 2013)).

[867] This estimate is based on the following calculation: 11,230 funds × 14.42 hours = 161,937. *See supra* note 777 (calculating the estimate for 11,230 funds).

[868] The external costs associated with Form N–CSR do not include the external costs associated with the shareholder report. The external costs associated with the shareholder report are accounted for under the collections of information related to rules 30e–1 and 30e–2 under the Investment Company Act.

[869] This estimate is based on the following calculation: 11,230 funds × $129 = $1,448,670; $1,448,670 × 2 times per year = $2,897,340. The current total annual cost burden of Form N–CSR is $3,189,771, which reflects the higher estimated number of filers for Form N–CSR at the time of the last renewal for the form. *See supra* n.866.

[870] *See supra* notes 397–399 and accompanying text. As discussed in Part II.F. above, we are also proposing technical and conforming amendments to certain registration forms. We do not believe these changes will result in any change to the burden and cost estimates currently applicable to those forms.

release; therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–08–15, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

VI. Initial Regulatory Flexibility Analysis

This Initial Regulatory Flexibility Analysis (''IRFA'') has been prepared in accordance with section 3 of the Regulatory Flexibility Act (''RFA'').[871] It relates to proposed new Form N–PORT and amendments to the Form N–CSR certification requirement, amendments to Regulation S–X, the proposed rule governing electronic transmission of shareholder reports, the rescission of Forms N–Q and N–SAR, and proposed amendments to Forms N–1A, N–2, N–3, N–4, and N–6.

A. Reasons for and Objectives of the Proposed Actions

The Commission collects certain information about the funds that it regulates. The Commission is proposing new rules, rule amendments, and new forms and form amendments that would improve the quality of information that funds report to the Commission, benefitting the Commission's risk monitoring and oversight, examination, and enforcement programs.

We believe that our proposals would improve the information that funds report to their shareholders and the Commission. In addition, the proposed new forms would require reports be filed in a structured data format (XML) to allow for easier collection and analysis of data by Commission staff and the public. This is the format used by Form N–MFP, Form 13F, and Form D, which greatly improves the ability of Commission staff and other potential users to aggregate and analyze the data reported.

The Commission's objective is to gain more timely and useful information about funds' operations and portfolio holdings. The Commission also believes that its risk monitoring and oversight, examination, and enforcement programs would be improved by requiring enhanced information from funds.

B. Legal Basis

The Commission is proposing the rules and forms contained in this document under the authority set forth in the Securities Act, particularly, section 19 thereof [15 U.S.C. *77a et seq.*], the Trust Indenture Act, particularly, section 319 thereof [15 U.S.C. 77aaa *et seq.*], the Exchange Act, particularly, sections 10, 13, 15, 23, and 35A thereof [15 U.S.C. 78a *et seq.*], the Investment Company Act, particularly, sections 8, 30, and 38 thereof [15 U.S.C. 80a *et seq.*], and 44 U.S.C. 3506, 3507.

C. Small Entities Subject to the Rule

An investment company is a small entity if, together with other investment companies in the same group of related investment companies, it has net assets of $50 million or less as of the end of its most recent fiscal year.[872] Commission staff estimates that, as of December 2014, approximately 146 registered investment companies, including 133 open and closed-end funds (including one SBIC) and 13 UITs. The Commission staff further estimates that, as of December 2014, approximately 28 BDCs are small entities.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments would create, amend, or eliminate current reporting requirements for small entities.

1. Form N–PORT

Funds currently report portfolio holdings information quarterly on Form N–Q (first and third fiscal quarters) and Form N–CSR (second and fourth fiscal quarters). The Commission is proposing to adopt new Form N–PORT on which funds, other than MMFs, UITs, and SBICs, would be required to report portfolio holdings information and information related to liquidity, derivatives, securities lending, purchases and redemptions, and counterparty exposure each month. Funds would be required to file Form N–PORT within 30 days after the end of the monthly period using a structured format. Only information reported for the third month of each quarter would be available to the public and such information would not be made public until 60 days after the end of the third month of the fund's fiscal quarter. For smaller funds and fund groups (*i.e.,* funds that together with other investment companies in the same ''group of related investment companies'' have net assets of less than $1 billion as of the end of the most recent fiscal year), which would include small entities, we expect to provide for an extra 12 months (or 30 months after the effective date) to comply with the new Form N–PORT reporting requirements.

Based on our experience with other interactive data filings, we estimate that funds would prepare and file their reports on proposed Form N–PORT by either (1) licensing a software solution and preparing and filing the reports in house, or (2) retaining a service provider to provide data aggregation and validation services as part of the preparation and filing of reports on proposed Form N–PORT on behalf of the fund. We estimate that approximately 132 open and closed-end funds (other than money market funds and SBICs), are small entities that would be required to file, on a monthly basis, a complete report on proposed Form N–PORT reporting certain information regarding the fund and its portfolio holdings. As discussed above, we estimate, for funds that choose to license a software solution to file reports on Form N–PORT, that completing, reviewing, and filing Form N–PORT would cost $55,970 for each fund, including small entities, in its first year of reporting and $46,745 per year for each subsequent year.[873] We further estimate, for funds that choose to retain a third-party service provider to provide data aggregation and validation services as part of the preparation and filing of reports on Form N–PORT, that completing, reviewing, and filing Form N–PORT would cost $54,821 for each fund, including small entities, in its first year of reporting, and $38,746 per year for each subsequent year.[874]

2. Rescission of Form N–Q

Our proposal would rescind Form N–Q in order to eliminate unnecessarily duplicative reporting requirements. The proposed rescission of Form N–Q would affect all management investment companies required to file reports on the form. We expect that approximately 132 open and closed-end funds are small entities that would be affected by the recession of Form N–Q.

As discussed above, we estimate that the rescission of Form N–Q would save $6,762 per year for each fund, including small entities.[875]

[871] 5 U.S.C. 603.

[872] 17 CFR 270.0–10(a).

[873] *See supra* notes 658–659 and accompanying text.

[874] *See supra* notes 660–661 and accompanying text.

[875] The estimated cost is based upon the following calculations: ($6,762 = 21 hours/fund × $322/hour compensation for professionals commonly used in preparation of Form N–Q filings.) *See supra* Part V.A.2.

3. Form N–CEN

Funds currently report census type information relating to the fund's organization, service providers, fees and expenses, portfolio strategies and investments, portfolio transactions, and share transactions on Form N–SAR. Funds file this form semi-annually with the Commission, except for UITs, which must file such reports annually.[876] The utility of the information reported on Form N–SAR has been limited for two reasons. First, the data items funds are required to report on Form N–SAR have not been updated to reflect current Commission staff needs. Second, the technology by which funds file reports on Form N–SAR has not been updated and limits the Commission staff's ability to extract and analyze reported data.

Because of these limitations, the Commission is proposing to replace Form N–SAR with new Form N–CEN. This new form would streamline and updated the required data items to reflect current Commission staff needs. The Commission is also proposing that funds file reports on Form N–CEN in a structured (XML) format, which would allow for easier data analysis and use in the Commission's rulemaking, inspection, and risk monitoring functions and reduce burdens on filers. Finally, the Commission is proposing that funds file reports on Form N–CEN annually, opposed to semi-annually, which is currently required for Form N–SAR (except UITs, which currently must file reports annually).

We estimate that approximately 146 registered investment companies, including 133 open and closed-end funds (including one SBIC) and 13 UITs, are small entities that would be required to file a complete report on Form N–CEN. Although UITs are required to complete fewer items on Form N–CEN than other registered investment companies, the burden on UITs would increase because UITs would be required to respond to more items in Form N–CEN than they are currently required to respond to under Form N–SAR.

As discussed above, the SEC estimates that completing, reviewing, and filing Form N–CEN would cost $10,622 for each fund,[877] including small entities, in its first year of reporting, and $4,252 per year for each subsequent year.[878] We further estimate that completing, reviewing, and filing Form N–CEN would cost $9,272 for each UIT,[879] including small entities, in its first year of reporting, and $2,902 per year for each subsequent year.[880]

4. Rescission of Form N–SAR

Our proposal would rescind Form N–SAR in order to eliminate unnecessarily duplicative reporting requirements. We estimate that that approximately 146 registered investment companies that are small entities, including 133 open and closed-end funds (including one SBIC) and 13 UITs would be affected by the rescission of Form N–SAR.

We estimate that rescinding Form N–SAR would save $9,778 per year for each fund, including small entities.[881] We further estimate that rescinding Form N–SAR would save $2,265 per year for each UIT, including small entities.[882]

5. Regulation S–X Amendments

The Commission is also proposing to amend Regulation S–X to require new, standardized disclosures regarding fund holdings in open futures contracts, open forward foreign currency contracts, and open swap contracts, and additional disclosures regarding fund holdings of written and purchased options, update the disclosures for other investments with conforming amendments, and amend the rules regarding the form and content of fund financial statements. We believe that the amendments we are proposing today are generally consistent with how many funds are currently reporting investments (including derivatives), and other information according to current industry practices. The Commission believes investors would benefit from our proposed amendments because increased disclosure and standardization of fund holdings would improve comparability among funds including transparency for investors regarding a fund's use of derivatives and the liquidity of certain investments. The Commission also believes that greater clarity would benefit the industry, while any additional burdens would be reduced since similar disclosures would be proposed to be required on Form N–PORT.

We expect that approximately 146 registered investment companies, including 133 open and closed-end funds (including one SBIC) and 13 UITs and, approximately 28 BDCs, are small entities that would be affected by the amendments to Regulation S–X. As discussed above, we estimate that amending Regulation S–X would cost $2,417 for each fund, including small entities, in its first year of reporting, and $806 per year for each subsequent year.[883] As discussed above, we further estimate that amending Regulation S–X would cost $2,417 for each UIT, including small entities, in its first year of reporting, and $806 per year for each subsequent year.[884]

6. Web Site Transmission of Shareholder Reports

The Commission is proposing new rule 30e–3 under the Investment Company Act, which would, if adopted, permit, but not require, a fund to satisfy requirements under the Act and rules thereunder to transmit reports to shareholders if the fund makes the reports and certain other materials accessible on its Web site and periodically notifies investors of the materials' availability.[885] Proposed rule 30e–3 would provide that a fund's annual or semiannual report to shareholders would be considered ''transmitted'' to a shareholder of record if certain conditions set forth in the rule are satisfied.[886] Funds that do not maintain Web sites or that otherwise wish to transmit shareholder reports in paper or pursuant the Commission's

[876] *See* rule 30b1–1 and rule 30a–1.

[877] *See supra* notes 723 and 725 and accompanying text. The estimated costs is based upon the following calculations: ($10,622 = (13.35 hours/fund ongoing costs + 20 hours/fund initial costs) × $318.50/hour compensation for professionals commonly used in preparation of Form N–CEN filings).

[878] *See supra* note 724 and accompanying text. The estimated costs is based upon the following calculations: ($4,252 = 13.35 hours/fund ongoing costs × $318.50/hour compensation for professionals commonly used in preparation of Form N–CEN filings).

[879] *See supra* notes 723 and 725 and accompanying text. The estimated costs is based upon the following calculations: ($9,272 = (9.11 hours/UIT ongoing costs + 20 hours/UIT initial costs) × $318.50/hour compensation for professionals commonly used in preparation of Form N–CEN filings).

[880] *See supra* note 724 and accompanying text. The estimated costs is based upon the following calculations: ($2,902 = 9.11 hours/UIT ongoing costs × $318.50/hour compensation for professionals commonly used in preparation of Form N–CEN filings).

[881] The estimated savings is based upon the following calculations: ($9,778 = 15.35 hours/fund × $318.50/hour compensation for professionals commonly used in preparation of Form N–SAR filings × 2 filings/year.) *See supra* notes 724–725 and accompanying text (using a weighted average annual hour burden per response for Form N–SAR of 14.25 hours).

[882] The estimated savings is based upon the following calculations: ($2,265 = 7.11 hours/UIT × $318.50/hour compensation for professionals commonly used in preparation of Form N–SAR filings.) *See supra* notes 724–725 and accompanying text (using a weighted average annual hour burden per response for Form N–SAR of 14.25 hours).

[883] *See supra* notes 694–699 and accompanying text.

[884] *See supra* notes 698–701 and accompanying text.

[885] *See supra* Part II.D.

[886] Proposed rule 30e–3(a).

existing electronic delivery guidance would continue to be able to satisfy their transmission requirements by those transmission methods.

We expect that approximately 146 registered investment companies, including 133 open and closed-end funds (including one SBIC) and 13 UITs, are small entities that would rely on the Web site reporting rules. As discussed above, the SEC estimates that our proposed Web site reporting would save $4,792 for each fund, including small entities, in its first year of reporting, and $6,122 per year for each subsequent year.[887]

7. Amendments to Form N–CSR

Form N–Q and Form N–CSR currently require a quarterly SOX certification relating to the accuracy of information reported to the Commission and disclosure controls and procedures and internal control over financial reporting. To facilitate the elimination of Form N–Q, we are proposing to expand the SOX certification for Form N–CSR to six months to maintain coverage for the entire fiscal year. We expect that approximately 146 registered investment companies, including 133 open and closed-end funds (including one SBIC) and 13 UITs, are small entities that would be affected by the amendments to Form N–CSR. As discussed above, the Commission does not believe that the costs associated with reporting on Form N–CSR for will change for funds, including small entities, as a result of the proposed amendments to Form N–CSR.[888]

8. Amendments to Registration Statement Forms

We are also proposing to amend Forms N–1A, N–2, N–3, N–4, and N–6 to exempt funds from those forms' respective books and records disclosures if the information is provided in a fund's most recent report on Form N–CEN.[889] The books and records disclosures required by these registration statement forms are not provided in a structured format. We believe that having this information in a structured format would increase our efficiency in preparing for exams as well as our ability to identify current industry trends and practices and, therefore, are proposing it be reported on proposed Form N–CEN. We are also proposing amendments that would restrict funds that would rely on proposed rule 30e-3 from providing a Summary Schedule in their shareholder reports in lieu of a complete schedule, and certain technical and conforming amendments to Forms N–1A, N–2 and N–3 to refer to the availability of portfolio holdings schedules attached to reports on Form N–PORT and posted on fund Web sites rather than on reports on Form N–Q.

We expect that approximately 146 registered investment companies, including 133 open and closed-end funds (including one SBIC) and 13 UITs, and approximately 28 BDCs, are small entities that would be required to file registration statements. As discussed above, the SEC estimates that our proposed amendments would not change for funds, including small entities, as a result of our proposed amendments to Forms N–1A, N–2, N–3, N–4, and N–6.[890]

E. Duplicative, Overlapping, or Conflicting Federal Rules

Funds currently report portfolio holdings information for the first and third fiscal quarters on Form N–Q and for the second and fourth fiscal quarters on Form N–CSR. As a result of our proposal to create new Form N–PORT, on which funds will report portfolio holdings information monthly, the Commission is proposing to eliminate Form N–Q, which will reduce duplication of portfolio holdings information for the first and third fiscal quarters. We acknowledge that Form N–CSR, Form N–PORT, Regulation S–X, and Web reporting would require reporting of some duplicative information, including information currently reported on the fund's registration statements and annual reports. However, we believe that both the nature and structure of the reporting are sufficiently different to justify overlapping information requirements on the fund's Web site or on respective Commission forms.[891]

Funds currently report census information on Form N–SAR. As part of our proposed amendments, the Commission is proposing to replace Form N–SAR with new Form N–CEN. In addition, we are proposing that reports on Form N–CEN be filed annually, as opposed to semi-annually, which is generally required for Form N–SAR. Again, we acknowledge that Form N–CEN would require reporting of some duplicative information, including information currently reported on the fund's registration statements and annual reports. Like Form N–PORT and Form N–CSR, we believe that both the nature and structure of the reporting are sufficiently different to justify overlapping information requirements.

Finally, in order to reduce duplicative information in Form N–CEN and fund registration statements, we are proposing to amend Forms N–1A, N–2, N–3, N–4, and N–6 to exempt funds from those forms' respective books and records disclosures if the information is provided in a fund's most recent report on Form N–CEN.

F. Significant Alternatives

The RFA directs the Commission to consider significant alternatives that would accomplish our stated objective, while minimizing any significant economic impact on small entities. The Commission considered the following alternatives for small entities in relation our proposed amendments: (i) Establishing different reporting requirements or frequency to account for resources available to small entities; (ii) using performance rather than design standards; and (iii) exempting small entities from all or part of the proposal.

Small entities currently follow the same requirements that large entities do when filing reports on Form N–SAR, Form N–CSR, and Form N–Q. The Commission believes that establishing different reporting requirements or frequency for small entities would not be consistent with the Commission's goal of industry oversight and investor protection. However, as discussed above, we are proposing a delayed compliance period for small entities that would file reports on Form N–PORT.

G. General Request for Comment

The Commission requests comments regarding this IRFA. We request comments on the number of small entities that may be affected by our proposed rules and guidelines, and whether the proposed rules and guidelines would have any effects not considered in this analysis. We request that commenters describe the nature of any effects on small entities subject to the rules, and provide empirical data to support the nature and extent of such effects. We also request comment on the proposed compliance burdens and the effect these burdens would have on smaller entities.

[887] *See supra* notes 715, 717, and 718 and accompanying text.

[888] *See supra* Part V.E.

[889] *See supra* notes 397–399 and accompanying text.

[890] *See supra* Part V.F.

[891] For example, the purpose of Form N–PORT is to provide structured portfolio holdings data for Commission staff and other to analyze, while the purpose of web reporting is to provide shareholders with investor-friendly portfolio disclosures on a quarterly basis.

VII. Consideration of Impact on The Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 (''SBREFA''),[892] the Commission must advise OMB whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results in or is likely to result in:

- An annual effect on the 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 SBREFA. 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.

Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VIII. Statutory Authority and Text of Proposed Amendments

We are proposing the rules and forms contained in this document under the authority set forth in the Securities Act, particularly, section 19 thereof [15 U.S.C. 77a *et seq.*], the Trust Indenture Act, particularly, section 319 thereof [15 U.S.C. 77aaa *et seq.*], the Exchange Act, particularly, sections 10, 13, 15, 23, and 35A thereof [15 U.S.C. 78a *et seq.*], the Investment Company Act, particularly, sections 8, 30, and 38 thereof [15 U.S.C. 80a *et seq.*], and 44 U.S.C. 3506, 3507.

List of Subjects

17 CFR Part 200

Administrative practice and procedure, Organization and functions (Government agencies).

17 CFR Part 210

Accounting, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 230 and 239

Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 232

Administrative practice and procedure, Reporting and recordkeeping requirements, Securities.

17 CFR Parts 240 and 249

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

For reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

Subpart N—Commission Information Collection Requirements Under the Paperwork Reduction Act: OMB Control Numbers

■ 1. The authority citation for Part 200 Subpart N continues to read as follows:

Authority: 44 U.S.C. 3506; 44 U.S.C. 3507.

■ 2. Section 200.800 is amended in paragraph (b) by removing the entry for ''Form N–SAR'' and adding in its place an entry ''Form N–CEN'' and adding an entry in numerical order by part and section number for ''Form N–PORT'', to read as follows:

§ 200.800 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

Information collection requirement	17 CFR part or section where identified and described	Current OMB control No.
* * * * *	*	*
Form N–CEN	274.101	[OMB control number TBD].
* * * * *	*	*
Form N–PORT	274.150	[OMB control number TBD].
* * * * *	*	*

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, INVESTMENT COMPANY ACT OF 1940, INVESTMENT ADVISERS ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

■ 3. The authority citation for part 210 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77nn(25), 77nn(26), 78c, 78j–1, 78*l,* 78m, 78n, 78o(d), 78q, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–20, 80a–29, 80a–30, 80a–31, 80a–37(a), 80b–3, 80b–11, 7202 and 7262, unless otherwise noted.

■ 4. Revise § 210.6–01 and the undesignated heading preceding it to read as follows:

Registered Investment Companies and Business Development Companies

§ 210.6–01 Application of §§ 210.6–01 to 210.6–10.

Sections 210.6–01 to 210.6–10 shall be applicable to financial statements filed for registered investment companies and business development companies.

■ 5. Revise § 210.6–03 to read as follows:

§ 210.6–03 Special rules of general application to registered investment companies and business development companies.

The financial statements filed for persons to which §§ 210.6–01 to 210.6–10 are applicable shall be prepared in accordance with the following special

[892] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C., and as a note to 5 U.S.C. 601).

rules in addition to the general rules in §§ 210.1–01 to 210.4–10 (Articles 1, 2, 3, and 4). Where the requirements of a special rule differ from those prescribed in a general rule, the requirements of the special rule shall be met.

(a) *Content of financial statements.* The financial statements shall be prepared in accordance with the requirements of this part (Regulation S–X) notwithstanding any provision of the articles of incorporation, trust indenture or other governing legal instruments specifying certain accounting procedures inconsistent with those required in §§ 210.6–01 to 210.6–10.

(b) *Audited financial statements.* Where, under Article 3 of this part, financial statements are required to be audited, the independent accountant shall have been selected and ratified in accordance with section 32 of the Investment Company Act of 1940 (15 U.S.C. 80a–31).

(c) *Consolidated and combined statements.* (1) Consolidated and combined statements filed for registered investment companies and business development companies shall be prepared in accordance with §§ 210.3A–01 to 210.3A–04 (Article 3A) except that:

(i) Statements of the registrant may be consolidated only with the statements of subsidiaries which are investment companies;

(ii) A consolidated statement of the registrant and any of its investment company subsidiaries shall not be filed unless accompanied by a consolidating statement which sets forth the individual statements of each significant subsidiary included in the consolidated statement: *Provided, however,* That a consolidating statement need not be filed if all included subsidiaries are totally held; and

(iii) Consolidated or combined statements filed for subsidiaries not consolidated with the registrant shall not include any investment companies unless accompanied by consolidating or combining statements which set forth the individual statements of each included investment company which is a significant subsidiary.

(2) If consolidating or combining statements are filed, the amounts included under each caption in which financial data pertaining to affiliates is required to be furnished shall be subdivided to show separately the amounts:

(i) Eliminated in consolidation; and

(ii) Not eliminated in consolidation.

(d) *Valuation of investments.* The balance sheets of registered investment companies and business development companies, other than issuers of face-amount certificates, shall reflect all investments at value, with the aggregate cost of each category of investment reported under §§ 210.6–04.1, 6–04.2, 6–04.3 and 6–04.9 or the aggregate cost of each category of investment reported under § 210.6–05.1 shown parenthetically. State in a note the methods used in determining value of investments. As required by section 28(b) of the Investment Company Act of 1940 (15 U.S.C. 80a–28(b)), *qualified* assets of face-amount certificate companies shall be valued in accordance with certain provisions of the Code of the District of Columbia. For guidance as to valuation of securities, see §§ 404.03 to 404.05 of the Codification of Financial Reporting Policies.

(e) *Qualified assets.* State in a note the nature of any investments and other assets maintained or required to be maintained, by applicable legal instruments, in respect of outstanding face-amount certificates. If the nature of the qualifying assets and amount thereof are not subject to the provisions of section 28 of the Investment Company Act of 1940 (15 U.S.C. 80a–28), a statement to that effect shall be made.

(f) *Restricted securities.* State in a note unless disclosed elsewhere the following information as to investment securities which cannot be offered for public sale without first being registered under the Securities Act of 1933 (restricted securities):

(1) The policy of the person with regard to acquisition of restricted securities.

(2) The policy of the person with regard to valuation of restricted securities. Specific comments shall be given as to the valuation of an investment in one or more issues of securities of a company or group of affiliated companies if any part of such investment is restricted and the aggregate value of the investment in all issues of such company or affiliated group exceeds five percent of the value of total assets. (As used in this paragraph, the term *affiliated* shall have the meaning given in § 210.6–02(a).)

(3) A description of the person's rights with regard to demanding registration of any restricted securities held at the date of the latest balance sheet.

(g) *Income recognition.* Dividends shall be included in income on the ex-dividend date; interest shall be accrued on a daily basis. Dividends declared on short positions existing on the record date shall be recorded on the ex-dividend date and included as an expense of the period.

(h) *Federal income taxes.* The company's status as a *regulated investment company* as defined in subtitle A, chapter 1, subchapter M of the Internal Revenue Code, as amended, shall be stated in a note referred to in the appropriate statements. Such note shall also indicate briefly the principal assumptions on which the company relied in making or not making provisions for income taxes. However, a company which retains realized capital gains and designates such gains as a distribution to shareholders in accordance with section 852(b)(3)(D) of the Internal Revenue Code shall, on the last day of its taxable year (and not earlier), make provision for taxes on such undistributed capital gains realized during such year.

(i) *Issuance and repurchase by a registered investment company or business development company of its own securities.* Disclose for each class of the company's securities:

(1) The number of shares, units, or principal amount of bonds sold during the period of report, the amount received therefor, and, in the case of shares sold by closed-end management investment companies, the difference, if any, between the amount received and the net asset value or preference in involuntary liquidation (whichever is appropriate) of securities of the same class prior to such sale; and

(2) The number of shares, units, or principal amount of bonds repurchased during the period of report and the cost thereof. Closed-end management investment companies shall furnish the following additional information as to securities repurchased during the period of report:

(i) As to bonds and preferred shares, the aggregate difference between cost and the face amount or preference in involuntary liquidation and, if applicable net assets taken at value as of the date of repurchase were less than such face amount or preference, the aggregate difference between cost and such net asset value;

(ii) As to common shares, the weighted average discount per share, expressed as a percentage, between cost of repurchase and the net asset value applicable to such shares at the date of repurchases.

Note to paragraphs (h)(2)(i) and (ii): The information required by paragraphs (h)(2)(i) and (ii) of this section may be based on reasonable estimates if it is impracticable to determine the exact amounts involved.

(j) *Series companies.* (1) The information required by this part shall, in the case of a person which in essence

is comprised of more than one separate investment company, be given as if each class or series of such investment company were a separate investment company; this shall not prevent the inclusion, at the option of such person, of information applicable to other classes or series of such person on a comparative basis, except as to footnotes which need not be comparative.

(2) If the particular class or series for which information is provided may be affected by other classes or series of such investment company, such as by the offset of realized gains in one series with realized losses in another, or through contingent liabilities, such situation shall be disclosed.

(k) *Certificate reserves.* (1) For companies issuing face-amount certificates subsequent to December 31, 1940 under the provisions of section 28 of the Investment Company Act of 1940 (15 U.S.C. 80a–28), balance sheets shall reflect reserves for outstanding certificates computed in accordance with the provisions of section 28(a) of the Act.

(2) For other companies, balance sheets shall reflect reserves for outstanding certificates determined as follows:

(i) For certificates of the installment type, such amount which, together with the lesser of future payments by certificate holders as and when accumulated at a rate not to exceed 3½ per centum per annum (or such other rate as may be appropriate under the circumstances of a particular case) compounded annually, shall provide the minimum maturity or face amount of the certificate when due.

(ii) For certificates of the fully-paid type, such amount which, as and when accumulated at a rate not to exceed 3½ per centum per annum (or such other rate as may be appropriate under the circumstances of a particular case) compounded annually, shall provide the amount or amounts payable when due.

(iii) Such amount or accrual therefor, as shall have been credited to the account of any certificate holder in the form of any credit, or any dividend, or any interest in addition to the minimum maturity or face amount specified in the certificate, plus any accumulations on any amount so credited or accrued at rates required under the terms of the certificate.

(iv) An amount equal to all advance payments made by certificate holders, plus any accumulations thereon at rates required under the terms of the certificate.

(v) Amounts for other appropriate contingency reserves, for death and disability benefits or for reinstatement rights on any certificate providing for such benefits or rights.

(l) *Inapplicable captions.* Attention is directed to the provisions of §§ 210.4–02 and 210.4–03 which permit the omission of separate captions in financial statements as to which the items and conditions are not present, or the amounts involved not significant. However, amounts involving directors, officers, and affiliates shall nevertheless be separately set forth except as otherwise specifically permitted under a particular caption.

(m) *Securities Lending.* State in a note unless disclosed elsewhere the following information regarding securities lending activities and cash collateral management:

(1) The gross income from securities lending activities, including income from cash collateral reinvestment;

(2) The dollar amount of all fees and/or compensation paid by the registrant for securities lending activities and related services, including borrower rebates and cash collateral management services;

(3) The net income from securities lending activities;

(4) The terms governing the compensation of the securities lending agent, including any revenue sharing split, with the related percentage split between the registrant and the securities lending agent, and/or any fee-for-service, and a description of services included;

(5) The details of any other fees paid directly or indirectly, including any fees paid directly by the registrant for cash collateral management and any management fee deducted from a pooled investment vehicle in which cash collateral is invested; and

(6) The monthly average of the value of portfolio securities on loan.

■ 6. Revise § 210.6–04 to read as follows:

§ 210.6–04 Balance sheets.

This section is applicable to balance sheets filed by registered investment companies and business development companies except for persons who substitute a statement of net assets in accordance with the requirements specified in § 210.6–05, and issuers of face-amount certificates which are subject to the special provisions of § 210.6–06. Balance sheets filed under this rule shall comply with the following provisions:

Assets

1. *Investments in securities of unaffiliated issuers.*

2. *Investments in and advances to affiliates.* State separately investments in and advances to: (a) Controlled companies and (b) other affiliates.

3. *Other investments.* State separately amounts of assets related to (a) variation margin receivable on futures contracts, (b) forward foreign currency contracts; (c) swap contracts; and (d) investments—other than those presented in §§ 210.12–12, 12–12A, 12–12B, 12–13, 12–13A, 12–13B, and 12–13C.

4. *Cash.* Include under this caption cash on hand and demand deposits. Provide in a note to the financial statements the information required under § 210.5–02.1 regarding restrictions and compensating balances.

5. *Receivables.* (a) State separately amounts receivable from (1) sales of investments; (2) subscriptions to capital shares; (3) dividends and interest; (4) directors and officers; and (5) others.

(b) If the aggregate amount of notes receivable exceeds 10 percent of the aggregate amount of receivables, the above information shall be set forth separately, in the balance sheet or in a note thereto, for accounts receivable and notes receivable.

6. *Deposits for securities sold short and other investments.* State separately amounts held by others in connection with: (a) Short sales; (b) open option contracts (c) futures contracts, (d) forward foreign currency contracts; (e) swap contracts; and (f) investments—other than those presented in §§ 210.12–12, 12–12A, 12–12B, 12–13, 12–13A, 12–13B, and 12–13C.

7. *Other assets.* State separately (a) prepaid and deferred expenses; (b) pension and other special funds; (c) organization expenses; and (d) any other significant item not properly classified in another asset caption.

8. *Total assets.*

Liabilities

9. *Other investments.* State separately amounts of liabilities related to: (a) Securities sold short; (b) open option contracts written; (c) variation margin payable on futures contracts, (d) forward foreign currency contracts; (e) swap contracts; and (f) investments—other than those presented in §§ 210.12–12, 12–12A, 12–12B, 12–13, 12–13A, 12–13B, and 12–13C.

10. *Accounts payable and accrued liabilities.* State separately amounts payable for: (a) Other purchases of securities; (b) capital shares redeemed; (c) dividends or other distributions on capital shares; and (d) others. State separately the amount of any other liabilities which are material.

11. *Deposits for securities loaned.* State the value of securities loaned and indicate the nature of the collateral received as security for the loan, including the amount of any cash received.

12. *Other liabilities.* State separately (a) amounts payable for investment advisory, management and service fees; and (b) the total amount payable to: (1) Officers and directors; (2) controlled companies; and (3) other affiliates, excluding any amounts owing to noncontrolled affiliates which arose in the ordinary course of business and which are subject to usual trade terms.

13. *Notes payable, bonds and similar debt.* (a) State separately amounts payable to: (1) Banks or other financial institutions for borrowings; (2) controlled companies; (3) other affiliates; and (4) others, showing for each category amounts payable within one year and amounts payable after one year.

(b) Provide in a note the information required under § 210.5–02.19(b) regarding unused lines of credit for short-term financing and § 210.5–02.22(b) regarding unused commitments for long-term financing arrangements.

14. *Total liabilities.*

15. *Commitments and contingent liabilities.*

Net Assets

16. *Units of capital.* (a) Disclose the title of each class of capital shares or other capital units, the number authorized, the number outstanding, and the dollar amount thereof.

(b) Unit investment trusts, including those which are issuers of periodic payment plan certificates, also shall state in a note to the financial statements: (1) The total cost to the investors of each class of units or shares; (2) the adjustment for market depreciation or appreciation; (3) other deductions from the total cost to the investors for fees, loads and other charges, including an explanation of such deductions; and (4) the net amount applicable to the investors.

17. *Accumulated undistributed income (loss).* Disclose:

(a) The accumulated undistributed investment income-net,

(b) accumulated undistributed net realized gains (losses) on investment transactions, and

(c) net unrealized appreciation (depreciation) in value of investments at the balance sheet date.

18. *Other elements of capital.* Disclose any other elements of capital or residual interests appropriate to the capital structure of the reporting entity.

19. *Net assets applicable to outstanding units of capital.* State the net asset value per share.

■ 7. Revise § 210.6–05 to read as follows:

§ 210.6–05 Statements of net assets.

In lieu of the balance sheet otherwise required by § 210.6–04, persons may substitute a statement of net assets if at least 95 percent of the amount of the person's total assets are represented by investments in securities of unaffiliated issuers. If presented in such instances, a statement of net assets shall consist of the following:

Statements of Net Assets

1. A schedule of investments in securities of unaffiliated issuers as prescribed in § 210.12–12.

2. The excess (or deficiency) of other assets over (under) total liabilities stated in one amount, except that any amounts due from or to officers, directors, controlled persons, or other affiliates, excluding any amounts owing to noncontrolled affiliates which arose in the ordinary course of business and which are subject to usual trade terms, shall be stated separately.

3. Disclosure shall be provided in the notes to the financial statements for any item required under § 210.6–04.3 and §§ 210.6–04.9 to 210.6–04.13.

4. The balance of the amounts captioned as *net assets.* The number of outstanding shares and net asset value per share shall be shown parenthetically.

5. The information required by (i) § 210.6–04.16, (ii) § 210.6–04.17 and (iii) § 210.6–04.18 shall be furnished in a note to the financial statements.

■ 8. Revise § 210.6–07 to read as follows:

§ 210.6–07 Statements of operations.

Statements of operations filed by registered investment companies and business development companies, other than issuers of face-amount certificates subject to the special provisions of § 210.6–08, shall comply with the following provisions:

Statements of Operations

1. *Investment income.* State separately income from: (a) Cash dividends; (b) non-cash dividends; (c) interest on securities excluding payment in kind interest; (d) payment in kind interest on securities; and (e) other income. If income from investments in or indebtedness of affiliates is included hereunder, such income shall be segregated under an appropriate caption subdivided to show separately income from: (1) Controlled companies; and (2) other affiliates. If non-cash dividends or payment in kind interest are included in income, the bases of recognition and measurement used in respect to such amounts shall be disclosed. Any other category of income which exceeds five percent of the total shown under this caption shall be stated separately.

2. *Expenses.* (a) State separately the total amount of investment advisory, management and service fees, and expenses in connection with research, selection, supervision, and custody of investments. Amounts of expenses incurred from transactions with affiliated persons shall be disclosed together with the identity of and related amount applicable to each such person accounting for five percent or more of the total expenses shown under this caption together with a description of the nature of the affiliation. Expenses incurred within the person's own organization in connection with research, selection and supervision of investments shall be stated separately. Reductions or reimbursements of management or service fees shall be shown as a negative amount or as a reduction of total expenses shown under this caption.

(b) State separately any other expense item the amount of which exceeds five percent of the total expenses shown under this caption.

(c) A note to the financial statements shall include information concerning management and service fees, the rate of fee, and the base and method of computation. State separately the amount and a description of any fee reductions or reimbursements representing: (1) Expense limitation agreements or commitments; and (2) offsets received from broker-dealers showing separately for each amount received or due from (i) unaffiliated persons; and (ii) affiliated persons. If no management or service fees were incurred for a period, state the reason therefor.

(d) If any expenses were paid otherwise than in cash, state the details in a note.

(e) State in a note to the financial statements the amount of brokerage commissions (including dealer markups) paid to affiliated broker-dealers in connection with purchase and sale of investment securities. Open-end management companies shall state in a note the net amounts of sales charges deducted from the proceeds of sale of capital shares which were retained by any affiliated principal underwriter or other affiliated broker-dealer.

(f) State separately all amounts paid in accordance with a plan adopted

under 17 CFR 270.12b–1 of this chapter. Reimbursement to the fund of expenses incurred under such plan (12b–1 expense reimbursement) shall be shown as a negative amount and deducted from current 12b–1 expenses. If 12b–1 expense reimbursements exceed current 12b–1 costs, such excess shall be shown as a negative amount used in the calculation of total expenses under this caption.

(g)(1) *Brokerage/Service Arrangements.* If a broker-dealer or an affiliate of the broker-dealer has, in connection with directing the person's brokerage transactions to the broker-dealer, provided, agreed to provide, paid for, or agreed to pay for, in whole or in part, services provided to the person (other than brokerage and research services as those terms are used in section 28(e) of the Securities Exchange Act of 1934 [15 U.S.C. 78bb(e)]), include in the expense items set forth under this caption the amount that would have been incurred by the person for the services had it paid for the services directly in an arms-length transaction.

(2) *Expense Offset Arrangements.* If the person has entered into an agreement with any other person pursuant to which such other person reduces, or pays a third party which reduces, by a specified or reasonably ascertainable amount, its fees for services provided to the person in exchange for use of the person's assets, include in the expense items set forth under this caption the amount of fees that would have been incurred by the person if the person had not entered into the agreement.

(3) *Financial Statement Presentation.* Show the total amount by which expenses are increased pursuant to paragraphs (1) and (2) of this paragraph (2)(g) as a corresponding reduction in total expenses under this caption. In a note to the financial statements, state separately the total amounts by which expenses are increased pursuant to paragraphs (1) and (2) of this paragraph (2)(g), and list each category of expense that is increased by an amount equal to at least 5 percent of total expenses. If applicable, the note should state that the person could have employed the assets used by another person to produce income if it had not entered into an arrangement described in paragraph (2)(g)(2) of this section.

3. *Interest and amortization of debt discount and expense.* Provide in the body of the statements or in the footnotes, the average dollar amount of borrowings and the average interest rate.

4. *Investment income before income tax expense.*

5. *Income tax expense.* Include under this caption only taxes based on income.

6. *Investment income—net.*

7. *Realized and unrealized gain (loss) on investments—net.* (a) State separately the net realized gain or loss from: (1) Transactions in investment securities of unaffiliated issuers, (2) transactions in investment securities of affiliated issuers, (3) expiration or closing of option contracts written, (4) closed short positions in securities, (5) expiration or closing of futures contracts, (6) settlement of forward foreign currency contracts, (7) expiration or closing of swap contracts, and (8) transactions in other investments held during the period.

(b) Distributions of realized gains by other investment companies shall be shown separately under this caption.

(c) State separately the amount of the net increase or decrease during the period in the unrealized appreciation or depreciation in the value of: (1) Investment securities of unaffiliated issuers, (2) investment securities of affiliated issuers, (3) option contracts written, (4) short positions in securities, (5) futures contracts, (6) forward foreign currency contracts, (7) swap contracts, and (8) other investments held at the end of the period.

(d) State separately any: (1) Federal income taxes and (2) other income taxes applicable to realized and unrealized gain (loss) on investments, distinguishing taxes payable currently from deferred income taxes.

8. *Net gain (loss) on investments.*

9. *Net increase (decrease) in net assets resulting from operations.*

■ 9. Revise § 210.6–10 to read as follows:

§ 210.6–10 What schedules are to be filed.

(a) The schedules shall be examined by an independent accountant if the related financial statements are so examined.

(b) *Management investment companies.* (1) Except as otherwise provided in the applicable form, the schedules specified in this paragraph shall be filed for management investment companies as of the dates of the most recent audited balance sheet and any subsequent unaudited statement being filed for each person or group.

Schedule I—Investments in securities of unaffiliated issuers. The schedule prescribed by § 210.12–12 shall be filed in support of caption 1 of each balance sheet.

Schedule II—Investments in and advances to affiliates. The schedule prescribed by § 210.12–14 shall be filed in support of caption 2 of each balance sheet.

Schedule III—Investments—securities sold short. The schedule prescribed by § 210.12–12A shall be filed in support of caption 9(a) of each balance sheet.

Schedule IV—Open option contracts written. The schedule prescribed by § 210.12–13 shall be filed in support of caption 9(b) of each balance sheet.

Schedule V—Open futures contracts. The schedule prescribed by § 210.12–13A shall be filed in support of captions 3(a) and 9(c) of each balance sheet.

Schedule VI—Open forward foreign currency contracts. The schedule prescribed by § 210.12–13B shall be filed in support of captions 3(b) and 9(d) of each balance sheet.

Schedule VII—Open swap contracts. The schedule prescribed by § 210.12–13C shall be filed in support of captions 3(c) and 9(e) of each balance sheet.

Schedule VIII—Investments—other than those presented in §§ 210.12–12, 12–12A, 12–12B, 12–13, 12–13A, 12–13B and 12–13C. The schedule prescribed by § 210.12–13D shall be filed in support of captions 3(d) and 9(f) of each balance sheet.

(2) When permitted by the applicable form, the schedule specified in this paragraph may be filed for management investment companies as of the dates of the most recent audited balance sheet and any subsequent unaudited statement being filed for each person or group.

Schedule IX—Summary schedule of investments in securities of unaffiliated issuers. The schedule prescribed by § 210.12–12B may be filed in support of caption 1 of each balance sheet.

(c) *Unit investment trusts.* Except as otherwise provided in the applicable form:

(1) Schedules I and II, specified below in this section, shall be filed for unit investment trusts as of the dates of the most recent audited balance sheet and any subsequent unaudited statement being filed for each person or group.

(2) Schedule III, specified below in this section, shall be filed for unit investment trusts for each period for which a statement of operations is required to be filed for each person or group.

Schedule I—Investment in securities. The schedule prescribed by § 210.12–12 shall be filed in support of caption 1 of each balance sheet (§ 210.6–04).

Schedule II—Allocation of trust assets to series of trust shares. If the trust assets are specifically allocated to different series of trust shares, and if such allocation is not shown in the balance sheet in columnar form or by the filing of separate statements for each

series of trust shares, a schedule shall be filed showing the amount of trust assets, indicated by each balance sheet filed, which is applicable to each series of trust shares.

Schedule III—Allocation of trust income and distributable funds to series of trust shares. If the trust income and distributable funds are specifically allocated to different series of trust shares and if such allocation is not shown in the statement of operations in columnar form or by the filing of separate statements for each series of trust shares, a schedule shall be submitted showing the amount of income and distributable funds, indicated by each statement of operations filed, which is applicable to each series of trust shares.

(d) *Face-amount certificate investment companies.* Except as otherwise provided in the applicable form:

(1) Schedules I, V and X, specified below, shall be filed for face-amount certificate investment companies as of the dates of the most recent audited balance sheet and any subsequent unaudited statement being filed for each person or group.

(2) All other schedules specified below in this section shall be filed for face-amount certificate investment companies for each period for which a statement of operations is filed, except as indicated for Schedules III and IV.

Schedule I—Investment in securities of unaffiliated issuers. The schedule prescribed by § 210.12–21 shall be filed in support of caption 1 and, if applicable, caption 5(a) of each balance sheet. Separate schedules shall be furnished in support of each caption, if applicable.

Schedule II—Investments in and advances to affiliates and income thereon. The schedule prescribed by § 210.12–22 shall be filed in support of captions 1 and 5(b) of each balance sheet and caption 1 of each statement of operations. Separate schedules shall be furnished in support of each caption, if applicable.

Schedule III—Mortgage loans on real estate and interest earned on mortgages. The schedule prescribed by § 210.12–23 shall be filed in support of captions 1 and 5(c) of each balance sheet and caption 1 of each statement of operations, except that only the information required by column G and note 8 of the schedule need be furnished in support of statements of operations for years for which related balance sheets are not required.

Schedule IV—Real estate owned and rental income. The schedule prescribed by § 210.12–24 shall be filed in support of captions 1 and 5(a) of each balance sheet and caption 1 of each statement of operations for rental income included therein, except that only the information required by columns H, I and J, and item ''Rent from properties sold during the period'' and note 4 of the schedule need be furnished in support of statements of operations for years for which related balance sheets are not required.

Schedule V—Qualified assets on deposit. The schedule prescribed by § 210.12–27 shall be filed in support of the information required by caption 4 of § 210.6–06 as to total amount of qualified assets on deposit.

Schedule VI—Certificate reserves. The schedule prescribed by § 210.12–26 shall be filed in support of caption 7 of each balance sheet.

Schedule VII—Valuation and qualifying accounts. The schedule prescribed by § 210.12–09 shall be filed in support of all other reserves included in the balance sheet.

■ 10. Revise § 210.12–12 to read as follows:

For Management Investment Companies

§ 210.12–12 Investments in securities of unaffiliated issuers.

[FOR MANAGEMENT INVESTMENT COMPANIES ONLY]

Col. A	Col. B	Col. C
Name of issuer and title of issue.[1 2 3 4]	Balance held at close of period. Number of shares—principal amount of bonds and notes.[7]	Value of each item at close of period.[5 6 8 9 10 11 12]

[1] Each issue shall be listed separately: *Provided,* however, that an amount not exceeding five percent of the total of Column C may be listed in one amount as ''Miscellaneous securities,'' provided the securities so listed are not restricted, have been held for not more than one year prior to the date of the related balance sheet, and have not previously been reported by name to the shareholders of the person for which the schedule is filed or to any exchange, or set forth in any registration statement, application, or annual report or otherwise made available to the public. If any securities are listed as ''Miscellaneous securities,'' briefly explain in a footnote what the term represents.

[2] Categorize the schedule by (i) the type of investment (such as common stocks, preferred stocks, convertible securities, fixed income securities, government securities, options purchased, warrants, loan participations and assignments, commercial paper, bankers' acceptances, certificates of deposit, short-term securities, repurchase agreements, other investment companies, and so forth); (ii) the related industry of the investment; and (iii) the related country, or geographic region of the investment. Short-term debt instruments (*i.e.,* debt instruments whose maturities or expiration dates at the time of acquisition are one year or less) of the same issuer may be aggregated, in which case the range of interest rates and maturity dates shall be indicated. For issuers of periodic payment plan certificates and unit investment trusts, list separately: (i) Trust shares in trusts created or serviced by the depositor or sponsor of this trust; (ii) trust shares in other trusts; and (iii) securities of other investment companies. Restricted securities shall not be combined with unrestricted securities of the same issuer. Repurchase agreements shall be stated separately showing for each the name of the party or parties to the agreement, the date of the agreement, the total amount to be received upon repurchase, the repurchase date and description of securities subject to the repurchase agreements.

[3] For options purchased, all information required by § 210.12–13 for options contracts written should be shown. Options on underlying investments where the underlying investment would otherwise be presented in accordance with §§ 210.12–12, 12–13A, 12–13B, 12–13C, or 12–13D should include the description of the underlying investment as would be required by §§ 210.12–12, 12–13A, 12–13B, 12–13C, or 12–13D as part of the description of the option.

[4] Indicate the interest rate or preferential dividend rate and maturity date, as applicable, for preferred stocks, convertible securities, fixed income securities, government securities, loan participations and assignments, commercial paper, bankers' acceptances, certificates of deposit, short-term securities, repurchase agreements, or other instruments with a stated rate of income. For variable rate securities, indicate a description of the reference rate and spread. For securities with payment in kind income, disclose the rate paid in kind.

[5] The subtotals for each category of investments, subdivided both by type of investment and industry, country, or geographic region, shall be shown together with their percentage value compared to net assets.

[6] Column C shall be totaled. The total of column C shall agree with the correlative amounts shown on the related balance sheet.

[7] Indicate by an appropriate symbol each issue of securities which is non-income producing. Evidences of indebtedness and preferred shares may be deemed to be income producing if, on the respective last interest payment date or date for the declaration of dividends prior to the date of the related balance sheet, there was only a partial payment of interest or a declaration of only a partial amount of the dividends payable; in such case, however, each such issue shall be indicated by an appropriate symbol referring to a note to the effect that, on the last interest or dividend date, only partial interest was paid or partial dividends declared. If, on such respective last interest or dividend date, no interest was paid or no cash or in kind dividends declared, the issue shall not be deemed to be income producing. Common shares shall not be deemed to be income producing unless, during the last year preceding the date of the related balance sheet, there was at least one dividend paid upon such common shares.

[8] Indicate by an appropriate symbol each issue of restricted securities. State the following in a footnote: (a) As to each such issue: (1) Acquisition date, (2) carrying value per unit of investment at date of related balance sheet, *e.g.,* a percentage of current market value of unrestricted securities of the same issuer, etc., and (3) the cost of such securities; (b) as to each issue acquired during the year preceding the date of the related balance sheet, the carrying value per unit of investment of unrestricted securities of the same issuer at: (1) The day the purchase price was agreed to; and (2) the day on which an enforceable right to acquire such securities was obtained; and (c) the aggregate value of all restricted securities and the percentage which the aggregate value bears to net assets.

[9] Indicate by an appropriate symbol each issue of securities whose fair value was determined using significant unobservable inputs.

[10] Indicate by an appropriate symbol each issue of illiquid securities.

[11] Indicate by an appropriate symbol each issue of securities held in connection with open put or call option contracts, loans for short sales, or where any portion of the issue is on loan.

[12] State in a footnote the following amounts based on cost for Federal income tax purposes: (a) Aggregate gross unrealized appreciation for all securities in which there is an excess of value over tax cost, (b) the aggregate gross unrealized depreciation for all securities in which there is an excess of tax cost over value, (c) the net unrealized appreciation or depreciation, and (d) the aggregate cost of securities for Federal income tax purposes.

■ 11. Revise § 210.12–12A to read as follows:

§ 210.12–12A Investments—securities sold short.

[FOR MANAGEMENT INVESTMENT COMPANIES ONLY]

Col. A	Col. B	Col. C
Name of issuer and title of issue.[1 2 3]	Balance of short position at close of period. (number of shares).	Value of each open short position.[4 5 6 7 8.]

[1] Each issue shall be listed separately.

[2] Categorize the schedule as required by instruction 2 of § 210.12–12.

[3] Indicate the interest rate or preferential dividend rate and maturity date, as applicable, as required by instruction 4 of § 210.12–12.

[4] The subtotals for each category of investments, subdivided both by type of investment and industry, country, or geographic region, shall be shown together with their percentage value compared to net assets.

[5] Column C shall be totaled. The total of column C shall agree with the correlative amounts shown on the related balance sheet.

[6] Indicate by an appropriate symbol each issue of securities whose fair value was determined using significant unobservable inputs.

[7] Indicate by an appropriate symbol each issue of securities held in connection with open put or call option contracts.

[8] State in a footnote the following amounts based on cost for Federal income tax purposes: (a) Aggregate gross unrealized appreciation for all securities in which there is an excess of value over tax cost, (b) the aggregate gross unrealized depreciation for all securities in which there is an excess of tax cost over value, (c) the net unrealized appreciation or depreciation, and (d) the aggregate cost of securities for Federal income tax purposes.

■ 12. Revise § 210.12–12B to read as follows:

§ 210.12–12B Summary schedule of investments in securities of unaffiliated issuers.

Column A	Column B	Column C	Column D
Name of issuer and title of issue.[1 3 4 5 6 7 8]	Balance held at close of period. Number of shares—principal amount of bonds and notes.[10]	Value of each item at close of period.[2 9 11 12 13 14 15]	Percentage value compared to net assets.

[1] Categorize the schedule by (a) the type of investment (such as common stocks, preferred stocks, convertible securities, fixed income securities, government securities, options purchased, warrants, loan participations and assignments, commercial paper, bankers' acceptances, certificates of deposit, short-term securities, repurchase agreements, other investment companies, and so forth); (b) the related industry of the investment; and (c) the related country or geographic region of the investment.

[2] The subtotals for each category of investments, subdivided both by type of investment and industry, country, or geographic region, shall be shown together with their percentage value compared to net assets.

[3] Indicate the interest rate or preferential dividend rate and maturity date, as applicable, for preferred stocks, convertible securities, fixed income securities, government securities, loan participations and assignments, commercial paper, bankers' acceptances, certificates of deposit, short-term securities, repurchase agreements, or other instruments with a stated rate of income. For variable rate securities, indicate a description of the reference rate and spread. For securities with payment in kind income, disclose the rate paid in kind.

[4] Except as provided in note 6, list separately the 50 largest issues and any other issue the value of which exceeded one percent of net asset value of the registrant as of the close of the period. For purposes of the list (including, in the case of short-term debt instruments, the first sentence of note 4), aggregate and treat as a single issue, respectively, (a) short-term debt instruments (*i.e.,* debt instruments whose maturities or expiration dates at the time of acquisition are one year or less) of the same issuer (indicating the range of interest rates and maturity dates); and (b) fully collateralized repurchase agreements (indicate in a footnote the range of dates of the repurchase agreements, the total purchase price of the securities, the total amount to be received upon repurchase, the range of repurchase dates, and description of securities subject to the repurchase agreements). Restricted and unrestricted securities of the same issue should be aggregated for purposes of determining whether the issue is among the 50 largest issues, but should not be combined in the schedule. For purposes of determining whether the value of an issue exceeds one percent of net asset value, aggregate and treat as a single issue all securities of any one issuer, except that all fully collateralized repurchase agreements shall be aggregated and treated as a single issue. The U.S. Treasury and each agency, instrumentality, or corporation, including each government-sponsored entity, that issues U.S. government securities is a separate issuer.

[5] For options purchased, all information required by § 210.12–13 for options contracts written should be shown. Options on underlying investments where the underlying investment would otherwise be presented in accordance with §§ 210.12–12, 12–13A, 12–13B, 12–13C, or 12–13D should include the description of the underlying investment as would be required by §§ 210.12–12, 12–13A, 12–13B, 12–13C, or 12–13D as part of the description of the option.

[6] If multiple securities of an issuer aggregate to greater than one percent of net asset value, list each issue of the issuer separately (including separate listing of restricted and unrestricted securities of the same issue) except that the following may be aggregated and listed as a single issue: (a) Fixed-income securities of the same issuer which are not among the 50 largest issues and whose value does not exceed one percent of net asset value of the registrant as of the close of the period (indicating the range of interest rates and maturity dates); and (b) U.S. government securities of a single agency, instrumentality, or corporation, which are not among the 50 largest issues and whose value does not exceed one percent of net asset value of the registrant as of the close of the period (indicating the range of interest rates and maturity dates). For each category identified pursuant to note 1, group all issues that are neither separately listed nor included in a group of securities that is listed in the aggregate as a single issue in a sub-category labeled ''Other securities,'' and provide the information for Columns C and D.

[7] Any securities that would be required to be listed separately or included in a group of securities that is listed in the aggregate as a single issue may be listed in one amount as ''Miscellaneous securities,'' provided the securities so listed are eligible to be, and are, categorized as ''Miscellaneous securities'' in the registrant's Schedule of Investments in Securities of Unaffiliated Issuers required under § 210.12–12. However, if any security that is included in ''Miscellaneous securities'' would otherwise be required to be included in a group of securities that is listed in the aggregate as a single issue, the remaining securities of that group must nonetheless be listed as required by notes 4 and 5 even if the remaining securities alone would not otherwise be required to be listed in this manner (*e.g.,* because the combined value of the security listed in ''Miscellaneous securities'' and the remaining securities of the same issuer exceeds one percent of net asset value, but the value of the remaining securities alone does not exceed one percent of net asset value).

[8] If any securities are listed as ''Miscellaneous securities'' pursuant to note 6 or ''Other securities'' pursuant to note 5, briefly explain in a footnote what those terms represent.

[9] Total Column C. The total of column C should equal the total shown on the related balance sheet for investments in securities of unaffiliated issuers.

[10] Indicate by an appropriate symbol each issue of securities which is non-income producing. Evidences of indebtedness and preferred shares may be deemed to be income producing if, on the respective last interest payment date or date for the declaration of dividends prior to the date of the related balance sheet, there was only a partial payment of interest or a declaration of only a partial amount of the dividends payable; in such case, however, each such issue shall be indicated by an appropriate symbol referring to a note to the effect that, on the last interest or dividend date, only partial interest was paid or partial dividends declared. If, on such respective last interest or dividend date, no interest was paid or no cash or in kind dividends declared, the issue shall not be deemed to be income producing. Common shares shall not be deemed to be income producing unless, during the last year preceding the date of the related balance sheet, there was at least one dividend paid upon such common shares.

[11] Indicate by an appropriate symbol each issue of restricted securities. State the following in a footnote: (a) As to each such issue: (1) Acquisition date, (2) carrying value per unit of investment at date of related balance sheet, *e.g.,* a percentage of current market value of unrestricted securities of the same issuer, etc., and (3) the cost of such securities; (b) as to each issue acquired during the year preceding the date of the related balance sheet, the carrying value per unit of investment of unrestricted securities of the same issuer at: (1) The day the purchase price was agreed to; and (2) the day on which an enforceable right to acquire such securities was obtained; and (c) the aggregate value of all restricted securities and the percentage which the aggregate value bears to net assets.

[12] Indicate by an appropriate symbol each issue of securities whose fair value was determined using significant unobservable inputs.

[13] Indicate by an appropriate symbol each issue of illiquid securities.

[14] Indicate by an appropriate symbol each issue of securities held in connection with open put or call option contracts, loans for short sales, or where any portion of the issue is on loan.

[15] State in a footnote the following amounts based on cost for Federal income tax purposes: (a) Aggregate gross unrealized appreciation for all securities in which there is an excess of value over tax cost, (b) the aggregate gross unrealized depreciation for all securities in which there is an excess of tax cost over value, (c) the net unrealized appreciation or depreciation, and (d) the aggregate cost of securities for Federal income tax purposes.

§ 210.12–12C [Removed and Reserved].

■ 13. Remove and reserve § 210.12–12C.

■ 14. Revise § 210.12–13 to read as follows:

§ 210.12–13 Open option contracts written.

[FOR MANAGEMENT INVESTMENT COMPANIES ONLY]

Col. A	Col. B	Col. C	Col. D	Col. E	Col. F	Col. G
Description.[1 2 3]	Counterparty.[4]	Number of contracts.[5]	Notional amount ..	Exercise price	Expiration date	Value.[6 7 8 9 10]

[1] Information as to put options shall be shown separately from information as to call options.

[2] Options where descriptions, counterparties, exercise prices or expiration dates differ shall be listed separately.

[3] Options on underlying investments where the underlying investment would otherwise be presented in accordance with §§ 210.12–12, 12–13A, 12–13B, 12–13C, or 12–13D should include the description of the underlying investment as would be required by §§ 210.12–12, 12–13A, 12–13B, 12–13C, or 12–13D as part of the description of the option.

If the underlying investment is an index or basket of investments, and the components are publicly available on a Web site as of the balance sheet date, identify the index or basket. If the underlying investment is an index or basket of investments, the components are not publicly available on a Web site as of the balance sheet date, and the notional amount of the option contract does not exceed one percent of the net asset value of the registrant as of the close of the period, identify the index or basket. If the underlying investment is an index or basket of investments, the components are not publicly available on a Web site as of the balance sheet date, and the notional amount of the option contract exceeds one percent of the net asset value of the registrant as of the close of the period, list separately each underlying investment in the index or basket. For each investment separately listed, include the description of the underlying investment as would be required by §§ 210.12–12, 12–13, 12–13A, 12–13B, or 12–13D as part of the description, the quantity held (*e.g.* the number of shares for common stocks, principal amount for fixed income securities), the value at the close of the period, and the percentage value when compared to the custom basket's net assets.

[4] Not required for exchange-traded options.

[5] If the number of shares subject to option is substituted for number of contracts, the column name shall reflect that change.

[6] Indicate by an appropriate symbol each investment which cannot be sold because of restrictions or conditions applicable to the investment.

[7] Indicate by an appropriate symbol each investment whose fair value was determined using significant unobservable inputs.

[8] Indicate by an appropriate symbol each illiquid investment.

[9] Column G shall be totaled and shall agree with the correlative amount shown on the related balance sheet.

[10] State in a footnote the following amounts based on cost for Federal income tax purposes: (a) Aggregate gross unrealized appreciation for all investments in which there is an excess of value over tax cost, (b) the aggregate gross unrealized depreciation for all investments in which there is an excess of tax cost over value, (c) the net unrealized appreciation or depreciation, and (d) the aggregate cost of investments for Federal income tax purposes.

■ 15. Add § 210.12–13A to read as follows:

§ 210.12–13A Open futures contracts.

[FOR MANAGEMENT INVESTMENT COMPANIES ONLY]

Col. A	Col. B	Col. C	Col. D	Col. E	Col. F
Description.[1 2]	Number of contracts.	Expiration date	Notional amount	Value	Unrealized appreciation/depreciation.[4 5 6 7 8]

[1] Information as to long purchases of futures contracts shall be shown separately from information as to futures contracts sold short.
[2] Futures contracts where descriptions or expiration dates differ shall be listed separately.
[3] Description should include the name of the reference asset or index.
[4] Indicate by an appropriate symbol each investment which cannot be sold because of restrictions or conditions applicable to the investment.
[5] Indicate by an appropriate symbol each investment whose fair value was determined using significant unobservable inputs.
[6] Indicate by an appropriate symbol each illiquid investment.
[7] Column F shall be totaled and shall be reconciled to the total variation margin receivable or payable on the related balance sheet.
[8] State in a footnote the following amounts based on cost for Federal income tax purposes: (a) Aggregate gross unrealized appreciation for all investments in which there is an excess of value over tax cost, (b) the aggregate gross unrealized depreciation for all investments in which there is an excess of tax cost over value, (c) the net unrealized appreciation or depreciation, and (d) the aggregate cost of investments for Federal income tax purposes.

■ 16. Add § 210.12–13B to read as follows:

§ 210.12–13B Open forward foreign currency contracts.

[FOR MANAGEMENT INVESTMENT COMPANIES ONLY]

Col. A	Col. B	Col. C	Col. D	Col. E
Amount and description of currency to be purchased.[1]	Amount and description of currency to be sold.[1]	Counterparty	Settlement date	Unrealized appreciation/depreciation.[2 3 4 5 6]

[1] Forward foreign currency contracts where description of currency purchased, description of currency sold, counterparty, or settlement dates differ shall be listed separately.
[2] Indicate by an appropriate symbol each investment which cannot be sold because of restrictions or conditions applicable to the investment.
[3] Indicate by an appropriate symbol each investment whose fair value was determined using significant unobservable inputs.
[4] Indicate by an appropriate symbol each illiquid investment.
[5] Column E shall be totaled and shall agree with the total of correlative amount(s) shown on the related balance sheet.
[6] State in a footnote the following amounts based on cost for Federal income tax purposes: (a) Aggregate gross unrealized appreciation for all investments in which there is an excess of value over tax cost, (b) the aggregate gross unrealized depreciation for all investments in which there is an excess of tax cost over value, (c) the net unrealized appreciation or depreciation, and (d) the aggregate cost of investments for Federal income tax purposes.

■ 17. Add § 210.12–13C to read as follows:

§ 210.12–13C Open swap contracts.

[FOR MANAGEMENT INVESTMENT COMPANIES ONLY]

Col. A	Col. B	Col. C	Col. D	Col. E	Col. F	Col. G	Col. H
Description and terms of payments to be received from another party.[1 2 3]	Description and terms of payments to be paid to another party.[1 2 3]	Counterparty.[4]	Maturity date.	Notional amount.	Value	Upfront payments/receipts.	Unrealized appreciation/depreciation.[5 6 7 8 9]

[1] List each major category of swaps by descriptive title (*e.g.,* credit default swaps, interest rate swaps, total return swaps). Credit default swaps where protection is sold shall be listed separately from credit default swaps where protection is purchased.
[2] Swaps where description, counterparty, or maturity dates differ shall be listed separately within each major category.
[3] Description should include information sufficient for a user of financial information to understand the terms of payments to be received and paid. (*e.g.* For a credit default swap, including, among other things, description of reference obligation(s) or index, financing rate to be paid or received, and payment frequency. For an interest rate swap, this may include, among other things, whether floating rate is paid or received, fixed interest rate, floating interest rate, and payment frequency. For a total return swap, this may include, among other things, description of reference asset(s) or index, financing rate, and payment frequency.)

If the reference instrument is an index or basket of investments, and the components are publicly available on a Web site as of the balance sheet date, identify the index or basket. If the reference instrument is an index or basket of investments, the components are not publicly available on a Web site as of the balance sheet date, and the notional amount of the swap contract does not exceed one percent of the net asset value of the registrant as of the close of the period, identify the index or basket. If the reference instrument is an index or basket of investments, the components are not publicly available on a Web site as of the balance sheet date, and the notional amount of the swap contract exceeds one percent of the net asset value of the registrant as of the close of the period, list separately each underlying investment. For each investment separately listed, include the description of the underlying investment as would be required by §§ 210.12–12, 12–13, 12–13A, 12–13B, or 12–13D as part of the description, the quantity held (*e.g.* the number of shares for common stocks, principal amount for fixed income securities), the value at the close of the period, and the percentage value when compared to the custom basket's net assets.

[4] Not required for exchange-traded swaps.
[5] Indicate by an appropriate symbol each investment which cannot be sold because of restrictions or conditions applicable to the investment.
[6] Indicate by an appropriate symbol each investment whose fair value was determined using significant unobservable inputs.
[7] Indicate by an appropriate symbol each illiquid investment.
[8] Columns F, G, and H shall be totaled and shall agree with the total of correlative amount(s) shown on the related balance sheet.

[9] State in a footnote the following amounts based on cost for Federal income tax purposes: (a) Aggregate gross unrealized appreciation for all investments in which there is an excess of value over tax cost, (b) the aggregate gross unrealized depreciation for all investments in which there is an excess of tax cost over value, (c) the net unrealized appreciation or depreciation, and (d) the aggregate cost of investments for Federal income tax purposes.

■ 18. Add § 210.12–13D to read as follows:

§ 210.12–13D Investments other than those presented in §§ 210.12–12, 12–12A, 12–12B, 12–13, 12–13A, 12–13B, and 12–13C.

[FOR MANAGEMENT INVESTMENT COMPANIES ONLY]

Col. A	Col. B	Col. C
Description.[1 2 3]	Balance held at close of period—quantity.[4 5]	Value of each item at close of period.[6 7 8 9 10 11]

[1] Each investment where any portion of the description differs shall be listed separately.
[2] Categorize the schedule by (i) the type of investment (such as real estate, commodities, and so forth); and, as applicable, (ii) the related industry of the investment and (iii) the related country, or geographic region of the investment.
[3] Description should include information sufficient for a user of financial information to understand the nature and terms of the investment, which may include, among other things, reference security, asset or index, currency, geographic location, payment terms, payment rates, call or put feature, exercise price, expiration date, and counterparty for non-exchange-traded investments.
[4] If practicable, indicate the quantity or measure in appropriate units.
[5] Indicate by an appropriate symbol each investment which is non-income producing.
[6] Indicate by an appropriate symbol each investment which cannot be sold because of restrictions or conditions applicable to the investment.
[7] Indicate by an appropriate symbol each investment whose fair value was determined using significant unobservable inputs.
[8] Indicate by an appropriate symbol each illiquid investment.
[9] Indicate by an appropriate symbol each investment subject to option. State in a footnote: (a) The quantity subject to option, (b) nature of option contract, (c) option price, and (d) dates within which options may be exercised.
[10] Column C shall be totaled and shall agree with the correlative amount shown on the related balance sheet.
[11] State in a footnote the following amounts based on cost for Federal income tax purposes: (a) Aggregate gross unrealized appreciation for all investments in which there is an excess of value over tax cost, (b) the aggregate gross unrealized depreciation for all investments in which there is an excess of tax cost over value, (c) the net unrealized appreciation or depreciation, and (d) the aggregate cost of investments for Federal income tax purposes.

■ 19. Revise § 210.12–14 to read as follows:

§ 210.12–14 Investments in and advances to affiliates.

[FOR MANAGEMENT INVESTMENT COMPANIES ONLY]

Col. A	Col. B	Col. C	Col. D	Col. E	Col. F
Name of issuer and title of issue or nature of indebtedness.[1 2 3]	Number of shares—principal amount of bonds, notes and other indebtedness held at close of period.	Net realized gain or loss for the period.[4 6]	Net increase or decrease in unrealized appreciation or depreciation for the period.[4 6]	Amount of dividends or interest.[4 6]. (1) Credited to income. (2) Other.	Value of each item at close of period[4 5 7 8 9 10 11]

[1] (a) List each issue separately and group (1) Investments in majority-owned subsidiaries; (2) other controlled companies; and (3) other affiliates. (b) If during the period there has been any increase or decrease in the amount of investment in and advance to any affiliate, state in a footnote (or if there have been changes to numerous affiliates, in a supplementary schedule) (1) name of each issuer and title of issue or nature of indebtedness; (2) balance at beginning of period; (3) gross additions; (4) gross reductions; (5) balance at close of period as shown in Column E. Include in the footnote or schedule comparable information as to affiliates in which there was an investment at any time during the period even though there was no investment at the close of the period of report.
[2] Categorize the schedule as required by instruction 2 of § 210.12–12.
[3] Indicate the interest rate or preferential dividend rate and maturity date, as applicable, as required by instruction 4 of § 210.12–12.
[4] Columns C, D, E, and F shall be totaled. The totals of Column F shall agree with the correlative amount shown on the related balance sheet.
[5] (a) Indicate by an appropriate symbol each issue of restricted securities. The information required by instruction 8 of § 210.12–12 shall be given in a footnote. (b) Indicate by an appropriate symbol each issue of securities subject to option. The information required by § 210.12–13 shall be given in a footnote.
[6] (a) Include in Column E (1) as to each issue held at the close of the period, the dividends or interest included in caption 1 of the statement of operations. In addition, show as the final item in Column E (1) the aggregate of dividends and interest included in the statement of operations in respect of investments in affiliates not held at the close of the period. The total of this column shall agree with the correlative amount shown on the related statement of operations.
(b) Include in Column E (2) all other dividends and interest. Explain in an appropriate footnote the treatment accorded each item.
(c) Indicate by an appropriate symbol all non-cash dividends and interest and explain the circumstances in a footnote.
(d) Indicate by an appropriate symbol each issue of securities which is non-income producing. Evidences of indebtedness and preferred shares may be deemed to be income producing if, on the respective last interest payment date or date for the declaration of dividends prior to the date of the related balance sheet, there was only a partial payment of interest or a declaration of only a partial amount of the dividends payable; in such case, however, each such issue shall be indicated by an appropriate symbol referring to a note to the effect that, on the last interest or dividend date, only partial interest was paid or partial dividends declared. If, on such respective last interest or dividend date, no interest was paid or no cash or in kind dividends declared, the issue shall not be deemed to be income producing. Common shares shall not be deemed to be income producing unless, during the last year preceding the date of the related balance sheet, there was at least one dividend paid upon such common shares.
(e) Include in Column C (1) as to each issue held at the close of the period, the realized gain or loss included in caption 7 of the statement of operations. In addition, show as the final item in Column C (1) the aggregate of realized gain or loss included in the statement of operations in respect of investments in affiliates not held at the close of the period. The total of this column shall agree with the correlative amount shown on the related statement of operations.

(f) Include in Column D (1) as to each issue held at the close of the period, the net increase or decrease in unrealized appreciation or depreciation included in caption 7 of the statement of operations. In addition, show as the final item in Column D (1) the aggregate of increase or decrease in unrealized appreciation or depreciation included in the statement of operations in respect of investments in affiliates not held at the close of the period. The total of this column shall agree with the correlative amount shown on the related statement of operations.

[7] The subtotals for each category of investments, subdivided both by type of investment and industry, country, or geographic region, shall be shown together with their percentage value compared to net assets.

[8] Indicate by an appropriate symbol each issue of securities whose fair value was determined using significant unobservable inputs.

[9] Indicate by an appropriate symbol each issue of illiquid securities.

[10] Indicate by an appropriate symbol each issue of securities held in connection with open put or call option contracts, loans for short sales, or where any portion of the issue is on loan.

[11] State in a footnote the following amounts based on cost for Federal income tax purposes: (a) Aggregate gross unrealized appreciation for all securities in which there is an excess of value over tax cost, (b) the aggregate gross unrealized depreciation for all securities in which there is an excess of tax cost over value, (c) the net unrealized appreciation or depreciation, and (d) the aggregate cost of securities for Federal income tax purposes.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

■ 20. The authority citation for part 230 continues to read, in part, as follows:

Authority: 15 U.S.C. 77b, 77b note, 77c, 77d, 77d note, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78j, 78l, 78m, 78n, 78*o,* 78*o*–7 note, 78t, 78w, 78*ll*(d), 78mm, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, and Pub. L. 112–106, sec. 201(a), 126 Stat. 313 (2012), unless otherwise noted.

* * * * *

■ 21. Amend § 230.498 by:

■ a. Adding to the end of paragraph (b)(1)(v)(A) ''If a Fund relies on § 270.30e–3 of this chapter to transmit a report, the legend must also include the Web site address required by § 270.30e–3(d)(1)(iv) of this chapter if different from the Web site address required by this paragraph (b)(1)(v)(A).''; and

■ b. In paragraph (f)(2), adding the phrase ''a Notice or Initial Statement under § 270.30e–1 of this chapter,'' after ''Statutory Prospectuses,''.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 22. The authority citation for part 232 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, and 7201 *et seq.*; and 18 U.S.C. 1350.

* * * * *

■ 23. Amend § 232.105 by removing paragraph (a) and redesignating paragraphs (b) and (c) as paragraphs (a) and (b).

■ 24. Amend § 232.301 by removing the fourth sentence ''Additional provisions applicable to Form N–SAR filers are set forth in the EDGAR Filer Manual, Volume III: ''N–SAR Supplement,'' Version 4 (October 2014).''

■ 25. Amend § 232.401 paragraph (d)(2)(iii) by removing the phrase '', N–CSR (§ 274.128 of this chapter) or N–Q (§ 274.130 of this chapter)'' and adding in its place ''or N–CSR (§ 274.128 of this chapter)''.

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

■ 26. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77z–3, 77sss, 78c, 78l, 78m, 78n, 78o(d), 78o–7, 78o–7 note, 78u–5, 78w(a), 78ll, 78mm, 80a–2(a), 80a–3, 80a–8, 80a–9, 80a–10, 80a–13, 80a–24, 80a–26, 80a–29, 80a–30, 80a–37, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 27. Amend Form N–14 (referenced in § 239.23) Item 14, subpart 1(ii) by removing the phrase ''the following schedules in support of the most recent balance sheet: (A) columns C and D of Schedule III [17 CFR 210.12–14]; and (B) Schedule IV [17 CFR 210.12–03];'' and adding in its place ''columns C and D of Schedule III [17 CFR 210.12–14] in support of the most recent balance sheet''.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 28. 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, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 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 7201 *et seq.*; 18 U.S.C. 1350; and 12 U.S.C. 5221(e)(3) unless otherwise noted.

* * * * *

■ 29. Amend § 240.10A–1 paragraph (a)(4)(i) by removing the phrase ''Form N–SAR'' and adding in its place ''Form N–CEN''.

■ 30. Amend § 240.12b–25 by:

■ a. In the section heading, removing the phrase ''Form N–SAR'' and adding in its place ''Form N–CEN'';

■ b. In paragraph (a), removing the phrase ''Form N–SAR'' and adding in its place ''Form N–CEN''; and

■ c. In paragraph (b)(2)(ii), removing the phrase ''N–SAR,'' and adding in its place ''N–CEN,''.

■ 31. Amend § 240.13a–10 paragraph (h) by removing the phrase ''Rule 30b1–1 (§ 270.30b1–1 of this chapter)'' and adding in its place ''§ 270.30a–1 of this chapter''.

■ 32. Amend § 240.13a–11 paragraph (b) by removing the phrase ''§ 270.30b1–1'' and adding in its place ''§ 270.30a–1''.

■ 33. Amend § 240.13a–13 paragraph (b)(1) by removing the phrase ''§ 270.30b1–1'' and adding in its place ''§ 270.30a–1 of this chapter''.

■ 34. Amend § 240.13a–16 paragraph (a)(1) by removing the phrase ''Rule 30b1–1 (17 CFR 270.30b1–1)'' and adding in its place ''17 CFR 270.30a–1 of this chapter'' .

■ 35. Amend § 240.14a–16 paragraph (f)(2)(iii) by adding the phrase ''a Notice or Initial Statement under § 270.30e–1 of this chapter,'' after ''§ 230.498(b) of this chapter,'' in.

■ 36. Amend § 240.15d–10 paragraph (h) by removing the phrase ''Rule 30b1–1 (§ 270.30b1–1 of this chapter)'' and adding in its place ''§ 270.30a–1 of this chapter''.

■ 37. Amend § 240.15d–11 paragraph (h) by removing the phrase ''§ 270.30b1–1'' and adding in its place ''§ 270.30a–1''.

■ 38. Amend § 240.15d–13 paragraph (b)(1) by removing the phrase ''§ 270.30b1–1'' and adding in its place ''§ 270.30a–1 of this chapter''.

■ 39. Amend § 240.15d–16 paragraph (a)(1) by removing the phrase ''Rule 30b1–1 [17 CFR 270.30b1–1]'' and adding in its place ''17 CFR 270.30a–1''.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

■ 40. The general authority citation for part 249 continues to read, and the sectional authority for § 249.330 is revised to read as follows:

Authority: 15 U.S.C. 78a *et seq.* and 7201 *et seq.*; 12 U.S.C. 5461 *et seq.*; and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

Section 249.330 is also issued under 15 U.S.C. 80a–29(a).

* * * * *

■ 41. Amend § 249.322 in the first sentence of paragraph (a) by removing the phrase ''or a semi-annual, annual, or transition report on Form N–SAR (§§ 249.330; 274.101) or'' and adding in its place ''an annual report on Form N–CEN (§§ 249.330; 274.101), or a semi-annual or annual report on''.

■ 42. Section 249.330 is revised to read as follows:

§ 249.330 Form N–CEN, annual report of registered investment companies.

This form shall be used by registered unit investment trusts and small business investment companies for annual reports to be filed pursuant to § 270.30a–1 of this chapter in satisfaction of the requirement of section 30(a) of the Investment Company Act of 1940 (15 U.S.C. 80a–29(a)) that every registered investment company must file annually with the Commission such information, documents, and reports as investment companies having securities registered on a national securities exchange are required to file annually pursuant to section 13(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a)) and the rules and regulations thereunder.

Note: The text of Form N–CEN will not appear in the *Code of Federal Regulations.*

§ 249.332 [Removed and Reserved]

■ 43. Section 249.332 is removed and reserved.

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

■ 44. The authority citation for part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.,* 80a–34(d), 80a–37, 80a–39, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 45. Amend § 270.8b–16 paragraph (a) by removing the phrase ''a semi-annual report on Form N–SAR, as prescribed by rule 30b1–1 (17 CFR 270.30b1–1)'' and adding in its place ''an annual report on Form N–CEN, as prescribed by 17 CFR 270.30a–1''.

■ 46. Amend § 270.8b–33 by:

■ a. In the first sentence, removing the phrase '', Form N–CSR (§§ 249.331 and 274.128 of this chapter), or Form N–Q (§§ 249.332 and 274.130 of this chapter)'' and adding in its place the phrase ''or Form N–CSR (§§ 249.331 and 274.128 of this chapter)''; and

■ b. In the third sentence, removing the phrase ''or Form N–Q''.

■ 47. Amend § 270.10f–3 by removing and reserving paragraph (c)(9).

■ 48. Revise § 270.30a–1 to read as follows:

§ 270.30a–1 Annual report for registered investment companies.

Every registered investment company must file an annual report on Form N–CEN (§ 274.101 of this chapter) at least every twelve months and not more than sixty calendar days after the close of each fiscal year. A registered investment company that has filed a registration statement with the Commission registering its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn.

■ 49. Amend § 270.30a–2 by:

■ a. In the section heading, removing the phrase ''and Form N–Q''; and

■ b. In the first sentence of paragraph (a), removing the phrases ''or Form N–Q (§§ 249.332 and 274.130 of this chapter)'' and ''or Item 3 of Form N–Q, as applicable,''.

■ 50. Amend § 270.30a–3 by:

■ a. In paragraph (b), removing the phrase ''and Form N–Q (§§ 249.332 and 274.130 of this chapter)''.

■ b. In the first sentence of paragraph (c), removing the phrase ''and Form N–Q (§§ 249.332 and 274.130 of this chapter)''.

■ c. In the second sentence of paragraph (c), removing the phrase ''and Form N–Q (§§ 249.332 and 274.130 of this chapter)''.

■ 51. Section 270.30a–4 is added to read as follows:

§ 270.30a–4 Annual report for wholly-owned registered management investment company subsidiary of registered management investment company.

Notwithstanding the provisions of § 270.30a–1, a registered management investment company that is a wholly-owned subsidiary of a registered management investment company need not file an annual report on Form N–CEN if financial information with respect to that subsidiary is reported in the parent's annual report on Form N–CEN.

§ 270.30b1–1 [Removed and Reserved]

■ 52. Section 270.30b1–1 is removed and reserved.

§ 270.30b1–2 [Removed and Reserved]

■ 53. Section 270.30b1–2 is removed and reserved.

§ 270.30b1–3 [Removed and Reserved]

■ 54. Section 270.30b1–3 is removed and reserved.

§ 270.30b1–5 [Removed and Reserved]

■ 55. Section 270.30b1–5 is removed and reserved.

■ 56. Section 270.30b1–9 is added to read as follows:

§ 270.30b1–9 Monthly report.

Each registered management investment company or exchange-traded fund organized as a unit investment trust, or series thereof, other than a registered open-end management investment company that is regulated as a money market fund under § 270.2a–7 or a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), must file a monthly report of portfolio holdings on Form N–PORT (§ 274.150 of this chapter), current as of the last business day, or last calendar day, of the month. A registered investment company that has filed a registration statement with the Commission registering its securities for the first time under the Securities Act of 1933 is relieved of this reporting obligation with respect to any reporting period or portion thereof prior to the date on which that registration statement becomes effective or is withdrawn. Reports on Form N–PORT must be filed with the Commission no later than 30 days after the end of each month.

■ 57. Amend § 270.30d–1 by:

■ a. In the first sentence, removing the phrase ''and Form N–Q (§§ 249.332 and 274.130 of this chapter)''; and

■ b. In the second sentence, removing the phrase ''Form N–SAR'' and adding in its place ''Form N–CEN''.

■ 58. Section 270.30e–3 is added to read as follows:

§ 270.30e–3 Internet availability of reports to shareholders.

(a) *Web site Transmission.* A report required by § 270.30e–1 or § 270.30e–2 will be considered transmitted to a shareholder of record if all of the conditions set forth in paragraphs (b) through (e) of this section are satisfied.

(b) *Availability of Report to Shareholders and Other Materials.*

(1) The following materials are publicly accessible, free of charge, at the Web site address specified in the Notice from the date of the transmission in reliance on paragraph (a) of this section until the Fund next transmits a report required by § 270.30e–1 or § 270.30e–2:

(i) The Fund's current report required by § 270.30e–1 or § 270.30e–2.

(ii) Any report required by § 270.30e–1 or § 270.30e–2 transmitted to shareholders of record within the last 244 days.

(iii) In the case of a Fund that is a management company, other than a

Fund that is regulated as a money market fund under § 270.2a–7 or a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), the Fund's complete portfolio holdings as of the close of the Fund's most recent first and third fiscal quarters, if any, after the date on which the Fund's registration statement became effective, presented in accordance with the schedules set forth in §§ 210.12–12—12–14 of Regulation S–X [17 CFR 210.12–12—12–14], which need not be audited.

(2) In the case of a Fund that is a management company, other than a Fund that is regulated as a money market fund under § 270.2a–7 or a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), the Fund's complete portfolio holdings as of the close of the next fiscal quarter, presented in accordance with the schedules set forth in §§ 210.12–12—12–14 of Regulation S–X [17 CFR 210.12–12—12–14], which need not be audited, are publicly accessible, free of charge, at the Web site address specified in the Notice from a date not more than 60 days after the close of the fiscal period until the Fund next transmits a report required by § 270.30e–1 or § 270.30e–2.

(3) The Web site address relied upon for compliance with this section may not be the address of the Commission's electronic filing system.

(4) The materials that are accessible in accordance with paragraphs (b)(1) through (b)(2) of this section must be presented on the Web site in a format, or formats, that are convenient for both reading online and printing on paper.

(5) Persons accessing the materials specified in paragraphs (b)(1) through (b)(2) of this section must be able to permanently retain, free of charge, an electronic version of such materials in a format, or formats, that meet the conditions of paragraph (b)(4) of this section.

(6) The conditions set forth in paragraphs (b)(1) through (b)(5) of this section shall be deemed to be met, notwithstanding the fact that the materials specified in paragraphs (b)(1) through (b)(2) of this section are not available for a time in the manner required by paragraphs (b)(1) through (b)(5) of this section, provided that:

(i) The Fund has reasonable procedures in place to ensure that the specified materials are available in the manner required by paragraphs (b)(1) through (b)(5) of this section; and

(ii) The Fund takes prompt action to ensure that the specified documents become available in the manner required by paragraphs (b)(1) through (b)(5) of this section, as soon as practicable following the earlier of the time at which it knows or reasonably should have known that the documents are not available in the manner required by paragraphs (b)(1) through (b)(5) of this section.

(c) *Consent.* The shareholder has previously consented to Web site transmission of shareholder reports or all of the following conditions are met:

(1) The Fund has transmitted a separate written statement (''Initial Statement'') to the shareholder at least 60 days before the Fund begins to rely on this section concerning transmission of reports to that shareholder. The Initial Statement must be written using plain English principles pursuant to paragraph (e) of this section and:

(i) State that future shareholder reports will be accessible, free of charge, at a Web site;

(ii) Explain that the Fund will no longer mail printed copies of shareholder reports to the shareholder unless the shareholder notifies the Fund that he or she wishes to receive printed reports in the future;

(iii) Include a toll-free telephone number and be accompanied by a reply form that is pre-addressed with postage provided and that includes the information the Fund would need to identify the shareholder, and explain that the shareholder can use either of those two methods at any time to notify the Fund that he or she wishes to receive printed reports in the future;

(iv) State that the Fund will mail printed copies of future shareholder reports within 30 days after the Fund receives notice of the shareholder's preference; and

(v) Contain a prominent legend in bold-face type that states: ''How to Continue Receiving Printed Copies of Shareholder Reports''. This legend must appear on the envelope in which the Initial Statement is delivered. Alternatively, if the Initial Statement is delivered separately from other communications to investors, this legend may appear either on the Initial Statement or on the envelope in which the Initial Statement is delivered.

(2) The Initial Statement may not be incorporated into, or combined with, another document.

(3) The Initial Statement must be sent separately from other types of shareholder communications and may not accompany any other document or materials; *provided, however,* that the Initial Statement may accompany the Fund's current Summary Prospectus, Statutory Prospectus, Statement of Additional Information, or Notice of Internet Availability of Proxy Materials under § 240.14a–16 of this chapter.

(4) The Fund has not received the reply form or other notification indicating that the shareholder wishes to continue to receive a print copy of the report, within 60 days after the Fund sent the Initial Statement.

(d) *Notice.* The Fund must send a notice to shareholders (''Notice'') meeting the following conditions of this paragraph (d) within 60 days after the close of the period for which the report to shareholders transmitted in reliance on paragraph (a) of this section is being made:

(1) The Notice must be written using plain English principles pursuant to paragraph (e) of this section and:

(i) Contain a prominent legend in bold-face type that states ''[A]n Important Report[s] to Shareholders of [insert Fund name or fund complex name] [is/are] Now Available Online and In Print by Request'';

(ii) State that each report to shareholders contains important information about their Fund, including its portfolio holdings, and is available on the Internet or, upon request, by mail, and that encourages the shareholder to access and review the report.

(iii) Include a Web site address that leads directly to each report the Fund is transmitting to the recipient shareholder in reliance on this section.

(iv) Include a Web site address where the report to shareholders and other materials specified in paragraphs (b)(1) through (b)(2) of this section are available. The Web site address must be specific enough to lead investors directly to the documents that are required to be accessible under paragraphs (b)(1) through (b)(2) of this section, rather than to the home page or section of the Web site other than on which the documents are posted. The Web site may be a central site with prominent links to each document.

(v) Provide instructions describing how a shareholder may request a paper copy of the shareholder report and other materials specified in paragraphs (b)(1) through (b)(2) of this section at no charge, and an indication that they will not otherwise receive a paper or email copy.

(vi) Include a toll-free telephone number and be accompanied by a reply form that is pre-addressed with postage provided and that includes the information the Fund would need to identify the shareholder, and explain that the shareholder can use either of those two methods at any time to notify the Fund that he or she wishes to receive printed reports in the future.

(2) The Notice may not be incorporated into, or combined with, another document.

(3) The Notice may contain only the information required by paragraph (d)(1) of this section.

(4) The Notice must be sent separately from other types of shareholder communications and may not accompany any other document or materials; *provided, however,* that the Notice may accompany the Fund's current Summary Prospectus, Statutory Prospectus, Statement of Additional Information, or Notice of Internet Availability of Proxy Materials under § 240.14a–16 of this chapter.

(5) A Notice required by this paragraph (d) will be considered sent to a shareholder of record if the Fund satisfies the conditions set forth in § 270.30e–1(f) with respect to that shareholder.

(6) The Fund must file a form of the Notice with the Commission not later than 10 business days after it is sent to shareholders.

(e) *Plain English Requirements.*

(1) To enhance the readability of the Initial Statement and the Notice, the Fund must use plain English principles in the organization, language, and design of those materials.

(2) The Fund must draft the language in the Initial Statement and the Notice so that, at a minimum, the materials substantially comply with each of the following plain English writing principles:

(i) Short sentences;

(ii) Definite, concrete, everyday words;

(iii) Active voice;

(iv) Tabular presentation or bullet lists for complex material, whenever possible;

(v) No legal jargon or highly technical business terms; and

(vi) No multiple negatives.

(f) *Delivery upon Request.* The Fund (or a financial intermediary through which shares of the Fund may be purchased or sold) must send, at no cost to the requestor and by U.S. first class mail or other reasonably prompt means, a paper copy of any of the materials specified in paragraph (b)(1) through (b)(2) of this section to any person requesting such a copy within three business days after receiving a request for a paper copy.

(g) A Fund may not rely on this section to transmit a copy of its currently effective Statutory Prospectus or Statement of Additional Information, or both, under the Securities Act as permitted by paragraph (d) of § 270.30e–1.

(h) *Definitions.* For purposes of this section:

(1) *Fund* means a registered investment company and any series of the investment company.

(2) *Initial Statement* means the statement described in paragraph (c)(1) of this section.

(3) *Notice* means the notice described in paragraph (d) of this section.

(4) *Statement of Additional Information* means the statement of additional information required by Part B of the registration form applicable to the Fund.

(5) *Statutory Prospectus* means a prospectus that satisfies the requirements of section 10(a) of the Securities Act of 1933 (15 U.S.C. 77(j)(a)).

(6) *Summary Prospectus* means the summary prospectus described in paragraph (b) of § 230.498 of this chapter.

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

■ 59. The general authority citation for part 274 continues to read as follows, and the sectional authorities for §§ 274.101 and 274.130 are removed:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, 80a–26, 80a–29, and Pub. L. 111–203, sec. 939A, 124 Stat. 1376 (2010), unless otherwise noted.

* * * * *

■ 60. Form N–1A (referenced in 274.11A) is amended by:

■ a. In Item 16(f), Instruction 3(b), removing the phrase ''or Form N–Q'';

■ b. In Item 27(b)(1), Instruction 1, removing the phrase ''Schedule VI'' and adding in its place ''Schedule IX'', removing the phrase ''[17 CFR 210.12–12C]'' and adding in its place ''17 CFR 210.12–12B]'', and removing the phrase ''(b)'' and adding in its place ''(b) the Fund is not relying upon rule 30e–3 [17 CFR 270.30e–3] to transmit reports to its shareholders; and (c)'';

■ c. In Item 27(b)(1), Instruction 2, removing the phrase '' ''[17 CFR 210.12–12C]'' and adding in its place ''17 CFR 210.12–12B]'';

■ d. In Item 27(d), revising Instruction 4; and

■ e. Revising Item 33.

The revisions to Item 27(d), Instruction 4, and Item 33 of Form N–1A read as follows:

Note: The text of Form N–1A does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–1A

* * * * *

Item 27. Financial Statements

* * * * *

(d) Annual and Semi-Annual Reports.

* * * * *

Instructions

* * * * *

4. *Statement Regarding Availability of Quarterly Portfolio Schedule.* A statement that: (i) The Fund files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year as an exhibit to its reports on Form N–PORT; (ii) the Fund's Form N–PORT reports are available on the Commission's Web site at *http://www.sec.gov*; and (iii) if the Fund makes the information on Form N–PORT available to shareholders on its Web site or upon request, a description of how the information may be obtained from the Fund; provided, however, that a Fund that makes its complete schedule of portfolio holdings for the first and third quarters of the fiscal year available on its Web site in accordance with rule 30e–3 under the Act should only provide a statement that describes how the information may be obtained from the Fund.

* * * * *

Item 33. Location of Accounts and Records

State the name and address of each person maintaining physical possession of each account, book, or other document required to be maintained by section 31(a) [15 U.S.C. 80a–30(a)] and the rules under that section.

Instructions

1. The instructions to Item 20.4 of this form shall also apply to this item.

2. Information need not be provided for any service for which total payments of less than $5,000 were made during each of the last three fiscal years.

3. A fund may omit this information to the extent it is provided in its most recent report on Form N–CEN [17 CFR 274.101].

* * * * *

■ 61. Form N–2 (referenced in 274.11a–1) is amended by:

■ a. In Item 24, Instruction 6, revising paragraph (b);

■ b. In Item 24, revising Instruction 7; and

■ c. Revising Item 32.

The revisions to Form N–2 read as follows:

Note: The text of Form N–2 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–2

* * * * *

Item 24. Financial Statements

* * * * *

Instructions

* * * * *

6. * * *

b. *Statement Regarding Availability of Quarterly Portfolio Schedule.* A statement that: (i) The Registrant files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year as an exhibit to its reports on Form N–PORT; (ii) the Registrant's Form N–PORT reports are available on the Commission's Web site at *http://www.sec.gov*; (iii) if the Registrant makes the information on Form N–PORT available to shareholders on its Web site or upon request, a description of how the information may be obtained from the Registrant; *provided, however,* that a Fund that makes its complete schedule of portfolio holdings for the first and third quarters of the fiscal year available on its Web site in accordance with rule 30e–3 under the Act should only provide a statement that describes how the information may be obtained from the Fund.

* * * * *

7. Schedule IX—Summary schedule of investments in securities of unaffiliated issuers [17 CFR 210.12–12B] may be included in the financial statements required under Instructions 4.a. and 5.a. of this Item in lieu of Schedule I—Investments in securities of unaffiliated issuers [17 CFR 210.12–12] if: (a) The Registrant states in the report that the Registrant's complete schedule of investments in securities of unaffiliated issuers is available (i) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (ii) on the Registrant's Web site, if applicable; and (iii) on the Commission's Web site at *http://www.sec.gov*; (b) the Registrant is not relying upon rule 30e–3 [17 CFR 270.30e–3] to transmit reports to its shareholders; and (c) whenever the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant's schedule of investments in securities of unaffiliated issuers, the Registrant (or financial intermediary) sends a copy of Schedule I—Investments in securities of unaffiliated issuers within 3 business days of receipt by first-class mail or other means designed to ensure equally prompt delivery.

* * * * *

Item 32. Location of Accounts and Records

Furnish the name and address of each person maintaining physical possession of each account, book, or other document required to be maintained by Section 31(a) of the 1940 Act [15 U.S.C. 80a–30(a)] and the rules thereunder [17 CFR 270.31a–1 through 31a–3].

Instruction. A fund may omit this information to the extent it is provided in its most recent report on Form N–CEN [17 CFR 274.101].

* * * * *

■ 62. Form N–3 (referenced in 274.11b) is amended by:

■ a. In Item 28(a), Instruction 6, revising paragraph (ii);

■ b. In Item 28(a), revising Instruction 7(i);

■ c. In Item 28(a), Instruction 7(ii), removing the phrase ''[17 CFR 210.12–12C]'' and adding in its place ''17 CFR 210.12–12]''; and

■ d. Revising Item 36.

The revisions to Item 28(a), Instructions 6 and 7(i), and Item 36 of Form N–3 read as follows:

Note: The text of Form N–3 does not, and this amendment will not, appear in the Code of Federal Regulations.

Form N–3

* * * * *

Item 28. Financial Statements

* * * * *

Instructions

* * * * *

6. * * * *

* * * * *

(ii) *Statement Regarding Availability of Quarterly Portfolio Schedule.* A statement that: (i) The Fund files its complete schedule of portfolio holdings with the Commission for the first and third quarters of each fiscal year as an exhibit to its reports on Form N–PORT; (ii) the Fund's Form N–PORT reports are available on the Commission's Web site at *http://www.sec.gov*; and (iii) if the Fund makes the information on Form N–PORT available to contractowners on its Web site or upon request, a description of how the information may be obtained from the Fund; *provided, however,* that a Fund that makes its complete schedule of portfolio holdings for the first and third quarters of the fiscal year available on its Web site in accordance with rule 30e–3 under the Act should only provide a statement that describes how the information may be obtained from the Fund.

* * * * *

7. * * * *

(i) Schedule IX—Summary schedule of investments in securities of unaffiliated issuers [17 CFR 210.12–12B] may be included in the financial statements required under Instructions 4.(i) and 5.(i) of this Item in lieu of Schedule I—Investments in securities of unaffiliated issuers [17 CFR 210.12–12] if: (A) The Registrant states in the report that the Registrant's complete schedule of investments in securities of unaffiliated issuers is available (1) without charge, upon request, by calling a specified toll-free (or collect) telephone number; (2) on the Registrant's Web site, if applicable; and (3) on the Commission's Web site at *http://www.sec.gov*; and (B) the Registrant is not relying upon rule 30e–3 [17 CFR 270.30e–3] to transmit reports to its contractowners; and (C) whenever the Registrant (or financial intermediary through which shares of the Registrant may be purchased or sold) receives a request for the Registrant's schedule of investments in securities of unaffiliated issuers, the Registrant (or financial intermediary) sends a copy of Schedule I—Investments in securities of unaffiliated issuers within 3 business days of receipt by first-class mail or other means designed to ensure equally prompt delivery.

* * * * *

Item 36. Location of Accounts and Records

Give the name and address of each person who maintains physical possession of each account, book, or other document required to be maintained by Section 31(a) of the 1940 Act [15 U.S.C. 80a–30(a)] and Rules under it [17 CFR 270.31a–1 to 31a–3].

Instruction. A fund may omit this information to the extent it is provided in its most recent report on Form N–CEN [17 CFR 274.101].

* * * * *

■ 63. Form N–4 (referenced in 274.11c) is amended by adding to the end of Item 30 a new instruction ''*Instruction.* A fund may omit this information to the extent it is provided in its most recent report on Form N–CEN [17 CFR 274.101].''.

■ 64. Form N–6 (referenced in 274.11d) is amended by adding to the end of Item 31 a new instruction ''*Instruction.* A fund may omit this information to the extent it is provided in its most recent report on Form N–CEN [17 CFR 274.101].''.

■ 65. Section 274.101 and its heading are revised to read as follows:

§ 274.101 Form N–CEN, annual report of registered investment companies.

This form shall be used by registered investment companies for annual reports to be filed pursuant to 17 CFR 270.30a–1.

Note: The text of Form N–CEN will not appear in the Code of Federal Regulations.

FORM N–CEN

ANNUAL REPORT FOR REGISTERED INVESTMENT COMPANIES

Form N–CEN is to be used by all registered investment companies, other than face amount certificate companies, to file annual reports with the Commission, not later than 60 days after the close of the fiscal year for which the report is being prepared, pursuant to rule 30a–1 under the Investment Company Act of 1940 (''Act'') (17 CFR 270.30a–1). Face amount certificate companies should continue to file periodic reports pursuant to section 13 or 15(d) of the Securities Exchange Act of 1934 (''Exchange Act''). The Commission may use the information provided on Form N–CEN in its regulatory, enforcement, examination, disclosure review, inspection, and policymaking roles.

GENERAL INSTRUCTIONS

A. Rule as to Use of Form N–CEN

Form N–CEN is the reporting form that is to be used for annual reports filed pursuant to rule 30a–1 under the Act (17 CFR 270.30a–1) by registered investment companies, other than face amount certificate companies, under section 30(a) of the Act and, in the case of small business investment companies and registered unit investment trusts, under section 13 or 15(d) of the Exchange Act, if applicable.

Registrants must respond to all items in the relevant Parts of Form N–CEN, as listed below in this General Instruction A. If an item within a required Part is inapplicable, the Registrant should respond ''N/A'' to that item. Registrants are not, however, required to respond to items in Parts of Form N–CEN that they are not required by this General Instruction A to respond to.

Management investment companies: Management investment companies other than small business investment companies must complete Parts A, B, C, and G of this Form. Management investment companies that offer multiple series must complete Part C as to each series separately, even if some information is the same for two or more series. Closed-end management investment companies also must complete Part D of this Form. Small business investment companies must complete Parts A, B, D, and G of this Form. Management investment companies that are registered on Form N–3 also must complete certain items in Part F of this Form as directed by Item 7.c.i.

Exchange-traded funds or exchange-traded managed funds: Funds that are exchange-traded funds or exchange-traded managed funds, as defined by this Form, must complete Part E of this Form in addition to any other required Parts.

Unit investment trusts: Unit investment trusts must complete Parts A, B, F, and G of this Form.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements should be carefully read and observed in the preparation and filing of reports on this form, except that any provision in the form or in these instructions shall be controlling.

C. Filing of Report

All registered investment companies with shares outstanding (other than shares issued in connection with an initial investment to satisfy section 14(a) of the Investment Company Act) must file a report on Form N–CEN at least annually. If a Registrant changes its fiscal year, a report filed on Form N–CEN may cover a period shorter than 12 months, but in no event may a report filed on Form N–CEN cover a period longer than 12 months or a period that overlaps with a period covered by a previously filed report. For example, if in 2014 a Registrant with a September 30 fiscal year end changes its fiscal year end to December 31, the Registrant could file a report on this Form for the fiscal period ending September 30, 2014 and a report for the period ending December 31, 2014. A Registrant could not, however, only file a report for the fiscal period ending December 31, 2014 if its last report was filed for the fiscal period ending September 30, 2013. An extension of time of up to 15 days for filing the form may be obtained by following the procedures specified in rule 12b–25 under the Exchange Act (17 CFR 240.12b–25).

Reports must be filed electronically using the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system in accordance with Regulation S–T. Consult the EDGAR Filer Manual and Appendices for EDGAR filing instructions.

D. Paperwork Reduction Act Information

A registrant is required to disclose the information specified by Form N–CEN, and the Commission will make this information public. A registrant is not required to respond to the collection of information contained in Form N–CEN unless the form displays a currently valid Office of Management and Budget (''OMB'') control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090. The OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

E. Signature and Filing of Report

If the report is filed in paper pursuant to a hardship exemption from electronic filing (see Item 201 *et seq.* of Regulation S–T (17 CFR 232.201 *et seq.*)), eight complete copies of the report shall be filed with the Commission. At least one complete copy of the report shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Commission and one such copy filed with each exchange must be manually signed. Copies not manually signed must bear typed or printed signatures.

A registrant may file an amendment to a previously filed report at any time, including an amendment to correct a mistake or error in a previously filed report. A registrant that files an amendment to a previously filed report must provide information in response to all required items of Form N–CEN, regardless of why the amendment is filed.

The report must be signed by the Registrant, and on behalf of the Registrant, by an authorized officer of the Registrant. The name of each person who signs the report shall be typed or printed beneath his or her signature. Attention is directed to rule 8b–11 under the Act (17 CFR 270.8b–11) concerning manual signatures and signatures pursuant to powers of attorney.

F. Definitions

Except as defined below or where the context clearly indicates the contrary, terms used in Form N–CEN have meanings as defined in the Act and the rules and regulations thereunder. Unless otherwise indicated, all references in the form or its instructions to statutory sections or to rules are sections of the Act and the rules and regulations thereunder.

In addition, the following definitions apply:

''**Class**'' means a class of shares issued by a Multiple Class Fund that represents interest in the same portfolio of securities under rule 18f–3 under the Act (17 CFR 270.18f–3) or under an

order exempting the Multiple Class Fund from sections 18(f), 18(g), and 18(i) of the Act (15 U.S.C. 80a–18(f), 18(g), and 18(i)).

''**CRD number**'' means a central licensing and registration system number issued by the Financial Industry Regulatory Authority.

''**Exchange-Traded Fund**'' means an open-end management investment company (or Series or Class thereof) or unit investment trust, the shares of which are listed and traded on a national securities exchange at market prices, and that has formed and operates under an exemptive order under the Act granted by the Commission or in reliance on an exemptive rule under the Act adopted by the Commission.

''**Exchange-Traded Managed Fund**'' means an open-end management investment company (or Series or Class thereof) or unit investment trust, the shares of which are listed and traded on a national securities exchange at NAV-based prices, and that has formed and operates under an exemptive order under the Act granted by the Commission or in reliance on an exemptive rule under the Act adopted by the Commission.

''**Fund**'' means the Registrant or a separate Series of the Registrant. When an item of Form N–CEN specifically applies to a Registrant or Series, those terms will be used.

''**LEI**'' means, with respect to any company, the ''legal entity identifier'' as assigned or recognized by the Global LEI Regulatory Oversight Committee or the Global LEI Foundation. In the case of a financial institution, if a ''legal entity identifier'' has not been assigned, then provide the RSSD ID, if any, assigned by the National Information Center of the Board of Governors of the Federal Reserve System.

''**Money Market Fund**'' means an open-end management investment company registered under the Act, or Series thereof, that is regulated as a money market fund pursuant to rule 2a–7 under the Act (17 CFR 270.2a–7).

''**Multiple Class Fund**'' means a Fund that has more than one Class.

''**PCAOB number**'' means the registration number issued to an independent public accountant registered with the Public Company Accounting Oversight Board.

''**Registrant**'' means the investment company filing this report or on whose behalf the report is filed.

''**SEC File number**'' means the number assigned to an entity by the Commission when that entity registered with the Commission in the capacity in which it is named in Form N–CEN.

''**Series**'' means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other Series of shares for assets specifically allocated to that Series in accordance with rule 18f–2(a) (17 CFR 270.18f–2(a)).

FORM N–CEN

ANNUAL REPORT FOR REGISTERED INVESTMENT COMPANIES

Part A: General Information

Item 1. Reporting period covered.
- a. Report for period ending: [month/day/year]
- b. Does this report cover a period of less than 12 months? [Y/N]

Part B: Information About the Registrant

Instruction. If the response to an item in Part B differs between Series of the Registrant, provide a response for each Series, as applicable, and label the response with the name and Series identification number of the Series to which a response relates.

Item 2. Background information.
- a. Full name of Registrant: ____
- b. Investment Company Act file number (*e.g.,* 811–): ____
- c. CIK: ____
- d. LEI: ____

Item 3. Address and telephone number of Registrant.
- a. Street: ____
- b. City: ____
- c. State, if applicable: ____
- d. Foreign country, if applicable: ____
- e. Zip code and zip code extension, or foreign postal code: ____
- f. Telephone number (including country code if foreign): ____
- g. Public Web site, if any: ____

Item 4. Location of books and records.
- a. Name of person (*e.g.,* a custodian of records): ____
- b. Street: ____
- c. City: ____
- d. State, if applicable
- e. Foreign country, if applicable: ____
- f. Zip code and zip code extension, or foreign postal code: ____
- g. Telephone number (including country code if foreign): ____
- h. Briefly describe the books and records kept at this location: ____

Instruction. Provide the requested information for each person maintaining physical possession of each account, book, or other document required to be maintained by section 31(a) of the Act (15 U.S.C. 80a–30(a)) and the rules under that section.

Item 5. Initial or final filings.
- a. Is this the first filing on this form by the Registrant? [Y/N]
- b. Is this the last filing on this form by the Registrant? [Y/N]

Instruction. Respond ''yes'' to Item 5(b) only if the Registrant has filed an application to deregister on Form N–8F or otherwise.

Item 6. Family of investment companies.
- a. Is the Registrant part of a family of investment companies? [Y/N]
- i. Full name of family of investment companies: ____

Instruction. ''Family of investment companies'' means, except for insurance company separate accounts, any two or more registered investment companies that (i) share the same investment adviser or principal underwriter; and (ii) hold themselves out to investors as related companies for purposes of investment and investor services. In responding to this item, all Registrants in the family of investment companies should report the name of the family of investment companies identically.

Insurance company separate accounts that may not hold themselves out to investors as related companies (products) for purposes of investment and investor services should consider themselves part of the same family if the operational or accounting or control systems under which these entities function are substantially similar.

Item 7. Organization. Indicate the classification of the Registrant by checking the applicable item below.
- a. Open end management investment company registered under the Act on Form N–1A: ____
- i. Total number of Series of the Registrant: ____
- ii. If a Series of the Registrant was terminated during the reporting period, provide the following information:
  1. Name of the Series: ____
  2. Series identification number: ____
  3. Date of termination (month/year): ____
- b. Closed-end management investment company registered under the Act on Form N–2: ____
- c. Separate account offering variable annuity contracts which is registered under the Act as a management investment company on Form N–3: ____
- i. Registrants that indicate they are a management investment company registered under the Act on Form N–3, should respond to Item 74 through Item 77 of this Form in addition to the items discussed in General Instruction A of this Form.
- d. Separate account offering variable annuity contracts which is

registered under the Act as a unit investment trust on Form N–4: ____

e. Small business investment company registered under the Act on Form N–5: ____

f. Separate account offering variable life insurance contracts which is registered under the Act as a unit investment trust on Form N–6: ____

g. Unit investment trust registered under the Act on Form N–8B–2: ____

Instruction. For Item 7.a.i, the Registrant should include all Series that have been established by the Registrant and have shares outstanding (other than shares issued in connection with an initial investment to satisfy section 14(a) of the Act).

Item 8. Securities Act registration. Is the Registrant the issuer of a class of securities registered under the Securities Act of 1933 (''Securities Act'')? [Y/N]

Item 9. Directors. Provide for each director the information below (management investment companies only):

a. Full name: ____

b. Is the director an ''interested person'' of the Registrant as that term is defined in section 2(a)(19) of the Act (15 U.S.C. 80a–2(a)(19))? [Y/N]

c. Investment Company Act file number of any other registered investment company for which the director also serves as a director (*e.g.,* 811–): ____

Item 10. Chief compliance officer. Provide the information requested below about the person serving as chief compliance officer of the Registrant for purposes of rule 38a–1 (17 CFR 270.38a–1):

a. Full name: ____

b. CRD number, if any: ____

c. Street: ____

d. City: ____

e. State, if applicable: ____

f. Foreign country, if applicable: ____

g. Zip code and zip code extension, or foreign postal code: ____

h. Telephone number (including country code if foreign): ____

i. Has the chief compliance officer changed since the last filing? [Y/N]

j. If the chief compliance officer is compensated or employed by any person other than the Registrant, or an affiliated person of the Registrant, for providing chief compliance officer services, provide:

i. Name of the person: ____

ii. Person's Employer Identification Number: ____

Item 11. Matters for security holder vote. Were any matters submitted by the Registrant for its security holders' vote during the reporting period? [Y/N]

Item 12. Legal proceedings.

a. Have there been any material legal proceedings, other than routine litigation incidental to the business, to which the Registrant or any of its subsidiaries was a party or of which any of their property was the subject during the reporting period? [Y/N] If yes, include the attachment required by Item 79.a.i.

b. Has any proceeding previously reported been terminated? [Y/N] If yes, include the attachment required by Item 79.a.i.

Instruction. For purposes of this Item, the following proceedings should be described: (1) any bankruptcy, receivership or similar proceeding with respect to the Registrant or any of its significant subsidiaries; (2) any proceeding to which any director, officer or other affiliated person of the Registrant is a party adverse to the Registrant or any of its subsidiaries; and (3) any proceeding involving the revocation or suspension of the right of the Registrant to sell securities.

Item 13. Fidelity bond and insurance (management investment companies only).

a. Were any claims with respect to the Registrant filed under a fidelity bond (including, but not limited to, the fidelity insuring agreement of the bond) during the reporting period? [Y/N]

i. If yes, enter the aggregate dollar amount of claims filed: ____

Item 14. Directors and officers/errors and omissions insurance (management investment companies only).

a. Are the Registrant's officers or directors covered in their capacities as officers or directors under any directors and officers/errors and omissions insurance policy owned by the Registrant or anyone else? [Y/N]

i. If yes, were any claims filed under the policy during the reporting period with respect to the Registrant? [Y/N]

Item 15. Provision of financial support. Did an affiliated person, promoter, or principal underwriter of the Registrant, or an affiliated person of such a person, provide any form of financial support to the Registrant during the reporting period? [Y/N] If yes, include the attachment required by Item 79.a.ii, unless the Registrant is a Money Market Fund.

Instruction. For purposes of this Item, a provision of financial support includes any (1) capital contribution, (2) purchase of a security from a Money Market Fund in reliance on rule 17a–9 under the Act (17 CFR 270.17a–9), (3) purchase of any defaulted or devalued security at fair value, (4) execution of letter of credit or letter of indemnity, (5) capital support agreement (whether or not the Registrant ultimately received support), (6) performance guarantee, or (7) other similar action reasonably intended to increase or stabilize the value or liquidity of the Registrant's portfolio. Provision of financial support does not include any (1) routine waiver of fees or reimbursement of Registrant's expenses, (2) routine inter-fund lending, (3) routine inter-fund purchases of Registrant's shares, or (4) action that would qualify as financial support as defined above, that the board of directors has otherwise determined not to be reasonably intended to increase or stabilize the value or liquidity of the Registrant's portfolio.

Item 16. Exemptive orders.

a. During the reporting period, did the Registrant rely on any orders from the Commission granting an exemption from one or more provisions of the Act, Securities Act or Exchange Act? [Y/N]

i. If yes, provide below the release number for each order: ____

Item 17. Principal underwriters.

a. Provide the information requested below about each principal underwriter:

i. Full name: ____

ii. SEC file number (*e.g.,* 8–): ____

iii. CRD number: ____

iv. LEI, if any: ____

v. State, if applicable: ____

vi. Foreign country, if applicable: ____

vii. Is the principal underwriter an affiliated person of the Registrant, or its investment adviser(s) or depositor? [Y/N]

b. Have any principal underwriters been hired or terminated during the reporting period? [Y/N]

Item 18. Independent public accountant. Provide the following information about the independent public accountant:

a. Full name: ____

b. PCAOB number: ____

c. LEI, if any: ____

d. State, if applicable: ____

e. Foreign country, if applicable: ____

f. Has the independent public accountant changed since the last filing? [Y/N] If yes, include the attachment required by Item 79.a.iii.

Item 19. Report on internal control (management investment companies only). For the reporting

period, did an independent public accountant's report on internal control find any material weaknesses? [Y/N]

Instruction. Small business investment companies are not required to respond to this item.

Item 20. Audit opinion. For the reporting period, did an independent public accountant issue an opinion other than an unqualified opinion with respect to its audit of the Registrant's financial statements? [Y/N]

Item 21. Change in valuation methods. Have there been material changes in the method of valuation (*e.g.,* change from use of bid price to mid price for fixed income securities or change in trigger threshold for use of fair value factors on international equity securities) of the Registrant's assets during the reporting period? [Y/N] If yes, provide the following:

a. Date of change: ___
b. Explanation of the change: ____
c. Type of investments involved: ____
d. Statutory or regulatory basis, if any: ____
e. Fund(s) involved:
i. Fund name: ____
ii. Series identification number: ____

Instruction. Responses to this item need not include changes to valuation techniques used for individual securities (*e.g.,* changing from market approach to income approach for a private equity security).

Item 22. Change in accounting principles and practices. Have there been any changes in accounting principles or practices, or any change in the method of applying any such accounting principles or practices, which will materially affect the financial statements filed or to be filed for the current year with the Commission and which has not been previously reported? [Y/N] If yes, include the attachment required by Item 79.a.v.

Item 23. Net asset value error corrections (open-end management investment companies only).

a. During the reporting period, did the Registrant make any payments to shareholders or reprocess shareholder accounts as a result of an error in calculating the Registrant's net asset value (or net asset value per share)? [Y/N]

Item 24. Rule 19a–1 notice (management investment companies only). During the reporting period, did the Registrant pay any dividend or make any distribution in the nature of a dividend payment, required to be accompanied by a written statement pursuant to section 19(a) of the Act (15 U.S.C. 80a–19(a)) and rule 19a–1 thereunder (17 CFR 270.19a–1)? [Y/N]

Part C: Additional Questions for Management Investment Companies

Item 25. Background information.

a. Full name of the Fund: ____
b. Series identification number, if any: ____
c. LEI: ____
d. Is this the first filing on this form by the Fund? [Y/N]

Item 26. Classes of open-end management investment companies.

a. How many Classes of shares of the Fund (if any) are authorized? ____
b. How many new Classes of shares of the Fund were added during the reporting period? ____
c. How many Classes of shares of the Fund were terminated during the reporting period? ___
d. For each Class with shares outstanding, provide the information requested below:
i. Full name of Class: ____
ii. Class identification number, if any: ____
iii. Ticker symbol, if any: ____

Item 27. Type of fund. Indicate if the Fund is any one of the types listed below. Check all that apply.

a. Exchange-Traded Fund or Exchange-Traded Managed Fund or offers a Class that itself is an Exchange-Traded Fund or Exchange-Traded Managed Fund:
i. Exchange-Traded Fund: ____
ii. Exchange-Traded Managed Fund: ____
b. Index Fund: ____
i. If the Fund is an index fund, provide the annualized difference between the Fund's total return during the reporting period and the index's return during the reporting period (*i.e.,* the Fund's total return less the index's return):
1. Before Fund fees and expenses: ____
2. After Fund fees and expenses (*i.e.,* net asset value): ____
ii. If the Fund is an index fund, provide the annualized standard deviation of the daily difference between the Fund's total return and the index's return during the reporting period:
1. Before Fund fees and expenses: ____
2. After Fund fees and expenses (*i.e.,* net asset value): ____
c. Seeks to achieve performance results that are a multiple of a benchmark, the inverse of a benchmark, or a multiple of the inverse of a benchmark: ____
d. Interval Fund: ____
e. Fund of Funds: ____
f. Master-Feeder Fund: ____
i. If the Registrant is a master fund, then provide the information requested below with respect to each feeder fund:
1. Full name: ____
2. For registered feeder funds:
a. Investment Company Act file number (*e.g.,* 811–): ____
b. Series identification number, if any: ____
c. LEI of feeder Fund: ____
3. For unregistered feeder funds:
a. SEC file number of the feeder fund's investment adviser (*e.g.,* 801–): ____
b. LEI of feeder fund, if any: ___
ii. If the Registrant is a feeder fund, then provide the information requested below with respect to a master fund registered under the Act:
1. Full name: ____
2. Investment Company Act file number (*e.g.,* 811–): ____
3. SEC file number of the master fund's investment adviser (*e.g.,* 801–): ___
4. LEI: ___
g. Money Market Fund: ____
h. Target Date Fund: ___
i. Underlying fund to a variable annuity or variable life insurance contract: ____

Instructions.

1. ''Fund of Funds'' means a fund that acquires securities issued by any other investment company in excess of the amounts permitted under paragraph (A) of section 12(d)(1) of the Act (15 U.S.C. 80a–12(d)(1)(A)).

2. ''Index Fund'' means an investment company, including an Exchange-Traded Fund, that seeks to track the performance of a specified index.

3. ''Interval Fund'' means a closed-end management investment company that makes periodic repurchases of its shares pursuant to rule 23c–3 under the Act (17 CFR 270.23c–3).

4. ''Master-Feeder Fund'' means a two-tiered arrangement in which one or more funds (each a feeder fund) holds shares of a single Fund (the master fund) in accordance with section 12(d)(1)(E) of the Act (15 U.S.C. 80a–12(d)(1)(E)).

5. ''Target Date Fund'' means an investment company that has an investment objective or strategy of providing varying degrees of long-term appreciation and capital preservation through a mix of equity and fixed income exposures that changes over time based on an investor's age, target retirement date, or life expectancy.

Item 28. Diversification. Does the Fund seek to operate as a ''non-diversified company'' as such term is defined in section 5(b)(2) of the Act (15 U.S.C. 80a–5(b)(2))? [Y/N]

Item 29. Investments in certain foreign corporations.

a. Does the fund invest in a controlled foreign corporation for the purpose of investing in certain types of instruments such as, but not limited to, commodities? [Y/N]

b. If yes, provide the following information:

i. Full name of subsidiary: ____

ii. LEI of subsidiary, if any: ____

Instruction. ''Controlled foreign corporation'' has the meaning provided in section 957 of the Internal Revenue Code [26 U.S.C. 957].

Item 30. Securities lending.

a. Is the Fund authorized to engage in securities lending transactions? [Y/N]

b. Did the Fund lend any of its securities during the reporting period? [Y/N]

i. If yes, has any borrower of fund securities defaulted during the reporting period? [Y/N]

c. Provide the information requested below about each securities lending agent, if any, retained by the Fund:

i. Full name of securities lending agent: ____

ii. LEI, if any: ____

iii. Is the securities lending agent an affiliated person, or an affiliated person of an affiliated person, of the Fund? [Y/N]

iv. Does the securities lending agent or any other entity indemnify the fund against borrower default on loans administered by this agent? [Y/N]

v. If the entity providing the indemnification is not the securities lending agent, provide the following information:

1. Name of person providing indemnification: ____

2. LEI, if any, of person providing indemnification: ____

d. If a person providing cash collateral management services to the Fund in connection with the Fund's securities lending activities does not also serve as securities lending agent, provide the following information about each cash collateral manager:

i. Full name of cash collateral manager: ____

ii. LEI, if any: ____

iii. Is the cash collateral manager an affiliated person, or an affiliated person of an affiliated person, of a securities lending agent retained by the Fund? [Y/N]

iv. Is the cash collateral manager an affiliated person, or an affiliated person of an affiliated person, of the Fund? [Y/N]

e. Types of payments made to one or more securities lending agents and cash collateral managers (check all that apply):

i. revenue sharing split: ____

ii. non-revenue sharing split (other than administrative fee): ____

iii. administrative fee: ____

iv. cash collateral reinvestment fee: ____

v. indemnification fee: ____

vi. other: ____. If other, describe: ____.

Item 31. Reliance on certain rules. Did the Fund rely on any of the following rules under the Act during the reporting period? (check all that apply)

a. Rule 10f–3 (17 CFR 270.10f–3): ____

b. Rule 12d1–1 (17 CFR 270.12d1–1): ____

c. Rule 15a&4 (17 CFR 270.15a–4): ____

d. Rule 17a–6 (17 CFR 270.17a–6): ____

e. Rule 17a–7 (17 CFR 270.17a–7): ____

f. Rule 17a–8 (17 CFR 270.17a–8): ____

g. Rule 17e–1 (17 CFR 270.17e–1): ____

h. Rule 22d–1 (17 CFR 270.22d–1): ____

i. Rule 23c–1 (17 CFR 270.23c–1): ____

j. Rule 32a–4 (17 CFR 270.32a–4): ____

Item 32. Expense limitations.

a. Did the Fund have an expense limitation arrangement in place during the reporting period? [Y/N]

b. Were any expenses of the Fund reduced or waived pursuant to an expense limitation arrangement during the reporting period? [Y/N]

c. Are the fees waived subject to recoupment? [Y/N]

d. Were any expenses previously waived recouped during the period? [Y/N]

Instruction. Provide information concerning any direct or indirect limitations, waivers or reductions, on the level of expenses incurred by the fund during the reporting period. A limitation, for example, may be applied indirectly (such as when an adviser agrees to accept a reduced fee pursuant to a voluntary fee waiver) or it may apply only for a temporary period such as for a new fund in its start-up phase.

Item 33. Investment advisers.

a. Provide the following information about each investment adviser (other than a sub-adviser) of the Fund:

i. Full name: ____

ii. SEC file number (*e.g.,* 801–): ____

iii. CRD number: ____

iv. LEI, if any: ____

v. State, if applicable: ____

vi. Foreign country, if applicable: ____

vii. Was the investment adviser hired during the reporting period? [Y/N]

1. If the investment adviser was hired during the reporting period, indicate the investment adviser's start date: ____

b. If an investment adviser (other than a sub-adviser) to the Fund was terminated during the reporting period, provide the following with respect to each investment adviser:

i. Full name: ____

ii. SEC file number (*e.g.,* 801–): ____

iii. CRD number: ____

iv. LEI, if any: ____

v. State, if applicable: ____

vi. Foreign country, if applicable: ____

vii. Termination date: ____

c. For each sub-adviser to the Fund, provide the information requested:

i. Full name: ____

ii. SEC file number (*e.g.,* 801–), if applicable: ____

iii. CRD number: ____

iv. LEI, if any: ____

v. State, if applicable: ____

vi. Foreign country, if applicable: ____

vii. Is the sub-adviser an affiliated person of the Fund's investment adviser(s)? [Y/N]

viii. Was the sub-adviser hired during the reporting period? [Y/N]

1. If the sub-adviser was hired during the reporting period, indicate the sub-adviser's start date: ____

d. If a sub-adviser was terminated during the reporting period, provide the following with respect to such sub-adviser:

i. Full name: ____

ii. SEC file number (*e.g.,* 801–): ____

iii. CRD number: ____

iv. LEI, if any: ____

v. State, if applicable: ____

vi. Foreign country, if applicable: ____

vii. Termination date: ____

Item 34. Transfer agents.

a. Provide the following information about each person providing transfer agency services to the Fund:

i. Full name: ____

ii. SEC file number (*e.g.,* 84– or 85–): ____

iii. LEI, if any: ____

iv. State, if applicable: ____

v. Foreign country, if applicable: ____

vi. Is the transfer agent an affiliated person of the Fund or its investment adviser(s)? [Y/N]

b. Has a transfer agent been hired or

terminated during the reporting period? [Y/N]

Item 35. Pricing services. Provide the following information about each person that provided pricing services to the Fund during the reporting period:

a. Full name: ____
b. LEI, if any, or provide and describe other identifying number: ____
c. State, if applicable: _____
d. Foreign country, if applicable: ____
e. Is the pricing service an affiliated person of the Fund or its investment adviser(s)? [Y/N]
f. Was the pricing service first retained by the Fund to provide pricing services during the current reporting period? [Y/N]

Item 36. Pricing services no longer retained. Provide the following information about each person that formerly provided pricing services to the Fund during the current or immediately prior reporting period that no longer provides such services to the Fund:

a. Full name: ____
b. LEI, if any, or provide and describe other identifying number: ____
c. State, if applicable: _____
d. Foreign country, if applicable: ____
e. Termination date: ____

Item 37. Custodians.

a. Provide the following information about each person that provided custodial services to the Fund during the reporting period:
i. Full name: ____
ii. LEI, if any: ____
iii. State, if applicable: ____
iv. Foreign country, if applicable: ____
v. Is the custodian an affiliated person of the Fund or its investment adviser(s)? [Y/N]
vi. Is the custodian a sub-custodian? [Y/N]
vii. With respect to the custodian, check below to indicate the type of custody:
1. Bank—section 17(f)(1) (15 U.S.C. 80a–17(f)(1)): ____
2. Member national securities exchange—rule 17f–1 (17 CFR 270.17f–1): ____
3. Self —rule 17f&2 (17 CFR 270.17f–2): ____
4. Securities depository—rule 17f–4 (17 CFR 270.17f–4): ____
5. Foreign custodian—rule 17f–5 (17 CFR 270.17f–5): ____
6. Futures commission merchants and commodity clearing organizations—rule 17f–6 (17 CFR 270.17f–6): ____
7. Foreign securities depository—rule 17f–7 (17 CFR 270.17f–7): ____
8. Insurance company sponsor—rule 26a–2 (17 CFR 270.26a–2): ____
9. Other: ____. If other, describe: ____.

b. Has a custodian been hired or terminated during the reporting period? [Y/N]

Item 38. Shareholder servicing agents.

a. Provide the following information about each shareholder servicing agent of the Fund:
i. Full name: ____
ii. LEI, if any, or provide and describe other identifying number: ____
iii. State, if applicable: _____
iv. Foreign country, if applicable: ____
v. Is the shareholder servicing agent an affiliated person of the Fund or its investment adviser(s)? [Y/N]
b. Has a shareholder servicing agent been hired or terminated during the reporting period? [Y/N]

Item 39. Third-party administrators.

a. Provide the following information about each third-party administrator of the Fund:
i. Full name: ____
ii. LEI, if any, or provide and describe other identifying number: ____
iii. State, if applicable: _____
iv. Foreign country, if applicable: ___
v. Is the third-party administrator an affiliated person of the Fund or its investment adviser(s)? [Y/N]
b. Has a third-party administrator been hired or terminated during the reporting period? [Y/N]

Item 40. Affiliated broker-dealers. Provide the following information about each affiliated broker-dealer:

a. Full name: ____
b. SEC file number: ____
c. CRD number: ____
d. LEI, if any: ____
e. State, if applicable: _____
f. Foreign country, if applicable: ____
g. Total commissions paid to the affiliated broker-dealer for the reporting period: ____

Item 41. Brokers.

a. For each of the ten brokers that received the largest dollar amount of brokerage commissions (excluding dealer concessions in underwritings) by virtue of direct or indirect participation in the Fund's portfolio transactions, provide the information below:
i. Full name of broker: ____
ii. SEC file number: ____
iii. CRD number: ____
iv. LEI, if any: ____
v. State, if applicable: _____
vi. Foreign country, if applicable: ____
vii. Gross commissions paid by the Fund for the reporting period: ____
b. Aggregate brokerage commissions paid by Fund during the reporting period: ____

Item 42. Principal transactions.

a. For each of the ten entities acting as principals with which the Fund did the largest dollar amount of principal transactions (include all short-term obligations, and U.S. government and tax-free securities) in both the secondary market and in underwritten offerings, provide the information below:
i. Full name of dealer: ____
ii. SEC file number: ____
iii. CRD number: ____
iv. LEI, if any: ____
v. State, if applicable: _____
vi. Foreign country, if applicable: ____
vii. Total value of purchases and sales (excluding maturing securities) with Fund: ____
b. Aggregate value of principal purchase/sale transactions of Fund during the reporting period: ____

Instructions to Item 41 and Item 42.

To help Registrants distinguish between agency and principal transactions, and to promote consistent reporting of the information required by these items, the following criteria should be used:

1. If a security is purchased or sold in a transaction for which the confirmation specifies the amount of the commission to be paid by the Registrant, the transaction should be considered an agency transaction and included in determining the answers to Item 41.

2. If a security is purchased or sold in a transaction for which the confirmation specifies only the net amount to be paid or received by the Registrant and such net amount is equal to the market value of the security at the time of the transaction, the transaction should be considered a principal transaction and included in determining the amounts in Item 42.

3. If a security is purchased by the Registrant in an underwritten offering, the acquisition should be considered a principal transaction and included in answering Item 42 even though the Registrant has knowledge of the amount the underwriters are receiving from the issuer.

4. If a security is sold by the Registrant in a tender offer, the sale should be considered a principal transaction and included in answering Item 42 even though the Registrant has knowledge of the amount the offeror is paying to soliciting brokers or dealers.

5. If a security is purchased directly from the issuer (such as a bank CD), the purchase should be considered a principal transaction and included in answering Item 42.

6. The value of called or maturing securities should not be counted in either agency or principal transactions and should not be included in determining the amounts shown in Item 41 and Item 42. This means that the

acquisition of a security may be included, but it is possible that its disposition may not be included. Disposition of a repurchase agreement at its expiration date should not be included.

7. The purchase or sales of securities in transactions not described in paragraphs (1) through (6) above should be evaluated by the Fund based upon the guidelines established in those paragraphs and classified accordingly. The agents considered in Item 41 may be persons or companies not registered under the Exchange Act as securities brokers. The persons or companies from whom the investment company purchased or to whom it sold portfolio instruments on a principal basis may be persons or entities not registered under the Exchange Act as securities dealers.

Item 43. Payments for brokerage and research. During the reporting period, did the Fund pay commissions to broker-dealers for ''brokerage and research services'' within the meaning of section 28(e) of the Exchange Act (15 U.S.C. 78bb)? [Y/N]

Part D: Additional Questions for Closed-End Management Investment Companies and Small Business Investment Companies

Item 44. Securities issued by Registrant. Indicate by checking below which of the following securities have been issued by the Registrant. Indicate all that apply.

a. Common stock: ____
i. Title of class: ____
ii. Exchange where listed: ____
iii. Ticker symbol: ____
b. Preferred stock: ____
1. Title of class: ____
2. Exchange where listed: ____
3. Ticker symbol: ____
c. Warrants: ____
i. Title of class: ____
ii. Exchange where listed: ____
iii. Ticker symbol: ____
d. Convertible securities: ____
i. Title of class: ____
ii. Exchange where listed: ____
iii. Ticker symbol: ____
e. Bonds: ____
i. Title of class: ____
ii. Exchange where listed: ____
iii. Ticker symbol: ____
f. Other: ___. If other, describe: ____.
i. Title of class: ____
ii. Exchange where listed: ____
iii. Ticker symbol: ____

Instruction. For any security issued by the Fund that is not listed on a securities exchange but that has a ticker symbol, provide that ticker symbol.

Item 45. Rights offerings.

a. Did the Fund make a rights offering with respect to any type of security during the reporting period? [Y/N] If yes, answer the following as to each rights offering made by the Fund:
b. Type of security.
i. Common stock: ____
ii. Preferred stock: ____
iii. Warrants: ____
iv. Convertible securities: ____
v. Bonds: ____
vi. Other: ____. If other, describe: _____.
c. Percentage of participation in primary rights offering: ____

Instruction. For Item 45.c, the ''percentage of participation in primary rights offering'' is calculated as the percentage of subscriptions exercised during the primary rights offering relative to the amount of securities available for primary subscription.

Item 46. Secondary offerings.

a. Did the Fund make a secondary offering during the reporting period? [Y/N]
b. If yes, indicate by checking below the type(s) of security. Indicate all that apply.
i. Common stock: ____
ii. Preferred stock: ____
iii. Warrants: ____
iv. Convertible security: ____
v. Bonds: ____
vi. Other: ____. If other, describe: ____.

Item 47. Repurchases.

a. Did the Fund repurchase any outstanding securities issued by the Fund during the reporting period? [Y/N]
b. If yes, indicate by checking below the type(s) of security. Indicate all that apply:
i. Common stock: ____
ii. Preferred stock: ____
iii. Warrants: ____
iv. Convertible securities: ____
v. Bonds: ____
vi. Other: ____. If other, describe: ____.

Item 48. Default on long-term debt.

a. Were any issues of the Fund's long-term debt in default at the close of the reporting period with respect to the payment of principal, interest, or amortization? [Y/N] If yes, provide the following:
i. Nature of default: ____
ii. Date of default: ____
iii. Amount of default per $1,000 face amount: ____
iv. Total amount of default: ____

Instruction. The term ''long-term debt'' means debt with a period of time from date of initial issuance to maturity of one year or greater.

Item 49. Dividends in arrears.

a. Were any accumulated dividends in arrears on securities issued by the Fund at the close of the reporting period? [Y/N] If yes, provide the following:
i. Title of issue: ____
ii. Amount per share in arrears: ____

Instruction. The term ''dividends in arrears'' means dividends that have not been declared by the board of directors or other governing body of the Fund at the end of each relevant dividend period set forth in the constituent instruments establishing the rights of the stockholders.

Item 50. Modification of securities. Have the terms of any constituent instruments defining the rights of the holders of any class of the Registrant's securities been materially modified? [Y/N] If yes, provide the attachment required by Item 79.b.ii.

Item 51. Management fee (closed-end companies only). Provide the Fund's advisory fee as of the end of the reporting period as percentage of net assets: ____

Instruction. Base the percentage on amounts incurred during the reporting period.

Item 52. Net annual operating expenses. Provide the Fund's net annual operating expenses as of the end of the reporting period (net of any waivers or reimbursements) as a percentage of net assets: ____

Item 53. Market price. Market price per share at end of reporting period: ____

Instruction. Respond to this item with respect to common stock issued by the Registrant only.

Item 54. Net asset value. Net asset value per share at end of reporting period: ____

Instruction. Respond to this item with respect to common stock issued by the Registrant only.

Item 55. Investment advisers (small business investment companies only).

a. Provide the following information about each investment adviser (other than a sub-adviser) of the Fund:
i. Full name: ____
ii. SEC file number (*e.g.,* 801–): ____
iii. CRD number: ____
iv. LEI, if any: ____
v. State, if applicable: ____
vi. Foreign country, if applicable: ____
vii. Was the investment adviser hired during the reporting period? [Y/N]
1. If the investment adviser was hired during the reporting period,

indicate the investment adviser's start date: ____

b. If an investment adviser (other than a sub-adviser) to the Fund was terminated during the reporting period, provide the following with respect to each investment adviser:

i. Full name: ____

ii. SEC file number (*e.g.,* 801–): ____

iii. CRD number: ____

iv. LEI, if any: ____

v. State, if applicable: ____

vi. Foreign country, if applicable: ____

vii. Termination date: ____

c. For each sub-adviser to the Fund, provide the information requested:

i. Full name: ____

ii. SEC file number (*e.g.,* 801–), if applicable: ____

iii. CRD number: ____

iv. LEI, if any: ____

v. State, if applicable: ____

vi. Foreign country, if applicable: ____

vii. Is the sub-adviser an affiliated person of the Fund's investment adviser(s)? [Y/N]

viii. Was the sub-adviser hired during the reporting period? [Y/N]

1. If the sub-adviser was hired during the reporting period, indicate the sub-adviser's start date: ____

d. If a sub-adviser was terminated during the reporting period, provide the following with respect to such sub-adviser:

i. Full name: ____

ii. SEC file number (*e.g.,* 801–): ____

iii. CRD number: ____

iv. LEI, if any: ____

v. State, if applicable: ____

vi. Foreign country, if applicable: ____

vii. Termination date: ____

Item 56. Transfer agents (small business investment companies only).

a. Provide the following information about each person providing transfer agency services to the Fund:

i. Full name: ____

ii. SEC file number (*e.g.,* 84– or 85–):

iii. LEI, if any: ____

iv. State, if applicable: ____

v. Foreign country, if applicable: ____

vi. Is the transfer agent an affiliated person of the Fund or its investment adviser(s)? [Y/N]

b. Has a transfer agent been hired or terminated during the reporting period? [Y/N]

Item 57. Custodians (small business investment companies only).

a. Provide the following information about each person that provided custodial services to the Fund during the reporting period:

i. Full name: ____

ii. LEI, if any: ____

iii. State, if applicable: ____

iv. Foreign country, if applicable: ____

v. Is the custodian an affiliated person of the Fund or its investment adviser(s)? [Y/N]

vi. Is the custodian a sub-custodian? [Y/N]

vii. With respect to the custodian, check below to indicate the type of custody:

1. Bank—section 17(f)(1) (15 U.S.C. 80a–17(f)(1)): ____

2. Member national securities exchange—rule 17f–1 (17 CFR 270.17f–1): ____

3. Self—rule 17f–2 (17 CFR 270.17f–2): ____

4. Securities depository—rule 17f–4 (17 CFR 270.17f–4): ____

5. Foreign custodian—rule 17f–5 (17 CFR 270.17f–5): ____

6. Futures commission merchants and commodity clearing organizations—rule 17f–6 (17 CFR 270.17f–6): ____

7. Foreign securities depository—rule 17f–7 (17 CFR 270.17f–7): ____

8. Insurance company sponsor—rule 26a–2 (17 CFR 270.26a–2): ____

9. Other: ____. If other, describe: ____.

b. Has a custodian been hired or terminated during the reporting period? [Y/N]

Part E: Additional Questions for Exchange-Traded Funds and Exchange-Traded Managed Funds

Item 58. Exchange where listed. Provide the securities exchange on which the Fund is listed: ____

Item 59. Authorized participants. For each authorized participant of the Fund, provide the following information:

a. Full name: ____

b. SEC file number: ____

c. CRD number: ____

d. LEI, if any: ____

e. The dollar value of the Fund shares the authorized participant purchased from the Fund during the reporting period: ____

f. The dollar value of the Fund shares the authorized participant redeemed during the reporting period: ____

Instruction. The term ''authorized participant'' means a broker-dealer that is also a member of a clearing agency registered with the Commission, and which has a written agreement with the Exchange-Traded Fund or Exchange-Traded Managed Fund or one of its designated service providers that allows it place orders to purchase or redeem creation units of the Exchange-Traded Fund or Exchange-Traded Managed Fund.

Item 60. Creation units. Number of Fund shares required to form a creation unit as of the last business day of the reporting period: ____

a. Total value of creation units that were purchased primarily with in-kind securities during the reporting period: ____

b. Total value of creation units that were purchased primarily with cash during the reporting period: ____

c. Total value of creation units that were redeemed primarily with in-kind securities during the reporting period: ____

d. Total value of creation units that were redeemed primarily with cash during the reporting period: ____

e. For the last creation unit purchased during the reporting period of which some or all was purchased on an in-kind basis, provide:

i. Any applicable ''fixed'' transaction fee expressed as dollars per creation unit: $____

ii. Any applicable ''fixed'' transaction fee expressed as dollars per order of one or more creation units: $____

iii. Any applicable ''variable'' transaction fee expressed as a percentage of the value of the in-kind portion of the creation unit: ____

iv. Any applicable ''variable'' transaction fee expressed as dollars per creation unit: $____

f. For the last creation unit purchased during the reporting period of which some or all was purchased on a cash basis, provide:

i. Any applicable ''fixed'' transaction fee expressed as dollars per creation unit: $____

ii. Any applicable ''fixed'' transaction fee expressed as dollars per order of one or more creation units: $____

iii. Any applicable ''variable'' transaction fee expressed as a percentage of the cash portion of the creation unit: ___%

iv. Any applicable ''variable'' transaction fee expressed as dollars per creation unit: $____

g. For the last creation unit redeemed during the reporting period of which some or all was redeemed on an in-kind basis, provide:

i. Any applicable ''fixed'' transaction fee expressed as dollars per creation unit: $____

ii. Any applicable ''fixed'' transaction fee expressed as dollars per order of one or more creation units: $____

iii. Any applicable ''variable'' transaction fee expressed as a percentage of the value of the in-kind portion of the creation unit: __%

iv. Any applicable ''variable'' transaction fee expressed as dollars per creation unit: $____

h. For the last creation unit redeemed during the reporting period of which some or all was redeemed on a cash basis, provide:
i. Any applicable ''fixed'' transaction fee expressed as dollars per creation unit: $____
ii. Any applicable ''fixed'' transaction fee expressed as dollars per order of one or more creation units: $____
iii. Any applicable ''variable'' transaction fee expressed as a percentage of the value of the cash portion of the creation unit: __%
iv. Any applicable ''variable'' transaction fee expressed as dollars per creation unit: $____

Instructions.

8. The term ''creation unit'' means a specified number of Exchange-Traded Fund or Exchange-Traded Managed Fund shares that the fund will issue to (or redeem from) an authorized participant in exchange for the deposit (or delivery) of specified securities, cash, and other assets.

9. For this item, the term ''primarily'' means greater than 50%.

Item 61. Benchmark return difference (unit investment trusts only).
a. If the Fund is an Index Fund as defined in Item 27 of this Form, provide the following information:
i. The annualized difference between the Fund's total return during the reporting period and the index's return during the reporting period (*i.e.,* the Fund's total return less the index's return):
1. Before Fund fees and expenses: ____
2. After Fund fees and expenses (*i.e.,* net asset value): ____
ii. The annualized standard deviation of the daily difference between the Fund's total return and the index's return during the reporting period:
1. Before Fund fees and expenses: ____
2. After Fund fees and expenses (*i.e.,* net asset value): ____

Part F: Additional Questions for Unit Investment Trusts

Item 62. Depositor. Provide the following information about the depositor:
a. Full name: ____
b. CRD number, if any: ____
c. LEI, if any: ____
d. State, if applicable: ____
e. Foreign country, if applicable: ____
f. Full name of ultimate parent of depositor: ____

Item 63. Third-party administrators.
a. Provide the following information about each third-party administrator of the Fund:
i. Full name: ____
ii. LEI, if any, or provide and describe other identifying number: ____
iii. State, if applicable: ____
iv. Foreign country, if applicable: ____
v. Is the third-party administrator an affiliated person of the Fund or depositor? [Y/N]
b. Has a third-party administrator been hired or terminated during the reporting period? [Y/N]

Item 64. Insurance company separate accounts. Is the Registrant a separate account of an insurance company? [Y/N]

Instruction. If the answer to Item 64 is yes, respond to Item 73 through Item 78. If the answer to Item 64 is no, respond to Item 65 through Item 72, and Item 78.

Item 65. Sponsor. Provide the following information about the sponsor:
a. Full name: ____
b. CRD number, if any: ____
c. LEI, if any: ____
d. State, if applicable: ____
e. Foreign country, if applicable: ____

Item 66. Trustees. Provide the following information about each trustee:
a. Full name: ____
b. State, if applicable: ____
c. Foreign country, if applicable: ____

Item 67. Securities Act registration. Provide the number of series existing at the end of the reporting period that had outstanding securities registered under the Securities Act: ____

Item 68. New series.
a. Number of new series for which registration statements under the Securities Act became effective during the reporting period: ____
b. Total aggregate value of the portfolio securities on the date of deposit for the new series: ____

Item 69. Series with a current prospectus. Number of series for which a current prospectus was in existence at the end of the reporting period: ____

Item 70. Number of existing series for which additional units were registered under the Securities Act.
a. Number of existing series for which additional units were registered under the Securities Act during the reporting period: ____
b. Total value of additional units: ____

Item 71. Value of units placed in portfolios of subsequent series. Total value of units of prior series that were placed in the portfolios of subsequent series during the reporting period (the value of these units is to be measured on the date they were placed in the subsequent series): ____

Item 72. Assets. Provide the total assets of all series of the Registrant combined as of the end of the reporting period: ____

Item 73. Series ID of separate account. Series identification number: ____

Item 74. Number of contracts. For each security that has a contract identification number assigned pursuant to rule 313 of Regulation S–T (17 CFR 232.313), provide the number of individual contracts that are in force at the end of the reporting period: ____

Instruction. In the case of group contracts, each participant certificate should be counted as an individual contract.

Item 75. Information on the security issued through the separate account. For each security that has a contract identification number assigned pursuant to rule 313 of Regulation S–T (17 CFR 232.313), provide the following information as of the end of the reporting period:
a. Full name of the security: ____
b. Contract identification number: ____
c. Total assets attributable to the security: ____
d. Number of contracts sold during the reporting period: ____
e. Gross premiums received during the reporting period: ____
f. Gross premiums received pursuant to section 1035 exchanges: ____
g. Number of contracts affected in connection with premiums paid in pursuant to section 1035 exchanges: ____
h. Amount of contract value redeemed during the reporting period: ____
i. Amount of contract value redeemed pursuant to section 1035 exchanges: ____
j. Number of contracts affected in connection with contract value redeemed pursuant to section 1035 exchanges: ____

Instruction. In the case of group contracts, each participant certificate should be counted as an individual contract.

Item 76. Reliance on rule 6c–7. Did the Registrant rely on rule 6c–7 under the Act (17 CFR 270.6c–7) during the reporting period? [Y/N]

Item 77. Reliance on rule 11a–2. Did the Registrant rely on rule 11a–2 under the Act (17 CFR 270.11a–2) during the reporting period? [Y/N]

Item 78. Divestments under section 13(c) of the Act.
a. If the Registrant has divested itself of securities in accordance with section 13(c) of the Act (15 U.S.C.

80a–13(c)) since the end of the reporting period immediately prior to the current reporting period and before filing of the current report, disclose the information requested below for each such divested security:

i. Full name of the issuer: ____

ii. Ticker symbol: ____

iii. CUSIP number: ____

iv. Total number of shares or, for debt securities, principal amount divested: ____

v. Date that the securities were divested: ____

vi.. Name of the statute that added the provision of section 13(c) in accordance with which the securities were divested: ____

b. If the Registrant holds any securities of the issuer on the date of the filing, provide the information requested below:

i. Ticker symbol: ____

ii. CUSIP number: ____

iii. Total number of shares or, for debt securities, principal amount held on the date of the filing: ____

Instructions.

This item may be used by a unit investment trust that divested itself of securities in accordance with section 13(c). A unit investment trust is not required to include disclosure under this item; however, the limitation on civil, criminal, and administrative actions under section 13(c) does not apply with respect to a divestment that is not disclosed under this item.

If a unit investment trust divests itself of securities in accordance with section 13(c) during the period that begins on the fifth business day before the date of filing a report on Form N–CEN and ends on the date of filing, the unit investment trust may disclose the divestment in either the report or an amendment thereto that is filed not later than five business days after the date of filing the report.

For purposes of determining when a divestment should be reported under this item, if a unit investment trust divests its holdings in a particular security in a related series of transactions, the unit investment trust may deem the divestment to occur at the time of the final transaction in the series. In that case, the unit investment trust should report each transaction in the series on a single report on Form N–CEN, but should separately state each date on which securities were divested and the total number of shares or, for debt securities, principal amount divested, on each such date.

Item 78 shall terminate one year after the first date on which all statutory provisions that underlie section 13(c) have terminated.

Part G: Attachments

Item 79. Attachments

a. Attachments applicable to all Registrants. All Registrants shall file the following attachments, as applicable, with the current report. Indicate the attachments filed with the current report by checking the applicable items below:

i. Legal proceedings: ____

ii. Provision of financial support: ____

iii. Change in the Registrant's independent public accountant: ____

iv. Independent public accountant's report on internal control (management investment companies only): ____

v. Change in accounting principles and practices: ____

vi. Information required to be filed pursuant to exemptive orders: ____

vii. Other information required to be included as an attachment pursuant to Commission rules and regulations: ____

Instructions.

10. Item 79.a.i. Legal proceedings.

(a) If the Registrant responded ''YES'' to Item 12.a., provide a brief description of the proceedings. As part of the description, provide the case or docket number (if any), and the full names of the principal parties to the proceeding.

(b) If the Registrant responded ''YES'' to Item 12.b., identify the proceeding and give its date of termination.

11. Item 79.a.ii. Provision of financial support. If the Registrant responded ''YES'' to Item 15, provide the following information (unless the Registrant is a Money Market Fund):

(a) Description of nature of support.

(b) Person providing support.

(c) Brief description of relationship between the person providing support and the Registrant.

(d) Date support provided.

(e) Amount of support.

(f) Security supported (if applicable). Disclose the full name of the issuer, the title of the issue (including coupon or yield, if applicable) and at least two identifiers, if available (*e.g.,* CIK, CUSIP, ISIN, LEI).

(g) Value of security supported on date support was initiated (if applicable).

(h) Brief description of reason for support.

(i) Term of support.

(j) Brief description of any contractual restrictions relating to support.

12. Item 79.a.iii. Change in the Registrant's independent public accountant. If the Registrant responded ''YES'' to Item 18.f., provide the information called for by Item 4 of Form 8–K under the Exchange Act (17 CFR 249.308). Unless otherwise specified by Item 4, or related to and necessary for a complete understanding of information not previously disclosed, the information should relate to events occurring during the reporting period. Notwithstanding requirements in Item 4 of Form 8–K to file more frequently, Registrants need only file reports on Form N–CEN annually in accordance with the requirements of this form.

13. Item 79.a.iv. Independent public accountant's report on internal control (management investment companies only). Small business investment companies are not required to respond to this item. Each management investment company shall furnish a report of its independent public accountant on the company's system of internal accounting controls. The accountant's report shall be based on the review, study and evaluation of the accounting system, internal accounting controls, and procedures for safeguarding securities made during the audit of the financial statements for the reporting period. The report should disclose any material weaknesses in: (a) The accounting system; (b) system of internal accounting control; or (c) procedures for safeguarding securities which exist as of the end of the Registrant's fiscal year. The accountant's report shall be furnished as an exhibit to the form and shall: (1) Be addressed to the Registrant's shareholders and board of directors; (2) be dated; (3) be signed manually; and (4) indicate the city and state where issued.

Attachments that include a report that discloses a material weakness should include an indication by the Registrant of any corrective action taken or proposed.

The fact that an accountant's report is attached to this form shall not be regarded as acknowledging any review of this form by the independent public accountant.

14. Item 79.a.v. Change in accounting principles and practices. If the Registrant responded ''YES'' to Item 22, provide an attachment that describes the change in accounting principles or practices, or the change in the method of applying any such accounting principles or practices. State the date of the change and the reasons therefor. A letter from the Registrant's independent accountants, approving or otherwise commenting on the change, shall accompany the description.

15. Item 79.a.vi. Information required to be filed pursuant to exemptive orders. File as an attachment any information

required to be reported on Form N–CEN or any predecessor form to Form N–CEN (*e.g.,* Form N–SAR) pursuant to exemptive orders issued by the Commission and relied on by the Registrant.

16. Item 79.a.vii. Other information required to be included as an attachment pursuant to Commission rules and regulations. File as an attachment any other information required to be included as an attachment pursuant to Commission rules and regulations.

b. Attachments to be filed by closed-end management investment companies and small business investment companies. Registrants shall file the following attachments, as applicable, with the current report. Indicate the attachments filed with the current report by checking the applicable items bellow.

i. Material amendments to organizational documents: ____

ii. Instruments defining the rights of the holders of any new or amended class of securities: ____

iii. New or amended investment advisory contracts: ____

iv. Information called for by Item 405 of Regulation S–K: ____

v. Code of ethics (small business investment companies only): ____

Instructions.

17. Item 79.b.i. Material amendments to organizational documents. Provide copies of all material amendments to the Registrant's charters, by-laws, or other similar organizational documents that occurred during the reporting period.

18. Item 79.b.ii. Instruments defining the rights of the holders of any new or amended class of securities. Provide copies of all constituent instruments defining the rights of the holders of any new or amended class of securities for the current reporting period. If the Registrant has issued a new class of securities other than short-term paper, furnish a description of the class called for by the applicable item of Form N–2. If the constituent instruments defining the rights of the holders of any class of the Registrant's securities have been materially modified during the reporting period, give the title of the class involved and state briefly the general effect of the modification upon the rights of the holders of such securities.

19. Item 79.b.iii. New or amended investment advisory contracts. Provide copies of any new or amended investment advisory contracts that became effective during the reporting period.

20. Item 79.b.iv. Information called for by Item 405 of Regulation S–K. Provide the information called for by Item 405 of Regulation S–K concerning failure of certain closed-end management investment company and small business investment company shareholders to file certain ownership reports.

21. Item 79.b.v. Code of ethics (small business investment companies only).

(a)(1) Disclose whether, as of the end of the period covered by the report, the Registrant has adopted a code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the Registrant or a third party. If the Registrant has not adopted such a code of ethics, explain why it has not done so.

(2) For purposes of this instruction, the term ''code of ethics'' means written standards that are reasonably designed to deter wrongdoing and to promote: (i) honest and ethical conduct, including the ethical handling of actual or apparent conflicts of interest between personal and professional relationships; (ii) full, fair, accurate, timely, and understandable disclosure in reports and documents that a Registrant files with, or submits to, the Commission and in other public communications made by the Registrant; (iii) compliance with applicable governmental laws, rules, and regulations; (iv) the prompt internal reporting of violations of the code to an appropriate person or persons identified in the code; and (v) accountability for adherence to the code.

(3) The Registrant must briefly describe the nature of any amendment, during the period covered by the report, to a provision of its code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the Registrant or a third party, and that relates to any element of the code of ethics definition enumerated in paragraph (a)(2) of this instruction. The Registrant must file a copy of any such amendment as an exhibit to this report on Form N–CEN, unless the Registrant has elected to satisfy paragraph (a)(6) of this instruction by posting its code of ethics on its Web site pursuant to paragraph (a)(6)(ii) of this Instruction, or by undertaking to provide its code of ethics to any person without charge, upon request, pursuant to paragraph (a)(6)(iii) of this instruction.

(4) If the Registrant has, during the period covered by the report, granted a waiver, including an implicit waiver, from a provision of the code of ethics to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, regardless of whether these individuals are employed by the Registrant or a third party, that relates to one or more of the items set forth in paragraph (a)(2) of this instruction, the Registrant must briefly describe the nature of the waiver, the name of the person to whom the waiver was granted, and the date of the waiver.

(5) If the Registrant intends to satisfy the disclosure requirement under paragraph (a)(3) or (4) of this instruction regarding an amendment to, or a waiver from, a provision of its code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions and that relates to any element of the code of ethics definition enumerated in paragraph (a)(2) of this instruction by posting such information on its Internet Web site, disclose the Registrant's Internet address and such intention.

(6) The Registrant must: (i) file with the Commission a copy of its code of ethics that applies to the Registrant's principal executive officer, principal financial officer, principal accounting officer or controller, or persons performing similar functions, as an exhibit to its report on this Form N–CEN; (ii) post the text of such code of ethics on its Internet Web site and disclose, in its most recent report on this Form N–CEN, its Internet address and the fact that it has posted such code of ethics on its Internet Web site; or (iii) undertake in its most recent report on this Form N–CEN to provide to any person without charge, upon request, a copy of such code of ethics and explain the manner in which such request may be made.

(7) A Registrant may have separate codes of ethics for different types of officers. Furthermore, a ''code of ethics'' within the meaning of paragraph (a)(2) of this instruction may be a portion of a broader document that addresses additional topics or that applies to more persons than those specified in paragraph (a)(1) of this instruction. In satisfying the requirements of paragraph (a)(6) of this instruction, a Registrant need only file, post, or provide the portions of a broader document that constitutes a ''code of ethics'' as defined in paragraph (a)(2) of this instruction

and that apply to the persons specified in paragraph (a)(1) of this instruction.

(8) If a Registrant elects to satisfy paragraph (a)(6) of this instruction by posting its code of ethics on its Internet Web site pursuant to paragraph (a)(6)(ii), the code of ethics must remain accessible on its Web site for as long as the Registrant remains subject to the requirements of this instruction and chooses to comply with this instruction by posting its code on its Internet Web site pursuant to paragraph (a)(6)(ii).

(9) The Registrant does not need to provide any information pursuant to paragraphs (a)(3) and (4) of this instruction if it discloses the required information on its Internet Web site within five business days following the date of the amendment or waiver and the Registrant has disclosed in its most recently filed report on this Form N–CEN its Internet Web site address and intention to provide disclosure in this manner. If the amendment or waiver occurs on a Saturday, Sunday, or holiday on which the Commission is not open for business, then the five business day period shall begin to run on and include the first business day thereafter. If the Registrant elects to disclose this information through its Web site, such information must remain available on the Web site for at least a 12-month period. The Registrant must retain the information for a period of not less than six years following the end of the fiscal year in which the amendment or waiver occurred. Upon request, the Registrant must furnish to the Commission or its staff a copy of any or all information retained pursuant to this requirement.

(10) The Registrant does not need to disclose technical, administrative, or other non-substantive amendments to its code of ethics.

(11) For purposes of this instruction: (i) the term ''waiver'' means the approval by the Registrant of a material departure from a provision of the code of ethics; and (ii) the term ''implicit waiver'' means the Registrant's failure to take action within a reasonable period of time regarding a material departure from a provision of the code of ethics that has been made known to an executive officer, as defined in rule 3b–7 under the Exchange Act (17 CFR 240.3b–7), of the Registrant.

(b)(1) Disclose that the Registrant's board of directors has determined that the Registrant either: (i) has at least one audit committee financial expert serving on its audit committee; or (ii) does not have an audit committee financial expert serving on its audit committee.

(2) If the Registrant provides the disclosure required by paragraph (b)(1)(i) of this instruction, it must disclose the name of the audit committee financial expert and whether that person is ''independent.'' In order to be considered ''independent'' for purposes of this instruction, a member of an audit committee may not, other than in his or her capacity as a member of the audit committee, the board of directors, or any other board committee: (i) accept directly or indirectly any consulting, advisory, or other compensatory fee from the issuer; or (ii) be an ''interested person'' of the investment company as defined in Section 2(a)(19) of the Act (15 U.S.C. 80a–2(a)(19)).

(3) If the Registrant provides the disclosure required by paragraph (b)(1)(ii) of this instruction, it must explain why it does not have an audit committee financial expert.

(4) If the Registrant's board of directors has determined that the Registrant has more than one audit committee financial expert serving on its audit committee, the Registrant may, but is not required to, disclose the names of those additional persons. A Registrant choosing to identify such persons must indicate whether they are independent pursuant to paragraph (b)(2) of this instruction.

(5) For purposes of this instruction, an ''audit committee financial expert'' means a person who has the following attributes: (i) an understanding of generally accepted accounting principles and financial statements; (ii) the ability to assess the general application of such principles in connection with the accounting for estimates, accruals, and reserves; (iii) experience preparing, auditing, analyzing, or evaluating financial statements that present a breadth and level of complexity of accounting issues that are generally comparable to the breadth and complexity of issues that can reasonably be expected to be raised by the Registrant's financial statements, or experience actively supervising one or more persons engaged in such activities; (iv) an understanding of internal controls and procedures for financial reporting; and (v) an understanding of audit committee functions.

(6) A person shall have acquired such attributes through: (i) education and experience as a principal financial officer, principal accounting officer, controller, public accountant, or auditor or experience in one or more positions that involve the performance of similar functions; (ii) experience actively supervising a principal financial officer, principal accounting officer, controller, public accountant, auditor, or person performing similar functions; (iii) experience overseeing or assessing the performance of companies or public accountants with respect to the preparation, auditing, or evaluation of financial statements; or (iv) other relevant experience.

(7)(i) A person who is determined to be an audit committee financial expert will not be deemed an ''expert'' for any purpose, including without limitation for purposes of Section 11 of the Securities Act (15 U.S.C. 77k), as a result of being designated or identified as an audit committee financial expert pursuant to this instruction; (ii) the designation or identification of a person as an audit committee financial expert pursuant to this instruction does not impose on such person any duties, obligations, or liability that are greater than the duties, obligations, and liability imposed on such person as a member of the audit committee and board of directors in the absence of such designation or identification; (iii) the designation or identification of a person as an audit committee financial expert pursuant to this instruction does not affect the duties, obligations, or liability of any other member of the audit committee or board of directors.

(8) If a person qualifies as an audit committee financial expert by means of having held a position described in paragraph (b)(6)(iv) of this Instruction, the Registrant shall provide a brief listing of that person's relevant experience.

SIGNATURES

Pursuant to the requirements of the Investment Company Act of 1940, the Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

_____
(Registrant)

_____
Date

_____
(Signature)*

*Print full name and title of the signing officer under his/her signature.

■ 66. Form N–CSR (referenced in § 274.128) is amended by:

■ a. In Item 11(a), removing the phrase ''90 days'' and adding in its place ''180 days'';

■ b. In Item 11(b), removing the phrase ''the second fiscal quarter of'';

■ c. Removing the instruction to Item 11(b);

■ d. In paragraph 4(c) of the certification exhibits listed in Item 12, removing the phrase ''90 days'' and adding in its place ''180 days'';

■ e. In paragraph 4(d) of the certification exhibits listed in Item 12, removing the phrase ''the second fiscal quarter of'';

■ f. In Item 12, removing the instruction to paragraph (a)(2).

Note: The text of Form N–CSR does not and these amendments will not appear in the *Code of Federal Regulations.*

§ 274.130 [Removed and Reserved]

■ 67. Section 274.130 is removed and reserved.

■ 68. Section 274.150 is added to read as follows:

§ 274.150 Form N–PORT, Monthly portfolio holdings report.

(a) Except as provided in paragraph (b) of this section, this form shall be used by registered management investment companies or exchange-traded funds organized as unit investment trusts, or series thereof, to file reports pursuant to § 270.30b1–9 of this chapter not later than 30 days after the end of each month.

(b) Form N–PORT shall not be filed by a registered open-end management investment company that is regulated as a money market fund under § 270.2a–7 of this chapter or a small business investment company registered on Form N–5 (§§ 239.24 and 274.5 of this chapter), or series thereof.

Note: The text of Form N–PORT will not appear in the *Code of Federal Regulations.*

FORM N–PORT

MONTHLY PORTFOLIO INVESTMENTS REPORT

Form N–PORT is to be used by a registered management investment company, or an exchange-traded product organized as a unit investment trust, or series thereof (''fund''), other than a fund that is regulated as a money market fund (''money market fund'') under rule 2a–7 under the Investment Company Act of 1940 [15 U.S. C. 80a] (''Act'') (17 CFR 270.2a–7) or a small business investment company (''SBIC'') registered on Form N–5 (17 CFR 239.24 and 274.5), to file monthly portfolio holdings reports pursuant to rule 30b1–9 under the Act (17 CFR 270.30b1–9). The Commission may use the information provided on Form N–PORT in its regulatory, enforcement, examination, disclosure review, inspection, and policymaking roles.

GENERAL INSTRUCTIONS

A. Rule as to Use of Form N–PORT

Form N–PORT is the reporting form that is to be used for monthly reports of funds other than money market funds and SBICs under section 30(b) of the Act, as required by rule 30b1–9 under the Act (17 CFR 270.30b1–9). Funds must report information about their portfolios and each of their portfolio holdings as of the last business day, or last calendar day, of the month. Reports on Form N–PORT must be filed with the Commission no later than 30 days after the end of each month. Each fund is required to file a separate report.

A fund may file an amendment to a previously filed report at any time, including an amendment to correct a mistake or error in a previously filed report. A fund that files an amendment to a previously filed report must provide information in response to all items of Form N–PORT, regardless of why the amendment is filed.

B. Application of General Rules and Regulations

The General Rules and Regulations under the Act contain certain general requirements that are applicable to reporting on any form under the Act. These general requirements shall be carefully read and observed in the preparation and filing of reports on this Form, except that any provision in the Form or in these instructions shall be controlling.

C. Filing of Reports

Reports must be filed electronically using the Commission's Electronic Data Gathering, Analysis, and Retrieval (''EDGAR'') system in accordance with Regulation S–T. Consult the EDGAR Filer Manual and Appendices for EDGAR filing instructions.

D. Paperwork Reduction Act Information

A fund is not required to respond to the collection of information contained in Form N–PORT unless the form displays a currently valid Office of Management and Budget (''OMB'') control number. Please direct comments concerning the accuracy of the information collection burden estimate and any suggestions for reducing the burden to the Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090. OMB has reviewed this collection of information under the clearance requirements of 44 U.S.C. 3507.

E. Definitions

References to sections and rules in this Form N–PORT are to the Act, unless otherwise indicated. Terms used in this Form N–PORT have the same meanings as in the Act or related rules, unless otherwise indicated.

As used in this Form N–PORT, the terms set out below have the following meanings:

''Class'' means a class of shares issued by a Multiple Class Fund that represents interests in the same portfolio of securities under rule 18f–3 [17 CFR 270.18f–3] or under an order exempting the Multiple Class Fund from one or more provisions of section 18 [15 U.S.C. 80a–18].

''Controlled Foreign Corporation'' has the meaning provided in section 957 of the Internal Revenue Code [26 U.S.C. 957].

''Exchange-Traded Product'' means an open-end management investment company (or Series or Class thereof) or unit investment trust, the shares of which are listed and traded on a national securities exchange, and that has formed and operates under an exemptive order under the Act granted by the Commission or in reliance on an exemptive rule under the Act adopted by the Commission.

''Fund'' means the Registrant or a separate Series of the Registrant. When an item of Form N–PORT specifically applies to a Registrant or a Series, those terms will be used.

''Illiquid Asset'' means an asset that cannot be sold or disposed of by the Fund in the ordinary course of business within seven calendar days, at approximately the value ascribed to them by the Fund.

''Investment Grade'' refers to an investment that is sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time and is subject to no greater than moderate credit risk.

''ISIN'' means, with respect to any security, the ''international securities identification number'' assigned by a national numbering agency, partner, or substitute agency that is coordinated by the Association of National Numbering Agencies.

''LEI'' means, with respect to any company, the ''legal entity identifier'' as assigned or recognized by the Global LEI Regulatory Oversight Committee or the Global LEI Foundation. In the case of a financial institution, if a ''legal entity identifier'' has not been assigned, then provide the RSSD ID, if any, assigned by the National Information Center of the Board of Governors of the Federal Reserve System.

''Multiple Class Fund'' means a Fund that has more than one Class.

''Non-Investment Grade'' refers to an investment that is not Investment Grade.

''Registrant'' means a management investment company, or an Exchange-Traded Product organized as a unit investment trust, registered under the Act.

''Restricted Security'' has the meaning defined in rule 144(a)(3) under the Securities Act of 1933 [17 CFR 230.144(a)(3)].

''Series'' means shares offered by a Registrant that represent undivided interests in a portfolio of investments and that are preferred over all other series of shares for assets specifically allocated to that series in accordance with rule 18f–2(a) [17 CFR 270.18f–2(a)].

''Swap'' means either a ''security-based swap'' or a ''swap'' as defined in sections 3(a)(68) and (69) of the Securities Exchange Act of 1934 [15 U.S.C. 78c(a)(68) and (69)] and any rules, regulations, or interpretations of the Commission with respect to such instruments.

F. Public Availability

Information reported on Form N–PORT for the third month of each fund's fiscal quarter will be made publicly available 60 days after the end of the fund's fiscal quarter.

The SEC does not intend to make public the information reported on Form N–PORT for the first and second months of each fund's fiscal quarter, or any information reported in Part D of this Form. However, the SEC may use information reported on this Form in its regulatory programs, including examinations, investigations, and enforcement actions.

G. Responses to Questions

In responding to the items on this Form, the following guidelines apply unless otherwise specifically indicated:

- A fund is required to respond to every item of this form. If an item requests information that is not applicable, for example, an LEI for a counterparty that does not have an LEI, respond N/A;
- If an item requests the name of an entity, provide the full name to the extent known, and do not use abbreviations (other than abbreviations that are part of the full name);
- If an item requests information expressed as a percentage, enter the response as a percentage (not a decimal), rounded to the nearest hundredth of one percent (*e.g.,* 5.27%);
- If an item requests a monetary value, report the amount rounded to the nearest hundredth (*e.g.,* if U.S. dollars, round to the nearest penny);
- For currencies other than U.S. dollars, also report the applicable three-letter alphabetic currency code pursuant to the International Organization for Standardization (''ISO'') 4217 standard;
- If an item requests a unique identifier, such an identifier may be internally generated by the fund or provided by a third party, but should be consistently used across the fund's filings for reporting that investment so that the Commission, investors, and other users of the information can track the investment from report to report;
- If an item requests a numerical value other than a percentage or a dollar value, provide information rounded to the nearest hundredth;
- If an item requests a date, provide information in mm/dd/yyyy format; and
- If an item requests information regarding a ''holding'' or ''investment,'' separately report information as to each holding or investment that is recorded in the Fund's books as part of a larger transaction. For example, two or more partially offsetting legs of a transaction entered into with the same counterparty under a common master agreement shall each be separately reported.

H. Signature and Filing of Report

If the report is filed in paper pursuant to a hardship exemption from electronic filing (see Item 201 *et seq.* of Regulation S–T (17 CFR 232.201 *et seq.*)), eight complete copies of the report shall be filed with the Commission. At least one complete copy of the report shall be filed with each exchange on which any class of securities of the registrant is registered. At least one complete copy of the report filed with the Commission and one such copy filed with each exchange must be manually signed. Copies not manually signed must bear typed or printed signatures.

The report must be signed by the Registrant, and on behalf of the Registrant by an authorized officer of the Registrant. The name of each person who signs the report shall be typed or printed beneath his or her signature. See rule 302 of Regulation S–T [17 CFR 232.302] regarding signatures on forms filed electronically and rule 8b–11 under the Act (17 CFR 270.8b–11) concerning signatures pursuant to powers of attorney.

UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, DC 20549

FORM N–PORT

MONTHLY SCHEDULE OF PORTFOLIO INVESTMENTS

Part A: General Information

Item A.1. Information about the Registrant.
- a. Name of Registrant.
- b. Investment Company Act file number for Registrant: (*e.g.,* 811-____).
- c. CIK number of Registrant.
- d. LEI of Registrant.
- e. Address and telephone number of Registrant.

Item A.2. Information about the Series
- a. Name of Series.
- b. EDGAR series identifier (if any).
- c. LEI of Series.

Item A.3. Reporting period.
- a. Date of fiscal year-end.
- b. Date as of which information is reported.

Item A.4. Does the Fund anticipate that this will be its final filing on Form N–PORT? [Y/N]

Part B: Information About the Fund

Report the following information for the Fund and its consolidated subsidiaries.

Item B.1. Assets and liabilities. Report amounts in U.S. dollars.
- a. Total assets, including assets attributable to miscellaneous securities reported in Part D.
- b. Total liabilities.
- c. Net assets.

Item B.2. Certain assets and liabilities. Report amounts in U.S. dollars.
- a. Assets attributable to miscellaneous securities reported in Part D.
- b. Assets invested in a Controlled Foreign Corporation for the purpose of investing in certain types of instruments such as, but not limited to, commodities.
- c. Borrowings attributable to amounts payable for notes payable, bonds, and similar debt, as reported pursuant to rule 6–04(13)(a) of Regulation S–X [17 CFR 210.6–04(13)(a)].
- d. Payables for investments purchased either (i) on a delayed delivery, when-issued, or other firm commitment basis, or (ii) on a standby commitment basis.
- e. Liquidation preference of outstanding preferred stock issued by the Fund.

Item B.3. Portfolio level risk metrics. If the Fund's notional value of debt investments is 20% or more of the Fund's net asset value, provide:
- a. Interest Rate Risk. For each currency to which the fund is exposed and for each of the following maturities: 1 month, 3 month, 6 month, 1 year, 2 years, 3 years, 5 years, 7 years, 10 years, 20 years, and 30 years, provide the change in value of the portfolio resulting from a 1 basis point change in interest rates (DV01).
- b. Credit Spread Risk. Provide the change in value of the portfolio resulting from a 1 basis point change in credit spreads (SDV01/CR01/CS01), aggregated by Investment Grade and Non-Investment Grade exposures, for each of the following maturities: 1 month, 3 month, 6 month, 1 year,

2 years, 3 years, 5 years, 7 years, 10 years, 20 years, and 30 years.

Calculate notional value as the sum of the absolute values of: (i) the value of each debt security, (ii) the notional amount of each swap, including, but not limited to, total return swaps, interest rate swaps credit default swaps, for which the underlying reference asset or assets are debt securities or an interest rate; and (iii) the delta-adjusted notional amount of any option for which the underlying reference asset is an asset described in clause (i) or (ii). Report zero for maturities to which the fund has no exposure. For exposures that fall between any of the listed maturities in (a) and (b), use linear interpolation to approximate exposure to each maturity listed above. For exposures outside of the range of maturities listed above, include those exposures in the nearest maturity.

Item B.4. Securities lending counterparties. For each counterparty to the fund in any securities lending transaction, provide the following information:

a. Name of counterparty.
b. LEI of counterparty (if any).
c. Aggregate value of all securities on loan to the counterparty.

Item B.5. Return information.

a. Monthly total returns of the Fund for each of the preceding three months. If the fund is a Multiple Class Fund, report returns for each class. Such returns shall be calculated in accordance with the methodologies outlined in Item 26(b)(1) of Form N–1A, Instruction 13 to sub-Item 1 of Item 4 of Form N–2, or Item 26(b)(i) of Form N–3, as applicable.
b. Class identification number(s) (if any) of the class(es) for which returns are reported.
c. For each of the preceding three months, monthly net realized gain (loss) and net change in unrealized appreciation (or depreciation) attributable to derivatives for each of the following categories: commodity contracts, credit contracts, equity contracts, foreign exchange contracts, interest rate contracts, and other contracts. Report in U.S. dollars. Losses and depreciation shall be reported as negative numbers.
d. For each of the preceding three months, monthly net realized gain (loss) and net change in unrealized appreciation (or depreciation) attributable to investments other than derivatives. Report in U.S. dollars. Losses and depreciation shall be reported as negative numbers.

Item B.6. Flow information. Provide the aggregate dollar amounts for sales and redemptions/repurchases of Fund shares during each of the preceding three months. The amounts to be reported under this Item should be after any front-end sales load has been deducted and before any deferred or contingent deferred sales load or charge has been deducted. Shares sold shall include shares sold by the Fund to a registered unit investment trust. For mergers and other acquisitions, include in the value of shares sold any transaction in which the Fund acquired the assets of another investment company or of a personal holding company in exchange for its own shares. For liquidations, include in the value of shares redeemed any transaction in which the Fund liquidated all or part of its assets. Exchanges are defined as the redemption or repurchase of shares of one fund or series and the investment of all or part of the proceeds in shares of another fund or series in the same family of investment companies.

a. Total net asset value of shares sold (including exchanges but excluding reinvestment of dividends and distributions).
b. Total net asset value of shares sold in connection with reinvestments of dividends and distributions.
c. Total net asset value of shares redeemed or repurchased, including exchanges.

Part C: Schedule of Portfolio Investments

For each investment held by the Fund and its consolidated subsidiaries, disclose the information requested in Part C. A Fund may report information for securities in an aggregate amount not exceeding five percent of its total assets as miscellaneous securities in Part D in lieu of reporting those securities in Part C, provided that the securities so listed are not restricted, have been held for not more than one year prior to the end of the reporting period covered by this report, and have not been previously been reported by name to the shareholders of the Fund or to any exchange, or set forth in any registration statement, application, or annual report or otherwise made available to the public.

Item C.1. Identification of investment.

a. Name of issuer (if any).
b. LEI of issuer (if any).
c. Title of the issue or description of the investment.
d. CUSIP (if any).
e. At least one of the following other identifiers:
i. ISIN.
ii. Ticker (if ISIN is not available).
iii. Other unique identifier (if ticker and ISIN are not available). Indicate the type of identifier used.

Item C.2. Amount of each investment.

a. Balance. Indicate whether amount is expressed in number of shares, principal amount, or other units. For derivatives contracts, as applicable, provide the number of contracts.
b. Currency. Indicate the currency in which the investment is denominated.
c. Value. Report values in U.S. dollars. If currency of investment is not denominated in U.S. dollars, provide the exchange rate used to calculate value.
d. Percentage value compared to net assets of the Fund.

Item C.3. Indicate payoff profile among the following categories (long, short, N/A). For derivatives, respond N/A to this Item and respond to the relevant payoff profile question in Item C.11.

Item C.4. Asset and issuer type. Select the category that most closely identifies the instrument among each of the following:

a. Asset type (short-term investment vehicle (*e.g.,* money market fund, liquidity pool, or other cash management vehicle), repurchase agreement, equity-common, equity-preferred, debt, derivative-commodity, derivative-credit, derivative-equity, derivative-foreign exchange, derivative-interest rate, structured note, loan, ABS-mortgage backed security, ABS-asset backed commercial paper, ABS-collateralized bond/debt obligation, ABS-other, commodity, real estate, other). If ''other,'' provide a brief description.
b. Issuer type (corporate, U.S. Treasury, U.S. government agency, U.S. government sponsored entity, municipal, non-U.S. sovereign, private fund, registered fund, other). If ''other,'' provide a brief description.

Item C.5. Country of investment or issuer. Report the ISO country code that corresponds to the country of investment or issuer based on the concentrations of the risk and economic exposure of the investments. If different from the country of the risk and economic exposure, also provide the country where the issuer is organized.

Item C.6. Is the investment a Restricted Security? [Y/N]

Item C.7. Is the investment an Illiquid Asset? [Y/N]

Item C.8. Indicate the level within the fair value hierarchy in which the fair value measurements fall pursuant to U.S. Generally Accepted Accounting Principles (ASC 820, Fair Value Measurement). [1/2/3]

Item C.9. For debt securities, also provide:

a. Maturity date.

b. Coupon.

i. Select the category that most closely reflects the coupon type among the following (fixed, floating, variable, none).

ii. Annualized rate.

c. Currently in default? [Y/N]

d. Are there any interest payments in arrears or have any coupon payments been legally deferred by the issuer? [Y/N]

e. Is any portion of the interest paid in kind? [Y/N] Enter ''N'' if the interest may be paid in kind but is not actually paid in kind.

f. For convertible securities, also provide:

i. Mandatory convertible? [Y/N]

ii. Contingent convertible? [Y/N]

iii. Description of the reference instrument, including the name of issuer, title of issue, and currency in which denominated, as well as CUSIP of reference instrument, ISIN (if CUSIP is not available), ticker (if CUSIP and ISIN are not available), or other identifier (if CUSIP, ISIN, and ticker are available). If other identifier provided, indicate the type of identifier used.

iv. Conversion ratio per US$1000 notional, or, if bond currency is not in U.S. dollars, per 1000 units of the relevant currency, indicating the relevant currency. If there is more than one conversion ratio, provide each conversion ratio.

v. Delta.

Item C.10. For repurchase and reverse repurchase agreements, also provide:

a. Select the category that reflects the transaction (repurchase, reverse repurchase). Select ''repurchase agreement'' if the Fund is the cash lender and receives collateral. Select ''reverse repurchase agreement'' if the Fund is the cash borrower and posts collateral.

b. Counterparty.

i. Cleared by central counterparty? [Y/N] If Y, provide the name of the central counterparty.

ii. If N, provide the name and LEI (if any) of counterparty.

c. Tri-party? [Y/N]

d. Repurchase rate.

e. Maturity date.

f. Provide the following information concerning the securities subject to the repurchase agreement (*i.e.,* collateral). If multiple securities of an issuer are subject to the repurchase agreement, those securities may be aggregated in responding to Items C.10.f.i–iii.

i. Principal amount.

ii. Value of collateral.

iii. Category of investments that most closely represents the collateral, selected from among the following (asset-backed securities; agency collateralized mortgage obligations; agency debentures and agency strips; agency mortgage-backed securities; private label collateralized mortgage obligations; corporate debt securities; equities; money market; U.S. Treasuries (including strips); other instrument). If ''other instrument,'' include a brief description, including, if applicable, whether it is a collateralized debt obligation, municipal debt, whole loan, or international debt.

Item C.11. For derivatives, also provide:

a. Category of derivative that most closely represents the investment, selected from among the following (forward, future, option, swaption, swap, warrant, other). If ''other,'' provide a brief description.

b. Counterparty.

i. Provide the name and LEI (if any) of counterparty (including a central counterparty).

c. For options and warrants, including options on a derivative (*e.g.,* swaptions) provide:

i. Type, selected from among the following (put, call). Respond call for warrants.

ii. Payoff profile, selected from among the following (written, purchased). Respond purchased for warrants.

iii. Description of reference instrument.

1. If the reference instrument is a derivative, indicate the category of derivative from among the categories listed in sub-Item C.11.a. and provide all information required to be reported on this Form for that category.

2. If the reference instrument is an index, and if the index's components are publicly available on a Web site and are updated on that Web site no less frequently than quarterly, identify the index and provide the index identifier, if any. If the index's components are not publicly available in that manner, and the notional amount of the derivative represents 1% or less of the net asset value of the Fund, provide a narrative description of the index. Otherwise, provide the name, identifier, number of shares or notional amount or contract value as of the trade date (all of which would be reported as negative for short positions), value, and unrealized appreciation or depreciation of every component in the index. The identifier shall include CUSIP of the index component, ISIN (if CUSIP is not available), ticker (if CUSIP and ISIN are not available), or other identifier (if CUSIP, ISIN, and ticker are not available). If other identifier provided, indicate the type of identifier used.

3. If the reference instrument is neither a derivative or an index, the description of the reference instrument shall include the name of issuer and title of issue, as well as CUSIP of reference instrument, ISIN (if CUSIP is not available), ticker (if CUSIP and ISIN are not available), or other identifier (if CUSIP, ISIN, and ticker are available). If other identifier provided, indicate the type of identifier used.

iv. Number of shares or principal amount of underlying reference instrument per contract.

v. Exercise price or rate.

vi. Expiration date.

vii. Delta.

viii. Unrealized appreciation or depreciation.

d. For futures and forwards (other than foreign exchange forwards), provide:

i. Payoff profile, selected from among the following (long, short).

ii. Description of reference instrument, as required by sub-Item C.11.c.iii.

iii. Expiration date.

iv. Aggregate notional amount or contract value on trade date.

v. Unrealized appreciation or depreciation.

e. For foreign exchange forwards and swaps, provide:

i. Amount and description of currency sold.

ii. Amount and description of currency purchased.

iii. Settlement date.

iv. Unrealized appreciation or depreciation.

f. For swaps (other than foreign exchange swaps), provide:

i. Description and terms of payments necessary for a user of financial information to understand the terms of payments to be paid and received, including, as applicable,

description of the reference instrument, obligation, or index (including the information required by sub-Item C.11.c.iii), financing rate, floating rate, fixed rates, and payment frequency.

1. Description and terms of payments to be received from another party.
2. Description and terms of payments to be paid to another party.

ii. Termination or maturity date.
iii. Upfront payments or receipts.
iv. Notional amount.
v. Unrealized appreciation or depreciation.

g. For other derivatives, provide:
i. Description of information sufficient for a user of financial information to understand the nature and terms of the investment, including as applicable, among other things, currency, payment terms, payment rates, call or put feature, exercise price, and information required by sub-Item C.11.c.iii.
ii. Termination or maturity (if any).
iii. Notional amount(s).
iv. Delta (if applicable).
v. Unrealized appreciation or depreciation.

Item C.12. Securities lending.

a. Does any amount of this investment represent reinvestment of cash collateral received for loaned securities? [Y/N] If Yes, provide the value of the investment representing cash collateral.
b. Does any portion of this investment represent non-cash collateral received for loaned securities? [Y/N] If yes, provide the value of the securities representing non-cash collateral.
c. Is any portion of this investment on loan by the Registrant? [Y/N] If Yes, provide the value of the securities on loan.

Part D: Miscellaneous Securities

Report miscellaneous securities, if any, using the same Item numbers and reporting the same information that would be reported for each investment in Part C if it were not a miscellaneous security. Information reported in this Item will be nonpublic.

Part E: Explanatory Notes (if any)

The Fund may provide any information it believes would be helpful in understanding the information reported in this Form. The Fund may also explain any assumptions that it made in responding to any Item in this Form. To the extent responses relate to a particular Item, provide the Item number(s), as applicable.

Part F: Exhibits

For reports filed for the end of the first and third quarters of the Fund's fiscal year, attach the Fund's complete portfolio holdings as of the close of the period covered by the report. These portfolio holdings must be presented in accordance with the schedules set forth in §§ 210.12–12—12–14 of Regulation S–X [17 CFR 210.12–12—12–14].

SIGNATURES

The Registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Registrant: _____

By (Signature): _____

Name of Signing Officer: _____

Title of Signing Officer: _____

Date: _____

By the Commission.

Dated: May 20, 2015.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–12779 Filed 6–11–15; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

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Part III

Securities and Exchange Commission

17 CFR Parts 275 and 279

Amendments to Form ADV and Investment Advisers Act Rules; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 275 and 279

[Release No. IA–4091; File No. S7–09–15]
RIN 3235–AL75

Amendments to Form ADV and Investment Advisers Act Rules

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing amendments to Form ADV that are designed to provide additional information regarding advisers, including information about their separately managed account business; incorporate a method for private fund adviser entities operating a single advisory business to register using a single Form ADV; and make clarifying, technical and other amendments to certain Form ADV items and instructions. The Commission also is proposing amendments to the Advisers Act books and records rule and technical amendments to several Advisers Act rules to remove transition provisions that are no longer necessary.

DATES: Comments should be received on or before August 11, 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 No. S7–09–15 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 Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number S7–09–15. 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 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 10:00 a.m. and 3:00 p.m. 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.

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 Commission'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: Bridget D. Farrell, Senior Counsel, Sarah A. Buescher, Branch Chief, or Daniel S. Kahl, Assistant Director, at (202) 551–6787 or *IArules@sec.gov*, Investment Adviser Regulation Office, Division of Investment Management, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–8549.

SUPPLEMENTARY INFORMATION: The Commission is proposing amendments to rules 204–2 [17 CFR 275.204–2], 202(a)(11)(G)–1 [17 CFR 275.202(a)(11)(G)–1], 203–1 [17 CFR 275.203–1], and 204–1 [17 CFR 275.204–1] under the Investment Advisers Act of 1940 [15 U.S.C. 80b] (''Advisers Act'' or ''Act''),[1] and amendments to Form ADV [17 CFR 279.1] under the Advisers Act. The Commission is also proposing to rescind rule 203A–5 [17 CFR 275.203A–5] under the Advisers Act.

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I. Background

Form ADV is used by investment advisers to register with the Commission and with the states. The information collected on Form ADV serves a vital role in our regulatory program and our ability to protect investors. Our staff uses Form ADV data to prepare for, conduct, and implement our risk-based examination program of investment advisers, and that data also assists our staff in conducting investigations and bringing enforcement actions. In addition to providing information about each investment adviser, Form ADV data is also aggregated by our staff across investment advisers to obtain census data and to monitor industry trends. Census data and industry trend information inform our regulatory program and the assessment of emerging risks. Importantly, Form ADV also benefits clients and prospective clients because the information filed by advisers is available to the public on our Web site.[2]

[1] 15 U.S.C. 80b. Unless otherwise noted, when we refer to the Advisers Act, or any paragraph of the Advisers Act, we are referring to 15 U.S.C. 80b of the United States Code, at which the Advisers Act is codified, and when we refer to rules under the Advisers Act, or any paragraph of these rules, we are referring to title 17, part 275 of the Code of Federal Regulations [17 CFR 275], in which these rules are published.

[2] Information on Form ADV is available to the public through the Investment Adviser Public Disclosure System (''IAPD''), which allows the

We have amended Form ADV several times to improve our ability to oversee investment advisers. Most recently we significantly enhanced reporting requirements for advisers to private funds in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act's (''Dodd-Frank Act's'') [3] private fund adviser registration requirements.[4] Today, we are proposing a more limited set of amendments to Part 1A of Form ADV in three areas: Revisions to fill certain data gaps and to enhance current reporting requirements; amendments to incorporate ''umbrella registration'' for private fund advisers; and clarifying, technical and other amendments to existing items and instructions.[5]

Several of the proposed amendments to Form ADV relate to separately managed accounts. Investment advisers manage assets of pooled investment vehicles, including registered and unregistered funds. Advisers also manage assets of other clients, such as pension plans, endowments, foundations, other institutional clients and retail clients, through separately managed accounts. We currently collect detailed information about pooled investment vehicles,[6] but little specific information regarding separately managed accounts. The proposed amendments to Form ADV would require an adviser to provide certain aggregate information on separately managed accounts it advises, including information on regulatory assets under management, investments and use of derivatives and borrowings.[7] Other examples of information we propose to collect from advisers include information on the use of social media and information on an adviser's other offices.[8] These items, and others discussed below, are designed to improve the depth and quality of the information we collect on investment advisers and to facilitate our risk monitoring initiatives.

We also are proposing amendments to Part 1A that would establish a more efficient method for the registration of multiple private fund adviser entities operating a single advisory business on one Form ADV (''umbrella registration''). Form ADV was designed to accommodate the typical registration of an investment adviser that is a single legal entity. Advisers of private funds frequently are organized using multiple legal entities, and the staff has provided guidance to private fund advisers regarding umbrella registration within the confines of the current form.[9] The proposed amendments to incorporate umbrella registration into Form ADV would make the availability of umbrella registration more widely known to advisers. Uniform filing requirements for umbrella registration in Form ADV also would provide more consistent data about, and create a clearer picture of, groups of advisers that operate as a single business by grouping Form ADV data for each legal entity registered under the umbrella. Uniform filing requirements also would allow for greater comparability across private fund advisers.

The last group of amendments we are proposing to Part 1A are clarifying, technical, and other amendments that are informed by our staff's experience with the form and responding to inquiries by advisers and their service providers. Among other things, these amendments should assist filers and their service providers by making the form easier to understand and complete.

We also are proposing several amendments to Advisers Act rules unrelated to the revisions to Form ADV described above. First, we are proposing amendments to the books and records rule, rule 204–2, that would require advisers to make and keep supporting documentation that demonstrates performance calculations or rates of return in any written communications that the adviser circulates or distributes, directly or indirectly, to any person. The proposed amendments also would require advisers to maintain originals of all written communications received and copies of written communications sent by an investment adviser related to the performance or rate of return of any or all managed accounts or securities recommendations.[10] As discussed more fully below, we believe that these proposed amendments would better protect investors from fraudulent performance claims. Finally, we are proposing several technical amendments to rules under the Advisers Act to remove transition provisions that were adopted in conjunction with previous rulemaking initiatives, but that are no longer necessary.

We note that in December 2014, the Financial Stability Oversight Council (''FSOC'') issued a notice requesting comment on aspects of the asset management industry, which includes, among other entities, registered investment advisers. Although this rulemaking proposal is independent of FSOC, the notice included requests for comment on additional data or information that would be helpful to regulators and market participants. In response to the notice, several commenters discussed issues concerning data that are relevant to this proposal, including data regarding separately managed accounts and are cited in the discussion below.[11]

II. Discussion

A. Proposed Amendments to Form ADV

1. Information Regarding Separately Managed Accounts

Several of the amendments to Form ADV that we are proposing today are designed to collect more specific information about advisers' separately managed accounts.[12] For purposes of reporting on Form ADV, we consider advisory accounts other than those that are pooled investment vehicles (*i.e.*, registered investment companies, business development companies, and pooled investment vehicles that are not investment companies (*i.e.*, private

public to access the most recent Form ADV filing made by an investment adviser and is available at *http://www.adviserinfo.sec.gov*.

[3] Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

[4] *See Rules Implementing Amendments to the Investment Advisers Act of 1940*, Investment Advisers Act Release No. 3221 (June 22, 2011), [76 FR 42950 (July 19, 2011)] (''*Implementing Release*'').

[5] In general, this release discusses the Commission's proposed rule and form amendments that would affect advisers registered with the Commission. We understand that the state securities authorities intend to consider similar changes that affect advisers registered with the states, who are also required to complete Form ADV Part 1B as part of their state registrations. We will accept any comments and forward them to the North American Securities Administrators Association (''NASAA'') for consideration by the state securities authorities. We request that you clearly indicate in your comment letter which of your comments relate to these items. Commenters alternatively may send comments relating to these items directly to NASAA at the following email address: *NASAAcomments@nasaa.org*.

[6] *See, e.g.*, Form ADV, Part 1A, Section 7.B.(1) of Schedule D; and Form PF [17 CFR 279.9].

[7] Proposed Form ADV, Part 1A, Item 5.K.(1)–(4) and Section 5.K.(1)–(3) of Schedule D.

[8] Proposed Form ADV, Part 1A, Items 1.I. and 1.F and Sections 1.I. and 1.F of Schedule D.

[9] *See* American Bar Association, Business Law Section, SEC Staff Letter (Jan. 18, 2012), *available at http://www.sec.gov/divisions/investment/noaction/2012/aba011812.htm* (the ''2012 ABA Letter'').

[10] Rule 204–2 under the Advisers Act.

[11] *See* Notice Seeking Comment on Asset Management Products and Activities, 79 FR 77488 (Dec. 24, 2014) (''FSOC Request for Comment'').

[12] In response to the FSOC Request for Comment, *supra* note 11, some commenters expressed support for collecting additional information regarding separately managed accounts. *See, e.g.,* Comment Letter of Americans for Financial Reform (March 27, 2015); Comment Letter of State Street Corporation (March 25, 2015); and Comment Letter of The Systemic Risk Council (March 25, 2015). Other commenters did not support additional reporting regarding separately managed accounts. *See, e.g.,* Comment Letter of Money Management Institute (March 25, 2015) and Comment Letter of Wellington Management Group LLP (March 25, 2015).

funds)) to be separately managed accounts. We currently collect detailed information about pooled investment vehicles that advisers manage, but little specific information regarding separately managed accounts.[13] The proposed amendments are designed to enhance our staff's ability to effectively carry out our risk-based examination program and other risk assessment and monitoring activities with respect to these separately managed accounts and their investment advisers.

The proposed amendments regarding separately managed accounts would require more detailed information than we currently receive in response to Item 5 of Part 1A and Section 5 of Schedule D.[14] Item 5 and Section 5 currently require advisers to provide information about their advisory business including percentages of types of clients and assets managed for those clients. We propose to collect information specifically about separately managed accounts, including types of assets held, and the use of derivatives and borrowings in the accounts. Advisers that report that they have regulatory assets under management attributable to separately managed accounts in response to Item 5.K.(1) would be required to complete several questions in Sections 5.K.(1), 5.K.(2) and 5.K.(3) of Schedule D regarding those accounts.

First, we propose to require advisers to report the approximate percentage of separately managed account regulatory assets under management invested in ten broad asset categories, such as exchange-traded equity securities and U.S. government/agency bonds.[15] These categories are designed to collect general information about the broad categories of assets held in separately managed accounts. We believe that collecting information about the types of assets held in these accounts would allow us to better monitor this segment of the investment advisory industry by, for instance, allowing us to identify advisers that specialize in certain asset classes. Advisers would report this information annually. For advisers with at least $10 billion in regulatory assets under management attributable to separately managed accounts, we propose to collect both mid-year and year-end data on an annual basis.

Second, we propose to require advisers with at least $150 million in regulatory assets under management attributable to separately managed accounts to report information on the use of borrowings and derivatives in those accounts.[16] For advisers with at least $150 million but less than $10 billion in regulatory assets under management attributable to separately managed accounts, we propose reporting of the number of accounts that correspond to certain categories of gross notional exposure, and the weighted average amount of borrowings (as a percentage of net asset value) in those accounts.[17] For purposes of this proposed item, gross notional exposure is the percentage obtained by dividing (i) the sum of (a) the dollar amount of any borrowings and (b) the gross notional value of all derivatives, by (ii) the net asset value of the account. Reporting on the use of borrowings and derivatives would only be required with respect to separately managed accounts with a net asset value of at least $10 million. Advisers with at least $10 billion in regulatory assets under management attributable to separately managed accounts would have to report the gross notional exposure and borrowing information described above, as well as the weighted average gross notional value of derivatives (as a percentage of the net asset value) in each of six different categories of derivatives.[18] We are proposing to collect information about gross notional exposure, borrowings, and gross notional value of derivatives because we believe it is important for us to better understand the use of derivatives and borrowings by advisers in separately managed accounts.[19] We are proposing to use these measures because they are commonly used metrics in assessing the use of derivatives and are comparable to information collected on Form PF regarding private funds. This reporting would be required for advisers managing at least $150 million in regulatory assets under management attributable to separately managed accounts, but all advisers to separately managed accounts would be required to report in Section 5.K.(1) the percentage of separately managed account assets held in derivatives.

Advisers would be required to update the derivatives and borrowings information annually when filing their annual updating amendment to Form ADV, which is consistent with the requirement for updating other information in Item 5 of Form ADV. In addition, advisers with at least $10 billion in separately managed account regulatory assets under management would be required to report both mid-year and year-end information as part of their annual filing.[20] Note that we are not proposing that advisers file information semi-annually. Rather, when filing an annual amendment, the adviser would be required to provide information as of each semi-annual period. Requiring less detailed reporting for advisers that manage less than $10 billion in separately managed account assets, and requiring reporting on borrowings and derivatives only with respect to separately managed accounts with a net asset value of at least $10

[13] Registered investment companies and business development companies report information about their portfolio holdings and investment strategies on reports filed with the Commission, including in their registration statements and shareholder reports. Today, in a contemporaneous release, we are proposing rule and form amendments for registered investment companies that are designed to modernize the reporting of information to the Commission. *See Investment Company Reporting Modernization,* Investment Company Act Release No. 31610, May 20, 2015. Investment advisers to private funds file reports with the Commission on Form PF. Form PF also collects information about private fund parallel managed accounts.

[14] *See* section II.A.2. for a discussion of other proposed amendments to Item 5 of Part 1A.

[15] Proposed Form ADV, Part 1A, Schedule D, Section 5.K.(1)(a)–(b). The Glossary to Proposed Form ADV includes ''Sovereign Bonds,'' ''Investment Grade'' and ''Non-Investment Grade,'' which are terms used in the list of asset categories. The definitions are consistent with those in Form PF.

[16] The $150 million threshold is consistent with Form PF, which requires investment advisers registered with the Commission that advise one or more private funds and have at least $150 million in private fund assets under management to file Form PF.

[17] The Glossary to Proposed Form ADV includes ''gross notional value'', ''borrowings'' and ''net asset value.'' The Glossary to Proposed Form ADV defines ''borrowings'' as ''[S]ecured borrowings and unsecured borrowings, collectively. Secured borrowings are obligations for borrowed money in respect of which the borrower has posted collateral or other credit support and should include any reverse repos (*i.e.,* any sale of securities coupled with an agreement to repurchase the same (or similar) securities at a later date at an agreed price). Unsecured borrowings are obligations for borrowed money in respect of which the borrower has not posted collateral or other credit support.'' The Glossary to Proposed Form ADV defines ''gross notional value'' as ''The gross nominal or notional value of all transactions that have been entered into but not yet settled as of the reporting date. For contracts with variable nominal or notional principal amounts, the basis for reporting is the nominal or notional principal amounts as of the reporting date. For options, use delta adjusted notional value.'' The Glossary to Proposed Form ADV defines ''net asset value'' as ''With respect to any client, the gross assets of the client's accounts minus any outstanding indebtedness or other accrued but unpaid liabilities.'' These definitions are consistent with those in Form PF.

[18] Proposed Form ADV, Part 1A, Schedule D, Section 5.K.(2)(a).

[19] In response to the FSOC Request for Comment, *supra* note 11, several commenters discussed a variety of measures for reporting leverage (which includes derivatives and borrowings). *See, e.g.,* Comment Letter of the Asset Management Group of the Securities Industry and Financial Markets Association and the Investment Adviser Association (March 25, 2015); Comment Letter of BlackRock, Inc. (March 25, 2015); Comment Letter of Fidelity Investments (March 25, 2015); and Comment Letter of Managed Funds Association (March 25, 2015).

[20] Proposed Form ADV, Part 1A, Schedule D, Section 5.K.(2)(a).

million, are designed to balance our regulatory need for this information while seeking to minimize the reporting burden on smaller advisers where appropriate. Our staff estimates that approximately six percent of advisers that manage separately managed accounts would be required to provide the more detailed semi-annual information.[21] The proposed amendments are designed to provide mid-year and end of year data points to assist our staff in identifying the use of borrowings and derivative exposures in large separately managed accounts as part of the staff's risk assessment and monitoring programs, and to allow Commission staff to identify and monitor trends in borrowings and derivatives transactions in separately managed accounts.

Finally, we propose to require advisers to identify any custodians that account for at least ten percent of separately managed account regulatory assets under management, and the amount of the adviser's regulatory assets under management attributable to separately managed accounts held at the custodian.[22] Information about assets held, custodians and the use of borrowings and derivatives in separately managed accounts is similar to information collected about pooled investment vehicles, and it would significantly improve our understanding of this segment of advisers' accounts. This information would allow examination staff to identify advisers whose clients use the same custodian in the event, for example, a concern is raised about a particular custodian.[23] Advisers frequently have client accounts at many custodians as a result of client requirements. Accordingly, we are proposing a ten percent threshold in order to focus the proposed reporting requirements on the identification of custodians that serve a significant number of advisers' separately managed account clients.

We request comment on the changes we propose to make to Form ADV regarding separately managed accounts.

- Advisers would be required to update separately managed account information annually. Should we require more frequent reporting, such as quarterly reporting? Should an adviser be required to update information on separately managed accounts any time the adviser files an other-than-annual amendment to Form ADV? Is it appropriate to require semi-annual data in annual reporting instead of semi-annual reporting for advisers that manage at least $10 billion in separately managed accounts? Why or why not?
- In order to better understand the use of derivatives in separately managed accounts, would we need more data points from each adviser than the annual and semi-annual proposed data points? Why or why not?
- Are the $10 million, $150 million and $10 billion thresholds appropriate? Why or why not? Should we require advisers that manage less than $150 million in assets under management attributable to separately managed accounts to report additional information about those accounts or report semi-annual information?
- Should we ask about the investment strategies used in separately managed accounts as opposed or in addition to asset types? If so, how should we define the investment strategies so that information reported to us is meaningful? Should we use some or all of the investment strategies listed in Form PF for private funds?[24] Is there other information about separately managed accounts that we should consider instead?
- Is there any overlap among the proposed asset types? If so, which particular types? Are there any additional asset types that should be included?
- Would disclosure of aggregate holdings, derivatives and borrowings in separately managed accounts raise concerns, in light of Section 210(c) of the Advisers Act, regarding the identity, investments, or affairs of any clients owning those accounts when clients are not identified? If so, please explain, and address whether there are ways in which the Commission could address these concerns and still request comparable information.
- Would the disclosure of information about separately managed accounts in the aggregate be useful for risk monitoring and data analysis purposes? Why or why not?
- Are the proposed definitions related to Schedule D, Section 5.K.(1) and (2) sufficiently clear to allow advisers to provide the requested information? If not, please explain why and provide alternative definitions or suggestions. Would a definition of ''derivatives'' improve the reporting requirements? If so, how should that term be defined? For instance, should it be defined broadly to include instruments whose price is dependent on or derives from one or more underlying assets? Alternatively, should it be defined to mean futures and forward contracts, options, swaps, security-based swaps, combinations of the foregoing, or any similar instruments, or should it be defined in some other manner? If, so, how?
- Are gross notional exposures and gross notional values appropriate measures of the use of derivatives? Are there alternative or additional measures that we should consider?
- Would the disclosure of information about separately managed accounts affect or influence business or other decisions by advisers?
- Is ten percent an appropriate threshold for information on custodians that serve a significant number of separately managed accounts? Should it be higher or lower? If so, why?
- Should we require advisers to report information about the use of securities lending and repurchase agreements in separately managed accounts? If so, is there specific information we should collect, and should we require information only from advisers that manage a large amount of separately managed account assets? Are securities lending arrangements and repurchase agreements used by separately managed accounts to such an extent that we should require all advisers that manage separately managed accounts to report this information?
- Is there additional information we should collect that would assist us in

[21] We propose to focus the proposed semi-annual reporting requirements on the top five to ten percent of registered investment advisers to separately managed accounts. Based on IARD data as of April 1, 2015, of the 8,500 registered investment advisers that reported regulatory assets under management from clients other than registered investment companies, business development companies and pooled investment vehicles (indicating that they have assets under management attributable to separately managed accounts) approximately 535 (approximately 6.3%) reported at least $10 billion in regulatory assets under management attributable to separately managed account clients. Having additional information about these larger advisers assists the staff in risk assessment.

[22] Proposed Form ADV, Part 1A, Item 5.K.(4) and Schedule D, Section 5.K.(3). We acknowledge that advisers that have custody (or whose related persons have custody) of client assets also currently report the number of persons who act as qualified custodians for their clients in connection with advisory services provided to clients in response to Part 1A, Item 9.F. The proposed item would provide the Commission with more detailed information about custodians by requiring advisers to separately managed accounts to identify all custodians, not just qualified custodians, that service ten percent or greater of separately managed account client assets, and would require a response whether or not the adviser or the adviser's related person has custody of assets in separately managed accounts.

[23] Information about custodians of separately managed accounts also would complement similar information that we obtain for pooled investment vehicles. *See* Form ADV, Part 1A, Schedule D, Section 7.B.(1), Question 25. Registered investment companies are required to identify their custodians, *see, e.g.,* Form N–1A, Item 19(h)(3) [17 CFR 274.11A].

[24] *See, e.g.,* Form PF, Section 1c, Item B., Question 20.

learning more about separately managed accounts?

- Is the information required to answer these proposed questions readily available to advisers? If not, why?

2. Additional Information Regarding Investment Advisers

In addition to the proposals outlined above regarding separately managed accounts, we are proposing to add several new questions and amend existing questions on Form ADV regarding identifying information, an adviser's advisory business, and affiliations. These items, developed through our staff's experience in examining and monitoring investment advisers, are designed to enhance our understanding and oversight of investment advisers and to assist our staff in its risk-based examination program.

Additional Identifying Information

We propose several amendments to Item 1 of Part 1A of Form ADV to improve certain identifying information that we obtain. Item 1 currently requires an adviser to provide a Central Index Key number (''CIK Number'') in Item 1.N only if the adviser is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.[25] We propose to remove this question from Item 1.N. and add a question to Item 1.D. that would require an adviser to provide all of its CIK Numbers if it has one or more such numbers assigned,[26] regardless of public reporting company status.[27] Requiring registrants to provide all of their assigned CIK numbers, if any, would improve our staff's ability to use and coordinate Form ADV information with information from other sources to investigate relationships relating to investment advisers.

Item 1.I of Part 1A of Form ADV currently asks whether an adviser has one or more Web sites, and Section 1.I. of Schedule D requests the Web site address. We propose to amend Item 1.I. to ask whether the adviser has one or more Web sites or Web sites for social media platforms, such as Twitter, Facebook and LinkedIn, and request the social media addresses in addition to the adviser's Web site address in Section 1.I. of Schedule D.[28] Along with Web sites, advisers increasingly utilize social media to communicate and it would be useful for this information to be available to us and the general public. Our staff could use this information to help prepare for examinations of investment advisers and compare information that advisers disseminate across different social media platforms as well as identifying and monitoring new platforms. Current and prospective clients could use this information to learn more about advisers and make more informed decisions regarding the selection of advisers.

We propose amending Item 1.F of Part 1A of Form ADV and Section 1.F. of Schedule D to expand the information provided about an adviser's offices other than its principal office and place of business. We currently require an adviser to provide contact and other information about its principal office and place of business, and, if an adviser conducts advisory activities from more than one location, about its largest five offices in terms of number of employees.[29] In order to assist Commission examination staff to learn more about an investment adviser's business and identify locations to conduct examinations, we are now proposing that advisers provide us with the total number of offices at which they conduct investment advisory business and provide information in Schedule D about their 25 largest offices in terms of number of employees.[30] We propose 25 offices as the number to be reported because it would provide a complete listing of offices for the vast majority of investment advisers, and provide valuable information about the main business locations for the few advisers that have a very large number of offices.[31]

In addition to providing contact information for the 25 largest offices, we propose to amend Section 1.F. of Schedule D to require advisers to report each office's CRD branch number (if applicable) and the number of employees who performed advisory functions from each office, identify from a list of securities-related activities the business activities conducted from each office, and describe any other investment-related business conducted from each office. This information would help our staff assess risk, because it provides a better understanding of an investment adviser's operations and the nature of activities conducted in its top 25 offices. In addition, if the staff wanted to focus on offices that conducted a combination of activities, such as those that engaged in municipal advisory activities as well as investment advisory activities, it would have that information readily available.

Item 1.J. of Form ADV currently requires each adviser to provide the name and contact information for the adviser's chief compliance officer. We propose to amend Item 1.J. to require an adviser to report whether its chief compliance officer is compensated or employed by any person other than the adviser (or a related person of the adviser) for providing chief compliance officer services, and, if so, to report the name and IRS Employer Identification Number (if any) of that other person. Our examination staff has observed a wide spectrum of both quality and effectiveness of outsourced chief compliance officers and firms. Identifying information for these third-party service providers, like others on Form ADV,[32] would allow us to identify all advisers relying on a particular service provider and could be used to improve our ability to assess potential risks.

We propose to amend Item 1.O. to require advisers to report their own assets within a range.[33] We added this item in 2011, and it currently requires an adviser to check a box to indicate if it has assets of $1 billion or more, in connection with the Dodd-Frank Act's requirements concerning certain incentive-based compensation arrangements.[34] Requiring advisers to report assets within a given range would provide more accurate data for use in Commission rulemaking arising from ongoing Dodd-Frank Act implementation.[35]

We request comment on the proposed changes to Item 1 of Part 1A and Section 1 of Schedule D.

[25] Form ADV, Part 1A, Item 1.N.

[26] The SEC assigns CIK numbers in EDGAR not only to identify entities as public reporting companies, but also when an entity is registered with the SEC in another capacity, such as a transfer agent.

[27] Proposed Form ADV, Part 1A, Item 1.D.(3).

[28] Proposed Form ADV, Part 1A, Item 1.I. and Section 1.I. of Schedule D.

[29] Form ADV, Part 1A, Item 1.F. and Section 1.F. of Schedule D.

[30] Proposed Form ADV, Part 1A, Item 1.F. and Section 1.F. of Schedule D.

[31] IAPD Investment Adviser Registered Representative State Data as of April 1, 2015 shows that a majority of SEC-registered advisers (approximately 98%) have 25 or fewer offices, but that many of the remaining two percent have many multiples of 25 offices.

[32] For example, advisers provide the names and addresses of independent public accountants that perform audits or surprise examinations and that prepare internal control reports on Form ADV, Part 1A, Schedule D, Section 9.C.

[33] Proposed Form ADV, Part 1A, Item 1.O.

[34] *See Implementing Release, supra* note 4; Section 956 of the Dodd-Frank Act. We also propose to move the instruction for how to report ''assets'' for the purpose of Item 1.O. from the Instructions for Part 1A to Form ADV to Item 1.O. in order to emphasize this instruction.

[35] *See, e.g.,* Section 165(i) of the Dodd-Frank Act, which requires the Commission and other financial regulators to establish methodologies for the conduct of stress tests required by section 165 of the Act.

• Are there concerns with providing all CIK numbers assigned to an adviser? If so, please explain those concerns.

• Are there concerns with providing social media information for advisers? If so, please explain those concerns. Are there ways that we could address these concerns and still request comparable information?

• Would the proposed social media information be useful to investors? Why or why not?

• Is there additional social media information that we should collect? Should we ask advisers whether they permit employees to have social media accounts associated with the advisers' business? And, if so, should we ask advisers to identify the number or percentage of employees that have those accounts? How burdensome would it be for advisers to report that information?

• As proposed, information would be required regarding an adviser's 25 largest offices. We selected 25 in order to balance the burden to investment advisers with providing this information with our need for information about additional offices. If instead we were to require all offices to be reported, would the burden on advisers be significant? Should we decrease the number of offices or provide another standard to identify the offices that should be reported?

• Would additional information about an adviser's offices be helpful to investors? Why or why not?

• Are there concerns related to disclosure of information regarding outsourced chief compliance officers? If so, please explain those concerns.

• In addition to the identification of outsourced chief compliance officers, should we also request information about advisers' use of third-party compliance auditors? If so, what information should we request?

• Are there any concerns related to disclosing the range of an adviser's own assets? If so, please explain those concerns. Should the ranges be different than proposed? Why or why not?

• Are the proposed requirements clearly stated?

• Do advisers readily have access to the data and information requested by these proposed changes?

Additional Information About Advisory Business

In addition to the proposed amendments to Item 5 regarding separately managed accounts discussed above, we are proposing a number of other amendments to Item 5. Item 5 currently requires an adviser to provide approximate ranges for three important data points concerning the adviser's business—the number of advisory clients, the types of advisory clients, and regulatory assets under management attributable to client types.[36] We propose to amend these items to require an adviser to report the number of clients and amount of regulatory assets under management attributable to each category of clients as of the date the adviser determines its regulatory assets under management.[37] Replacing ranges with more precise information would provide more accurate information about investment advisers and would significantly enhance our ability to analyze data across investment advisers because providing actual numbers of clients and regulatory assets under management allows us to see the scale and concentration of assets by client type. It will also allow us to determine the regulatory assets under management attributable to separately managed accounts. We believe that the information needed for providing the number of clients and amount of regulatory assets under management should be readily available to advisers because, among other reasons, advisers are producing this data to answer the current iterations of these questions on Form ADV, and advisers typically base their advisory fees on client assets under management. We also propose to require reporting on the number of clients for whom an adviser provided advisory services but does not have regulatory assets under management in order to obtain a more complete understanding of the adviser's advisory business.[38] This information also would assist in our risk assessment process and increase the effectiveness of our examinations.

We are proposing several targeted additions to Item 5 and Section 5 of Schedule D to inform our risk-based exam program and other risk monitoring initiatives. An adviser that elects to report client assets in Part 2A of Form ADV differently from the regulatory assets under management it reported in Part 1A of Form ADV would be required to check a box noting that election.[39] This information would allow our examination staff to review across advisers the extent to which advisers report assets under management in Part 2A that differ from the regulatory assets under management reported in Part 1A of Form ADV. Having this information would allow our staff to better understand the situations in which the calculations differ, and assist us in analyzing whether those differences require a regulatory response. In addition, we propose to add a question asking the approximate amount of an adviser's regulatory assets under management that is attributable to non-U.S. clients[40] to complement the current requirement that each adviser report the percentage of its clients that are non-U.S. persons, which, based on our experience, is not always a reliable indicator of an adviser's relationships with non-U.S. clients.[41] Our examination staff could use this information to better understand the extent of investment advice provided to non-U.S. clients which would assist us in our risk assessment process.

Section 5.G.(3) of Schedule D currently requires the SEC File Number for registered investment companies and business development companies advised by the adviser. We propose adding to Section 5.G.(3) a requirement that advisers report the regulatory assets under management of all parallel managed accounts related to a registered investment company or business development company that is advised by the adviser.[42] This information

[36] Form ADV, Part 1A, Item 5.C.(1), Item 5.D.(1)–(2).

[37] Proposed Form ADV, Part 1A, Item 5.D.(1)–(2). The categories of clients are the same as those in Item 5.D. of the current Form ADV, except that we propose adding ''sovereign wealth funds and foreign official institutions'' as a client category, and specifying that state or municipal government entities include government pension plans, and that government pension plans should not be counted as pension and profit sharing plans.

[38] Proposed Form ADV, Part 1A, Item 5.C.(1). An example of a situation where an adviser provides investment advice but does not have regulatory assets under management is a nondiscretionary account or a one-time financial plan, depending on the facts and circumstances.

[39] Proposed Form ADV, Part 1A, Item 5.J.(2). Form ADV, Part 2A, Item 4.E. requires an investment adviser to disclose the amount of client assets it manages on a discretionary basis and on a non-discretionary basis. The method used by an adviser to compute the amount of client assets it manages can be different from the method used to compute regulatory assets under management required for Item 5.F. in Part 1A. As discussed in the proposing release for Part 2, the regulatory assets under management calculation for Part 1A is designed for a particular purpose (*i.e.,* for making a bright line determination about whether an adviser should register with the Commission or with the states) and permitting a different calculation for Part 2 disclosure may be appropriate to enable advisers to make disclosure that is more indicative to clients about the nature of their business. *See Amendments to Form ADV,* Investment Advisers Act Release No. 2711 (March 3, 2008) [73 FR 13958 (March. 14, 2008)].

[40] Proposed Form ADV, Part 1A, Item 5.F.(3).

[41] Form ADV, Part 1A, Item 5.C.(2). For example, an adviser may report a significant percentage of clients that are non-U.S. persons, but the regulatory assets under management attributable to those clients is a small percentage of the adviser's regulatory assets under management.

[42] Proposed Form ADV, Part 1A, Section 5.G.(3) of Schedule D. The Glossary to Proposed Form ADV includes ''parallel managed account,'' which would be defined as: ''With respect to any registered

Continued

would be helpful because it would permit our staff to assess the accounts and consider how an adviser manages conflicts of interest between parallel managed accounts and registered investment companies or business development companies advised by the adviser. This information also would show the extent of any shift in assets between parallel managed accounts and registered investment companies or business development companies.

Finally, we propose to amend Item 5 to obtain additional information concerning wrap fee programs.[43] Item 5.I. of Part 1A currently requires an adviser to indicate whether it serves as a sponsor of or portfolio manager for a wrap fee program. We propose to amend Item 5.I. to require an adviser to report the total amount of regulatory assets under management attributable to acting as a sponsor and/or portfolio manager of a wrap fee program.[44] Section 5.I.(2) of Schedule D currently requires advisers to list the name and sponsor of each wrap fee program for which the adviser serves as portfolio manager. We propose amending Section 5.I.(2) to add questions that would require an adviser to provide any SEC File Number and CRD Number for sponsors to those wrap fee programs.[45] This information would help us better understand a particular adviser's business and assist in our risk assessment and examination process by making it easier for our staff to identify the extent to which the firm acts as sponsor or portfolio manager of wrap fee programs and collect information across investment advisers involved in a particular wrap fee program. Wrap fee accounts are held by a large number of retail clients, and we believe additional information about the capacity in which advisers serve these accounts would help us better protect investors.

We request comment on the additional changes we propose to make to Item 5 and related sections of Schedule D.

- Please describe any benefits or concerns with using more precise numbers in Item 5, rather than ranges.
- Is there any overlap among the categories of clients, and if so, among which particular categories? How could we address any overlaps?
- Please describe any concerns with providing information on: (a) The number of clients for whom investment advisers provide advisory services but do not have regulatory assets under management; (b) the regulatory assets under management attributable to non-U.S. clients; or (c) parallel managed accounts. Are there other types of information advisers could report that would meet our goals?
- Would the additional information on wrap fee programs be helpful to investors and other market participants? Should any additional information be required?
- Would advisers readily have access to the data requested?
- Are the proposed requirements clearly stated?

Additional Information About Financial Industry Affiliations and Private Fund Reporting

Part 1A, Section 7.A. of Schedule D requires information on an adviser's financial industry affiliations and Section 7.B.(1) of Schedule D requires information on private funds managed by the adviser. We are proposing amendments to Sections 7.A. and 7.B.(1) of Schedule D that would require advisers to provide identifying numbers (*e.g.,* Public Company Accounting Oversight Board (''PCAOB'') registration numbers[46] and CIK numbers[47]) in several questions to allow us to better compare information across data sets and understand relationships of advisers to other financial service providers. We are also proposing a new question that would require advisers to report the percentage of a private fund owned by qualified clients, as defined in rule 205–3 under the Advisers Act.[48] This information would help us better understand the nature of investors in private funds.

We request comment on the proposed changes to Sections 7.A. and 7.B.(1) of Schedule D.

- Would advisers readily have access to the data requested?
- Please describe any concerns with providing: (a) Identifying numbers; or (b) the percentage of a private fund owned by qualified clients.
- Are the requirements clearly stated?

3. Umbrella Registration

The Dodd-Frank Act, among other things, repealed the private adviser exemption that used to be in section 203(b)(3) of the Advisers Act.[49] As a result, many previously unregistered advisers to private funds,[50] including hedge funds and private equity funds, were required to register under the Advisers Act. Today, about 4,364 registered investment advisers provide advice on approximately $10.1 trillion in assets to approximately 28,532 private funds clients.[51]

For a variety of tax, legal and regulatory reasons, advisers to private funds may be organized as a group of related advisers that are separate legal entities but effectively operate as—and appear to investors and regulators to be—a single advisory business. Although these separate legal entities effectively operate as a single advisory business,[52] Form ADV is designed to accommodate the registration request of an adviser structured as a single legal entity. As a result, a private fund adviser organized as a group of related advisers could have to file multiple registration forms for the same advisory business. Multiple Form ADVs for a single advisory business may distort the data we collect on Form ADV and use in our regulatory program, be less efficient and more costly for advisers, and may be confusing to the public researching an adviser on our Web site.

Our staff provided guidance to private fund advisers before the compliance date of the Dodd-Frank Act private fund adviser registration requirements

investment company or business development company, a parallel managed account is any managed account or other pool of assets that you advise and that pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as the identified investment company or business development company that you advise.''

[43] Form ADV, Glossary defines a wrap fee program as ''[a]ny advisory program under which a specified fee or fees not based directly upon transactions in a *client's* account is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of *client* transactions.'' We are not proposing any change to this definition.

[44] Proposed Form ADV, Part 1A, Item 5.I.

[45] Proposed Form ADV, Part 1A, Section 5.I.(2) of Schedule D.

[46] Proposed Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 23(e).

[47] Proposed Form ADV, Part 1A, Section 7.A of Schedule D, Question 4(b).

[48] Proposed Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 15(b).

[49] Section 403 of the Dodd-Frank Act. Section 203(b)(3) of the Advisers Act (the ''private adviser exemption'') previously exempted any investment adviser from registration if the investment adviser (i) had fewer than 15 clients in the preceding 12 months, (ii) did not hold itself out to the public as an investment adviser and (iii) did not act as an investment adviser to a registered investment company or a company that elected to be a business development company.

[50] Section 202(a)(29) of the Advisers Act defines the term ''private fund'' as ''an issuer that would be an investment company, as defined in section 3 of the Investment Company Act of 1940 (15 U.S.C. 80a–3), but for section 3(c)(1) or 3(c)(7) of that Act.''

[51] Based on IARD data as of April 1, 2015.

[52] We will treat as a single adviser two or more affiliated advisers that are separate legal entities but are operationally integrated, which could result in a requirement for one or both advisers to register. *See Exemptions for Advisers to Venture Capital Funds, Private Fund Advisers With Less Than $150 Million in Assets Under Management, and Foreign Private Advisers,* Investment Advisers Act Release No. 3222 (June 22, 2011) [76 FR 39646 (July 6, 2011)] (''*Exemptions Release*''); *see also In the Matter of TL Ventures Inc.,* Investment Advisers Act Release No. 3859 (June 20, 2014) (settled action).

designed to address concerns raised by advisers.[53] The guidance provided conditions under which the staff believed one adviser (the ''filing adviser'') may file a single Form ADV on behalf of itself and other advisers that are controlled by or under common control with the filing adviser (each, a ''relying adviser''), provided that they conduct a single advisory business (collectively an ''umbrella registration''). We believe that the staff's position has been successful in addressing the registration concerns that can arise from the legal structures of private fund advisers. Most advisers that can rely on umbrella registration are doing so, with approximately 750 filing advisers and approximately 2,500 relying advisers filing umbrella registrations.[54]

The method outlined in the staff guidance for filing Form ADV on behalf of multiple entities is limited, however, by the form being designed for a single legal entity, and in some cases complicates data collection and analysis on umbrella registrants and can confuse filers and the public.[55] The amendments to Part 1A that we propose would yield additional and more consistent data about, and create a clearer picture of, groups of private fund advisers that operate as a single business, while codifying the concept of umbrella registration and simplifying the process of registration for such advisers. The amendments also would allow for greater comparability across private fund advisers.

Under the amendments we are proposing, umbrella registration would be available where a filing adviser and one or more relying advisers conduct a single private fund advisory business and each relying adviser is controlled by or under common control with the filing adviser. As proposed, umbrella registration would only be available in the scenario of a private fund adviser operating as a single business through multiple legal entities. At this time, we do not believe umbrella registration would be appropriate for advisers that are related but that operate separate advisory businesses as it would compromise data quality and complicate analyses that rely on data from Form ADV.[56] In addition, providing for disparate businesses to register on a single Form ADV as it is designed today would limit investors' ability to assess information on investment advisers because, based on our experience, reporting information about multiple advisers' businesses together on a single form would make Part 1A difficult to understand.

Accordingly, we are proposing amendments to Form ADV's General Instructions that would establish conditions for an adviser to assess whether umbrella registration is available. The conditions, which are indicia of a single advisory business, include the following:

1. The filing adviser and each relying adviser advise only private funds and clients in separately managed accounts that are qualified clients (as defined in rule 205–3 under the Advisers Act) and are otherwise eligible to invest in the private funds advised by the filing adviser or a relying adviser and whose accounts pursue investment objectives and strategies that are substantially similar or otherwise related to those private funds;

2. The filing adviser has its principal office and place of business in the United States and, therefore, all of the substantive provisions of the Advisers Act and the rules thereunder apply to the filing adviser's and each relying adviser's dealings with each of its clients, regardless of whether any client or the filing adviser or relying adviser providing the advice is a United States person;[57]

3. Each relying adviser, its employees and the persons acting on its behalf are subject to the filing adviser's supervision and control and, therefore, each relying adviser, its employees and the persons acting on its behalf are ''persons associated with'' the filing adviser (as defined in section 202(a)(17) of the Advisers Act);

4. The advisory activities of each relying adviser are subject to the Advisers Act and the rules thereunder, and each relying adviser is subject to examination by the Commission; and

5. The filing adviser and each relying adviser operate under a single code of ethics adopted in accordance with rule 204A–1 under the Advisers Act and a single set of written policies and procedures adopted and implemented in accordance with rule 206(4)–(7) under the Advisers Act and administered by a single chief compliance officer in accordance with that rule.[58]

The conditions are drawn from our experience with examining investment advisers and are designed to capture advisers to private funds that operate as a single business through commonality of the application of the Advisers Act and rules to all entities, implementation of compliance requirements, and advisory services. They are designed to include advisers to private funds (as discussed in condition 1) that operate as a single business. Conditions 2 and 4 provide assurance that our staff has access to and can readily examine the filing and relying advisers and that the Advisers Act and the rules thereunder fully apply to all advisers under the umbrella registration and clients of those advisers. Conditions 3 and 5 are designed to address the requirement that the filing and relying advisers operate as a single business. Advisers that operate under common supervision and control and have a single set of compliance policies and procedures and code of ethics are likely to operate as a

[53] *See* 2012 ABA Letter. The Division of Investment Management previously provided no-action relief to enable a special purpose vehicle (''SPV'') that acts as a private fund's general partner or managing member to essentially rely upon its parent adviser's registration with the Commission rather than separately register. *See* American Bar Association Subcommittee on Private Investment Entities, SEC Staff Letter (Dec. 8, 2005), Question G1, *available at http://www.sec.gov/divisions/investment/noaction/aba120805.htm* (the ''2005 ABA Letter'').

[54] Based on IARD data as of April 1, 2015.

[55] Under the guidance provided by the staff, for example, umbrella registration is appropriate where a relying adviser is not prohibited from registering with the Commission by section 203A of the Advisers Act. *See* 2012 ABA Letter, *supra* note 9. However, a relying adviser does not currently have a way to answer Item 2 regarding the basis on which it is eligible for SEC registration. In addition, relying advisers often must list owners and executive officers in a confusing manner in Schedules A and B which were not designed to accommodate multiple advisers and do not always provide the Commission staff with useful information on the owners of each relying adviser. Also, the filing adviser currently discloses its reliance on the 2012 ABA Letter in the Miscellaneous Section of Schedule D.

[56] The filing of a single Form ADV for exempt reporting advisers in a manner similar to the filing of an umbrella registration for registered advisers also would not be available as the conditions of a single advisory business are designed, in part, to reflect requirements that only apply to registered advisers, including the requirement for compliance policies and procedures pursuant to rule 206(4)–7 under the Advisers Act and for a code of ethics pursuant to rule 204A–1 under the Advisers Act. An exempt reporting adviser is an investment adviser that qualifies for the exemption from registration under section 203(l) of the Advisers Act because it is an adviser solely to one or more venture capital funds, or under rule 203(m)–1 under the Advisers Act because it is an adviser solely to private funds and has assets under management in the United States of less than $150 million. *See* Form ADV Glossary.

[57] As we have previously stated, we do not apply most of the substantive provisions of the Advisers Act to the non-U.S. clients of a non-U.S. adviser registered with the Commission. *See Exemptions Release, supra* note 52, at section II.D. The Glossary to Form ADV provides that ''United States person'' has the same meaning as in rule 203(m)–1 under the Advisers Act, which includes any natural person that is resident in the United States.

[58] Under this approach, the code of ethics and written policies and procedures must be administered as if the filing adviser and each relying adviser are part of a single entity, although they may take into account, for example, that a relying adviser operating in a different jurisdiction may have obligations that differ from the filing adviser or another relying adviser.

single business. Finally, the conditions are the same as those in the staff's guidance that many investment advisers have relied on since 2012 (except that the staff's guidance also included disclosure conditions for Form ADV, the substance of which is covered elsewhere in this proposal).[59]

In addition, we propose to amend the General Instructions to provide advisers using umbrella registration directions on completing Form ADV for the filing adviser and each relying adviser, including details for filing umbrella registration requests and the timing of filings and amendments in connection with an umbrella registration.[60] To satisfy the requirements of Form ADV while using umbrella registration, the filing adviser would be required to file, and update as required, a single Form ADV (Parts 1 and 2) that relates to, and includes all information concerning, the filing adviser and each relying adviser, and must include this same information in any other reports or filings it must make under the Advisers Act or the rules thereunder (*e.g.,* Form PF). The proposed revisions to the form's Instructions and Form ADV would further specify those questions that should be answered solely with respect to the filing adviser and those that require the filing adviser to answer on behalf of itself and its relying adviser(s).[61] Additionally, we propose amending the Glossary to add the following three terms: (i) ''Filing adviser;''[62] (ii) ''relying adviser;''[63] and (iii) ''umbrella registration.''[64]

We also are proposing a new schedule to Part 1A—Schedule R—that would have to be filed for each relying adviser.[65] Schedule R would require identifying information, basis for SEC registration, and ownership information about each relying adviser, some of which is already filed by an adviser relying on the staff guidance.[66] This new schedule would consolidate in one location important information for each relying adviser and address the problem the staff faced in its guidance that resulted in information regarding relying advisers being submitted in response to a number of different items on the Form, in ways not consistent across advisers, due to the fact that Form ADV was not designed to accommodate umbrella registration.[67] Finally, we propose to add a new question to Schedule D that would require advisers to identify the filing advisers and relying advisers that manage or sponsor private funds reported on Form ADV. This information would allow us to identify the specific adviser managing the private fund reported on Form ADV if it is part of an umbrella registration.[68]

Advisers registering in reliance on the staff's umbrella registration approach outlined in the 2012 ABA Letter do not provide information about each relying adviser's address, CRD, unique identifier numbers, basis for registration or form of organization. Our proposal would require this information to be reported. We believe that certain information that we propose requiring as part of umbrella registration (such as mailing address and basis for registration) would be the same for nearly all relying advisers, and the filing adviser could check a box indicating that the mailing address of the relying advisers is the same as that of the filing adviser. Advisers relying on the 2012 ABA Letter do not currently identify the filing adviser or relying adviser that advises private funds reported on Section 7.B.(1) of Schedule D, and our proposal would require this information to be reported. We believe that this information would help us better understand the management of private funds, would provide information to contact relying advisers, and would help us better understand the relationship between relying advisers and filing advisers.

We request comment on the changes we propose to make to Form ADV regarding umbrella registration.

- Should we amend Form ADV to accommodate umbrella registration? Why or why not?
- Would these amendments be helpful for private fund advisers and investors?
- Is umbrella registration appropriate or should we require separate registration by each adviser?
- Would umbrella registration provide more consistent and clear information about groups of private fund advisers that operate as a single business? Why or why not?
- Are there additional or different conditions we should consider for umbrella registration?
- Should we require that the availability of umbrella registration be expanded to include advisers with clients that are not primarily private funds, and if so, what are the legal structures that it should accommodate and are the proposed conditions sufficient to capture only single advisory businesses?
- We are not proposing to make filing an umbrella registration mandatory, because we believe it is appropriate to permit advisers to file a separate Form ADV for each relying adviser if they choose to do so.[69] Should umbrella registration be required? Should firms indicate if they could, but chose not to, rely on umbrella registration?
- Are the proposed amendments to the instructions and Form ADV sufficient to implement umbrella registration? If not, what amendments are necessary?
- Should we require more, less or different information on proposed Schedule R? What information should be added or deleted?

4. Proposed Clarifying, Technical and Other Amendments to Form ADV

We are proposing several amendments to Form ADV that are designed to clarify the form and its instructions. We believe these proposed amendments to Form ADV would make the filing process clearer and therefore more efficient for advisers, and increase the reliability and the consistency of information provided by investment

[59] *See* 2012 ABA Letter, *supra* note 9, Question 4.

[60] *See* Proposed Form ADV General Instruction 5.

[61] *See, e.g.,* statements added to Proposed Form ADV, Instructions and Part 1A, Items 1, 2, 3, 7, 10 and 11.

[62] ''Filing Adviser'' would mean: ''An investment adviser eligible to register with the SEC that files (and amends) a single *umbrella registration* on behalf of itself and each of its *relying advisers.''* *See* Proposed Form ADV Glossary.

[63] ''Relying Adviser'' would mean: ''An investment adviser eligible to register with the SEC that relies on a *filing adviser* to file (and amend) a single *umbrella registration* on its behalf.'' *See* Proposed Form ADV Glossary.

[64] ''Umbrella Registration'' would mean: ''A single registration by a *filing adviser* and one or more *relying advisers* who collectively conduct a single advisory business and that meet the conditions set forth in General Instruction 5.'' *See* Proposed Form ADV Glossary.

[65] Advisers that choose to file an umbrella registration would be directed by Item 1.B. to complete a new Schedule R for each relying adviser. Proposed Form ADV, Part 1A, Item 1.B.(2).

[66] Schedule R would require the following information for each relying adviser: Identifying information (Section 1); basis for SEC registration (Section 2); form of organization (Section 3) and control persons (Section 4). For basis for SEC registration (Section 2), we do not include categories that would make the relying adviser ineligible for umbrella registration, such as serving as an adviser to a registered investment company.

[67] Under the staff's guidance in the 2012 ABA Letter, an adviser reports in its Form ADV (Miscellaneous Section of Schedule D) that it and its relying advisers are together filing a single Form ADV in reliance on the position expressed in the letter and identifies each relying adviser by completing a separate Section 1.B., Schedule D, of Form ADV for each relying adviser and identifying it as such by including the notation ''(relying adviser).'' *See* 2012 ABA Letter, *supra* note 9, Question 4.

[68] Proposed Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 3(b).

[69] Under the proposed amendments, multiple private advisers operating a single advisory business may elect to apply separately for registration.

Proposed Amendments to Item 2 information would improve our staff's ability to interpret, understand, and place in context the information provided by advisers, and also would allow our staff to make comparisons across investment advisers, and improve the risk assessment and examination program. Many of these proposed amendments are derived from questions frequently received by our staff.

Proposed Amendments to Item 2

Item 2.A. of Part 1A of Form ADV requires an adviser to select the basis upon which it is eligible to register with the Commission, and Item 2.A.(9) includes as a basis that the adviser is eligible for registration because it is a ''newly formed adviser'' relying on rule 203A–2(c) because it expects to be eligible for SEC registration within 120 days.[70] Section 2.A.(9) of Schedule D. is entitled ''Newly Formed Adviser'' and requests the adviser to make certain representations. Our staff has received questions about whether the exemption from the prohibition on Commission registration contained in rule 203A–2(c) under the Advisers Act applies *only* to entities that have been ''newly formed,'' *i.e.,* newly created as corporate or other legal entities. It does not only apply to newly created entities and therefore we propose to delete the phrase ''newly formed adviser'' from Item 2.A.(9) and Section 2.A.(9) of Schedule D. Section 2.A.(9) would be renamed ''Investment Advisers Expecting to be Eligible for Commission Registration within 120 Days.'' [71]

Proposed Amendments to Item 4

Item 4 of Part 1A of Form ADV addresses successions of investment advisers, and the Instructions to Item 4 provide that a new organization has been created under certain circumstances, including if the adviser has changed its structure or legal status (*e.g.,* form of organization or state of incorporation). Our staff frequently receives questions from investment advisers regarding this item and we propose adding to Item 4 and Section 4 of Schedule D text that is currently contained in the Instructions to Item 4 that succeeding to the business of a registered investment adviser includes, for example, a change of structure or legal status (*e.g.,* form of organization or state of incorporation).[72]

Proposed Amendments to Item 7

Item 7 of Part 1A of Form ADV and corresponding sections of Schedule D require advisers to report information about their financial industry affiliations and the private funds they advise. We propose several technical amendments to Item 7. We propose to revise Item 7.A., which requires advisers to check whether their related persons are within certain categories of the financial industry, to clarify that advisers should not disclose in response to this item that some of their employees perform investment advisory functions or are registered representatives of a broker-dealer, because this information should instead be reported on Items 5.B.(1) and 5.B.(2) of Part 1A, respectively. Items 5.B.(1) and 5.B.(2) request information about an adviser's employees. Adding this text to Form ADV should assist filers in filling out the form as well as provide more accurate data to us and the general public.[73]

Item 7.B. of Part 1A of Form ADV asks whether the adviser serves as adviser to any private fund. Section 7.B.(1) of Schedule D requires advisers to provide information about the private funds they manage. We propose adding text to Item 7.B. clarifying that Section 7.B.(1) of Schedule D should not be completed if another SEC-registered adviser or SEC exempt reporting adviser reports the information required by Section 7.B.(1) of Schedule D. Currently the instructions only refer to another adviser. We also propose several amendments to Section 7.B.(1) of Schedule D. Question 8 of Section 7.B.(1) currently asks whether the private fund is a ''fund of funds,'' and if it is, whether the private fund invests in funds managed by the adviser or a related person of the adviser. Below those two questions there is currently a note informing advisers when they should answer yes to the first question regarding whether the private fund is a ''fund of funds.'' We propose renaming the first question as Question 8(a), moving the note to directly after Question 8(a), and making the second question Question 8(b).[74] We believe these proposed changes would assist filers in answering Question 8.

Question 10 of Section 7.B.(1) of Schedule D asks the adviser to identify the category of the private fund. We propose to delete text in Question 10 that directs advisers to refer to the underlying funds of a fund of funds when selecting the type of fund, in order to reconcile differences with Form PF, which permits advisers to disregard any private fund's equity investments in other private funds.[75] Question 19 of Section 7.B.(1) of Schedule D asks whether the adviser's clients are solicited to invest in the private fund. We propose to add text to Question 19 to make clear that the adviser should not consider feeder funds as clients of the adviser to a private fund when answering whether the adviser's clients are solicited to invest in the private fund.[76] This is a common question that our staff receives and the intent of Question 19 is not to capture affiliated feeder funds. Question 21 of Section 7.B.(1) of Schedule D asks whether the private fund relies on an exemption from registration of its securities under Regulation D of the Securities Act of 1933 and Question 22 asks for the private fund's Form D file number. We propose a clarifying revision to Question 21 to ask if the private fund has ever relied on an exemption from registration of its securities under Regulation D, in order to better reflect the intention of the Question.[77] The current Question 21, if answered in the negative, would not require the adviser to provide the private fund's Form D file number in Question 22, meaning we would not receive Form D file numbers in the event there was past reliance on Regulation D.[78]

We propose a revision to Question 23(a)(2). Currently, this question requires an adviser to check a box to indicate whether the private fund's financial statements are prepared in accordance with U.S. generally accepted accounting principles (''GAAP'').[79] We propose to add text instructing advisers that they are required to answer Question 23(a)(2) only if they answer ''yes'' to Question 23(a)(1), which asks whether the private fund's financial statements are subject to an annual audit.[80] This revision will clarify when an adviser is actually required to answer Question 23(a)(2). We also propose to

[70] Form ADV, Part 1A, Item 2.A.(9) and Section 2.A.(9) of Schedule D.

[71] Proposed Form ADV, Part 1A, Item 2.A.(9); *see* rule 203A–2(c) under the Advisers Act.

[72] Proposed Form ADV, Part 1A, Item 4.A.

[73] Proposed Form ADV, Part 1A, Item 7. The staff has provided this clarification and it is currently available online at our staff's Frequently Asked Questions on Form ADV and IARD, *available at http://www.sec.gov/divisions/investment/iard/iardfaq.shtml.*

[74] Proposed Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Questions 8(a)–(b).

[75] Proposed Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 10. *See* General Instruction 7 to Form PF.

[76] Proposed Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 19.

[77] Proposed Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 21.

[78] Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 21.

[79] Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 23(a)(2).

[80] Proposed Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 23(a)(2).

revise Question 23(g). The question currently asks whether the private fund's audited financial statements are distributed to private fund investors. We propose adding ''for the most recent fiscal year'' to clarify the question. In addition, we propose to revise Question 23(h). This question currently asks whether the report prepared by the auditing firm contains an unqualified opinion.[81] This question has prompted questions from advisers regarding which report and what timeframe the question refers to. We propose to clarify the question to ask whether all of the reports prepared by the auditing firm since the date the adviser last filed its annual updating amendment contain unqualified opinions.[82] Finally, we propose adding Question 25(g), which would request the legal entity identifier, if any, for a private fund custodian that is not a broker-dealer, or that is a broker-dealer but does not have an SEC registration number. This information would help our examination staff more readily identify the use of particular custodians by private funds.

Proposed Amendments to Item 8

In order to address a frequent question from filers, we propose to clarify that advisers should answer Item 8 based on the types of participation and interest the adviser expects to engage in during the next year. Item 8.B.(2) of Part 1A of Form ADV currently asks whether the adviser or any related person of the adviser recommended purchase of securities to advisory clients for which the adviser or any related person of the adviser serves as underwriter, general or managing partner, or purchaser representative.[83] The current wording has caused confusion regarding the treatment of purchaser representatives. We are proposing to reword the question to ask whether the adviser or any related person of the adviser recommends to advisory clients or acts as a purchaser representative for advisory clients with respect to the purchase of securities for which the adviser or any related person of the adviser serves as underwriter or general or managing partner. This proposed edit is designed to clarify that the question applies to any related person who recommends to advisory clients or acts as a purchaser representative for advisory clients with respect to the purchase of securities for which the adviser or any related person of the adviser serves as underwriter, general or managing partner.[84]

Item 8.H. of Part 1A of Form ADV asks whether the adviser or any related person of the adviser, directly or indirectly, compensates any person for client referrals. We are proposing revisions to Item 8.H. to break the question into two parts to increase our understanding of compensation for client referrals. Proposed Item 8.H.(1) would cover compensation to persons other than employees for client referrals.[85] Proposed Item 8.H.(2) would cover compensation to employees, in addition to employees' regular salaries, for obtaining clients for the firm.[86] Item 8.I. asks whether the adviser or any related person of the adviser directly or indirectly receives compensation from any person for client referrals. We have also proposed wording to clarify that Item 8.I. is not designed to include the regular salary that the adviser pays to an employee.[87] We have proposed these edits to better understand how advisers compensate both their staff and third parties for client referrals. The proposed revisions to this item do not change the scope of the information collected, but instead provide more precise information about compensation for client referrals.

Proposed Amendments to Section 9.C. of Schedule D

Section 9.C. of Schedule D requests information about independent public accountants that perform surprise examinations in connection with the Advisers Act custody rule, rule 206(4)–2. We propose two changes to Section 9.C. of Schedule D. First, we propose to add text requiring an adviser to provide the PCAOB registration number of the adviser's independent public accountant to improve our staff's ability to cross-reference information submitted through other systems and monitor compliance with the custody rule.[88] Section 9.C.(6) currently requires advisers to report whether any report prepared by an independent public accountant that audited a pooled investment vehicle or examined internal controls contained an unqualified opinion. We propose to amend Section 9.C.(6) in a manner similar to Section 7.B.(1) of Schedule D, Question 23(h) as described above to provide clarity to filers. Accordingly, the question would now ask whether all of the reports prepared by the independent public accountant since the date of the last annual updating amendment have contained unqualified opinions.[89]

Proposed Amendments to Disclosure Reporting Pages

Item 11 of Part 1A of Form ADV requires registered advisers and exempt reporting advisers to provide information about their disciplinary history and the disciplinary history of their advisory affiliates. Those advisers who report an event for purposes of Item 11 are directed to complete a Disclosure Reporting Page (''DRP'') to provide the details of the event. DRPs can be removed from Form ADV under certain circumstances, including when ''the adviser is registered or applying for registration with the SEC and the event was resolved in the adviser's or advisory affiliate's favor.'' [90] We propose amending this text in each DRP to add ''or reporting as an exempt reporting adviser with the SEC'' after ''applying for registration with the SEC'' to clarify that both registered and exempt reporting advisers may remove a DRP from their Form ADV record if a criminal, regulatory or civil judicial action was resolved in the adviser's (or advisory affiliate's) favor.[91] This proposal would make disciplinary reporting uniform across registered and exempt reporting advisers, consistent with requiring exempt reporting advisers to report disciplinary events on Form ADV.

Proposed Amendments to Instructions and Glossary

Together with the proposed amendments to Part 1A, we are also proposing conforming amendments to the General Instructions and the Glossary for Form ADV. As discussed above, we propose to amend the General Instructions to include instructions regarding umbrella registration. We also propose to remove outdated references to ''Special One-Time Dodd-Frank Transition Filing for SEC Registered Advisers'' and ''recent'' amendments to Form ADV Part 2 that are no longer needed. We propose to update the definition of ''Legal Entity Identifier'' to reflect recent advancements in this protocol.[92]

[78] Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 21.

[79] Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 23(a)(2).

[80] Proposed Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 23(a)(2).

[81] Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 23(h).

[82] Proposed Form ADV, Part 1A, Section 7.B.(1) of Schedule D, Question 23(h).

[83] Form ADV, Part 1A, Item 8.B.(2).

[84] Proposed Form ADV, Part 1A, Item 8.B.(2).

[85] Proposed Form ADV, Part 1A, Item 8.H.(1).

[88] Proposed Form ADV, Part 1A, Section 9.C.(3) of Schedule D.

[89] Proposed Form ADV, Part 1A, Section 9.C.(6) of Schedule D.

[80] Form ADV, Part 1.A., Criminal, Regulatory Action and Civil Judicial Action Disclosure Reporting Pages.

[91] Proposed Form ADV, Part 1A, Criminal, Regulatory Action and Civil Judicial Action Disclosure Reporting Pages.

Where applicable, we propose to make technical revisions to specify that an adviser must ''apply for registration'' (rather than simply ''register'') to more accurately reflect the rule text. We also propose to delete text in the instructions related to Item 1.O. because this text is proposed to appear directly in the corresponding section of Part 1 of Form ADV. We propose to add text clarifying that a change in information related to Item 1.O. does not necessitate a prompt other-than-annual amendment (as changes to Item 1 otherwise do).

We request comment on our proposed clarifying, technical and other amendments.

- Are the proposed amendments necessary? Should we consider different or additional amendments? If so, please specify.
- Are there any ambiguities or concerns that we should address in the form, instructions or glossary?
- Should we ask additional questions in Section 7.B.(1) of Schedule D regarding an adviser's reliance on Regulation D? If so, what additional information should we request?
- Are the proposed amendments regarding payment for client referrals in Item 8 clear? Why or why not?

B. Proposed Amendments to Investment Advisers Act Rules

1. Proposed Amendments to Books and Records Rule

We are proposing two amendments to the Advisers Act books and records rule, rule 204–2, that would require investment advisers to maintain additional materials related to the calculation and distribution of performance information.

Rule 204–2(a)(16) currently requires advisers that are registered or required to be registered with us to maintain records supporting performance claims in communications that are distributed or circulated to ten or more persons.[93] Although it has been our staff's experience that investment advisers routinely make and preserve communications containing performance information and records to support the performance claims, the books and records rule requires such records only when the communication is distributed to ten or more persons. We are proposing to amend rule 204–2(a)(16) by removing the ten or more persons condition and replacing it with ''any person.'' Accordingly, advisers would be required to maintain the materials listed in rule 204–2(a)(16) that demonstrate the calculation of the performance or rate of return in any communication that the adviser circulates or distributes, directly or indirectly, to any person. The veracity of performance information is important regardless of whether it is a personalized client communication or in an advertisement sent to ten or more persons.

Rule 204–2(a)(7) currently requires advisers that are registered or required to be registered with us to maintain certain categories of written communications received and copies of written communications sent by such advisers.[94] We are proposing to amend rule 204–2(a)(7) to require advisers to also maintain originals of all written communications received and copies of written communications sent by an investment adviser relating to the performance or rate of return of any or all managed accounts or securities recommendations. We believe these records would be useful in examining and evaluating adviser performance claims. A recent enforcement action demonstrated to us the disadvantages of not requiring investment advisers to maintain records forming the basis of performance calculations or performance communications sent to individuals.[95]

Based on our staff's experience, we believe that most advisers already maintain this information as part of their compliance with rule 206(4)–1 under the Advisers Act, which regulates advertisements by investment advisers. The proposed amendments would provide our examination staff with additional information to review an adviser's compliance with rule 206(4)–1 and would assist us in enforcing rule 206(4)–1 in cases of fraudulent advertising. Investors would benefit to the extent that the proposed amendments reduce the incidence of misleading or fraudulent advertising.

We request comment on the proposed amendments to rule 204–2.

- Do investment advisers currently maintain these records? If so, are there concerns with making these required records?
- Are there alternate means that would be sufficient to collect performance information and client communications regarding performance?
- Are there exceptions that we should consider?

2. Proposed Technical Amendments to Advisers Act Rules

We are proposing technical amendments to several rules under the Advisers Act and the withdrawal of transition rule 203A–5 under the Advisers Act. The proposed amendments would remove transition provisions from rules where the transition process is complete. Three of the provisions were added as part of the implementation of the Dodd-Frank Act. Two provisions were added when we amended Form ADV and several Advisers Act rules to require advisers to electronically file their brochures with the Commission.

Rule 203A–5

The Dodd-Frank Act amended section 203A of the Advisers Act to prohibit from SEC registration ''mid-sized'' advisers that generally have assets under management of between $25 million and $100 million.[96] Rule 203A–5 provided a temporary exemption from the prohibition on registration for mid-sized advisers to facilitate their transition to state registration.[97] We propose withdrawing rule 203A–5 because the transition of mid-sized advisers from SEC to state registration was completed in June 2012.

Rule 202(a)(11)(G)–1(e)

Section 409 of the Dodd-Frank Act created a new exclusion from the definition of ''investment adviser'' in

[93] Rule 204–2(a)(16) requires advisers to make and keep ''All accounts, books, internal working papers, and any other records or documents that are necessary to form the basis for or demonstrate the calculation of the performance or rate of return of any or all managed accounts or securities recommendations in any notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication that the investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than persons connected with such investment adviser); provided, however, that, with respect to the performance of managed accounts, ''the retention of all account statements, if they reflect all debits, credits, and other transactions in a client's account for the period of the statement, and all worksheets necessary to demonstrate the calculation of the performance or rate of return of all managed accounts shall be deemed to satisfy the requirements of this paragraph.''

[94] Rule 204–2(a)(7) requires advisers to make and keep: ''Originals of all written communications received and copies of all written communications sent by such investment adviser relating to (i) any recommendation made or proposed to be made and any advice given or proposed to be given, (ii) any receipt, disbursement or delivery of funds or securities, or (iii) the placing or execution of any order to purchase or sell any security.''

[95] *In the Matter of Michael R. Pelosi,* Investment Advisers Act Release No. 3141 (Jan. 14, 2011); Initial Decision Release No. 448 (Jan. 5, 2012); Investment Advisers Act Release No. 3805 (Mar. 27, 2014) (Commission opinion dismissing proceeding against associated person of registered investment adviser charged with providing false and misleading performance information because the record lacked an evidentiary basis from which to determine that the performance information was materially false or misleading).

[96] *See* Section 410 of the Dodd-Frank Act.

[97] *See Implementing Release, supra* note 4.

section 202(a)(11)(G) of the Advisers Act for family offices. The Commission adopted rule 202(a)(11)(G)–1 [98] defining a family office and provided two extended transition periods for family offices with certain charitable organization clients and family offices relying on the rescinded ''private adviser'' exemption.[99] We propose removing paragraph (e) of rule 202(a)(11)(G)–1 because subparagraph (1) of the transition provisions provided for by it expired on December 31, 2013 and subparagraph (2) expired on March 30, 2012.

Rule 203–1(e)

Rule 203–1 outlines the procedures for advisers to register with the Commission. Paragraph (e) of the rule was added as part of the implementation of the Dodd-Frank Act and allowed companies that were relying on the rescinded ''private adviser'' exemption [100] to remain exempt from registration until March 30, 2012 under certain conditions.[101] We propose removing paragraph (e) from Rule 203–1 because the transition for private advisers is now complete.

Rule 203–1(b) and Rule 204–1(c)

Rule 203–1 and Rule 204–1 were amended in 2010 to provide transition periods for advisers to file narrative brochures required by Part 2A of Form ADV electronically with the Investment Adviser Registration Depository (''IARD'').[102] Rule 203–1(b), entitled ''transition to electronic filing,'' requires investment advisers applying for registration after January 1, 2011 to file their brochures electronically unless they receive a continuing hardship exemption.[103] Rule 204–1(c) requires investment advisers that are required to file a brochure and had a fiscal year that ended on or after December 31, 2010 to electronically file a Part 2A brochure as part of their next annual updating amendment. We propose removing paragraph (b) from rule 203–1 and paragraph (c) from rule 204–1 because the transition to electronic filing is now complete.[104]

We request comment on these proposed changes.

- Is there any benefit to keeping any of these provisions?

III. Economic Analysis

A. Introduction

The Commission is sensitive to the benefits and costs of its rules. The following economic analysis identifies and considers the benefits and costs—including the effects on efficiency, competition, and capital formation—that would result from the proposed amendments to Form ADV and the proposed amendments to and rescission of certain rules under the Investment Advisers Act. The economic effects of the proposed amendments are discussed below and have informed the policy choices described in this release.

We are proposing amendments to Form ADV and the Advisers Act books and records rule 204–2, and technical amendments to several other rules under the Advisers Act. In summary, and as discussed in greater detail in section II. above, we are proposing the following amendments to Form ADV and Advisers Act rules:

- Amendments to Form ADV that are designed to fill certain data gaps and enhance current reporting provided by investment advisers in order to improve the depth and quality of the information we collect on investment advisers and to facilitate our risk monitoring objectives;
- Amendments to Form ADV to incorporate ''umbrella registration'' for private fund advisers;
- Clarifying, technical and other amendments to Part 1A of Form ADV;
- Amendments to the Advisers Act books and records rule that would require advisers to make and keep supporting documentation that demonstrates performance calculations or rates of return in any written communications that the investment adviser circulates or distributes; and
- Technical amendments to several rules under the Advisers Act to remove transition provisions that are no longer necessary.

We rely on information reported by investment advisers to us on Form ADV to monitor trends, assess emerging risks, inform policy choices and rulemaking, and assist Commission staff in examination and enforcement efforts. We believe that the proposed amendments to Form ADV would improve the information provided by investment advisers to the Commission, clients and prospective clients and would improve investor protection by informing policy choices and focusing examination activities. We also believe that the proposed amendments to the Advisers Act books and records rule would improve investor protections by providing useful information to evaluate advisers' performance claims.

The regulatory regime as it exists today for investment advisers serves as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation of the proposed amendments are discussed. The baseline includes the current requirement for investment advisers to file Form ADV, the staff guidance that permits filing advisers to file a single Form ADV on behalf of itself and each relying adviser,[105] the current requirements for investment advisers to maintain books and records, and other current rules under the Advisers Act. The parties that would be affected by the proposed amendments are investment advisers that file Form ADV, including private fund advisers that rely on, or will rely on, umbrella registration, and investment advisers that currently manage, or will manage, separately managed accounts, the Commission, current and future advisory clients and other current and future users of investment adviser information reported on Form ADV, including third-party information providers.

Based on IARD system data as of April 2015, approximately 11,600 investment advisers are registered with the Commission, and 2,914 exempt reporting advisers file reports with the Commission. Approximately 8,500 investment advisers registered with us (73%) reported assets under management attributable to separately managed account clients. Of those 8,500 advisers, approximately 5,366 advisers reported regulatory assets under management attributable to separately managed account clients of at least $150 million but less than $10 billion and approximately 535 advisers reported regulatory assets under management attributable to separately managed account clients of at least $10 billion.[106]

[98] *Family Offices,* Investment Advisers Act Release No. 3220 (June 22, 2011) [76 FR 37983 (June 29, 2011)].

[99] Section 203(b)(3) of the Advisers Act as in effect before July 21, 2011, repealed by section 403 of the Dodd-Frank Act.

[100] *Id.*

[101] *See Implementing Release, supra* note 4. The rule 203–1(e) exemption from registration requires not only reliance on the former private adviser exemption but also that an adviser have fifteen or fewer clients in the preceding twelve months and neither hold itself out to the public as an investment adviser nor act as an investment adviser to a registered investment company or business development company.

[102] *Amendments to Form ADV,* Investment Advisers Act Release No. 3060 (July 28, 2010) [75 FR 49233 (Aug. 12, 2010)].

[103] The continuing hardship exemption under rule 203–3 will not be withdrawn by these technical amendments.

[104] We propose redesignating current paragraphs (c) and (d) of Rule 203–1 as (b) and (c) and redesignating current paragraphs (d) and (e) of Rule 204–1 as (c) and (d).

[105] *See* 2012 ABA Letter, *supra* note 9.

[106] Based on IARD data as of April 1, 2015. These estimates are approximations because Form ADV currently collects information about assets under management by client type and the number of

Advisers with at least $10 billion in regulatory assets under management attributable to separately managed accounts would be subject to proposed additional reporting on separately managed accounts on Form ADV. Approximately 750 registered advisers to private funds currently submit a single Form ADV on behalf of themselves and 2,500 relying advisers, relying on the 2012 ABA Letter. All investment advisers registered or required to be registered with us are subject to the Advisers Act books and records rule.

We have sought, where possible, to quantify the costs, benefits, and effects on efficiency, competition, and capital formation expected to result from the proposed amendments to Form ADV and Investment Advisers Act rules, and reasonable alternatives. As discussed below, in certain cases, we are unable to quantify the economic effects because we lack the information necessary to provide reasonable estimates. The economic effects of the proposal also depend upon a number of factors some of which we cannot estimate, such as the extent to which investor protection and our ability to oversee investment advisers will improve, and the extent to which investors would utilize the information in Form ADV to choose or retain an investment adviser. Therefore, some of the discussion below is qualitative in nature. We request comment on all aspects of the economic effects of the amendments that we are proposing, such as the costs and benefits, effects on efficiency, competition and capital formation, and reasonable alternatives to the proposed amendments. We request that commenters identify sources of data and information as well as provide data and information to assist us in analyzing the economic consequences of the proposed rulemaking.

B. Proposed Amendments to Form ADV

Some of the proposed amendments to Form ADV are designed to address certain gaps in information, such as information about advisers' separately managed accounts. We are also proposing to collect additional information on Form ADV on topics such as social media, offices, foreign clients, and wrap fee accounts. These items are designed to improve the depth and quality of information that we collect on investment advisers, which would be important for oversight activities. We are also proposing amendments to Form ADV to establish a more efficient method for advisers to private funds that are organized as multiple legal entities to register with us using a single Form ADV (''umbrella registration''). Finally, we are proposing a number of clarifying, technical and other amendments to Form ADV.

1. Economic Baseline and Affected Market Participants

As noted above, the investment adviser regulatory regime currently in effect serves as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation, of the proposed amendments to Form ADV are discussed. Form ADV is used by investment advisers to register with the SEC and with the states. Once registered, an investment adviser is required to file an annual amendment within 90 days of the end of its fiscal year end, and more frequently if required by the instructions to Form ADV.[107] Form ADV is also used by exempt reporting advisers to submit, and periodically update, reports to us by completing a limited subset of items on Form ADV. Information filed on Form ADV is publicly available through the IAPD Web site.[108] The parties that would be directly affected by the proposed amendments to Form ADV are: Investment advisers that file Form ADV with the Commission; the Commission; current and future advisory clients; and other current and future users of information filed on Form ADV, including third-party information providers.

2. Benefits

As discussed in section II. above, the proposed amendments to Form ADV would improve our ability to oversee investment advisers and identify potential risks by increasing the amount, usefulness, consistency, and reliability of the information disclosed by investment advisers, which would enhance our staff's ability to effectively carry out the risk-based examination program and other risk monitoring activities, and could improve investor protection by informing policy choices and focusing examination activities. The enhanced reporting requirements should also improve the ability of clients and potential clients of investment advisers to make more informed decisions about the selection and retention of investment advisers.

We are proposing that advisers report additional information on Form ADV regarding separately managed accounts, which are clients other than registered investment companies, business development companies and other pooled investment vehicles, such as private funds, and are designed to meet the needs of institutional and individual investors. Based on IARD data, more than 73% of investment advisers registered with us indicate that they manage assets of separately managed accounts.[109] We do not currently collect additional information specific to separately managed accounts managed by investment advisers. We currently collect detailed information about registered investment companies and private funds, but only limited information regarding the management of separately managed accounts. The absence of information about separately managed accounts, such as information about investments, compared to the information we receive describing registered investment companies and private funds, limits our ability to understand, monitor and oversee the investment advisers that advise these accounts, and recognize the potential risks relating to these accounts.[110]

The proposed amendments are intended to enhance our ability to effectively carry out our risk-based examination program and other risk-monitoring activities in relation to advisers of separately managed accounts. The additional information regarding separately managed accounts would assist us in addressing regulatory issues, anticipating the implications of various regulatory actions that we may consider, and identifying areas for additional examination and enforcement activities. The proposed amendments are also intended to improve our ability to monitor risks related to those advisers that manage greater amounts of regulatory assets under management in separately managed accounts, while reducing the potential reporting burden for those advisers that manage lesser amounts of regulatory assets under management in these accounts.

In addition to information regarding separately managed accounts, the proposed amendments to Form ADV include requests for additional information that we believe would be useful to our risk assessment, examination and oversight of

clients of each type in broad ranges. Proposed Item 5.D.(1)–(2) would require advisers to specify their assets under management and number of clients by client type, which will benefit our ability to understand and oversee the investment advisers that advise these accounts and recognize potential risks.

[107] *See* Rule 204–1(a) under the Advisers Act.

[108] Certain personal identifying information is not made public.

[109] Based on IARD data as of April 1, 2015.

[110] *See, e.g.,* Form N–1A for investment companies and Form PF for private funds.

investment advisers. For example, we propose requesting information regarding social media platforms used by investment advisers. This information would assist our staff with examinations and provide them with better awareness of an adviser's social media activities and how advisers use social media to communicate with their clients and prospective clients. We also are proposing to request additional information about an adviser's participation in and assets under management attributable to wrap fee programs. These programs are widely used by individual retail clients, and we believe it would be useful for us and the public to learn more about an adviser's participation in these programs. For example, if our staff identifies an issue with a particular wrap fee program, then this information also would assist the staff in identifying other advisers associated with the program. Other proposed items that would assist our examination activities include replacing ranges with more precise information about the number of advisory clients and related assets under management, the total number of offices that conduct investment advisory business, and information regarding each adviser's top 25 largest offices in terms of employees.

For several items, we are proposing additional identifying information, such as the CIK numbers for all advisers that have obtained one or more of them, PCAOB registration numbers for auditing firms, and the SEC file number and the CRD number for sponsors of wrap fee programs. The identifiers will improve our ability and that of other current and future users of Form ADV information to cross-reference information from Form ADV with information from other sources to investigate and obtain a more complete understanding of the business and relationships of investment advisers.

The proposed amendments to Form ADV that would incorporate the concept of umbrella registration and establish a method on Form ADV for certain private fund advisers to use umbrella registration would clarify, simplify, and therefore make more efficient the filing procedures for these advisers and provide greater certainty about the availability of umbrella registration. The proposed amendments also would improve the consistency and quality of the information that private fund advisers disclose about their business and provide a more complete picture of groups of private fund advisers that operate as a single business, thus allowing for greater comparability across private fund advisers. As of April 1, 2015, approximately 750 registered advisers indicated on Form ADV that they relied on the 2012 ABA Letter. Additional advisers may be eligible to use umbrella registration but do not currently do so.

The proposed clarifying, technical and other amendments to Form ADV would make the filing process clearer and therefore more efficient for advisers, and increase the reliability and the consistency of information provided by investment advisers. More reliable and consistent information would improve our staff's ability to interpret and evaluate the information provided by advisers, make comparisons across investment advisers, and better identify the investment advisers that may need additional outreach or examination. To the extent the proposed clarifying and technical amendments would make Form ADV easier to understand and complete, the proposed amendments would decrease future costs, especially for those investment advisers registering with us for the first time.

As discussed above, an improvement in our ability to oversee the business and assess the risks of investment advisers would benefit clients and prospective clients of investment advisers. To the extent that these proposed amendments would allow our staff to identify potential risks at investment advisers before any clients are disadvantaged, clients and potential clients would benefit. In addition, an increase in the amount, consistency and usefulness of information disclosed by investment advisers would allow advisory clients and potential advisory clients to make more informed decisions about the selection and retention of investment advisers. For example, these proposed amendments should allow prospective clients to review, either directly from Form ADV or through third-party information providers, additional or more precise information about the number of clients and amount of regulatory assets under management attributable to various client types which may provide useful information about an adviser's experience and business practices. As another example, the proposed amendments should allow clients and potential clients to identify the social media platforms of an investment adviser from which additional information about the adviser may be available. An increase in the ability of clients and potential clients to differentiate investment advisers could result in a limited increase in competition among investment advisers for clients. The proposed amendments would likely not have a significant effect on capital formation or on the ability of investors to efficiently allocate capital across investments because the proposed amendments do not directly relate to the amount of capital investors allocate to investments or their ability to allocate capital across investments.

3. Costs

The proposed amendments to Form ADV would require investment advisers to provide additional information about certain aspects of their business, including separately managed accounts, social media platforms, wrap fee programs and offices. Reporting this additional information would impose additional costs on investment advisers, but we believe that much of the information we propose requesting on Form ADV would be readily available because, based on our experience, we understand that it is information used by advisers to conduct their business.

Costs would vary across advisers, depending on the nature of an adviser's business and its business model. For example, advisers that manage a limited number of separately managed accounts or that manage smaller amounts of assets under management in those accounts would have fewer reporting requirements than advisers that manage a large number of or assets in such accounts. In addition, advisers with a large number of offices would be required to report more information on a greater number of offices than what is currently required in Form ADV. To the extent possible, we have attempted to quantify these costs. As discussed in section IV., for purposes of the increased Paperwork Reduction Act burden for Form ADV, we estimate that each adviser would incur average costs in connection with the proposed amendments to Form ADV of approximately $750,[111] for a total aggregate cost of $8,700,000.[112]

The proposed amendments regarding the reporting of information about

[111] We estimate that each adviser will spend, on average, 2 hours to complete the proposed questions regarding separately managed accounts. We further estimate that the proposed amendments to Part 1A that request other additional information would take each adviser, on average, 1 hour to complete. As a result, we estimate a three hour increase in the total average time burden related to the proposed amendments to Form ADV. We expect that the performance of this function would most likely be equally allocated between a senior compliance examiner and a compliance manager. Data from the Securities Industry Financial Markets Association's *Management & Professional Earnings in the Securities Industry 2013* (''SIFMA *Management and Professional Earnings Report*''), modified to account for an 1,800-hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, suggest that costs for a senior compliance examiner and a compliance manager are $217 and $283 per hour, respectively. [1.5 hours × $217 = $325.5] + [1.5 hours × $283 = $424.5] = $750.

[112] 11,600 advisers × $750 = $8,700,000.

separately managed accounts may have a limited impact on competition between advisers that manage a significant number of separately managed accounts and those that manage a small number of such accounts. If disclosure of aggregate information about separately managed accounts resulted in public disclosure of sensitive information about a small number of clients' derivative exposures because an adviser has only one or a very small number of separately managed account clients, then that adviser could be competitively disadvantaged compared with an adviser with numerous separately managed account clients because of concerns that the public disclosure of derivatives exposures would indirectly reveal sensitive information about a particular separately managed account client. We believe that this possible concern is mitigated by the fact that the proposed item does not require the disclosure or reporting of positions or specific exposures or of client identities.

Regarding the proposed amendments to Form ADV that would codify umbrella registration, we estimate that each adviser that files Schedule R would incur average costs of approximately $250,[113] for a total aggregate cost of $187,500.[114] We do not believe the proposed amendments to provide for umbrella registration would impose significant costs on investment advisers because advisers currently relying on the 2012 ABA Letter are already reporting much of the information that would be reported on proposed Schedule R. The additional information that would be reported for relying advisers on Schedule R, such as basis for SEC registration and form of organization, should be readily available to filing advisers.

We do not believe that the proposed clarifying, technical and other amendments to Form ADV would result in any additional costs for investment advisers and could result in some cost savings to the extent that advisers have fewer questions to research when completing the form. We have identified provisions of Form ADV that have caused confusion among filers in the past or that have resulted in inconsistent or unreliable information. Discussed above, the proposed clarifications and revisions to the questions and instructions of Form ADV would increase the efficiency of investment advisers to disclose information, and our ability to oversee investment advisers. We do not anticipate that the proposed clarifying, technical and other amendments would have a significant impact on competition or capital formation because they do not directly relate to investors' ability to differentiate among investment advisers or the amount of capital that investors allocate to investments or their ability to efficiently allocate capital across securities.

We do not believe the proposed amendments to Form ADV would increase costs for exempt reporting advisers. Exempt reporting advisers are required to complete only a limited number of items in Part 1A of Form ADV (consisting of Items 1, 2.B., 3, 6, 7, 10, 11 and corresponding schedules) and would not be eligible to file proposed Schedule R. We are proposing limited amendments to the items that exempt reporting advisers are required to complete, including the proposed amendments to Item 1 regarding the use of social media and the reporting of information on up to 25 offices. Of the approximately 2,914 exempt reporting advisers that file information with us on Form ADV, approximately 17 reported that they had five or more other offices. Therefore, there would be a minimal increase in costs for these advisers to report this information.

4. Alternatives

Alternatives to the proposed amendments to Form ADV include the disclosure of different additional information from investment advisers. For example, with respect to separately managed accounts, we could have proposed requiring information as of each quarter, proposed other reporting thresholds to differentiate smaller and larger amounts of regulatory assets under management, or proposed narrower asset categories. Other examples include additional information describing an adviser's use of social media platforms, and additional information about the size and operations of offices.

When determining the specific proposed amendments to Form ADV for purposes of this proposal, we considered what information would be important for our oversight activities and for advisory clients and prospective clients, and the costs to investment advisers to provide this information. Additional information could improve our ability to oversee investment advisers and protect advisory clients and potential advisory clients, and increase clients' ability to make more informed decisions about the selection and retention of investment advisers. However, we currently believe the one-time and ongoing reporting costs for investment advisers to provide this information in addition to what we have proposed could be significant when compared to its potential benefits. Another alternative to the proposed amendments to Form ADV would be for us not to require investment advisers to report additional information but instead for us to undertake targeted examinations of investment advisers. We believe it is more efficient to compile information about advisers that can then be utilized to identify specific advisers for examination. An absence of information about advisers would reduce our ability to identify industry trends and assess risks.

C. Proposed Amendments to Investment Advisers Act Rules

As discussed above, we are proposing amendments to the Advisers Act books and records rule, and technical amendments to several other rules to remove transition provisions where the transition process is complete. The discussion below focuses on the proposed amendments to the Advisers Act books and records rule, because the technical amendments are clarifying or ministerial in nature and therefore should have little, if any, economic effects.

The proposed amendments to rule 204–2 would require investment advisers to maintain records supporting performance claims in communications that are distributed or circulated to any person. Advisers also would be required to maintain originals of all written communications received and copies of all written communications sent relating to the performance or rate of return of any or all managed accounts or securities recommendations. The proposal would require investment advisers to maintain records that they have already created, rather than create new records. We believe that most investment advisers currently maintain the information proposed to be required under the rule, as part of their compliance with the Advisers Act advertising rule (rule 206(4)–1) or as a result of their implementation of recordkeeping controls to comply with the current requirements of rule 204–2. Under the proposed amendments, each

[113] We estimate that for purposes of the PRA, the filing adviser would spend on average 1 hour completing the proposed Schedule R on behalf of its relying advisers. We expect that the performance of this function would most likely be equally allocated between a senior compliance examiner and a compliance manager. Data from the SIFMA *Management and Professional Earnings Report,* modified to account for an 1,800- hour work-year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, suggest that costs for a senior compliance examiner and a compliance manager are $217 and $283 per hour, respectively. [.5 hours × $217 = $108.5] + [.5 hours × $283 = $141.5] = $250.

[114] 750 advisers × $250 = $187,500.

respondent would be required to retain records in the same manner and for the same period of time as currently required under rule 204–2.

1. Economic Baseline and Affected Market Participants

As noted above, the investment adviser regulatory regime currently in effect serves as the economic baseline against which the costs and benefits, as well as the impact on efficiency, competition, and capital formation, of the proposed amendments to the Advisers Act books and records rule (rule 204–2). The parties that would be directly affected by the proposed amendments to rules under the Advisers Act include: Investment advisers registered with the Commission; the Commission; and current and future investment advisory clients. As discussed above, approximately 11,600 investment advisers are currently registered with the Commission.

2. Benefits

The proposed amendments to the Advisers Act books and records rule (rule 204–2) would benefit the clients and prospective clients of investment advisers by improving our ability to oversee investment advisers and making available to our examination staff all records necessary to evaluate performance information.

The proposed amendments to the books and records rule would provide our enforcement and examination staff with additional information to review an adviser's compliance with the Advisers Act advertising rule, rule 206(4)–1, regardless of the number of clients or prospective clients that receive performance communications. The increased efficiency in examining and enforcing the rule may increase investor protection by increasing the disincentive for misleading or fraudulent communications, which may reduce the incidence of fraud. In addition, investors may benefit from the proposed amendments to the books and records rule as these records would assist us in enforcing rule 206(4)–1 against, for example, fraudulent performance advertising.

To the extent that the proposed amendments to the rule reduce misleading or fraudulent communications, the competitive position of investment advisers could be improved because clients and potential clients would receive more accurate information regarding an adviser's performance and thus would be better able to differentiate advisers based on skill. In addition, to the extent that the proposed amendments to the rule improve the ability of clients and potential clients to differentiate advisers based on skill, potential clients may be more likely to obtain investment advice from an investment adviser, which would increase the ability of investment advisers to compete for investor capital. The proposed amendments could improve the ability of investors to better or more efficiently allocate capital across investments to the extent that the current allocation of capital is based on misleading or fraudulent information, which in turn could promote capital formation.

3. Costs

We estimate that for purposes of the PRA, advisers would incur an aggregate cost of approximately $324,800 per year for the total hours advisory personnel would spend in complying with the proposed recordkeeping requirements.[115] A possible non-quantifiable cost as a result of the proposed recordkeeping requirements would be discouraging advisers from creating and communicating custom performance information to individual clients, who would then lose the benefit of having that information available to them. Although we believe that such a response to the rule would be unlikely, a decrease in communications could reduce the ability of clients and potential clients to compare advisers and potentially decrease competition.

Included in this cost estimate is our expectation that these costs would vary among firms, depending on a number of factors, including the degree to which advisers already maintain correspondence, performance information, and the inputs and worksheets used to generate performance information. Compliance costs also would vary depending on the degree to which performance figure determination and the recordkeeping process is automated, and the amount of updating to the adviser's recordkeeping policy that would be required.

4. Alternatives

An alternative to the proposed amendments to rule 204–2 would be to not propose the amendments. The proposed amendments are designed to address a potential recordkeeping gap that could limit our ability to examine and oversee advisers and ultimately protect investors. The proposed amendment to require maintenance of the performance calculations and communications regardless of the number of clients or potential clients that receive the information would address this issue. An alternative that would require maintenance of records supporting performance claims in communications that are distributed or circulated to less than the current threshold of ten persons could reduce our ability to examine and oversee advisers. We believe that the limited costs of these amendments are appropriate given its benefits.

D. Request for Comment

We request comment on our estimates and assumptions regarding the costs and benefits of the proposed amendments to Form ADV and certain rules under the Investment Advisers Act. Commenters are requested to provide empirical data to support their views. In addition to our general request for comment on the costs and benefits of the proposed amendments, we request the following specific comment on certain aspects of our economic analysis.

- To what extent would clients and prospective clients use information reported in Form ADV to select or retain investment advisers? Are there other benefits to clients and prospective clients or to other interested parties not outlined above?
- To what extent would advisers benefit from incorporation of umbrella registration into Form ADV?
- Do commenters expect that advisers would incur costs in addition to, or that differ from, the costs we outlined above? In particular, do commenters expect that advisers would incur costs different from the costs we outline above with respect to the collection or retention of additional information?
- What are the benefits and costs of the proposed reporting thresholds for separately managed account information? Are there other thresholds that would increase benefits and be just as costly or provide similar benefits and be more cost effective? Please explain.
- Would any of the effects of these proposed amendments be large enough to affect the behavior of investment advisers or their clients? For instance, would the public disclosure of aggregate separately managed account information raise confidentiality concerns, and would disclosure impact a client's

[115] We estimate that for purposes of the PRA, the proposed amendments to rule 204–2 would increase the burden by 0.5 hours per adviser annually. We expect that the function of recording and maintaining records of performance information and communications would be performed by a combination of compliance clerks and general clerks at a cost of $64 per hour and $53 per hour, respectively. We anticipate that compliance clerks will perform an estimated 0.1 hours of this work and clerical staff will perform the remaining 0.4 hours. Therefore the total cost per adviser would be (0.1 hours × $64 per hour = $6.4) + (0.4 hour × $53 = $21.2) = approximately $28 for a total cost of $324,800 (11,600 advisers × $28).

selection of an investment adviser? Please explain.

IV. Paperwork Reduction Act Analysis

Certain provisions of our proposal contain ''collection of information'' requirements within the meaning of the Paperwork Reduction Act of 1995 (''PRA''),[116] and we are submitting the proposed collections of information to the Office of Management and Budget (''OMB'') for review in accordance with 44 U.S.C. 3507 and 5 CFR 1320.11. The titles for the collections of information we are proposing to amend are: (i) ''Form ADV;'' and (ii) ''Rule 204–2 under the Investment Advisers Act of 1940.'' 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.

A. Form ADV

Form ADV (OMB Control No. 3235–0049) is the two-part investment adviser registration form. Part 1 of Form ADV contains information used primarily by Commission staff, and Part 2 is the client brochure. We are not proposing changes to Part 2 at this time. We use the information to determine eligibility for registration with us and to manage our regulatory and examination programs. Clients use certain of the information to determine whether to hire or retain an adviser. The collection of information is necessary to provide advisory clients, prospective clients, and the Commission with information about the adviser and its business, conflicts of interest and personnel. Rule 203–1 under the Advisers Act requires every person applying for investment adviser registration with the Commission to file Form ADV. Rule 204–4 under the Advisers Act requires certain investment advisers exempt from registration with the Commission (''exempt reporting advisers'') to file reports with the Commission by completing a limited number of items on Form ADV. Rule 204–1 under the Advisers Act requires each registered and exempt reporting adviser to file amendments to Form ADV at least annually, and requires advisers to submit electronic filings through the IARD. The paperwork burdens associated with rules 203–1, 204–1, and 204–4 are included in the approved annual burden associated with Form ADV and thus do not entail separate collections of information.

These collections of information are found at 17 CFR 275.203–1, 275.204–1, 275.204–4 and 275.279.1 and are mandatory. Responses are not kept confidential. The respondents are investment advisers registered with the Commission or applying for registration with the Commission and exempt reporting advisers. Based on IARD system data as of April 2015, approximately 11,600 investment advisers are registered with the Commission, and 2,914 exempt reporting advisers file reports with the Commission.

The currently approved total annual burden estimate for all advisers of completing, amending and filing Form ADV (Part 1 and Part 2) with the Commission is 154,402 hours. This burden is based on an average total hour burden of 40.74 hours per Commission-registered adviser for the first year that an adviser completes Form ADV but excluding private fund reporting.[117]

As discussed above, we are proposing amendments to Form ADV that are designed to provide additional information about investment advisers and their clients, including clients in separately managed accounts, provide for umbrella registration for private fund advisers and clarify and address technical and other issues in certain Form ADV items and instructions. The amendments we are proposing would increase the information requested in Part 1A of Form ADV, and we expect that this would correspondingly increase the average burden to an adviser filing Form ADV.

We discuss below, in three subsections, the estimated revised collection of information requirements for Form ADV: First, we provide estimates for the revised and new burdens resulting from the proposed amendments to Part 1A; second, we determine how those estimates will be reflected in the annual burden attributable to Form ADV; and third, we calculate the total revised burdens associated with Form ADV.

1. Changes in Average Burden Estimates and New Burden Estimates

As a result of the differing burdens on advisers to complete Form ADV, we have divided the effect of the proposed amendments to the form into three subsections; first we address the change to the collection of information for registered advisers as a result of our proposed amendments to Part 1A of Form ADV excluding those changes related to private funds; second, we discuss the proposed amendments to Form ADV related to registered advisers to private funds, including the proposed amendments to Section 7.B. of Schedule D and the proposed new Schedule R that would implement umbrella registration; and third, we address the proposed amendments to Form ADV affecting exempt reporting advisers.

a. Estimated Change in Burden Related to Part 1A Proposed Amendments (Not Including Private Fund Reporting)

We are proposing amendments to Part 1A, some of which are merely technical changes or very simple in nature, and others that would require more time for an adviser to prepare a response. The paperwork burdens of filing an amended Form ADV, Part 1A would vary among advisers, depending on factors such as the size of the adviser, the complexity of its operations, and the number or extent of its affiliations. Advisers should have ready access to all the information necessary to respond to the proposed items in their normal course of operations because, among other things, they likely maintain and use the proposed requested information in connection with managing client assets. We anticipate that the responses to many of the questions would be unlikely to change from year to year, which would minimize the ongoing reporting burden associated with these questions.

i. Proposed Amendments Related to Reporting of Separately Managed Account Information

The proposed amendments to Part 1A, Items 5.K.(1), 5.K.(2), 5.K.(3) and 5.K.(4) and Schedule D, Sections 5.K.(1), 5.K.(2) and 5.K.(3) are designed to collect information about the separately managed accounts managed by advisers. Those proposed amendments would enhance existing information we receive and permit us to conduct more robust risk monitoring with respect to advisers of separately managed accounts. As discussed above, the information collected about separately managed accounts would include regulatory assets under management reported by asset type, borrowings and derivatives information, and the identity of custodians that account for at least ten percent of separately managed account regulatory assets under management. We believe much of this information is readily available to advisers to separately managed accounts because, among other things, they may maintain and use this or similar information for operational reasons (*e.g.,* trading systems) and for customary account

[116] 44 U.S.C. 3501–3520.

[117] The currently approved one-time initial cost burden for outside legal and compliance consulting fees in connection with initial preparation of Part 2 of Form ADV is $3,600,000. We are not proposing any amendments to Part 2 of Form ADV and therefore we are not modifying this estimate.

reporting to clients in separately managed accounts.

Although we understand that much of the proposed information is readily available to advisers to separately managed accounts, we expect that these amendments could subject advisers, particularly those that advise a large number of separately managed accounts and engage in borrowings and derivatives transactions on behalf of separately managed accounts, to an increased paperwork burden. For this and other reasons, as we explained above, we propose to minimize the burden on advisers with a smaller amount of separately managed account assets under management by proposing to require advisers with regulatory assets under management attributable to separately managed accounts of at least $150 million but less than $10 billion to report borrowings and derivatives information as of the date the adviser calculates its regulatory assets under management for purposes of its annual updating amendment, while those advisers with regulatory assets under management attributable to separately managed accounts of at least $10 billion would report information as of that date and six months before that date.

Considering the proposed changes in Part 1A, Items 5.K.(1), 5.K.(2), 5.K.(3) and 5.K.(4) and Schedule D, Sections 5.K.(1), 5.K.(2) and 5.K.(3) as well as our efforts to mitigate the reporting burden to advisers that manage a smaller amount of separately managed account regulatory assets under management, we estimate that each adviser will spend, on average, 2 hours to complete the questions regarding separately managed accounts in the first year a new or existing investment adviser completes these questions.[118]

ii. Other Additional Information Regarding Investment Advisers

We are proposing to add several new questions and amend existing questions on Form ADV regarding identifying information, an adviser's advisory business, and affiliations. The proposed questions primarily refine or expand existing questions or request information we believe that advisers already have for compliance purposes. For example, we propose to require each adviser to provide Central Index Key (CIK) numbers if it has one or more such numbers and to provide identifying information for social media platforms that it uses. Other proposed questions would require advisers to provide readily available or easily accessible information, such as the proposed amendment to Part IA, Item 1.O. that would require advisers to report their assets within ranges. However, some of the proposed questions may take longer for advisers to complete, such as the proposed amendments to Schedule D, Section 1.F that would require information about an adviser's 25 largest offices other than its principal office and place of business. While this information is readily available to an adviser because it should be aware of its offices, a clerk would be required to manually enter expanded information about the adviser's offices in the first year the adviser responds to the proposed item and then make updates in subsequent years.

We are proposing a number of amendments to Item 5 in addition to the questions relating to separately managed accounts discussed above. Like other new or revised items, we believe several of these new Item 5 questions would merely require advisers to provide readily available or easily accessible information, such as the number of clients and regulatory assets under management attributable to each category of clients during the last fiscal year. Advisers currently provide this information in ranges, and therefore likely already have available to them the more precise numbers to report. In addition, information such as whether the adviser uses different assets under management numbers in Part 1A vs. Part 2A of Form ADV should be readily available. Other proposed items would likely present greater burdens for some advisers but not others, depending on the nature and complexity of their businesses. For instance, the burden associated with the proposed disclosure regarding wrap fee programs or non-U.S. clients would depend on whether and to what extent an adviser allocates client assets to wrap fee programs or the extent to which the adviser has non-U.S. clients.

We estimate that these proposed amendments to Part 1A of Form ADV and Schedule D would take each adviser approximately 1 hour, on average, to complete in the first year a new or existing adviser responds to these proposed questions. We have arrived at this estimate, in part, by comparing the relative complexity and availability of the information required by the proposed amended items to the current form and its approved burden, and by considering the advisers affected by the proposed amendments.

iii. Proposed Clarifying, Technical and Other Amendments

We are proposing several further amendments to Form ADV that are designed to clarify the Form and its instructions and address technical issues. These proposed changes primarily refine existing questions, such as deleting the phrase ''newly formed adviser'' from Part IA, Item 2.A.(9) because of questions from filers about whether that phrase refers to only newly formed corporate entities, and the proposed amendments to Part IA, Item 8.B.(2) to clarify that the question applies to any related person who recommends the adviser to advisory clients or acts as a purchaser representative. Because these proposed changes do not change the scope or amount of information required to be reported on Form ADV, we do not believe that these proposed clarifying, technical and other amendments to Part 1A of Form ADV would increase or decrease the average total collection of information burden for advisers in their first year filing Form ADV.

As a result of the proposed amendments to Form ADV Part 1A discussed above, including the proposed amendments related to separately managed accounts, additional items and technical and clarifying amendments, we estimate the average total collection of information burden would increase 3 hours to 43.74 hours per adviser for the first year that an adviser completes Form ADV (Part 1 and Part 2).[119]

b. Estimated Changes in Burden Related to Private Fund Reporting Requirements

We propose several amendments to Part 1A, Schedule D, Section 7.B. that refine and enhance existing information we receive about advisers to private funds. In addition, as part of our proposal to provide for umbrella registration, we propose a new schedule to Part 1A—Schedule R—to be submitted by advisers to private funds that use umbrella registration to file a single Form ADV.

[118] Based on IARD data, as of April 1, 2015, approximately 8,500 registered investment advisers, or approximately 73% of all investment advisers registered with us, reported assets under management from clients other than registered investment companies, business development companies and pooled investment vehicles, indicating that they have assets under management attributable to separately managed accounts. Of those approximately 8,500 advisers, we estimate approximately 535 (approximately 6.3%) reported at least $10 billion in regulatory assets under management from separately managed account clients.

[119] Currently approved estimate of the average total collection if information burden per SEC registered adviser for the first year that an adviser completes Form ADV (40.74 hours) + 2 hours to complete the proposed questions about separately managed accounts + 1 hour to complete other additional information regarding investment advisers = 43.74 hours.

We believe the information required by the few proposed amendments to Part 1A, Schedule D, Section 7.B would be readily available or easily accessible to advisers to private funds, such as information about the percentage of a private fund owned by qualified clients, and the PCAOB registration number for a private fund auditor. Other amendments to Section 7.B. are designed to make the questions easier to answer, but do not cause a change in reporting burden, including moving certain ''notes'' to questions and changes to the current question regarding unqualified opinions. The currently approved total annual burden estimate for advisers making their initial filing in completing Item 7.B. and Schedule D, Section 7.B. is 1 hour per private fund. We do not estimate that the proposed amendments to Schedule D, Section 7.B would increase or decrease the total annual burden because the information is readily available to advisers.

The proposal to incorporate umbrella registration into Form ADV would codify a staff position and provide a method for certain private fund advisers that operate as a single advisory business to file a single registration form. Umbrella registration would only be available if the filing adviser and each relying adviser advise only private funds and clients in separately managed accounts that are qualified clients, as defined in rule 205–3 under the Advisers Act, that are otherwise eligible to invest in the private funds advised by the filing or a relying adviser. The filing and relying advisers would also have to satisfy certain requirements, including that each relying adviser is controlled by or under common control with the filing adviser. There has been staff guidance for single registration under defined circumstances since 2012,[120] and the proposed amendments to Form ADV would provide for umbrella registration and simplify the process of umbrella registration for advisers constituting a single advisory business. We are proposing a new schedule to Part 1A, Schedule R, that would have to be filed with respect to each relying adviser, as well as a new question to Schedule D that would link private funds reported on Form ADV to the specific (filing or relying) adviser that advises it. Schedule R would require identifying information, basis for SEC registration, and ownership information about each relying adviser.

We believe that much of the information we are proposing to include in Schedule R should be readily available to private fund advisers because it is information that they are already reporting either on Form ADV filings for separate advisers or on a single Form ADV filing, in reliance on the staff guidance. Accordingly, although these proposed requirements would be an increase in the information collected, the increased burden should largely be attributable to data entry and not data collection. Furthermore, some advisers who currently separately file Form ADV for each of their advisers may cumulatively have a reduced Form ADV burden by switching to umbrella registration should the new process be codified and Schedule R available. We also believe that new filing advisers using umbrella registration would readily have information available about relying advisers, because they are operating as a single advisory business.

There is no currently approved annual burden estimate of completing Schedule R because it is a new Schedule. Taking into account the scope of information we propose to request, our understanding that much of the information is readily available and currently required on Form ADV, and our belief that many private fund advisers that file an umbrella registration will have only a small number of relying advisers,[121] we estimate that advisers to private funds that elect to rely on umbrella registration will spend on average 1 hour per filing adviser completing new Schedule R for the first time.

c. Estimated Changes in Burden Related to Exempt Reporting Adviser Reporting Requirements

Exempt reporting advisers are required to complete a limited number of items in Part 1A of Form ADV (consisting of Items 1, 2.B., 3, 6, 7, 10, 11 and corresponding schedules), and are not required to complete Part 2 and would not be eligible to file proposed Schedule R. The proposed amendments to Part 1A would revise only Items 1 and 7 for exempt reporting advisers. We believe the information required by these proposed revisions should be readily available to any adviser as part of their ongoing operations and management of client assets, and, moreover, are unlikely to require additional reporting for most exempt reporting advisers. For instance, we estimate that almost all exempt reporting advisers currently have five or fewer offices (the number of offices currently required by Form ADV) and thus would not have to provide information on additional offices.[122] Accordingly, we do not expect that the proposed amendments would increase or decrease the currently approved total annual burden estimate per exempt reporting adviser initially completing these items in Form ADV, other than Item 7.B., of 2 hours. We also do not expect that the proposed amendments would increase or decrease the currently approved total annual burden estimate per exempt reporting adviser initially completing Item 7.B. and Section 7.B. of Schedule D of 1 hour per private fund.

2. Annual Burden Estimates

a. Estimated Annual Burden Applicable to All Registered Investment Advisers

i. Estimated Initial Hour Burden (Not Including Burden Applicable to Private Funds) For First Year Adviser Completes Form ADV (Part 1 and Part 2)

We estimate that, as a result of the proposed amendments to Form ADV Part 1A discussed above, other than those applicable to private funds, the average total collection of information burden per respondent would increase 3 hours to 43.74 hours per adviser for the first year that an adviser completes Form ADV (Part 1 and Part 2).

Approximately 11,600 investment advisers are currently registered with the Commission.[123] Not including private fund reporting, the estimated aggregate annual burden applicable to these advisers would be 507,384 hours [124] (34,800 hours of it attributable to the proposed amendments).[125] As with the Commission's prior Paperwork Reduction Act estimates for Form ADV, we believe that most of the paperwork burden would be incurred in advisers' initial submission of the amended Form ADV, and that over time this burden would decrease substantially because the paperwork burden would be limited

[120] *See* 2012 ABA Letter, *supra* note 9.

[121] Based on IARD data as of April1, 2015, approximately 750 investment advisers rely on the 2012 ABA Letter to file Form ADV on behalf of themselves and 2,500 relying advisers, an average of approximately 3 relying advisers per filing adviser.

[122] Based on IARD data as of April 1, 2015, only 17 ERAs reported on Form ADV that they had five or more other offices.

[123] Based on IARD data as of April 1, 2015. We include currently registered advisers in the estimated initial hour burden calculation because, for purposes of estimating burdens under the Paperwork Reduction Act, we assume that every new and existing registered adviser completes an initial registration in a three year period, which is the period after which estimates are required to be renewed.

[124] 43.74 hour per-adviser burden × 11,600 advisers = 507,384 hours.

[125] 3 hour per-adviser additional burden × 11,600 advisers = 34,800 hours.

to updating information.[126] Amortizing the burden imposed by Form ADV over a three-year period to reflect the anticipated period of time that advisers would use the revised Form would result in an average annual burden of an estimated 169,128 hours per year[127] (11,600 hours per year of it attributable to the proposed amendments),[128] or 14.58 hours per year for each adviser currently registered with the Commission.[129]

Based on IARD system data, we estimate that there will be approximately 1,000 new investment advisers filing Form ADV with us annually. Therefore, we estimate that the total annual burden applicable to these advisers for the first year that they complete Form ADV but excluding private fund reporting requirements is 43,740 hours (1,000 advisers x 43.74 hours). Amortizing the burden imposed by Form ADV for new registrants over a three-year period to reflect the anticipated period of time that advisers would use the revised Form would result in an average annual burden of an estimated 14,580 hours per year[130] (1,000 of it attributable to the proposed amendments).[131] We therefore estimate the total hour burden to be 183,708 hours per year.[132]

ii. Estimated Initial Hour Burden Applicable to Registered Advisers to Private Funds

The amount of time that a registered adviser managing private funds would incur to complete Item 7.B. and Section 7.B. of Schedule D will vary depending on the number of private funds the adviser manages. Of the advisers currently registered with us, we estimate that approximately 4,364 registered advisers advise a total of 28,532 private funds, and, on average, 300 SEC-registered advisers annually would make their initial filing with us reporting approximately 1,100 private funds.[133] The currently approved annual burden estimate for advisers making their initial filing in completing Item 7.B. and Schedule D, Item 7.B. is 1 hour per private fund. As a result, we estimate that the private fund reporting requirements that are applicable to registered investment advisers would add 29,632 hours to the overall annual burden applicable to registered advisers.[134] As noted above, we believe most of the paperwork burden would be incurred in connection with advisers' initial submission of Form ADV, and that over time the burden would decrease substantially because it would be limited to updating (instead of compiling) information. Amortizing this burden over three years, as we did above with respect to the initial filing of the rest of the form, results in an average estimated burden of 9,877 hours per year.[135]

We also propose a new Schedule R to Form ADV for umbrella filing. Of the advisers currently registered with us, we estimate based on current Form ADV filings that approximately 750 registered advisers currently submit a single Form ADV on behalf of themselves and approximately 2,500 relying advisers.[136] Taking into account the scope of information we propose to request and our understanding that much of the information is readily available and is already reported by advisers, we estimate that advisers to private funds that elect to rely on umbrella registration will spend 1 hour per filing adviser completing new Schedule R. As a result, we estimate that umbrella registration would add 750[137] hours to the annual burden applicable to registered advisers. We estimate that, on average, 65 SEC registered advisers annually would make their initial filing with us as filing advisers, increasing the overall annual burden for advisers to private funds an additional 65 hours, or 815 hours in total. Amortizing these hours for a three year period as with the rest of the burdens associated with Form ADV, results in 272 additional hours per year.[138]

iii. Estimated Annual Burden Associated With Amendments, New Brochure Supplements, and Delivery Obligations

The current approved collection of information burden for Form ADV has three elements in addition to those discussed above: (1) The annual burden associated with annual and other amendments to Form ADV; (2) the annual burden associated with creating new Part 2 brochure supplements for advisory employees throughout the year; and (3) the annual burden associated with delivering codes of ethics to clients as a result of the offer of such codes contained in the brochure. We anticipate that our proposed amendments to Form ADV would increase the currently approved annual burden estimate associated with annual amendments to Form ADV from 6 hours to 7 hours per adviser, but would not impact interim updating amendments to Form ADV.

We continue to estimate that, on average, each adviser filing Form ADV through the IARD will likely amend its form two times during the year. We estimate, based on IARD data, that advisers, on average, make one interim updating amendment (at an estimated 0.5 hours per amendment) and one annual updating amendment (at an estimated 7 hours per amendment) each year.[139]

In addition, the currently approved annual burden estimates are that each investment adviser registered with us will, on average, spend 1 hour per year making interim amendments to brochure supplements,[140] and an additional 1 hour per year to prepare new brochure supplements as required by Part 2.[141] The currently approved annual burden estimate is that advisers spend an average of 1.3 hours annually to meet obligations to deliver codes of ethics to clients.[142] We are not changing these estimates as the proposed amendments do not affect these requirements. Therefore we estimate the total annual burden for advisers registered with us attributable to amendments, brochure supplements and obligations to deliver codes of ethics to be 125,280 hours.[143]

iv. Estimated Annual Cost Burden

The currently approved total annual collection of information burden estimate for Form ADV has a one-time initial cost for outside legal and compliance consulting fees in

[126] We discuss the burden for advisers making annual updating amendments to Form ADV in section iii below.

[127] 507,384 hours/3 = 169.128 hours.

[128] 34,800 hours/3 = 11,600 hours.

[129] 169,128 hours/11,600 advisers = 14.58 hours.

[130] 43,740 hours/3 = 14,580 hours.

[131] 3,000 hours/3 = 1,000 hours.

[132] 14,580 hours for new registrants + 169,128 hours for existing registrants = 183,708 hours.

[133] Based on IARD data as of April 1, 2015. We include existing funds of currently registered advisers in the estimated initial hour burden calculation because, for purposes of estimating burdens under the Paperwork Reduction Act, we assume that every existing registered adviser completes an initial filing completing Item 7.B and Schedule D, Item 7.B per fund in a three year period, which is the period after which estimates are required to be renewed.

[134] 1 hour × 28,532 private funds = 28,532 hours. 1 hour × 1,100 private funds = 1,100 hours. 28,532 hours + 1,100 hours = 29,632 hours.

[135] 29,632 hours/3 = 9,877 hours.

[136] Based on IARD data as of April 1, 2015.

[137] 750 filing advisers × 1 hour per completing Schedule R = 750 hours.

[138] 815 hours/3 = 271.66 hours.

[139] (11,600 advisers × 0.5 hours/other than annual amendment) + (11,600 advisers × 7 hours/annual amendment) = 87,000 hours.

[140] 11,600 hours attributable to interim amendments to the brochure supplements = 11,600 advisers × 1 hour = 11,600 hours.

[141] 11,600 hours attributable to new brochure supplements = 11,600 advisers × 1 hour = 11,600 hours.

[142] 15,080 hours for the delivery of codes of ethics = 11,600 advisers × 1.3 hours = 15,080 hours.

[143] 87,000 hours + 11,600 hours + 11,600 hours + 15,080 hours = 125,280 hours.

connection with the initial preparation of Part 2 of Form ADV. We do not anticipate that the amendments we are proposing to Form ADV will affect the per adviser cost burden estimates for outside legal and compliance consulting fees. In addition to the estimated legal and compliance consulting fees, investment advisers of private funds incur costs with respect to the requirement for investment advisers to report the fair value of private fund assets.

We expect that 1,000 new advisers will register annually with the Commission. We estimate that the initial cost related to preparation of Part 2 of Form ADV would be $4,400 for legal services and $5,000 for compliance consulting services, in each case, for those advisers who engaged legal counsel or consultants. We anticipate that a quarter of these advisers would seek the help of outside legal services and half would seek the help of compliance consulting services. Accordingly, we estimate that 250 of these advisers would use outside legal services, for a total cost burden of $1,100,000,[144] and 500 advisers would use outside compliance consulting services, for a total cost burden of $2,500,000,[145] resulting in a total cost burden among all respondents of $3,600,000 for outside legal and compliance consulting fees related to drafting narrative brochures.[146]

We estimate that 3% of registered advisers have at least one private fund client that may not be audited. These advisers therefore may incur costs to fair value their private fund assets. Based on current IARD data, 4,364 registered advisers currently advise private funds. We therefore estimate that approximately 131 registered advisers may incur costs of $37,625 each on an annual basis, for an aggregate annual total cost of $4,928,875.[147]

Together, we estimate that the total cost burden among all respondents for outside legal and compliance consulting fees related to third party or outside valuation services and for drafting outside legal and compliance consulting fees to be $8,528,875.[148]

b. Estimated Annual Burden Applicable to Exempt Reporting Advisers

i. Estimated Initial Hour Burden

Based on IARD system data, there are approximately 2,914 exempt reporting advisers currently filing reports with the SEC.[149] The paperwork burden applicable to these exempt reporting advisers consists of the burden attributable to completing a limited number of items in Form ADV Part 1A as well as the burden attributable to the private fund reporting requirements of Item 7.B. and Section 7.B. of Schedule D.

The currently approved estimate of the average total collection of information burden per exempt reporting adviser for the first year that an exempt reporting adviser completes a limited subset of Part 1 of Form ADV, other than Item 7.B. and Section 7.B. of Schedule D, is 2 hours. As discussed above, we do not anticipate that our proposed amendments to Form ADV would affect the per exempt reporting adviser burden estimate. Based on IARD system data, we estimate that there will be 500 new exempt reporting advisers filing Form ADV annually. Therefore, we estimate that the total annual burden applicable to the existing and new exempt reporting advisers for the first year that they complete Form ADV but excluding private fund reporting requirements is 6,828 hours.[150] Amortizing the burden imposed by Form ADV over a three-year period to reflect the anticipated period of time that advisers would use the revised Form ADV results in an average annual burden of an estimated 2,276 hours per year.[151]

As discussed above, we estimate the burden of completing Item 7.B. and Section 7.B. of Schedule D to be 1 hour per private fund. We do not anticipate that our proposed amendments to Form ADV would affect the per exempt reporting adviser burden of completing Item 7.B. and Section 7.B. of Schedule D. Based on IARD data, we estimate that, on average, the 2,914 current exempt reporting advisers will report 9,896 funds and the projected 500 new exempt reporting advisers making their initial filing will report approximately 1,000 funds, resulting in a total annual burden of 10,896 hours.[152] Amortizing this total burden over three years as we did above for registered advisers results in an average burden of an estimated 3,632 hours per year,[153] or approximately 1 hour per year, on average, for each exempt reporting adviser.[154]

ii. Estimated Annual Burden Associated With Amendments and Final Filings

In addition to the burdens associated with initial completion and filing of the portion of the form that exempt reporting advisers are required to prepare, we estimate that, based on IARD data, each exempt reporting adviser would amend its form 2 times per year. On average, these consist of one interim updating amendment (at an estimated 0.5 hours per amendment)[155] and one annual updating amendment (at an estimated 1 hour per amendment)[156] each year. In addition, we anticipate 200 final filings by exempt reporting advisers annually (at an estimated 0.1 hours per filing).[157] We do not anticipate that our proposed amendments to Form ADV would affect the per exempt reporting adviser burden. The total annual burden associated with exempt reporting advisers filing amendments and final filings is 4,391 hours.[158]

3. Total Revised Burdens

The revised total annual collection of information burden for SEC registered advisers to file and complete the revised Form ADV (Parts 1 and 2), including the initial burden for both existing and anticipated new registrants, private fund reporting, plus the burden associated with amendments to the form, preparing brochure supplements and delivering codes of ethics to clients, is estimated to be approximately 319,137 hours per year, for a monetized total of $79,784,000.[159]

[144] 25% × 1000 SEC registered advisers = approximately 250 advisers. $4,400 for legal services × 250 advisers = $1,100,000.

[145] 50% × 1000 SEC registered advisers = 500 advisers. $5,000 for consulting services × 500 advisers = $2,500,000.

[146] $1,100,000 + $2,500,000 = $3,600,000.

[147] 131 advisers × $37,625 = $4,928,875.

[148] $3,600,000 + $4,928,875 = $8,528,875.

[149] Based on IARD data as of April 1, 2015. We include existing exempt reporting advisers and their private funds in the estimated initial hour burden calculation because, for the purpose of estimating burdens under the Paperwork Reduction Act, we assume that every new and existing exempt reporting adviser completes an initial Form ADV in a three year period, which is the period after which estimates are required to be renewed.

[150] 2 hours × (2,914 reporting exempt reporting advisers + 500 new exempt reporting advisers) = 6,828 hours.

[151] 6,828 hours/3 = 2,276 hours.

[152] 9,896 funds + 1,000 funds = 10,896 funds. 10,896 × 1 hour = 10,896 hours.

[153] 10,896 hours/3 years = 3,632 hours per year.

[154] 3,632 hours per year/3,414 exempt reporting advisers = 1 hour per year.

[155] 2,914 × .5 hours = 1,457 hours.

[156] 2,914 × 1 hour = 2,914 hours.

[157] 200 × 0.1 hours = 20 hours.

[158] 1,457 hours + 2,914 hours + 20 hours = 4,391 hours. Exempt reporting advisers are not required to complete Part 2 of Form ADV and so will not incur an hour burden to prepare new brochure supplements or the cost for preparation of the brochure. Exempt reporting advisers also do not have an obligation to deliver codes of ethics to clients as required by Part 2 of Form ADV.

[159] 183,708 hours per year attributable to initial preparation of Form ADV + 9,877 hours per year attributable to initial private fund reporting

Continued

The revised total annual collection of information burden for exempt reporting advisers to file and complete the required Items of Part 1A of Form ADV, including the burdens associated with private fund reporting, amendments to the form and final filings, would be approximately 10,299 hours per year, for a monetized total of $2,574,500.[160]

We estimate that if the proposed amendments to Form ADV are adopted, the total annual hour burden for the form would be 329,436 hours and a monetized total of $82,358,500.[161] This is an increase of 175,034 hours and $45,688,073 from the currently approved burden estimates,[162] which is attributable primarily to the currently approved burden estimates not considering the amortized annual burden of Form ADV on existing registered advisers and exempt reporting advisers. The resulting blended average per adviser burden for Form ADV is 22.69 hours (for a monetized total of $5,674.42),[163] which consists of an average annual burden of 27.51 hours [164] for each of the estimated 11,600 SEC registered advisers, and 3.53 hours [165] for each of the estimated 2,914 exempt reporting advisers.

Registered investment advisers are also expected to incur an annual cost burden of $8,528,875, an increase of $4,928,875 from the current approved cost burden estimate of $3,600,000. The increase in annual cost burden is attributable to the currently approved burden not considering the cost to advisers to fair value private fund assets.

B. Rule 204–2

Rule 204–2 (OMB Control No. 3235–0278) requires investment advisers registered, or required to be registered under section 203 of the Act, to keep certain books and records relating to their advisory business. The collection of information under rule 204–2 is necessary for the Commission staff to use in its examination and oversight program, and the information is generally kept confidential.[166] The collection of information is mandatory.

The proposed amendments to rule 204–2 would require investment advisers to make and keep the following records: (i) Documentation necessary to demonstrate the calculation of the performance the adviser distributes to any person, and (ii) all written communications received or sent relating to the adviser's performance.

The currently approved total annual burden for rule 204–2 is based on an estimate of 10,946 registered advisers subject to rule 204–2 and an estimated average burden of 181.45 burden hours each year per adviser, for a total of 1,986,152 hours. Based upon updated IARD data, the current approximate number of investment advisers is 11,600. As a result in the increase in the number of advisers registered with the Commission since the current total annual burden estimate was approved, the total burden estimate has increased by 118,668 hours.[167] We estimate that most advisers provide, or seek to provide, performance information to their clients. Under the proposed amendments, each adviser would be required to retain the records in the same manner, and for the same period of time, as other books and records under rule. We believe that the documentation necessary to support the performance calculations is customarily maintained, or required to be maintained by advisers already in account statements or portfolio management systems. We also believe that most advisers already maintain this information in their books and records, in order to show compliance with the Advisers Act advertising rule, rule 206(4)–1. Accordingly, the proposed amendments to rule 204–2 are estimated to increase the burden by approximately 0.5 hours per adviser annually for a total increase of 5,800 hours.[168] The revised annual aggregate burden would be 2,110,620 hours.[169] The revised average burden per adviser would be approximately 182 hours per year.[170]

Advisers would likely use a combination of compliance clerks and general clerks to make and keep the information and records required under the rule. The currently approved total cost burden is $108,708,557.10. We estimate the hourly wage for compliance clerks to be $64 per hour, including benefits, and the hourly wage for general clerks to be $53 per hour, including benefits.[171] For each adviser, 182 burden hours would be required to make and keep the information and records required under the rule. We anticipate that compliance clerks will perform an estimated 32 hours of this work, and clerical staff will perform the remaining 150 hours. The total cost per respondent therefore will be an estimated $9,998,[172] for a total burden cost of approximately $115,976,800,[173] an increase of $7,268,243 from the currently approved total cost per respondent.[174] The increase in cost is attributable to a larger registered investment adviser population since the most recent approval as well as the proposed rule 204–2 amendments discussed in this release.

C. Request for Comment

We request comment on whether our estimates for the change in burden hours and associated costs described above are reasonable. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) Evaluate whether the proposed collections of information are necessary

requirements + 272 hours per year for initial umbrella registration + 125,280 hours per year for attributable to amendments, brochure supplements and obligations to deliver codes of ethics = 319,137 hours. We expect that the performance of this function would most likely be equally allocated between a senior compliance examiner and a compliance manager, or persons performing similar functions. Data from the SIFMA *Management and Professional Earnings Report,* modified to account for an 1,800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, suggest that costs for these positions are $217 and $283 per hour, respectively. (159,568 hours × $217) + (159,568 hours × 283) = $79,784,000.

[160] 2,276 hours per year attributable to initial preparation of Form ADV + 3,632 hours per year attributable to initial private fund reporting requirements + 4,391 hours per year for amendments and final filings = 10,299 hours. We expect that the performance of this function would most likely be equally allocated between a senior compliance examiner and a compliance manager, or persons performing similar functions. Data from the SIFMA *Management and Professional Earnings Report,* modified to account for an 1,800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits and overhead, suggest that costs for these positions are $217 and $283 per hour, respectively. (5,149 × $217) + (5,149 × $283) = $2,574,500.

[161] 319,137 hours + 10,299 hours = 329,436 hours. $79,784,000 + $2,574,500 = $82,358,500.

[162] 329,436 hours − 154,402 hours = 175,034 hours. $82,358,500 − $36,670,427 = $45,688,073.

[163] 329,436 hours/(11,600 registered advisers + 2,914 exempt reporting advisers) = 22.69 hours. $82,358,500/(11,600 registered advisers + 2,914 exempt reporting advisers) = $5,674.42.

[164] 319,137 hours/11,600 registered advisers = 27.51 hours.

[165] 10,299 hours/2,914 exempt reporting advisers = 3.53 hours.

[166] *See* section 210(b) of the Advisers Act.

[167] 11,600 advisers × 181.45 hours = 2,104,820 hours. 2,104,820 hours − 1,986,152 hours = 118,668 hours.

[168] 11,600 advisers × 0.5 hours = 5,800 hours.

[169] 1,986,152 (current approved burden) + 118,668 (burden for additional registrants) + 5,800 (burden for proposed amendments) = 2,110,620 hours.

[170] 2,110,620 hours/11,600 advisers = 181.9 hours.

[171] Our hourly wage rate estimate for a compliance manager and compliance clerk is based on data from the SIFMA *Office Salaries in the Securities Industry Report 2013,* modified by Commission staff to account for an 1800-hour work-year and multiplied by 5.35, for compliance clerks to account for bonuses, firm size, employee benefits and overhead.

[172] (32 hours per compliance clerk × $64) + (150 hours per clerical staff × $53) = ($2,048 + $7,950) = $9,998.

[173] $9,998 per adviser × 11,600 advisers = approximately $115,976,800.

[174] $115,976,800 − $108,708,557 = $7,268,243.

for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) determine whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

The agency has submitted the proposed collection of information to OMB for approval. Persons wishing to submit comments on the collection of information requirements of the proposed amendments should direct them 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. S7–09–15. As OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–09–15, and be submitted to the Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE., Washington, DC 20549–2736.

V. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis (''IRFA'') in accordance with section 3(a) of the Regulatory Flexibility Act [175] regarding our proposed amendments to Form ADV and rule 204–2 and our proposed technical amendments to certain other rules under the Advisers Act.

A. Reason for the Proposed Action

The proposed amendments to Form ADV are designed to provide the Commission with additional information about registered investment advisers, including information about separately managed accounts, provide for umbrella registration for multiple investment advisers operating as a single advisory business, and provide technical, clarifying and other amendments to certain Form ADV provisions. The proposed amendments to Form ADV would improve the information provided by investment advisers to the Commission and the public.

We are also proposing amendments to the Advisers Act books and records rule that would require advisers to make and keep supporting documentation that demonstrates performance calculations or rates of return in any written communications that the adviser circulates or distributes, directly or indirectly, to any person. We believe that the proposed amendments to the books and records rule would improve investor protections by providing useful information in examining and evaluating advisers' performance claims.

Finally, we are proposing technical amendments to certain rules under the Advisers Act to remove transition provisions where the transition process is complete.

B. Objectives and Legal Basis

The proposed amendments to Form ADV would address certain data gaps and enhance current reporting provided by investment advisers, particularly about separately managed accounts, in order to increase our ability to effectively oversee and monitor their activities, and to incorporate umbrella registration for private fund advisers that operate as a single advisory business. The proposed amendments to the Advisers Act books and records rule would require advisers to make and keep supporting documentation that demonstrates performance calculations or rates of return in any written communications that the adviser circulates or distributes, directly and indirectly, to any persons.

The Commission is proposing amendments to Form ADV under section 19(a) of the Securities Act of 1933 [15 U.S.C. 77s(a)], sections 23(a) and 28(e)(2) of the Securities Exchange Act of 1934 [15 U.S.C. 78w(a) and 78bb(e)(2)], section 319(a) of the Trust Indenture Act of 1939 [15 U.S.C. 7sss(a)], section 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–37(a)], and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)]. The Commission is proposing to amend rule 204–2 pursuant to the authority set forth in sections 204 and 211 of the Advisers Act [15 U.S.C. 80b–4 and 80b–11]. The Commission is proposing to amend rule 202(a)(11)(G)–1 pursuant to authority in sections 202(a)(11)(G) and 206A of the Advisers Act [15 U.S.C. 80b–2(a)(11)(G) and 80b–6A]. The Commission is proposing to amend rule 203–1 pursuant to authority in section 206A of the Advisers Act [15 U.S.C. 80b–6A]. The Commission is proposing to rescind rule 203A–5 and amend rule 204–1 pursuant to authority in sections 204 and 211(a) of the Advisers Act [15 U.S.C. 80b–4 and 80b–11(a)].

C. Small Entities Subject to the Rule and Rule Amendments

In developing these proposals, we have considered their potential impact on small entities that would be subject to the proposed amendments. The proposed amendments would affect all advisers registered with the Commission and exempt reporting advisers, including small entities. Under Commission rules, for the purposes of the Advisers Act and the Regulatory Flexibility Act, an investment adviser generally is a small entity if it: (1) Has assets under management having a total value of less than $25 million; (2) did not have total assets of $5 million or more on the last day of the most recent fiscal year; and (3) does not control, is not controlled by, and is not under common control with another investment adviser that has assets under management of $25 million or more, or any person (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year.[176]

Our proposed rule and Form ADV amendments would not affect most advisers that are small entities (''small advisers'') because they are generally registered with one or more state securities authorities and not with us. Under section 203A of the Advisers Act, most small advisers are prohibited from registering with the Commission and are regulated by state regulators. Based on IARD data, we estimate that as of April 1, 2015, approximately 489 advisers that are small entities are registered with the Commission.[177] Because these entities are registered, they, like all SEC-registered investment advisers, would all be subject to the proposed amendments to Form ADV, rule 204–2 and other Advisers Act rules.

The only small entity exempt reporting advisers that would be subject to the proposed amendments would be exempt reporting advisers that maintain their principal office and place of

[175] 5 U.S.C. 603(a).

[176] Rule 0–7(a) under the Advisers Act.

[177] Based on SEC-registered investment adviser responses to Form ADV, Item 5.F and Item 12.

business in Wyoming or outside the United States. Advisers with less than $25 million in assets under management generally are prohibited from registering with us unless they maintain their principal office and place of business in Wyoming or outside the United States. Exempt reporting advisers are not required to report regulatory assets under management on Form ADV and therefore we do not have a precise number of exempt reporting advisers that are small entities. Exempt reporting advisers are required to report in Part 1A, Schedule D the gross asset value of each private fund they manage.[178] Based on responses to that question, we estimate that there is approximately 1 exempt reporting adviser with its principal office and place of business in Wyoming that meets the definition of small entity. Advisers with their principal office and place of business outside the United States may have additional assets under management other than what is reported in Schedule D. Based on IARD filings, approximately 18% of registered investment advisers with their principal office and place of business outside the U.S. are small entities. There are approximately 1,148 exempt reporting advisers with their principal office and place of business outside the U.S. We estimate that 18% of those advisers, approximately 206, are small entities.

D. Reporting, Recordkeeping and Other Compliance Requirements

The proposed amendments to Form ADV and rule 204–2 would impose certain reporting, recordkeeping, and compliance requirements on all Commission-registered advisers, including small advisers. All Commission-registered small advisers would be required to file Form ADV, including the proposed amendments, and all Commission-registered small advisers would be subject to the proposed amended recordkeeping requirements. We do not believe that our proposed technical amendments to other Advisers Act rules would impose different reporting, recordkeeping, or other compliance requirements on small advisers.

Proposed Form ADV Amendments

The proposed amendments to Form ADV would require registered investment advisers to report different or additional information than what is currently required. Approximately 489 small advisers currently registered with us would be subject to these requirements. We expect these 489 small advisers to spend, on average, 3 hours to respond to the proposed new and amended questions, not including items relating to private fund reporting.[179] We expect the aggregate cost to small advisers associated with this process would be $366,500.[180]

In addition, of these 489 small advisers, we estimate that 4 small advisers currently rely on the 2012 ABA Letter to act as filing advisers for their relying advisers.[181] We expect that our proposed changes to codify umbrella registration would take 4 hours [182] in the aggregate, at a cost to small advisers of $1,000.[183] We do not know how many additional small advisers would use umbrella registration if it was incorporated into Form ADV. We estimate for purposes of the Paperwork Reduction Act that they would also have a burden of 1 hour per filing adviser.

We do not estimate any increase or decrease in burden related to our proposed amendments for private fund advisers, other than the hours related to proposed Schedule R or for exempt reporting advisers. The total estimated labor costs associated with our amendments that we expect will be borne by small advisers is $367,500.[184]

Proposed Amendments to Books and Records Rule

Our proposed amendments to rule 204–2's performance information recordkeeping provisions are meant to require investment advisers to make and keep the following records: (i) Documentation necessary to demonstrate the calculation of the performance the adviser distributes to any person, and (ii) all written communications received or sent relating to the adviser's performance. These amendments would create reporting, recordkeeping, and other compliance requirements for small advisers. As discussed in the Paperwork Reduction Act Analysis in section IV. above, the proposed amendments to rule 204–2 would increase the burden by approximately 0.5 hours per adviser. We expect the aggregate cost to small advisers associated with our proposed amendments would be $13,415.[185]

E. Duplicative, Overlapping, or Conflicting Federal Rules

We believe there are no federal rules that duplicate, overlap, or conflict with the proposed rule and form amendments.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant adverse impact on small entities. In connection with the proposed Form ADV and rule amendments, the Commission considered the following alternatives: (i) The establishment of differing compliance or reporting requirements that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance and reporting requirements under the proposed Form ADV and rule amendments for such small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the proposed Form ADV and rule amendments, or any part thereof, for such small entities.

Regarding the first and second alternatives, for certain proposed reporting requirements regarding separately managed accounts on Form ADV, we propose to require semi-annual information filed annually for

[178] *See* Form ADV, Part 1A, Schedule D, Section 7.B.(1).A, Question 11.

[179] *See supra* section IV. of this release.

[180] We expect that performance of this function will most likely be equally allocated between a senior compliance examiner and a compliance manager. Data from the SIFMA *Management and Professional Earnings Report,* modified to account for an 1,800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, suggest that costs for these positions are $217 and $283 per hour, respectively. 489 small advisers × 3 hours = 1,467 hours. [733 hours × $217 = $159,061] + [733 hours × $283 = $207,439] = $366,500.

[181] Based on IARD data as of April 1, 2015.

[182] For purposes of the Paperwork Reduction Act, we estimated in section IV. of this release that amendments to codify umbrella registration would take an additional 1 hour per filing adviser.

[183] As discussed in connection with the Paperwork Reduction Act, we expect that performance of this function will most likely be equally allocated between a senior compliance examiner and a compliance manager. Data from the SIFMA *Management and Professional Earnings Report,* modified to account for an 1,800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, suggest that costs for these positions are $217 and $283 per hour, respectively. 4 filing advisers × 1 hour = 4 hours. [2 hours × $217 = $434] + [2 hours × $283 = 566] = $1,000.

[184] $366,500 + $1,000 = $367,500. These costs are discussed in Paperwork Reduction Act Analysis in section IV. of the release.

[185] As discussed in connection with the Paperwork Reduction Act, we expect that performance of this function will most likely be allocated between compliance clerks and general clerks with compliance clerks performing 17% of the function and general clerks performing 83% of the function. Data from the SIFMA *Office Salaries in the Securities Industry Report 2013,* modified to account for an 1,800-hour work year and multiplied by 5.35 to account for bonuses, firm size, employee benefits, and overhead, suggest that costs for these positions are $64 and $53, respectively. 489 small advisers × 0.5 hours = 244.5 hours. [0.17 × 244.5 hours × $64 = $2,660] + [0.83 × 244.5 hours × $53 = $10,755] = $13,415.

advisers with regulatory assets under management attributable to separately managed accounts of $10 billion or more and annual information for other advisers.[186] Requiring less detailed reporting on these items for advisers with less than $10 billion is designed to balance our regulatory needs for this type of information while seeking to minimize the reporting burden on advisers that manage a smaller amount of separately managed account assets where appropriate.

Regarding the first and fourth alternatives for the other proposed amendments to Form ADV and Advisers Act rules, we do not believe that different compliance or reporting requirements or an exemption from coverage of the Form ADV and rule amendments, or any part thereof, for small entities, would be appropriate. Because the protections of the Advisers Act are intended to apply equally to clients of both large and small advisers, it would be inconsistent with the purposes of the Act to specify differences for small entities under the proposed amendments.

Regarding the second alternative for the other proposed amendments to Form ADV and the Advisers Act rules, we will continue to consider whether further clarification, consolidation, or simplification of the compliance requirements is feasible or necessary, but we believe that the current proposal is clear. The remaining Form ADV amendments do not change that all SEC-registered advisers use a single form, Form ADV, and an existing filing system, IARD, for reporting and registration purposes, and this would not change for small entities. With respect to the rule 204–2 amendments, we believe that the same requirements should apply to all advisers to permit our staff to more effectively examine them.

Regarding the third alternative, we consider using performance rather than design standards with respect to the proposed amendments to Form ADV and rule 204–2 to be inconsistent with our statutory mandate to protect investors, as advisers must provide certain registration information and maintain books and records in a uniform and quantifiable manner so that it is useful to our regulatory and examination program.

G. Solicitation of Comments

We encourage written comments on matters discussed in this IRFA. We solicit comment on the number of small entities subject to the proposed Form ADV and rule amendments; and whether the proposed Form ADV and rule amendments discussed in this release could have an effect on small entities that has not been considered. We request that commenters describe the nature of any impact on small entities and provide empirical data to support the extent of such impact.

VI. Consideration of Impact on the Economy

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, or ''SBREFA,'' [187] we must advise OMB whether a proposed regulation constitutes a ''major'' rule. Under SBREFA, a rule is considered ''major'' where, if adopted, it results in or is likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers or individual industries; or (3) significant adverse effects on competition, investment or innovation.

We request comment on the potential impact of the proposed amendments on the economy on an annual basis. Commenters are requested to provide empirical data and other factual support for their views to the extent possible.

VII. Statutory Authority

The Commission is proposing amendments to Form ADV under section 19(a) of the Securities Act of 1933 [15 U.S.C. 77s(a)], sections 23(a) and 28(e)(2) of the Securities Exchange Act of 1934 [15 U.S.C. 78w(a) and 78bb(e)(2)], section 319(a) of the Trust Indenture Act of 1939 [15 U.S.C. 7sss(a)], section 38(a) of the Investment Company Act of 1940 [15 U.S.C. 80a–37(a)], and sections 203(c)(1), 204, and 211(a) of the Investment Advisers Act of 1940 [15 U.S.C. 80b–3(c)(1), 80b–4, and 80b–11(a)]. The Commission is proposing to amend rule 204–2 pursuant to the authority set forth in sections 204 and 211 of the Advisers Act [15 U.S.C. 80b–4 and 80b–11]. The Commission is proposing to amend rule 202(a)(11)(G)–1 pursuant to authority in sections 202(a)(11)(G) and 206A of the Advisers Act [15 U.S.C. 80b–2(a)(11)(G) and 80b–6A]. The Commission is proposing to amend rule 203–1 pursuant to authority in section 206A of the Advisers Act [15 U.S.C. 80b–6A]. The Commission is proposing to rescind rule 203A–5 and amend rule 204–1 pursuant to authority in sections 204 and 211(a) of the Advisers Act [15 U.S.C. 80b–4 and 80b–11(a)].

[186] Proposed Form ADV, Part 1A, Schedule D, Sections 5.K.(1).

[187] Public Law 104–121, Title II, 110 Stat. 857 (1996) (codified in various sections of 5 U.S.C., 15 U.S.C. and as a note to 5 U.S.C. 601).

List of Subjects in 17 CFR Parts 275 and 279

Reporting and recordkeeping requirements; Securities.

Text of Rule and Form Amendments

For the reasons set forth in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows.

PART 275—RULES AND REGULATIONS, INVESTMENT ADVISERS ACT OF 1940

■ 1. The authority citation for part 275 continues to read in part as follows:

Authority: 15 U.S.C. 80b–2(a)(11)(G), 80b–2(a)(11)(H), 80b–2(a)(17), 80b–3, 80b–4, 80b–4a, 80b–6(4), 80b–6a, and 80b–11, unless otherwise noted.

§ 275.202(a)(11)(G)–1 [Amended]

■ 2. Amend § 275.202(a)(11)(G)–1 by removing paragraph (e).

■ 3. Amend § 275.203–1 by:

■ a. In the first sentence of paragraph (a) removing the phrase ''Subject to paragraph (b), to'' and adding in its place ''To'';

■ b. Removing paragraph (b);

■ c. In the Note to paragraphs (a) and (b), revising the paragraph heading;

■ d. Redesignating paragraphs (c) and (d) as paragraphs (b) and (c); and

■ e. Removing paragraph (e).

The revision reads as follows:

§ 275.203–1 Application for investment adviser registration.

(a) * * *

Note to paragraph (a): * * *

* * * * *

§ 275.203A–5 [Removed and Reserved]

■ 4. § 275.203A–5 is removed and reserved.

§ 275.204–1 [Amended]

■ 5. Amend § 275.204–1 by:

■ a. In the first sentence of paragraph (b)(1) removing the phrase ''Subject to paragraph (c) of this section, you'' and adding in its place ''You'';

■ b. Removing paragraph (c); and

■ c. Redesignating paragraphs (d) and (e) as paragraphs (c) and (d).

■ 6. Amend § 275.204–2 by:

■ a. Revising paragraph (a)(7); and

■ b. In paragraph (a)(16) removing the phrase ''to 10 or more persons'' and adding in its place ''to any person''.

§ 275.204–2 Books and records to be maintained by investment advisers.

(a) * * *

(7) Originals of all written communications received and copies of all written communications sent by such investment adviser relating to:

(i) Any recommendation made or proposed to be made and any advice given or proposed to be given;

(ii) Any receipt, disbursement or delivery of funds or securities;

(iii) The placing or execution of any order to purchase or sell any security: *Provided, however:*

(A) That the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser; and

(B) That if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent; except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof; or

(iv) The performance or rate of return of any or all managed accounts or securities recommendations.

* * * * *

PART 279—FORMS PRESCRIBED UNDER THE INVESTMENT ADVISERS ACT OF 1940

■ 7. The authority citation for part 279 continues to read in part as follows:

Authority: The Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.*

■ a. Form ADV [referenced in § 279.1] is amended by: In the instructions to the form, revising the section entitled ''Form ADV: General Instructions.'' The revised version of Form ADV: General Instructions is attached as Appendix A;

■ b. In the instructions to the form, revising the section entitled ''Form ADV: Instructions for Part 1A.'' The revised version of Form ADV: Instructions for Part 1A is attached as Appendix B;

■ c. In the instructions to the form, revising the section entitled ''Form ADV: Glossary of Terms.'' The revised version of Form ADV: Glossary of Terms is attached as Appendix C;

■ d. In the form, revising Part 1A. The revised version of Form ADV, Part 1A, is attached as Appendix D.

Note: The text of Form ADV does not and the amendments will not appear in the Code of Federal Regulations.

By the Commission.

Dated: May 20, 2015.

Robert W. Errett,

Deputy Secretary.

BILLING CODE 8011–01–O

APPENDIX A

FORM ADV (Paper Version)

- **UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION AND**
- **REPORT FORM BY EXEMPT REPORTING ADVISERS**

Form ADV: General Instructions

Read these instructions carefully before filing Form ADV. Failure to follow these instructions, properly complete the form, or pay all required fees may result in your application or report being delayed or rejected.

In these instructions and in Form ADV, "you" means the investment adviser (i.e., the advisory firm). If you are a "separately identifiable department or division" (SID) of a bank, "you" means the SID, rather than your bank, unless the instructions or the form provide otherwise. If you are a *private fund* adviser filing an *umbrella registration*, "you" means the *filing adviser* and each *relying adviser*, unless the instructions or the form provide otherwise. The information in Items 1, 2, 3 and 10 (including corresponding schedules) should be provided for the *filing adviser* only. Terms that appear in *italics* are defined in the Glossary of Terms to Form ADV.

1. Where can I get more information on Form ADV, electronic filing, and the IARD?

The SEC provides information about its rules and the Advisers Act on its website: <http://www.sec.gov/iard>.

NASAA provides information about state investment adviser laws and state rules, and how to contact a *state securities authority*, on its website: <http://www.nasaa.org>.

FINRA provides information about the IARD and electronic filing on the IARD website: <http://www.iard.com>.

2. What is Form ADV used for?

Investment advisers use Form ADV to:

- Register with the Securities and Exchange Commission
- Register with one or more *state securities authorities*
- Amend those registrations;
- Report to the SEC as an *exempt reporting adviser*
- Report to one or more *state securities authorities* as an *exempt reporting adviser*
- Amend those reports; and
- Submit a final report as an *exempt reporting adviser*

3. How is Form ADV organized?

Form ADV contains four parts:

- Part 1A asks a number of questions about you, your business practices, the *persons* who own and *control* you, and the *persons* who provide investment advice on your behalf.
  - All advisers registering with the SEC or any of the *state securities authorities* must complete Part 1A.
  - *Exempt reporting advisers* (that are not also registering with any *state securities authority*) must complete only the following Items of Part 1A: 1, 2, 3, 6, 7, 10, and 11, as well as corresponding schedules. *Exempt reporting advisers* that are registering with any *state securities authority* must complete all of Form ADV.

  Part 1A also contains several supplemental schedules. The items of Part 1A let you know which schedules you must complete.

  - Schedule A asks for information about your direct owners and executive officers.
  - Schedule B asks for information about your indirect owners.
  - Schedule C is used by paper filers to update the information required by Schedules A and B (see Instruction 18).
  - Schedule D asks for additional information for certain items in Part 1A.
  - Schedule R asks for additional information about *relying advisers*.
  - Disclosure Reporting Pages (or DRPs) are schedules that ask for details about disciplinary events involving you or your *advisory affiliates*.

  - Part 1B asks additional questions required by *state securities authorities*. Part 1B contains three additional DRPs. If you are applying for SEC registration or are registered only with the SEC, you do not have to complete Part 1B. (If you are filing electronically and you do not have to complete Part 1B, you will not see Part 1B.)

- Part 2A requires advisers to create narrative *brochures* containing information about the advisory firm. The requirements in Part 2A apply to all investment advisers registered with or applying for registration with the SEC, but do not apply to *exempt reporting advisers*.

- Part 2B requires advisers to create *brochure supplements* containing information about certain *supervised persons*. The requirements in Part 2B apply to all investment advisers registered with or applying for registration with the SEC, but do not apply to *exempt reporting advisers*.

4. When am I required to update my Form ADV?

- <u>SEC- and State-Registered Advisers</u>:

  - <u>Annual updating amendments</u>: You must amend your Form ADV each year by filing an *annual updating amendment* within 90 days after the end of your fiscal

year. When you submit your *annual updating amendment*, you must update your responses to all items, including corresponding sections of Schedules A, B, C, and D and all sections of Schedule R for each *relying adviser*. You must submit your summary of material changes required by Item 2 of Part 2A either in the *brochure* (cover page or the page immediately thereafter) or as an exhibit to your *brochure*.

- Other-than-annual amendments: In addition to your *annual updating amendment*, if you are registered with the SEC or a *state securities authority*, you must amend your Form ADV, including corresponding sections of Schedules A, B, C, D and R, by filing additional amendments (other-than-annual amendments) promptly if:
  - you are adding or removing a *relying adviser* as part of your *umbrella registration*
  - information you provided in response to Items 1 (except 1.O), 3, 9 (except 9.A.(2), 9.B.(2), 9.E., and 9.F.), or 11 of Part 1A or Items 1, 2.A. through 2.F., or 2.I. of Part 1B or Sections 1 or 3 of Schedule R becomes inaccurate in any way;
  - information you provided in response to Items 4, 8, or 10 of Part 1A, or Item 2.G. of Part 1B, or Section 10 of Schedule R becomes materially inaccurate; or
  - information you provided in your *brochure* becomes materially inaccurate (see note below for exceptions)

Notes: Part 1: If you are submitting an other-than-annual amendment, you are not required to update your responses to Items 2, 5, 6, 7, 9.A.(2), 9.B.(2), 9.E., 9.F., or 12 of Part 1A, Items 2.H. or 2.J. of Part 1B, or Section 2 of Schedule R even if your responses to those items have become inaccurate.

Part 2: You must amend your *brochure supplements* (see Form ADV, Part 2B) promptly if any information in them becomes materially inaccurate. If you are submitting an other-than-annual amendment to your *brochure*, you are not required to update your summary of material changes as required by Item 2. You are not required to update your *brochure* between annual amendments solely because the amount of *client* assets you manage has changed or because your fee schedule has changed. However, if you are updating your *brochure* for a separate reason in between annual amendments, and the amount of *client* assets you manage listed in response to Item 4.E or your fee schedule listed in response to Item 5.A has become materially inaccurate, you should update that item(s) as part of the interim amendment.

- If you are an SEC-registered adviser, you are required to file your *brochure* amendments electronically through IARD. You are not required to file amendments to your *brochure supplements* with the SEC, but you must maintain a copy of them in your files.

- If you are a state-registered adviser, you are required to file your *brochure* amendments and *brochure supplement* amendments with the appropriate *state securities authorities* through IARD.

- *Exempt reporting advisers*:

  - Annual Updating Amendments: You must amend your Form ADV each year by filing an *annual updating amendment* within 90 days after the end of your fiscal year. When you submit your *annual updating amendment*, you must update your responses to all required items, including corresponding sections of Schedules A, B, C and D.

  - Other-than-Annual Amendments: In addition to your *annual updating amendment*, you must amend your Form ADV by filing additional amendments (other-than-annual amendments) promptly if:

    - information you provided in response to Items 1, 3, or 11 becomes inaccurate in any way; or

    - information you provided in response to Item 10 becomes materially inaccurate.

Failure to update your Form ADV, as required by this instruction, is a violation of SEC rules or similar state rules and could lead to your registration being revoked.

5. What is SEC *umbrella registration* and how can I satisfy the requirements of filing an *umbrella registration*?

An *umbrella registration* is a single registration by a *filing adviser* and one or more *relying advisers* who advise only *private funds* and certain separately managed account *clients* that are *qualified clients* and collectively conduct a single advisory business. Absent other facts suggesting that the *filing adviser* and *relying adviser(s)* conduct different businesses, *umbrella registration* is available under the following circumstances:

i. The *filing adviser* and each *relying adviser* advise only *private funds* and *clients* in separately managed accounts that are *qualified clients* and are otherwise eligible to invest in the *private funds* advised by the *filing adviser* or a *relying adviser* and whose accounts pursue investment objectives and strategies that are substantially similar or otherwise related to those *private funds*.

ii. The *filing adviser* has its *principal office and place of business* in the United States and, therefore, all of the substantive provisions of the Advisers Act and the rules thereunder apply to the *filing adviser's* and each *relying adviser's* dealings with each of its *clients*, regardless of whether any *client* or the *filing adviser* or *relying adviser* providing the advice is a *United States person*.

iii. Each *relying adviser*, its *employees* and the *persons* acting on its behalf are subject to the *filing adviser's* supervision and *control* and, therefore, each *relying adviser*, its *employees* and the *persons* acting on its behalf are "persons associated with" the *filing adviser* (as defined in section 202(a)(17) of the Advisers Act).

iv. The advisory activities of each *relying adviser* are subject to the Advisers Act and the rules thereunder, and each *relying adviser* is subject to examination by the SEC.

v. The *filing adviser* and each *relying adviser* operate under a single code of ethics adopted in accordance with SEC rule 204A-1 and a single set of written policies and procedures adopted and implemented in accordance with SEC rule 206(4)-(7) and administered by a single chief compliance officer in accordance with that rule.

To satisfy the requirements of Form ADV while using *umbrella registration* the *filing adviser* must sign, file, and update as required, a single Form ADV (Parts 1 and 2) that relates to, and includes all information concerning, the *filing adviser* and each *relying adviser* (e.g., disciplinary information and ownership information), and must include this same information in any other reports or filings it must make under the Advisers Act or the rules thereunder (e.g., Form PF). The *filing adviser* and each *relying adviser* must not be prohibited from registering with the SEC by section 203A of the Advisers Act (i.e. the *filing adviser* and each *relying adviser* must individually qualify for SEC registration).

Unless otherwise specified, references to "you" in Form ADV refer to both the *filing adviser* and each *relying adviser*. The information in Items 1, 2, 3 and 10 (including corresponding schedules) should be provided for the *filing adviser* only. A separate Schedule R should be completed for each *relying adviser*. References to "you" in Schedule R refer to the *relying adviser* only.

A *filing adviser* applying for registration with the SEC should complete a Schedule R for each *relying adviser*. If you are a *filing adviser* registered with the SEC and would like to add or delete *relying advisers* from an *umbrella registration, you* should file an other-than-annual amendment and add or delete Schedule Rs as needed.

Note: *Umbrella registration* is not available to *exempt reporting advisers*.

6. Where do I sign my Form ADV application or amendment?

You must sign the appropriate Execution Page. There are three Execution Pages at the end of the form. Your initial application, your initial report (in the case of an *exempt reporting adviser*), and all amendments to Form ADV must include at least one Execution Page.

- If you are applying for or are amending your SEC registration, or if you are reporting as an *exempt reporting adviser* or amending your report, you must sign and submit either a:
  - Domestic Investment Adviser Execution Page, if you (the advisory firm) are a resident of the United States; or

- *Non-Resident* Investment Adviser Execution Page, if you (the advisory firm) are not a resident of the United States.

- If you are applying for or are amending your registration with a *state securities authority*, you must sign and submit the State-Registered Investment Adviser Execution Page.

7. Who must sign my Form ADV or amendment?

The individual who signs the form depends upon your form of organization:

- For a sole proprietorship, the sole proprietor.
- For a partnership, a general partner.
- For a corporation, an authorized principal officer.
- For a "separately identifiable department or division" (SID) of a bank, a principal officer of your bank who is directly engaged in the management, direction, or supervision of your investment advisory activities.
- For all others, an authorized individual who participates in managing or directing your affairs.

The signature does not have to be notarized, and in the case of an electronic filing, should be a typed name.

8. How do I file my Form ADV?

Complete Form ADV electronically using the Investment Adviser Registration Depository (IARD) if:

- You are filing with the SEC (and submitting *notice filings* to any of the *state securities authorities*), or

- You are filing with a *state securities authority* that requires or permits advisers to submit Form ADV through the IARD.

Note: SEC rules require advisers that are registered or applying for registration with the SEC, or that are reporting to the SEC as an *exempt reporting adviser*, to file electronically through the IARD system. See SEC rules 203-1 and 204-4.

To file electronically, go to the IARD website (<www.iard.com>), which contains detailed instructions for advisers to follow when filing through the IARD.

Complete Form ADV (Paper Version) on paper if:

- You are filing with the SEC or a *state securities authority* that requires electronic filing, but you have been granted a continuing hardship exemption. Hardship exemptions are described in Instruction 17.

- You are filing with a *state securities authority* that permits (but does not require) electronic filing and you do not file electronically.

9. How do I get started filing electronically?

First, obtain a copy of the IARD Entitlement Package from the following website: <http://www.iard.com/GetStarted.asp>. Second, request access to the IARD system for your firm by completing and submitting the IARD Entitlement Package. The IARD Entitlement Package must be submitted on paper. Mail the forms to: FINRA Entitlement Group, P.O. Box 9495, Gaithersburg, MD 20898-9495.

When FINRA receives your Entitlement Package, they will assign a *CRD* number (identification number for your firm) and a user I.D. code and password (identification number and system password for the individual(s) who will submit Form ADV filings for your firm). Your firm may request an I.D. code and password for more than one individual. FINRA also will create a financial account for you from which the IARD will deduct filing fees and any state fees you are required to pay. If you already have a *CRD* account with FINRA, it will also serve as your IARD account; a separate account will not be established.

Once you receive your *CRD* number, user I.D. code and password, and you have funded your account, you are ready to file electronically.

Questions regarding the Entitlement Process should be addressed to FINRA at 240.386.4848.

10. If I am applying for registration with the SEC, or amending my SEC registration, how do I make *notice filings* with the *state securities authorities*?

If you are applying for registration with the SEC or are amending your SEC registration, one or more *state securities authorities* may require you to provide them with copies of your SEC filings. We call these filings "*notice filings*." Your *notice filings* will be sent electronically to the states that you check on Item 2.C. of Part 1A. The *state securities authorities* to which you send *notice filings* may charge fees, which will be deducted from the account you establish with FINRA. To determine which *state securities authorities* require SEC-registered advisers to submit *notice filings* and to pay fees, consult the relevant state investment adviser law or *state securities authority*. See General Instruction 1.

If you are granted a continuing hardship exemption to file Form ADV on paper, FINRA will enter your filing into the IARD and your *notice filings* will be sent electronically to the *state securities authorities* that you check on Item 2.C. of Part 1A.

11. I am registered with a state. When must I switch to SEC registration?

If at the time of your *annual updating amendment* you meet at least one of the requirements for SEC registration in Item 2.A.(1) to (12) of Part 1A, you must apply for registration with the SEC within 90 days after you file the *annual updating amendment*. Once you register with the

SEC, you are subject to SEC regulation, regardless of whether you remain registered with one or more states. See SEC rule 203A-1(b)(2). Each of your *investment adviser representatives*, however, may be subject to registration in those states in which the representative has a place of business. See Advisers Act section 203A(b)(1); SEC rule 203A-3(a). For additional information, consult the investment adviser laws or the *state securities authority* for the particular state in which you are "doing business." See General Instruction 1.

12. I am registered with the SEC. When must I switch to registration with a *state securities authority*?

If you check box 13 in Item 2.A. of Part 1A to report on your *annual updating amendment* that you are no longer eligible to register with the SEC, you must withdraw from SEC registration within 180 days after the end of your fiscal year by filing Form ADV-W. See SEC rule 203A-1(b)(2). You should consult state law or the *state securities authority* for the states in which you are "doing business" to determine if you are required to register in these states. See General Instruction 1. Until you file your Form ADV-W with the SEC, you will remain subject to SEC regulation, and you also will be subject to regulation in any states where you register. See SEC rule 203A-1(b)(2).

13. I am an *exempt reporting adviser*. When must I submit my first report on Form ADV?

- All *exempt reporting advisers*:

You must submit your initial Form ADV filing within 60 days of relying on the exemption from registration under either section 203(l) of the Advisers Act as an adviser solely to one or more venture capital funds or section 203(m) of the Advisers Act because you act solely as an adviser to *private funds* and have assets under management in the United States of less than $150 million.

- Additional instruction for advisers switching from being registered to being *exempt reporting advisers*:

If you are currently registered as an investment adviser (or have an application for registration pending) with the SEC or with a *state securities authority*, you must file a Form ADV-W to withdraw from registration in the jurisdictions where you are switching. You must submit the Form ADV-W before submitting your first report as an *exempt reporting adviser*.

14. I am an *exempt reporting adviser*. Is it possible that I might be required to also register with or submit a report to a *state securities authority*?

Yes, you may be required to register with or submit a report to one or more *state securities authorities*. If you are required to register with one or more *state securities authorities*, you must complete all of Form ADV. See General Instruction 3. If you are required to submit a report to one or more *state securities authorities*, check the box(es) in Item 2.C. of Part 1A next to the state(s) you would like to receive the report. Each of your *investment adviser representatives* may also be subject to registration requirements. For additional information

about the requirements that may apply to you, consult the investment adviser laws or the *state securities authority* for the particular state in which you are "doing business." See General Instruction 1.

15. What do I do if I no longer meet the definition of an "*exempt reporting adviser*"?

- Advisers Switching to SEC Registration:
  - You may no longer be an *exempt reporting adviser* and may be required to register with the SEC if you wish to continue doing business as an investment adviser. For example, you may be relying on section 203(l) and wish to accept a *client* that is not a venture capital fund as defined in SEC rule 203(l)-1, or you may have been relying on SEC rule 203(m)-1 and reported in Section 2.B. of Schedule D to your *annual updating amendment* that you have *private fund* assets of $150 million or more.
    - If you are relying on section 203(l), unless you qualify for another exemption, you would violate the Advisers Act's registration requirement if you accept a *client* that is not a venture capital fund as defined in SEC rule 203(l)-1 before the SEC approves your application for registration. You must submit your final report as an *exempt reporting adviser* and apply for SEC registration in the same filing.
    - If you were relying on SEC rule 203(m)-1 and you reported in Section 2.B. of Schedule D to your *annual updating amendment* that you have *private fund* assets of $150 million or more, you must register with the SEC unless you qualify for another exemption. If you have complied with all SEC reporting requirements applicable to an *exempt reporting adviser* as such, you have up to 90 days after filing your *annual updating amendment* to apply for SEC registration, and you may continue doing business as a *private fund* adviser during this time. You must submit your final report as an *exempt reporting adviser* and apply for SEC registration in the same filing. Unless you qualify for another exemption, you would violate the Advisers Act's registration requirement if you accept a *client* that is not a *private fund* during this transition period before the SEC approves your application for registration, and you must comply with all SEC reporting requirements applicable to an *exempt reporting adviser* as such during this 90-day transition period. If you have not complied with all SEC reporting requirements applicable to an *exempt reporting adviser* as such, this 90-day transition period is not available to you. Therefore, if the transition period is not available to you, and you do not qualify for another exemption, your application for registration must be approved by the SEC before you meet or exceed SEC rule 203(m)-1's $150 million asset threshold.

- You will be deemed in compliance with the Form ADV filing and reporting requirements until the SEC approves or denies your application. If your application is approved, you will be able to continue business as a registered adviser.

- If you register with the SEC, you may be subject to state *notice filing* requirements. To determine these requirements, consult the investment adviser laws or the *state securities authority* for the particular state in which you are "doing business." See General Instruction 1.

Note: If you are relying on SEC rule 203(m)-1 and you accept a *client* that is not a *private fund*, you will lose the exemption provided by SEC rule 203(m)-1 immediately. To avoid this result, you should apply for SEC registration in advance so that the SEC has approved your registration before you accept a *client* that is not a *private fund*.

The 90-day transition period described above also applies to investment advisers with their *principal offices and places of business* outside of the United States with respect to their *clients* who are *United States persons* (e.g., the adviser would not be eligible for the 90-day transition period if it accepted a *client* that is a *United States person* and is not a *private fund*).

- Advisers Not Switching to SEC Registration:

  - You may no longer be an *exempt reporting adviser* but may not be required to register with the SEC or may be prohibited from doing so. For example, you may cease to do business as an investment adviser, become eligible for an exemption that does not require reporting, or be ineligible for SEC registration. In this case, you must submit a final report as an *exempt reporting adviser* to update only Item 1 of Part 1A of Form ADV.

  - You may be subject to state registration requirements. To determine these requirements, consult the investment adviser laws or the *state securities authority* for the particular state in which you are "doing business." See General Instruction 1.

16. Are there filing fees?

Yes. These fees go to support and maintain the IARD. The IARD filing fees are in addition to any registration or other fee that may be required by state law. You must pay an IARD filing fee for your initial application, your initial report, and each *annual updating amendment*. There is no filing fee for an other-than-annual amendment, a final report as an *exempt reporting adviser*, or Form ADV-W. The IARD filing fee schedule is published at <http://www.sec.gov/iard>; <http://www.nasaa.org>; and <http://www.iard.com>.

If you are submitting a paper filing under a continuing hardship exemption (see Instruction 17), you are required to pay an additional fee. The amount of the additional fee depends on whether you are filing Form ADV or Form ADV-W. (There is no additional fee for filings

made on Form ADV-W.) The hardship filing fee schedule is available by contacting FINRA at 240.386.4848.

17. What if I am not able to file electronically?

If you are required to file electronically but cannot do so, you may be eligible for one of two types of hardship exemptions from the electronic filing requirements.

- A **temporary hardship exemption** is available if you file electronically, but you encounter unexpected difficulties that prevent you from making a timely filing with the IARD, such as a computer malfunction or electrical outage. This exemption does not permit you to file on paper; instead, it extends the deadline for an electronic filing for seven business days. See SEC rules 203-3(a) and 204-4(e).

- A **continuing hardship exemption** may be granted if you are a small business and you can demonstrate that filing electronically would impose an undue hardship. You are a small business, and may be eligible for a continuing hardship exemption, if you are required to answer Item 12 of Part 1A (because you have assets under management of less than $25 million) and you are able to respond "no" to each question in Item 12. See SEC rule 0-7.

  If you have been granted a continuing hardship exemption, you must complete and submit the paper version of Form ADV to FINRA. FINRA will enter your responses into the IARD. As discussed in General Instruction 16, FINRA will charge you a fee to reimburse it for the expense of data entry.

18. I am eligible to file on paper. How do I make a paper filing?

When filing on paper, you must:

- Type all of your responses.
- Include your name (the same name you provide in response to Item 1.A. of Part 1A) and the date on every page.
- If you are amending your Form ADV:
  - complete page 1 and circle the number of any item for which you are changing your response.
  - include your SEC 801-number (if you have one), or your 802-number (if you have one), and your *CRD* number (if you have one) on every page.
  - complete the amended item in full and circle the number of the item for which you are changing your response.
  - to amend Schedule A or Schedule B, complete and submit Schedule C.

Where you submit your paper filing depends on why you are eligible to file on paper:

- If you are filing on paper because you have been granted a continuing hardship exemption, submit one manually signed Form ADV and one copy to: IARD Document Processing, FINRA, P.O. Box 9495, Gaithersburg, MD 20898-9495.

  If you complete Form ADV on paper and submit it to FINRA but you do not have a continuing hardship exemption, the submission will be returned to you.

- If you are filing on paper because a state in which you are registered or in which you are applying for registration allows you to submit paper instead of electronic filings, submit one manually signed Form ADV and one copy to the appropriate *state securities authorities*.

19. Who is required to file Form ADV-NR?

Every *non-resident* general partner and *managing agent* of all SEC-registered advisers and *exempt reporting advisers*, whether or not the adviser is resident in the United States, must file Form ADV-NR in connection with the adviser's initial application or report. A general partner or *managing agent* of an SEC-registered adviser or *exempt reporting adviser* who becomes a *non-resident* after the adviser's initial application or report has been submitted must file Form ADV-NR within 30 days. Form ADV-NR must be filed on paper (it cannot be filed electronically).

Submit Form ADV-NR to the SEC at the following address:

Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549; Attn: Registrations Branch.

Failure to file Form ADV-NR promptly may delay SEC consideration of your initial application.

Federal Information Law and Requirements

Sections 203 and 204 of the Advisers Act [15 U.S.C. §§ 80b-3 and 80b-4] authorize the SEC to collect the information required by Form ADV. The SEC collects the information for regulatory purposes, such as deciding whether to grant registration. Filing Form ADV is mandatory for advisers who are required to register with the SEC and for *exempt reporting advisers*. The SEC maintains the information submitted on this form and makes it publicly available. The SEC may return forms that do not include required information. Intentional misstatements or omissions constitute federal criminal violations under 18 U.S.C. § 1001 and 15 U.S.C. § 80b-17.

SEC's 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 control number. The Advisers Act authorizes the SEC to collect the information on Form ADV from investment advisers. See 15 U.S.C. §§ 80b-3 and 80b-4. Filing the form is mandatory.

The form enables the SEC to register investment advisers and to obtain information from and about *exempt reporting advisers*. Every applicant for registration with the SEC as an adviser, and every *exempt reporting adviser*, must file the form. See 17 C.F.R. § 275.203-1 and 204-4. By accepting a form, however, the SEC does not make a finding that it has been completed or submitted correctly. The form is filed annually by every adviser, no later than 90 days after the end of its fiscal year, to amend its registration or its report. It is also filed promptly during the year to reflect material changes. See 17 C.F.R. § 275.204-1. The SEC maintains the information on the form and makes it publicly available through the IARD.

Anyone may send the SEC comments on the accuracy of the burden estimate on page 1 of the form, as well as suggestions for reducing the burden. The Office of Management and Budget has reviewed this collection of information under 44 U.S.C. § 3507.

The information contained in the form is part of a system of records subject to the Privacy Act of 1974, as amended. The SEC has published in the Federal Register the Privacy Act System of Records Notice for these records.

APPENDIX B

FORM ADV (Paper Version)

- **UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION AND**
- **REPORT BY EXEMPT REPORTING ADVISERS**

Form ADV: Instructions for Part 1A

These instructions explain how to complete certain items in Part 1A of Form ADV.

1. Item 1: Identifying Information

Separately Identifiable Department or Division of a Bank. If you are a "separately identifiable department or division" (SID) of a bank, answer Item 1.A. with the full legal name of your bank, and answer Item 1.B. with your own name (the name of the department or division) and all names under which you conduct your advisory business. In addition, your *principal office and place of business* in Item 1.F. should be the principal office at which you conduct your advisory business. In response to Item 1.I., the website addresses and social media information you list on Schedule D should be those that provide information about your own activities, rather than general information about your bank.

2. Item 2: SEC Registration and SEC Report by *Exempt Reporting Advisers*

If you are registered or applying for registration with the SEC, you must indicate in Item 2.A. why you are eligible to register with the SEC by checking at least one of the boxes.

a. **Item 2.A.(1): Adviser with Regulatory Assets Under Management of $100 Million or More.** You may check box 1 only if your response to Item 5.F.(2)(c) is $100 million or more, or you are filing an *annual updating amendment* with the SEC and your response to Item 5.F.(2)(c) is $90 million or more. While you may register with the SEC if your regulatory assets under management are at least $100 million but less than $110 million, you must apply for registration with the SEC if your regulatory assets under management are $110 million or more. If you are a SEC-registered adviser, you may remain registered with the SEC if your regulatory assets under management are $90 million or more. See SEC rule 203A-1(a). Part 1A Instruction 5.b. explains how to calculate your regulatory assets under management.

If you are a state-registered adviser and you report on your *annual updating amendment* that your regulatory assets under management increased to $100 million or more, you may register with the SEC. If your regulatory assets under management increased to $110 million or more, you must apply for registration with the SEC within 90 days after you file that *annual updating amendment.* See SEC rule 203A-1(b)(1) and Form ADV General Instruction 11.

b. **Item 2.A.(2): Mid-Sized Adviser.** You may check box 2 only if your response to Item 5.F(2)(c) is $25 million or more but less than $100 million, and you satisfy one of the

requirements below. Part 1A Instruction 5.b. explains how to calculate your regulatory assets under management.

You must register with the SEC if you meet at least one of the following requirements:

- You are not required to be registered as an investment adviser with the *state securities authority* of the state where you maintain your *principal office and place of business* pursuant to that state's investment adviser laws. If you are exempt from registration with that state or are excluded from the definition of investment adviser in that state, you must register with the SEC. You should consult the investment adviser laws or the *state securities authority* for the particular state in which you maintain your *principal office and place of business* to determine if you are required to register in that state. See General Instruction 1.

- You are not subject to examination by the *state securities authority* of the state where you maintain your *principal office and place of business*. To determine whether such *state securities authority* does not conduct such examinations, see: http://www.sec.gov/divisions/investment/midsizedadviserinfo.htm.

See section 203A(a)(2) of the Advisers Act.

c. **Item 2.A.(5): Adviser to an Investment Company.** You may check box 5 only if you currently provide advisory services under an investment advisory contract to an investment company registered under the Investment Company Act of 1940 and the investment company is operational (i.e., has assets and shareholders, other than just the organizing shareholders). See sections 203A(a)(1)(B) and 203A(a)(2)(A) of the Advisers Act. Advising investors about the merits of investing in mutual funds or recommending particular mutual funds does not make you eligible to check this box.

d. **Item 2.A.(6): Adviser to a Business Development Company. You may check box 6 only** if your response to Item 5.F.(2)(c) is $25 million or more of regulatory assets under management, and you currently provide advisory services under an investment advisory contract to a company that has elected to be a business development company pursuant to section 54 of the Investment Company Act of 1940, that has not withdrawn the election, and that is operational (i.e., has assets and shareholders, other than just the organizing shareholders). See section 203A(a)(2)(A) of the Advisers Act. Part 1A Instruction 5.b. explains how to calculate your regulatory assets under management.

e. **Item 2.A.(7): Pension Consultant.** You may check box 7 only if you are eligible for the pension consultant exemption from the prohibition on SEC registration.

- You are eligible for this exemption if you provided investment advice to employee benefit plans, governmental plans, or church plans with respect to assets having an aggregate value of $200 million or more during the 12-month period that ended within 90 days of filing this Form ADV. You are not eligible for this exemption if

you only advise plan participants on allocating their investments within their pension plans. See SEC rule 203A-2(a).

- To calculate the value of assets for purposes of this exemption, aggregate the assets of the plans for which you provided advisory services at the end of the 12-month period. If you provided advisory services to other plans during the 12-month period, but your employment or contract terminated before the end of the 12-month period, you also may include the value of those assets.

f. **Item 2.A.(8): Related Adviser.** You may check box 8 only if you are eligible for the related adviser exemption from the prohibition on SEC registration. See SEC rule 203A-2(b). You are eligible for this exemption if you *control*, are *controlled* by, or are under common *control* with an investment adviser that is registered with the SEC, and you have the same *principal office and place of business* as that other investment adviser. Note that you may not rely on the SEC registration of an Internet adviser under rule 203A-2(e) in establishing eligibility for this exemption. See SEC rule 203A-2(e)(1)(iii). If you check box 8, you also must complete Section 2.A.(8) of Schedule D.

g. **Item 2.A.(9): Adviser Expecting to be Eligible for Registration within 120 Days.** You may check box 9 only if you are eligible for the exemption from the prohibition on SEC registration available to advisers expecting to be eligible for SEC registration within 120 days, such as a newly formed adviser. See SEC rule 203A-2(c). You are eligible for this exemption if immediately before you file your application for registration with the SEC,

- you were not registered or required to be registered with the SEC or a *state securities authority;* and

- you have a reasonable expectation that you would be eligible to register with the SEC within 120 days after the date that your registration with the SEC becomes effective.

If you check box 9, you also must complete Section 2.A.(9) of Schedule D.

You must file an amendment to Part 1A of your Form ADV that updates your response to Item 2.A. within 120 days after the SEC declares your registration effective. You may not check box 9 on your amendment; since this exemption is available only if you are not registered, you may not "re-rely" on this exemption. If you indicate on that amendment (by checking box 13) that you are not eligible to register with the SEC, you also must file a Form ADV-W to withdraw your SEC registration no later than 120 days after your registration was declared effective. You should contact the appropriate *state securities authority* to determine how long it may take to become state-registered sufficiently in advance of when you are required to file Form ADV-W to withdraw from SEC registration.

Note: If you expect to be eligible for SEC registration because of the amount of your regulatory assets under management, that amount must be $100 million or more no later than 120 days after your registration is declared effective.

h. **Item 2.A.(10): Multi-State Adviser.** You may check box 10 only if you are eligible for the multi-state adviser exemption from the prohibition on SEC registration. See SEC rule 203A-2(d). You are eligible for this exemption if you are required to register as an investment adviser with the *state securities authorities* of 15 or more states. If you check box 10, you must complete Section 2.A.(10) of Schedule D. You must complete Section 2.A.(10) of Schedule D in each *annual updating amendment* you submit.

If you check box 10, you also must:

- create and maintain a list of the states in which, but for this exemption, you would be required to register;
- update this list each time you submit an *annual updating amendment* in which you continue to represent that you are eligible for this exemption; and
- maintain the list in an easily accessible place for a period of not less than five years from each date on which you indicate that you are eligible for the exemption.

If, at the time you file your *annual updating amendment*, you are required to register in less than 15 states and you are not otherwise eligible to register with the SEC, you must check box 13 in Item 2.A. You also must file a Form ADV-W to withdraw your SEC registration. See Part 1A Instruction 2.j.

i. **Item 2.A.(11): Internet Adviser**. You may check box 11 only if you are eligible for the Internet adviser exemption from the prohibition on SEC registration. See SEC rule 203A-2(e). You are eligible for this exemption if:

- you provide investment advice to your *clients* through an interactive website. An interactive website means a website in which computer software-based models or applications provide investment advice based on personal information each *client* submits through the website. Other forms of online or Internet investment advice do not qualify for this exemption;

- you provide investment advice to all of your *clients* exclusively through the interactive website, except that you may provide investment advice to fewer than 15 *clients* through other means during the previous 12 months; and

- you maintain a record demonstrating that you provide investment advice to your *clients* exclusively through an interactive website in accordance with these limits.

j. **Item 2.A.(13): Adviser No Longer Eligible to Remain Registered with the SEC.** You must check box 13 if:

- you are registered with the SEC;

- you are filing an *annual updating amendment* to Form ADV in which you indicate in response to Item 5.F.(2)(c) that you have regulatory assets under management of less than $90 million; and
- you are not eligible to check any other box (other than box 13) in Item 2.A. (and are therefore no longer eligible to remain registered with the SEC).

You must withdraw from SEC registration within 180 days after the end of your fiscal year by filing Form ADV-W. Until you file your Form ADV-W, you will remain subject to SEC regulation, and you also will be subject to regulation in the states in which you register. See SEC rule 203A-1(b)(2).

k. **Item 2.B.: Reporting by *Exempt Reporting Advisers*.** You may check box 2.B.(1) only if you qualify for the exemption from SEC registration as an adviser solely to one or more venture capital funds. See SEC rule 203(l)-1. You may check box 2.B.(2) only if you qualify for the exemption from SEC registration because you act solely as an adviser to *private funds* and have assets under management in the United States of less than $150 million. See SEC rule 203(m)-1. You may check both boxes to indicate that you qualify for both exemptions. You should check box 2.B.(3) if you act solely as an adviser to *private funds* but you are no longer eligible to check box 2.B.(2) because you have assets under management in the United States of $150 million or more. If you check box 2.B.(2) or (3), you also must complete Section 2.B. of Schedule D.

3. Item 3: Form of Organization

If you are a "separately identifiable department or division" (SID) of a bank, answer Item 3.A. by checking "other." In the space provided, specify that you are a "SID of" and indicate the form of organization of your bank. Answer Items 3.B. and 3.C. with information about your bank.

4. Item 4: Successions

a. **Succession of an SEC-Registered Adviser.** If you (1) have taken over the business of an investment adviser or (2) have changed your structure or legal status (e.g., form of organization or state of incorporation), a new organization has been created, which has registration obligations under the Advisers Act. There are different ways to fulfill these obligations. You may rely on the registration provisions discussed in the General Instructions, or you may be able to rely on special registration provisions for "successors" to SEC-registered advisers, which may ease the transition to the successor adviser's registration.

To determine if you may rely on these provisions, review "Registration of Successors to Broker-Dealers and Investment Advisers," Investment Advisers Act Release No. 1357 (Dec. 28, 1992). If you have taken over an adviser, follow Part 1A Instruction 4.a(1), Succession by Application. If you have changed your structure or legal status, follow Part 1A Instruction 4.a(2), Succession by Amendment. If either (1) you are a "separately identifiable department or division" (SID) of a bank that is currently registered as an

investment adviser, and you are taking over your bank's advisory business; or (2) you are a SID currently registered as an investment adviser, and your bank is taking over your advisory business, then follow Part 1A Instruction 4.a(1), Succession by Application.

(1) **Succession by Application.** If you are not registered with the SEC as an adviser, and you are acquiring or assuming substantially all of the assets and liabilities of the advisory business of an SEC-registered adviser, file a new application for registration on Form ADV. You will receive new registration numbers. You must file the new application within 30 days after the succession. On the application, make sure you check "yes" to Item 4.A., enter the date of the succession in Item 4.B., and complete Section 4 of Schedule D.

Until the SEC declares your new registration effective, you may rely on the registration of the adviser you are acquiring, but only if the adviser you are acquiring is no longer conducting advisory activities. Once your new registration is effective, a Form ADV-W must be filed with the SEC to withdraw the registration of the acquired adviser.

(2) **Succession by Amendment.** If you are a new investment adviser formed solely as a result of a change in form of organization, a reorganization, or a change in the composition of a partnership, and there has been no practical change in *control* or management, you may amend the registration of the registered investment adviser to reflect these changes rather than file a new application. You will keep the same registration numbers, and you should not file a Form ADV-W. On the amendment, make sure you check "yes" to Item 4.A., enter the date of the succession in Item 4.B., and complete Section 4 of Schedule D. You must submit the amendment within 30 days after the change or reorganization.

b. **Succession of a State-Registered Adviser.** If you (1) have taken over the business of an investment adviser or (2) have changed your structure or legal status (e.g., form of organization or state of incorporation), a new organization has been created, which has registration obligations under state investment adviser laws. There may be different ways to fulfill these obligations. You should contact each state in which you are registered to determine that state's requirements for successor registration. See Form ADV General Instruction 1.

5. Item 5: Information About Your Advisory Business

a. **Newly-Formed Advisers:** Several questions in Item 5 that ask about your advisory business assume that you have been operating your advisory business for some time. Your response to these questions should reflect your current advisory business (i.e., at the time you file your Form ADV), with the following exceptions:

- base your response to Item 5.E. on the types of compensation you expect to accept;
- base your response to Item 5.G. and Item 5.J. on the types of advisory services you expect to provide during the next year; and

- skip Item 5.H.

b. **Item 5.F: Calculating Your Regulatory Assets Under Management.** In determining the amount of your regulatory assets under management, include the securities portfolios for which you provide continuous and regular supervisory or management services as of the date of filing this Form ADV.

(1) **Securities Portfolios**. An account is a securities portfolio if at least 50% of the total value of the account consists of securities. For purposes of this 50% test, you may treat cash and cash equivalents (i.e., bank deposits, certificates of deposit, bankers acceptances, and similar bank instruments) as securities. You must include securities portfolios that are:

(a) your family or proprietary accounts;

(b) accounts for which you receive no compensation for your services; and

(c) accounts of *clients* who are not *United States persons*.

For purposes of this definition, treat all of the assets of a *private fund* as a securities portfolio, regardless of the nature of such assets. For accounts of *private funds*, moreover, include in the securities portfolio any uncalled commitment pursuant to which a *person* is obligated to acquire an interest in, or make a capital contribution to, the *private fund*.

(2) **Value of Portfolio**. Include the entire value of each securities portfolio for which you provide continuous and regular supervisory or management services. If you provide continuous and regular supervisory or management services for only a portion of a securities portfolio, include as regulatory assets under management only that portion of the securities portfolio for which you provide such services. Exclude, for example, the portion of an account:

(a) under management by another *person*; or

(b) that consists of real estate or businesses whose operations you "manage" on behalf of a *client* but not as an investment.

Do not deduct any outstanding indebtedness or other accrued but unpaid liabilities.

(3) **Continuous and Regular Supervisory or Management Services.**

General Criteria. You provide continuous and regular supervisory or management services with respect to an account if:

(a) you have *discretionary authority* over and provide ongoing supervisory or management services with respect to the account; or

(b) you do not have *discretionary authority* over the account, but you have ongoing responsibility to select or make recommendations, based upon the needs of the *client*, as to specific securities or other investments the account may purchase or sell and, if such recommendations are accepted by the *client*, you are responsible for arranging or effecting the purchase or sale.

Factors. You should consider the following factors in evaluating whether you provide continuous and regular supervisory or management services to an account.

(a) **Terms of the advisory contract.** If you agree in an advisory contract to provide ongoing management services, this suggests that you provide these services for the account. Other provisions in the contract, or your actual management practices, however, may suggest otherwise.

(b) **Form of compensation.** If you are compensated based on the average value of the *client's* assets you manage over a specified period of time, that suggests that you provide continuous and regular supervisory or management services for the account. If you receive compensation in a manner similar to either of the following, that suggests you do not provide continuous and regular supervisory or management services for the account --

(i) you are compensated based upon the time spent with a *client* during a *client* visit; or

(ii) you are paid a retainer based on a percentage of assets covered by a financial plan.

(c) **Management practices.** The extent to which you actively manage assets or provide advice bears on whether the services you provide are continuous and regular supervisory or management services. The fact that you make infrequent trades (e.g., based on a "buy and hold" strategy) does not mean your services are not "continuous and regular."

Examples. You may provide continuous and regular supervisory or management services for an account if you:

(a) have *discretionary authority* to allocate *client* assets among various mutual funds;

(b) do not have *discretionary authority*, but provide the same allocation services, and satisfy the criteria set forth in Instruction 5.b.(3);

(c) allocate assets among other managers (a "manager of managers"), but only if you have *discretionary authority* to hire and fire managers and reallocate assets among them; or

(d) you are a broker-dealer and treat the account as a brokerage account, but only if you have *discretionary authority* over the account.

You do not provide continuous and regular supervisory or management services for an account if you:

(a) provide market timing recommendations (i.e., to buy or sell), but have no ongoing management responsibilities;

(b) provide only *impersonal investment advice* (e.g., market newsletters);

(c) make an initial asset allocation, without continuous and regular monitoring and reallocation; or

(d) provide advice on an intermittent or periodic basis (such as upon *client* request, in response to a market event, or on a specific date (e.g., the account is reviewed and adjusted quarterly)).

(4) **Value of Regulatory Assets Under Management**. Determine your regulatory assets under management based on the current market value of the assets as determined within 90 days prior to the date of filing this Form ADV. Determine market value using the same method you used to report account values to *clients* or to calculate fees for investment advisory services.

In the case of a *private fund*, determine the current market value (or fair value) of the *private fund*'s assets and the contractual amount of any uncalled commitment pursuant to which a *person* is obligated to acquire an interest in, or make a capital contribution to, the *private fund*.

(5) **Example.** This is an example of the method of determining whether an account of a *client* other than a *private fund* may be included as regulatory assets under management.

The *client's* portfolio consists of the following:

$ 6,000,000	stocks and bonds
$ 1,000,000	cash and cash equivalents
$ 3,000,000	non-securities (collectibles, commodities, real estate, etc.)
$10,000,000	Total Assets

First, is the account a securities portfolio? The account is a securities portfolio because securities as well as cash and cash equivalents (which you have chosen to include as securities) ($6,000,000 + $1,000,000 = $7,000,000) comprise at least 50% of the value of the account (here, 70%). (See Instruction 5.b(1)).

Second, does the account receive continuous and regular supervisory or management services? The entire account is managed on a *discretionary basis* and is provided ongoing supervisory and management services, and therefore receives continuous and regular supervisory or management services. (See Instruction 5.b.(3)).

Third, what is the entire value of the account? The entire value of the account ($10,000,000) is included in the calculation of the adviser's total regulatory assets under management.

6. Item 7: Financial Industry Affiliations and Private Fund Reporting

Item 7.A. and Section 7.A. of Schedule D ask questions about you and your *related persons*' financial industry affiliation. If you are filing an *umbrella registration*, you should not check Item 7.A.(2) with respect to your *relying advisers*, and you do not have to complete Section 7.A. in Schedule D for your *relying advisers*. You should complete Schedule R with respect to your *relying advisers*. Item 7.B. and Section 7.B. of Schedule D ask questions about the *private funds* that you advise. You are required to complete a Section 7.B.(1) of Schedule D for each *private fund* that you advise, except in certain circumstances described under Item 7.B. and below.

a. If your *principal office and place of business* is outside the United States, for purposes of Item 7 and Section 7.B. of Schedule D you may disregard any *private fund* that, during your last fiscal year, was not a *United States person*, was not offered in the United States, and was not beneficially owned by any *United States person*.

b. When filing Section 7.B.(1) of Schedule D for a *private fund*, you must acquire an identification number for the fund by logging onto the IARD website and using the private fund identification number generator. You must continue to use the same identification number whenever you amend Section 7.B.(1) for that fund. If you file a Section 7.B.(1) for a *private fund* for which an identification number has already been acquired by another adviser, you must not acquire a new identification number, but must instead utilize the existing number. If you choose to complete a single Section 7.B.(1) for a master-feeder arrangement under instruction 6.d. below, you must acquire an identification number also for each feeder fund.

c. If any *private fund* has issued two or more series (or classes) of equity interests whose values are determined with respect to separate portfolios of securities and other assets, then each such series (or class) should be regarded as a separate *private fund*. In Section 7.B.(1) and 7.B.(2) of Schedule D, next to the name of the *private fund*, list the name and identification number of the specific series (or class) for which you are filing the sections. This only applies with respect to series (or classes) that you manage as if they were separate funds and not a fund's side pockets or similar arrangements.

d. In the case of a master-feeder arrangement (see questions 6-7 of Section 7.B.(1) of Schedule D), instead of completing a Section 7.B.(1) for each of the master fund and each feeder fund, you may complete a single Section 7.B.(1) for the master-feeder arrangement under the name of the master fund if the answers to questions 8, 10, 21 and 23 through 28 are the same for all of the feeder funds (or, in the case of questions 24 and 25, if the feeder funds do not use a prime broker or custodian). If you choose to complete a single Section 7.B.(1), you should disregard the feeder funds, except for the following:

(1) **Question 11**: State the gross assets for the master-feeder arrangement as a whole.

(2) **Question 12**: List the lowest minimum investment commitment applicable to any of the master fund and the feeder funds.

(3) **Questions 13-16**: Answer by aggregating all investors in the master-feeder arrangement (but do not count the feeder funds themselves as investors).

(4) **Questions 19-20**: For purposes of these questions, the *private fund* means any of the master fund or the feeder funds. In answering the questions, moreover, disregard the feeder funds' investment in the master fund.

(5) **Question 22**: List all of the Form D SEC file numbers of any of the master fund and feeder funds.

e. Additional Instructions:

(1) **Question 9: Investment in Registered Investment Companies:** For purposes of this question, disregard any open-end management investment company regulated as a money market fund under rule 2a-7 under the Investment Company Act if the *private fund* invests in such a company in reliance on rule 12d1-1 under the same Act.

(2) **Question 10: Type of *Private Fund*:** For purposes of this question, the following definitions apply:

"Hedge fund" means any *private fund* (other than a securitized asset fund):

(a) with respect to which one or more investment advisers (or *related persons* of investment advisers) may be paid a performance fee or allocation calculated by taking into account unrealized gains (other than a fee or allocation the calculation of which may take into account unrealized gains solely for the purpose of reducing such fee or allocation to reflect net unrealized losses);

(b) that may borrow an amount in excess of one-half of its net asset value (including any committed capital) or may have gross notional exposure in excess of twice its net asset value (including any committed capital); or

(c) that may sell securities or other assets short or enter into similar transactions (other than for the purpose of hedging currency exposure or managing duration).

A commodity pool is categorized as a hedge fund solely for purposes of this question. For purposes of this definition, do not net long and short positions. Include any borrowings or notional exposure of another *person* that are guaranteed by the *private fund* or that the *private fund* may otherwise be obligated to satisfy.

"Liquidity fund" means any *private fund* that seeks to generate income by investing in a portfolio of short-term obligations in order to maintain a stable net asset value per unit or minimize principal volatility for investors.

"Private equity fund" means any *private fund* that is not a hedge fund, liquidity fund, real estate fund, securitized asset fund, or venture capital fund and does not provide investors with redemption rights in the ordinary course.

"Real estate fund" means any *private fund* that is not a hedge fund, that does not provide investors with redemption rights in the ordinary course, and that invests primarily in real estate and real estate related assets.

"Securitized asset fund" means any *private fund* whose primary purpose is to issue asset backed securities and whose investors are primarily debt-holders.

"Venture capital fund" means any *private fund* meeting the definition of venture capital fund in rule 203(l)-1 under the Advisers Act.

"Other *private fund*" means any *private fund* that is not a hedge fund, liquidity fund, private equity fund, real estate fund, securitized asset fund, or venture capital fund.

(3) **Question 11: Gross Assets.** Report the assets of the *private fund* that you would include in calculating your regulatory assets under management according to instruction 5.b above.

(4) **Questions 19-20: Other clients' investments:** For purposes of these questions, disregard any feeder fund's investment in its master fund. (*See* questions 6-7 for the definition of "master fund" and "feeder fund.")

7. Item 10: *Control Persons*

If you are a "separately identifiable department or division" (SID) of a bank, identify on Schedule A your bank's executive officers who are directly engaged in managing, directing, or supervising your investment advisory activities, and list any other *persons* designated by your bank's board of directors as responsible for the day-to-day conduct of your investment advisory activities, including supervising *employees* performing investment advisory activities.

8. Additional Information.

If you believe your response to an item in Form ADV Part 1A requires further explanation, or if you wish to provide additional information, you may do so on Schedule D, in the Miscellaneous section. Completion of this section is optional.

APPENDIX C

GLOSSARY OF TERMS

1. **Advisory Affiliate:** Your advisory affiliates are (1) all of your officers, partners, or directors (or any ***person*** performing similar functions); (2) all ***persons*** directly or indirectly ***controlling*** or ***controlled*** by you; and (3) all of your current ***employees*** (other than ***employees*** performing only clerical, administrative, support or similar functions).

   If you are a "separately identifiable department or division" (SID) of a bank, your ***advisory affiliates*** are: (1) all of your bank's ***employees*** who perform your investment advisory activities (other than clerical or administrative ***employees***); (2) all ***persons*** designated by your bank's board of directors as responsible for the day-to-day conduct of your investment advisory activities (including supervising the ***employees*** who perform investment advisory activities); (3) all ***persons*** who directly or indirectly ***control*** your bank, and all ***persons*** whom you ***control*** in connection with your investment advisory activities; and (4) all other ***persons*** who directly manage any of your investment advisory activities (including directing, supervising or performing your advisory activities), all ***persons*** who directly or indirectly ***control*** those management functions, and all ***persons*** whom you ***control*** in connection with those management functions. *[Used in: Part 1A, Items 7, 11, DRPs; Part 1B, Item 2]*

2. **Annual Updating Amendment:** Within 90 days after your firm's fiscal year end, your firm must file an "annual updating amendment," which is an amendment to your firm's Form ADV that reaffirms the eligibility information contained in Item 2 of Part 1A and updates the responses to any other item for which the information is no longer accurate. *[Used in: General Instructions; Part 1A Instructions, Introductory Text, Item 2; Part 2A, Instructions, Appendix 1 Instructions; Part 2B, Instructions]*

3. **Borrowings:** Borrowings include secured borrowings and unsecured borrowings, collectively. Secured borrowings are obligations for borrowed money in respect of which the borrower has posted collateral or other credit support and should include any reverse repos (i.e. any sale of securities coupled with an agreement to repurchase the same (or similar) securities at a later date at an agreed price). Unsecured borrowings are obligations for borrowed money in respect of which the borrower has not posted collateral or other credit support. *[Used in: Part 1A, Instructions, Item 5, Schedule D]*

4. **Brochure:** A written disclosure statement that you must provide to ***clients*** and prospective ***clients***. See SEC rule 204-3; Form ADV, Part 2A. *[Used in: General Instructions; Used throughout Part 2]*

5. **Brochure Supplement:** A written disclosure statement containing information about certain of your ***supervised persons*** that your firm is required by Part 2B of Form ADV to provide to ***clients*** and prospective ***clients***. See SEC rule 204-3; Form ADV, Part 2B. *[Used in: General Instructions; Used throughout Part 2]*

6. **Charged:** Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge). *[Used in: Part 1A, Item 11; DRPs]*

7. **Client:** Any of your firm's investment advisory clients. This term includes clients from which your firm receives no compensation, such as family members of your *supervised persons*. If your firm also provides other services (e.g., accounting services), this term does not include clients that are not investment advisory clients. *[Used throughout Form ADV and Form ADV-W]*

8. **Commodity Derivative:** Exposures to commodities that you do not hold physically, whether held synthetically or through derivatives (whether cash or physically settled). *[Used in: Part 1A, Schedule D]*

9. **Control:** The power, directly or indirectly, to direct the management or policies of a ***person***, whether through ownership of securities, by contract, or otherwise.

   - Each of your firm's officers, partners, or directors exercising executive responsibility (or ***persons*** having similar status or functions) is presumed to control your firm.

   - A ***person*** is presumed to control a corporation if the ***person***: (i) directly or indirectly has the right to vote 25 percent or more of a class of the corporation's voting securities; or (ii) has the power to sell or direct the sale of 25 percent or more of a class of the corporation's voting securities.

   - A ***person*** is presumed to control a partnership if the ***person*** has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the partnership.

   - A ***person*** is presumed to control a limited liability company ("LLC") if the ***person***: (i) directly or indirectly has the right to vote 25 percent or more of a class of the interests of the LLC; (ii) has the right to receive upon dissolution, or has contributed, 25 percent or more of the capital of the LLC; or (iii) is an elected manager of the LLC.

   - A ***person*** is presumed to control a trust if the ***person*** is a trustee or ***managing agent*** of the trust.

   [Used in: General Instructions; Part 1A, Instructions, Items 2, 7, 10, 11, 12, Schedules A, B, C, D, R; DRPs]

10. **Credit Derivative**: Single name credit default swap, including loan credit default swap, credit default swap referencing a standardized basket of credit entities, including credit default swap indices and indices referencing leverage loans, and credit default swap referencing bespoke basket or tranche of collateralized debt obligations and collateralized loan obligations (including cash flow and synthetic) other than mortgage backed securities. *[Used in: Part 1A, Schedule D]*

11. **Custody:** Holding, directly or indirectly, ***client*** funds or securities, or having any authority to obtain possession of them. You have custody if a ***related person*** holds, directly or indirectly, ***client*** funds or securities, or has any authority to obtain possession of them, in connection with advisory services you provide to ***clients***. Custody includes:

- Possession of ***client*** funds or securities (but not of checks drawn by clients and made payable to third parties) unless you receive them inadvertently and you return them to the sender promptly, but in any case within three business days of receiving them;

- Any arrangement (including a general power of attorney) under which you are authorized or permitted to withdraw ***client*** funds or securities maintained with a custodian upon your instruction to the custodian; and

- Any capacity (such as general partner of a limited partnership, managing member of a limited liability company or a comparable position for another type of pooled investment vehicle, or trustee of a trust) that gives you or your ***supervised person*** legal ownership of or access to ***client*** funds or securities.

[Used in: Part 1A, Item 9; Part 1B, Instructions, Item 2; Part 2A, Items 15, 18]

12. **Discretionary Authority or Discretionary Basis:** Your firm has discretionary authority or manages assets on a discretionary basis if it has the authority to decide which securities to purchase and sell for the ***client***. Your firm also has discretionary authority if it has the authority to decide which investment advisers to retain on behalf of the ***client***. *[Used in: Part 1A, Instructions, Item 8; Part 1B, Instructions; Part 2A, Items 4, 16, 18; Part 2B, Instructions]*

13. **Employee:** This term includes an independent contractor who performs advisory functions on your behalf. *[Used in: Part 1A, Instructions, Items 1, 5, 11; Part 2B, Instructions]*

14. **Enjoined:** This term includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or a temporary restraining ***order***. *[Used in: Part 1A, Item 11; DRPs]*

15. **Equity Derivative:** Includes both listed equity derivative and derivative exposure to unlisted securities. Listed equity derivative includes all synthetic or derivative exposure to equities, including preferred equities, listed on a regular exchange. Listed equity derivative also includes a single stock future, equity index future, dividend swap, total return swap (contract for difference), warrant and right. Derivative exposure to unlisted equities includes all synthetic or derivative exposure to equities, including preferred equities, that are not listed on a regulated exchange. Derivative exposure to unlisted securities also

includes a single stock future, equity index future, dividend swap, total return swap (contract for difference), warrant and right. *[Used in: Part 1A, Schedule D]*

16. **Exempt Reporting Adviser:** An investment adviser that qualifies for the exemption from registration under section 203(l) of the Advisers Act because it is an adviser solely to one or more venture capital funds, or under rule 203(m)-1 of the Advisers Act because it is an adviser solely to ***private funds*** and has assets under management in the United States of less than $150 million. *[Used in: Throughout Part 1A; General Instructions; Form ADV-H; Form ADV-NR]*

17. **Felony:** For jurisdictions that do not differentiate between a felony and a ***misdemeanor***, a felony is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least $1,000. The term also includes a general court martial. *[Used in: Part 1A, Item 11; DRPs; Part 2A, Item 9; Part 2B, Item 3]*

18. **Filing Adviser:** An investment adviser eligible to register with the SEC that files (and amends) a single ***umbrella registration*** on behalf of itself and each of its ***relying advisers***. *[Used in: General Instructions; Part 1A, Items 1, 2, 3, 10 and 11; Schedule R]*

19. **FINRA CRD** or **CRD:** The Web Central Registration Depository ("CRD") system operated by FINRA for the registration of broker-dealers and broker-dealer representatives. *[Used in: General Instructions, Part 1A, Item 1, Schedules A, B, C, D, R, DRPs; Form ADV-W, Item 1]*

20. **Foreign Exchange Derivative**: Any derivative whose underlying asset is a currency other than U.S. dollars or is an exchange rate. Cross-currency interest rate swaps should be included in foreign exchange derivatives and excluded from ***interest rate derivatives***. *[Used in: Part 1A, Schedule D]*

21. **Foreign Financial Regulatory Authority:** This term includes (1) a foreign securities authority; (2) another governmental body or foreign equivalent of a ***self-regulatory organization*** empowered by a foreign government to administer or enforce its laws relating to the regulation of ***investment-related*** activities; and (3) a foreign membership organization, a function of which is to regulate the participation of its members in the activities listed above. *[Used in: Part 1A, Items 1, 11; DRPs; Part 2A, Item 9; Part 2B, Item 3]*

22. **Found:** This term includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters of caution, admonishments, and similar informal resolutions of matters. *[Used in: Part 1A, Item 11; Part 1B, Item 2; Part 2A, Item 9; Part 2B, Item 3]*

23. **Government Entity:** Any state or political subdivision of a state, including (i) any agency, authority, or instrumentality of the state or political subdivision; (ii) a plan or pool of assets ***controlled*** by the state or political subdivision or any agency, authority, or instrumentality thereof; and (iii) any officer, agent, or employee of the state or political subdivision or any agency, authority, or instrumentality thereof, acting in their official capacity. *[Used in: Part 1A, Item 5]*

24. **Gross Notional Value**: The gross nominal or notional value of all transactions that have been entered into but not yet settled as of the reporting date. For contracts with variable nominal or notional principal amounts, the basis for reporting is the nominal or notional principal amounts as of the reporting date. For options, use delta adjusted notional value. *[Used in: Part 1A, Schedule D]*

25. **High Net Worth Individual:** An individual who is a ***qualified client*** or who is a "qualified purchaser" as defined in section 2(a)(51)(A) of the Investment Company Act of 1940. *[Used in: Part 1A, Item 5; Schedule D]*

26. **Home State:** If your firm is registered with a ***state securities authority***, your firm's "home state" is the state where it maintains its ***principal office and place of business***. *[Used in: Part 1B, Instructions]*

27. **Impersonal Investment Advice:** Investment advisory services that do not purport to meet the objectives or needs of specific individuals or accounts. *[Used in: Part 1A, Instructions; Part 2A, Instructions; Part 2B, Instructions]*

28. **Independent Public Accountant:** A public accountant that meets the standards of independence described in rule 2-01(b) and (c) of Regulation S-X (17 CFR 210.2-01(b) and (c)). *[Used in: Item 9; Schedule D]*

29. **Interest Rate Derivative**: Any derivative whose underlying asset is the obligation to pay or the right to receive a given amount of money accruing interest at a given rate. Cross-currency interest rate swaps should be included in ***foreign exchange derivatives*** and excluded from interest rate derivatives. *[Used in: Part 1A, Schedule D]*

30. **Investment Adviser Representative:** *Any of your firm's* ***supervised persons*** *(except* those that provide only ***impersonal investment advice***) is an investment adviser representative, if

- the ***supervised person*** regularly solicits, meets with, or otherwise communicates with your firm's ***clients***,
- the ***supervised person*** has more than five ***clients*** who are natural persons and not ***high net worth individuals***, and

- more than ten percent of the ***supervised person's clients*** are natural persons and not ***high net worth individuals.***

NOTE: If your firm is registered with the ***state securities authorities*** and not the SEC, your firm may be subject to a different state definition of "investment adviser representative." Investment adviser representatives of SEC-registered advisers may be required to register in each state in which they have a place of business.

[Used in: General Instructions; Part 1A, Item 5; Part 2B, Item 1]

31. **Investment Grade**: A security is investment grade if it is sufficiently liquid that it can be sold at or near its carrying value within a reasonably short period of time and is subject to no greater than moderate credit risk. *[Used in: Part 1A, Schedule D]*

32. **Investment-Related:** Activities that pertain to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with an investment adviser, broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, futures sponsor, bank, or savings association). *[Used in: Part 1A, Items 7, 11, Schedule D, DRPs; Part 1B, Item 2; Part 2A, Items 9 and 19; Part 2B, Items 3, 4 and 7]*

33. **Involved:** Engaging in any act or omission, aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act. *[Used in: Part 1A, Item 11; Part 2A, Items 9 and 19; Part 2B, Items 3 and 7]*

34. **Legal Entity Identifier:** A "legal entity identifier" assigned or recognized by the Global LEI Regulatory Oversight Committee (ROC) or the Global LEI Foundation (GLEIF). *[Used in: Part 1A, Item 1, Schedules D, R]*

35. **Management Persons:** Anyone with the power to exercise, directly or indirectly, a ***controlling*** influence over your firm's management or policies, or to determine the general investment advice given to the ***clients*** of your firm.

Generally, all of the following are management persons:

- Your firm's principal executive officers, such as your chief executive officer, chief financial officer, chief operations officer, chief legal officer, and chief compliance officer; your directors, general partners, or trustees; and other individuals with similar status or performing similar functions;

- The members of your firm's investment committee or group that determines general investment advice to be given to ***clients***; and

- If your firm does not have an investment committee or group, the individuals who determine general investment advice provided to ***clients*** (if there are more than five people, you may limit your firm's response to their supervisors).

[Used in: Part 1B, Item 2; Part 2A, Items 9, 10 and 19]

36. **Managing Agent:** A managing agent of an investment adviser is any ***person***, including a trustee, who directs or manages (or who participates in directing or managing) the affairs of any unincorporated organization or association that is not a partnership. *[Used in: General Instructions; Form ADV-NR; Form ADV-W, Item 8]*

37. **Minor Rule Violation:** A violation of a ***self-regulatory organization*** rule that has been designated as "minor" pursuant to a plan approved by the SEC. A rule violation may be designated as "minor" under a plan if the sanction imposed consists of a fine of $2,500 or less, and if the sanctioned ***person*** does not contest the fine. (Check with the appropriate ***self-regulatory organization*** to determine if a particular rule violation has been designated as "minor" for these purposes.) *[Used in: Part 1A, Item 11]*

38. **Misdemeanor:** For jurisdictions that do not differentiate between a ***felony*** and a misdemeanor, a misdemeanor is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than $1,000. The term also includes a special court martial. *[Used in: Part 1A, Item 11; DRPs; Part 2A, Item 9; Part 2B, Item 3]*

39. **Net Asset Value**: With respect to any ***client***, the gross assets of the ***client's*** accounts minus any outstanding indebtedness or other accrued but unpaid liabilities. *[Used in: Part 1A, Item 5]*

40. **Non-Investment Grade**: A security is non-investment grade if it is not an ***investment grade*** security. *[Used in: Part 1A, Schedule D]*

41. **Non-Resident:** (a) an individual who resides in any place not subject to the jurisdiction of the United States; (b) a corporation incorporated in or that has its ***principal office and place of business*** in any place not subject to the jurisdiction of the United States; and (c) a partnership or other unincorporated organization or association that is formed in or has its ***principal office and place of business*** in any place not subject to the jurisdiction of the United States. *[Used in: General Instructions; Form ADV-NR]*

42. **Notice Filing:** SEC-registered advisers may have to provide ***state securities authorities*** with copies of documents that are filed with the SEC. These filings are referred to as "notice filings." *[Used in: General Instructions; Part 1A, Item 2; Execution Page(s); Form ADV-W]*

43. **Order:** A written directive issued pursuant to statutory authority and procedures, including an order of denial, exemption, suspension, or revocation. Unless included in an order, this term does not include special stipulations, undertakings, or agreements relating to payments, limitations on activity or other restrictions. *[Used in: Part 1A, Items 2 and 11; Schedules D, R; DRPs; Part 2A, Item 9; Part 2B, Item 3]*

44. **Other derivative:** Any derivative that is not a ***commodity derivative***, ***credit derivative***, ***equity derivative***, ***foreign exchange derivative*** or ***interest rate derivative***. *[Used in: Part 1A, Schedule D]*

45. **Parallel Managed Account:** With respect to any registered investment company or business development company, a parallel managed account is any managed account or other pool of assets that you advise and that pursues substantially the same investment objective and strategy and invests side by side in substantially the same positions as the identified investment company or business development company that you advise. *[Used in: Part 1A, Schedule D]*

46. **Performance-Based Fee:** An investment advisory fee based on a share of capital gains on, or capital appreciation of, ***client*** assets. A fee that is based upon a percentage of assets that you manage is not a performance-based fee. *[Used in: Part 1A, Item 5; Part 2A, Items 6 and 19]*

47. **Person:** A natural person (an individual) or a company. A company includes any partnership, corporation, trust, limited liability company ("LLC"), limited liability partnership ("LLP"), sole proprietorship, or other organization. *[Used throughout Form ADV and Form ADV-W]*

48. **Principal Office and Place of Business:** Your firm's executive office from which your firm's officers, partners, or managers direct, ***control***, and coordinate the activities of your firm. *[Used in: Part 1A, Instructions, Items 1 and 2; Schedules D, R; Form ADV-W, Item 1]*

49. **Private Fund:** An issuer that would be an investment company as defined in section 3 of the Investment Company Act of 1940 but for section 3(c)(1) or 3(c)(7) of that Act. *[Used in: Part 1A, Items 2, 5, 7, and 9; Schedule D; General Instructions; Part 1A, Instructions]*.

50. **Proceeding:** This term includes a formal administrative or civil action initiated by a governmental agency, ***self-regulatory organization*** or ***foreign financial regulatory authority***; a ***felony*** criminal indictment or information (or equivalent formal charge); or a ***misdemeanor*** criminal information (or equivalent formal charge). This term does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge). *[Used in: Part 1A, Item 11; DRPs; Part 1B, Item 2; Part 2A, Item 9; Part 2B, Item 3]*

51. **Qualified Client**: A ***client*** that satisfies the definition of qualified client in SEC rule 205-3. *[Used in: Schedule D ; General Instructions]*

52. **Related Person:** Any ***advisory affiliate*** and any ***person*** that is under common ***control*** with your firm. *[Used in: Part 1A, Items 7, 8, 9; Schedule D; Form ADV-W, Item 3; Part 2A, Items 10, 11, 12, 14; Part 2A, Appendix 1, Item 6]*

53. **Relying Adviser:** An investment adviser eligible to register with the SEC that relies on a ***filing adviser*** to file (and amend) a single ***umbrella registration*** on its behalf. *[Used in: General Instructions; Part 1A, Items 1, 7, 11; Schedule D; Schedule R]*

54. **Self-Regulatory Organization** or **SRO:** Any national securities or commodities exchange, registered securities association, or registered clearing agency. For example, the Chicago Board of Trade ("CBOT"), FINRA and New York Stock Exchange ("NYSE") are self-regulatory organizations. *[Used in: Part 1A, Item 11; DRPs; Part 1B, Item 2; Part 2A, Items 9 and 19; Part 2B, Items 3 and 7]*

55. **Sovereign Bonds**: Any notes, bonds and debentures issued by a national government (including central government, other governments and central banks but excluding U.S. state and local governments), whether denominated in a local or foreign currency. *[Used in: Part 1A, Schedule D]*

56. **Sponsor:** A sponsor of a ***wrap fee program*** sponsors, organizes, or administers the program or selects, or provides advice to ***clients*** regarding the selection of, other investment advisers in the program. *[Used in: Part 1A, Item 5; Schedule D; Part 2A, Instructions, Appendix 1 Instructions]*

57. **State Securities Authority:** The securities commissioner or commission (or any agency, office or officer performing like functions) of any state of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, or any other possession of the United States. *[Used throughout Form ADV]*

58. **Supervised Person:** Any of your officers, partners, directors (or other ***persons*** occupying a similar status or performing similar functions), or ***employees***, or any other ***person*** who provides investment advice on your behalf and is subject to your supervision or ***control***. *[Used throughout Part 2]*

59. **Umbrella Registration:** A single registration by a ***filing adviser*** and one or more ***relying advisers*** who collectively conduct a single advisory business and that meet the conditions set forth in General Instruction 5. *[Used in: General Instructions; Part 1A, Items 1, 2, 3, 7, 10 and 11; Schedule D; Schedule R]*

60. **United States person:** This term has the same meaning as in rule 203(m)-1 under the Advisers Act, which includes any natural person that is resident in the United States. *[Used in: Part 1A, Instructions; Item 5; Schedule D]*

61. **Wrap Brochure** or **Wrap Fee Program Brochure:** The written disclosure statement that ***sponsors*** of ***wrap fee programs*** must provide to each of their ***wrap fee program clients***. *[Used in: Part 2, General Instructions; Used throughout Part 2A, Appendix 1]*

62. **Wrap Fee Program:** Any advisory program under which a specified fee or fees not based directly upon transactions in a ***client's*** account is charged for investment advisory services (which may include portfolio management or advice concerning the selection of other investment advisers) and the execution of ***client*** transactions. *[Used in: Part 1, Item 5; Schedule D; Part 2A, Instructions, Item 4, used throughout Appendix 1; Part 2B, Instructions]*

APPENDIX D

FORM ADV (Paper Version)

- **UNIFORM APPLICATION FOR INVESTMENT ADVISER REGISTRATION AND**
- **REPORT BY EXEMPT REPORTING ADVISERS**

PART 1A

WARNING: Complete this form truthfully. False statements or omissions may result in denial of your application, revocation of your registration, or criminal prosecution. You must keep this form updated by filing periodic amendments. See Form ADV General Instruction 4.

Check the box that indicates what you would like to do (check all that apply):

SEC or State Registration:

☐ Submit an initial application to register as an investment adviser with the SEC.
☐ Submit an initial application to register as an investment adviser with one or more states.
☐ Submit an *annual updating amendment* to your registration for your fiscal year ended_____.
☐ Submit an other-than-annual amendment to your registration.

SEC or State Report by *Exempt Reporting Advisers*:

☐ Submit an initial report to the SEC.
☐ Submit a report to one or more *state securities authorities*.
☐ Submit an *annual updating amendment* to your report for your fiscal year ended_____.
☐ Submit an other-than-annual amendment to your report.
☐ Submit a final report.

Item 1 Identifying Information

Responses to this Item tell us who you are, where you are doing business, and how we can contact you. If you are filing an *umbrella registration*, the information in Item 1 should be provided for the *filing adviser* only. General Instruction 5 provides information to assist you with filing an *umbrella registration*.

A. Your full legal name (if you are a sole proprietor, your last, first, and middle names):

_____

B. (1) Name under which you primarily conduct your advisory business, if different from Item 1.A.

_____

List on Section 1.B. of Schedule D any additional names under which you conduct your advisory business.

(2) If you are using this Form ADV to register more than one investment adviser under an *umbrella registration*, check this box ☐.

If you check this box, complete a Schedule R for each relying adviser.

C. If this filing is reporting a change in your legal name (Item 1.A.) or primary business name (Item 1.B.), enter the new name and specify whether the name change is of ☐ your legal name or ☐ your primary business name:

_____

D. (1) If you are registered with the SEC as an investment adviser, your SEC file number: 801-

(2) If you report to the SEC as an *exempt reporting adviser*, your SEC file number: 802-_____

(3) If you have Central Index Key numbers assigned by the SEC ("CIK Number"), all of your CIK numbers: _____

E. If you have one or more numbers ("*CRD* Numbers") assigned by the *FINRA's CRD* system or by the IARD system, all of your *CRD* numbers: _____

If your firm does not have a CRD number, skip this Item 1.E. Do not provide the CRD number of one of your officers, employees, or affiliates.

F. *Principal Office and Place of Business*

(1) Address (do not use a P.O. Box):

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

If this address is a private residence, check this box: ☐

List on Section 1.F. of Schedule D any office, other than your principal office and place of business, at which you conduct investment advisory business. If you are applying for registration, or are registered, with one or more state securities authorities, you must list all of your offices in the state or states to which you are applying for registration or with whom you are registered. If you are applying for SEC registration, if you are registered only with the SEC, or if you are reporting to the SEC as an exempt reporting adviser, list the largest twenty-five offices in terms of numbers of employees as of the end of your most recently completed fiscal year.

(2) Days of week that you normally conduct business at your *principal office and place of business*:

☐ Monday - Friday ☐ Other: _____

Normal business hours at this location: _____

(3) Telephone number at this location: _____
(area code) (telephone number)

(4) Facsimile number at this location, if any: _____
(area code) (facsimile number)

(5) What is the total number of offices, other than your *principal office and place of business*, at which you conduct investment advisory business as of the end of your most recently completed fiscal year?

_____

FORM ADV Part 1A Page 3 of 21	Your Name_____ Date_____	*CRD* Number_____ SEC 801- or 802 Number_____

G. Mailing address, if different from your *principal office and place of business* address:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

If this address is a private residence, check this box: ☐

H. If you are a sole proprietor, state your full residence address, if different from your *principal office and place of business* address in Item 1.F.:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

I. Do you have one or more websites or websites for social media platforms used by your firm (including, but not limited to, Twitter, Facebook and LinkedIn)?

Yes ☐ No ☐

If "yes," list all firm website addresses on Section 1.I. of Schedule D. If a website address serves as a portal through which to access other information you have published on the web, you may list the portal without listing addresses for all of the other information. Some advisers may need to list more than one portal address. Do not provide individual electronic mail (e-mail) addresses or social media websites of employees in response to this Item.

J. Chief Compliance Officer

(1) Provide the name and contact information of your Chief Compliance Officer: If you are an *exempt reporting adviser*, you must provide the contact information for your Chief Compliance Officer, if you have one. If not, you must complete Item 1.K. below.

_____
(name)

_____
(other titles, if any)

_____ _____
(area code) (telephone number) (area code) (facsimile number, if any)

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

_____
(electronic mail (e-mail) address, if Chief Compliance Officer has one)

(2) If your Chief Compliance Officer is compensated or employed by any *person* other than you or a *related person* for providing chief compliance officer services, provide the *person's* name and IRS Employer Identification Number (if any):_____.

K. Additional Regulatory Contact Person: If a person other than the Chief Compliance Officer is authorized to receive information and respond to questions about this Form ADV, you may provide that information here.

_____
(name)

_____
(titles)

_____ _____
(area code) (telephone number) (area code) (facsimile number, if any)

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

_____
(electronic mail (e-mail) address, if contact person has one)

L. Do you maintain some or all of the books and records you are required to keep under Section 204 of the Advisers Act, or similar state law, somewhere other than your *principal office and place of business*?

Yes ☐ No ☐

If "yes," complete Section 1.L. of Schedule D.

M. Are you registered with a *foreign financial regulatory authority*? Yes No

Answer "no" if you are not registered with a foreign financial regulatory authority, even if you have an affiliate that is registered with a foreign financial regulatory authority. If "yes," complete Section 1.M. of Schedule D.

N. Are you a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934?

☐ ☐ Yes No

O. Did you have $1 billion or more in assets on the last day of your most recent fiscal year?

☐ ☐ Yes No

If yes, what is the approximate amount of your assets:

$1 billion to less than $10 billion ☐

$10 billion to less than $50 billion ☐

$50 billion or more ☐

For purposes of Item 1.O. only, "assets" refers to your total assets, rather than the assets you manage on behalf of clients. Determine your total assets using the total assets shown on the balance sheet for your most recent fiscal year end.

P. Provide your *Legal Entity Identifier* if you have one: _____

A *legal entity identifier* is a unique number that companies use to identify each other in the financial marketplace. You may not have a *legal entity identifier*.

Item 2

SEC Registration

Responses to this Item help us (and you) determine whether you are eligible to register with the SEC. Complete this Item 2.A. only if you are applying for SEC registration or submitting an *annual updating amendment* to your SEC registration. If you are filing an *umbrella registration*, the information in Item 2 should be provided for the *filing adviser* only.

A. To register (or remain registered) with the SEC, you must check **at least one** of the Items 2.A.(1) through 2.A.(12), below. If you are submitting an *annual updating amendment* to your SEC registration and you are no longer eligible to register with the SEC, check Item 2.A.(13). Part 1A Instruction 2 provides information to help you determine whether you may affirmatively respond to each of these items.

You (the adviser):

☐ (1) are a **large advisory firm** that either:

(a) has regulatory assets under management of $100 million (in U.S. dollars) or more, or

(b) has regulatory assets under management of $90 million (in U.S. dollars) or more at the time of filing its most recent *annual updating amendment* and is registered with the SEC;

☐ (2) are a **mid-sized advisory firm** that has regulatory assets under management of $25 million (in U.S. dollars) or more but less than $100 million (in U.S. dollars) and you are either:

(a) not required to be registered as an adviser with the *state securities authority* of the state where you maintain your *principal office and place of business*, or

(b) not subject to examination by the *state securities authority* of the state where you maintain your *principal office and place of business*;

*Click **HERE** for a list of states in which an investment adviser, if registered, would not be subject to examination by the state securities authority.*

☐ (3) have your *principal office and place of business* **in Wyoming** (which does not regulate advisers);

☐ (4) have your *principal office and place of business* **outside the United States**;

☐ (5) are **an investment adviser (or sub-adviser) to an investment company** registered under the Investment Company Act of 1940;

☐ (6) are **an investment adviser to a company which has elected to be a business development company** pursuant to section 54 of the Investment Company Act of 1940 and has not withdrawn the election, and you have at least $25 million of regulatory assets under management;

☐ (7) are a **pension consultant** with respect to assets of plans having an aggregate value of at least $200,000,000 that qualifies for the exemption in rule 203A-2(a);

☐ (8) are a **related adviser** under rule 203A-2(b) that *controls,* is *controlled* by, or is under common *control* with, an investment adviser that is registered with the SEC, and your *principal office and place of business* is the same as the registered adviser;

If you check this box, complete Section 2.A.(8) of Schedule D.

☐ (9) are an **adviser** relying on rule 203A-2(c) because you **expect to be eligible for SEC registration within 120 days**;

If you check this box, complete Section 2.A.(9) of Schedule D.

☐ (10) are a **multi-state adviser** that is required to register in 15 or more states and is relying on rule 203A-2(d);

If you check this box, complete Section 2.A.(10) of Schedule D.

☐ (11) are an **Internet adviser** relying on rule 203A-2(e);

☐ (12) have **received an SEC *order*** exempting you from the prohibition against registration with the SEC;

If you check this box, complete Section 2.A.(12) of Schedule D.

☐ (13) are **no longer eligible** to remain registered with the SEC.

SEC Reporting by *Exempt Reporting Advisers*

B. Complete this Item 2.B. only if you are reporting to the SEC as an *exempt reporting adviser.* Check all that apply. You:

☐ (1) qualify for the exemption from registration as an adviser solely to one or more venture capital funds;

☐ (2) qualify for the exemption from registration because you act solely as an adviser to *private funds* and have assets under management in the United States of less than $150 million;

☐ (3) act solely as an adviser to *private funds* but you are no longer eligible to check box 2.B.(2) because you have assets under management in the United States of $150 million or more.

If you check box (2) or (3), complete Section 2.B. of Schedule D.

State Securities Authority Notice Filings and State Reporting by *Exempt Reporting Advisers*

C. Under state laws, SEC-registered advisers may be required to provide to *state securities authorities* a copy of the Form ADV and any amendments they file with the SEC. These are called *notice filings.* In addition, *exempt reporting advisers* may be required to provide *state securities authorities* with a copy of reports and any amendments they file with the SEC. If this is an initial application or report, check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings or reports you submit to

the SEC. If this is an amendment to direct your *notice filings* or reports to additional state(s), check the box(es) next to the state(s) that you would like to receive notice of this and all subsequent filings or reports you submit to the SEC. If this is an amendment to your registration to stop your *notice filings* or reports from going to state(s) that currently receive them, uncheck the box(es) next to those state(s).

☐ AL	☐ CT	☐ HI	☐ KY	☐ MN	☐ NH	☐ OH	☐ SC	☐ VI
☐ AK	☐ DE	☐ ID	☐ LA	☐ MS	☐ NJ	☐ OK	☐ SD	☐ VA
☐ AZ	☐ DC	☐ IL	☐ ME	☐ MO	☐ NM	☐ OR	☐ TN	☐ WA
☐ AR	☐ FL	☐ IN	☐ MD	☐ MT	☐ NY	☐ PA	☐ TX	☐ WV
☐ CA	☐ GA	☐ IA	☐ MA	☐ NE	☐ NC	☐ PR	☐ UT	☐ WI
☐ CO	☐ GU	☐ KS	☐ MI	☐ NV	☐ ND	☐ RI	☐ VT	

If you are amending your registration to stop your notice filings or reports from going to a state that currently receives them and you do not want to pay that state's notice filing or report filing fee for the coming year, your amendment must be filed before the end of the year (December 31).

Item 3 Form of Organization

If you are filing an *umbrella registration*, the information in Item 3 should be provided for the *filing adviser* only.

A. How are you organized?

☐ Corporation ☐ Sole Proprietorship ☐ Limited Liability Partnership (LLP)
☐ Partnership ☐ Limited Liability Company (LLC) ☐ Limited Partnership (LP)
☐ Other (specify):_____

If you are changing your response to this Item, see Part 1A Instruction 4.

B. In what month does your fiscal year end each year? _____

C. Under the laws of what state or country are you organized? _____

If you are a partnership, provide the name of the state or country under whose laws your partnership was formed. If you are a sole proprietor, provide the name of the state or country where you reside.

If you are changing your response to this Item, see Part 1A Instruction 4.

Item 4 Successions

A. Are you, at the time of this filing, succeeding to the business of a registered investment adviser, including, for example, a change of your structure or legal status (*e.g.*, form of organization or state of incorporation)?

☐ Yes ☐ No

If "yes," complete Item 4.B. and Section 4 of Schedule D.

B. Date of Succession: _____
(mm/dd/yyyy)

If you have already reported this succession on a previous Form ADV filing, do not report the succession again. Instead, check "No." See Part 1A Instruction 4.

Item 5 Information About Your Advisory Business

Responses to this Item help us understand your business, assist us in preparing for on-site examinations, and provide us with data we use when making regulatory policy. Part 1A Instruction 5.a. provides additional guidance to newly formed advisers for completing this Item 5.

Employees

If you are organized as a sole proprietorship, include yourself as an employee in your responses to Item 5.A and Items 5.B.(1), (2), (3), (4), and (5). If an employee performs more than one function, you should count that employee in each of your responses to Items 5.B.(1), (2), (3), (4) and (5).

A. Approximately how many *employees* do you have? Include full- and part-time *employees* but do not include any clerical workers.

_____

B. (1) Approximately how many of the *employees* reported in 5.A. perform investment advisory functions (including research)?

_____

(2) Approximately how many of the *employees* reported in 5.A. are registered representatives of a broker-dealer?

_____

(3) Approximately how many of the *employees* reported in 5.A. are registered with one or more *state securities authorities* as *investment adviser representatives*?

_____

(4) Approximately how many of the *employees* reported in 5.A. are registered with one or more *state securities authorities* as *investment adviser representatives* for an investment adviser other than you?

_____

(5) Approximately how many of the *employees* reported in 5.A. are licensed agents of an insurance company or agency?

_____

(6) Approximately how many firms or other *persons* solicit advisory *clients* on your behalf?

_____

In your response to Item 5.B.(6), do not count any of your employees and count a firm only once – do not count each of the firm's employees that solicit on your behalf.

Clients

In your responses to Items 5.C. and 5.D. do not include as "clients" the investors in a private fund you advise, unless you have a separate advisory relationship with those investors.

C. (1) To approximately how many *clients* for whom you do not have regulatory assets under management did you provide investment advisory services during your most recently completed fiscal year?

_____

(2) Approximately what percentage of your *clients* are non-*United States persons*? _____%

D. *For purposes of this Item 5.D., the category "individuals" includes trusts, estates, and 401(k) plans and IRAs of individuals and their family members, but does not include businesses organized as sole proprietorships.*
The category "business development companies" consists of companies that have made an election pursuant to section 54 of the Investment Company Act of 1940. Unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940, do not answer (d)(1) or (d)(2) below.

Indicate the approximate number of your *clients* and amount of your total regulatory assets under management (reported in Item 5.F. below) attributable to each of the following type of *client*. The aggregate amount of regulatory assets under management reported in Item 5.D.(2) should equal the total amount of regulatory assets under management reported in Item 5.F.(2) below.

Type of *Client*	(1) Number of *Client*(s)	(2) Amount of Regulatory Assets under Management
(a) Individuals (other than *high net worth individuals*)		
(b) *High net worth individuals*		
(c) Banking or thrift institutions		
(d) Investment companies		
(e) Business development companies		
(f) Pooled investment vehicles (other than investment companies)		
(g) Pension and profit sharing plans (but not the plan participants or government pension plans)		
(h) Charitable organizations		
(i) Corporations or other businesses not listed above		
(j) State or municipal *government entities* (including government pension plans)		
(k) Other investment advisers		
(l) Insurance companies		
(m) Sovereign wealth funds and foreign official institutions		
(n) Other: _____		

Compensation Arrangements

E. You are compensated for your investment advisory services by (check all that apply):

- ☐ (1) A percentage of assets under your management
- ☐ (2) Hourly charges
- ☐ (3) Subscription fees (for a newsletter or periodical)
- ☐ (4) Fixed fees (other than subscription fees)
- ☐ (5) Commissions
- ☐ (6) *Performance-based fees*
- ☐ (7) Other (specify): _____

Regulatory Assets Under Management

F. (1) Do you provide continuous and regular supervisory or management services to securities portfolios? ☐ Yes ☐ No

(2) If yes, what is the amount of your regulatory assets under management and total number of accounts?

		U.S. Dollar Amount		Total Number of Accounts
Discretionary:	(a)	$_____.00	(d)	_____
Non-Discretionary:	(b)	$_____.00	(e)	_____
Total:	(c)	$_____.00	(f)	_____

Part 1A Instruction 5.b. explains how to calculate your regulatory assets under management. You must follow these instructions carefully when completing this Item.

(3) What is the approximate amount of your total regulatory assets under management (reported in Item 5.F.(2)(c) above) attributable to non-U.S. *clients*? _____

Advisory Activities

G. What type(s) of advisory services do you provide? Check all that apply.

- ☐ (1) Financial planning services
- ☐ (2) Portfolio management for individuals and/or small businesses
- ☐ (3) Portfolio management for investment companies (as well as "business development companies" that have made an election pursuant to section 54 of the Investment Company Act of 1940)
- ☐ (4) Portfolio management for pooled investment vehicles (other than investment companies)
- ☐ (5) Portfolio management for businesses (other than small businesses) or institutional *clients* (other than registered investment companies and other pooled investment vehicles)
- ☐ (6) Pension consulting services
- ☐ (7) Selection of other advisers (including *private fund* managers)
- ☐ (8) Publication of periodicals or newsletters
- ☐ (9) Security ratings or pricing services
- ☐ (10) Market timing services
- ☐ (11) Educational seminars/workshops
- ☐ (12) Other (specify): _____

Do not check Item 5.G.(3) unless you provide advisory services pursuant to an investment advisory contract to an investment company registered under the Investment Company Act of 1940, including as a subadviser. If you check Item 5.G.(3), report the 811 or 814 number of the investment company or investment companies to which you provide advice in Section 5.G.(3) of Schedule D.

H. If you provide financial planning services, to how many *clients* did you provide these services during your last fiscal year?

☐ 0 ☐ 1-10 ☐ 11-25 ☐ 26-50 ☐ 51-100 ☐ 101-250 ☐ 251 – 500
☐ More than 500 If more than 500, how many? _____ (round to the nearest 500)

In your responses to this Item 5.H., do not include as "clients" the investors in a private fund you advise, unless you have a separate advisory relationship with those investors.

I. (1) Do you participate in a *wrap fee program*? ☐ Yes ☐ No.

(2) If you participate in a *wrap fee program*, what is the amount of your regulatory assets under management attributable to acting as:

(a) *sponsor* to a *wrap fee program* $_____

(b) a portfolio manager for a *wrap fee program*? $_____

If you are a portfolio manager for a wrap fee program, list the names of the programs, their sponsors and related information in Section 5.I.(2) of Schedule D.

If your involvement in a wrap fee program is limited to recommending wrap fee programs to your clients, or you advise a mutual fund that is offered through a wrap fee program, do not check Item 5.I.(1) or enter any amounts in response to Item 5.I(2).

J. (1) In response to Item 4.B. of Part 2A of Form ADV, do you indicate that you provide investment advice only with respect to limited types of investments? ☐ Yes ☐ No

(2) Do you report *client* assets in Item 4.E of Part 2A that are computed using a different method than the method used to compute your regulatory assets under management? ☐ Yes ☐ No

K. Separately Managed Account *Client*s

(1) Do you have regulatory assets under management attributable to *clients* other than those listed in Item 5.D.(2)(d)-(f) (separately managed account *clients*)? ☐ Yes ☐ No

If yes, complete Section 5.K.(1) of Schedule D.

(2) Do you engage in *borrowing* transactions on behalf of any of the separately managed account *clients* that you advise? ☐ Yes ☐ No

If yes, complete Section 5.K.(2) of Schedule D.

(3) Do you engage in derivative transactions on behalf of any of the separately managed account *clients* that you advise? ☐ Yes ☐ No

If yes, complete Section 5.K.(2) of Schedule D.

(4) After subtracting the amounts in Item 5.D.(2)(d)-(f) above from your total regulatory assets under management, does any custodian hold ten percent or more of this remaining amount of regulatory assets under management?

☐ Yes ☐ No

If yes, complete Section 5.K.(3) of Schedule D for each custodian.

Item 6 Other Business Activities

In this Item, we request information about your firm's other business activities.

A. You are actively engaged in business as a (check all that apply):

☐ (1) broker-dealer (registered or unregistered)
☐ (2) registered representative of a broker-dealer
☐ (3) commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
☐ (4) futures commission merchant
☐ (5) real estate broker, dealer, or agent
☐ (6) insurance broker or agent
☐ (7) bank (including a separately identifiable department or division of a bank)
☐ (8) trust company
☐ (9) registered municipal advisor
☐ (10) registered security-based swap dealer
☐ (11) major security-based swap participant
☐ (12) accountant or accounting firm
☐ (13) lawyer or law firm
☐ (14) other financial product salesperson (specify): _____

If you engage in other business using a name that is different from the names reported in Items 1.A. or 1.B.(1), complete Section 6.A. of Schedule D.

B. (1) Are you actively engaged in any other business not listed in Item 6.A. (other than giving investment advice)? ☐ Yes ☐ No

(2) If yes, is this other business your primary business? ☐ Yes ☐ No

If "yes," describe this other business on Section 6.B.(2) of Schedule D, and if you engage in this business under a different name, provide that name.

(3) Do you sell products or provide services other than investment advice to your advisory *clients*?
☐ Yes ☐ No

If "yes," describe this other business on Section 6.B.(3) of Schedule D, and if you engage in this business under a different name, provide that name.

Item 7 Financial Industry Affiliations and *Private Fund* Reporting

In this Item, we request information about your financial industry affiliations and activities. This information identifies areas in which conflicts of interest may occur between you and your *clients*.

A. This part of Item 7 requires you to provide information about you and your *related persons*, including foreign affiliates. Your *related persons* are all of your *advisory affiliates* and any *person* that is under common *control* with you.

You have a *related person* that is a (check all that apply):

☐ (1) broker-dealer, municipal securities dealer, or government securities broker or dealer (registered or unregistered)
☐ (2) other investment adviser (including financial planners)
☐ (3) registered municipal advisor
☐ (4) registered security-based swap dealer
☐ (5) major security-based swap participant
☐ (6) commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
☐ (7) futures commission merchant
☐ (8) banking or thrift institution
☐ (9) trust company
☐ (10) accountant or accounting firm
☐ (11) lawyer or law firm
☐ (12) insurance company or agency
☐ (13) pension consultant
☐ (14) real estate broker or dealer
☐ (15) sponsor or syndicator of limited partnerships (or equivalent), excluding pooled investment vehicles
☐ (16) sponsor, general partner, managing member (or equivalent) of pooled investment vehicles

Note that Item 7.A should not be used to disclose that some of your employees perform investment advisory functions or are registered representatives of a broker-dealer. The number of your firm's employees who perform investment advisory functions should be disclosed under Item 5.B(1). The number of your firm's employees who are registered representatives of a broker-dealer should be disclosed under Item 5.B(2).

Note that if you are filing an umbrella registration, you should not check Item 7.A.(2) with respect to your relying advisers, and you do not have to complete Section 7.A. in Schedule D for your relying advisers. You should complete a Schedule R for each relying adviser.

For each related person, including foreign affiliates that may not be registered or required to be registered in the United States, complete Section 7.A. of Schedule D.

You do not need to complete Section 7.A. of Schedule D for any related person if: (1) you have no business dealings with the related person in connection with advisory services you provide to your clients; (2) you do not conduct shared operations with the related person; (3) you do not refer clients or business to the related person, and the related person does not refer prospective clients or business to you; (4) you do not share supervised persons or premises with the related person; and (5) you have no reason to believe that your relationship with the related person otherwise creates a conflict of interest with your clients.

You must complete Section 7.A. of Schedule D for each related person acting as qualified custodian in connection with advisory services you provide to your clients (other than any mutual fund transfer agent

pursuant to rule 206(4)-2(b)(1)), regardless of whether you have determined the related person to be operationally independent under rule 206(4)-2 of the Advisers Act.

B. Are you an adviser to any *private fund*? ☐ Yes ☐ No

If "yes," then for each private fund that you advise, you must complete a Section 7.B.(1) of Schedule D, except in certain circumstances described in the next sentence and in Instruction 6 of the Instructions to Part 1A. If you are registered or applying for registration with the SEC or reporting as an SEC exempt reporting adviser, and another SEC-registered adviser or SEC exempt reporting adviser reports this information with respect to any such private fund in Section 7.B.(1) of Schedule D of its Form ADV (e.g., if you are a subadviser), do not complete Section 7.B.(1) of Schedule D with respect to that private fund. You must, instead, complete Section 7.B.(2) of Schedule D.

In either case, if you seek to preserve the anonymity of a private fund client by maintaining its identity in your books and records in numerical or alphabetical code, or similar designation, pursuant to rule 204-2(d), you may identify the private fund in Section 7.B.(1) or 7.B.(2) of Schedule D using the same code or designation in place of the fund's name.

Item 8 Participation or Interest in *Client* Transactions

In this Item, we request information about your participation and interest in your *clients'* transactions. This information identifies additional areas in which conflicts of interest may occur between you and your *clients*. Your responses to these questions should be based on the types of participation and interest that you expect to engage in during the next year.

Like Item 7, Item 8 requires you to provide information about you and your *related persons*, including foreign affiliates.

Proprietary Interest in *Client* Transactions

A. Do you or any *related person*:	Yes	No
(1) buy securities for yourself from advisory *clients*, or sell securities you own to advisory *clients* (principal transactions)?	☐	☐
(2) buy or sell for yourself securities (other than shares of mutual funds) that you also recommend to advisory *clients*?	☐	☐
(3) recommend securities (or other investment products) to advisory *clients* in which you or any *related person* has some other proprietary (ownership) interest (other than those mentioned in Items 8.A.(1) or (2))?	☐	☐

Sales Interest in *Client* Transactions

B. Do you or any *related person*:	Yes	No
(1) as a broker-dealer or registered representative of a broker-dealer, execute securities trades for brokerage customers in which advisory *client* securities are sold to or bought from the brokerage customer (agency cross transactions)?	☐	☐

FORM ADV Part 1A Page 15 of 21	Your Name_____ Date_____	*CRD* Number_____ SEC 801- or 802 Number_____

(2) recommend to advisory *clients,* or act as a purchaser representative for advisory *clients* with respect to, the purchase of securities for which you or any *related person* serves as underwriter or general or managing partner? ☐ ☐

(3) recommend purchase or sale of securities to advisory *clients* for which you or any *related person* has any other sales interest (other than the receipt of sales commissions as a broker or registered representative of a broker-dealer)? ☐ ☐

Investment or Brokerage Discretion

		Yes	No
C.	Do you or any *related person* have *discretionary authority* to determine the:		
	(1) securities to be bought or sold for a *client's* account?	☐	☐
	(2) amount of securities to be bought or sold for a *client's* account?	☐	☐
	(3) broker or dealer to be used for a purchase or sale of securities for a *client's* account?	☐	☐
	(4) commission rates to be paid to a broker or dealer for a *client's* securities transactions?	☐	☐
		Yes	No
D.	If you answer "yes" to C.(3) above, are any of the brokers or dealers *related persons*?	☐	☐
E.	Do you or any *related person* recommend brokers or dealers to *clients*?	☐	☐
F.	If you answer "yes" to E above, are any of the brokers or dealers *related persons*?	☐	☐
G.	(1) Do you or any *related person* receive research or other products or services other than execution from a broker-dealer or a third party ("soft dollar benefits") in connection with *client* securities transactions?	☐	☐
	(2) If "yes" to G.(1) above, are all the "soft dollar benefits" you or any *related persons* receive eligible "research or brokerage services" under section 28(e) of the Securities Exchange Act of 1934?	☐	☐
H.	(1) Do you or any *related person*, directly or indirectly, compensate any *person* that is not an *employee* for *client* referrals?	☐	☐
	(2) Do you or any *related person*, directly or indirectly, provide any *employee* compensation that is specifically related to obtaining *clients* for the firm (cash or non-cash compensation in addition to the *employee*'s regular salary)?	☐	☐
I.	Do you or any *related person*, including any *employee*, directly or indirectly, receive compensation from any *person* (other than you or any *related* person) for *client* referrals?	☐	☐

In your response to Item 8.I., do not include the regular salary you pay to an employee.

In responding to Items 8.H and 8.I., consider all cash and non-cash compensation that you or a related person gave to (in answering Item 8.H) or received from (in answering Item 8.I) any person in exchange for client referrals, including any bonus that is based, at least in part, on the number or amount of client referrals.

Item 9 Custody

In this Item, we ask you whether you or a *related person* has *custody* of *client* (other than *clients* that are investment companies registered under the Investment Company Act of 1940) assets and about your custodial practices.

A. (1) Do you have *custody* of any advisory *clients'*:

	Yes	No
(a) cash or bank accounts?	☐	☐
(b) securities?	☐	☐

If you are registering or registered with the SEC, answer "No" to Item 9.A.(1)(a) and (b) if you have custody solely because (i) you deduct your advisory fees directly from your clients' accounts, or (ii) a related person has custody of client assets in connection with advisory services you provide to clients, but you have overcome the presumption that you are not operationally independent (pursuant to Advisers Act rule 206(4)-(2)(d)(5)) from the related person.

(2) If you checked "yes" to Item 9.A.(1)(a) or (b), what is the approximate amount of *client* funds and securities and total number of *clients* for which you have *custody*:

U.S. Dollar Amount Total Number of *Clients*

(a) $_____ (b) _____

If you are registering or registered with the SEC and you have custody solely because you deduct your advisory fees directly from your clients' accounts, do not include the amount of those assets and the number of those clients in your response to Item 9.A.(2). If your related person has custody of client assets in connection with advisory services you provide to clients, do not include the amount of those assets and the number of those clients in your response to Item 9.A.(2). Instead, include that information in your response to Item 9.B.(2).

B. (1) In connection with advisory services you provide to *clients*, do any of your *related persons* have *custody* of any of your advisory *clients'*:

	Yes	No
(a) cash or bank accounts?	☐	☐
(b) securities?	☐	☐

You are required to answer this item regardless of how you answered Item 9.A.(1)(a) or (b).

(2) If you checked "yes" to Item 9.B.(1)(a) or (b), what is the approximate amount of *client* funds and securities and total number of *clients* for which your *related persons* have *custody*:

U.S. Dollar Amount Total Number of *Clients*

(a) $_____ (b) _____

C. If you or your *related persons* have *custody* of *client* funds or securities in connection with advisory services you provide to *clients*, check all the following that apply:

☐ (1) A qualified custodian(s) sends account statements at least quarterly to the investors in the pooled investment vehicle(s) you manage.

☐ (2) An *independent public accountant* audits annually the pooled investment vehicle(s) that you manage and the audited financial statements are distributed to the investors in the pools.

☐ (3) An *independent public accountant* conducts an annual surprise examination of *client* funds and securities.

☐ (4) An *independent public accountant* prepares an internal control report with respect to custodial services when you or your *related persons* are qualified custodians for *client* funds and securities.

If you checked Item 9.C.(2), C.(3) or C.(4), list in Section 9.C. of Schedule D the accountants that are engaged to perform the audit or examination or prepare an internal control report. (If you checked Item 9.C.(2), you do not have to list auditor information in Section 9.C. of Schedule D if you already provided this information with respect to the private funds you advise in Section 7.B.(1) of Schedule D).

D. Do you or your *related person(s)* act as qualified custodians for your *clients* in connection with advisory services you provide to *clients*?

	Yes	No
(1) you act as a qualified custodian	☐	☐
(2) your *related person(s)* act as qualified custodian(s)	☐	☐

If you checked "yes" to Item 9.D.(2), all related persons that act as qualified custodians (other than any mutual fund transfer agent pursuant to rule 206(4)-2(b)(1)) must be identified in Section 7.A. of Schedule D, regardless of whether you have determined the related person to be operationally independent under rule 206(4)-2 of the Advisers Act.

E. If you are filing your *annual updating amendment* and you were subject to a surprise examination by an *independent public accountant* during your last fiscal year, provide the date (MM/YYYY) the examination commenced: _____

F. If you or your *related persons* have *custody* of *client* funds or securities, how many *persons*, including, but not limited to, you and your *related persons*, act as qualified custodians for your *clients* in connection with advisory services you provide to *clients*? _____

Item 10 Control Persons

In this Item, we ask you to identify every *person* that, directly or indirectly, *controls* you. If you are filing an *umbrella registration*, the information in Item 10 should be provided for the *filing adviser* only.

If you are submitting an initial application or report, you must complete Schedule A and Schedule B. Schedule A asks for information about your direct owners and executive officers. Schedule B asks for information about your indirect owners. If this is an amendment and you are updating information you reported on either Schedule A or Schedule B (or both) that you filed with your initial application or report, you must complete Schedule C.

A. Does any *person* not named in Item 1.A. or Schedules A, B, or C, directly or indirectly, *control* your management or policies? ☐ Yes ☐ No

If yes, complete Section 10.A. of Schedule D.

B. If any *person* named in Schedules A, B, or C or in Section 10.A. of Schedule D is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934, please complete Section 10.B. of Schedule D.

Item 11 Disclosure Information

In this Item, we ask for information about your disciplinary history and the disciplinary history of all your *advisory affiliates*. We use this information to determine whether to grant your application for registration, to decide whether to revoke your registration or to place limitations on your activities as an investment adviser, and to identify potential problem areas to focus on during our on-site examinations. One event may result in "yes" answers to more than one of the questions below. In accordance with General Instruction 5 to Form ADV, "you" and "your" includes the *filing adviser* and all *relying advisers* under an *umbrella registration*.

Your *advisory affiliates* are: (1) all of your current *employees* (other than *employees* performing only clerical, administrative, support or similar functions); (2) all of your officers, partners, or directors (or any *person* performing similar functions); and (3) all *persons* directly or indirectly *controlling* you or *controlled* by you. If you are a "separately identifiable department or division" (SID) of a bank, see the Glossary of Terms to determine who your *advisory affiliates* are.

If you are registered or registering with the SEC or if you are an exempt reporting adviser, you may limit your disclosure of any event listed in Item 11 to ten years following the date of the event. If you are registered or registering with a state, you must respond to the questions as posed; you may, therefore, limit your disclosure to ten years following the date of an event only in responding to Items 11.A.(1), 11.A.(2), 11.B.(1), 11.B.(2), 11.D.(4), and 11.H(1)(a). For purposes of calculating this ten-year period, the date of an event is the date the final order, judgment, or decree was entered, or the date any rights of appeal from preliminary orders, judgments, or decrees lapsed.

You must complete the appropriate Disclosure Reporting Page ("DRP") for "yes" answers to the questions in this Item 11.

	Yes	No
Do any of the events below involve you or any of your *supervised persons?*	☐	☐

For "yes" answers to the following questions, complete a Criminal Action DRP:

	Yes	No
A. In the past ten years, have you or any *advisory affiliate*:		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony*?	☐	☐
(2) been *charged* with any *felony*?	☐	☐

If you are registered or registering with the SEC, or if you are reporting as an exempt reporting adviser, you may limit your response to Item 11.A.(2) to charges that are currently pending.

FORM ADV Part 1A Page 19 of 21	Your Name_____ *CRD* Number_____ Date_____ SEC 801- or 802 Number_____

B. In the past ten years, have you or any *advisory affiliate*:

(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to a *misdemeanor* involving: investments or an *investment-related* business, or any fraud, false statements, or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses? ☐ ☐

(2) been *charged* with a *misdemeanor* listed in Item 11.B.(1)? ☐ ☐

If you are registered or registering with the SEC, or if you are reporting as an exempt reporting adviser, you may limit your response to Item 11.B.(2) to charges that are currently pending.

For "yes" answers to the following questions, complete a Regulatory Action DRP:

	Yes	No
C. Has the SEC or the Commodity Futures Trading Commission (CFTC) ever:		
(1) *found* you or any *advisory affiliate* to have made a false statement or omission?	☐	☐
(2) *found* you or any *advisory affiliate* to have been *involved* in a violation of SEC or CFTC regulations or statutes?	☐	☐
(3) *found* you or any *advisory affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) entered an *order* against you or any *advisory affiliate* in connection with *investment-related* activity?	☐	☐
(5) imposed a civil money penalty on you or any *advisory affiliate*, or *ordered* you or any *advisory affiliate* to cease and desist from any activity?	☐	☐
D. Has any other federal regulatory agency, any state regulatory agency, or any *foreign financial regulatory authority*:		
(1) ever *found* you or any *advisory affiliate* to have made a false statement or omission, or been dishonest, unfair, or unethical?	☐	☐
(2) ever *found* you or any *advisory affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes?	☐	☐
	Yes	No
(3) ever *found* you or any *advisory affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) in the past ten years, entered an *order* against you or any *advisory affiliate* in connection with an *investment-related* activity?	☐	☐
(5) ever denied, suspended, or revoked your or any *advisory affiliate's* registration or license, or otherwise prevented you or any *advisory affiliate*, by *order*, from associating with an *investment-related* business or restricted your or any		

advisory affiliate's activity? ☐ ☐

E. Has any *self-regulatory organization* or commodities exchange ever:

(1) *found* you or any *advisory affiliate* to have made a false statement or omission? ☐ ☐

(2) *found* you or any *advisory affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the SEC)? ☐ ☐

(3) *found* you or any *advisory affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted? ☐ ☐

(4) disciplined you or any *advisory affiliate* by expelling or suspending you or the *advisory affiliate* from membership, barring or suspending you or the *advisory affiliate* from association with other members, or otherwise restricting your or the *advisory affiliate's* activities? ☐ ☐

F. Has an authorization to act as an attorney, accountant, or federal contractor granted to you or any *advisory affiliate* ever been revoked or suspended? ☐ ☐

G. Are you or any *advisory affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of Item 11.C., 11.D., or 11.E.? ☐ ☐

For "yes" answers to the following questions, complete a Civil Judicial Action DRP:

	Yes	No
H. (1) Has any domestic or foreign court:		
(a) in the past ten years, *enjoined* you or any *advisory affiliate* in connection with any *investment-related* activity?	☐	☐
(b) ever *found* that you or any *advisory affiliate* were *involved* in a violation of *investment-related* statutes or regulations?	☐	☐
(c) ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against you or any *advisory affiliate* by a state or *foreign financial regulatory authority*?	☐	☐
(2) Are you or any *advisory affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of Item 11.H(1)?	☐	☐

Item 12 Small Businesses

The SEC is required by the Regulatory Flexibility Act to consider the effect of its regulations on small entities. In order to do this, we need to determine whether you meet the definition of "small business" or "small organization" under rule 0-7.

Answer this Item 12 only if you are registered or registering with the SEC and you indicated in response to Item 5.F.(2)(c) that you have regulatory assets under management of less than $25 million. You are not required to

answer this Item 12 if you are filing for initial registration as a state adviser, amending a current state registration, or switching from SEC to state registration.

For purposes of this Item 12 only:

- Total Assets refers to the total assets of a firm, rather than the assets managed on behalf of *clients*. In determining your or another *person's* total assets, you may use the total assets shown on a current balance sheet (but use total assets reported on a consolidated balance sheet with subsidiaries included, if that amount is larger).

- *Control* means the power to direct or cause the direction of the management or policies of a *person*, whether through ownership of securities, by contract, or otherwise. Any *person* that directly or indirectly has the right to vote 25 percent or more of the voting securities, or is entitled to 25 percent or more of the profits, of another *person* is presumed to *control* the other *person*.

	Yes	No
A. Did you have total assets of $5 million or more on the last day of your most recent fiscal year?	☐	☐

If "yes," you do not need to answer Items 12.B. and 12.C.

B. Do you:

(1) *control* another investment adviser that had regulatory assets under management (calculated in response to Item 5.F.(2)(c) of Form ADV) of $25 million or more on the last day of its most recent fiscal year?	☐	☐
(2) *control* another *person* (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year?	☐	☐

C. Are you:

(1) *controlled* by or under common *control* with another investment adviser that had regulatory assets under management (calculated in response to Item 5.F.(2)(c) of Form ADV) of $25 million or more on the last day of its most recent fiscal year?	☐	☐
(2) *controlled* by or under common *control* with another *person* (other than a natural person) that had total assets of $5 million or more on the last day of its most recent fiscal year?	☐	☐

Direct Owners and Executive Officers

1. Complete Schedule A only if you are submitting an initial application or report. Schedule A asks for information about your direct owners and executive officers. Use Schedule C to amend this information.

2. Direct Owners and Executive Officers. List below the names of:

   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer (Chief Compliance Officer is required if you are registered or applying for registration and cannot be more than one individual), director and any other individuals with similar status or functions;

   (b) if you are organized as a corporation, each shareholder that is a direct owner of 5% or more of a class of your voting securities, unless you are a public reporting company (a company subject to Section 12 or 15(d) of the Exchange Act);

   Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of your voting securities. For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

   (c) if you are organized as a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of your capital;

   (d) in the case of a trust that directly owns 5% or more of a class of your voting securities, or that has the right to receive upon dissolution, or has contributed, 5% or more of your capital, the trust and each trustee; and

   (e) if you are organized as a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of your capital, and (ii) if managed by elected managers, all elected managers.

3. Do you have any indirect owners to be reported on Schedule B? ☐ Yes ☐ No

4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner or executive officer is an individual.

5. Complete the Title or Status column by entering board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).

6. Ownership codes are:

NA - less than 5%	B - 10% but less than 25%	D - 50% but less than 75%
A - 5% but less than 10%	C - 25% but less than 50%	E - 75% or more

7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.
   (b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.
   (c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Title or Status	Date Title or Status Acquired MM	YYYY	Ownership Code	*Control Person*	PR	*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.

Indirect Owners

1. Complete Schedule B only if you are submitting an initial application or report. Schedule B asks for information about your indirect owners; you must first complete Schedule A, which asks for information about your direct owners. Use Schedule C to amend this information.

2. Indirect Owners. With respect to each owner listed on Schedule A (except individual owners), list below:

   (a) in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;

   For purposes of this Schedule, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

   (b) in the case of an owner that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital;

   (c) in the case of an owner that is a trust, the trust and each trustee; and

   (d) in the case of an owner that is a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Exchange Act) is reached, no further ownership information need be given.

4. In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner is an individual.

5. Complete the Status column by entering the owner's status as partner, trustee, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).

6. Ownership codes are: C - 25% but less than 50% D - 50% but less than 75% E - 75% or more F - Other (general partner, trustee, or elected manager)

7. (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.
   (b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.
   (c) Complete each column.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Entity in Which Interest is Owned	Status	Date Status Acquired MM	YYYY	Ownership Code	*Control Person*	PR	*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.

Amendments to Schedules A and B

1. Use Schedule C only to amend information requested on either Schedule A or Schedule B. Refer to Schedule A and Schedule B for specific instructions for completing this Schedule C. Complete each column.

2. In the Type of Amendment column, indicate "A" (addition), "D" (deletion), or "C" (change in information about the same *person*).

3. Ownership codes are:
   - NA - less than 5%
   - A - 5% but less than 10%
   - B - 10% but less than 25%
   - C - 25% but less than 50%
   - D - 50% but less than 75%
   - E - 75% or more
   - G - Other (general partner, trustee, or elected member)

4. List below all changes to Schedule A (Direct Owners and Executive Officers):

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amendment	Title or Status	Date Title or Status Acquired MM/YYYY	Ownership Code	*Control Person*	PR	*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.

5. List below all changes to Schedule B (Indirect Owners):

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amendment	Title or Status	Date Title or Status Acquired MM/YYYY	Ownership Code	*Control Person*	PR	*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax No. or Employer ID No.

FORM ADV Schedule D Page 1 of 17	Your Name_____ Date_____	*CRD* Number_____ SEC 801- or 802 Number_____

Certain items in Part 1A of Form ADV require additional information on Schedule D. Use this Schedule D to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an ☐ INITIAL or ☐ AMENDED Schedule D

SECTION 1.B. Other Business Names

List your other business names and the jurisdictions in which you use them. You must complete a separate Schedule D Section 1.B. for each business name.

Check only one box: ☐ Add ☐ Delete ☐ Amend

Name _____ Jurisdictions _____

SECTION 1.F. Other Offices

Complete the following information for each office, other than your *principal office and place of business*, at which you conduct investment advisory business. You must complete a separate Schedule D Section 1.F. for each location. If you are applying for SEC registration, if you are registered only with the SEC, or if you are an *exempt reporting adviser*, list only the largest twenty-five offices (in terms of numbers of *employees*).

Check only one box: ☐ Add ☐ Delete

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

If this address is a private residence, check this box: ☐

_____ _____
(area code) (telephone number) (area code) (facsimile number, if any)

If this office location is also required to be registered with FINRA or a *state securities authority* as a branch office location for a broker-dealer or investment adviser on the Uniform Branch Office Registration Form (Form BR), please provide the *CRD* Branch Number here:

How many *employees* perform investment advisory functions from this office location? _____

Are other business activities conducted at this office location? (check all that apply)

☐ (1)) Broker-dealer (registered or unregistered)

☐ (2) Bank (including a separately identifiable department or division of a bank)

☐ (3)) Insurance broker or agent

☐ (4) Commodity pool operator or commodity trading advisor (whether registered or exempt from registration)

☐ (5) Registered municipal advisor

☐ (6) Accountant or accounting firm

☐ (7) Lawyer or law firm

Describe any other *investment-related* business activities conducted from this office location:

_____

SECTION 1.I. Website Addresses

List your website addresses, including website addresses for social media platforms (including, but not limited to, Twitter, Facebook and/or LinkedIn). You must complete a separate Schedule D Section 1.I. for each website or social media website address.

FORM ADV Schedule D Page 2 of 17	Your Name_____ Date_____	*CRD* Number_____ SEC 801- or 802 Number_____

Certain items in Part 1A of Form ADV require additional information on Schedule D. Use this Schedule D to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an ☐ INITIAL or ☐ AMENDED Schedule D

Check only one box: ☐ Add ☐ Delete

Website Address/Social Media Website Address: _____

SECTION 1.L. Location of Books and Records

Complete the following information for each location at which you keep your books and records, other than your *principal office and place of business.* You must complete a separate Schedule D Section 1.L. for each location.

Check only one box: ☐ Add ☐ Delete ☐ Amend

Name of entity where books and records are kept: _____

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

If this address is a private residence, check this box: ☐

_____ _____
(area code) (telephone number) (area code) (facsimile number, if any)

This is (check one): ☐ one of your branch offices or affiliates.
☐ a third-party unaffiliated recordkeeper.
☐ other.

Briefly describe the books and records kept at this location. _____

_____

SECTION 1.M. Registration with *Foreign Financial Regulatory Authorities*

List the name and country, in English, of each *foreign financial regulatory authority* with which you are registered. You must complete a separate Schedule D Section 1.M. for each *foreign financial regulatory authority* with whom you are registered.

Check only one box: ☐ Add ☐ Delete

Name of *Foreign Financial Regulatory Authority* _____
Name of Country _____

SECTION 2.A.(8) Related Adviser

If you are relying on the exemption in rule 203A-2(b) from the prohibition on registration because you *control,* are *controlled* by, or are under common *control* with an investment adviser that is registered with the SEC and your *principal office and place of business* is the same as that of the registered adviser, provide the following information:

Name of Registered Investment Adviser _____
CRD Number of Registered Investment Adviser _____
SEC Number of Registered Investment Adviser 801-_____

SECTION 2.A.(9) Investment Adviser Expecting to be Eligible for Commission Registration within 120 Days

If you are relying on rule 203A-2(c), the exemption from the prohibition on registration available to an adviser that expects to be eligible for SEC registration within 120 days, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations. You must make both of these representations:

☐ I am not registered or required to be registered with the SEC or a *state securities authority* and I have a reasonable expectation that I will be eligible to register with the SEC within 120 days after the date my registration with the SEC becomes effective.

FORM ADV Schedule D Page 3 of 17	Your Name_____ Date_____	*CRD* Number_____ SEC 801- or 802 Number_____

Certain items in Part 1A of Form ADV require additional information on Schedule D. Use this Schedule D to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an ☐ INITIAL or ☐ AMENDED Schedule D

☐ I undertake to withdraw from SEC registration if, on the 120th day after my registration with the SEC becomes effective, I would be prohibited by Section 203A(a) of the Advisers Act from registering with the SEC.

SECTION 2.A.(10) Multi-State Adviser

If you are relying on rule 203A-2(d), the multi-state adviser exemption from the prohibition on registration, you are required to make certain representations about your eligibility for SEC registration. By checking the appropriate boxes, you will be deemed to have made the required representations.

If you are applying for registration as an investment adviser with the SEC, you must make both of these representations:

☐ I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of 15 or more states to register as an investment adviser with the *state securities authorities* in those states.

☐ I undertake to withdraw from SEC registration if I file an amendment to this registration indicating that I would be required by the laws of fewer than 15 states to register as an investment adviser with the *state securities authorities* of those states.

If you are submitting your *annual updating amendment*, you must make this representation:

☐ Within 90 days prior to the date of filing this amendment, I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of at least 15 states to register as an investment adviser with the *state securities authorities* in those states.

SECTION 2.A.(12) SEC Exemptive *Order*

If you are relying upon an SEC *order* exempting you from the prohibition on registration, provide the following information:

Application Number: 803-_____ Date of *order*: _____ (mm/dd/yyyy)

SECTION 2.B. *Private Fund* Assets

If you check Item 2.B.(2) or (3), what is the amount of the *private fund* assets that you manage?_____.

NOTE: "*Private fund* assets" has the same meaning here as it has under rule 203(m)-1. If you are an investment adviser with its *principal office and place of business* outside of the United States only include *private fund* assets that you manage at a place of business in the United States.

SECTION 4 Successions

Complete the following information if you are succeeding to the business of a currently registered investment adviser, including a change of your structure or legal status (*e.g.*, form of organization or state of incorporation). If you acquired more than one firm in the succession you are reporting on this Form ADV, you must complete a separate Schedule D Section 4 for each acquired firm. See Part 1A Instruction 4.

Name of Acquired Firm _____

Acquired Firm's SEC File No. (if any) 801- _____ Acquired Firm's *CRD* Number _____

SECTION 5.G.(3) Advisers to Registered Investment Companies and Business Development Companies

If you check Item 5.G (3), what is the SEC file number (811 or 814 number) of each of the registered investment companies and business development companies to which you act as an adviser pursuant to an advisory contract? You must complete a separate Schedule D Section 5.G.(3) for each registered investment company and business development company to which you act as an adviser.

Check only one box: ☐ Add ☐ Delete

SEC File Number 811- or 814-_____

FORM ADV Schedule D Page 4 of 17	Your Name_____ Date_____	*CRD* Number_____ SEC 801- or 802 Number_____

Certain items in Part 1A of Form ADV require additional information on Schedule D. Use this Schedule D to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an ☐ INITIAL or ☐ AMENDED Schedule D

Provide the regulatory assets under management of all *parallel managed accounts* related to a registered investment company or business development company that you advise.

$_____

SECTION 5.I.(2) *Wrap Fee Programs*

If you are a portfolio manager for one or more *wrap fee programs*, list the name of each program and its *sponsor*. You must complete a separate Schedule D Section 5.I.(2) for each *wrap fee program* for which you are a portfolio manager.

Check only one box: ☐ Add ☐ Delete ☐ Amend

Name of *Wrap Fee Program* _____

Name of *Sponsor* _____

Sponsor's SEC File Number (if any) (*e.g.*, 801-, 8-, 866-, 802-) _____

Sponsor's CRD Number (if any): _____

SECTION 5.K.(1) Separately Managed Accounts

After subtracting the amounts reported in Item 5.D.(2)(d)-(f) from your total regulatory assets under management, indicate the approximate percentage of this remaining amount attributable to each of the following categories of assets. If the remaining amount is at least $10 billion in regulatory assets under management, complete Question (a). If the remaining amount is less than $10 billion in regulatory assets under management, complete Question (b). End of year refers to the date used to calculate your regulatory assets under management for purposes of your *annual updating amendment*. Mid-year is the date six months before the end of year date. Each column should add up to 100%.

(a)

Asset Type		Mid-year	End of year
(i)	Exchange-Traded Equity Securities	___%	
(ii)	U.S. Government /Agency Bonds		
(iii)	U.S. State and Local Bonds		
(iv)	*Sovereign Bonds*		
(v)	Corporate Bonds – *Investment Grade*		
(vi)	Corporate Bonds – *Non-Investment Grade*		
(vii)	Derivatives		
(viii)	Securities Issued by Registered Investment Companies or Business Development Companies		
(ix)	Securities Issued by Pooled Investment Vehicles (other than Registered Investment Companies)		
(x)	Other		

Generally describe any assets included in "Other":_____

FORM ADV Schedule D Page 5 of 17	Your Name_____ Date_____	*CRD* Number_____ SEC 801- or 802 Number_____

Certain items in Part 1A of Form ADV require additional information on Schedule D. Use this Schedule D to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an ☐ INITIAL or ☐ AMENDED Schedule D

(b)

Asset Type		End of year
(i)	Exchange-Traded Equity Securities	___%
(ii)	U.S. Government /Agency Bonds	
(iii)	U.S. State and Local Bonds	
(iv)	*Sovereign Bonds*	
(v)	Corporate Bonds – *Investment Grade*	
(vi)	Corporate Bonds – *Non-Investment Grade*	
(vii)	Derivatives	
(viii)	Securities Issued by Registered Investment Companies or Business Development Companies	
(ix)	Securities Issued by Pooled Investment Vehicles (other than Registered Investment Companies)	
(x)	Other	

Generally describe any assets included in "Other":_____

Section 5.K.(2). Separately Managed Accounts – Use of *Borrowing*s and Derivatives. If your regulatory assets under management attributable to separately managed accounts are at least $10 billion, you should complete Question (a). If your regulatory assets under management attributable to separately managed accounts are at least $150 million but less than $10 billion, you should complete Question (b).

(a)

In the table below, provide the following information regarding the separately managed accounts you advise. If you are a subadviser to a separately managed account, you should only provide information with respect to the portion of the account that you subadvise. End of year refers to the date used to calculate your regulatory assets under management for purposes of your *annual updating amendment*. Mid-year is the date six months before the end of year date.

In column 1, indicate the number of separately managed accounts you advise according to *net asset value* and gross notional exposure. For this purpose, the gross notional exposure of an account is the percentage obtained by dividing (i) the sum of (a) the dollar amount of any *borrowing*s and (b)) the *gross notional value* of all derivatives, by (ii) the *net asset value* of the account.

In column 2, provide the weighted average amount of *borrowings* (as a percentage of net assets) for the accounts included in column 1.

In column 3, provide the weighted average *gross notional value* of derivatives (aggregate *gross notional value* of derivatives divided by the aggregate *net asset value* of the accounts included in column 1) with respect to each category of derivatives specified in 3(a) through (f).

You do not need to complete the table with respect to any separately managed accounts with a *net asset value* of less than $10,000,000.

FORM ADV Schedule D Page 6 of 17	Your Name_____ Date_____	*CRD* Number_____ SEC 801- or 802 Number_____

Certain items in Part 1A of Form ADV require additional information on Schedule D. Use this Schedule D to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

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(i) Mid-Year

Net asset value of account	Gross notional exposure	1 Number of accounts	2 Average *borrowings*	3 Derivative Exposures Average					
				(a) *Interest Rate Derivative*	(b) *Foreign Exchange Derivative*	(c) *Credit Derivative*	(d) *Equity Derivative*	(e) *Commodity Derivative*	(f) *Other Derivative*
$10,000,000-249,999,999	Less than 10%								
	10-99%								
	100-199%								
	200% or more								
$250,000,000-999,999,999	Less than 10%								
	10-99%								
	100-199%								
	200% or more								
$1,000,000,000-or greater	Less than 10%								
	10-99%								
	100-199%								
	200% or more								

Optional: Use the space below to provide a narrative description of the strategies and/or manner in which *borrowings* and derivatives are used in the management of the separately managed accounts that you advise.

_____

_____

_____

(ii) End of Year

Net asset value of account	Gross notional exposure	1 Number of accounts	2 Average *borrowings*	3 Derivative Exposures Average					
				(a) *Interest Rate Derivative*	(b) *Foreign Exchange Derivative*	(c) *Credit Derivative*	(d) *Equity Derivative*	(e) *Commodity Derivative*	(f) *Other Derivative*
$10,000,000-249,999,999	Less than 10%								
	10-99%								
	100-199%								
	200% or more								
$250,000,000-999,999,999	Less than 10%								
	10-99%								
	100-199%								
	200% or more								
$1,000,000,000-or greater	Less than 10%								
	10-99%								
	100-199%								
	200% or more								

Optional: Use the space below to provide a narrative description of the strategies and/or manner in which *borrowings* and derivatives are used in the management of the separately managed accounts that you advise.

_____

_____

_____

FORM ADV Schedule D Page 7 of 17	Your Name_____ Date_____	*CRD* Number_____ SEC 801- or 802 Number_____

Certain items in Part 1A of Form ADV require additional information on Schedule D. Use this Schedule D to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

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(b)

In the table below, provide the following information regarding the separately managed accounts you advise as of the date used to calculate your regulatory assets under management for purposes of your *annual updating amendment*. If you are a subadviser to a separately managed account, you should only provide information with respect to the portion of the account that you subadvise.

In column 1, indicate the number of separately managed accounts you advise according to *net asset value* and gross notional exposure. For purposes of this item, the gross notional exposure of an account is the percentage obtained by dividing (i) the sum of (a) the dollar amount of any *borrowings* and (b) the *gross notional value* of all derivatives, by (ii) the *net asset value* of the account.

In column 2, provide the weighted average amount of *borrowings* (as a percentage of *net asset value*) for the accounts included in column 1.

You do not need to complete the table with respect to any separately managed accounts with a *net asset value* of less than $10,000,000.

***Net asset value* of account**	**Gross notional exposure**	**1** **Number of accounts**	**2** **Average *borrowings***
$10,000,000-249,999,999	**Less than 10%**		
	10-99%		
	100-199%		
	200% or more		
$250,000,000-999,999,999	**Less than 10%**		
	10-99%		
	100-199%		
	200% or more		
$1,000,000,000- or greater	**Less than 10%**		
	10-99%		
	100-199%		
	200% or more		

Optional: Use the space below to provide a narrative description of the strategies and/or manner in which *borrowings* and derivatives are used in the management of the separately managed accounts that you advise.

_____

_____

_____

SECTION 5.K.(3) Custodians for Separately Managed Accounts

Complete a separate Schedule D Section 5.K.(3) for each custodian that holds ten percent or more of your separately managed account *client* regulatory assets under management.

(a) Legal name of custodian: _____

(b) Primary business name of custodian: _____

(c) The location(s) of the custodian's office(s) responsible for *custody* of the assets (city, state and country): _____

(d) Is the custodian a *related person* of your firm? ☐ Yes ☐ No

(e) If the custodian is a broker-dealer, provide its SEC registration number (if any) 8-_____

FORM ADV Schedule D Page 8 of 17	Your Name_____ Date_____	*CRD* Number_____ SEC 801- or 802 Number_____

Certain items in Part 1A of Form ADV require additional information on Schedule D. Use this Schedule D to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

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(f) If the custodian is not a broker-dealer, or is a broker-dealer but does not have an SEC registration number, provide its *legal entity identifier* (if any)_____

(g) What amount of your regulatory assets under management attributable to separately managed accounts is held at the custodian?_____

SECTION 6.A. Names of Your Other Businesses

If you are actively engaged in other business using a different name, provide that name and the other line(s) of business.

☐ Add ☐ Delete ☐ Amend

Other Business Name: _____

Other line(s) of business in which you engage using this name: (check all that apply)

☐ (1) broker-dealer (registered or unregistered)
☐ (2) registered representative of a broker-dealer
☐ (3) commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
☐ (4) futures commission merchant
☐ (5) real estate broker, dealer, or agent
☐ (6) insurance broker or agent
☐ (7) bank (including a separately identifiable department or division of a bank)
☐ (8) trust company
☐ (9) registered municipal advisor
☐ (10) registered security-based swap dealer
☐ (11) major security-based swap participant
☐ (12) accountant or accounting firm
☐ (13) lawyer or law firm
☐ (14) other financial product salesperson (specify): _____

SECTION 6.B.(2) Description of Primary Business

Describe your primary business (not your investment advisory business):

_____
_____
_____

If you engage in that business under a different name, provide that name:

_____
_____
_____

SECTION 6.B.(3) Description of Other Products and Services

Describe other products or services you sell to your *client*. You may omit products and services that you listed in Section 6.B.2. above.

_____
_____
_____

If you engage in that business under a different name, provide that name:

_____
_____
_____

FORM ADV Schedule D Page 9 of 17	Your Name_____ Date_____	*CRD* Number_____ SEC 801- or 802 Number_____

Certain items in Part 1A of Form ADV require additional information on Schedule D. Use this Schedule D to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an ☐ INITIAL or ☐ AMENDED Schedule D

SECTION 7.A. Financial Industry Affiliations

Complete a separate Schedule D Section 7.A. for each *related person* listed in Item 7.A.

Check only one box: ☐ Add ☐ Delete ☐ Amend

1. Legal Name of *Related Person*: _____
2. Primary Business Name of *Related Person*: _____
3. *Related Person*'s SEC File Number (if any) (*e.g.*, 801-, 8-, 866-, 802-) _____
4. *Related Person's* (a) *CRD* Number (if any): _____) CIK Number(s) (if any): _____
5. *Related Person* is: (check all that apply)

(b)

- ☐ (a) broker-dealer, municipal securities dealer, or government securities broker or dealer
- ☐ (b) other investment adviser (including financial planners)
- ☐ (c) registered municipal advisor
- ☐ (d) registered security-based swap dealer
- ☐ (e) major security-based swap participant
- ☐ (f) commodity pool operator or commodity trading advisor (whether registered or exempt from registration)
- ☐ (g) futures commission merchant
- ☐ (h) banking or thrift institution
- ☐ (i) trust company
- ☐ (j) accountant or accounting firm
- ☐ (k) lawyer or law firm
- ☐ (l) insurance company or agency
- ☐ (m) pension consultant
- ☐ (n) real estate broker or dealer
- ☐ (o) sponsor or syndicator of limited partnerships (or equivalent), excluding pooled investment vehicles
- ☐ (p) sponsor, general partner, managing member (or equivalent) of pooled investment vehicles

6. Do you *control* or are you *controlled* by the *related person*? ☐ Yes ☐ No
7. Are you and the *related person* under common *control*? ☐ Yes ☐ No
8. (a) Does the *related person* act as a qualified custodian for your *clients* in connection with advisory services you provide to *clients*? ☐ Yes ☐ No

   (b)) If you are registering or registered with the SEC and you have answered "yes" to question 8.(a) above, have you overcome the presumption that you are not operationally independent (pursuant to rule 206(4)-(2)(d)(5)) from the *related person* and thus are not required to obtain a surprise examination for your *clients'* funds or securities that are maintained at the *related person*? ☐ Yes ☐ No

   (c) If you have answered "yes" to question 8.(a) above, provide the location of the *related person*'s office responsible for *custody* of your *clients'* assets:

   _____
   (number and street)

   _____
   (city) (state/country) (zip+4/postal code)

9. (a) If the *related person* is an investment adviser, is it exempt from registration? ☐ Yes ☐ No

   (b) If the answer is yes, under what exemption? _____

FORM ADV Schedule D Page 10 of 17	Your Name_____ Date_____	*CRD* Number_____ SEC 801- or 802 Number_____

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10. (a) Is the *related person* registered with a *foreign financial regulatory authority?* ☐ Yes ☐ No

    (b) If the answer is yes, list the name and country, in English, of each *foreign financial regulatory authority* with which the *related person* is registered. _____

11. Do you and the *related person* share any *supervised persons*? ☐ Yes ☐ No

12. Do you and the *related person* share the same physical location? ☐ Yes ☐ No

SECTION 7.B.(1) *Private Fund* Reporting

Check only one box: ☐ Add ☐ Delete ☐ Amend

A. PRIVATE FUND

Information About the *Private Fund*

1. (a) Name of the *private fund*: _____

   (b) *Private fund* identification number: _____

2. Under the laws of what state or country is the *private fund* organized: _____

3. Name(s) of General Partner, Manager, Trustee, or Directors (or *persons* serving in a similar capacity):

   (a) Check only one box: ☐ Add ☐ Delete ☐ Amend

   (b) If filing an *umbrella registration*, identify the *filing adviser* or *relying adviser* that sponsors or manages this *private fund*.

   _____

4. The *private fund* (check all that apply; you must check at least one):

   ☐ (1) qualifies for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act of 1940

   ☐ (2) qualifies for the exclusion from the definition of investment company under section 3(c)(7) of the Investment Company Act of 1940

5. List the name and country, in English, of each *foreign financial regulatory authority* with which the *private fund* is registered.

   Check only one box: ☐ Add ☐ Delete ☐ Amend

   English Name of *Foreign Financial Regulatory Authority* _____ Name of Country _____

6. (a) Is this a "master fund" in a master-feeder arrangement? ☐ Yes ☐ No

   (b) If yes, what is the name and *private fund* identification number (if any) of the feeder funds investing in this *private fund*?

   Check only one box: ☐ Add ☐ Delete ☐ Amend

   _____ _____

   (c) Is this a "feeder fund" in a master-feeder arrangement? ☐ Yes ☐ No

FORM ADV Schedule D Page 11 of 17	Your Name_____ Date_____	*CRD* Number_____ SEC 801- or 802 Number_____

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(d) If yes, what is the name and *private fund* identification number (if any) of the master fund in which this *private fund* invests?

Check only one box: ☐ Add ☐ Delete ☐ Amend

_____ _____

NOTE: You must complete question 6 for each master-feeder arrangement regardless of whether you are filing a single Schedule D, Section 7.B.(1) for the master-feeder arrangement or reporting on the funds separately.

7. If you are filing a single Schedule D, Section 7.B.(1) for a master-feeder arrangement according to the instructions to this Section 7.B.(1), for each of the feeder funds answer the following questions:

Check only one box: ☐ Add ☐ Delete ☐ Amend

(a) Name of the *private fund*: _____

(b) *Private fund* identification number: _____

(c) Under the laws of what state or country is the *private fund* organized: _____

(d) Name(s) of General Partner, Manager, Trustee, or Directors (or *persons* serving in a similar capacity):

(1) Check only one box: ☐ Add ☐ Delete ☐ Amend

_____

(2) If filing an *umbrella registration*, identify the *filing adviser* or *relying adviser* that sponsors or manages this *private fund*.

_____

(e) The *private fund* (check all that apply; you must check at least one):

☐ (1) qualifies for the exclusion from the definition of investment company under section 3(c)(1) of the Investment Company Act of 1940

☐ (2) qualifies for the exclusion from the definition of investment company under section 3(c)(7) of the Investment Company Act of 1940

(f) List the name and country, in English, of each *foreign financial regulatory authority* with which the *private fund* is registered.

Check only one box: ☐ Add ☐ Delete ☐ Amend

English Name of *Foreign Financial Regulatory Authority* _____ Name of Country _____

NOTE: For purposes of questions 6 and 7, in a master-feeder arrangement, one or more funds ("feeder funds") invest all or substantially all of their assets in a single fund ("master fund"). A fund would also be a "feeder fund" investing in a "master fund" for purposes of this question if it issued multiple classes (or series) of shares or interests, and each class (or series) invests substantially all of its assets in a single master fund.

8. (a) Is this *private fund* a "fund of funds"? ☐ Yes ☐ No

NOTE: For purposes of this question only, answer "yes" if the fund invests 10 percent or more of its total assets in other pooled investment vehicles, regardless of whether they are also *private funds* or registered investment companies.

(b) If yes, does the *private fund* invest in funds managed by you or by a *related person?* ☐ Yes ☐ No

FORM ADV Schedule D Page 12 of 17	Your Name_____ Date_____	*CRD* Number_____ SEC 801- or 802 Number_____

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9. During your last fiscal year, did the *private fund* invest in securities issued by investment companies registered under the Investment Company Act of 1940 (other than "money market funds," to the extent provided in Instruction 6.e.)? ☐ Yes ☐ No

10. What type of fund is the *private fund*?

☐ hedge fund ☐ liquidity fund ☐ private equity fund ☐ real estate fund ☐ securitized asset fund ☐ venture capital fund

☐Other *private fund*:_____

NOTE: For definitions of these fund types, please see Instruction 6 of the Instructions to Part 1A.

11. Current gross asset value of the *private fund*: $_____

Ownership

12. Minimum investment commitment required of an investor in the *private fund*: $_____

NOTE: Report the amount routinely required of investors who are not your *related persons* (even if different from the amount set forth in the organizational documents of the fund).

13. Approximate number of the *private fund*'s beneficial owners: _____

14. What is the approximate percentage of the *private fund* beneficially owned by you and your *related persons*:

_____%

15. What is the approximate percentage of the *private fund* beneficially owned (in the aggregate) by:

a. Funds of funds:

_____%

b. Qualified clients

_____%

16. What is the approximate percentage of the *private fund* beneficially owned by *non-United States persons*:

_____%

Your Advisory Services

17. (a) Are you a subadviser to this *private fund*? ☐ Yes ☐ No

(b) If the answer to question 17(a) is "yes," provide the name and SEC file number, if any, of the adviser of the *private fund*. If the answer to question 17(a) is "no," leave this question blank. _____

18. (a) Do any other investment advisers advise the *private fund*? ☐ Yes ☐ No

(b) If the answer to question 18(a) is "yes," provide the name and SEC file number, if any, of the other advisers to the *private fund*. If the answer to question 18(a) is "no," leave this question blank.

FORM ADV Schedule D Page 13 of 17	Your Name_____ Date_____	*CRD* Number_____ SEC 801- or 802 Number_____

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Check only one box: ☐ Add ☐ Delete ☐ Amend

19. Are your *clients* solicited to invest in the *private fund*? ☐ Yes ☐ No
NOTE: For purposes of this question, do not consider feeder funds of the private fund.

20. Approximately what percentage of your *clients* has invested in the *private fund*?_____%

Private Offering

21. Has the *private fund* ever relied on an exemption from registration of its securities under Regulation D of the Securities Act of 1933?
☐ Yes ☐ No

22. If yes, provide the *private fund*'s Form D file number (if any):

Check only one box: ☐ Add ☐ Delete ☐ Amend

021-_____

B. SERVICE PROVIDERS

☐ Check this box if you are filing this Form ADV through the IARD system and want the IARD system to create a new Schedule D, Section 7.B.(1) with the same service provider information you have given here in Questions 23 - 28 for a new *private fund* for which you are required to complete Section 7.B.(1) If you check the box, the system will pre-fill those fields for you, but you will be able to manually edit the information after it is pre-filled and before you submit your filing.

Auditors

23. (a) (1) Are the *private fund*'s financial statements subject to an annual audit? ☐ Yes ☐ No

(2) If the answer to 23(a)(1) is yes, are the financial statements prepared in accordance with U.S. GAAP? ☐ Yes ☐ No

If the answer to 23(a)(1) is "yes," respond to questions (b) through (h) below. If the *private fund* uses more than one auditing firm, you must complete questions (b) through (h) separately for each auditing firm.

Check only one box: ☐ Add ☐ Delete ☐ Amend

(b) Name of the auditing firm: _____

(c) The location of the auditing firm's office responsible for the *private fund's* audit (city, state and country): _____

(d) Is the auditing firm an *independent public accountant*? ☐ Yes ☐ No

(e) Is the auditing firm registered with the Public Company Accounting Oversight Board? ☐ Yes ☐ No

If yes, Public Company Accounting Oversight Board Registration Number: _____

(f) If "yes" to (e) above, is the auditing firm subject to regular inspection by the Public Company Accounting Oversight Board in accordance with its rules? ☐ Yes ☐ No

(g) Are the *private fund*'s audited financial statements for the most recently completed fiscal year distributed to the *private fund*'s investors? ☐ Yes ☐ No

(h) Do all of the reports prepared by the auditing firm for the *private fund* since your last *annual updating amendment* contain unqualified opinions? ☐ Yes ☐ No ☐ Report Not

FORM ADV Schedule D Page 14 of 17	Your Name_____ Date_____	*CRD* Number_____ SEC 801- or 802 Number_____

Certain items in Part 1A of Form ADV require additional information on Schedule D. Use this Schedule D to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

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Yet Received

If you check "Report Not Yet Received," you must promptly file an amendment to your Form ADV to update your response when the report is available.

Prime Broker

24. (a) Does the *private fund* use one or more prime brokers? ☐ Yes ☐ No

If the answer to 24(a) is "yes," respond to questions (b) through (e) below for each prime broker the *private fund* uses. If the *private fund* uses more than one prime broker, you must complete questions (b) through (e) separately for each prime broker.

Check only one box: ☐ Add ☐ Delete ☐ Amend

(b) Name of the prime broker: _____

(c) If the prime broker is registered with the SEC, its registration number: 8-_____

(d) Location of prime broker's office used principally by the *private fund* (city, state and country):

_____

(e) Does this prime broker act as custodian for some or all of the *private fund*'s assets? ☐ Yes ☐ No

Custodian

25. (a) Does the *private fund* use any custodians (including the prime brokers listed above) to hold some or all of its assets? ☐ Yes ☐ No

If the answer to 25(a) is "yes," respond to questions (b) through (f) below for each custodian the *private fund* uses. If the *private fund* uses more than one custodian, you must complete questions (b) through (g) separately for each custodian.

Check only one box: ☐ Add ☐ Delete ☐ Amend

(b) Legal name of custodian: _____

(c) Primary business name of custodian: _____

(d) The location of the custodian's office responsible for *custody* of the *private fund*'s assets (city, state and country): _____

(e) Is the custodian a *related person* of your firm? ☐ Yes ☐ No

(f) If the custodian is a broker-dealer, provide its SEC registration number (if any) 8-_____

(g) If the custodian is not a broker-dealer, or is a broker-dealer but does not have an SEC registration number, provide its *legal entity identifier* (if any)_____

Administrator

26. (a) Does the *private fund* use an administrator other than your firm? ☐ Yes ☐ No

If the answer to 26(a) is "yes," respond to questions (b) through (f) below. If the *private fund* uses more than one administrator, you must complete questions (b) through (f) separately for each administrator.

Check only one box: ☐ Add ☐ Delete ☐ Amend

(b) Name of administrator: _____

(c) Location of administrator (city, state and country): _____

(d) Is the administrator a *related person* of your firm? ☐ Yes ☐ No

FORM ADV Schedule D Page 15 of 17	Your Name_____ Date_____	*CRD* Number_____ SEC 801- or 802 Number_____

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(e) Does the administrator prepare and send investor account statements to the *private fund*'s investors?

☐ Yes (provided to all investors) ☐ Some (provided to some but not all investors) ☐ No (provided to no investors)

(f) If the answer to 26(e) is "no" or "some," who sends the investor account statements to the (rest of the) *private fund*'s investors? If investor account statements are not sent to the (rest of the) *private fund*'s investors, respond "not applicable."
_____.

27. During your last fiscal year, what percentage of the *private fund*'s assets (by value) was valued by a *person*, such as an administrator, that is not your *related person*?

_____%

Include only those assets where (i) such person carried out the valuation procedure established for that asset, if any, including obtaining any relevant quotes, and (ii) the valuation used for purposes of investor subscriptions, redemptions or distributions, and fee calculations (including allocations) was the valuation determined by such person.

Marketers

28. (a) Does the *private fund* use the services of someone other than you or your *employees* for marketing purposes? ☐ Yes ☐ No

You must answer "yes" whether the *person* acts as a placement agent, consultant, finder, introducer, municipal advisor or other solicitor, or similar *person*. If the answer to 28(a) is "yes", respond to questions (b) through (g) below for each such marketer the *private fund* uses. If the *private fund* uses more than one marketer, you must complete questions (b) through (g) separately for each marketer.

Check only one box: ☐ Add ☐ Delete ☐ Amend

(b) Is the marketer a *related person* of your firm? ☐ Yes ☐ No

(c) Name of the marketer: _____

(d) If the marketer is registered with the SEC, its file number (*e.g.*, 801-, 8-, or 866-):_____and *CRD* Number (if any) _____

(e) Location of the marketer's office used principally by the *private fund* (city, state and country):

_ _

(f) Does the marketer market the *private fund* through one or more websites? Yes No

(g) If the answer to 28(f) is "yes," list the website address(es): _____

SECTION 7.B.(2) *Private Fund* Reporting

(1) Name of the *private fund* _____

(2) *Private fund* identification number _____

(3) Name and SEC File number of adviser that provides information about this *private fund* in Section 7.B.(1) of Schedule D of its Form ADV filing_____, 801- _____ or 802-_____

(4) Are your *clients* solicited to invest in this *private fund*? ☐ Yes ☐ No

FORM ADV Schedule D Page 16 of 17	Your Name_____ Date_____	*CRD* Number_____ SEC 801- or 802 Number_____

Certain items in Part 1A of Form ADV require additional information on Schedule D. Use this Schedule D to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an ☐ INITIAL or ☐ AMENDED Schedule D

In answering this question, disregard feeder funds' investment in a master fund. For purposes of this question, in a master-feeder arrangement, one or more funds ("feeder funds") invest all or substantially all of their assets in a single fund ("master fund"). A fund would also be a "feeder fund" investing in a "master fund" for purposes of this question if it issued multiple classes (or series) of shares or interests, and each class (or series) invests substantially all of its assets in a single master fund.

SECTION 9.C. *Independent Public Accountant*

You must complete the following information for each *independent public accountant* engaged to perform a surprise examination, perform an audit of a pooled investment vehicle that you manage, or prepare an internal control report. You must complete a separate Schedule D Section 9.C. for each *independent public accountant*.

Check only one box: ☐ Add ☐ Delete ☐ Amend

(1) Name of the *independent public accountant*:_____

(2) The location of the *independent public accountant*'s office responsible for the services provided:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

(3) Is the *independent public accountant* registered with the Public Company Accounting Oversight Board? ☐ Yes ☐ No

If yes, Public Company Accounting Oversight Board Registration Number: _____

(4) If yes to (3) above, is the *independent public accountant* subject to regular inspection by the Public Company Accounting Oversight Board in accordance with its rules? ☐ Yes ☐ No

(5) The *independent public accountant* is engaged to:

A. ☐ audit a pooled investment vehicle
B. ☐ perform a surprise examination of *clients'* assets
C. ☐ prepare an internal control report

(6) Since your last *annual updating amendments*, did all of the reports prepared by the *independent public accountant* that audited the pooled investment vehicle or that examined internal controls contain unqualified opinions? ☐ Yes ☐ No ☐ Report Not Yet Received

If you check "Report Not Yet Received," you must promptly file an amendment to your Form ADV to update your response when the accountant's report is available.

SECTION 10.A. *Control Persons*

You must complete a separate Schedule D Section 10.A. for each *control person* not named in Item 1.A. or Schedules A, B, or C that directly or indirectly *controls* your management or policies.

Check only one box: ☐ Add ☐ Delete ☐ Amend

(1) Firm or Organization Name

_____

(2) *CRD* Number (if any) _____ Effective Date _____ (mm/dd/yyyy) Termination Date _____ (mm/dd/yyyy)

FORM ADV Schedule D Page 17 of 17	Your Name_____ Date_____	*CRD* Number_____ SEC 801- or 802 Number_____

Certain items in Part 1A of Form ADV require additional information on Schedule D. Use this Schedule D to report details for items listed below. Report only new information or changes/updates to previously submitted information. Do not repeat previously submitted information.

This is an ☐ INITIAL or ☐ AMENDED Schedule D

(3) Business Address:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

If this address is a private residence, check this box: ☐

(4) Individual Name (if applicable) (Last, First, Middle)

_____

(5) *CRD* Number (if any) _____ Effective Date _____ Termination Date _____
mm/dd/yyyy mm/dd/yyyy

(6) Business Address:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

If this address is a private residence, check this box: ☐

(7) Briefly describe the nature of the *control*:

_____
_____
_____

SECTION 10.B. *Control Person* Public Reporting Companies

If any *person* named in Schedules A, B, or C, or in Section 10 A. of Schedule D is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934, please provide the following information (you must complete a separate Schedule D Section 10.B. for each public reporting company):

(1) Full legal name of the public reporting company: _____

(2) The public reporting company's CIK number (Central Index Key number that the SEC assigns to each reporting company):

_____

Miscellaneous

You may use the space below to explain a response to an Item or to provide any other information.

_____
_____
_____
_____
_____
_____
_____
_____

FORM ADV Schedule R Page 1 of 7	Your Name_____ **Date**_____	*CRD* Number_____ SEC 801- Number_____

Check the box that indicates what you would like to do:

Submit a new Schedule R

☐ Submit an initial Schedule R.

Amend a Schedule R

☐ Amend an existing Schedule R

Delete a Schedule R

☐ Delete an existing Schedule R for a *relying adviser* that is no longer eligible for SEC registration

☐ Delete an existing Schedule R for a *relying adviser* that is no longer relying on this *umbrella registration*

SECTION 1 Identifying Information

Responses to this Section 1 tell us who you (the *relying adviser*) are, where you are doing business, and how we can contact you.

A. Your full legal name:

_____

B. Name under which you primarily conduct your advisory business, if different from Section 1.A or Item 1.A of the *filing adviser's* Form ADV Part 1A.

_____

C. List any other business names and the jurisdictions in which you use them. Complete this question for each other business name. ☐ Add ☐ Delete ☐ Amend

Name_____Jurisdiction _____

You do not have to include the names or jurisdictions of the filing adviser or other relying adviser(s) in response to this Section 1.C.

D. If you have a number ("*CRD* Number") assigned by the *FINRA's CRD* system or by the IARD system (other than the *filing adviser's CRD* number), your *CRD* number: _____

*If you do not have a CRD number, skip this Section 1.D. Do not provide the CRD number of one of your officers, employees, or affiliates (*including *the filing adviser).*

E. *Principal Office and Place of Business*

☐ Same as the *filing adviser*.

(1) Address (do not use a P.O. Box):

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

If this address is a private residence, check this box: ☐

(2) Days of week that you normally conduct business at your *principal office and place of business*:

☐ Monday - Friday ☐ Other: _____

Normal business hours at this location: _____

(3) Telephone number at this location: _____
(area code) (telephone number)

(4) Facsimile number at this location, if any: _____
(area code) (facsimile number)

FORM ADV Schedule R Page 2 of 7	Your Name_____ Date_____	*CRD* Number_____ SEC 801- Number_____

F. Mailing address, if different from your *principal office and place of business* address:

☐ Same as the *filing adviser*.

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

If this address is a private residence, check this box: ☐

G. Provide your *Legal Entity Identifier* if you have one: _____

A *legal entity identifier* is a unique number that companies use to identify each other in the financial marketplace. You may not have a *legal entity identifier*.

H: If you have Central Index Key numbers assigned by the SEC ("CIK Number"), all of your CIK numbers:

_____

SECTION 2

SEC Registration

Responses to this Section help us (and you) determine whether you are eligible to register with the SEC.

A. To be a *relying adviser*, you must be independently eligible to register (or remain registered) with the SEC. You must check **at least one** of the Sections 2.A.(1) through 2.A.(8), below. Part 1A Instruction 2 provides information to help you determine whether you may affirmatively respond to each of these items.

You (the *relying adviser*):

☐ (1) are a **large advisory firm** that either:

(a) has regulatory assets under management of $100 million (in U.S. dollars) or more, or

(b) has regulatory assets under management of $90 million (in U.S. dollars) or more at the time of filing its most recent *annual updating amendment* and is registered with the SEC;

☐ (2) are a **mid-sized advisory firm** that has regulatory assets under management of $25 million (in U.S. dollars) or more but less than $100 million (in U.S. dollars) and you are either:

(a) not required to be registered as an adviser with the *state securities authority* of the state where you maintain your *principal office and place of business*, or

(b) not subject to examination by the *state securities authority* of the state where you maintain your *principal office and place of business*;

☐ (3) have your *principal office and place of business* **in Wyoming** (which does not regulate advisers);

☐ (4) have your *principal office and place of business* **outside the United States**;

☐ (5) are a **related adviser** under rule 203A-2(b) that *controls*, is *controlled* by, or is under common *control* with, an investment adviser that is registered with the SEC, and your *principal office and place of business* is the same as the registered adviser;

☐ (6) are an **adviser** relying on rule 203A-2(c) because you **expect to be eligible for SEC registration within 120 days**;

If you check this box, you must make both of the representations below:

FORM ADV Schedule R Page 3 of 7	Your Name_____ Date_____	*CRD* Number_____ SEC 801- Number_____

☐ I am not registered or required to be registered with the SEC or a *state securities authority* and I have a reasonable expectation that I will be eligible to register with the SEC within 120 days after the date my registration with the SEC becomes effective.

☐ By submitting this Form ADV to the SEC, the *filing adviser* undertakes to file an amendment to this *umbrella registration* to remove this Schedule R if, on the 120th day after this application for *umbrella registration* with the SEC becomes effective, I would be prohibited by Section 203A(a) of the Advisers Act from registering with the SEC.

☐ (7) are a **multi-state adviser** that is required to register in 15 or more states and is relying on rule 203A-2(d);

If this is your initial filing as a *relying adviser*, you must make both of these representations:

☐ I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of 15 or more states to register as an investment adviser with the *state securities authorities* in those states.

☐ The *filing adviser* undertakes to file an amendment to this *umbrella registration* to remove this Schedule R if, at the time of the *annual updating amendment*, I would be required by the laws of fewer than 15 states to register as an investment adviser with the *state securities authorities* of those states.

If you are submitting your *annual updating amendment*, you must make this representation:

☐ Within 90 days prior to the date of filing this amendment, I have reviewed the applicable state and federal laws and have concluded that I am required by the laws of at least 15 states to register as an investment adviser with the *state securities authorities* in those states.

☐ (8) have **received an SEC *order*** exempting you from the prohibition against registration with the SEC;
If you check this box, provide the following information:

Application Number: 803-_____ Date of *order*: _____
(mm/dd/yyyy)

☐ (9) are **no longer eligible** to remain registered with the SEC.

SECTION 3 Form of Organization

A. How are you organized?

☐ Corporation ☐ Sole Proprietorship ☐ Limited Liability Partnership (LLP)
☐ Partnership ☐ Limited Liability Company (LLC) ☐ Limited Partnership (LP)
☐ Other (specify):_____

B. In what month does your fiscal year end each year? _____

C. Under the laws of what state or country are you organized? _____

If you are a partnership, provide the name of the state or country under whose laws your partnership was formed.

FORM ADV Schedule R Page 4 of 7	Your Name_____ Date_____	*CRD* Number_____ SEC 801- Number_____

SECTION 4 Control Persons

In this Section 4, we ask you to identify each other *person* that, directly or indirectly, *controls* you.

A. Direct Owners and Executive Officers

(1) Section 4.A asks for information about your direct owners and executive officers.

(2) Direct Owners and Executive Officers. List below the names of:

(a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, director and any other individuals with similar status or functions;

(b) if you are organized as a corporation, each shareholder that is a direct owner of 5% or more of a class of your voting securities, unless you are a public reporting company (a company subject to Section 12 or 15(d) of the Exchange Act);

Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of your voting securities. For purposes of this Section 4.A, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

(c) if you are organized as a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of your capital;

(d) in the case of a trust that directly owns 5% or more of a class of your voting securities, or that has the right to receive upon dissolution, or has contributed, 5% or more of your capital, the trust and each trustee; and

(e) if you are organized as a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of your capital, and (ii) if managed by elected managers, all elected managers.

(3) Do you have any indirect owners to be reported in Section 4.B below? ☐ Yes ☐ No

(4) In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner or executive officer is an individual.

(5) Complete the Title or Status column by entering board/management titles; status as partner, trustee, sole proprietor, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).

(6) Ownership codes are:

NA - less than 5%	B - 10% but less than 25%	D - 50% but less than 75%
A - 5% but less than 10%	C - 25% but less than 50%	E - 75% or more

(7) (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.

(b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.

(c) Complete each column.

FORM ADV Schedule R Page 5 of 7	Your Name_____ Date_____	*CRD* Number_____ SEC 801- Number_____

Check this box if you are filing this Form ADV through the IARD system and want the IARD system to pre-fill the chart below with the same direct owners and executive officers you have provided in Schedule A for your *filing adviser*. If you check the box, the system will pre-fill these fields for you, but you will be able to manually edit the information after it is pre-filled and before you submit your filing. ☐

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Entity in Which Interest is Owned	Status	Date Status Acquired MM YYYY		Ownership Code	*Control Person*	PR	*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax ID No. or Employer ID NO

B. Indirect Owners

(1) Section 4.B asks for information about your indirect owners; you must first complete Section 4.A, which asks for information about your direct owners.

(2) Indirect Owners. With respect to each owner listed in Section 4.A (except individual owners), list below:

(a) in the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;

For purposes of this Section, a *person* beneficially owns any securities: (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant, or right to purchase the security.

(b) in the case of an owner that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital;

(c) in the case of an owner that is a trust, the trust and each trustee; and

(d) in the case of an owner that is a limited liability company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

(3) Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Exchange Act) is reached, no further ownership information need be given.

(4) In the DE/FE/I column below, enter "DE" if the owner is a domestic entity, "FE" if the owner is an entity incorporated or domiciled in a foreign country, or "I" if the owner is an individual.

(5) Complete the Status column by entering the owner's status as partner, trustee, elected manager, shareholder, or member; and for shareholders or members, the class of securities owned (if more than one is issued).

(6) Ownership codes are: C - 25% but less than 50%, D - 50% but less than 75%, E - 75% or more, F - Other (general partner, trustee, or elected manager)

(7) (a) In the *Control Person* column, enter "Yes" if the *person* has *control* as defined in the Glossary of Terms to Form ADV, and enter "No" if the *person* does not have *control*. Note that under this definition, most executive officers and all 25% owners, general partners, elected managers, and trustees are *control persons*.

(b) In the PR column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Exchange Act.
(c) Complete each column.

Check this box if you are filing this Form ADV through the IARD system and want the IARD system to pre-fill Schedule B with the same indirect owners you have provided in Schedule B for your *filing adviser*. If you check the box, the system will pre-fill these fields for you, but you will be able to manually edit the information after it is pre-filled and before you submit your filing. ☐

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Entity in Which Interest is Owned	Status	Date Status Acquired MM YYYY		Ownership Code	*Control Person*	PR	*CRD* No. If None: S.S. No. and Date of Birth, IRS Tax ID No. or Employer ID NO

C. Does any *person* not named in Section 1.A., Section 4.A, or Section 4.B directly or indirectly, *control* your management or policies? ☐ Yes ☐ No

If yes, you must complete the information below for each *control person* not named in Section 1.A., Section 4.A, or Section 4.B that directly or indirectly *controls* your management or policies.

Check only one box: ☐ Add ☐ Delete ☐ Amend

(1) Firm or Organization Name

_____

(2) *CRD* Number (if any) _____ Effective Date _____ (mm/dd/yyyy) Termination Date _____ (mm/dd/yyyy)

(3) Business Address:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

If this address is a private residence, check this box: ☐

(4) Individual Name (if applicable) (Last, First, Middle)

_____

(5) *CRD* Number (if any) _____ Effective Date _____ (mm/dd/yyyy) Termination Date _____ (mm/dd/yyyy)

(6) Business Address:

_____
(number and street)

_____
(city) (state/country) (zip+4/postal code)

If this address is a private residence, check this box: ☐

(7) Briefly describe the nature of the *control*:

_____

_____

_____

D. If any *person* named in Section 4.A, Section 4.B, or Section 4.C is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934, complete the information below (you must complete this information for each public reporting company).

Check only one box: ☐ Add ☐ Delete ☐ Amend

(1) Full legal name of the public reporting company: _____

(2) The public reporting company's CIK number (Central Index Key number that the SEC assigns to each reporting company): _____

CRIMINAL DISCLOSURE REPORTING PAGE (ADV)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to Items 11.A. or 11.B. of Form ADV.

Check item(s) being responded to: ☐ 11.A(1) ☐ 11.A(2) ☐ 11.B(1) ☐ 11.B(2)

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

Multiple counts of the same charge arising out of the same event(s) should be reported on the same DRP. Unrelated criminal actions, including separate cases arising out of the same event, must be reported on separate DRPs. Use this DRP to report all charges arising out of the same event. One event may result in more than one affirmative answer to the items listed above.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):
- ☐ You (the advisory firm)
- ☐ You and one or more of your *advisory affiliates*
- ☐ One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name).

If the *advisory affiliate* has a *CRD* number, provide that number. If not, indicate "non-registered" by checking the appropriate box.

ADV DRP - *ADVISORY AFFILIATE*

CRD Number	This *advisory affiliate* is ☐a firm ☐an individual Registered: ☐Yes ☐No
Name (For individuals, Last, First, Middle)	

- ☐ This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.
- ☐ This DRP should be removed from the ADV record because: (1) the event or *proceeding* occurred more than ten years ago or (2) the adviser is registered or applying for registration with the SEC or reporting as an *exempt reporting adviser* with the SEC and the event was resolved in the adviser's or *advisory affiliate's* favor.
- ☐ This DRP should be removed from the ADV record because it was filed in error, such as due to a clerical or data-entry mistake. Explain the circumstances:

_____

_____

_____

B. If the *advisory affiliate* is registered through the IARD system or *CRD* system, has the *advisory affiliate* submitted a DRP (with Form ADV, BD or U-4) to the IARD or *CRD* for the event? If the answer is "Yes," no other information on this DRP must be provided.
☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or *CRD* records.

(continued)

CRIMINAL DISCLOSURE REPORTING PAGE (ADV)
(continuation)

PART II

1. If charge(s) were brought against an organization over which you or an *advisory affiliate* exercise(d) *control*: Enter organization name, whether or not the organization was an *investment-related* business and your or the *advisory affiliate's* position, title, or relationship.

_____

2. Formal Charge(s) were brought in: (include name of Federal, Military, State or Foreign Court, Location of Court - City or County and State or Country, Docket/Case number).

_____

3. Event Disclosure Detail (Use this for both organizational and individual charges.)

   A. Date First *Charged* (MM/DD/YYYY): ☐ Exact ☐ Explanation

   If not exact, provide explanation: _____

   B. Event Disclosure Detail (include Charge(s)/Charge Description(s), and for each charge provide: (1) number of counts, (2) *felony* or *misdemeanor*, (3) plea for each charge, and (4) product type if charge is *investment-related*).

   _____
   _____
   _____

   C. Did any of the Charge(s) within the Event involve a *felony*? ☐ Yes ☐ No

   D. Current status of the Event? ☐ Pending ☐ On Appeal ☐ Final

   E. Event Status Date (complete unless status is Pending) (MM/DD/YYYY):

   ☐ Exact ☐ Explanation

   If not exact, provide explanation: _____

4. Disposition Disclosure Detail: Include for each charge (a) Disposition Type (e.g., convicted, acquitted, dismissed, pretrial, etc.), (b) Date, (c) Sentence/Penalty, (d) Duration (if sentence-suspension, probation, etc.), (e) Start Date of Penalty, (f) Penalty/Fine Amount, and (g) Date Paid.

   _____
   _____
   _____
   _____
   _____
   _____

(continued)

CRIMINAL DISCLOSURE REPORTING PAGE (ADV)
(continuation)

5. Provide a brief summary of circumstances leading to the charge(s) as well as the disposition. Include the relevant dates when the conduct which was the subject of the charge(s) occurred. (Your response must fit within the space provided.)

REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ☐ INITIAL ***OR*** ☐ AMENDED response used to report details for affirmative responses to Items 11.C., 11.D., 11.E., 11.F. or 11.G. of Form ADV.

Check item(s) being responded to:

☐ 11.C(1) ☐ 11.C(2) ☐ 11.C(3) ☐ 11.C(4) ☐ 11.C(5)
☐ 11.D(1) ☐ 11.D(2) ☐ 11.D(3) ☐ 11.D(4) ☐ 11.D(5)
☐ 11.E(1) ☐ 11.E(2) ☐ 11.E(3) ☐ 11.E(4)
☐ 11.F. ☐ 11.G.

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items 11.C., 11.D., 11.E., 11.F. or 11.G. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):
☐ You (the advisory firm)
☐ You and one or more of your *advisory affiliates*
☐ One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name).

If the *advisory affiliate* has a *CRD* number, provide that number. If not, indicate "non-registered" by checking the appropriate box.

Your Name	Your *CRD* Number

ADV DRP - *ADVISORY AFFILIATE*

CRD Number	This *advisory affiliate* is ☐ a firm ☐ an individual Registered: ☐ Yes ☐ No

Name (For individuals, Last, First, Middle)

☐ This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.

☐ This DRP should be removed from the ADV record because: (1) the event or *proceeding* occurred more than ten years ago or (2) the adviser is registered or applying for registration with the SEC or reporting as an *exempt reporting adviser* with the SEC and the event was resolved in the adviser's or *advisory affiliate's* favor.

If you are registered or registering with a *state securities authority*, you may remove a DRP for an event you reported only in response to Item 11.D(4), and only if that event occurred more than ten years ago. If you are registered or registering with the SEC, you may remove a DRP for any event listed in Item 11 that occurred more than ten years ago.

☐ This DRP should be removed from the ADV record because it was filed in error, such as due to a clerical or data-entry mistake. Explain the circumstances:

_____

_____

B. If the *advisory affiliate* is registered through the IARD system or *CRD* system, has the *advisory affiliate* submitted a DRP (with Form ADV, BD or U-4) to the IARD or *CRD* for the event? If the answer is "Yes," no other information on this DRP must be provided.
☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or *CRD* records.

(continued)

REGULATORY ACTION DISCLOSURE REPORTING PAGE
(ADV)
(continuation)

PART II

1. Regulatory Action initiated by:
   ☐ SEC ☐ Other Federal ☐ State ☐ *SRO* ☐ Foreign

(Full name of regulator, *foreign financial regulatory authority*, federal, state or S*RO*)

_____

2. Principal Sanction (check appropriate item):

☐ Civil and Administrative Penalty(ies)/Fine(s)	☐ Disgorgement	☐ Restitution
☐ Bar	☐ Expulsion	☐ Revocation
☐ Cease and Desist	☐ Injunction	☐ Suspension
☐ Censure	☐ Prohibition	☐ Undertaking
☐ Denial	☐ Reprimand	☐ Other _____

Other Sanctions:

_____
_____
_____

3. Date Initiated (MM/DD/YYYY): ☐ ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

4. Docket/Case Number:

5. *Advisory Affiliate* Employing Firm when activity occurred which led to the regulatory action (if applicable):

6. Principal Product Type (check appropriate item):

☐Annuity(ies) - Fixed	☐Derivative(s)	☐Investment Contract(s)
☐Annuity(ies) - Variable	☐Direct Investment(s) - DPP & LP Interest(s)	☐Money Market Fund(s)
☐CD(s)	☐Equity - OTC	☐Mutual Fund(s)
☐Commodity Option(s)	☐Equity Listed (Common & Preferred Stock)	☐No Product
☐Debt - Asset Backed	☐Futures - Commodity	☐Options
☐Debt - Corporate	☐Futures - Financial	☐Penny Stock(s)
☐Debt - Government	☐Index Option(s)	☐Unit Investment Trust(s)
☐Debt - Municipal	☐Insurance	☐Other _____

Other Product Types:

_____
_____

(continued)

REGULATORY ACTION DISCLOSURE REPORTING PAGE
(ADV)
(continuation)

7. Describe the allegations related to this regulatory action (your response must fit within the space provided):

8. Current status? ☐ Pending ☐ On Appeal ☐ Final

9. If on appeal, regulatory action appealed to (SEC, *SRO*, Federal or State Court) and Date Appeal Filed:

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 13 only.

10. How was matter resolved (check appropriate item):

☐ Acceptance, Waiver & Consent (AWC)
☐ Consent
☐ Decision
☐ Decision & *Order* of Offer of Settlement
☐ Dismissed
☐ *Order*
☐ Settled
☐ Stipulation and Consent
☐ Vacated
☐ Withdrawn
☐ Other _____

11. Resolution Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

12. Resolution Detail:

A. Were any of the following Sanctions *Ordered* (check all appropriate items)?

☐ Monetary/Fine ☐ Revocation/Expulsion/Denial ☐ Disgorgement/Restitution

Amount: $ ☐ Censure ☐ Cease and Desist/Injunction ☐ Bar ☐ Suspension

B. Other Sanctions *Ordered*:

Sanction detail: if suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against you or an *advisory affiliate*, date paid and if any portion of penalty was waived:

(continued)

REGULATORY ACTION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

13. Provide a brief summary of details related to the action status and (or) disposition and include relevant terms, conditions and dates (your response must fit within the space provided).

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP ADV) is an ☐INITIAL ***OR*** ☐AMENDED response used to report details for affirmative responses to Item 11.H. of Part 1A and Item 2.F. of Part 1B of Form ADV.

Check Part 1A item(s) being responded to: ☐11.H(1)(a) ☐11.H(1)(b) ☐11.1.H(1)(c) ☐11.H(2)
Check Part 1B item(s) being responded to: ☐2.F(1) ☐2.F(2) ☐2.F(3) ☐2.F(4) ☐2.F(5)

Use a separate DRP for each event or *proceeding*. The same event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Item 11.H. of Part 1A or Item 2.F. of Part 1B. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):
☐ You (the advisory firm)
☐ You and one or more of your *advisory affiliates*
☐ One or more of your *advisory affiliates*

If this DRP is being filed for an *advisory affiliate*, give the full name of the *advisory affiliate* below (for individuals, Last name, First name, Middle name).

If the *advisory affiliate* has a *CRD* number, provide that number. If not, indicate "non-registered" by checking the appropriate box.

ADV DRP - *ADVISORY AFFILIATE*

CRD Number	This *advisory affiliate* is ☐ a firm ☐ an individual Registered: ☐ Yes ☐ No

Name (For individuals, Last, First, Middle)

☐ This DRP should be removed from the ADV record because the *advisory affiliate(s)* is no longer associated with the adviser.

☐ This DRP should be removed from the ADV record because: (1) the event or *proceeding* occurred more than ten years ago or (2) the adviser is registered or applying for registration with the SEC or reporting as an *exempt reporting adviser* with the SEC and the event was resolved in the adviser's or *advisory affiliate's* favor.

If you are registered or registering with a *state securities authority*, you may remove a DRP for an event you reported only in response to Item 11.H.(1)(a), and only if that event occurred more than ten years ago. If you are registered or registering with the SEC, you may remove a DRP for any event listed in Item 11 that occurred more than ten years ago.

☐ This DRP should be removed from the ADV record because it was filed in error, such as due to a clerical or data-entry mistake. Explain the circumstances:

_____
_____
_____

B. If the *advisory affiliate* is registered through the IARD system or *CRD* system, has the *advisory affiliate* submitted a DRP (with Form ADV, BD or U-4) to the IARD or *CRD* for the event? If the answer is "Yes," no other information on this DRP must be provided.
☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *advisory affiliate* of its obligation to update its IARD or *CRD* records.

(continued)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

PART II

1. Court Action initiated by: (Name of regulator, *foreign financial regulatory authority, SRO*, commodities exchange, agency, firm, private plaintiff, etc.)

_____

2. Principal Relief Sought (check appropriate item):

☐ Cease and Desist ☐ Disgorgement ☐ Money Damages (Private/Civil Complaint) ☐ Restraining Order
☐ Civil Penalty(ies)/Fine(s) ☐ Injunction ☐ Restitution ☐ Other _____

Other Relief Sought:

_____
_____

3. Filing Date of Court Action (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

4. Principal Product Type (check appropriate item):

☐ Annuity(ies) - Fixed
☐ Annuity(ies) - Variable
☐ CD(s)
☐ Commodity Option(s)
☐ Debt - Asset Backed
☐ Debt - Corporate
☐ Debt - Government
☐ Debt - Municipal
☐ Derivative(s)
☐ Direct Investment(s) - DPP & LP Interest(s)
☐ Equity - OTC
☐ Equity Listed (Common & Preferred Stock)
☐ Futures - Commodity
☐ Futures - Financial
☐ Index Option(s)
☐ Insurance
☐ Investment Contract(s)
☐ Money Market Fund(s)
☐ Mutual Fund(s)
☐ No Product
☐ Options
☐ Penny Stock(s)
☐ Unit Investment Trust(s)
☐ Other _____

Other Product Types:

_____

5. Formal Action was brought in (include name of Federal, State or Foreign Court, Location of Court - City or County and State or Country, Docket/Case Number):

_____

6. *Advisory Affiliate* Employing Firm when activity occurred which led to the civil judicial action (if applicable):

(continued)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

7. Describe the allegations related to this civil action (your response must fit within the space provided):

8. Current status? ☐ Pending ☐ On Appeal ☐ Final

9. If on appeal, action appealed to (provide name of court) and Date Appeal Filed (MM/DD/YYYY):

10. If pending, date notice/process was served (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 14 only.

11. How was matter resolved (check appropriate item):

☐ Consent ☐ Judgment Rendered ☐ Settled
☐ Dismissed ☐ Opinion ☐ Withdrawn ☐ Other

12. Resolution Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

13. Resolution Detail:

A. Were any of the following Sanctions *Order*ed or Relief Granted (check appropriate items)?

☐ Monetary/Fine ☐ Revocation/Expulsion/Denial ☐ Disgorgement/Restitution

Amount: $ ☐ Censure ☐ Cease and Desist/Injunction ☐ Bar ☐ Suspension

B. Other Sanctions:

(continued)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (ADV)
(continuation)

C. Sanction detail: if suspended, *enjoined* or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against you or an *advisory affiliate*, date paid and if any portion of penalty was waived:

14. Provide a brief summary of circumstances related to the action(s), allegation(s), disposition(s) and/or finding(s) disclosed above (your response must fit within the space provided).

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BILLING CODE 8011–01–P

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Part IV

Environmental Protection Agency

40 CFR Part 52

State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–HQ–OAR–2012–0322; FRL–9924–05–OAR]

RIN 2060–AR68

State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final action.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action on a petition for rulemaking filed by the Sierra Club (Petitioner) that concerns how provisions in EPA-approved state implementation plans (SIPs) treat excess emissions during periods of startup, shutdown or malfunction (SSM). Further, the EPA is clarifying, restating and revising its guidance concerning its interpretation of the Clean Air Act (CAA or Act) requirements with respect to treatment in SIPs of excess emissions that occur during periods of SSM. The EPA evaluated existing SIP provisions in a number of states for consistency with the EPA's interpretation of the CAA and in light of recent court decisions addressing this issue. The EPA is issuing a finding that certain SIP provisions in 36 states (applicable in 45 statewide and local jurisdictions) are substantially inadequate to meet CAA requirements and thus is issuing a ''SIP call'' for each of those 36 states. Further, the EPA is establishing a due date for states subject to this SIP call action to submit corrective SIP revisions. Finally, this final action embodies the EPA's updated SSM Policy as it applies to SIP provisions. The SSM Policy provides guidance to states for compliance with CAA requirements for SIP provisions applicable to excess emissions during SSM events.

DATES: This final action shall become applicable on May 22, 2015. The deadline for each affected state to submit its corrective SIP revision is November 22, 2016.

ADDRESSES: The EPA has established a docket for this rulemaking under Docket ID No. EPA–HQ–OAR–2012–0322. 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.,* Confidential Business Information 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 U.S. Environmental Protection Agency, EPA Docket Center, William Jefferson Clinton West Building, 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 Office of Air and Radiation Docket is (202) 566–1742.

FOR FURTHER INFORMATION CONTACT: Ms. Lisa Sutton, U.S. EPA, Office of Air Quality Planning and Standards, State and Local Programs Group (C539–01), Research Triangle Park, NC 27711, telephone number (919) 541–3450, email address: *sutton.lisa@epa.gov*.

SUPPLEMENTARY INFORMATION: For information related to a specific SIP, please contact the appropriate EPA Regional Office:

EPA Regional Office	Contact for Regional Office (person, mailing address, telephone number)	State
I	Alison Simcox, Environmental Scientist, EPA Region 1, 5 Post Office Square, Suite 100, Boston, MA 02109–3912, (617) 918–1684.	Connecticut, Massachusetts, Maine, New Hampshire, Rhode Island and Vermont.
II	Karl Mangels, Chief, Air Planning Section, EPA Region 2, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–4078.	New Jersey, New York, Puerto Rico and Virgin Islands.
III	Amy Johansen, EPA Region 3, 1650 Arch Street, Philadelphia, PA 19103–2029, (215) 814–2156.	District of Columbia, Delaware, Maryland, Pennsylvania, Virginia and West Virginia.
IV	Joel Huey, EPA Region 4, Atlanta Federal Center, 61 Forsyth Street SW., Atlanta, GA 30303–8960, (404) 562–9104.	Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee.
V	Mary Portanova, Air and Radiation Division (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, IL 60604–3507, (312) 353–5954.	Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin.
VI	Alan Shar (6PD–L), EPA Region 6, Fountain Place 12th Floor, Suite 1200, 1445 Ross Avenue, Dallas, TX 75202–2733, (214) 665–6691.	Arkansas, Louisiana, New Mexico, Oklahoma and Texas.
VII	Lachala Kemp, EPA Region 7, Air Planning and Development Branch, 11201 Renner Boulevard, Lenexa, KS 66219–9601, (913) 551–7214. Alternate contact is Ward Burns, (913) 551–7960.	Iowa, Kansas, Missouri and Nebraska.
VIII	Adam Clark, Air Quality Planning Unit (8P–AR) Air Program, EPA Region 8, 1595 Wynkoop Street, Denver, CO 80202–1129, (303) 312–7104.	Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming.
IX	Andrew Steckel, EPA Region 9, Air Division, 75 Hawthorne Street (AIR–4), San Francisco, CA 94105–3901, (415) 947–4115.	Arizona, California, Hawaii, Nevada and the Pacific Islands.
X	Dave Bray, Office of Air, Waste and Toxics (AWT–150), EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101–3140, (206) 553–4253.	Alaska, Idaho, Oregon, and Washington.

I. General Information

A. Does this action apply to me?

Entities potentially affected by this action include states, U.S. territories, local authorities and eligible tribes that are currently administering, or may in the future administer, EPA-approved implementation plans (''air agencies'').[1] The EPA's action on the petition for rulemaking filed by the Sierra Club with the EPA Administrator on June 30, 2011 (the Petition), is potentially of interest to all such entities because the EPA is addressing issues related to basic CAA requirements for SIPs. The particular issues addressed in this rulemaking are the same issues that the Petition identified, which relate specifically to section 110 of the CAA. Pursuant to section 110, through what is generally referred to as the ''SIP program,'' the states and the EPA together provide for implementation, maintenance and enforcement of the national ambient air quality standards (NAAQS). While recognizing similarity to (and in some instances overlap with) issues concerning other air programs, *e.g.,* concerning SSM provisions in the EPA's regulatory programs for New Source Performance Standards (NSPS) pursuant to section 111 and National Emission Standards for Hazardous Air Pollutants (NESHAP) pursuant to section 112, the EPA notes that the issues addressed in this rulemaking are specific to SSM provisions in the SIP program. Through this rulemaking, the EPA is both clarifying and applying its interpretation of the CAA with respect to SIP provisions applicable to excess emissions during SSM events in general. In addition, the EPA is issuing findings that some of the specific SIP provisions in some of the states identified in the Petition and some SIP provisions in additional states are substantially inadequate to meet CAA requirements, pursuant to CAA section 110(k)(5), and thus those states (named in section II.C of this document) are directly affected by this rulemaking. For example, where a state's existing SIP includes an affirmative defense provision that would purport to alter the jurisdiction of the federal courts to assess monetary penalties for violations of CAA requirements, then the EPA is determining that the SIP provision is substantially inadequate because the provision is inconsistent with fundamental requirements of the CAA. This action may also be of interest to the public and to owners and operators of industrial facilities that are subject to emission limitations in SIPs, because it will require changes to certain state rules applicable to excess emissions during SSM events. This action embodies the EPA's updated SSM Policy concerning CAA requirements for SIP provisions relevant to excess emissions during SSM events.

B. Where can I get a copy of this document and other related information?

In addition to being available in the docket, an electronic copy of this document will also be available on the World Wide Web. Following signature by the EPA Administrator, a copy of this document will be posted on the EPA's Web site, under ''State Implementation Plans to Address Emissions During Startup, Shutdown and Malfunction,'' at *http://www.epa.gov/air/urbanair/sipstatus.* The EPA's initial proposed response to the Petition in the February 2013 proposal, the EPA's revised proposed response to the Petition in the September 2014 supplemental notice of proposed rulemaking (SNPR) and the EPA's Response to Comments document may be found in the docket for this action.

C. How is the preamble organized?

The information presented in this preamble is organized as follows:

I. General Information
- A. Does this action apply to me?
- B. Where can I get a copy of this document and other related information?
- C. How is the preamble organized?
- D. What is the meaning of key terms used in this document?

II. Overview of Final Action and Its Consequences
- A. Summary
- B. What the Petitioner Requested
- C. To which air agencies does this rulemaking apply and why?
- D. What are the next steps for states that are receiving a finding of substantial inadequacy and a SIP call?
- E. What are potential impacts on affected states and sources?
- F. What happens if an affected state fails to meet the SIP submission deadline?
- G. What is the status of SIP provisions affected by this SIP call action in the interim period starting when the EPA promulgates the final SIP call and ending when the EPA approves the required SIP revision?

III. Statutory, Regulatory and Policy Background

IV. Final Action in Response to Request To Rescind the EPA Policy Interpreting the CAA To Allow Affirmative Defense Provisions
- A. What the Petitioner Requested
- B. What the EPA Proposed
- C. What Is Being Finalized in This Action
- D. Response to Comments Concerning Affirmative Defense Provisions in SIPs

V. Generally Applicable Aspects of the Final Action in Response to Request for the EPA's Review of Specific Existing SIP Provisions for Consistency With CAA Requirements
- A. What the Petitioner Requested
- B. What the EPA Proposed
- C. What Is Being Finalized in This Action
- D. Response to Comments Concerning the CAA Requirements for SIP Provisions Applicable to SSM Events

VI. Final Action in Response to Request That the EPA Limit SIP Approval to the Text of State Regulations and Not Rely Upon Additional Interpretive Letters From the State
- A. What the Petitioner Requested
- B. What the EPA Proposed
- C. What Is Being Finalized In This Action
- D. Response to Comments Concerning Reliance on Interpretive Letters in SIP Revisions

VII. Clarifications, Reiterations and Revisions to the EPA's SSM Policy
- A. Applicability of Emission Limitations During Periods of SSM
  - 1. What the EPA Proposed
  - 2. What Is Being Finalized in This Action
  - 3. Response to Comments
- B. Alternative Emission Limitations During Periods of Startup and Shutdown
  - 1. What the EPA Proposed
  - 2. What Is Being Finalized in This Action
  - 3. Response to Comments
- C. Director's Discretion Provisions Pertaining to SSM Events
  - 1. What the EPA Proposed
  - 2. What Is Being Finalized in This Action
  - 3. Response to Comments
- D. Enforcement Discretion Provisions Pertaining to SSM Events
  - 1. What the EPA Proposed
  - 2. What Is Being Finalized in This Action
  - 3. Response to Comments
- E. Affirmative Defense Provisions in SIPs During Any Period of Operation
- F. Relationship Between SIP Provisions and Title V Regulations
- G. Intended Effect of the EPA's Action on the Petition

VIII. Legal Authority, Process and Timing for SIP Calls
- A. SIP Call Authority Under Section 110(k)(5)
  - 1. General Statutory Authority

[1] The EPA respects the unique relationship between the U.S. government and tribal authorities and acknowledges that tribal concerns are not interchangeable with state concerns. Under the CAA and EPA regulations, a tribe may, but is not required to, apply for eligibility to have a tribal implementation plan (TIP). For convenience, the EPA refers to ''air agencies'' in this rulemaking collectively when meaning to refer in general to states, the District of Columbia, U.S. territories, local air permitting authorities and eligible tribes that are currently administering, or may in the future administer, EPA-approved implementation plans. This final action does not include action on any provisions in any TIP. The EPA therefore refers to ''state'' or ''states'' rather than ''air agency'' or ''air agencies'' when meaning to refer to the District of Columbia and/or one, some, or all of the states at issue in this rulemaking. The EPA also uses ''state'' or ''states'' rather than ''air agency'' or ''air agencies'' when quoting or paraphrasing the CAA or other document that uses that term even when the original referenced passage may have applicability to tribes as well.

2. Substantial Inadequacy of Automatic Exemptions
3. Substantial Inadequacy of Director's Discretion Exemptions
4. Substantial Inadequacy of Improper Enforcement Discretion Provisions
5. Substantial Inadequacy of Affirmative Defense Provisions
B. SIP Call Process Under Section 110(k)(5)
C. SIP Call Timing Under Section 110(k)(5)
D. Response to Comments Concerning SIP Call Authority, Process and Timing
IX. What is the EPA's final action for each of the specific SIP provisions identified in the Petition or by the EPA?
A. Overview of the EPA's Evaluation of Specific SIP Provisions
B. Affected States in EPA Region I
C. Affected State in EPA Region II
D. Affected States in EPA Region III
E. Affected States and Local Jurisdictions in EPA Region IV
F. Affected States in EPA Region V
G. Affected States in EPA Region VI
H. Affected States in EPA Region VII
I. Affected States in EPA Region VIII
J. Affected States and Local Jurisdictions in EPA Region IX
K. Affected States in EPA Region X
X. Implementation Aspects of EPA's SSM SIP Policy
A. Recommendations Concerning Alternative Emission Limitations for Startup and Shutdown
B. Recommendations for Compliance With Section 110(l) and Section 193 for SIP Revisions
XI. Statement of the EPA's SSM SIP Policy as of 2015
A. Definitions
B. Emission Limitations in SIPs Must Apply Continuously During All Modes of Operation, Without Automatic or Discretionary Exemptions or Overly Broad Enforcement Discretion Provisions That Would Bar Enforcement by the EPA or by Other Parties in Federal Court Through a Citizen Suit
C. Emission Limitations in SIPs May Contain Components Applicable to Different Modes of Operation That Take Different Forms, and Numerical Emission Limitations May Have Differing Levels and Forms for Different Modes of Operation
D. Recommendations for Development of Alternative Emission Limitations Applicable During Startup and Shutdown
E. Enforcement Discretion Provisions
F. Affirmative Defense Provisions in SIPs
G. Anti-Backsliding Considerations
XII. Environmental Justice Consideration
XIII. References
XIV. Statutory and Executive Order Reviews
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)
E. Executive Order 13132: Federalism
F. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments
G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks
H. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use
I. National Technology Transfer and Advancement Act (NTTAA)
J. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations
K. Determination Under Section 307(d)
L. Congressional Review Act (CRA)
XV. Judicial Review
XVI. Statutory Authority

D. What is the meaning of key terms used in this document?

For the purpose of this document, the following definitions apply unless the context indicates otherwise:

The terms *Act* or *CAA* or *the statute* mean or refer to the Clean Air Act.

The term *affirmative defense* means, in the context of an enforcement proceeding, a response or defense put forward by a defendant, regarding which the defendant has the burden of proof, and the merits of which are independently and objectively evaluated in a judicial or administrative proceeding. The term *affirmative defense provision* means more specifically a state law provision in a SIP that specifies particular criteria or preconditions that, if met, would purport to preclude a court from imposing monetary penalties or other forms of relief for violations of SIP requirements in accordance with CAA section 113 or CAA section 304.

The term *Agency* means or refers to the EPA. When not capitalized, this term refers to an agency in general and not specifically to the EPA.

The terms *air agency* and a*ir agencies* mean or refer to states, the District of Columbia, U.S. territories, local air permitting authorities with delegated authority from the state and tribal authorities with appropriate CAA jurisdiction.

The term *alternative emission limitation* means, in this document, an emission limitation in a SIP that applies to a source during some but not all periods of normal operation (*e.g.,* applies only during a specifically defined mode of operation such as startup or shutdown). An alternative emission limitation is a component of a continuously applicable SIP emission limitation, and it may take the form of a control measure such as a design, equipment, work practice or operational standard (whether or not numerical). This definition of the term is independent of the statutory use of the term ''alternative means of emission limitation'' in sections 111(h)(3) and 112(h)(3), which pertain to the conditions under which the EPA may pursuant to sections 111 and 112 promulgate emission limitations, or components of emission limitations, that are not necessarily in numeric format.

The term *automatic exemption* means a generally applicable provision in a SIP that would provide that if certain conditions existed during a period of excess emissions, then those exceedances would not be considered violations of the applicable emission limitations.

The term *director's discretion provision* means, in general, a regulatory provision that authorizes a state regulatory official unilaterally to grant exemptions or variances from otherwise applicable emission limitations or control measures, or to excuse noncompliance with otherwise applicable emission limitations or control measures, which would be binding on the EPA and the public.

The term *EPA* refers to the United States Environmental Protection Agency.

The term *emission limitation* means, in the context of a SIP, a legally binding restriction on emissions from a source or source category, such as a numerical emission limitation, a numerical emission limitation with higher or lower levels applicable during specific modes of source operation, a specific technological control measure requirement, a work practice standard, or a combination of these things as components of a comprehensive and continuous emission limitation in a SIP provision. In this respect, the term *emission limitation* is defined as in section 302(k) of the CAA. By definition, an emission limitation can take various forms or a combination of forms, but in order to be permissible in a SIP it must be applicable to the source continuously, *i.e.,* cannot include periods during which emissions from the source are legally or functionally exempt from regulation. Regardless of its form, a fully approvable SIP emission limitation must also meet all substantive requirements of the CAA applicable to such a SIP provision, *e.g.,* the statutory requirement of section 172(c)(1) for imposition of reasonably available control measures and reasonably available control technology (RACM and RACT) on sources located in designated nonattainment areas.

The term *excess emissions* means the emissions of air pollutants from a source that exceed any applicable SIP emission limitation. In particular, this term includes those emissions above the otherwise applicable SIP emission limitation that occur during startup, shutdown, malfunction or other modes of source operation, *i.e.,* emissions that would be considered violations of the applicable emission limitation but for an impermissible automatic or discretionary exemption from such emission limitation.

The term *February 2013 proposal* means the notice of proposed rulemaking that the EPA signed on February 12, 2013, and published in the **Federal Register** on February 22, 2013. The February 2013 proposal comprises the EPA's initial proposed response to the Petition. The EPA subsequently issued the September 2014 SNPR that updated and revised the EPA's February 2013 proposal with respect to affirmative defense provisions in SIPs.

The term *malfunction* means a sudden and unavoidable breakdown of process or control equipment.

The term *NAAQS* means national ambient air quality standard or standards. These are the national primary and secondary ambient

air quality standards that the EPA establishes under CAA section 109 for criteria pollutants for purposes of protecting public health and welfare.

The term *Petition* refers to the petition for rulemaking titled, ''Petition to Find Inadequate and Correct Several State Implementation Plans under Section 110 of the Clean Air Act Due to Startup, Shutdown, Malfunction, and/or Maintenance Provisions,'' filed by the Sierra Club with the EPA Administrator on June 30, 2011.

The term *Petitioner* refers to the Sierra Club.

The term *practically enforceable* means, in the context of a SIP emission limitation, that the limitation is enforceable as a practical matter (*e.g.,* contains appropriate averaging times, compliance verification procedures and recordkeeping requirements). The term uses ''practically'' as it means ''in a practical manner'' and not as it means ''almost'' or ''nearly.'' In this document, the EPA uses the term ''practically enforceable'' as interchangeable with the term ''practicably enforceable.''

The term *shutdown* means, generally, the cessation of operation of a source for any reason. In this document, the EPA uses this term in the generic sense. In individual SIP provisions it may be appropriate to include a specifically tailored definition of this term to address a particular source category for a particular purpose.

The term *SIP* means or refers to a State Implementation Plan. Generally, the SIP is the collection of state statutes and regulations approved by the EPA pursuant to CAA section 110 that together provide for implementation, maintenance and enforcement of a national ambient air quality standard (or any revision thereof) promulgated under section 109 for any air pollutant in each air quality control region (or portion thereof) within a state. In some parts of this document, statements about SIPs in general would also apply to tribal implementation plans in general even though not explicitly noted.

The term *SNPR* means the supplemental notice of proposed rulemaking that the EPA signed and posted on the Agency Web site on September 5, 2014, and published in the **Federal Register** on September 17, 2014. Supplementing the February 2013 proposal, the SNPR comprises the EPA's revised proposed response to the Petition with respect to affirmative defense provisions in SIPs.

The term *SSM* refers to startup, shutdown or malfunction at a source. It does not include periods of maintenance at such a source. An SSM event is a period of startup, shutdown or malfunction during which there may be exceedances of the applicable emission limitations and thus excess emissions.

The term *SSM Policy* refers to the cumulative guidance that the EPA has issued as of any given date concerning its interpretation of CAA requirements with respect to treatment of excess emissions during periods of startup, shutdown and malfunction at a source in SIP provisions. The most comprehensive statement of the EPA's SSM Policy prior to this final action is embodied in a 1999 guidance document discussed in more detail in this final action. That specific guidance document is referred to as the *1999 SSM Guidance.* The final action described in this document embodies the EPA's updated SSM Policy for SIP provisions relevant to excess emissions during SSM events. In section XI of this document, the EPA provides a statement of the Agency's SSM SIP Policy as of 2015.

The term *startup* means, generally, the setting in operation of a source for any reason. In this document, the EPA uses this term in the generic sense. In an individual SIP provision it may be appropriate to include a specifically tailored definition of this term to address a particular source category for a particular purpose.

II. Overview of Final Action and Its Consequences

A. Summary

The EPA is in this document taking final action on a petition for rulemaking that the Sierra Club filed with the EPA Administrator on June 30, 2011. The Petition concerns how air agency rules in EPA-approved SIPs treat excess emissions during periods of SSM of industrial source process or emission control equipment. Many of these rules were added to SIPs and approved by the EPA in the years shortly after the 1970 amendments to the CAA, which for the first time provided for the system of clean air plans that were to be prepared by air agencies and approved by the EPA. At that time, it was widely believed that emission limitations set at levels representing good control of emissions during periods of so-called ''normal'' operation (which, until no later than 1982, was meant by the EPA to refer to periods of operation other than during startup, shutdown, maintenance or malfunction) could in some cases not be met with the same emission control strategies during periods of startup, shutdown, maintenance or malfunction.[2] Accordingly, it was common for state plans to include provisions for special, more lenient treatment of excess emissions during such periods of startup, shutdown, maintenance or malfunction. Many of these provisions took the form of absolute or conditional statements that excess emissions from a source, when they occur during startup, shutdown, malfunction or otherwise outside of the source's so-called ''normal'' operations, were not to be considered violations of the air agency rules; *i.e.,* these emissions were considered exempt from legal control.

Excess emission provisions for startup, shutdown, maintenance and malfunctions were often included as part of the original SIPs that the EPA approved in 1971 and 1972. In the early 1970s, because the EPA was inundated with proposed SIPs and had limited experience in processing them, not enough attention was given to the adequacy, enforceability and consistency of these provisions. Consequently, many SIPs were approved with broad and loosely defined provisions to control excess emissions. Starting in 1977, however, the EPA discerned and articulated to air agencies that exemptions for excess emissions during such periods were inconsistent with certain requirements of the CAA.[3] The EPA also realized that such provisions allow opportunities for sources to emit pollutants during such periods repeatedly and in quantities that could cause unacceptable air pollution in nearby communities with no legal pathway within the existing EPA-approved SIP for air agencies, the EPA, the public or the courts to require the sources to make reasonable efforts to reduce these emissions. The EPA has attempted to be more careful after 1977 not to approve SIP submissions that contain illegal SSM provisions and has issued several guidance memoranda to advise states on how to avoid impermissible provisions[4] as they expand and revise their SIPs. The EPA has also found several SIPs to be deficient because of problematic SSM provisions and called upon the affected states to amend their SIPs. However, in light of the other high-priority work facing both air agencies and the EPA,

[2] Since at least 1982, however, the EPA has used the term ''normal'' in the SSM Policy in the ordinary sense of the word to distinguish between predictable modes of source operation such as startup and shutdown and genuine ''malfunctions,'' which are by definition supposed to be unpredictable and unforeseen events and which could not have been precluded by proper source design, maintenance and operation. *See, e.g.,* 1982 SSM Guidance, Attachment at 2, in which the EPA states, ''[s]tart-up and shutdown of process equipment are part of the normal operation of a source and should be accounted for in the design and implementation of the operating procedure for the process and control equipment.'' The 1982 SSM Guidance is in the rulemaking docket at EPA–HQ–OAR–2012–0322–0005.

[3] In 1977, the EPA took actions related to specific sources located in Utah and Idaho in which the EPA expressed its views regarding issues such as automatic exemptions from applicable emission limitations. *See* Memorandum, ''Statutory, Regulatory, and Policy Context for this Rulemaking,'' at n.2, February 4, 2013, in the rulemaking docket at EPA–HQ–OAR–2012–0322–0029.

[4] The term ''impermissible provision'' as used throughout this document is generally intended to refer to a SIP provision that the EPA now believes to be inconsistent with requirements of the CAA. As described later in this document (*see* section VIII.A), the EPA is proposing to find a SIP ''substantially inadequate'' to meet CAA requirements where the EPA determines that the SIP includes an impermissible provision.

the EPA had not until the February 2013 proposal initiated a broader effort to require a larger number of states to remove impermissible provisions from their SIPs and to adopt other, approvable approaches for addressing excess emissions when appropriate. Public interest in the issue of SSM provisions in SIPs is evidently high, on the basis of the large number of public submissions made to the rulemaking docket in response to the February 2013 proposal (representing approximately 69,000 unique commenters) and the SNPR (over 20,000 commenters, some of whom had also made submissions in response to the earlier proposal). The EPA has attempted to further count commenters according to general categories (state and local governments, industry commenters, public interest groups and individual commenters), as described in section V.D.1 of this document. Public interest groups, including the Petitioner, have sued the EPA in several state-specific cases concerning SIP issues, and they have been urging the EPA to give greater priority generally to addressing the issue of SSM provisions in SIPs. In one of these SIP cases, the EPA entered into a settlement agreement requiring it to respond to the Petition from the Sierra Club. A copy of the settlement agreement is provided in the docket for this rulemaking.[5]

The EPA emphasizes that there are other approaches that would be consistent with CAA requirements for SIP provisions that states can use to address emissions during SSM events. While automatic exemptions and director's discretion exemptions from otherwise applicable emission limitations are not consistent with the CAA, SIPs may include criteria and procedures for the use of enforcement discretion by air agency personnel. Similarly, SIPs may, rather than exempt emissions during SSM events, include emission limitations that subject those emissions to alternative numerical limitations or other technological control requirements or work practice requirements during startup and shutdown events, so long as those components of the emission limitations meet applicable CAA requirements. In this action, the EPA is again articulating its interpretation of the CAA in the SSM Policy that reflects these principles and is applying this interpretation to issue a SIP call for specific existing provisions in the SIPs of 36 states. In some cases, the EPA's review involved a close reading of the provision in the SIP and its context to discern whether it was in fact an exemption, a statement regarding exercise of enforcement discretion by the air agency or an affirmative defense. Each state will ultimately decide how to address the SIP inadequacies identified by the EPA in this final action. The EPA acknowledges that for some states, this rulemaking entailed the EPA's evaluation of SIP provisions that may date back several decades. Aware of that fact, the EPA is committed to working closely with each of the affected states to develop approvable SIP submissions consistent with the guidance articulated in the updated SSM Policy in this final action. Section IX of this document presents the EPA's analysis of each specific SIP provision at issue in this action. The EPA's review also involved interpretation of several relevant sections of the CAA. While the EPA has already developed and has been implementing the SSM Policy that is based on its interpretation of the CAA for SIP provisions, this action provides the EPA an opportunity to update the SSM Policy and its basis in the CAA through notice and comment. To that end, section XI of this document contains a restatement of the EPA's SSM Policy for SIP provisions as revised and updated for 2015. Also, supplementary to the February 2013 proposal, the EPA provided a background memorandum to summarize the legal and administrative context for this action which is available in the docket for this rulemaking.[6] This final document is intended to clarify how states can resolve the identified deficiencies in their SIPs as well as to provide all air agencies guidance as they develop SIPs in the future.

In summary, the EPA is agreeing with the Petitioner that many of the identified SIP provisions are not permissible under the CAA. However, in some cases the EPA is instead concluding that an identified SIP provision is actually consistent with CAA requirements. In addition, the EPA notes, this final action does not include a final finding of substantial inadequacy and SIP call for specific SIP provisions included in the February 2013 proposal for several air agencies, because of SIP revisions made subsequent to that proposal. The state of Kentucky has already submitted, and the EPA has approved, SIP revisions that corrected the problematic provisions applicable in the Jefferson County (Louisville, Kentucky) area.[7] The state of Wyoming has already submitted, and the EPA has approved, SIP revisions that corrected the problematic provisions applicable statewide.[8] The state of North Dakota has likewise already submitted, and the EPA has approved, SIP revisions that corrected a portion of the problematic provisions applicable statewide.[9]

Of the 41 states for which SIP provisions were identified by the Petition or identified independently by the Agency in the SNPR, the EPA is issuing a SIP call for 36 states. The EPA is aware of other SSM-related SIP provisions that were not identified in the Petition but that may be inconsistent with the EPA's interpretation of the CAA. For SIP provisions that have potential defects other than an impermissible affirmative defense, the EPA elected to focus on the provisions specifically raised in the Petition. The EPA may address these other provisions later in a separate notice-and-comment action. States are encouraged to consider the updated SSM Policy laid out in this final action in reviewing their own SIP provisions. With respect to affirmative defense provisions, however, the EPA elected to identify some additional provisions not included in the Petition. This is necessary to minimize potential confusion relating to other recent rulemakings and court decisions that pertain generally to affirmative defense provisions. Therefore, in order to give updated and comprehensive guidance with respect to affirmative defense provisions, the EPA has also addressed additional affirmative defense provisions in 17 states in the SNPR and in this final action. See section V.D.3 of this document for further explanation as to which SSM-related SIP provisions the

[5] *See* Settlement Agreement executed November 30, 2011, in the rulemaking docket at EPA–HQ–OAR–2012–0322–0039, to address a lawsuit filed by Sierra Club and WildEarth Guardians in the United States District Court for the Northern District of California: *Sierra Club et al.* v. *Jackson,* No. 3:10–cv–04060–CRB (N.D. Cal.). A subsequent Modification to the Settlement Agreement specifies a deadline of May 22, 2015, for signature on the final action to respond to the Petition.

[6] *See* Memorandum, ''Statutory, Regulatory, and Policy Context for this Rulemaking,'' February 4, 2013, in the rulemaking docket at EPA–HQ–OAR–2012–0322–0029. The EPA notes that with respect to the legal basis for affirmative defense provisions in SIPs, the Agency has revised its views as a result of a court decision, as explained in more detail in the SNPR. Thus, the portions of that background memorandum that concern affirmative defense provisions are no longer germane to this action.

[7] *See* ''Approval and Promulgation of Implementation Plans; Kentucky; Approval of Revisions to the Jefferson County Portion of the Kentucky SIP; Emissions During Startups, Shutdowns, and Malfunctions,'' 79 FR 33101 (June 10, 2014).

[8] *See* ''Approval and Promulgation of Implementation Plans; Wyoming; Revisions to the Air Quality Standards and Regulations,'' 79 FR 62859 (October 21, 2014).

[9] *See* ''Approval and Promulgation of Implementation Plans; North Dakota; Revisions to the Air Pollution Control Rules,'' 79 FR 63045 (October 22, 2014).

EPA reviewed for consistency with CAA requirements as part of this rulemaking.

B. What the Petitioner Requested

The Petition includes three interrelated requests concerning the treatment in SIPs of excess emissions by sources during periods of SSM.

First, the Petitioner argued that SIP provisions providing an affirmative defense for monetary penalties for excess emissions in judicial proceedings are contrary to the CAA. Thus, the Petitioner advocated that the EPA should rescind its interpretation of the CAA expressed in the SSM Policy that allows appropriately drawn affirmative defense provisions in SIPs. The Petitioner made no distinction between affirmative defenses for excess emissions related to malfunction and those related to startup or shutdown. Further, the Petitioner requested that the EPA issue a SIP call requiring states to eliminate all such affirmative defense provisions in existing SIPs. As explained later in this final document, the EPA has decided to fully grant this request. Although the EPA initially proposed to grant in part and to deny in part this request in the February 2013 proposal, a subsequent court decision concerning the legal basis for affirmative defense provisions under the CAA caused the Agency to reexamine this question. As a result, the EPA issued the SNPR to present its revised interpretation of the CAA with respect to this issue and to propose action on the Petition and on specific existing affirmative defense provisions in the SIPs of 17 states consistent with the reasoning of that court decision. In this final action, the EPA is revising its SSM Policy with respect to affirmative defenses for violations of SIP requirements. The EPA believes that SIP provisions that function to alter the jurisdiction of the federal courts under CAA section 113 and section 304 to determine liability and to impose remedies are inconsistent with fundamental legal requirements of the CAA, especially with respect to the enforcement regime explicitly created by statute.

Second, the Petitioner argued that many existing SIPs contain impermissible provisions, including automatic exemptions from applicable emission limitations during SSM events, director's discretion provisions that in particular provide discretionary exemptions from applicable emission limitations during SSM events, enforcement discretion provisions that appear to bar enforcement by the EPA or citizens for such excess emissions and inappropriate affirmative defense provisions that are not consistent with the CAA or with the recommendations in the EPA's SSM Policy. The Petitioner identified specific provisions in SIPs of 39 states that it considered inconsistent with the CAA and explained the basis for its objections to the provisions. As explained later in this final document, the EPA agrees with the Petitioner that some of these existing SIP provisions are legally impermissible and thus finds such provisions ''substantially inadequate'' [10] to meet CAA requirements. Among the reasons for the EPA's action is to eliminate SIP provisions that interfere with enforcement in a manner prohibited by the CAA. Simultaneously, where the EPA agrees with the Petitioner, the EPA is issuing a SIP call that directs the affected state to revise its SIP accordingly. For the remainder of the identified provisions, however, the EPA disagrees with the contentions of the Petitioner and is thus denying the Petition with respect to those provisions and taking no further action. The EPA's action issuing the SIP calls on this portion of the Petition will assure that these SIPs comply with the fundamental requirements of the CAA with respect to the treatment of excess emissions during periods of SSM. The majority of the state-specific provisions affected by this SIP call action are inconsistent with the EPA's longstanding interpretation of the CAA through multiple iterations of its SSM Policy. With respect to SIP provisions that include an affirmative defense for violations of SIP requirements, however, the EPA has revised its prior interpretation of the statute that would have allowed such provisions under certain very limited conditions. Based upon an evaluation of the relevant statutory provisions in light of more recent court decisions, the EPA is issuing a SIP call to address existing affirmative defense provisions that would operate to alter or eliminate the jurisdiction of courts to assess liability and impose remedies and that would thereby contradict explicit provisions of the CAA relating to judicial authority.

Third, the Petitioner argued that the EPA should not rely on interpretive letters from states to resolve any ambiguity, or perceived ambiguity, in state regulatory provisions in SIP submissions. The Petitioner reasoned that all regulatory provisions should be clear and unambiguous on their face and that any reliance on interpretive letters to alleviate facial ambiguity in SIP provisions can lead to later problems with compliance and enforcement. Extrapolating from several instances in which the basis for the original approval of a SIP provision related to excess emissions during SSM events was arguably not clear, the Petitioner contended that the EPA should never use interpretive letters to resolve such ambiguities. As explained later in this proposal, the EPA acknowledges the concern of the Petitioner that provisions in SIPs should be clear and unambiguous. However, the EPA does not agree with the Petitioner that reliance on interpretive letters in a rulemaking context is never appropriate. Without the ability to rely on a state's interpretive letter that can in a timely way clarify perceived ambiguity in a provision in a SIP submission, however small that ambiguity may be, the EPA may have no recourse other than to disapprove the state's SIP submission. Thus, the EPA is denying the request that actions on SIP submissions never rely on interpretive letters. Instead, the EPA explains how proper documentation of reliance on interpretive letters in notice-and-comment rulemaking nevertheless addresses the practical concerns of the Petitioner.

C. To which air agencies does this rulemaking apply and why?

In general, the final action may be of interest to all air agencies because the EPA is clarifying, restating and revising its longstanding SSM Policy with respect to what the CAA requires concerning SIP provisions relevant to excess emissions during periods of SSM. For example, the EPA is granting the Petitioner's request that the EPA rescind its prior interpretation of the CAA that, as stated in prior guidance in the SSM Policy, allowed appropriately drawn affirmative defense provisions applicable to malfunctions. The EPA is also reiterating, clarifying or revising its prior guidance with respect to several other issues related to SIP provisions applicable to SSM events in order to ensure that future SIP submissions, not limited to those that affected states make in response to this action, are fully consistent with the CAA. For example, the EPA is reiterating and clarifying its prior guidance concerning how states may elect to replace existing exemptions for excess emissions during SSM events with properly developed alternative emission limitations that apply to the affected sources during startup, shutdown or other normal modes of source operation (*i.e.,* that apply to excess emissions during those normal modes of operation as opposed to during malfunctions). This action also

[10] The term ''substantially inadequate'' is used in the CAA and is discussed in detail in section VIII.A of this document.

addresses the use of interpretive letters for purposes of resolving an actual or perceived ambiguity in a SIP submission during the EPA's evaluation of the SIP revision at issue.

In addition, this final action is directly relevant to the states with SIP provisions relevant to excess emissions that the EPA has determined are inconsistent with CAA requirements or with the EPA's interpretation of those requirements in the SSM Policy. In this final action, the EPA is either granting or denying the Petition with respect to the specific existing SIP provisions in each of 39 states identified by the Petitioner as allegedly inconsistent with the CAA. The 39 states (for which the Petitioner identified SIP provisions applicable in 46 statewide and local jurisdictions and no tribal areas) [11] are listed in table 1, ''List of States with SIP Provisions for Which the EPA Either Grants or Denies the Petition, in Whole or in Part.'' After evaluating the Petition, the EPA is granting the Petition with respect to one or more provisions in 34 of the 39 states listed, and these are the states for which the action on the Petition, according to table 1, is either ''Grant'' or ''Partially grant, partially deny.'' Conversely, the EPA is denying the petition with respect to all provisions that the Petitioner identified in 5 of the 39 states, and these (Idaho, Nebraska, New Hampshire, Oregon and Wyoming) are the states for which the final action on the Petition, according to table 1, is ''Deny.''

TABLE 1—LIST OF STATES WITH SIP PROVISIONS FOR WHICH THE EPA EITHER GRANTS OR DENIES THE PETITION, IN WHOLE OR IN PART

EPA region	State	Final action on petition
I	Maine	Grant.
	New Hampshire	Deny.
	Rhode Island	Grant.
II	New Jersey	Partially grant, partially deny.
III	Delaware	Grant.
	District of Columbia	Partially grant, partially deny.
	Virginia	Grant.
	West Virginia	Grant.
IV	Alabama	Grant.
	Florida	Grant.
	Georgia	Grant.
	Kentucky	Partially grant, partially deny.
	Mississippi	Grant.
	North Carolina	Grant.
	South Carolina	Partially grant, partially deny.
	Tennessee	Grant.
V	Illinois	Grant.
	Indiana	Grant.
	Michigan	Grant.
	Minnesota	Grant.
	Ohio	Partially grant, partially deny.
VI	Arkansas	Grant.
	Louisiana	Grant.
	New Mexico	Grant.
	Oklahoma	Grant.
VII	Iowa	Partially grant, partially deny.
	Kansas	Grant.
	Missouri	Partially grant, partially deny.
	Nebraska	Deny.
VIII	Colorado	Grant.
	Montana	Grant.
	North Dakota	Partially grant, partially deny.
	South Dakota	Grant.
	Wyoming	Deny.
IX	Arizona	Partially grant, partially deny.
X	Alaska	Grant.
	Idaho	Deny.
	Oregon	Deny.
	Washington	Grant.

For each state for which the final action on the Petition is either ''Grant'' or ''Partially grant, partially deny,'' the EPA finds that certain specific provisions in each state's SIP are substantially inadequate to meet CAA requirements for the reason that these provisions are inconsistent with the CAA with regard to how the state treats excess emissions from sources during periods of SSM. With respect to the affirmative defense provisions identified in the Petition, the EPA finds that they improperly impinge upon the statutory jurisdiction of the courts to determine liability and impose remedies for violations of SIP emission limitations. The EPA believes that certain specific provisions in these SIPs fail to meet fundamental statutory requirements intended to attain and maintain the

[11] The state has the primary responsibility to implement SIP obligations, pursuant to CAA section 107(a). However, as CAA section 110(a)(2)(E) allows, a state may authorize and rely on a local or regional government, agency or instrumentality to carry out the SIP or a portion of the SIP within its jurisdiction. As a result, some of the SIP provisions at issue in this rulemaking apply to specific portions of a state. Thus, in certain states, submission of a corrective SIP revision may involve rulemaking in more than one jurisdiction.

NAAQS, protect prevention of significant deterioration (PSD) increments and improve visibility. Equally importantly, the EPA believes that the same provisions may undermine the ability of states, the EPA and the public to enforce emission limitations in the SIP that have been relied upon to ensure attainment or maintenance of the NAAQS or to meet other CAA requirements.

For each state for which the final action on the Petition is either ''Grant'' or ''Partially grant, partially deny,'' the EPA is also in this final action calling for a SIP revision as necessary to correct the identified deficient provisions. The SIP revisions that the states are directed to make will rectify a number of different types of defects in existing SIPs, including automatic exemptions from emission limitations, impermissible director's discretion provisions, enforcement discretion provisions that have the effect of barring enforcement by the EPA or through a citizen suit and affirmative defense provisions that are inconsistent with CAA requirements. A corrective SIP revision addressing automatic or impermissible discretionary exemptions will ensure that excess emissions during periods of SSM are treated in accordance with CAA requirements. Similarly, a corrective SIP revision addressing ambiguity in who may enforce against violations of these emission limitations will also ensure that CAA requirements to provide for enforcement are met. A SIP revision to remove affirmative defense provisions will assure that the SIP provision does not purport to alter or eliminate the jurisdiction of federal courts to assess liability or to impose remedies consistent with the statutory authority provided in CAA section 113 and section 304. The particular provisions for which the EPA is requiring SIP revisions are summarized in section IX of this document. Many of these provisions were added to the respective SIPs many years ago and have not been the subject of action by the state or the EPA since.

For each of the states for which the EPA is denying or is partially denying the Petition, the EPA finds that the particular provisions identified by the Petitioner are not substantially inadequate to meet the requirements pursuant to CAA section 110(k)(5), because the provisions: (i) Are, as they were described in the Petition and as they appear in the existing SIP, consistent with the requirements of the CAA; or (ii) are, as they appear in the existing SIP after having been revised subsequent to the date of the Petition, consistent with the requirements of the CAA; or (iii) have, subsequent to the date of the Petition, been removed from the SIP. Thus, in this final action, the EPA is taking no action to issue a SIP call with respect to those states for those particular SIP provisions.

In addition to evaluating specific SIP provisions identified in the Petition, the EPA has independently evaluated additional affirmative defense provisions in the SIPs of six states (applicable in nine statewide and local jurisdictions).[12] As explained in the SNPR, the EPA determined that this approach was necessary in order to take into consideration recent judicial decisions concerning affirmative defense provisions and CAA requirements. As the result of this evaluation, the EPA finds that specific affirmative defense provisions in 17 states (applicable in 23 statewide and local jurisdictions) are substantially inadequate to meet CAA requirements for the reason that these provisions impinge upon the statutory jurisdiction of the federal courts to determine liability and impose remedies for violations of SIP emission limitations.[13] By improperly impinging upon the jurisdiction of the federal courts, the EPA believes, these provisions fail to meet fundamental statutory requirements intended to attain and maintain the NAAQS, protect PSD increments and improve visibility. As with the affirmative defense provisions identified in the Petition, the EPA believes that these provisions may undermine the ability of states, the EPA and the public to enforce emission limitations in the SIP that have been relied upon to ensure attainment or maintenance of the NAAQS or to meet other CAA requirements.

In this final action, the EPA is issuing a SIP call to each of 36 states (for provisions applicable in 45 statewide and local jurisdictions) with respect to these provisions. The 36 states are listed in table 2, ''List of All States With SIP Provisions Subject to SIP Call.'' The EPA emphasizes that this SIP call action pertains to the specific SIP provisions identified and discussed in section IX of this document. The actions required of individual states in response to this SIP call action are discussed in more detail in section IX of this action.

TABLE 2—LIST OF ALL STATES WITH SIP PROVISIONS SUBJECT TO SIP CALL

EPA region	State	Area
I	Maine	State.
	Rhode Island	State.
II	New Jersey	State.
III	Delaware	State.
	District of Columbia	State.
	Virginia	State.
	West Virginia	State.
IV	Alabama	State.
	Florida	State.
	Georgia	State.
	Kentucky	State.

[12] The six states in which the EPA independently evaluated affirmative defense provisions are: California; South Carolina, New Mexico, Texas, Washington and West Virginia. The EPA evaluated the New Mexico SIP with respect to provisions applicable to the state and Albuquerque-Bernalillo County. The EPA evaluated the Washington SIP with respect to provisions applicable to the state, the Energy Facility Site Evaluation Council and the Southwest Clean Air Agency.

[13] The 17 states for which the EPA finds that specific affirmative defense provisions are substantially inadequate to meet CAA requirements are counted as follows: The EPA evaluated affirmative defense provisions identified by the Petitioner for 14 states: Alaska; Arizona; Arkansas; Colorado; District of Columbia; Georgia; Illinois; Indiana; Kentucky; Michigan; Mississippi; New Mexico; Virginia; and Washington. The EPA evaluated affirmative defense provisions that it independently identified among two states identified by the Petitioner: South Carolina; and West Virginia. Further, the EPA independently identified and evaluated affirmative defense provisions in two states that were not included in the Petition: California; and Texas. In the final action, the EPA is finding one or more affirmative defense provisions to be substantially inadequate in all but one of the 18 states for which the EPA evaluated affirmative defense provisions; for one state, Kentucky, the affirmative defense provision, which was applicable in Jefferson County, was corrected prior to the EPA's issuing its SNPR.

TABLE 2—LIST OF ALL STATES WITH SIP PROVISIONS SUBJECT TO SIP CALL—Continued

EPA region	State	Area
	Mississippi	State.
	North Carolina	State and Forsyth County.
	South Carolina	State.
	Tennessee	State, Knox County and Shelby County.
V	Illinois	State.
	Indiana	State.
	Michigan	State.
	Minnesota	State.
	Ohio	State.
VI	Arkansas	State.
	Louisiana	State.
	New Mexico	State and Albuquerque-Bernalillo County.
	Oklahoma	State.
	Texas	State.
VII	Iowa	State.
	Kansas	State.
	Missouri	State.
VIII	Colorado	State.
	Montana	State.
	North Dakota	State.
	South Dakota	State.
IX	Arizona	State and Maricopa County.
	California	Eastern Kern APCD, Imperial County APCD and San Joaquin Valley Unified APCD.
X	Alaska	State.
	Washington	State, Energy Facility Site Evaluation Council and Southwest Clean Air Agency.

D. What are the next steps for states that are receiving a finding of substantial inadequacy and a SIP call?

The EPA is finalizing a finding of substantial inadequacy and issuing a SIP call for the states listed in table 2 (*see* section II.C of this document). The EPA is also establishing a deadline by which these states must make a SIP submission to rectify the specifically identified deficiencies in their respective SIPs. Pursuant to CAA section 110(k)(5), the EPA has authority to set a SIP submission deadline that is up to 18 months from the date of the final finding of substantial inadequacy. After considering comment on this issue, the EPA is in this final action establishing a deadline of November 22, 2016, by which each affected state is to respond to the SIP call. The deadline falls 18 months from the date of signature and dissemination of this final finding of substantial inadequacy. Thereafter, the EPA will review the adequacy of that new SIP submission in accordance with the CAA requirements of sections 110(a), 110(k)(3), 110(l) and 193, including the EPA's interpretation of the CAA reflected in the SSM Policy as clarified and updated through this rulemaking. The EPA believes that states should be provided the maximum time allowable under CAA section 110(k)(5) in order to have sufficient time to make appropriate SIP revisions following their own SIP development process. Such a schedule will allow for the necessary SIP development process to correct the deficiencies yet still achieve the necessary SIP improvements as expeditiously as practicable consistent with the maximum time allowed by statute.

E. What are potential impacts on affected states and sources?

The issuance of a SIP call requires an affected state to take action to revise its SIP. That action by the state may, in turn, affect sources as described later in this document. The states that are receiving a SIP call in this final action will in general have options as to exactly how to revise their SIPs. In response to a SIP call, a state retains broad discretion concerning how to revise its SIP, so long as that revision is consistent with the requirements of the CAA. Some provisions that are affected by this SIP call, for example an automatic exemption provision, have to be removed entirely and an affected source could no longer depend on the exemption to avoid all liability for excess emissions during SSM events. Some other provisions, for example a problematic enforcement discretion provision, could either be removed entirely from the SIP or retained if revised appropriately to apply only to state enforcement personnel, in accordance with the EPA's interpretation of the CAA as described in the EPA's SSM Policy. The EPA notes that if a state removes a SIP provision that pertains to the state's exercise of enforcement discretion, this removal would not affect the ability of the state to apply its traditional enforcement discretion in its enforcement program. It would merely make the exercise of such discretion case-by-case in nature, as is the normal form of such discretion.

In addition, affected states may choose to consider reassessing particular emission limitations, for example to determine whether those emission limitations can be revised such that well-managed emissions during planned operations such as startup and shutdown would not exceed the revised emission limitation, while still protecting air quality and meeting other applicable CAA requirements. Such a revision of an emission limitation will need to be submitted as a SIP revision for the EPA's approval if the existing limitation to be changed is already included in the SIP or if the existing SIP relies on the particular existing emission limitation to meet a CAA requirement. In such instances, the EPA would review the SIP revision for consistency with all applicable CAA requirements. A state that chooses to revise particular emission limitations, in addition to removing or revising the aspect of the existing SIP provision that is inconsistent with CAA requirements, could include those revisions in the same SIP submission that addresses the SSM provisions identified in the SIP call, or it could submit them separately.

The implications for a regulated source in a given state, in terms of

whether and how it would potentially have to change its equipment or practices in order to operate with emissions that comply with the revised SIP, will depend on the nature and frequency of the source's SSM events and how the state has chosen to revise the SIP to address excess emissions during SSM events. The EPA did not conduct an analysis that would indicate, *e.g.,* how many owners or operators of sources in each affected state would likely change any procedures or processes for control of emissions from those sources during periods of SSM. The impacts of revised SIP provisions will be unique to each affected state and its particular mix of affected sources, and thus the EPA cannot predict what those impacts might be. Furthermore, the EPA does not believe the results of such analysis, had one been conducted, would significantly affect this rulemaking that pertains to whether SIP provisions comply with CAA requirements. The EPA recognizes that after all the responsive SIP revisions are in place and are being implemented by the states, some sources may need to take steps to control emissions better so as to comply with emission limitations continuously, as required by the CAA, or to increase durability of components and monitoring systems to detect and manage malfunctions promptly.

The EPA Regional Offices will work with states to help them understand their options and the potential consequences for sources as the states prepare their SIP revisions in response to this SIP call.

F. What happens if an affected state fails to meet the SIP submission deadline?

If, in the future, the EPA finds that a state that is subject to this SIP call action has failed to submit a complete SIP revision as required, or the EPA disapproves such a SIP revision, then the finding or disapproval would trigger an obligation for the EPA to impose a federal implementation plan (FIP) within 24 months after that date. That FIP obligation would be discharged without promulgation of a FIP only if the state makes and the EPA approves the called-for SIP submission. In addition, if a state fails to make the required SIP revision, or if the EPA disapproves the required SIP revision, then either event can also trigger mandatory 18-month and 24-month sanctions clocks under CAA section 179. The two sanctions that apply under CAA section 179(b) are the 2-to-1 emission offset requirement for all new and modified major sources subject to the nonattainment new source review (NSR) program and restrictions on highway funding. More details concerning the timing and process of the SIP call, and potential consequences of the SIP call, are provided in section VIII of this document.

G. What is the status of SIP provisions affected by this SIP call action in the interim period starting when the EPA promulgates the final SIP call and ending when the EPA approves the required SIP revision?

When the EPA issues a final SIP call to a state, that action alone does not cause any automatic change in the legal status of the existing affected provision(s) in the SIP. During the time that the state takes to develop a SIP revision in response to the SIP call and the time that the EPA takes to evaluate and act upon the resulting SIP submission from the state pursuant to CAA section 110(k), the existing affected SIP provision(s) will remain in place. The EPA notes, however, that the state regulatory revisions that the state has adopted and submitted for SIP approval will most likely be already in effect at the state level during the pendency of the EPA's evaluation of and action upon the new SIP submission.

The EPA recognizes that in the interim period, there may continue to be instances of excess emissions that adversely affect attainment and maintenance of the NAAQS, interfere with PSD increments, interfere with visibility and cause other adverse consequences as a result of the impermissible provisions. The EPA is particularly concerned about the potential for serious adverse consequences for public health in this interim period during which states, the EPA and sources make necessary adjustments to rectify deficient SIP provisions and take steps to improve source compliance. However, given the need to resolve these longstanding SIP deficiencies in a careful and comprehensive fashion, the EPA believes that providing sufficient time consistent with statutory constraints for these corrections to occur will ultimately be the best course to meet the ultimate goal of eliminating the inappropriate SIP provisions and replacing them with provisions consistent with CAA requirements.

III. Statutory, Regulatory and Policy Background

The Petition raised issues related to excess emissions from sources during periods of SSM and the correct treatment of these excess emissions in SIPs. In this context, ''excess emissions'' are air emissions that exceed the otherwise applicable emission limitations in a SIP, *i.e.,* emissions that would be violations of such emission limitations. The question of how to address excess emissions correctly during SSM events has posed a challenge since the inception of the SIP program in the 1970s. The primary objective of state and federal regulators is to ensure that sources of emissions are subject to appropriate emission controls as necessary in order to attain and maintain the NAAQS, protect PSD increments, improve visibility and meet other statutory requirements. Generally, this is achieved through enforceable emission limitations on sources that apply, as required by the CAA, continuously.

Several key statutory provisions of the CAA are relevant to the EPA's evaluation of the Petition. These provisions relate generally to the basic legal requirements for the content of SIPs, the authority and responsibility of air agencies to develop such SIPs and the EPA's authority and responsibility to review and approve SIP submissions in the first instance, as well as the EPA's authority to require improvements to a previously approved SIP if the EPA later determines that to be necessary for a SIP to meet CAA requirements. In addition, the Petition raised issues that pertain to enforcement of provisions in a SIP. The enforcement issues relate generally to what constitutes a violation of an emission limitation in a SIP, who may seek to enforce against a source for that violation, and whether the violator should be subject to monetary penalties as well as other forms of judicial relief for that violation.

The EPA has a longstanding interpretation of the CAA with respect to the treatment of excess emissions during periods of SSM in SIPs. This statutory interpretation has been expressed, reiterated and elaborated upon in a series of guidance documents issued in 1982, 1983, 1999 and 2001. In addition, the EPA has applied this interpretation in individual rulemaking actions in which the EPA: (i) Approved SIP submissions that were consistent with the EPA's interpretation; [14] (ii) disapproved SIP submissions that were not consistent with this interpretation; [15] (iii) itself promulgated regulations in FIPs that were consistent

[14] *See* ''Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown, Maintenance, and Malfunction Activities,'' 75 FR 68989 (November 10, 2010).

[15] *See* ''Approval and Promulgation of State Implementation Plans; Michigan,'' 63 FR 8573 (February 20, 1998).

with this interpretation;[16] or (iv) issued a SIP call requiring a state to revise an impermissible SIP provision.[17]

The EPA's SSM Policy is a policy statement and thus constitutes guidance. As guidance, the SSM Policy does not bind states, the EPA or other parties, but it does reflect the EPA's interpretation of the statutory requirements of the CAA. The EPA's evaluation of any SIP provision, whether prospectively in the case of a new provision in a SIP submission or retrospectively in the case of a previously approved SIP submission, must be conducted through a notice-and-comment rulemaking in which the EPA will determine whether a given SIP provision is consistent with the requirements of the CAA and applicable regulations.[18]

The Petition raised issues related to excess emissions from sources during periods of SSM, and the consequences of failing to address these emissions correctly in SIPs. In broad terms, the Petitioner expressed concerns that the exemptions for excess emissions and the other types of alleged deficiencies in existing SIP provisions ''undermine the emission limits in SIPs and threaten states' abilities to achieve and maintain the NAAQS, thereby threatening public health and public welfare, which includes agriculture, historic properties and natural areas.'' [19] The Petitioner asserted that such exemptions for SSM events are ''loopholes'' that can allow dramatically higher amounts of emissions and that these emissions ''can swamp the amount of pollutants emitted at other times.'' [20] In addition, the Petitioner argued that these automatic and discretionary exemptions, as well as other SIP provisions that interfere with the enforcement structure of the CAA, undermine the objectives of the CAA.

The EPA notes that the types of SIP deficiencies identified in the Petition are not legal technicalities. Compliance with the applicable requirements is intended to achieve the air quality protection and improvement purposes and objectives of the CAA. The EPA believes that the results of automatic and discretionary exemptions in SIP provisions, and of other provisions that interfere with effective enforcement of SIPs, are real-world consequences that adversely affect public health. Commenters on the February 2013 proposal provided illustrative examples of impacts that these types of SIP provisions have on the communities located near sources that rely on automatic or discretionary exemptions for excess emissions during SSM events, rather than by designing, operating and maintaining their sources to meet the applicable emission limitations.[21] These comments also illustrated the ways in which such exemptions, incorrect enforcement discretion provisions and affirmative defense provisions have interfered with the enforcement structure of the CAA by raising inappropriate impediments to enforcement by states, the EPA or citizens.

The EPA's memorandum providing a detailed discussion of the statutory, regulatory and policy background for this action can be found in the docket for this rulemaking.[22]

IV. Final Action in Response To Request To Rescind the EPA Policy Interpreting the CAA To Allow Affirmative Defense Provisions

A. What the Petitioner Requested

The Petitioner's first request was for the EPA to rescind its SSM Policy element interpreting the CAA to allow affirmative defense provisions in SIPs for excess emissions during SSM events.[23] Related to this request, the Petitioner also asked the EPA: (i) To find that SIPs containing an affirmative defense to monetary penalties for excess emissions during SSM events are substantially inadequate because they do not comply with the CAA; and (ii) to issue a SIP call pursuant to CAA section 110(k)(5) to require each such state to revise its SIP.[24] Alternatively, if the EPA denies these two related requests, the Petitioner asked the EPA: (i) To require states with SIPs that contain such affirmative defense provisions to revise them so that they are consistent with the EPA's 1999 SSM Guidance for excess emissions during SSM events; and (ii) to issue a SIP call pursuant to CAA section 110(k)(5) to states with provisions inconsistent with the EPA's interpretation of the CAA.[25]

The Petitioner requested that the EPA rescind its SSM Policy element interpreting the CAA to allow SIPs to include affirmative defenses for violations due to excess emissions during any type of SSM events because the Petitioner contended there is no legal basis for the Agency's interpretation. Specifically, the Petitioner cited to two statutory grounds, CAA sections 113(b) and 113(e), related to the type of judicial relief available in an enforcement proceeding and to the factors relevant to the scope and availability of such relief, that the Petitioner claimed would bar the approval of any type of affirmative defense provision in SIPs. The Petitioner drew no distinction between affirmative defense provisions for malfunctions versus affirmative defense provisions for startup and shutdown or other normal modes of operation; in the Petitioner's view all are equally inconsistent with CAA requirements.

In the Petitioner's view, the CAA ''unambiguously grants jurisdiction to the district courts to determine penalties that should be assessed in an enforcement action involving the violation of an emissions limit.'' [26] The Petitioner first argued that in any judicial enforcement action in a district court, CAA section 113(b) provides that ''such court shall have jurisdiction to restrain such violation, to require compliance, to assess such penalty, . . . and to award any other appropriate relief.'' The Petitioner reasoned that the EPA's SSM Policy is therefore fundamentally inconsistent with the CAA because it purports to remove the discretion and authority of the district courts to assess monetary penalties for violations if a source is shielded from monetary penalties under an affirmative defense provision in the approved SIP.[27] The Petitioner concluded that the EPA's interpretation of the CAA in the SSM Policy element allowing any affirmative defenses is impermissible ''because the inclusion of an affirmative defense provision in a SIP limits the courts' discretion—granted by Congress—to assess penalties for Clean Air Act violations.'' [28]

[16] *See* ''Federal Implementation Plan for the Billings/Laurel, MT [Montana], Sulfur Dioxide Area,'' 73 FR 21418 (April 21, 2008).

[17] *See* ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 76 FR 21639 (April 18, 2011).

[18] *See generally Catawba County, North Carolina* v. *EPA,* 571 F.3d 20, 33–35 (D.C. Cir. 2009) (upholding the EPA's process for developing and applying its guidance for designations).

[19] Petition at 2.

[20] Petition at 12.

[21] The EPA notes that a number of commenters described the impacts of SIP provisions of these types. *See, e.g.,* comments of *Sierra Club, et al.,* EPA–HQ–OAR–2012–0322–0622, pp. 28–35 (describing impacts on several specific communities); comments of American Bottom Conservancy, EPA–HQ–OAR–2012–0322–0579 (describing impacts on one specific community); and comments of Citizen for Envt'l Justice and Env'l Integrity Project, EPA–HQ–OAR–2012–0322–0621, pp. 8–17 (discussing impacts of such provisions on enforcement more generally).

[22] *See* Memorandum, ''Statutory, Regulatory, and Policy Context for this Rulemaking,'' February 4, 2013, in the rulemaking docket at EPA–HQ–OAR–2012–0322–0029.

[23] Petition at 11.

[24] *Id.*

[25] Petition at 12.

[26] Petition at 10.

[27] *Id.*

[28] *Id.*

Second, in reliance on CAA section 113(e)(1), the Petitioner argued that in a judicial enforcement action in a district court, the statute explicitly specifies a list of factors that the court is to consider in assessing penalties.[29] The Petitioner argued that the EPA's SSM Policy authorizes states to create affirmative defense provisions with criteria for monetary penalties that are inconsistent with the factors that the statute specifies and that the statute explicitly directs courts to weigh in any judicial enforcement action. By specifying particular factors for courts to consider, the Petitioner reasoned, Congress has already definitively spoken to the question of what factors are germane in assessing monetary penalties under the CAA for violations. The Petitioner concluded that the EPA has no authority to allow a state to include an affirmative defense provision in a SIP with different criteria to be considered in awarding monetary penalties because ''[p]reventing the district courts from considering these statutory factors is not a permissible interpretation of the Clean Air Act.'' [30] A more detailed explanation of the Petitioner's arguments appears in the 2013 February proposal.[31]

B. What the EPA Proposed

In the February 2013 proposal, consistent with its interpretation of the Act at that time, the EPA proposed to deny in part and to grant in part the Petition with respect to this overarching issue. As a revision to the SSM Policy as embodied in the 1999 SSM Guidance, the EPA proposed a distinction between affirmative defenses for unplanned events such as malfunctions and planned events such as startup and shutdown. The EPA explained the basis for its initial proposed action in detail, including why the Agency then believed that there was a statutory basis for narrowly drawn affirmative defense provisions that met certain criteria applicable to malfunction events but no such statutory basis for affirmative defense provisions applicable to startup and shutdown events. In the February 2013 proposal, the EPA also proposed to deny in part and to grant in part the Petition with respect to specific affirmative defense provisions in the SIPs of various states identified in the Petition consistent with that interpretation. With respect to these specific existing SIP provisions, the EPA distinguished between those provisions that were consistent with the Agency's interpretation of the CAA as set forth in 1999 SSM Guidance and were limited to malfunction events and other affirmative defense provisions that were not limited to malfunctions or otherwise not consistent with the Agency's interpretation of the CAA and included one or more deficiencies.

Subsequent to the February 2013 proposal, however, a judicial decision by the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *NRDC* v. *EPA* concerning the legal basis for affirmative defense provisions in the EPA's own regulations caused the Agency to reconsider the legal basis for any affirmative defense provisions in SIPs, regardless of the type of events to which they apply, the criteria they may contain or the types of judicial remedies they purport to limit or eliminate.[32] Thus, the EPA issued an SNPR to revise its proposed response to the Petition with respect to whether affirmative defense provisions in SIPs are consistent with fundamental legal requirements of the CAA.[33] In the SNPR, the EPA also revised its proposed response related to each of the specific affirmative defense provisions identified in the Petition. Changes to the proposed response included revision of the basis for the proposed finding of substantial inadequacy for many of the provisions (to incorporate the EPA's revised interpretation of the CAA into that basis). Other changes to the proposed response included reversal of the proposed denial of the Petition for some provisions that the Agency previously believed to be consistent with CAA requirements but subsequently determined were not authorized by the Act under the analysis prompted by the *NRDC* v. *EPA* decision. In order to provide comprehensive guidance to all states concerning affirmative defense provisions in SIPs and to avoid confusion that may arise due to recent court decisions relevant to such provisions under the CAA, the EPA also addressed additional existing SIP affirmative defense provisions of which it was aware although the provisions were not specifically identified in the Petition. The EPA initially examined the specific affirmative defense provisions identified by the Petitioner in 14 states but subsequently broadened its review to include additional provisions in four states, including two states that were not included in the Petition. Most importantly, the EPA provided a detailed explanation in the SNPR as to why it now believes that the logic of the court in the *NRDC* v. *EPA* decision vacating the affirmative defense in an Agency emission limitation under CAA section 112 likewise extends to affirmative defense provisions in SIPs.

C. What Is Being Finalized in This Action

The EPA is taking final action to grant the Petition on the request to rescind its SSM Policy element that interpreted the CAA to allow states to elect to create affirmative defense provisions in SIPs. The EPA is also taking final action to grant the Petition on the request to make a finding of substantial inadequacy and to issue SIP calls for specific existing SIP provisions that include an affirmative defense as identified in the SNPR. The specific SIP provisions at issue are discussed in section IX of this document. These existing affirmative defense provisions include some provisions that the EPA had previously determined were consistent with the CAA as interpreted in the 1999 SSM Guidance and other provisions that were not consistent even with that interpretation of the CAA. As explained in the SNPR, the EPA has now concluded that the enforcement structure of the CAA, embodied in section 113 and section 304, precludes any affirmative defense provisions that would operate to limit a court's jurisdiction or discretion to determine the appropriate remedy in an enforcement action. These provisions are not appropriate under the CAA, no matter what type of event they apply to, what criteria they contain or what forms of remedy they purport to limit or eliminate.

The EPA is revising its interpretation of the CAA with respect to affirmative defenses based upon a reevaluation of the statutory provisions that pertain to enforcement of SIP provisions in light of recent court opinions. Section 113(b) provides courts with explicit jurisdiction to determine liability and to impose remedies of various kinds, including injunctive relief, compliance orders and monetary penalties, in judicial enforcement proceedings. This grant of jurisdiction comes directly from Congress, and the EPA is not authorized to alter or eliminate this jurisdiction under the CAA or any other law. With respect to monetary penalties, CAA section 113(e) explicitly includes the factors that courts and the EPA are required to consider in the event of judicial or administrative enforcement for violations of CAA requirements, including SIP provisions. Because Congress has already given federal courts the jurisdiction to determine

[29] Petition at 11.

[30] Petition at 11.

[31] *See* February 2013 proposal, 78 FR 12459 at 12468 (February 22, 2013).

[32] *See NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir. 2014).

[33] *See* SNPR, 79 FR 55919 (September 17, 2014).

what monetary penalties are appropriate in the event of judicial enforcement for a violation of a SIP provision, neither the EPA nor states can alter or eliminate that jurisdiction by superimposing restrictions on that jurisdiction and discretion granted by Congress to the courts. Affirmative defense provisions by their nature purport to limit or eliminate the authority of federal courts to determine liability or to impose remedies through factual considerations that differ from, or are contrary to, the explicit grants of authority in section 113(b) and section 113(e). Accordingly, pursuant to section 110(k) and section 110(l), the EPA cannot approve any such affirmative defense provision in a SIP. If such an affirmative defense provision is included in an existing SIP, the EPA has authority under section 110(k)(5) to require a state to remove that provision.

States have great discretion in how to devise SIP provisions, but they do not have discretion to create provisions that contradict fundamental legal requirements of the CAA. The jurisdiction of federal courts to determine liability and to impose statutory remedies for violations of SIP emission limitations is one such fundamental requirement. The court in the recent *NRDC* v. *EPA* decision did not remand the regulation to the EPA for better explanation of the legal basis for an affirmative defense; the court instead vacated the affirmative defense and indicated that there could be no valid legal basis for such a provision because it contradicted fundamental requirements of the CAA concerning the jurisdiction of courts in judicial enforcement of CAA requirements. A more detailed explanation of the EPA's basis for determining that affirmative defense provisions in SIPs are similarly contrary to the requirements of the CAA appears in the SNPR.[34]

Couching an affirmative defense provision in terms of merely defining whether the emission limitation applies and thus whether there is a ''violation,'' as suggested by some commenters, is also problematic. If there is no ''violation'' when certain criteria or conditions for an ''affirmative defense'' are met, then there is in effect no emission limitation that applies when the criteria or conditions are met; the affirmative defense thus operates to create an exemption from the emission limitation. As explained in the February 2013 proposal, the CAA requires that emission limitations must apply continuously and cannot contain exemptions, conditional or otherwise. This interpretation is consistent with the decision in *Sierra Club* v. *Johnson* concerning the term ''emission limitation'' in section 302(k).[35] Characterizing the exemptions as an ''affirmative defense'' runs afoul of the requirement that emission limitations must apply continuously.

The EPA recognizes that the original policy objectives behind states' affirmative defense provisions were likely well-intentioned, *e.g.,* to encourage better source design, maintenance and operation through the incentive of being shielded from certain statutory remedies for violations under certain specified conditions. Nevertheless, creation of SIP provisions that would operate to limit or eliminate the jurisdiction of courts to determine liability or to impose remedies provided for by statute is inconsistent with the enforcement structure of the CAA. The EPA emphasizes that the absence of an affirmative defense provision in a SIP, whether as a freestanding generally applicable provision or as a specific component of a particular emission limitation, does not mean that all exceedances of SIP emission limitations will automatically be subject to enforcement or automatically be subject to imposition of particular remedies. Pursuant to the CAA, all parties with authority to bring an enforcement action to enforce SIP provisions (*i.e.,* the state, the EPA or any parties who qualify under the citizen suit provision of section 304) have enforcement discretion that they may exercise as they deem appropriate in any given circumstances. For example, if the event that causes excess emissions is an actual malfunction that occurred despite reasonable care by the source operator to avoid malfunctions, then each of these parties may decide that no enforcement action is warranted. In the event that any party decides that an enforcement action is warranted, then it has enforcement discretion with respect to what remedies to seek from the court for the violation (*e.g.,* injunctive relief, compliance order, monetary penalties or all of the above), as well as the type of injunctive relief and/or amount of monetary penalties sought.[36] Further, courts have the discretion under section 113 to decline to impose penalties or injunctive relief in appropriate cases as explained below.

Similarly, the absence of an affirmative defense provision in a SIP does not alter the legal rights of sources under the CAA. In the event of an enforcement action for an exceedance of a SIP emission limit, a source can elect to assert any common law or statutory defenses that it determines is supported, based upon the facts and circumstances surrounding the alleged violation. Under section 113(b), courts have explicit authority to impose injunctive relief, issue compliance orders, assess monetary penalties or fees and impose any other appropriate relief. Under section 113(e), courts are required to consider the enumerated statutory factors when assessing monetary penalties, including ''such other factors as justice may require.'' For example, if the exceedance of the SIP emission limitation occurs due to a malfunction, that exceedance is a violation of the applicable emission limitation, but the source retains the ability to defend itself in an enforcement action and to oppose the imposition of particular remedies or to seek the reduction or elimination of monetary penalties, based on the specific facts and circumstances of the event. Thus, elimination of a SIP affirmative defense provision that purported to take away the statutory jurisdiction of the court to exercise its authority to impose remedies does not disarm sources in potential enforcement actions. Sources retain all of the equitable arguments they could previously have made under an affirmative defense provision; they must simply make such arguments to the reviewing court as envisioned by Congress in section 113(b) and section 113(e). Congress vested the courts with the authority to judge how best to weigh the evidence in an enforcement action and determine appropriate remedies.

Removal of such impermissible SIP affirmative defense provisions is necessary to preserve the enforcement structure of the CAA, to preserve the jurisdiction of courts to adjudicate questions of liability and remedies in judicial enforcement actions and to preserve the potential for enforcement by states, the EPA and other parties under the citizen suit provision as an effective deterrent to violations. In turn, this deterrent encourages sources to be properly designed, maintained and operated and, in the event of violation of SIP emission limitations, to take appropriate action to mitigate the impacts of the violation. In this way, as intended by the existing enforcement structure of the CAA, sources can mitigate the potential for enforcement actions against them and the remedies

[34] *See* 79 FR 55919 at 12931–34 (September 17, 2014).

[35] 551 F.3d 1019 (D.C. Cir. 2008).

[36] The EPA notes that only the state and the Agency have authority to seek criminal penalties for knowing and intentional violation of CAA requirements. The EPA has this explicit authority under section 113(c).

that courts may impose upon them in such enforcement actions, based upon the facts and circumstances of the event.

D. Response to Comments Concerning Affirmative Defense Provisions in SIPs

The EPA received numerous comments concerning the portion of the Agency's proposed response to the Petition in the February 2013 proposal that addressed the question of whether affirmative defense provisions are consistent with CAA requirements for SIPs. As explained in the SNPR, those particular comments submitted on the original February 2013 proposal are no longer germane, given that the EPA has substantially revised its initial proposed action on the Petition and its basis, both with respect to the overarching issue of whether such provisions are valid in SIPs under the CAA and with respect to specific affirmative defense provisions in existing SIPs of particular states. Accordingly, as the EPA indicated in the SNPR, it considers those particular comments on the February 2013 proposal no longer relevant and has determined that it is not necessary to respond to them. Concerning affirmative defense provisions, the appropriate focus of this rulemaking is on the comments that addressed the EPA's revised proposal in the SNPR.

With respect to the revised proposal concerning affirmative defense provisions in the SNPR, the EPA received numerous comments, some supportive and some critical of the Agency's proposed action on the Petition as revised in the SNPR. Many of these comments raised conceptual issues and arguments concerning the EPA's revised interpretation of the CAA with respect to affirmative defense provisions in SIPs in light of the *NRDC* v. *EPA* decision and concerning the EPA's application of that interpretation to specific affirmative defense provisions discussed in the SNPR. For clarity and ease of discussion, the EPA is responding to these overarching comments, grouped by issue, in this section of this document.

1. Comments that the EPA is misapplying the decision of the D.C. Circuit in *NRDC* v. *EPA* to SIP provisions because the decision only applies to the Agency's own regulations pursuant to CAA section 112.

Comment: Many commenters stated that the EPA's reliance on the D.C. Circuit's decision in *NRDC* v. *EPA* is misplaced in the SNPR because the opinion is limited to disapproval of a Maximum Achievable Control Technology (MACT) standard's affirmative defense for unavoidable malfunctions. The commenters noted that the *NRDC* v. *EPA* decision did not address the issue of affirmative defense provisions in SIPs. The commenters argued that the D.C. Circuit's opinion only stands for the narrow proposition that the EPA may not include an affirmative defense to civil penalties in a NESHAP [37] under CAA section 112.

One commenter noted that the EPA, in the SNPR, stated that the *NRDC* v. *EPA* decision did not turn on any factors specific to CAA section 112 as support for the EPA applying the decision to SIPs. However, the commenter argued that this fact is not probative because neither party raised any argument specific to CAA section 112 and it is reasonable for a court to limit its analysis to the arguments presented before it.

One commenter also noted that the EPA is not bound to apply D.C. Circuit law to actions reviewable in other circuits.

Response: As explained in the SNPR, the EPA believes the reasoning of the court in the *NRDC* v. *EPA* decision indicates that states, like the EPA, have no authority in SIP provisions to alter the jurisdiction of federal courts to assess penalties for violations of CAA requirements through affirmative defense provisions.[38] If states lack authority under the CAA to alter the jurisdiction of the federal courts through affirmative defense provisions in SIPs, then the EPA lacks authority to approve any such provision in a SIP.

The EPA agrees with the commenters' statement that the *NRDC* v. *EPA* decision pertained to a challenge to the EPA's NESHAP regulations issued pursuant to CAA section 112 to regulate hazardous air pollutants (HAPs) from sources that manufacture Portland cement. However, the EPA disagrees with the commenters' contention that, because the *NRDC* v. *EPA* decision was based on a NESHAP, it is somehow inappropriate for the EPA to rely on the reasoning of the D.C. Circuit's decision as a basis for this action.

As acknowledged by a commenter, the EPA explained in the SNPR that the *NRDC* v. *EPA* decision did not turn on the specific provisions of CAA section 112.[39] However, the commenter missed the importance of this point. Although the *NRDC* v. *EPA* decision analyzed the legal validity of an affirmative defense provision created by the EPA in conjunction with a specific NESHAP, the court based its decision upon the provisions of sections 113 and 304. Sections 113 and 304 pertain to enforcement of the CAA requirements more broadly, including to enforcement of SIP requirements. The court addressed section 112 and not sections germane specifically to SIPs, as only that section was before it. The EPA has applied the *NRDC* court's analysis to sections 113 and 304 with respect to SIPs and has concluded that the *NRDC* court's analysis is the better reading of the statutory provisions.

The affirmative defense provision in the Portland Cement NESHAP required the source to prove, by a preponderance of the evidence in an enforcement proceeding, that the source met specific criteria concerning the nature of the event. These specific criteria required to establish the affirmative defense in the Portland Cement NESHAP are functionally the same as the criteria that the EPA previously recommended to states for SIP provisions in the 1999 SSM Guidance and that the EPA repeated in the February 2013 proposal document. Accordingly, the EPA believes that the opinion of the court in *NRDC* v. *EPA* has significant impacts on the Agency's SSM Policy with respect to affirmative defense provisions. The reasoning by the *NRDC* court, as logically extended to SIP provisions, indicates that neither states nor the EPA have authority to alter either the rights of other parties to seek relief or the jurisdiction of federal courts to impose relief for violations of CAA requirements in SIPs. The EPA believes that the court's decision in *NRDC* v. *EPA* compelled the Agency to reevaluate its interpretation of the CAA as described in the SNPR.

The EPA also disagrees with commenters who suggested that a decision of the D.C. Circuit should have no bearing on actions that affect states in other circuit courts. The CAA vests authority with the D.C. Circuit to review nationally applicable regulations and any action of nationwide scope or effect. Accordingly, any decision of the D.C. Circuit in conducting such review is binding nationwide with respect to the action under review, and the D.C. Circuit's reasoning is also binding with respect to review of future EPA actions raising the same issues that will be subject to review within that Circuit. Given that the EPA has determined that this action has nationwide scope and effect, it is subject to exclusive review in the D.C. Circuit, so the EPA believes it is appropriate to apply the reasoning

[37] The NESHAPs are found in 40 CFR part 61 and 40 CFR part 63. The NESHAPs promulgated after the 1990 CAA Amendments are found in 40 CFR part 63. These standards require application of technology-based emissions standards referred to as Maximum Achievable Control Technology (MACT). Consequently, these post-1990 NESHAPs are also referred to as MACT standards.

[38] *See* 79 FR 55929–30; 55931–34.

[39] SNPR, 79 FR 55919 at 55932.

of the *NRDC* court, which interprets CAA sections 113 and 304, to determine the legality of affirmative defense provisions in this national action.[40]

2. Comments that the EPA is misapplying the decision of the D.C. Circuit in *NRDC* v. *EPA* to SIP provisions because the court did not address the legality of affirmative defense provisions in SIPs.

Comment: Many commenters alleged that the EPA inappropriately relied on the D.C. Circuit's decision in *NRDC* v. *EPA* in the SNPR because the court specifically stated that its decision did not address whether affirmative defense provisions in SIPs were appropriate. The commenters pointed to the second footnote in the decision, in which the court explicitly stated: ''We do not here confront the question whether an affirmative defense may be appropriate in a State Implementation Plan.'' [41] Accordingly, the commenters argued that the *NRDC* v. *EPA* decision is ''non-binding'' with respect to SIP provisions.

Response: The EPA disagrees that the footnote relied upon by commenters renders application of the legal interpretation of the *NRDC* court to SIP provisions improper. The EPA specifically acknowledged and discussed the footnote in the *NRDC* v. *EPA* decision in the SNPR. The EPA explained its view of the significance of the footnote: ''footnote 2 in the opinion does not signify that the court intended to take any position with respect to the application of its interpretation of the CAA to SIP provisions, let alone to suggest that its interpretation would not apply more broadly.'' As discussed in the SNPR in detail, the EPA believes the logic of the court's decision in *NRDC* v. *EPA* regarding the interpretation of sections 113 and 304 concerning affirmative defenses does extend to SIP provisions.

3. Comment that the EPA is inappropriately relying on the *NRDC* v. *EPA* decision because the DC Circuit's decision was decided in error.

Comment: One commenter alleged that the EPA's reliance on the *NRDC* v. *EPA* decision is misplaced because the court in that decision mistakenly relied on section 304(a) when holding that the EPA cannot restrict the jurisdiction of the courts with affirmative defense provisions. The commenter alleged that Congress did not intend to give the judiciary ''fully-unfettered discretion'' in section 304(a) because such a reading cannot be squared with section 304(b), which provides that ''[n]o action can be commenced . . . if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States.''

Response: The EPA does not agree with the commenter's premise that the *NRDC* court erred by not considering section 304(b) as well as section 304(a). As the court correctly reasoned, section 304(a) authorizes any person to bring an enforcement action for violations of emission limitations. Section 304(f) defines the term ''emission limitation'' for this purpose very broadly. Section 304(b) does not alter the rights of any person who has given proper notice to bring such an action under section 304(a), unless the EPA or the state is diligently prosecuting a civil action to require compliance. The fact that section 304(b) limits the ability of any person to bring an enforcement action (as opposed to intervening in such action) if the EPA or the state is pursuing enforcement has no bearing upon whether the EPA or a state could seek to alter or eliminate the jurisdiction of the courts to determine liability or to impose remedies for violations of SIP emission limitations in judicial enforcement. The EPA also does not believe that this rulemaking is the appropriate forum in which to challenge the court's decision.

4. Comments that the court's reasoning in the *NRDC* v. *EPA* decision does not apply to affirmative defenses in SIP provisions because if a source qualifies for an affirmative defense, then there has been no violation.

Comment: Several commenters stated that the D.C. Circuit's analysis in the *NRDC* v. *EPA* opinion is based on statutory language that indicates Congress intended the courts, not the EPA, to decide what constitutes an appropriate penalty once a violation has occurred. The commenters argued that if a SIP provision contains an affirmative defense, and if a source meets the requirements to qualify for that affirmative defense, then there is no violation of the SIP requirements. One commenter contended that if there is no violation, then the courts have no jurisdiction to award any remedies and thus there can be no concern that the affirmative defense provision alters or eliminates the jurisdiction of the courts. Another commenter argued that affirmative defense provisions in the context of a SIP can be described as limitations on the application of an emission limitation to the conditions under which the emission reduction technology can be effectively operated. The commenters stated that the *NRDC* court did not address the EPA's or states' authority to establish requirements that determine, in the first instance, whether a violation has occurred.

Response: The EPA disagrees with the commenters' arguments that affirmative defense provisions are appropriate in SIPs if they merely define what constitutes a violation. As explained in detail in the SNPR, the EPA believes that SIP provisions with affirmative defenses that operate to limit or eliminate the jurisdiction of the courts to determine liability and to impose remedies are not consistent with CAA requirements. Under the commenters' theory, such provisions would not improperly impinge on the jurisdiction of the courts to impose remedies for violations by redefining what constitutes a ''violation.''

First, the EPA does not agree that all affirmative defense provisions in the SIPs at issue in this action are constructed in this way. Some, including those that the EPA previously approved as consistent with the Agency's 1999 SSM Guidance, explicitly provide that the excess emissions that occur are still violations, but a source could be excused from monetary penalties if the source met the criteria for the affirmative defense. Under the EPA's prior interpretation of the CAA, the legal basis for any affirmative defense started with the fact that the excess emissions still constituted a violation and injunctive relief would still be available as appropriate. As explained in the SNPR and this document, the EPA no longer interprets the CAA to allow even narrowly drawn affirmative defense provisions in SIPs, let alone those advocated by the commenters that would provide a complete bar to any type of judicial remedy provided for in section 113(b).

Second, even if a specific affirmative defense provision were worded in the way that the commenters' claim, then that provision would be deficient for other reasons. Under the commenters' premise, if certain criteria are met then there is no ''violation'' for excess emissions during SSM events. The EPA's view is that this formulation of an affirmative defense in effect means that there is no emission limitation that applies when the criteria are met, *i.e.,* the affirmative defense operates to create a conditional exemption for emissions from the source during SSM events. Such an approach would be inconsistent with the decision in *Sierra Club* v. *Johnson* concerning the term ''emission limitation'' in section 302(k).[42] Exemptions for emissions during SSM events, whether automatic

[40] CAA section 307(b)(1).

[41] 749 F.3d 1055, 1064, n.2.

[42] 551 F.3d 1019 (D.C. Cir. 2008).

or conditional based upon the criteria of an affirmative defense, are inconsistent with the requirement for continuous controls on sources.

Finally, the EPA believes that the commenters' premise that an affirmative defense provision merely defines what a violation is also runs afoul of other fundamental requirements for SIP provisions. To the extent any such provision would allow state personnel to decide, unilaterally, whether excess emissions during an SSM event constitute a violation (*e.g.,* through application of an ''affirmative defense''), this would interfere with the ability of the EPA or other parties to enforce for violations of SIP requirements. The EPA interprets the CAA to prohibit SIP provisions that impose the enforcement discretion decisions of a state on other parties. This includes provisions that are structured or styled as an affirmative defense but in effect allow *ad hoc* conditional exemptions from emission limitations and preclude enforcement for excess emission during SSM events.

5. Comments that the *NRDC* v. *EPA* decision, which concerned an emission limitation under section 112, does not apply in the context of section 110, because section 110 affords states flexibility in how to develop emission limitations in SIP provisions.

Comment: Commenters argued that the EPA's extension of the logic of the *NRDC* v. *EPA* decision to affirmative defenses in SIP provisions is incorrect because the EPA's NESHAP standards are governed by section 112, whereas SIP provisions are governed by section 110. Under the latter, commenters asserted, states are afforded wide discretion in how to develop emission limitations.[43] The commenters stated that section 110 governs the development of state SIPs to satisfy the NAAQS, which may address many different types of sources, major and minor, industrial and non-industrial, small and large, and old and new. The commenters alleged that states have independent authority to include affirmative defenses in SIP provisions, so long as the provisions are otherwise approvable, because the state has met its section 110 planning responsibilities and the SIP is enforceable.

Response: The EPA agrees with the commenters that section 110 governs the development of state SIPs and that states are accorded great discretion in determining how to meet CAA requirements in SIPs. However, as explained in the February 2013 proposal, the SNPR and sections IV.D.13 and V.D.2 of this document, states are obligated to develop SIP provisions that meet fundamental CAA requirements. The EPA has the responsibility to review SIP provisions developed by states to ensure that they in fact meet fundamental CAA requirements. As explained in the SNPR and this document, the EPA no longer believes that affirmative defense provisions meet CAA requirements. Based on the logic of the court in the *NRDC* v. *EPA* decision, the better reading of the statute is that such provisions have the effect of limiting or eliminating the statutory jurisdiction of the courts to determine liability or impose remedies.

The EPA also disagrees with the commenters' arguments that ''emission limitations'' under section 112 and section 110 are not comparable with respect to meeting fundamental CAA requirements. As an initial matter, both section 112 MACT standards and section 110 SIP emission limitations can be composed of various elements that include, among other things, numerical emission limitations, work practice standards and monitoring and recordkeeping requirements. However, whether there are other components that are part of the emission limitation to make it apply continuously is not relevant for purposes of determining whether an affirmative defense provision that provides relief from penalties for a violation of either a MACT standard under section 112 or a SIP provision under section 110 is consistent with the CAA.

As explained in the SNPR, the EPA has revised its interpretation of the CAA with respect to affirmative defense provisions in SIPs, based upon the logic of the court in the *NRDC* v. *EPA* decision. Section 304(a) sets forth the basis for a civil enforcement action and section 113(a)(1) does the same for administrative or judicial enforcement actions brought by the EPA. Sections 113(b) and 304(a) provide the federal district courts with jurisdiction to hear civil enforcement cases. Furthermore, section 113(e) confers jurisdiction on the district court in a civil enforcement case to determine the amount of penalty to be assessed where a violation has been established.

6. Comments that the *NRDC* v. *EPA* decision does not pertain to the appropriateness of affirmative defense provisions in the context of state administrative or civil enforcement.

Comment: Some commenters noted that the *NRDC* court only reviewed whether affirmative defense provisions could be used to limit CAA citizen suit remedies in judicial enforcement actions. The commenters alleged that the use of an affirmative defense in a citizen suit under federal regulations does not dictate the appropriateness of similar provisions in the context of state administrative or civil actions. According to the commenters, a SIP represents an air quality management system and the state administrative process is distinct from federal citizen suits. Similarly, the commenters believed that SIP emission limitations are enforceable via state regulation penalty provisions that are separate from the CAA civil penalty provisions. Because the *NRDC* court spoke only to the appropriateness of affirmative defense provisions in the context of federal citizen suits, the commenters asserted, the decision is inapplicable in the EPA's SIP call action.

Response: The EPA agrees that the court in the *NRDC* v. *EPA* decision did not speak directly to the issue of whether states can establish affirmative defenses to be used by sources exclusively in state administrative enforcement actions or in judicial enforcement in state courts. The reasoning of the *NRDC* court indicates only that such provisions would be inconsistent with the CAA in the context of judicial enforcement of SIP requirements in federal court. Indeed, the *NRDC* court suggested that if the EPA elected to consider factors comparable to the affirmative defense criteria in its own administrative enforcement proceedings, it may be able to do so. The implication of the commenters, however, is that the EPA should interpret the CAA to allow affirmative defenses in SIP provisions, so long as it is unequivocally clear that sources cannot assert the affirmative defenses in federal court enforcement actions and cannot assert the affirmative defenses in enforcement actions brought by any party other than the state.

The EPA of course agrees that states can exercise their own enforcement discretion and elect not to bring an enforcement action or seek certain remedies, using criteria analogous to an affirmative defense. It does not follow, however, that states can impose this enforcement discretion on other parties by adopting SIP provisions that would apply in federal judicial enforcement, or in enforcement brought by the EPA or other parties. To the extent that the state developed an ''enforcement discretion'' type provision that applied only in its own administrative enforcement actions or only with respect to enforcement actions brought by the state in state courts, such a provision may be appropriate. This authority is not unlimited because the state could not create affirmative defense provision that in effect undermines its legal authority

[43] *See, e.g., Train* v. *NRDC,* 421 U.S. 60, 79 (1975).

to enforce SIP requirements. Section 110(a)(2)(C) requires states to have a program that provides for enforcement of the state's SIP, and enforcement discretion provisions that unreasonably limit the state's own authority to enforce the requirements of the SIP would be inconsistent with section 110(a)(2)(C). The EPA's obligations with respect to SIPs include determining whether states have adequate enforcement authority.

7. Comments that the EPA's proposal is inappropriate because it runs counter to previous court decisions, including the decision of the U.S. Court of Appeals for the Fifth Circuit (Fifth Circuit) in *Luminant Generation* v. *EPA.*

Comment: Many commenters on the SNPR argued that the decision of the Fifth Circuit in *Luminant Generation* v. *EPA* precludes the EPA's proposed action concerning affirmative defenses in SIP provisions, in general and with respect to the provisions in the Texas SIP in particular. The commenters noted that the court upheld the EPA's approval of an affirmative defense provision for unavoidable excess emissions during unplanned SSM events in the Texas SIP.[44] The commenters argued that the Fifth Circuit ruled that in approving the Texas SIP affirmative defense provision, the EPA ''acted neither contrary to law nor in excess of its statutory authority.''[45] According to the commenters, the court specifically considered and rejected arguments by litigants concerning sections 113 and 304. Some commenters argued that the court also considered and ''decisively rejected'' the legal arguments articulated by the EPA in the SNPR. The commenters alleged that the *Luminant Generation* v. *EPA* decision demonstrates that affirmative defenses for malfunctions are permissible in SIP provisions. The commenters contended that, because the Fifth Circuit in *Luminant Generation* v. *EPA* specifically considered whether an affirmative defense provision applicable to malfunctions included in a SIP violates the CAA, unlike the D.C. Circuit in *NRDC* v. *EPA,* the EPA should follow the *Luminant Generation* v. *EPA* decision rather than the D.C. Circuit decision in *NRDC* v. *EPA.*

Some commenters also pointed out that the D.C. Circuit, in the recent *NRDC* v. *EPA* decision, mentioned and cited the *Luminant Generation* v. *EPA* opinion and did not expressly disagree with the Fifth Circuit's holding. One commenter noted that if the *NRDC* court believed that the issue it was deciding was the same as the issue decided in *Luminant Generation* v. *EPA,* the D.C. Circuit would have explicitly stated that it was declining to follow the Fifth Circuit on the issue instead of acknowledging that the issue upon which the Fifth Circuit ruled was not before the D.C. Circuit.

Several commenters also argued that, because the Fifth Circuit previously determined in *Luminant Generation* v. *EPA* that the Texas SIP affirmative defense provision at issue in this SIP call action is consistent with CAA sections 113 and 304, the EPA does not have any legal authority under the CAA to finalize the action proposed in SNPR. Some commenters further stated that the EPA lacks authority to disagree with the Fifth Circuit's determination of the law as applied to a state within the Fifth Circuit's jurisdiction. These commenters believed that if the EPA were to finalize the action discussed in the SNPR with respect to the affirmative defense for malfunctions in the Texas SIP, this action would violate the mandate rule. Some commenters also alleged that courts outside the Fifth Circuit, including the D.C. Circuit, will apply principles of claim preclusion, or *res judicata,* to give effect to the Fifth Circuit's prior adjudication on the legal basis for the affirmative defense in the Texas SIP. One commenter claimed that the EPA's ''failure'' to address how the holdings in *Luminant Generation* v. *EPA* will no longer apply and how the EPA is exempt from the court's mandate render the theories presented in the SNPR unsupported as a basis for the SIP call action.

Some commenters alleged that the EPA is bound by its own prior representations before the Fifth Circuit, in which it asserted and defended its approval of the affirmative defense provision for malfunctions in the Texas SIP, under the doctrine of judicial estoppel.[46] Similarly, the commenters alleged that under the doctrine of issue preclusion, or collateral estoppel, the EPA is precluded from re-litigating the issues previously considered and determined by the Fifth Circuit, regardless of where any subsequent challenge to this final action is brought.

Some commenters also cited to other circuit court decisions that have upheld the EPA's approvals of affirmative defense provisions for malfunctions.[47] The commenters alleged that other than calling the *NRDC* v. *EPA* decision a newer decision, the EPA did not explain its justification for relying on the *NRDC* v. *EPA* opinion instead of following the three circuit court decisions that are directly on point.

Response: The EPA disagrees with the commenters' arguments concerning the application of the court's decision in *Luminant Generation* v. *EPA* to this SIP call action. As explained in the SNPR, the EPA acknowledges that it has previously approved affirmative defenses in SIP provisions or, when appropriate, promulgated affirmative defenses in FIPs. The EPA also acknowledged that its approval of an affirmative defense provision applicable to ''unplanned events'' (*i.e.,* malfunctions) in a Texas SIP submission was upheld in 2012 by the U.S. Court of Appeals for the Fifth Circuit. In that litigation, the EPA argued that sections 113 and 304 do not preclude appropriately drawn affirmative defense provisions for malfunctions in SIPs. Importantly, in upholding the EPA's approval of the affirmative defense, the Fifth Circuit determined that *Chevron* step 1 was not applicable to this case and ''turn[ed] to step two of *Chevron*''[48] in holding that the Agency's interpretation of the CAA at that time was a ''permissible interpretation of section [113], warranting deference.''[49] The Fifth Circuit did not determine that the EPA's interpretation at the time of the *Luminant Generation* v. *EPA* decision was the only or even the best permissible interpretation. It is clearly within the EPA's legal authority to now revise its interpretation to a different, but still permissible, interpretation of the statute.[50] The EPA has explained at length in the SNPR, and elsewhere in this final rulemaking, its reasons for changing its previous interpretation of

[44] 714 F.3d 841 (5th Cir. 2013).

[45] *Id.* at 853. The EPA notes that the Fifth Circuit also upheld the Agency's disapproval of the affirmative defense provisions that the state sought to create for ''planned'' events.

[46] *See, e.g., New Hampshire* v. *Maine,* 532 U.S. 742, 749 (2001).

[47] *See Montana Sulphur & Chemical Co.* v. *EPA,* 666 F.3d 1174 (9th Cir. 2012); *Arizona Public Service Co.* v. *EPA,* 562 F.3d 1116 (10th Cir. 2009).

[48] 714 F.3d at 852.

[49] *Id.* at 853.

[50] *See, e.g., Nat'l Cable & Telecomms. Ass'n* v. *Brand X Internet Servs.,* 545 U.S. 967 (2005) and *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502 (2009). The Agency also notes that commenters' position, that the EPA cannot now change its interpretation of the CAA, is at odds with the SIP call provision established by Congress in section 110(k)(5). That provision provides the EPA with authority to issue a SIP call ''whenever'' it determines that an existing SIP is substantially inadequate to meet CAA requirements. In other words, section 110(k)(5) expressly envisions cases where the EPA has previously approved a SIP provision as meeting CAA requirements, and one that the EPA may have even defended in court, but later determines that the provision no longer meets CAA requirements, and section 110(k)(5) gives the EPA authority to issue a SIP call in these situations.

the CAA to permit narrowly drawn affirmative defenses applicable only to penalties and has explained why it now believes that the reasoning of the court in the *NRDC* v. *EPA* decision is the better reading of the CAA.

Some commenters allege that the Fifth Circuit considered and rejected the legal arguments articulated by the EPA in the SNPR to support the Agency's new interpretation that affirmative defenses in SIP provisions are inconsistent with the Act. The EPA disagrees with commenters' assertions. As explained above, in the *Luminant Generation* v. *EPA* decision the Fifth Circuit analyzed the EPA's former interpretation of the CAA under step 2 of *Chevron* and found that the Agency's position was reasonable. The Fifth Circuit held that the CAA did not dictate the outcome put forth by environmental petitioners in the *Luminant Generation* v. *EPA* case; the court did not hold that the Agency could not reasonably interpret the CAA provisions at issue to come to the new position articulated in the SNPR and other sections of this document. In fact, the Fifth Circuit upheld the EPA's reading of the statute to preclude affirmative defense provisions for planned events in the same decision as a reasonable interpretation of the CAA.

In the SNPR, the EPA also addressed the discussion in the *NRDC* v. *EPA* decision that referred to the earlier *Luminant Generation* v. *EPA* decision and explained its view that the court in *NRDC* v. *EPA* did not suggest that its interpretation of the CAA would not apply more broadly to SIP provisions. Rather, the court simply declined to address that issue. As to commenters' allegation that the EPA should follow the *Luminant* court's reasoning because that court addressed the specific issue of affirmative defenses in SIP provisions, the EPA has explained in detail in the SNPR and section IV.D.1 of this document why it now believes that the *NRDC* court's reasoning is applicable here and why it believes this is the better interpretation of sections 113 and 304.

The EPA acknowledges that other circuit courts have also upheld affirmative defense provisions promulgated by the Agency in FIPs.[51] Those decisions were also based upon an interpretation of the CAA that the Agency no longer holds. The EPA further notes that the affirmative defense provisions at issue in the other court decisions cited by the commenters are not at issue in this action. However, the EPA may elect to address these provisions in a separate rulemaking.

The EPA also disagrees with commenters' allegations that this final SIP call action violates the mandate rule. The mandate rule generally governs how a lower court handles a higher court's decision on remand. The Agency believes that the mandate rule is inapplicable here. Similarly, the Agency believes that the principles of *res judicata,* judicial estoppel and collateral estoppel (issue preclusion) raised by commenters are all inapplicable in this situation. For reasons the EPA has fully explained in this rulemaking, the Agency is adopting a revised interpretation of the CAA. This necessarily changes the issues or claims that may be raised in any future litigation concerning the Agency's action here or subsequent Agency actions taken pursuant to this changed interpretation. As noted previously, the Agency's ability to change its interpretation of the statute is well established, even if courts have previously upheld the Agency's former interpretation as reasonable under step 2 of the *Chevron* analysis.

8. Comments that affirmative defense provisions are needed or appropriate because sources cannot control malfunctions or the excess emissions that occur during them.

Comment: Several commenters claimed that by requiring states to remove affirmative defense provisions, the EPA will create a situation where sources have no potential relief from liability for exceedances resulting from excess emissions during malfunctions. The commenters argued that this will effectively expose sources to penalties for emissions that are not within the sources' control. The commenters alleged that the EPA's proposal is unreasonable because it fails to consider the infeasibility of controlling emissions during malfunction periods. The commenters believe that because malfunction events are uncontrollable by definition, removing affirmative defense provisions applicable to malfunctions will not reduce emissions but instead will only expose facilities to potential enforcement for uncontrollable exceedances.

Response: The EPA disagrees that without affirmative defense provisions, sources will have no ''relief'' from liability for violations during actual malfunctions. To the extent that sources have an actual malfunction, sources retain the ability to raise this fact in the event of an enforcement action related to the malfunction. Congress has already provided courts with explicit jurisdiction and authority to determined liability and to impose appropriate remedies, based on the facts and circumstances surrounding the violation. To the extent that there are extenuating circumstances that justify not holding a source responsible for a violation or not imposing particular remedies as a result of a violation, sources retain the ability to raise these facts to the court. In addition, the absence of an affirmative defense provision in the SIP does not impede a violating source from taking appropriate actions to minimize emissions during a malfunction, so as to mitigate the potential remedies that a court may impose as a result of the violation.

Furthermore, the EPA disagrees with the commenters' premise that states have authority to create affirmative defense provisions in SIPs because some sources may otherwise be subject to enforcement actions for emissions during malfunctions. As explained in the SNPR in detail, the EPA has concluded that there is no legal basis for affirmative defenses in SIP provisions, including affirmative defenses applicable to malfunction events. Because such affirmative defense provisions purport to alter or eliminate the statutory jurisdiction of courts to determine liability and to assess appropriate remedies for violations of SIP requirements, these provisions are not permissible.

9. Comments that there will not be any reduction in overall emissions from the EPA's SIP call action because states will need to revise emission limitations to allow more emissions if affirmative defense provisions are removed from the SIPs.

Comment: Commenters on the SNPR questioned whether the elimination of affirmative defenses in SIP provisions would result in any reductions of emissions from sources. Several commenters asserted that affirmative defense provisions allow states to lower emission limitations overall. Thus, the commenters claimed that elimination of the affirmative defense provisions would obligate states to raise affected emission limitations so that sources could comply with them continuously. Another commenter criticized the EPA's approach as requiring each state to reframe the existing episodic emissions provisions of its SIP as alternative emission limitations rather than as more limited and conditional affirmative defenses. This commenter asserted that structuring the provisions as an affirmative defense allows a state to impose more stringent numerical limitations without penalizing sources for unavoidable emissions when those

[51] *See Montana Sulphur & Chemical Co.* v. *EPA,* 666 F.3d 1174 (9th Cir. 2012); *Arizona Public Service Co.* v. *EPA,* 562 F.3d 1116 (10th Cir. 2009).

emissions do not compromise the underlying air quality objectives.

Several commenters also disagreed with the EPA's belief that removal of affirmative defense provisions would reduce emissions. One commenter noted that some affirmative defense provisions require a source to evaluate impacts on NAAQS compliance as part of asserting the affirmative defense; the commenter contended that forgoing these provisions would thus reduce the incentive for owners and operators to minimize emissions during malfunctions so that they could qualify for the affirmative defense. Several commenters noted that many sources immediately investigate excess emissions events and implement measures intended to prevent recurrence. Nevertheless, those commenters asserted that because malfunction events are uncontrollable by definition, removing an affirmative defense applicable to malfunctions will not reduce emissions. Commenters also argued that an assumption that elimination of the affirmative defense provisions will reduce emissions is flawed because, given the stringent applicability criteria for a ''narrowly drawn'' affirmative defense, a facility has no assurance that an affirmative defense will apply to any particular malfunction event and that even if the affirmative defense was available, it would not shield the facility from compliance orders or other injunctive relief (or from criminal prosecution).

Response: The commenters' arguments concerning whether elimination of affirmative defense provisions will or will not reduce emissions during SSM events and will or will not reduce incentives for sources to minimize emissions during SSM events do not address the legal basis for any such affirmative defense provisions. As the commenters correctly observed, the EPA's 1999 SSM Guidance reflected the Agency's prior interpretation of the CAA to permit such affirmative defense provisions, so long as they were sufficiently narrowly drawn, applied only to monetary penalties and required the source to prove that it met the applicable criteria to the trier of fact in an enforcement proceeding. The EPA's arguments for why appropriate affirmative defense provisions could be consistent with CAA requirements included that they could provide an incentive for sources to be properly designed, maintained and operated to minimize emissions at all times.

As explained in the SNPR, however, the EPA has determined that affirmative defenses are impermissible in SIP provisions because they operate to alter or eliminate the statutory jurisdiction of the courts. The EPA has reached this conclusion in light of the court's decision in *NRDC* v. *EPA.* Because affirmative defense provisions are inconsistent with the enforcement structure of the CAA, the EPA is making the finding that such provisions are substantially inadequate to meet legal requirements of the CAA. In order to make the finding that these provisions fail to meet legal requirements of the CAA, the EPA is not required to determine or estimate emission reductions that will or will not result from the removal of such provisions from the affected SIPs. The EPA believes this action is necessary to provide environmental protection. However, the EPA's obligation as a legal matter would not change even if commenters were correct in their view that emissions reductions will not result from the removal of the impermissible affirmative defense provisions. The EPA's interpretation of its authority under section 110(k)(5) is discussed in detail in section VIII.A of this document.

The EPA agrees that in response to this SIP call directing the removal of affirmative defense provisions, the affected states may elect to revise affected SIP emission limitation. In so doing, the states may determine that it is appropriate to revise the emission limitations in other respects, so long as they do so consistent with CAA requirements. For example, affected states may elect to create alternative emission limitations that apply to sources during startup and shutdown. The EPA's guidance for this approach is discussed in detail in VII.B.2 of this document. Alternatively, states may elect to overhaul an affected SIP emission limitation entirely to account for the removal of the affirmative defense in some other way. However, states will need to comply with the applicable substantive requirements for the type of SIP provision at issue and the EPA will review those SIP revisions in accordance with the requirements of the CAA, including sections 110(k)(3), 110(l) and 193.

10. Comments that the elimination of affirmative defense provisions will result in sources' facing inconsistent treatment by courts or states when excess emissions are emitted during malfunction events.

Comment: Commenters claimed that the concept and framework for affirmative defense provisions are consistent from state to state and that by removing these provisions, sources will be subject to inconsistent treatment of excess emissions during SSM in different states. The commenters noted that the EPA recognized in the February 2013 proposal and SNPR that states may elect to revise their deficient SIP provisions differently in response to the SIP call and thus the commenters expressed concern that the potential difference in treatment among states will lead to ''inconsistent regulation of air pollution across the country.''

Commenters further argued that without the consistent regulatory framework provided by an affirmative defense provision, each court is likely to evaluate SSM events differently in the context of enforcement actions. The commenters suggested that allowing each court to consider the facts and circumstances of the emission event in its penalty evaluation without a governing framework could lead to inconsistent enforcement throughout the country.

Response: The EPA disagrees that it is inappropriate to allow states to determine how best to revise their SIPs in response to this SIP call, consistent with CAA requirements. As discussed in this document, and as many commenters have also noted, the structure of the CAA is based upon cooperative federalism. Under this structure, Congress gave states broad discretion to develop SIP provisions as necessary to attain and maintain the NAAQS and meet other CAA objectives, so long as the SIPs also meet statutory requirements. The very nature of the SIP program is that similar sources can be treated differently in different states, because the states have discretion with respect to developing their SIP provisions consistent with CAA requirements. Thus, whether the affirmative defense provisions at issue in this action added some level of ''consistent'' treatment of sources across the nation (a statement with which the EPA does not agree) is not relevant for purposes of this SIP call.[52] Rather, for the reasons explained in the SNPR and in this document, the EPA has determined that affirmative defense provisions are inconsistent with the fundamental legal requirements of the CAA. For that reason, the EPA is requiring the affected states to revise their SIPs to remove the affirmative defense provisions identified in this action. States have discretion in how

[52] The EPA notes that the actual affirmative defense provisions at issue in this action are very dissimilar; some are based on the EPA's interpretation of the CAA in the 1999 SSM Guidance, but the majority of the provisions are relatively unique from state to state. Accordingly, the EPA disagrees with the commenters' basic premise that the affirmative defense provisions are consistent from state to state.

they revise their SIPs in this context as in all other contexts.

As to the concern that different courts might evaluate liability for violations during SSM events differently in the absence of affirmative defense provisions, the EPA notes that this is not the relevant question. The potential for inconsistent treatment by the courts is not a basis for allowing states to retain SIP provisions that are inconsistent with the legal requirements of the CAA. In any event, the EPA disagrees that elimination of affirmative defenses in SIP provisions make it more likely that there would be ''inconsistent enforcement'' because of a lack of a ''regulatory framework.'' The enforcement structure of the CAA embodied in section 113 and section 304 already provides a structure for enforcement of CAA requirements in federal courts. For example, the CAA already provides uniform criteria for courts to apply, based upon the facts and circumstances of individual enforcement actions. Similar to an affirmative defense provision, section 113(e) already enumerates the factors that courts are required to consider in determining appropriate penalties for violations and thus there is a consistent statutory framework. In essence the commenters object to the fact that in any judicial enforcement case, the court will determine liability and remedies based on the facts and circumstances of the case. However, this is an inherent feature of the enforcement structure of the CAA, regardless of whether there is an affirmative defense provision at issue.

11. Comments that the EPA should have acted in a single, comprehensive rulemaking rather than issuing the supplemental notice of proposed rulemaking.

Comment: Commenters asserted that the EPA's issuance of two separate proposals instead of one proposal has prevented states and industry from knowing the entire proposed regulatory action. The commenters claimed that if the EPA is going to issue a SIP call to states concerning the treatment of emissions during SSM events, then it should do so in a single comprehensive rulemaking. The commenters argued this is necessary because states consider different options when revising SIP provisions and that thereafter states will have to work with affected sources to revise permits.

Response: The EPA disagrees with the argument that states, industry, individuals and other interested parties have not had an opportunity to know and comment upon the Agency's entire action. The EPA's February 2013 proposal was intended to cover a broad range of issues related to the correct treatment of emissions during SSM events in SIP provisions comprehensively. Because of an intervening court decision that affected the substance of the EPA's initial proposed action, it was necessary to issue a supplemental proposal. The EPA disagrees that the issuance of the SNPR adversely affected the ability of interested parties to understand the Agency's proposed action, because the SNPR only affected one aspect of the original proposed action. As the EPA explained in the SNPR: ''In this SNPR, we are supplementing and revising what we earlier proposed as a response to the Petitioner's requests but only to the extent the requests narrowly concern affirmative defense provisions in the SIPs. We are not revising or seeking further comment on any other aspects of the February 2013 proposed action.'' [53]

As to the commenters' concern that the EPA should take action in a single comprehensive rulemaking, the Agency is doing so. This SIP call action addresses all aspects of the Petition and it is based upon both the February 2013 proposal and the SNPR. As advocated by the commenters, the EPA's objective in this SIP call action is to provide states with comprehensive and up-to-date guidance concerning the correct treatment of emissions during SSM events in SIP provisions, consistent with CAA requirements as interpreted by recent court decisions. The EPA agrees with the commenters that providing states comprehensive guidance in this rulemaking is important to assist states in revising their SIP provisions consistent with CAA requirements. Any necessary changes to permits to reflect the removal of affirmative defense provisions from the underlying SIP will occur later, after the SIP provisions have been revised.

12. Comments that the EPA has not proven that the existence of affirmative defense provisions in SIPs is resulting in specific environmental impacts or interference with attainment and maintenance of the NAAQS.

Comment: Several commenters argued that the EPA has failed to demonstrate that the affirmative defense provisions at issue in this action have contributed to a specific NAAQS violation or otherwise caused harm to public health or the environment. The commenters contend that, because of the narrow scope of affirmative defense provisions, it is unlikely that their existence would cause or contribute to any violations of the NAAQS. Some commenters further noted that some states have experienced improved ambient air quality conditions, despite having SIPs in place with affirmative defense provisions at issue in this action.

The commenters alleged that without providing specific record-based evidence of the impacts caused by affirmative defense provisions, it is unreasonable for the EPA to determine that existing provisions are substantially inadequate or otherwise not in compliance with the CAA. Some commenters further alleged that the EPA has no authority to issue a SIP call without ''find[ing] that the applicable implementation plan . . . is substantially inadequate to attain or maintain the relevant [NAAQS].''

Response: As explained in the February 2013 proposal, the SNPR and this document, the EPA does not interpret its authority under section 110(k)(5) to require proof that a deficient SIP provision caused a specific violation of the NAAQS at a particular monitor on a particular date, or that a deficient SIP provision undermined a specific enforcement action. Section 110(k)(5) explicitly authorizes the EPA to make a finding that a SIP provision is substantially inadequate to ''comply with any requirement of'' the CAA, in addition to the authority to do so where a SIP is inadequate to attain and maintain the NAAQS or to address interstate transport. In light of the court's decision in *NRDC* v. *EPA,* the EPA has reexamined the question of whether affirmative defenses are consistent with CAA requirements for SIP provisions. As explained in this action, the EPA has concluded that such provisions are inconsistent with the requirements of section 113 and section 304. Accordingly, the EPA has the authority to issue SIP calls to states, requiring that they revise their SIPs to eliminate the specific affirmative defense provisions identified in this action. Issues related to the EPA's authority under section 110(k)(5) are discussed in more detail in section VIII.A of this document.

13. Comments that the EPA is violating the principles of cooperative federalism through this action.

Comment: Several commenters stated that the EPA's action with respect to affirmative defenses in SIP provisions is inconsistent with the system of cooperative federalism contemplated by the CAA. The commenters alleged that this action is at odds with established CAA and judicial precedents indicating that states have broad discretion in developing SIP provisions, with the EPA's role being limited. Some commenters further alleged that the

[53] 79 FR 55919 at 55923.

EPA's action has the effect of unlawfully directing states to impose a particular control measure. The commenters argued that the EPA must defer to a state's choices on how to meet the relevant NAAQS, through whatever SIP provisions the state elects to develop. One commenter argued that states have independent authority to include affirmative defense policies in their SIPs, even if the DC Circuit has held that the EPA may not include affirmative defense provisions in federal regulations.

Response: The EPA agrees that the CAA is based upon the principle of cooperative federalism but disagrees with the commenters' characterization of the respective authorities and responsibilities of states and the Agency. As explained in the February 2013 proposal, and in section V.D.2 of this document, the EPA has the authority and the obligation to ensure that SIP provisions meet fundamental CAA requirements, when initially submitted and later. In the case of affirmative defenses in SIP provisions, the EPA has determined that such provisions do not comply with CAA requirements because they operate to alter or eliminate the statutory jurisdiction of the courts, contrary to section 113 and section 304. The states have broad discretion in how to create SIP provisions but must do so consistent with CAA requirements. By issuing this SIP call, the EPA is not in any way compelling states to impose any specific SIP control measure on any specific source but merely requiring states to revise their SIP provisions to make them consistent with CAA requirements.

14. Comments that the EPA failed to account adequately for the amount of time and resources that will be required to revise state SIPs.

Comment: Many commenters asserted that the SNPR did not recognize that removal of affirmative defense provisions from SIPs will impose enormous burdens on states because they will need to revise SIPs to create alternative emission limitations in lieu of the affirmative defenses. Commenters contended that removal of the affirmative defense provisions will necessarily require state air agencies to make extensive revisions to SIPs and that in many states, such changes will have to be reviewed by the state legislature. Commenters explained that such an effort could not reasonably be completed in many states within the 18 months the EPA proposed to provide for SIP revisions in response to the final SIP call. Commenters also stated that the SSM provisions that the EPA proposed to require states to remove from their SIPs have been incorporated into thousands of title V operating permits and that those title V permits would, in turn, need to be modified if the affirmative defense provisions are removed from the approved SIPs. Commenters indicated that states might also need to amend an even larger number of minor source permits.

Commenters also indicated that in conjunction with removal of affirmative defenses, states will also have to reevaluate the emission limitations currently contained in their SIPs to determine if those limitations are still are consistent with federal and state law (*e.g.,* represent reasonably available control technology). Some commenters expressed the view that the EPA must indicate that states will not be required to remove the identified affirmative defense provisions from their SIPs until the state has had time to consider whether emission limitations in state regulations and in construction and operating permits need to be modified and to obtain any necessary EPA approval for the modified requirements. Commenters also argued that the EPA's suggestion that states subject to a SIP call could simply remove an existing affirmative defense provision and rely on enforcement discretion to address ''unavoidable'' exceedances is wrong and that states adopt emission limitations under state administrative rules that require the agency to provide a record to support the level of the emission limitation.

Response: The EPA has acknowledged that correction of the deficient SIP provisions at issue in this action will take time and resources. For this reason, the EPA is providing states with the maximum time (18 months) permitted by section 110(k)(5) to respond to this SIP call. In addition, the EPA is endeavoring to provide states with clear and comprehensive guidance concerning the proper treatment of excess emissions during SSM events in SIP provisions in order to make this process more efficient.

The EPA acknowledges that some states, in conjunction with removal of affirmative defense provisions, may elect to undertake a more comprehensive revision of affected SIP emission limitations. In so doing, the states may need to undertake a more resource intensive approach than those states that merely elect to eliminate the affirmative defense provisions. In addition, the EPA also recognizes that states may eventually need to revise permits to reflect the elimination of affirmative defense provisions from underlying SIP provisions that may have been reflected in permits. The EPA discussed these issues in the both the February 2013 proposal and in the SNPR. A summary of comments concerning revisions to operating permits to reflect the revised SIP provisions appears, with the EPA's response to comments, in section VIII.D.28 of this document.

Despite the potential burden on states, as the EPA explained in the February 2013 proposal and the SNPR, the Agency believes that it is obligated and authorized to issue this SIP call action to affected states to require the removal of affirmative defense provisions. The EPA is not in this action evaluating or determining whether SIP emission limitations should or should not be revised in light of the removal of affirmative defenses and is not required to do so. The states have discretion to determine how best to revise the deficient SIP provisions identified in this action, so long as they do so consistent with the CAA requirements.

Further, the EPA does not agree that enforcement discretion cannot substitute for an affirmative defense for malfunctions. For example, the EPA has taken the position that the CAA does not require malfunction emissions to be factored into development of section 112 or section 111 standards and that case-by-case enforcement discretion provides sufficient flexibility.[54] Moreover, the EPA believes that Congress has already provided for such flexibility in section 113, by providing the courts with jurisdiction to determine liability and to impose remedies. For example, in section 113(e), Congress provided specific criteria for courts to consider in imposing monetary penalties, including consideration of such factors as justice may require.

With respect to the potential need to amend permits, as explained in the February 2013 proposal, ''the EPA does not intend its action on the Petition to affect existing permit terms or conditions regarding excess emissions during SSM events that reflect previously approved SIP provisions. . . . [A]ny needed revisions to existing permits will be accomplished in the ordinary course as the state issues new permits or reviews and revises existing permits. The EPA does not intend the issuance of a SIP call to have automatic impacts on the terms of any existing permit.'' [55] Thus, these permit revisions that commenters expressed concern about need not occur during the 18-

[54] *See, e.g.,* ''Oil and Natural Gas Sector: Reconsideration of Additional Provisions of New Source Performance Standards; Proposed rule,'' 79 FR 41752 at 41762–63 (July 17, 2014).

[55] *See* February 2013 proposal, 78 FR 12459 at 12482 (February 22, 2013).

month SIP development timeframe but may proceed thereafter according to normal permit revision requirements.

Finally, the EPA notes, the burdens associated with SIP revisions and permit revisions are burdens imposed by the CAA. The states have both the authority and the responsibility under the CAA to have SIPs and permit programs that meet CAA requirements. It is inherent in the structure of the CAA that states thus have the burden to revise their SIPs and permits when that is necessary, whether because of changes in the CAA, changes in judicial interpretations of the CAA, changes in the NAAQS, or a host of other potential events that necessitate such revisions. Among those is the obligation to respond to a SIP call that identifies legal deficiencies in specific provisions in a state's SIP.

15. Comments that the EPA is being inconsistent because rules promulgated by the EPA provide affirmative defense provisions for malfunction events.

Comment: A number of commenters claimed that the EPA cannot interpret the CAA to prohibit affirmative defenses in SIP provisions because the Agency itself has issued regulations that include affirmative defenses for excess emissions during malfunction events. The commenters claim that the EPA is being inconsistent on this point and thus cannot require states to remove affirmative defenses from SIPs.

Other commenters alleged that the EPA is being inconsistent because it has not adequately explained the reversal of its ''decades-old'' policy interpreting the CAA to allow affirmative defenses in SIP provision. The commenters cited to SIP provisions that the EPA previously approved in eight states between 2001 and 2010 that they believed would be affected by this SIP call. The commenters claimed that these prior actions were consistent with the EPA's SSM policy memoranda. Additionally, the commenters cited to federal regulations that the EPA has previously promulgated that include affirmative defense provisions. The commenters claimed that these prior actions are ''inconsistent with EPA's proposed disallowance of affirmative defenses.''

Response: The EPA has acknowledged that it has previously approved some SIP provisions with affirmative defenses that were consistent with its interpretation of the CAA in the 1999 SSM Guidance at the time it acted on those SIP submissions. However, since that time, two decisions from the D.C. Circuit have addressed fundamental interpretations of the CAA related to the legally permissible approaches for addressing excess emissions during SSM events.[56] In light of those decisions, as explained in detail in the February 2013 proposal, the SNPR and this document, the EPA has concluded that certain aspects of its prior interpretation of the CAA, as set forth in the SSM Policy, were not the best interpretation of the CAA. As a result, certain SIP provisions that the EPA previously approved are also not consistent with the requirements of the CAA. In particular, this includes the EPA's prior interpretation of the CAA to allow affirmative defense provisions in SIPs in the 1999 SSM Guidance.

The EPA has also acknowledged that it has in the past taken a similar approach regarding affirmative defense provisions in federal regulations addressing hazardous air pollution and in new source performance standards. Indeed, the EPA's inclusion of an affirmative defense provision in a federal regulation resulted in the court decision in *NRDC* v. *EPA,* in which the court rejected the Agency's interpretation of the CAA to allow affirmative defenses that limit or eliminate the jurisdiction of the courts. Just as the EPA is calling on states to revise their SIPs to remove affirmative defense provisions, the Agency is also taking action to correct such provisions in federal regulations.[57] The continued existence of such provisions in the EPA regulations that have not yet been corrected does not mean that such provisions are authorized either in state or federal regulations.

As to the claim that the EPA has not adequately explained the basis for changing its interpretation of the CAA regarding affirmative defenses in SIP provisions, the Agency disagrees. The SNPR set forth in detail the basis for the EPA's revised interpretation of the CAA, in light of the court's decision in *NRDC* v. *EPA.*[58] The commenters failed to specify why this explanation was ''inadequate.''

16. Comments that existing affirmative defense provisions do not preclude parties from filing enforcement actions or hinder parties from seeking injunctive relief for violations of SIP requirements.

Comment: One state commenter asserted that the existing affirmative defense provisions in the state's SIP do not prevent the state or the EPA from pursuing injunctive relief or mitigation of environmental impacts in the event of violations. Thus, the commenter supported the EPA's prior interpretation of the CAA to allow affirmative defense provisions, so long as courts can still award injunctive relief for violations. The commenter did not articulate how this prior statutory interpretation is consistent with the reasoning of the court in *NRDC* v. *EPA* concerning the same statutory provisions.

By contrast, an environmental group commenter cited a citizen suit enforcement case in Texas in which the commenter claimed that the affirmative defense provision in that state's SIP operated as a *de facto* shield against any enforcement. The commenter stated that the EPA's approval of the affirmative defense was premised upon its only applying to civil penalties and not to injunctive relief and that the Agency's approval of the SIP provision was explicitly upheld on this basis by the Fifth Circuit. Nevertheless, the commenter asserted, the state agency has implemented this provision such that if the affirmative defense criteria are met, there is ''no violation'' and thus no potential for injunctive relief.

Response: The EPA agrees that some of the affirmative defense provisions at issue in this action are expressly limited to monetary penalties and not to injunctive relief. This approach was consistent with the EPA's prior interpretation of the CAA concerning affirmative defense provisions in SIPs but also consistent with the arguments that the D.C. Circuit rejected in the *NRDC* v. *EPA* decision. Thus, the fact that some of the affirmative defense provisions addressed in this action preserve the possibility for injunctive relief, even if the court could award no monetary penalties, is no longer a deciding factor.

The EPA also agrees that some agencies or courts may not apply the affirmative defense provisions in the manner intended at the time the EPA approved them into the SIP. Incorrect application of SIP affirmative defense provisions by sources, regulators or courts is a matter of concern. However, even perfect implementation of a SIP affirmative defense provision does not cure the underlying and now evident absence of a legal basis for such provisions. Again, the fact that a given affirmative defense provision is being implemented correctly or incorrectly is no longer a deciding factor for purposes of this SIP call action.

These issues are not pertinent to the EPA's decision in this action to require states to remove the affirmative defense provisions from the previously approved SIPs. Rather, as explained in

[56] *See Sierra Club* v. *Johnson,* 551 F.3d 1019 (D.C. Cir. 2008), in the rulemaking docket at EPA–HQ–OAR–2012–0322–0048; *see also NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir. 2014), in the rulemaking docket at EPA–HQ–OAR–2012–0322–0885.

[57] *See, e.g.,* 79 FR 60897 (October 8, 2014); 79 FR 72914 (December 8, 2014).

[58] 79 FR 55919 at 55929–30.

detail in the SNPR and this final action, the EPA is requiring the affected states to remove these SIP provisions because they are inconsistent with CAA requirements. As explained in the SNPR, the EPA has concluded that such affirmative defenses in SIP provisions are inconsistent with section 113 and section 304, in light of the reasoning of the court in *NRDC* v. *EPA.*

17. Comments that the EPA is changing its policy on affirmative defenses, and this change is arbitrary and capricious and thus an impermissible basis for a SIP call.

Comment: Several commenters stated that the EPA's action with respect to affirmative defense provisions marks a change in the EPA's approach to these provisions. The commenters alleged that this SIP call action is not mandated by judicial precedent, and therefore the SNPR simply reflected a ''policy change'' by the EPA. The commenters argued that, while the EPA is permitted to change its policy or interpretation of the law, this specific change is arbitrary and capricious and forces unreasonably difficult and burdensome requirements on states and sources. The commenters asserted that the EPA failed to explain adequately this change in policy or to document reasons for the change in the administrative record. Some commenters further alleged that the EPA does not have authority to impose its policy preferences on states.

Response: The EPA disagrees that the basis for this SIP call action is a change of ''policy'' as alleged by the commenters. The EPA's guidance to states concerning the proper treatment of excess emissions during SSM events in SIP provisions is provided in the SSM Policy, but this guidance reflects the Agency's interpretation of statutory requirements. As explained in detail in the SNPR and in this document, the EPA is changing its interpretation of the CAA with respect to affirmative defenses in SIP provisions based on the logic of the court in *NRDC* v. *EPA.* Further, as acknowledged by commenters, the EPA is permitted to change its interpretation of the statute provided that it clearly explains the basis for the change. The EPA clearly explained the basis for the changed interpretation in the SNPR based on its analysis of the legal rationale respecting sections 113 and 304 in the *NRDC* v. *EPA* decision.

18. Comments that emissions during malfunction periods are not ''excess'' or ''violations'' but rather are part of the established SIP emission limitations.

Comment: Commenters cited the EPA's brief filed in the Fifth Circuit *Luminant Generation* v. *EPA* case in support of an argument that states are not required to attach a penalty or any certain amount of penalty to a violation of a SIP emission limitation. The commenters noted that in the brief, the EPA stated that under section 110 of the CAA, states are authorized ''to determine what constitutes a violation, and to distinguish both quantitatively and qualitatively between different types of violations.'' Further, the commenter noted, the EPA argued in the brief that because the violation is defined by the state, an affirmative defense does not impinge on the court's jurisdiction. The commenters contended that nothing has changed since the brief was filed to justify a change in interpretation of the CAA and that the EPA failed to explain why its prior interpretation is no longer correct.

Other commenters claimed that the EPA takes the position that affirmative defenses in SIP provisions conflict with the court's jurisdiction over enforcement actions and stated that this position is flawed because enforcement is limited to violations as defined in the context of the SIP. The commenters asserted that section 304 does not apply when there is no SIP requirement being violated and that the state has the authority to define what constitutes such a violation. Similarly, commenters argued that an affirmative defense provision may provide that emissions will not be ''violations'' if criteria are met and that it therefore does not interfere with a court's ability to determine appropriate penalty amounts under section 113. The commenters contended that, because the state has the authority to define what constitutes a violation, SIP provisions that include an affirmative defense do not infringe on a court's authority to penalize a source because the CAA does not provide a court with jurisdiction to impose remedies in the absence of liability.

Response: The EPA explained in detail the rationale for its change in interpretation of the CAA regarding affirmative defenses in the SNPR. The EPA acknowledges that in the *Luminant Generation* v. *EPA* case, the Agency argued that states are authorized to determine what constitutes a violation and to distinguish between different types of violations. As the EPA explained in the SNPR, the court in *Luminant Generation* v. *EPA* held that the Agency's interpretation of the CAA to permit affirmative defenses applicable to malfunctions at that time was a ''permissible interpretation of section [113], warranting deference.'' The same court also upheld the EPA's interpretation of the CAA to preclude affirmative defenses for planned events on the same basis that it was a reasonable interpretation of the CAA. However, the EPA has reevaluated this interpretation of the CAA requirements in light of the more recent *NRDC* v. *EPA* decision, and the Agency now believes that its prior interpretation of the CAA with respect to the approvability of affirmative defense provisions in SIPs is no longer the best reading of the statute. Thus, the Agency's view now is that a ''violation'' cannot be defined in a manner that interferes with the court's role in assessing remedies. It is irrelevant that the EPA had argued for a different interpretation in the past as the Agency now believes that the court's analysis in *NRDC* v. *EPA* is the better reading of the provisions of the statute concerning affirmative defenses. The EPA has authority to revise its prior interpretation of the CAA when further consideration indicates to the Agency that its prior interpretation of the statute is incorrect. The EPA fully explained the basis for this change in its interpretation of the CAA in the SNPR.

The EPA agrees that in some cases, affirmative defense provisions at issue in this SIP call action are structured as a complete defense to any liability, not merely a defense to monetary penalties. The EPA has also determined that affirmative defense provisions of this type are substantially inadequate to meet CAA requirements. Although such affirmative defenses may not present the same concerns as affirmative defenses applicable only to penalties, such affirmative defenses may create a different concern because they in effect provide a conditional exemption from otherwise applicable emission limitations. If there is no ''violation'' when the criteria of such an ''affirmative defense'' are met and no legitimate alternative emission limitation applies during that event, then such an affirmative defense in effect operates to create a conditional exemption from applicable emission limitations. This form of ''affirmative defense'' provision therefore runs afoul of different CAA requirements for SIP provisions. Under section 302(k) of the CAA, emissions standards or limitations must be continuous and cannot include SSM exemptions, automatic or otherwise. Regardless of whether the commenters believe that this form of ''affirmative defense'' should be allowed, the EPA believes that provisions of this form are inconsistent with the decision of the court in *Sierra Club* v. *Johnson.*[59] In that case, the court held that emission limitations under the CAA must impose

[59] 551 F.3d 1019 (D.C. Cir. 2008).

continuous controls and cannot include exemptions for emissions during SSM events. The EPA concludes that making the exemptions from emission limitations conditional does not alter the fact that once exercised they are illegal exemptions.

19. Comments that the definition of ''emission limitation'' in CAA section 302(k) does not support this SIP call action.

Comment: Several commenters noted that while the EPA depends on the definition of ''emission limitation'' in the CAA section 302(k) for this action, that CAA provision does not support this SIP call action, including that the CAA does not require that SIPs contain continuous emissions standards in the form asserted by the EPA. The commenters alleged that the definition in the CAA and supporting materials interpreting that definition do not support the EPA's requiring one emission limitation to apply in all circumstances at all times. Some commenters further alleged that states subject to the EPA's SIP call action have implementation plans that provide emission limitations that apply continuously through a combination of numerical emission limitations, the general duty to minimize emissions and the affirmative defense criteria for excess emissions during malfunctions.

Several commenters questioned why, even if the challenged affirmative defense provisions do not qualify as ''emission limitations'' or ''emissions standards'' under the first part of the definition, they are not approvable as ''design, equipment, work practice or operational standards'' promulgated under the second part of the definition. Some commenters argued that, to the extent that affirmative defense provisions in SIPs do not satisfy the definition of ''emission limitation,'' they would still be approvable elements of a SIP as ''other control measures, means, or techniques'' allowed under CAA section 110(a)(2). Further, some commenters believe that the legislative history cited in the SNPR does not support the EPA's position but rather is only intended to preclude the use of dispersion techniques, such as intermittent controls.

One commenter stated that the Portland Cement NESHAP, at issue in the *NRDC* v. *EPA* decision, was classified by statute as an ''emissions standard,'' a term defined by the CAA and defined as applying ''on a continuous basis.'' The commenter stated that SIP provisions involve more than ''emissions standards'' and need not be ''emissions standards.'' [60] Thus, according to the commenter, the *NRDC* v. *EPA* decision does not apply to SIP rules.

Response: The commenters alleged that the EPA's interpretation of the CAA section 302(k) definition of ''emission limitation'' in this action was inappropriate and that section 302(k) does not support this SIP call action. The EPA notes that it is not the Agency's position that all emission limitations in SIP provisions must be set at the same numerical level for all modes of source operation or even that they must be expressed numerically at all. To the contrary, the EPA intended in the February 2013 proposal and the SNPR to indicate that states may elect to create emission limitations that include alternative emission limitations, including specific technological controls or work practices, that apply during certain modes of source operation such as startup and shutdown. However, this comment is not relevant to the issue of affirmative defense provisions in SIPs. It is not for the reason that affirmative defense provisions do not meet the definition of an ''emission limitation'' in section 302(k) that the EPA is promulgating this SIP call action for affirmative defense provisions. The EPA has concluded that affirmative defense provisions are substantially inadequate to meet CAA requirements concerning enforcement, in particular the requirements of section 113 and section 304.

As to commenters' argument that affirmative defense provisions can be appropriately considered to be ''design, equipment, work practice or operational standards'' under CAA section 302(k), the critical aspect of an emission limitation in general is that it be a ''requirement . . . which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis . . . .'' These provisions operate to *excuse* sources from liability for emissions under certain conditions, not to *limit* the emissions in question. The affirmative defense provisions at issue in this final action do not themselves, or in combination with other components of the emission limitation, limit the quantity, rate or concentration of air pollutants on a continuous basis. These affirmative defense provisions, therefore, do not themselves meet the statutory definition of an emission limitation under section 302(k).

The EPA notes that the definition of ''emission limitation'' in section 302(k) is relevant, however, with respect to those affirmative defense provisions that commenters claim are merely a means to define what constitutes a ''violation'' of an applicable SIP emission limitation. As previously explained, the EPA believes that an ''affirmative defense'' structured in such a fashion is deficient because it in effect creates a conditional exemption from the SIP emission limitations. By creating such exemptions, conditional or otherwise, an affirmative defense of this type would render the emission limitations less than continuous.

The EPA disagrees with commenters' remaining points because the EPA's position on what appropriately qualifies as an emission limitation is consistent with the CAA, relevant legislative history and case law. These issues are addressed in more detail in sections VII.A.3.i through 3.j of this document.

20. Comments that the EPA has failed to show that state SIPs are substantially inadequate, as is required to promulgate a SIP call.

Comment: Several commenters noted that before the EPA can issue a SIP call under section 110(k)(5) with respect to affirmative defense provisions, the EPA must determine that a SIP provision is ''substantially inadequate to attain or maintain the relevant [NAAQS], to mitigate adequately the interstate pollutant transport described in section 7506a of this title or section 7511c of this title, or to otherwise comply with any requirement of this chapter.'' The commenters further stated that Congress employed a high bar in the language of CAA section 110(k)(5) in requiring the EPA to find ''substantial'' inadequacies, as opposed to other CAA provisions that permit the Agency to act based on ''discretion'' or when it ''may be appropriate.'' The commenters alleged that the EPA has not demonstrated a ''substantial inadequacy'' with respect to the affirmative defense provisions at issue in the SNPR, as required to issue a SIP call.

Some commenters also argued that the EPA has failed in its SNPR to define or interpret ''substantially inadequate'' or provide any standards for assessing the adequacy of a SIP with respect to affirmative defense provisions. The commenters also alleged that, if the EPA is required to rely on data and evidence in evaluating SIP revisions, it follows that the EPA should produce at least the same level of data and evidence, if not more, to support a SIP call that is based on the more stringent substantial inadequacy standard of section 110(k)(5).

Response: The EPA disagrees with the commenters' arguments that the Agency has failed to establish that the

[60] *See* CAA section 110(a)(2)(A).

affirmative defense provisions identified in the SNPR are ''substantially inadequate'' as required by section 110(k)(5). As explained in the SNPR and this action, the EPA has determined that affirmative defense provisions at issue in this action are substantially inadequate because they are inconsistent with applicable legal requirements of the CAA. The commenters raised similar arguments with respect to the EPA's authority to issue a SIP call to address other forms of deficient SIP provisions, such as automatic or discretionary exemptions from emission limitations. The EPA responds to these broader arguments in sections VIII.D.46 through D.48 of this document.

21. Comments that this action is not national in scope, and therefore the D.C. Circuit is not the sole venue for review of this action.

Comment: Several commenters claimed that the EPA is incorrect in stating that this SIP call action is a single nationally applicable action and of nationwide scope or effect. The commenters alleged that review of all affected SIP provisions in a single action in the D.C. Circuit would inappropriately limit the scope of review by obscuring distinctions between the various states' regulatory programs and practical concerns. The commenters asserted that none of the various state SIP provisions addressed in the SNPR were the same, and the EPA analyzed each separately and provided case-by-case justification for its proposed action as to each. Further, the commenters argued that although the EPA has packaged the SIP calls in one **Federal Register** document, any final action that the EPA takes with respect to a single state's affirmative defense provision is only locally applicable and therefore should be reviewed in the individual circuits with jurisdiction over the affected state. One commenter further contended that, while the EPA's revised SSM Policy may be of interest to states to which the SIP call does not directly apply, that does not make the action ''nationally applicable.''

The commenters acknowledged that the EPA cited *Texas* v. *EPA* in support of its assertion, but the commenters allege that the Fifth Circuit in that case never reached the issue of nationwide scope and effect.[61] The commenters claimed that this SIP call action is distinct from the rule at issue in *Texas* v. *EPA* because this final action turns on the particulars of the SIP call action's impact on each individual state's SIP. One commenter also claimed that the EPA has failed to provide authority or a legal basis to support its determination that this rulemaking is of ''nationwide scope or effect.'' Such failure, according to the commenter, violated the requirements of section 307(d)(3) and did not allow for full and meaningful comment on this issue.

One commenter alleged that the EPA has waived its challenge to venue for those circuits that have already weighed in regarding individual state SIP provisions at issue in this action, including Texas's affirmative defense provisions. Another commenter claimed that the discussion over appropriate venue in the February 2013 proposal and SNPR presupposes that the EPA's issuance of a revised SSM Policy is a ''final agency action'' subject to judicial review under section 307(b)(1) but argued that the EPA has failed to determine that its issuance of the SSM Policy, in and of itself, constitutes ''final agency action.''

Response: The EPA disagrees with the commenters' theories concerning the scope of the Agency's action. These comments on the SNPR questioning the EPA's determination of ''nationwide scope and effect'' for this action largely repeat similar comments on the February 2013 proposal. As with those prior comments, commenters on the SNPR made the basic argument that this action is not of nationwide scope and effect because the EPA is reviewing individual SIP provisions and directing states to correct their respective deficient SIP provisions. The EPA disagrees with commenters because, as explained in more detail in its response in section V.D.6 of this document, this rulemaking action applies the same ''process and standard'' to numerous areas across the country. While it is correct that the SIP submissions that states make in response to this SIP call will be reviewed separately by the EPA and subsequently subject to potential judicial review in various circuits, the EPA's legal interpretation of the CAA concerning permissible SIP provisions to address emissions during SSM events in this action is nationally applicable to all states subject to the SIP call. The EPA provided a full explanation of its basis for this determination of nationwide scope and effect in the February 2013 proposal and the SNPR.

The EPA also disagrees with the argument that the Agency has waived venue regarding challenges to this SIP call action concerning the affirmative defense provisions in the Texas SIP. Evidently, the commenter believes that because a prior challenge to another EPA rulemaking concerning the affirmative defense provisions occurred in the Fifth Circuit, it necessarily follows that any other rulemaking related to such provisions can only occur in the Fifth Circuit. The EPA believes that this interpretation of its authority under section 307(b)(1) is simply incorrect. Under section 307(b)(1), the EPA is explicitly authorized to make a determination that a specific rulemaking action is of ''nationwide scope and effect.'' The statute does not specify the considerations that the EPA is to take into account when making such a determination, let alone provide that the Agency cannot invoke this because some aspect of the rulemaking at issue might previously have been addressed in one or more other circuit courts. To the contrary, the EPA believes that section 307(b)(1) explicitly provides authority for the Agency to determine that a given rulemaking should be reviewed in the D.C. Circuit in situations such as those presented in this action that affects important questions of statutory interpretation that affect states nationwide.

The EPA likewise disagrees with the argument that its action is not a final agency action. Within this action, the EPA is taking final agency action to respond to the Petition, updating its interpretations of the CAA in the SSM Policy and applying its interpretations of the CAA in the SSM Policy to specific SIP provisions in the SIPs of many states. The EPA is conducting this action through notice-and-comment rulemaking to assure full consideration of the issues. As stated elsewhere in this document, the revised SSM Policy is a nonbinding policy statement that does not, in and of itself, constitute ''final'' action. However, the EPA is taking ''final'' action by responding to the Petition and issuing the resulting SIP call action. To the extent that interpretations expressed in the revised SSM Policy are also relied on to support this ''final'' action, then the EPA's interpretations of the CAA requirements for SIP provisions applicable to emissions during SSM events are part of the final agency action and are subject to judicial review. To the extent the commenters are otherwise arguing that the issuance of the updated SSM Policy in and of itself is not final agency action subject to judicial review under the CAA, the EPA agrees with this assertion. The EPA notes that the commenters are at liberty to adopt this position and waive their opportunity to challenge the SSM Policy because they do not consider it final agency action.

[61] *See* No. 10–60961, 2011 WL 710598 (5th Cir. Feb. 24, 2011).

22. Comments that the EPA should clarify that SIPs can include work practice standards or general-duty clauses to apply during malfunction periods in place of affirmative defense provisions.

Comment: Several commenters stated that the EPA should announce in this final action that in lieu of affirmative defenses, states may elect to revise their SIP provisions to include work practice standards or general-duty clauses that are modeled on existing affirmative defense provisions and that would apply during malfunctions. Most of these commenters advocated that the EPA's previously recommended criteria for an ''affirmative defense'' for malfunctions should simply be changed into criteria for a ''work practice'' provision instead. One commenter made the same suggestion but also advocated that the EPA eliminate six of the nine criteria and rephrase the remaining criteria, in order to ''improve the standards, reduce uncertainty, and reduce wasteful litigation.'' This commenter advocated that the EPA also redefine the term ''malfunction'' to much more broadly mean any ''sudden and unavoidable breakdown of process or control equipment.'' Specifically, the commenter advocated, the EPA should no longer recommend that a malfunction be defined as an event that: (i) Was caused by a sudden, infrequent and unavoidable failure of air pollution control equipment, process equipment or a process to operate in a normal or usual manner; (ii) could not have been prevented through careful planning, proper design or better operation and maintenance practices; (iii) did not stem from any activity or event that could have been foreseen and avoided or planned for; and (iv) was not part of a recurring pattern indicative of inadequate design, operation or maintenance. By changing the ''affirmative defense'' provisions for malfunctions into ''work practice'' or ''general duty'' provisions for malfunctions, the commenters argued, the revised provisions would be consistent with CAA requirements. Under this approach, the commenters asserted that compliance with these new requirements would mean that any emissions during a malfunction event could not be considered ''excess'' or result in any violation if the source had complied with the ''work practice'' criteria.

Response: As an initial matter, the EPA has not established a regulatory definition of ''malfunction'' that is binding on states when developing SIPs. States have the flexibility in their SIPs to define that term. Thus, the EPA is not addressing here the comments requesting that EPA ''redefine'' the definition of malfunction.

Regarding the more general concern of the commenters, that states be allowed to establish an alternative emission limitation in the form of a work practice standard that applies during malfunctions, the EPA notes two points. First, the CAA does not preclude that emissions during malfunctions could be addressed by an alternative emission limitation. The EPA's general position in the context of standards under sections 111, 112 and 129 is that: (i) The applicable emission limitation applies at all times including during malfunctions; (ii) the CAA does not require the EPA to take into account emissions that occur during periods of malfunction when setting such standards; and (iii) accounting for malfunctions would be difficult, if not impossible, given the myriad types of malfunctions that can occur across all sources in a source category and given the difficulties associated with predicting or accounting for the frequency, degree and duration of various malfunctions that might occur. Although the EPA has not, to date, found it practicable to develop emission standards that apply during periods of malfunction in place of an otherwise applicable emission limitation, this does not preclude the possibility that a state may determine that it can do so for all or some set of malfunctions. Second, states are not bound to establish any specific definition of ''malfunction'' in their SIPs. Thus, it is difficult to judge at this time whether any particular alternative emission limitation in a SIP for malfunctions, including any specific work practice requirements in place of an otherwise applicable emission limitation, would be approvable.

With regard to the specific comment that the affirmative defense criteria could be converted into a work practice requirement to apply during malfunctions in place of an otherwise applicable emission limitation, the EPA is unsure at this time whether the criteria previously recommended for an affirmative defense provision would serve to meet the obligation to develop an appropriate alternative emission limitation. Existing affirmative defense criteria (which include, among other things, making repairs expeditiously, taking all possible steps to minimize emissions and operating in a manner consistent with good practices for minimizing emissions) were developed in the context of helping to determine whether a source should be excused from monetary penalties for violations of CAA requirements and were not developed in the context of establishing an enforceable alternative emission limitation under the Act. The EPA would need to consider this approach in the context of a specific SIP regulation for a specific type of source and emission control system.

Finally, the EPA notes that any emission limitation, including an alternative emission limitation, that applies during a malfunction must meet the applicable stringency requirements for that type of SIP provision (*e.g.,* would need to meet RACT for sources subject to the RACT requirement) and must be legally and practically enforceable. Thus, the SIP provision would need to: (i) Clearly define when the alternative emission limitation applied and the otherwise applicable emission limitation did not; (ii) clearly spell out the requirements of that standard; and (iii) include adequate monitoring, recordkeeping and reporting requirements in order to make it enforceable. In addition, the state would need to account for emissions attributable to these foreseen events in emissions inventories, modeling demonstrations and other regulatory contexts as appropriate.

23. Comments that the EPA has failed to account adequately for the cost of this SIP call action and is therefore in violation of the Regulatory Flexibility Act, the Unfunded Mandates Reform Act and Administration policy.

Comment: Two commenters argued that the SNPR lacks sufficient analysis of what this action will cost states, stationary sources and the public. The commenters allege that this absence of economic impact analysis is contrary to the Regulatory Flexibility Act, the Unfunded Mandates Reform Act and Administration policy. One of the commenters also noted that imposing substantial ''unfunded mandates'' on state regulatory agencies and forcing stationary sources to absorb additional costs should be evaluated carefully.

Response: The EPA disagrees with the commenters' allegation that the EPA has failed to comply with relevant statutes and Administration policy in accounting for the cost of the actions proposed in the SNPR. The EPA did in fact properly consider the costs imposed by this action. These issues are addressed in more detail in section V.D.7 of this document.

24. Comments that states should not be required to eliminate affirmative defense provisions but rather should be allowed to revise them to be appropriate under CAA requirements.

Comment: One state commenter claimed that it should be allowed to revise its existing affirmative defense

provisions rather than remove them. The commenter asserted that the state should be allowed to revise the provision to make clear that it does not apply to private enforcement actions under CAA section 304(a), which was the only issue specifically before the court in *NRDC* v. *EPA.* Relying on the court's decision, the commenter claimed that the state should be allowed to revise the affirmative defense provisions to apply only in administrative enforcement proceedings. The commenter also argued that there may be other options for appropriately tailoring the state's existing affirmative defense provisions rather than removing them from the SIP.

Response: The EPA agrees that the court in *NRDC* v. *EPA* did not directly address whether states have authority to create affirmative defense provisions that apply exclusively to state personnel in the context of state administrative enforcement actions. Statements by the court concerning the EPA's own authority in the context of administrative enforcement, however, indicate that the court did not intend to foreclose the Agency from exercising its own enforcement discretion with respect to remedies in federal administrative enforcement actions. However, the EPA has reevaluated its interpretation of CAA requirements in light of the court's decision in *NRDC* v. *EPA* and the EPA now interprets the CAA to preclude state SIP provisions creating affirmative defenses that sources could assert in the context of judicial enforcement in federal court, whether initiated by states, the EPA, or other parties pursuant to section 304.

The EPA agrees that states may elect to revise their existing deficient affirmative defense provisions to make them ''enforcement discretion''-type provisions that apply only in the context of administrative enforcement by the state. Such revised provisions would need to be unequivocally clear that they do not provide an affirmative defense that sources can raise in a judicial enforcement context or against any party other than the state. Moreover, such provisions would have to make clear that the assertion of an affirmative defense by the source in a state administrative enforcement context has no bearing on the additional remedies that the EPA or other parties may seek for the same violation in federal administrative enforcement proceedings or judicial proceedings.

In this action, the EPA is not determining whether any such revisions would meet applicable CAA requirements. The EPA would need to consider the precise wording of any such revised provisions in evaluating whether the state has adequate enforcement authority to meet the requirements of section 110(a)(2)(C) and also whether application of such a provision in a state administrative proceeding could interfere with the ability of a citizen or the EPA to bring a federal enforcement action.

25. Comments that states' ability to use enforcement discretion is not an adequate replacement for affirmative defense provisions.

Comment: Several commenters argued that exercise of enforcement discretion is not an adequate substitute for an affirmative defense, particularly where the emissions at issue resulted from an inevitable and unavoidable malfunction. In any individual case, the commenters were concerned that even if a state elects not to enforce against a violation, the EPA or others might elect to bring an enforcement action. One commenter contended that it is inappropriate for the EPA to encourage states to use enforcement discretion instead of encouraging them to create alternative emission limitations to replace affirmative defenses in SIP provisions. The commenters also alleged that reliance on judicial discretion to determine the appropriateness of penalties is similarly inadequate.

The commenters contended that, although it is reasonable for a state to exercise enforcement discretion under circumstances when an emission limitation cannot be met, it is not reasonable to adopt SIP provisions with emission limitations that put some sources in the position of ''repeated noncompliance.''

Response: These comments addressing whether an enforcement discretion approach is sufficient are similar to comments received on the February 2013 proposal to which the EPA responds in section VII.A.3.p of this document. Through this SIP call, the EPA is not requiring states to rely on enforcement discretion in place of achievable SIP emission limitations. Rather, the EPA is requiring states to ensure that emission limitations are consistent with the definition of that term in section 302(k), and specifically that emission standards provide for continuous compliance. If emission limitations that apply during routine operations cannot be met by a source during periods of startup or shutdown, states have authority to establish alternative emission standards. The EPA disagrees that an affirmative defense for penalties for excess emissions for periods of malfunctions is an adequate substitute for an enforceable continuous emission limitation and concludes that such an approach is inconsistent with the CAA as interpreted by the court in *NRDC,* as explained in the SNPR.

The EPA also disagrees that affirmative defense provisions would have been appropriate to address the ''repeated noncompliance'' concerns of the commenters. The EPA's prior interpretation of the CAA was that states could create narrowly tailored affirmative defense provisions applicable to malfunctions. However, to the extent that there are malfunctions that put a source in the position of ''repeated noncompliance,'' the form of affirmative defense that the EPA previously believed was consistent with the CAA would not have provided relief because several of the criteria could not be met. Specifically, the EPA believes repeated noncompliance is typically a result of inadequate design, is part of a ''recurring pattern,'' and thus likely could have been ''foreseen and avoided.'' In short, an affirmative defense would not have been appropriate for such a source.

26. Comments that the EPA should establish specific rules to govern how states set alternative limitations that apply in lieu of affirmative defense provisions.

Comment: Commenters urged the EPA to clarify in this final action that states may establish alternative emission limitations applicable to startup and shutdown only if the source meets all applicable CAA requirements, including but not limited to BACT/LAER, and the state also demonstrates through modeling that potential worst-case emissions from startup and shutdown would not interfere with attainment and reasonable further progress. Other commenters stated that any changes to SIP emission limitations must be made as part of a SIP revision process, which would include a demonstration that higher levels of emissions during startup and/or shutdown would not lead to violations of the NAAQS or PSD increments.

Commenters also argued that any such alternative emission limitation should ''sunset'' each time the EPA promulgates a new NAAQS and that the Agency should require the state to demonstrate again that an alternative emission limitation applicable during startup and/or shutdown does not interfere with attainment or other applicable requirements of the CAA for the revised NAAQS. In support of their arguments that the EPA should impose specific requirements of this type, the commenters indicated that a state has issued permits for sources that establish particulate matter (PM) emission limitations less stringent than existing

permit terms and without requiring a BACT/LAER/ambient impacts analysis and has done so without public notice and comment. Commenters urged the EPA to require states to follow public notice-and-comment processes before issuing any permits for sources with alternative limitations less stringent than those imposed by the SIP and claimed such process is required under the CAA.

In addition, some commenters stated that if the EPA allows states to set ''new, higher, or alternate limits'' applicable during startup and shutdown, the EPA should set clear parameters. According to commenters, the EPA at a minimum should require, for emissions that have not previously been authorized or considered part of a source's potential to emit, that: (i) Limitations must meet BACT/LAER; (ii) there should be clear, enforceable rules for when alternate limitations apply; (iii) there should be a demonstration that worst-case emissions will not cause or contribute to a violation of the NAAQS or PSD increments; and (iv) proposed limitations should be subject to public notice and comment and judicial review. The commenter pointed to a letter from the EPA to Texas in which, the commenter claims, the Agency indicated that these parameters must be met.

A commenter stated that the EPA should unequivocally state in this final action that: (i) All potential to emit emissions, including quantifiable emissions associated with startup and shutdown, must be included in federal applicability determinations and air quality permit reviews; (ii) authorization of these emissions must include technology reviews and impacts analyses; and (iii) the above requirements must be included in the permit that authorizes routine emissions from the applicable units and must be subject to public notice, comment and judicial review.

A commenter recognized that there may be a variety of ways in which states can authorize different limits to apply during startup and shutdown but argued that, no matter the method chosen, the emissions need to be fully accounted for by the state in the relevant SIP, including a demonstration that the additional emissions authorized during startup and shutdown will not violate any NAAQS.

Response: The EPA understands the concerns raised by the commenters but does not agree that further regulatory action such as issuance of regulatory text is necessary at this time. Through this action, the EPA is providing comprehensive guidance to states concerning issues related to the proper treatment of emissions during SSM events in SIP provisions. For example, the EPA is addressing the concern raised by commenters that states will need to ensure that any SIP revisions in response to this SIP call will meet applicable CAA requirements. Under section 110(k)(3), the EPA has authority to approve SIP revisions only if they comply with CAA requirements. Moreover, under section 110(l), the EPA cannot approve SIP revisions if they would ''interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement'' of the CAA. The EPA believes that both states and the Agency can address these issues in SIP rulemakings without the need for any additional federal regulations as suggested by the commenters.

The EPA agrees with the concerns raised by the commenters regarding instances where a state has issued source permits that impose less stringent emission limitations than otherwise established in the SIP. Using a permitting process to create exemptions from emission limitations in SIP emission limitations applicable to the source is tantamount to revising the SIP without meeting the procedural and substantive requirements for a SIP revision. The Agency's views on this issue are described in more detail in section VII.C.3.e of this document.

The EPA does not agree with the comment that suggests ''worst-case modeling'' would always be needed to show that a SIP revision establishing alternative emission limitations for startup and shutdown would not interfere with attainment or reasonable further progress. The nature of the technical demonstration needed under section 110(l) to support approval of a SIP revision depends on the facts and circumstances of the SIP revision at issue. The EPA will evaluate SIP submissions that create alternative emission limitations applicable to certain modes of operation such as startup and shutdown carefully and will work with the states to assure that any such limitations are consistent with applicable CAA requirements. Under certain circumstances, there may be alternative emission limitations that necessitate a modeling of worst-case scenarios, but those will be determined on a case-by-case basis.

The EPA also does not agree that existing SIP provisions with alternative emission limitations should automatically ''sunset'' upon promulgation of a new or revised NAAQS. Such a process could result in gaps in the state's regulatory structure that could lead to backsliding. When the EPA promulgates new or revised NAAQS, it has historically issued rules or guidance to states concerning how to address the transition to the new NAAQS. In this process, the EPA typically addresses how states should reexamine existing SIP emission limitations to determine whether they should be revised. With respect to technology-based rules, the EPA has typically taken the position that states need not adopt new SIP emission limitations for sources where the state can demonstrate that existing SIP provisions still meet the relevant statutory obligations. For example, the EPA believes that states can establish that existing SIP provisions still represent RACT for a specific source or source category for a revised NAAQS. In making this determination, states would need to review the entire emission limitation, including any alternative numerical limitations, control technologies or work practices that apply during modes of operation such as startup and shutdown, and ensure that all components of the SIP emission limitation meet all applicable CAA requirements.

27. Comments that the EPA should closely monitor states' SIP revisions in response to this SIP call.

Comment: Commenters urged the EPA to monitor states' efforts to revise SIPs in response to the SIP call closely in order to assure that the revisions meet all applicable requirements. The commenters indicated concern that states and industry may weaken emission limitations through this process. The commenter alleged that one state has issued permits for sources with emission limitations applicable during SSM events that are less stringent than the emission limitations approved in the SIP. Furthermore, the commenter alleged, the state issued these permits without public notice and comment. As support for this contention, the commenter detailed the differences between the requirements of a permit issued for a source and the requirements in the SIP. The commenter also claimed that the state has issued permits for other facilities similar to the one it described in detail in the comments.

Response: The EPA understands the concerns expressed by the commenter that SIP revisions made in response to this SIP call need to be consistent with CAA requirements. As explained in this document, the states and the EPA will work to assure that the SIP revisions will meet applicable legal requirements. The EPA will evaluate these SIP submissions consistent with its

obligations under sections 110(k)(3), 110(l) and 193 and under any other substantive provisions of the CAA applicable to specific SIP submissions.

To the extent that the commenters are concerned about whether the SIP revisions meet applicable requirements, they will have the opportunity to participate in the development of those revisions. States must submit SIP revisions following an opportunity for comment at the state level. Additionally, the EPA acts on SIP submissions through its own notice-and-comment process. As part of these administrative processes, both the state and the EPA will need to evaluate whether the proposed revision to the SIP meets applicable CAA requirements. In the context of those future rulemaking actions, the public will have a chance to review the substance of the specific SIP revisions in response to this SIP call, as well as the state's and the EPA's analysis of the SIP submissions for compliance with the CAA.

28. Comments that the EPA does not have authority to take this action without Congressional authorization.

Comment: A commenter contended that the EPA does not have the authority to write law and that the EPA should be required to seek changes to the applicable law through Congress, before eliminating affirmative defense and due process provisions from SIPs.

Response: Through this action the EPA is not attempting to rewrite the CAA. Rather, the EPA is requiring states to revise specific SIP provisions to comply with the existing requirements of the CAA, as interpreted by the courts. As explained in detail in the SNPR and this document, the EPA has determined that affirmative defense provisions at issue in this action are inconsistent with the existing requirements of the CAA.

29. Comments that affirmative defense provisions are needed to ensure sources' Constitutional right to due process in the event of violations.

Comment: A number of commenters argued that by requiring the removal of affirmative defense provisions from SIPs, the EPA is impinging on the Constitutional rights of sources that may have wanted to assert such affirmative defenses in an enforcement action. A commenter claimed that affirmative defense provisions are not ''loop holes,'' as alleged by the EPA, but instead are fundamental due process provisions which should be retained at all levels for the protection of the public. Another commenter cited *State Farm Mut. Auto Ins. Co.* v. *Campbell,* for the proposition that a monetary penalty that is ''grossly excessive . . . constitutes an arbitrary deprivation of property.'' [62] Other commenters claimed that excessive penalties constitute an arbitrary deprivation of property. The commenters asserted that a penalty is excessive where it applies severe punishment to an act that is unavoidable.

Response: The commenters' due process concerns suggest that without an affirmative defense provision, any penalty assessed for violation of a SIP would be *per se* ''excessive'' or ''arbitrary.'' Though not expressly stated, some of these comments appear to suggest that the existing CAA enforcement provisions are facially unconstitutional. The EPA disagrees. The CAA does not mandate that any penalty is automatically assessed for a violation. Rather the CAA establishes a maximum civil penalty in section 113(b) but then expressly provides in section 113(e) the criteria that the EPA or the courts (as appropriate in administrative or judicial enforcement) ''shall take into consideration (in addition to other factors as justice may require).'' These criteria explicitly include consideration of ''good faith efforts to comply.'' Thus, the CAA on its face does not mandate the imposition of any penalty automatically, much less one that is *per se* excessive. Notably, the commenters do not elaborate on how or why they believe the statutory penalty provisions of the CAA are facially unconstitutional, instead making generalized claims.

To the extent that the commenters are raising an ''as applied'' claim of unconstitutionality, any such claim can be raised in the future in the context of a specific application of the statute in an enforcement action. Such was the case in the *State Farm* case cited by the commenters. In that case, a court had awarded punitive damages of $145 million in addition to $1 million compensatory damages in an automobile liability case. A statutory penalty provision was not at issue in that case and thus there were no statutory criteria for the lower court to consider in determining the appropriate penalty amount. Rather, in its review of whether the punitive damage award was excessive, and thus violated due process, the Court looked at three factors it has instructed lower courts to consider in assessing punitive damages. Such would be the case with any claim that a CAA penalty violated due process, where a reviewing court would consider whether the court appropriately considered the relevant penalty factors in assessing a penalty claimed as unconstitutional ''as applied.''

30. Comments that the EPA's action eliminating affirmative defense provisions from SIPs violates the Eighth Amendment of the Constitution.

Comment: Several commenters asserted that relying on judicial discretion to determine the appropriateness of penalties is arguably unconstitutional under the Eighth Amendment's prohibition on excessive fines and punishments by allowing potentially significant penalties that are disproportionate to the offense. The commenter stated that an affirmative defense provision ''helps guard against infringement of the Eighth Amendment's protections.'' Other commenters argued that the U.S. Supreme Court has held that Eighth Amendment protections apply to government action in a civil context as well as in a criminal context. The commenters claimed that significant penalties are not proportional to an offense caused by unavoidable events, such as excess emissions during malfunction events. The commenters concluded that unless the EPA allows states to accommodate unavoidable emissions through changes to applicable emission limitations before affirmative defenses are removed, the EPA's proposal would ''run afoul of Constitutional limitations.''

One commenter stated that an affirmative defense is the ''minimum protection EPA or the state must provide to avoid infringing constitutional rights.'' The commenter also argued that the EPA itself has relied on the existence of an affirmative defense to defend against a challenge to the achievability of an emission limitation in a FIP. To support this argument, the commenter quoted from the court's opinion in *Montana Sulphur.*[63]

Response: For the reasons provided above regarding commenters' due process claims, the EPA also disagrees with their claims that eliminating affirmative defense provisions in SIPs would result in the penalty provisions of the CAA being facially in violation of the Eighth Amendment. Similarly, if a party believes that the penalties assessed in any civil enforcement action do violate the Eighth Amendment, they can raise a challenge that the specific SIP provision at issue ''as applied'' in that instance violates the U.S. Constitution. As with the commenters'

[62] *See* 538 U.S. 408, 417 (2003).

[63] *See* 666 F.3d at 1192–93 (''EPA acknowledges that violations are likely inevitable, but relies on the provision of an affirmative defense to compensate for infeasibility problems.'').

due process arguments, the EPA believes that Congress has already adequately addressed their concerns about potential unfair punishment for violations by authorizing courts to consider a range of factors in determining what remedies to impose for a particular violation, including the explicit factors for consideration in imposition of civil penalties as well as other factors as justice may require.

The EPA acknowledges that is has previously relied on affirmative defense provisions as a mechanism to mitigate penalties where a violation was beyond the control of the owner or operator. These actions, however, predated the court's decision in *NRDC* v. *EPA* and the EPA has since revised its approach to affirmative defense provisions in its own rulemaking actions. In addition, the EPA believes that the penalty criteria in section 113(e) provide a similar function and the commenters do not explain why they believe these explicit statutory factors do not provide sufficient relief from the imposition of an allegedly unconstitutionally excessive penalty.

31. Comments that the EPA should impose a deadline of 12 months for states to respond to this SIP call with respect to affirmative defense provisions.

Comment: An environmental organization commented that the EPA should require affected states to make the required SIP revisions within 12 months, rather than the 18 months proposed in the February 2013 proposal and the SNPR. The commenter claimed that communities near large sources have been suffering for decades and individuals are suffering adverse health effects because of the emissions from sources that are currently allowed by deficient SIP provisions. The commenter also stated that the EPA has recognized that excess emissions allowed by the SIP provisions subject to the SIP call are continuing to interfere with attainment and maintenance of the NAAQS and that this justifies imposing a shorter schedule for states to respond to the SIP call.

Response: The EPA acknowledges the concerns expressed by the commenters and the importance of providing environmental protection. However, as explained in the February 2013 proposal and in section IV.D.14 of this document, the EPA believes that providing states with the full 18 months authorized by section 110(k)(5) is appropriate in this action. The EPA is taking into consideration that state rule development and the associated administrative processes can be complex and time-consuming. This is particularly true where states might elect to consider more substantial revision of a SIP emission limitation, rather than merely removal of the impermissible automatic or discretionary exemption or the impermissible affirmative defense provision. In addition, the EPA believes that providing states with the full 18 months will be more likely to result in timely SIP submissions that will meet CAA requirements and provide the ultimate outcome that the commenters seek. Some states subject to the SIP call may be able to revise their deficient SIP provisions more quickly, and the EPA is committed to working with states to revise these provisions consistent with CAA requirements in a timely fashion. For these reasons, the EPA does not agree that it would be reasonable to provide less than the 18-month maximum period allowed under the CAA for states to submit SIP revisions in response to the SIP call.

32. Comments that the EPA should encourage states to add reporting and notification provisions into their SIPs.

Comment: A commenter urged the EPA to encourage states to make information about excess emissions events easily and quickly accessible to the public. The commenter claimed that it is unacceptable to make it difficult for members of the public to obtain information about potential harmful exposure to pollutants and that state ''open-record'' request laws are inadequate, particularly when the public is not informed that an event occurred. The commenter also asserted that reporting provisions enhance compliance and cited to the Toxic Release Inventory program's success in driving pollution reduction. The commenter argued that contemporaneous reporting of the conditions surrounding a violation, the cause and the measures taken to limit or prevent emissions ensure that stakeholders can respond in real time and also target enforcement efforts to violations where further action is warranted. As support for this approach, the commenter pointed to Jefferson County, Kentucky, as a local air quality control area that has already corrected problematic regulations in advance of this SIP call and also noted that the County included notification and reporting requirements, recognizing that they would reduce the burden on the government in trying to calculate the level of excess emissions and also help in responding to citizen inquiries about such events.

Response: The EPA agrees with the commenter that reporting and notification provisions can ease the burden on government agencies by placing the burden on the entity that is in the best position to calculate the level of excess emissions and also provide other relevant information regarding such events. In addition, to make this information available to the public quickly allows for a timely response if there is any health concern. An increased level of communication between industry and residents also serves to build a better community relationship and partnership. The EPA also supports such requirements as components of SIP emission limitations because they facilitate effective compliance assurance. However, the EPA does not believe that the Agency should create a separate federal requirement addressing this issue beyond general CAA requirements at this time.

33. Comments that this SIP call action concerning affirmative defense provisions is being taken pursuant to sue-and-settle tactics.

Comment: One commenter alleged that the action proposed in the EPA's SNPR has an ''impermissible sue-and-settle genesis'' and that the EPA is attempting to grant as much of Sierra Club's petition as it can ''regardless of the wisdom or permissibility of doing so.''

Response: The EPA disagrees with the commenter's allegation that the EPA's proposed action in the SNPR is inappropriate because it is the result of ''sue-and-settle'' actions. This is a rulemaking in which the EPA is taking action to respond to a petition for rulemaking, and it has undergone a full notice-and-comment rulemaking process as provided for in the CAA. This issue is addressed in more detail in section V.D.1 of this document.

34. Comments that affirmative defense provisions do not alter or eliminate federal court jurisdiction and therefore do not violate CAA sections 113 or 304.

Comment: Two commenters argued that SIP affirmative defense provisions do not in fact interfere with the rights of litigants to pursue enforcement consistent with their rights under the citizen suit provision of CAA section 304, because plaintiffs have the right to bring a citizen suit despite the existence of affirmative defense provisions. One commenter cited at least four instances in the last few years in which environmental groups filed enforcement actions against sources in federal district court based on alleged emissions events for which the companies asserted affirmative defenses. The commenters stated that courts applied the affirmative defense provision criteria and the criteria of section 113(e) to determine

whether penalties were appropriate for alleged violations and did not dismiss plaintiffs' claims for lack of jurisdiction. According to the commenters, affirmative defense provisions place additional burden on the sources, not plaintiffs, to demonstrate that the criteria of an affirmative defense are met.

Response: The commenters argued that affirmative defense provisions are not inconsistent with the statutory requirements of section 304, because citizen groups still bring enforcement actions for events where companies may raise an affirmative defense. Even if this were so, the EPA disagrees with the commenters that this establishes that affirmative defense provisions are consistent with CAA requirements. The mere existence of enforcement actions does not negate the fact that affirmative defense provisions interfere with effective enforcement of SIP emission limitations according to CAA section 304. More to the point, affirmative defense provisions purport to alter or eliminate the statutory jurisdiction of courts to determine liability or to impose remedies for violations, which makes the provisions inconsistent with the grant of authority in sections 113 and 304. The court's decision in *NRDC* v. *EPA* was not based on the question of whether plaintiffs could still try to bring an enforcement case for violations of the EPA regulation at issue; the case was decided on the grounds that the EPA when creating regulations has no authority to limit or eliminate the jurisdiction of the courts. As explained in the SNPR and this document, the EPA believes that the same principle applies to states when creating SIP provisions.

35. Comments that this action may increase the chance of catastrophic failure at facilities.

Comment: One commenter expressed a concern that eliminating affirmative defense provisions applicable to emissions during SSM events could increase the potential for environmental harm caused by catastrophic failure by outlawing and penalizing the emissions during SSM events that have previously been allowed or shielded from liability through affirmative defense provisions. As an example, the commenter argued that refineries and gas plants must be allowed to vent VOCs to the atmosphere on the rare occasion that there is an equipment malfunction that could otherwise cause an explosion that might destroy the plant and surrounding neighborhood. The commenter speculated that the threat of costly new fines inherent with the removal of affirmative defense provisions could cloud plant operators' thinking when they make safety decisions. The commenter contended that allowing rare, safely controlled releases of emissions would invariably be better for both the natural and human environment than the damage from a catastrophic explosion.

Response: Although the comment refers to SSM events generally, the only specific concern raised by the commenter concerning affirmative defense provisions is that if they are not allowed in SIPs, this may lead to an increase in malfunction-related catastrophic events. The EPA does not agree with the commenter's view that removal of affirmative defense provisions may increase environmental harm related to catastrophic events. The EPA believes that it is unlikely the availability or unavailability of an affirmative defense will affect a responsible and competent source operator's response to a risk of explosion. First, an explosion presents much more serious and more certain adverse economic consequences for the source than does the specter of a potential enforcement action for a CAA violation, especially because enforcement agencies and courts are likely to exercise leniency if the violation was the result of an unpreventable malfunction. Second, even if an affirmative defense were available, it is only used after initiation of an enforcement proceeding, and successful assertion of such a defense in an enforcement proceeding depends on meeting all affirmative defense criteria and is not guaranteed. The EPA does not believe that a responsible and competent source operator's actions in an emergency situation would be influenced by speculation that if the source is subject to an enforcement action in the future, there may be a defense to penalties available.

Moreover, as explained in detail in the SNPR and this document, the court's decision in *NRDC* v. *EPA* held that section 113 and section 304 preclude EPA authority to create affirmative defense provisions in the Agency's own regulations imposing emission limitations on sources, because such provisions purport to alter the jurisdiction of federal courts to assess liability and impose penalties for violations of those limits in private civil enforcement cases. The EPA believes that the reasoning of the court in that decision indicates that the states, like the EPA, have no authority in SIP provisions to alter the jurisdiction of federal courts to assess penalties for violations of CAA requirements through affirmative defense provisions. If states lack authority under the CAA to alter the jurisdiction of the federal courts through affirmative defense provisions in SIPs, then the EPA lacks authority to approve any such provision in a SIP. The EPA notes that the court in *NRDC* v. *EPA* did not indicate that the statutory provisions should be interpreted differently based on speculation that a given source operator might allow a catastrophic explosion because of the absence of an affirmative defense.

36. Comments that the SNPR did not meet the procedural requirements of section 307(d) because the EPA failed to provide its legal interpretations or explain the data relied upon in this rulemaking.

Comment: Commenters claimed that the EPA violated the procedural requirements of the CAA in the SNPR. The commenters asserted that the EPA designated this rulemaking a section 307(d) action, and the commenters claimed that the EPA did not follow the procedures required in section 307(d). The commenters claimed that the EPA failed to provide a statement of basis and purpose that includes ''the major legal interpretations and policy consideration underlying the proposed rule.''

In particular, the commenters argued that the EPA did not provide required information with regard to its proposed SIP call concerning the affirmative defense provisions in the Texas SIP. Commenters claimed that the SNPR is deficient because it does not address: (i) Why the Fifth Circuit decision in *Luminant Generation* v. *EPA* does not control the present action; (ii) on what basis the EPA believes it may disregard the judgment in *Luminant Generation* v. *EPA;* (iii) why the DC Circuit decision, which does not address the Texas SIP, should take precedence over the *Luminant Generation* v. *EPA* decision; (iv) on what basis the EPA believes that the DC Circuit may reach a different result than the Fifth Circuit as to the affirmative defenses in the Texas SIP; and (v) the grounds for ''acquiescing'' to the DC Circuit decision in *NRDC* v. *EPA,* which specifically states that it does not apply to SIP revisions, and ignoring the relevant holding in the Fifth Circuit. Commenters cited several cases claiming that the DC Circuit has held that, unlike under the Administrative Procedure Act (APA), under CAA section 307(d) the EPA is required to give a detailed explanation of its reasoning and that commenters should not be required to ''divine the agency's unspoken thoughts.''

Response: The EPA disagrees with the commenters' premise. The EPA did

discuss the *Luminant Generation* v. *EPA* decision in the SNPR and also explained in detail why it believes that the logic of the DC Circuit's decision in *NRDC* v. *EPA* supports this SIP call action for affirmative defense provisions. Specifically, the EPA recognized that both the Fifth Circuit and the DC Circuit were evaluating the same fundamental question—whether section 113 and section 304 preclude the creation of affirmative defense provisions that alter or eliminate the jurisdiction of federal courts to determine liability and impose remedies for violations of CAA requirements in judicial enforcement actions. The EPA explained that, after reviewing the *NRDC* v. *EPA* decision and the *Luminant Generation* v. *EPA* decision, the Agency determined that its prior interpretation of the CAA, as advanced in both courts, is not the best reading of the statute. Indeed, it is significant that the *Luminant* court upheld the EPA's approval of affirmative defense provisions for unplanned events (*i.e.,* malfunctions) and the disapproval of affirmative defenses for planned events (*i.e.,* startup, shutdown and maintenance) specifically because the court deferred to the Agency's reasonable interpretation of ambiguous statutory provisions in the case at hand. In the SNPR, the EPA explained point by point why it now believes that the decision of the DC Circuit in *NRDC* v. *EPA* reflected the better reading of section 113 and section 304 and thus that the Agency no longer interprets the CAA to permit affirmative defenses in SIP provisions. Therefore, the EPA believes the Fifth Circuit could also take a different view of the reasonableness of the EPA's resolution of ambiguous provisions after reviewing the EPA's current interpretation of the statute.

37. Comments that the EPA has recently approved affirmative defense provisions through various SIP actions and, therefore, these provisions are proper under the EPA's interpretation of the CAA.

Comment: One commenter noted that the EPA has never taken issue with the affirmative defense provisions in states' SIPs across the many instances where the EPA has reviewed the states' later SIP submissions. The implication of the commenters' argument is that if the EPA has previously approved a SIP submission and directly or indirectly reapproved an affirmative defense provision in the past, this means that the affirmative defense provision still meets CAA requirements.

Response: The EPA disagrees with this comment. As explained in the EPA's response in section VIII.D.18 of this document, when the EPA takes final action on a state's SIP submission, this does not necessarily entail reexamination and reapproval of every provision in the existing SIP. The EPA often only examines the specific SIP provision the state seeks to revise in the SIP submission, which may not include any affirmative defense provisions. To the extent the EPA did review and approve any affirmative defense provision consistent with its prior interpretation of the CAA that narrowly tailored affirmative defenses were appropriate, the EPA has fully explained why it is now revising that interpretation such that past action based on the earlier interpretation would no longer provide precedent for the EPA's actions. As part of this final action, applying its revised SSM Policy, the EPA is taking action to address affirmative defense provisions in SIPs. Since the issuance of the court's opinion in *NRDC* v. *EPA,* the EPA has similarly taken steps in its own ongoing NSPS and NESHAP rulemakings to ensure that any existing affirmative defense provisions are removed and that no affirmative defenses are proposed or finalized.[64]

38. Comments that affirmative defense provisions function as structured state ''enforcement discretion'' and are an important tool for states to prioritize enforcement activities.

Comment: A state commenter characterized the affirmative defense contained in the state's SIP as an ''enforcement discretion'' tool that supports the state's regulation of excess emissions during malfunction events and promotes preventive measures, proper monitoring and reporting by sources. The state asserted that removal of the affirmative defense provision from the SIP would require the state to address and track violations that are not a high priority to the state agency. The state argued that the affirmative defense provision provides certainty to the regulated community by providing structure to how the state will exercise its enforcement discretion. The state expressed concern that without the affirmative defense, there will be uncertainty for the regulated community and less incentive for sources to make repairs and submit excess emissions reports promptly. The commenter explained that state law requires reporting of emission events that exceed an established ''reportable'' quantity and that this prompt reporting allows the state agency to evaluate each event reported quickly. In investigating reports of emission events, the state claimed, it ''exercises enforcement discretion only in cases in which it determines that each affirmative defense criteria is met,'' and the state claimed that elimination of the affirmative defense provision would result in an increase of unavoidable emissions being treated as violations. In general, the state objected to the elimination of the affirmative defense provision because it would strain the state agency's enforcement resources.

Response: These comments concerning the state's use of affirmative defense criteria in structuring the exercise of its enforcement discretion (*e.g.,* determining whether to bring an enforcement action or to further investigate an emissions events) appear to be based on a misunderstanding of the SNPR. This SIP call action directing states to remove affirmative defense provisions from SIPs would not prevent the state from applying such criteria in the exercise of its own enforcement discretion. For example, the state is free to consider factors such as a facility's efforts to comply and the facility's compliance history in determining whether to investigate an excess emissions event or whether to issue a notice of violation or otherwise pursue enforcement. Application of such criteria may well be useful and appropriate to the state in determining the best way to allocate its own enforcement resources. So long as a state does not use the criteria in such a way that the state fails to have a valid enforcement program as required by section 110(a)(2)(C), the state is free to use criteria like those of an affirmative defense as a way to ''structure'' its exercise of its own enforcement discretion.

However, as explained in the SNPR, the EPA's view is that SIPs cannot include affirmative defense provisions that alter the jurisdiction of the federal court to assess penalties in judicial enforcement proceeding for violation of CAA requirements. The EPA has determined that the specific affirmative

[64] *See, e.g.,* ''National Emission Standards for Hazardous Air Pollutants Residual Risk and Technology Review for Flexible Polyurethane Foam Production; Final rule,'' 79 FR 48073 (August 15, 2014) (announcing decision not to finalize the proposed affirmative defense); ''National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology Standards; and Manufacture of Amino/Phenolic Resins; Final rule,'' 79 FR 60897 (October 8, 2014) (announcing decision not to finalize the proposed affirmative defense); ''Oil and Natural Gas Sector: Reconsideration of Additional Provisions of New Source Performance Standards; Final rule,'' 79 FR 79017 (December 31, 2014) (removing affirmative defense from regulations); and ''National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; Proposed rule,'' 80 FR 3089 (January 21, 2015) (proposing to remove affirmative defense from regulations).

defense provisions at issue in the SIP of the state commenter are inconsistent with CAA requirements for SIP provisions. In addition, the EPA interprets the CAA to bar ''enforcement discretion'' provisions in SIPs that operate to impose the enforcement discretion decisions of the state upon the EPA or any other parties who may seek to enforce pursuant to section 304. Pursuant to the requirements of sections 110(k), 110(l) and 193, the EPA has both the authority and the responsibility to evaluate SIP submissions to assure that they meet the requirements of the CAA. Pursuant to section 110(k)(5), the EPA has authority and discretion to take action to require states to revise previously approved SIP provisions if they do not meet CAA requirements.

39. Comments that requiring states to adopt emissions standards that are not achievable at all times and then expecting courts to render those standards lawful by employing discretion in the assessment of penalties is contradictory to CAA section 307(b)(2), which mandates pre-enforcement review.

Comment: Commenters claimed that courts have consistently held that regulators cannot rely on enforcement discretion to establish the achievability of emission limitations. The commenters referred to a 1973 case addressing NSPS regulations in which they claimed the court remanded the standard to the EPA to support an ''at all times'' standard.

Commenters further asserted that reliance on the discretion of judges to decide whether and to what extent penalties are appropriate is also not lawful. The commenters claimed that if a state establishes an emission limitation on the basis that it is achievable, then the standard must be achievable under all circumstances to which it applies. The commenters argued that if a state adopts an emission limitation that is not achievable under all conditions, then the state must explain how the standard can be reasonably enforced. The commenters concluded that a numerical emission limitation that cannot be achieved by sources at all times is not enforceable because no amount of penalty can deter the violating conduct. The commenters recognized that it is reasonable for states to exercise enforcement discretion under circumstances when an emission limitation cannot be met but argued that it is not reasonable to adopt a SIP that puts sources in a state of repeated noncompliance.

Commenters further claimed that the decision in *NRDC* v. *EPA,* while allowing sources to argue unjust punishment should not be imposed, conflicts with the CAA's requirements for pre-enforcement review. The commenters stated that emission limitations that could have been challenged at the time of promulgation are not subject to judicial review in an enforcement proceeding. Thus, the commenters claimed that any challenges to the achievability of a SIP emission limitation must be made at the time the emission limitation is promulgated and that judges will not consider such arguments in the context of an enforcement action. The commenters argued that forcing states to adopt unachievable standards and then prohibiting them from including an affirmative defense for penalties for unavoidable exceedances creates a dilemma Congress sought to avoid.

Response: A number of the arguments that the commenters are raising appear to go beyond the scope of the affirmative defense issues in the SNPR. In the SNPR, the EPA revised its prior proposal with respect to issues related exclusively to affirmative defense provisions in SIPs. These comments are similar to an argument that any period during which an emission limitation cannot be met must be deemed not to be a violation of the standard. The EPA is addressing these types of issues, to the extent that they were raised in comments on the February 2013 proposal. The EPA does note, however, that the Agency is not requiring states to adopt standards that cannot be met and then providing that states rely only on enforcement discretion to address periods of noncompliance. As the EPA has already noted, states may choose to adopt standards that are different from the underlying standards for periods where the underlying standards cannot otherwise be met.

The EPA also disagrees with the comments that the holding in *NRDC* v. *EPA* is inconsistent with section 307(b)(2) that provides that regulations that could have been challenged at promulgation cannot later be challenged in an enforcement action. Nothing in section 307(b) limits the ability of the court to consider the criteria of section 113(e), such as good faith efforts of a source to comply in assessing penalties. Neither the decision in *NRDC* v. *EPA* nor this SIP call action requires states to adopt standards that cannot be met. Moreover, the public, including regulated sources, will be able to comment on the revised emission limitations developed by states in response to this SIP call. If an interested party believes that the state has adopted unachievable emission limitations, that party can challenge such standards at the time of adoption.

40. Comments that the EPA should announce that it no longer recognizes existing affirmative defense provisions, effective immediately.

Comment: Commenters claimed that because the court held in *NRDC* v. *EPA* that the EPA was without authority to interpret the CAA to allow affirmative defenses, the EPA should explicitly state that it no longer recognizes such provisions immediately. The commenters argued that by proceeding under its authority under section 110(k)(5), the EPA is providing states 18 months to remove the affirmative defense provisions and that thereafter the EPA will take additional time to act upon those SIP revisions under section 110(k). The commenters argued that this in effect allows sources to continue relying on affirmative defense provisions that are not consistent with CAA requirements for a period of years into the future. Because the EPA did not have authority to approve the affirmative defense provisions in the first instance, the commenters contended that the Agency should simply declare that the affirmative defense provisions are now null and void.

Response: The EPA understands the concerns raised by the commenters but does not agree that it is inappropriate for the Agency to proceed under section 110(k)(5). The affirmative defense provisions at issue in this action are part of the EPA-approved SIPs for the affected states. The EPA, as well as states, cannot unilaterally change provisions of the approved SIP without following appropriate notice-and-comment procedures. To the extent that the commenters were advocating that the EPA should have proceeded under its authority to do error corrections under section 110(k)(6) rather than a SIP call under section 110(k)(5), the Agency has explained in detail in the February 2013 proposal and this document why it is more appropriate to proceed via SIP call instead. Under the SIP call process, the EPA cannot declare approved SIP provisions null and void prior to state submission and Agency approval of revised SIP provisions.

41. Comments that instead of acting through a nationwide SIP call action, the EPA should have worked individually with states to correct any deficient SIP provisions.

Comment: One commenter stated that rather than using a SIP call to address SSM issues in existing SIPs, the EPA should work with each state's air agency individually to identify and address SIP deficiencies and work through the

normal rulemaking and SIP revision processes to correct any identified problems.

Response: The CAA provides a mechanism specifically for the correction of flawed SIPs. Section 110(k)(5) provides: ''Whenever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to . . . comply with any requirement of [the Act], the Administrator shall require the State to revise the plan as necessary to correct such inadequacies.'' This type of action is commonly referred to as a ''SIP call.'' The EPA, in this action, is using a SIP call to notify states of flawed provisions in SIPs and initiate a process for correction of those provisions.

The EPA, largely through its Regional Offices, has individually reviewed each state provision subject to the SIP call. The EPA will work closely with each state, during future rulemaking actions taken by states to adopt SIP revisions and then subsequent actions by the EPA, to determine whether these adopted SIP revisions meet the mandate of the SIP call and are consistent with CAA requirements. As part of these actions, each individual state will work closely with the EPA to address the SIP deficiencies identified in this action.

42. Comments that the EPA should not consider those comments on the February 2013 proposal that concern affirmative defense provisions in SIPs to no longer be relevant.

Comment: One commenter disagreed with the EPA's decision not to respond to certain comments submitted on the February 2013 proposal, to the extent the comments applied to issues related to affirmative defense provisions in SIPs generally or to issues related to specific affirmative defense provisions identified by the Petitioner, on a basis that those comments are no longer relevant if the EPA finalizes its action as proposed in the SNPR. According to the commenter, the EPA's interpretation of the CAA has not changed so as to exclude the other SSM provisions in the proposed action, and this alone shows that the comments submitted on the February 2013 proposal are still relevant.

Response: The EPA's proposed action on the Petition in the SNPR superseded the February 2013 proposal with respect to the issues related to affirmative defense provisions in SIPs. As explained in detail in the SNPR, after the February 2013 proposal, a federal court ruled that the CAA precludes authority of the EPA to create affirmative defense provisions applicable to private civil suits in its own regulations. As a result, the EPA issued the SNPR to propose applying a revised interpretation of the CAA to affirmative defense provisions in SIPs consistent with the reasoning of court's decision in *NRDC* v. *EPA.* The EPA supplemented and revised its proposed response to the issues raised in the Petition to the extent they concern affirmative defenses in SIPs, and the EPA solicited comment on its revised proposed response. Because the EPA's interpretation of the CAA with respect to the legal basis for affirmative defense provisions in SIPs changed from the time of the February 2013 proposal to the SNPR, comments on the February 2013 proposal, to the extent they concern affirmative defenses in SIPs, are not relevant to the EPA's revised proposed action. For example, comments on the February 2013 proposal that argue that the EPA was wrong to interpret the CAA to allow affirmative defense provisions for malfunction events but not for startup or shutdown events are not relevant when the Agency's interpretation of the CAA is now that no such affirmative defense provisions are valid. Similarly, comments that the criteria that the EPA previously recommended for valid affirmative defense provisions were too many, too few, too stringent or too lax simply have no relevance when the EPA does not interpret the CAA to allow any such affirmative defense provisions regardless of the number, nature or stringency of the criteria for qualifying for the affirmative defense. The EPA believes that it is reasonable for the Agency to determine that comments that have no bearing on the proposed action concerning affirmative defense provisions in the SNPR are not relevant. Because the EPA is finalizing the action on the Petition as proposed in the SNPR concerning affirmative defense provisions in SIPs, it is doing so based on evaluation of the comments that are relevant to the SNPR.

V. Generally Applicable Aspects of the Final Action in Response to Request for the EPA's Review of Specific Existing SIP Provisions for Consistency With CAA Requirements

A. What the Petitioner Requested

The Petitioner's second request was for the EPA to find as a general matter that SIPs ''containing an SSM exemption or a provision that could be interpreted to affect EPA or citizen enforcement are substantially inadequate to comply with the requirements of the Clean Air Act.'' [65] In addition, the Petitioner requested that if the EPA finds such defects in existing SIPs, the EPA ''issue a call for each of the states with such a SIP to revise it in conformity with the requirements or otherwise remedy these defective SIPs.'' [66]

The Petitioner argued that many SIPs currently contain provisions that are inconsistent with the requirements of the CAA. According to the Petitioner, these provisions fall into two general categories: (1) Exemptions for excess emissions by which such emissions are not treated as violations; and (2) enforcement discretion provisions that may be worded in such a way that a decision by the state not to enforce against a violation could be construed by a federal court to bar enforcement by the EPA under CAA section 113, or by citizens under CAA section 304.

First, the Petitioner expressed concern that many SIPs have either automatic or discretionary exemptions for excess emissions that occur during periods of SSM. Automatic exemptions are those that, on the face of the SIP provision, provide that any excess emissions during such events are not violations even though the source exceeds the otherwise applicable emission limitations. These provisions preclude enforcement by the state, the EPA or citizens, because by definition these excess emissions are defined as not violations. Discretionary exemptions or, more correctly, exemptions that may arise as a result of the exercise of ''director's discretion'' by state officials, are exemptions from an otherwise applicable emission limitation that a state may grant on a case-by-case basis with or without any public process or approval by the EPA, but that do have the effect of barring enforcement by the EPA or citizens. The Petitioner argued that ''[e]xemptions that may be granted by the state do not comply with the enforcement scheme of title I of the Act because they undermine enforcement by the EPA under section 113 of the Act or by citizens under section 304.''

The Petitioner explained that all such exemptions are fundamentally at odds with the requirements of the CAA and with the EPA's longstanding interpretation of the CAA with respect to excess emissions in SIPs. SIPs are required to include emission limitations designed to provide for the attainment and maintenance of the NAAQS and for protection of PSD increments. The Petitioner emphasized that the CAA requires that such emission limitations be ''continuous'' and that they be established at levels that achieve sufficient emissions control to meet the required CAA objectives when adhered

[65] Petition at 14.

[66] *Id.*

to by sources. Instead, the Petitioner contended, exemptions for excess emissions through ''loopholes'' in SIP provisions often result in real-world emissions that are far higher than the level of emissions envisioned and planned for in the SIP.

Second, the Petitioner expressed concern that many SIPs have provisions that may have been intended to govern only the exercise of enforcement discretion by the state's own personnel but are worded in a way that could be construed to preclude enforcement by the EPA or citizens if the state elects not to enforce against the violation. The Petitioner contended that ''any SIP provision that purports to vest the determination of whether or not a violation of the SIP has occurred with the state enforcement authority is inconsistent with the enforcement provisions of the Act.''

After articulating these overarching concerns with existing SIP provisions, the Petitioner requested that the EPA evaluate specific SIP provisions identified in the separate section of the Petition titled, ''Analysis of Individual States' SSM Provisions.'' [67] In that section, the Petitioner identified specific provisions in the SIPs of 39 states that the Petitioner believed to be inconsistent with the requirements of the CAA and explained in detail the basis for that belief. In the conclusion section of the Petition, the Petitioner listed the SIP provisions in each state for which it seeks a specific remedy. A more detailed explanation of the Petitioner's arguments appears in the 2013 February proposal.[68]

B. What the EPA Proposed

In its February 2013 proposal, the EPA proposed to deny in part and to grant in part the Petition with respect to this two-part request. The EPA explained its longstanding interpretations of the CAA with respect to SIP provisions that apply to excess emissions during SSM events. The EPA also agreed that automatic exemptions, discretionary exemptions via director's discretion, ambiguous enforcement discretion provisions that may be read to preclude EPA or citizen enforcement and affirmative defense provisions can interfere with the overarching objectives of the CAA, such as attaining and maintaining the NAAQS, protecting PSD increments and improving visibility. Such provisions in SIPs can interfere with effective enforcement by air agencies, the EPA and the public to assure that sources comply with CAA requirements, and such interference is contrary to the fundamental enforcement structure provided in CAA sections 113 and 304.

Accordingly, the EPA evaluated each of the specific SIP provisions that the Petitioner identified to determine whether it is consistent with CAA requirements for SIP provisions. The EPA conducted this evaluation in light of its interpretations of the CAA reflected in the SSM Policy and recent court decisions pertaining to relevant issues. In section IX of the February 2013 proposal, the EPA provided its proposed view with respect to each of these SIP provisions. The EPA solicited comment on its proposed grant or denial of the Petition for each of the specific SIP provisions and its rationale for the proposed action. Through consideration of the overarching issues raised by the Petition, and informed by the evaluation of the specific SIP provisions identified in the Petition as a group, the EPA also determined that it was necessary to reiterate, clarify and amend its SSM Policy. The EPA thus took comment on its interpretations of the CAA set forth in the SSM Policy in order to assure that it provides comprehensive and up-to-date guidance to states concerning SIP provisions applicable to emissions from sources during SSM events.

C. What Is Being Finalized in This Action

The EPA is taking final action to deny in part and to grant in part the Petition with respect to the request to find specific SIP provisions inconsistent with the CAA as interpreted by the Agency in the SSM Policy. The EPA is also taking final action to grant the Petition on the request to make a finding of substantial inadequacy and to issue a SIP call for specific existing SIP provisions. The basis for the SIP call is that these provisions include an automatic exemption, a discretionary exemption, an inappropriate enforcement discretion provision, an affirmative defense provision, or other form of provision that is inconsistent with CAA requirements for SIP provisions. For those SIP provisions that the EPA has determined to be consistent with CAA requirements, however, the Agency is taking final action to deny the Petition and taking no further action with respect to those provisions. The specific SIP provisions at issue are discussed in detail in section IX of this document.

As a result of its review of the issues raised by the Petition, the EPA is also through this action clarifying, reiterating and updating its SSM Policy to make certain that it provides comprehensive and up-to-date guidance to air agencies concerning SIP provisions to address emissions during SSM events, consistent with CAA requirements. With respect to automatic exemptions from emission limitations in SIPs, the EPA's longstanding interpretation of the CAA is that such exemptions are impermissible because they are inconsistent with the fundamental requirements of the CAA. The EPA has reiterated this point in numerous guidance documents and rulemaking actions and is reaffirming that interpretation in this final action. By exempting emissions that would otherwise constitute violations of the applicable emission limitations, such exemptions interfere with the primary air quality objectives of the CAA (*e.g.,* attainment and maintenance of the NAAQS), undermine the enforcement structure of the CAA (*e.g.,* the requirement that all SIP provisions be legally and practically enforceable by states, the EPA and parties with standing under the citizen suit provision), and eliminate the incentive for emission sources to comply at all times, not solely during normal operation (*e.g.,* incentives to be properly designed, maintained and operated so as to minimize emissions of air pollutants during startup and shutdown or to take prompt steps to rectify malfunctions).

The court's decision in *Sierra Club* v. *Johnson* concerning exemptions for SSM events in the EPA's own regulations has reemphasized the fact that emission limitations under the CAA are required to be continuous. The court held that this statutory requirement precludes emission limitations that would allow periods during which emissions are exempt. Moreover, from a policy perspective, the EPA notes that the existence of impermissible exemptions in SIP provisions has the potential to lessen the incentive for development of control strategies that are effective at reducing emissions during certain modes of source operation such as startup and shutdown, even while such strategies could become increasingly helpful for various purposes, including attaining and maintaining the NAAQS. The issue of automatic exemptions for SSM events in SIP provisions is discussed in more detail in section VII.A of this document.

With respect to discretionary exemptions from emission limitations in SIPs, the EPA also has a longstanding interpretation of the CAA that prohibits ''director's discretion'' provisions in SIPs if they provide unbounded discretion to allow what would amount to a case-specific revision of the SIP

[67] Petition at 17.

[68] *See* February 2013 proposal, 78 FR 12459 at 12473–74 (February 22, 2013).

without meeting the statutory requirements of the CAA for SIP revisions. In particular, the EPA interprets the CAA to preclude SIP provisions that provide director's discretion authority to create discretionary exemptions for violations when the CAA would not allow such exemptions in the first instance. As with automatic exemptions for excess emissions during SSM events, discretionary exemptions for such emissions interfere with the primary air quality objectives of the CAA, undermine the enforcement structure of the CAA and eliminate the incentive for emission sources to minimize emissions of air pollutants at all times, not solely during normal operations. Through this action, the EPA is reiterating its interpretation of the provisions of the CAA that preclude unbounded director's discretion provisions in SIPs. The EPA is also explaining two ways in which air agencies may elect to correct a director's discretion type of deficiency. The issue of director's discretion in SIP provisions applicable to SSM events is discussed in more detail in section VII.C of this document.

With respect to enforcement discretion provisions in SIPs, the EPA also has a longstanding interpretation of the CAA that SIPs may contain such provisions concerning the exercise of discretion by the air agency's own personnel, but such provisions cannot bar enforcement by the EPA or by other parties through a citizen suit.[69] In the event such a SIP provision could be construed by a court to preclude EPA or citizen enforcement, that provision would be at odds with fundamental requirements of the CAA pertaining to enforcement. Such provisions in SIPs can interfere with effective enforcement by the EPA and the public to assure that sources comply with CAA requirements, and this interference is contrary to the fundamental enforcement structure provided in CAA sections 113 and 304. The issue of enforcement discretion in SIP provisions applicable to SSM events is discussed in more detail in section VII.D of this document.

The EPA has evaluated the concerns expressed by the Petitioner with respect to each of the identified SIP provisions and has considered the specific remedy sought by the Petitioner. Through evaluation of comments on the February 2013 proposal and the SNPR, the EPA has taken into account the perspective of other stakeholders concerning the proper application of the CAA and the Agency's preliminary evaluation of the specific SIP provisions identified in the Petition. In many instances, the EPA has concluded that the Petitioner's analysis is correct and that the provision in question is inconsistent with CAA requirements for SIPs. For those SIP provisions, the EPA is granting the Petition and is simultaneously making a finding of substantial inadequacy and issuing a SIP call to the affected state to rectify the specific SIP inadequacy. In other instances, however, the EPA disagrees with the Petitioner's analysis of the provision, in some instances because the analysis applied to provisions that have since been corrected in the SIP. For those provisions, the EPA is therefore denying the Petition and taking no further action. In summary, the EPA is granting the Petition in part, and denying the Petition in part, with respect to all of the specific existing SIP provisions for which the Petitioner requested a remedy. The EPA's evaluation of each of the provisions identified in the Petition and the basis for the final action with respect to each provision is explained in detail in section IX of this document.

D. Response to Comments Concerning the CAA Requirements for SIP Provisions Applicable to SSM Events

The EPA received numerous comments, both supportive and adverse, concerning the Agency's decision to propose action on the Petition with respect to the overarching issues raised by the Petitioner. A number of these comments also raised important issues concerning the rights of citizens to petition their government, the process by which the EPA evaluated the issues raised in the Petition and the relative authorities and responsibilities of states and the EPA under the CAA. Many commenters raised the same conceptual issues and arguments. For clarity and ease of discussion, the EPA is responding to these overarching comments, grouped by topic, in this section of this document. The responses to more specific substantive issues raised by commenters on the EPA's interpretation of the CAA in the SSM Policy appear in other sections of this document that focus on particular aspects of this action.

1. Comments that the EPA should not have responded to the petition for rulemaking or that the EPA was wrong to do so.

Comment: Some commenters opposed the EPA's proposed action on the Petition in the February 2013 proposal entirely and alleged that it is ''sue-and-settle rulemaking'' or ''regulation by litigation.'' Commenters stated that the ''proposed rule and corresponding aggressive deadline schedule stem from'' a settlement of litigation brought by Sierra Club to respond to the Petition.

Some commenters expressed concern that the EPA's proposed action was made in response to a settlement agreement, through a process that, the commenters alleged, did not permit any opportunity for participation by affected parties. Other commenters, believing that the EPA's proposed action was taken to fulfill a consent decree obligation, argued that consent decree deadlines ''often do not allow EPA enough time to write quality regulations'' or would not allow ''opportunity to properly research and investigate the effect of State SSM provisions or the State's ability to meet the NAAQS, or to determine whether the SSM provisions are somehow inconsistent with the CAA.'' The commenters alleged that the process ''bypasses the traditional rulemaking concepts of transparency and effective public participation'' and ''sidesteps the proper rulemaking channels and undercuts meaningful opportunities for those affected by the proposed rule to develop and present evidence that would support a competing and fully informed viewpoint on the substantive issues during the rulemaking process.''

Response: The EPA believes that these comments reflect fundamental misunderstandings about this action. This is a rulemaking in which the EPA is taking action to respond to a petition for rulemaking, and it has undergone a full notice-and-comment rulemaking process as provided for in the CAA. In the February 2013 proposal, the EPA proposed to take action on the Petition. Under the CAA, the APA and the U.S. Constitution, citizens have the right to petition the government for redress. For example, the APA provides that ''[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.''[70] When citizens file a petition for rulemaking, they are entitled to a response to such petition—whether that response is to grant the petition, to deny the petition, or to partially grant and partially deny the petition as has occurred in this rulemaking action.

Some of these commenters expressed concern that the EPA's action on the Petition was the result of the Agency's obligations under a consent decree or settlement agreement and that this fact in some way invalidates the substantive action. First, the EPA notes that the action was undertaken not in response to a consent decree but rather in

[69] *See, e.g.,* 1983 SSM Guidance at Attachment p. 2.

[70] 5 U.S.C. 553(e).

response to a settlement agreement. Second, the EPA notes that this settlement agreement was entered into by the Agency and the Sierra Club in order to resolve allegations that the EPA was not correctly evaluating and acting upon SIP submissions from states. In particular, the Sierra Club claimed that the EPA was illegally ignoring existing deficiencies in the SIPs of many states, including existing allegedly deficient provisions concerning the treatment of excess emissions during SSM events, when acting on certain SIP submissions. As a result, the Sierra Club alleged, the EPA was acting in contravention of its obligations under the CAA and various consent decrees and thus should be held in contempt for failure to address these issues. In order to resolve these allegations, the EPA agreed only to take action on a petition for rulemaking and to take the action that it deemed appropriate after evaluation of the allegations in the petition. The terms of the settlement agreement underwent public comment and are a matter of public record and are in the docket for this rulemaking.[71]

The EPA does not enter into settlement agreements lightly, nor does the EPA enter into settlement agreements without following the full public process required by CAA section 113(g), which the Agency followed in this case.[72] The EPA solicited comment on the draft settlement agreement as required by section 113(g). In no case does the EPA enter into a settlement agreement that has not been officially reviewed not only by the Agency but also by the Department of Justice. Thus, contrary to the commenters' implications, this rulemaking is the result of an appropriate settlement agreement that did undergo public comment and is legitimate.

In acting on the Petition the EPA has followed all steps of a notice-and-comment rulemaking, as governed by applicable statutes, regulations and executive orders, including a robust process for public participation. When the EPA initially proposed to take action on the Petition, in February 2013, it simultaneously solicited public comment on all aspects of its proposed response to the issues in the Petition and in particular on its proposed action with respect to each of the specific existing SIP provisions identified by the Petitioner as inconsistent with the requirements of the CAA. In response to requests, the EPA extended the public comment period for this proposal to May 13, 2013, which is 80 days from the date the proposed rulemaking was published in the **Federal Register** and 89 days from the date the proposed rulemaking was posted on the EPA's Web site.[73] The EPA deemed this extension appropriate because of the issues raised in the February 2013 proposal. The EPA also held a public hearing on March 12, 2013. In response to this proposed action, the EPA received approximately 69,000 public comments, including over 50 comment letters from state and local governments, over 150 comment letters from industry commenters, over 25 comment letters from public interest groups and many thousands of comments from individual commenters. Many of these comment letters were substantial and covered numerous issues.

Similarly, when the EPA ascertained that it was necessary to revise its proposed action on the Petition with respect to affirmative defenses in SIP provisions, the Agency issued the SNPR. In that supplemental proposal, in September 2014, the EPA fully explained the issues and took comment on the questions related to whether affirmative defense provisions are consistent with CAA requirements concerning the jurisdiction of courts in enforcement actions, and thus whether such provisions are consistent with fundamental CAA requirements for SIP provisions. The EPA provided a public comment period ending November 6, 2014, which is 50 days from the date the SNPR was published in the **Federal Register** and 62 days from the date the SNPR was posted on the EPA's Web site. The EPA believes that the comment period was sufficient given that the subject of the SNPR was limited to the narrow issue of whether affirmative defense provisions are consistent with CAA requirements. The EPA also held a public hearing on the SNPR on October 7, 2014 on the specific topic of the legitimacy of affirmative defense provisions in SIPs. In response to the SNPR, the EPA received over 20,000 public comments, including at least 9 comment letters from states and local governments, over 40 comment letters from industry commenters, at least 6 comment letters from public interest groups, and many thousands of comments from individual commenters.

2. Comments that EPA's action on the Petition violates ''cooperative federalism.''

Comment: Many commenters asserted that the EPA's proposed action on the Petition and the issuance of this SIP call violate principles of cooperative federalism because they impermissibly substitute the EPA's judgment for that of the states in the development of SIPs. This argument was raised by both air agency and industry commenters.

These commenters described the relationship between states and the EPA with respect to SIPs in general. The commenters stated that Congress designed the CAA as a regulatory partnership between the EPA and the states, *i.e.,* a relationship based on ''cooperative federalism.'' Under cooperative federalism, the commenters noted, the EPA has the primary responsibility to identify air pollutants that endanger the public health and welfare and to set national standards for those pollutants. By contrast, the states have primary responsibility to determine how to achieve those national standards by developing federally enforceable measures through SIPs. According to these commenters, however, once a state has made a SIP submission, the EPA's role is relegated exclusively to the ministerial function of reviewing whether the SIP submission will result in compliance with the NAAQS. Similarly, the commenters claim that when EPA is evaluating in the context of a SIP call whether a state's existing SIP continues to meet applicable CAA requirements, the only relevant question is whether the existing SIP will result in compliance with the NAAQS. Thus, the commenters claimed that by finding certain existing SIP provisions substantially inadequate because they are legally deficient to meet CAA requirements for SIP provisions, the EPA is usurping state authority under the cooperative-federalism structure of the CAA.

To support this view, many commenters cited to the ''*Train-Virginia* line of cases,'' named for the U.S. Supreme Court case *Train* v. *Natural Resources Defense Council, Inc.,*[74] and to the D.C. Circuit case *Virginia* v. *EPA.*[75] The D.C. Circuit has described these cases as defining a ''federalism bar'' that constrains the EPA's authority with respect to evaluation of state SIPs

[71] *See* Settlement Agreement executed November 30, 2011, in the rulemaking docket at EPA–HQ–OAR–2012–0322–0039.

[72] *See* ''Proposed Settlement Agreement, Clean Air Act Citizen Suit'' (notice of proposed settlement agreement; request for public comment), 76 FR 54465 (September 1, 2011).

[73] *See* ''State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Notice of extension of public comment period,'' 78 FR 20855 (April 8, 2013), in the rulemaking docket at EPA–HQ–OAR–2012–0322–0126.

[74] 421 U.S. 60 (1975).

[75] 108 F.3d 1397 (D.C. Cir. 1997).

under section 110.[76] Many commenters asserted that this federalism bar limits the EPA's oversight of state SIPs exclusively to whether a SIP will result in compliance with the NAAQS. The commenters evidently construe ''compliance with the NAAQS'' very narrowly to mean the SIP will factually result in attainment of the NAAQS, regardless of whether the SIP provisions in fact meet all applicable CAA requirements (*e.g.,* the requirement that the SIP emission limitations be continuous and enforceable). Accordingly, most of these commenters selectively quoted or cited a passage in *Train,*[77] and similar passages in circuit court opinions following *Train,* for the proposition that the EPA cannot issue a SIP call addressing the SIP provisions at issue in this SIP call action. Some of these commenters asserted that if the EPA were to finalize this action, the states would have ''nothing left'' of their discretion in SIP development and implementation in the future.

Response: The EPA agrees that the CAA establishes a framework for state-federal partnership based on cooperative federalism. The EPA does not, however, agree with the commenters' characterization of that relationship. The EPA explained its view of the cooperative-federalism structure in the February 2013 proposal, especially the fact that under this principle both states and the EPA have authorities and responsibilities with respect to implementing the requirements of the CAA.[78] The EPA believes that the commenters fundamentally misunderstand or inaccurately describe this action, as well as the '''division of responsibilities' between the states and the federal government'' in section 110 that is described in the *Train-Virginia* line of cases.[79]

In CAA section 110(a)(1), Congress imposed the duty upon all states to have a SIP that provides for ''the implementation, maintenance, and enforcement'' of the NAAQS. In section 110(a)(2), Congress clearly set forth the basic SIP requirements that ''[e]ach such plan *shall*'' satisfy.[80] By using the mandatory ''shall'' in section 110(a)(2), Congress established a framework of mandatory requirements *within which* states may exercise their otherwise considerable discretion to design SIPs to provide for attainment and maintenance of the NAAQS and to meet other CAA requirements. In other sections of the Act, Congress also imposed additional, more specific SIP requirements (*e.g.,* the requirement in section 189 that states impose RACM-level emission limitations on sources located in $PM_{2.5}$ nonattainment areas).

In particular, this SIP call action concerns whether SIP provisions satisfy section 110(a)(2)(A), which requires that each SIP ''[shall] include enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights), as well as schedules and timetables for compliance, as may be necessary or appropriate to meet the applicable requirements of this chapter.''

As explained in the February 2013 proposal, the automatic and discretionary exemptions for emissions from sources during SSM events at issue in this action fail to meet this most basic SIP requirement and are also inconsistent with the enforcement requirements of the CAA. Similarly, the enforcement discretion provisions at issue in this action that have the effect of barring enforcement by EPA or citizens fail to meet this requirement for enforceable emission limitations by interfering with the enforcement structure of the CAA as established by Congress. The affirmative defense provisions at issue are similarly inconsistent with the requirement that SIPs provide for enforcement of the NAAQS and also contravene the statutory jurisdiction of courts to determine liability and to impose remedies for violations of SIP requirements. Each of these types of deficient SIP provisions is thus inconsistent with legal requirements of the CAA for SIP provisions. Contrary to the claims of many commenters, the EPA has authority and responsibility to assure that a state's SIP provisions in fact comply with fundamental legal requirements of the CAA as part of the obligation to ensure that SIPs protect the NAAQS.[81]

The *Train-Virginia* line of cases affirms the plain language of the Act—that in addition to providing generally for attainment and maintenance of the NAAQS, all state SIPs must satisfy the specific elements outlined in section 110(a)(2). Even setting aside that *Train* predated substantive revisions to the CAA that strengthened section 110(a)(2)(A) in ways relevant here,[82] the *Train* Court clearly stated that section 110(a)(2) imposes additional requirements for state submissions to be accepted, independent of the general obligation to meet the NAAQS. Many commenters on the February 2013 proposal selectively quoted or cited only portions of the following excerpt from *Train,* omitting or ignoring the portions emphasized here:

> The Agency is plainly charged by the Act with the responsibility for setting the national ambient air standards. Just as plainly, however, it is relegated by the Act to a secondary role in the process of determining and enforcing the specific, source-by-source emission limitations which are necessary if the national standards it has set are to be met. Under § 110(a)(2), the Agency is required to approve a state plan which provides for the timely attainment and subsequent maintenance of ambient air standards, *and which also satisfies that section's other general requirements.* The Act gives the Agency no authority to question the wisdom of a State's choices of emission limitations *if they are part of a plan which satisfies the standards of § 110(a)(2)* . . . . *Thus* [*i.e.,* provided the state plan satisfies the basic requirements of § 110(a)(2)], so long as the ultimate effect of a State's choice of emission limitations is compliance with the national standards for ambient air, the State is at liberty to adopt whatever mix of emission limitations it deems best suited to its particular situation.[83]

[76] *See, e.g., Michigan* v. *EPA,* 213 F.3d 663, 687 (D.C. Cir. 2000).

[77] *See* 421 U.S. at 79.

[78] *See* 78 FR 12459 at 12468; Background Memorandum at 1–3.

[79] *See Virginia* v. *EPA,* 108 F.3d 1397, 1407 (D.C. Cir. 1997) (quoting *Train,* 421 U.S. at 79).

[80] Section 110(a)(2) (emphasis added); *see EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584, 1600 (2014) (holding that section 110(a)(2) ''speaks without reservation'' regarding what ''components'' a SIP '' 'shall' include''); H. Rept. 101–490, at 217 (calling the provisions of section 110(a)(2)(A) through (M) ''the basic requirements of SIPs'').

[81] The EPA notes that many of the specific SIP elements required in section 110(a)(2) are not themselves stated in terms of attainment and maintenance of the NAAQS. Instead, these requirements are part of the SIP structure that Congress deemed necessary to support implementation, maintenance and enforcement of the NAAQS, as well as to meet other objectives such as protection of PSD increments and visibility.

[82] For example, to the extent the *Train* Court was construing section 110(a)(2)'s emission limitation provision, it is important to note that while that statutory section before the *Train* Court required approvable SIPs to include certain controls ''necessary to insure compliance with [the] primary or secondary standards'' (*i.e.,* the NAAQS), *see* CAA of 1970, Pub. L. 91–604, section 4(a), 84 Stat. 1676, 1680 (December 31, 1970), that section now more broadly speaks of controls ''necessary or appropriate *to meet the applicable requirements of this chapter*'' (*i.e.,* the CAA). Section 110(a)(2)(A) (emphasis added). Among the other relevant textual changes are the qualification that emission limitations and other controls be ''enforceable,'' *id.;* a statutory definition of ''emission limitation'' that adds requirements not contemplated by *Train, compare* Section 302(k), *with Train,* 421 U.S. at 78; as well as a recharacterization of section 110(a)(2)'s emission limitation requirement from one bearing on whether ''[t]he Administrator shall approve such plan,'' *see* Pub. L. 91–604, section 4(a), 84 Stat. at 1680, to a requirement expressly directed at what ''[e]ach plan shall'' include.

[83] 421 U.S. at 79 (emphasis added) (footnotes omitted).

When read in its entirety, without omitting the portions italicized above, *Train* clearly does not stand for the proposition that SIPs must be judged exclusively on the basis of whether they will ensure attainment and maintenance of the NAAQS. To the contrary, the Court made clear that approvable SIP submissions must not only provide for attainment and maintenance of the NAAQS but must also satisfy section 110(a)(2)'s ''*other* general requirements . . . .'' [84] Furthermore, while states have great latitude to select emission limitations, *Train* explained that those emission limitations must nevertheless be ''part of a plan which satisfies the standards of § 110(a)(2) . . . .'' [85] Finally, the EPA notes that many commenters quoting the final sentence excerpted above typically excluded the word ''Thus,'' which references the preceding sentence stating that SIPs must ''satisfy [section 110(a)(2)]'s other general requirements.'' [86] By omitting the word ''thus,'' and the passages concerning the obligation of states to comply with section 110(a)(2) and other obligations of the CAA, the commenters disregard the critical point that the EPA has the statutory responsibility to assure that state SIPs meet the specific requirements of the CAA, not merely that they provide for attainment of the NAAQS regardless of whether they meet other mandatory legal requirements.[87] In short, the *Train* Court did not hold that SIPs must merely provide for attainment of the NAAQS even under the 1970 Act, much less the text of the CAA applicable today. To the contrary, the U.S. Supreme Court indicated that approvable state plans were also required to meet other legal specifications of the CAA for SIPs such as those in section 110(a)(2) and that the EPA's responsibility is to determine whether they do so. The EPA's own obligations with respect to evaluating SIPs under sections 110(k)(3), 110(l) and 193 continue to provide this authority and responsibility today.

After *Train,* one of the cases most frequently cited by commenters for its discussion of cooperative federalism was the D.C. Circuit's decision in *EME Homer City Generation, L.P.* v. *EPA,* a case since overturned by the U.S. Supreme Court.[88] In that case arising under section 110(a)(2), the D.C. Circuit vacated the EPA's Cross-State Air Pollution Rule for two reasons, one being related to statutory interpretation of section 110(a)(2)(D)(i), the other being ''a second, entirely independent problem'' based on the EPA's purported overstep of the federalism bar identified in the *Train-Virginia* line of cases.[89] After recounting a list of decisions that recognize the cooperative-federalism structure of the CAA, the D.C. Circuit concluded that even though states have the ''primary responsibility'' for implementing the NAAQS, in this case the states had no responsibility to address interstate transport until the EPA first quantified the obligations of the states. The dissent described the majority's application of the *Train-Virginia* cases as ''a redesign of Congress's vision of cooperative federalism in implementing the CAA . . . .'' [90] The commenters approvingly cited to the D.C. Circuit's *EME Homer City* decision, evidently to illustrate the importance of states' role under section 110. That states are given the first opportunity to develop a SIP that complies with section 110 is not in dispute. What is in dispute are the authority and the responsibility of the EPA to take action when states fail to comply with all of the requirements for SIP provisions under the CAA, whether that requirement is to address interstate transport or to meet other specific legal requirements of the Act applicable to SIP provisions.

The U.S. Supreme Court reversed the *EME Homer City* decision in June 2014,[91] rendering suspect the D.C. Circuit's interpretation of the *Train-Virginia* line of cases, as well as rendering suspect the commenters' even broader characterization of that interpretation as *per se* authorizing the states to create provisions such as the SSM exemptions and affirmative defenses at issue in this SIP call. The U.S. Supreme Court held that the touchstone for identifying the division of responsibility between the EPA and the states is the text of section 110(a)(2) itself.[92] Although this SIP call involves different requirements of section 110(a)(2) than the one at issue in *EME Homer City*—there, the interstate transport obligations of 110(a)(2)(D)(i)(I)—the Court expressly held that ''[n]othing in the Act differentiates the Good Neighbor Provision from the several other matters a State must address in its SIP.'' [93] After the U.S. Supreme Court's ruling, the EPA's role under section 110's cooperative-federalism framework—as the agency charged with reasonably interpreting the fundamental requirements of section 110(a)(2), and applying those reasonably interpreted requirements to state SIPs—cannot reasonably be in doubt.[94]

The touchstone of the cooperative-federalism concept outlined in the *Train-Virginia* line of cases is that, under the authority of section 110, the EPA may not legally or functionally require a state to adopt a specific control measure in its SIP in response to a SIP call.[95] On this point, the DC Circuit's opinion in *EME Homer City* was largely in line with *Train, Virginia,* and other DC Circuit cases. In that decision, the court described the *Train-Virginia* federalism bar as prohibiting the EPA ''from using the SIP process to adopt *specific* control measures.'' [96] The *EME Homer City* court did not more broadly hold that section 110(a)(2) imposes no independent limits on state discretion

[84] *See id.* (emphasis added).

[85] *See id.* The EPA notes that section 110(a)(2) and other sections relevant to SIPs in fact contain numerous procedural and substantive requirements that air agencies must meet. Section 110(a) is not composed of a single sentence that directs states merely to attain the NAAQS; it is replete with legal requirements applicable to SIPs that help to assure that a SIP will successfully meet that objective.

[86] *See id.*

[87] As a related point, the EPA notes that commenters claiming that the proposed SIP call was a violation of cooperative federalism likewise typically did not address the existence or significance of sections 110(k), 110(l) and 193. All of these provisions indicate that the EPA has statutory authority and responsibility to approve or disapprove SIP submissions, based upon whether they meet applicable requirements of the CAA. The EPA fully explained its views concerning its authority and responsibility under these provisions in the February 2013 proposal. *See* 78 FR 12459 at 12471, 12477–78, 12483–89; Background Memorandum at 2–3.

[88] 696 F.3d 7, 29 (D.C. Cir. 2012) *rev'd,* 134 S. Ct. 1584 (2014).

[89] *Id.* at 28.

[90] *Id.* at 38 (Rogers, J., dissenting).

[91] *See EPA* v. *EME Homer City Generation, L.P.,* 134 S. Ct. 1584 (2014).

[92] *Id.* at 1600–01.

[93] *Id.* at 1601 (citing, *inter alia,* section 110(a)(2)).

[94] *See id.* at 1593 (citing *Chevron, U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.,* 467 U.S. 837 (1984)). *See, e.g., Oklahoma* v. *EPA,* 723 F.3d 1201, 1208 (10th Cir. 2013), *cert. denied,* 134 S. Ct. 2662 (2014) (applying *Chevron* to uphold EPA's disapproval of a SIP for noncompliance with regional haze requirements in section 110(a)(2)(J)); *North Dakota* v. *EPA,* 730 F.3d 750 (8th Cir. 2013), *cert. denied,* 134 S. Ct. 2662 (2014) (applying *Chevron* to uphold EPA's disapproval of a SIP for noncompliance with interstate visibility requirements in section 110(a)(2)(D)(i)(II)); *Luminant Generation* v. *EPA,* 714 F.3d 841, 856 (5th Cir. 2013), *cert. denied,* 134 S. Ct. 387 (2013); *Mont. Sulphur & Chem. Co.* v. *United States EPA,* 666 F.3d 1174, 1180, 1189 (9th Cir. 2012), *cert. denied,* 133 S. Ct. 409 (2012) (''The Clean Air Act gives the EPA significant national oversight over air quality standards, to be exercised pursuant to statutory specifications, and provides EPA with regulatory discretion in key respects relevant to SIP calls and determinations about the attainment of the NAAQS''); *Mich. Dep't of Envtl. Quality* v. *Browner,* 230 F.3d 181, 184–85 (6th Cir. 2000) (''Although states are given broad authority to design programs, the EPA has the final authority to determine whether a SIP meets the requirements of the CAA.'').

[95] 78 FR 12459 at 12489 & nn.89–90.

[96] *See EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d at 29 (citing *Michigan,* 213 F.3d at 687; *Virginia,* 108 F.3d at 1410) (emphasis added).

by requiring the states to meet legal requirements for SIP provisions, or that the EPA is prohibited from either interpreting 110(a)(2)'s basic requirements or reviewing state SIPs for compliance with those requirements. Accordingly, the EPA believes that to the extent that the DC Circuit's *EME Homer City* decision is relevant to this action, the decision in fact supports the basic principle that the EPA has authority and responsibility to assure that states comply with legal requirements of the CAA applicable to SIP provisions.

This view of what cooperative federalism prohibits is consistent with *Train,* where the U.S. Supreme Court stated that the EPA ''is relegated by the [1970] Act to a secondary role in the process of determining and enforcing the *specific, source-by-source emission limitations* which are necessary if the national standards it has set are to be met.'' [97] It is also consistent with the *Virginia* decision, where the DC Circuit held that the EPA cannot under section 110 functionally require states to ''adopt[] particular control measures'' in a SIP but must rather ensure that states have a meaningful choice among alternatives.[98] Moreover, it is consistent with the court's view in *Michigan* v. *EPA,*[99] a case involving a SIP call, in which the DC Circuit interpreted and applied those precedents:

> Given the *Train* and *Virginia* precedent, the validity of the NOx budget program underlying the SIP call depends in part on whether the program in effect constitutes an EPA-imposed control measure or emission limitation triggering the *Train-Virginia* federalism bar: In other words, on whether the program constitutes an *impermissible source-specific means rather than a permissible end goal.* However, the program's validity also depends on whether EPA's budgets *allow the covered states real choice with regard to the control measure options available to them* to meet the budget requirements.[100]

Clearly, in this SIP call the EPA is leaving the states the freedom to correct the inappropriate provisions in any manner they wish as long as they comply with the constraints of section 110(a)(2).

Finally, this view is consistent with *Appalachian Power Co.* v. *EPA,* where the DC Circuit reiterated that *Virginia* ''disapproved the EPA's plan to reject SIPs that did not incorporate *particular limits* upon emissions from new cars.'' [101] The specific controls discussed in these cases are quite different, both as a legal matter and functionally, from the statutory constraints on the states' exercise of discretion that the EPA is interpreting and applying in this action.[102]

As explained in the February 2013 proposal, in this action the EPA is not requiring states to adopt any particular emission limitation or to impose a specific control measure in a SIP provision; the EPA is merely directing the states to address the fundamental statutory requirements that all SIP provisions must meet.[103] This SIP call outlines the principles and framework for how states can revise the existing deficient SIP provisions to meet a permissible end goal [104]—compliance with the Act. In so doing, the EPA is merely acting pursuant to its supervisory role under the CAA's cooperative-federalism framework, to ensure that SIPs satisfy those broad requirements that section 110(a)(2) mandates SIPs ''shall'' satisfy. With respect to section 110(a)(2)(A), this means that a SIP must at least contain legitimate, enforceable emission limitations to the extent they are necessary or appropriate ''to meet the applicable requirements'' of the Act. SIPs cannot contain unbounded director's discretion provisions that functionally subvert the requirements of the CAA for approval and revision of SIP provisions. Likewise, SIPs cannot have enforcement discretion provisions or affirmative defense provisions that contravene the fundamental requirements concerning the enforcement of SIP provisions. Accordingly, the EPA believes that this SIP call fully accords with the federal-state partnership outlined in section 110, by providing the states meaningful latitude when developing SIP submissions, while '''nonetheless subject[ing] the States to strict minimum compliances requirements' and giv[ing] EPA the authority to determine a state's compliance with those requirements.'' [105]

The EPA emphasizes that this action also allows states ''real choice'' concerning their SIP provisions, so long as the provisions are consistent with applicable requirements. For example, this SIP call does not establish any specific, source-by-source limitations. To the contrary, as described in section VII.A of this document, emission limitations meeting the requirements of section 110(a)(2)(A) may take a variety of forms. Under section 110(a)(2)(A), states are free to include in their SIPs whatever emission limitations they wish, provided the states comply with applicable legal requirements. Among those requirements are that an emission limitation in a SIP must be an ''emission limitation'' as defined in section 302(k) and that all controls—emission limitations and otherwise—must be sufficiently ''enforceable'' to ensure compliance with applicable CAA requirements. The SSM provisions at issue in this SIP call subvert both of these legal requirements.

3. Comments that the EPA should expand the rulemaking to include additional SIP provisions that the commenters consider deficient with respect to SSM issues.

Comment: Some commenters requested that the EPA expand its February 2013 proposed action to include additional SIP provisions that the commenters consider deficient with respect to SSM issues. Specifically, commenters identified additional SIP provisions in Wisconsin (a state not identified by the Petitioner) and New Hampshire (a state for which the Petitioner did specifically identify other SIP provisions).

One commenter argued that ''[i]t would substantially ease the administrative burden on EPA as well on public commenters'' and ''ensure that companies in all states are treated equally'' if the EPA were to include ''all SIPs with faulty SSM provisions in [a] consolidated SIP call.'' Another commenter noted that ''the interests of regulatory efficiency will be served'' by adding additional SIP provisions to the SIP call because ''all changes required by the policy underlying this rulemaking'' to state SIPs would then be made at once.

Response: The EPA acknowledges the requests made by the commenters concerning additional SIP provisions that may be inconsistent with CAA

[97] 421 U.S. at 79 (emphasis added).

[98] *Virginia* v. *EPA,* 108 F.3d 1397, 1415 (D.C. Cir. 1997) (holding that functionally, in that case, ''EPA's alternative is no alternative at all''); *see also Appalachian Power Co.* v. *EPA,* 249 F.3d 1032, 1047 (D.C. Cir. 2001) (citing *Virginia,* 108 F.3d at 1406, 1410) (''We did not suggest [in *Virginia*] that under § 110 states may develop their plans free of extrinsic legal constraints. Indeed, SIP development . . . commonly involves decisionmaking subject to various legal constraints.'').

[99] 213 F.3d 663 (D.C. Cir. 2000).

[100] *Id.* at 687 (emphasis added).

[101] 249 F.3d 1032, 1047 (D.C. Cir. 2001) (citing *Virginia,* 108 F.3d at 1410) (emphasis added).

[102] *See id.*

[103] 78 FR 12459 at 12489.

[104] *See, e.g., Michigan,* 213 F.3d at 687.

[105] *Michigan* v. *EPA,* 213 F.3d 663, 687 (D.C. Cir. 2000) (quoting *Union Elec. Co.* v. *EPA,* 427 U.S. 246, 256–57 (1976)); *see Mont. Sulphur & Chem. Co.* v. *United States EPA,* 666 F.3d 1174, 1181 (9th Cir. 2012), *cert. denied,* 133 S. Ct. 409 (2012) (''The Clean Air Act gives the EPA significant national oversight power over air quality standards, to be exercised pursuant to statutory specifications, and provides the EPA with regulatory discretion in key respects relevant to SIP calls and determinations about the attainment of NAAQS.'').

requirements. The EPA also agrees with the points made by the commenters concerning the potential benefits of expanding the rulemaking to include evaluation of additional provisions. However, in the February 2013 proposal the EPA elected to review the specific SIP provisions identified by the Petitioner in the SIPs of only the 39 states (and jurisdictions) identified by the Petitioner to determine whether they were consistent with the CAA as interpreted in the EPA's SSM Policy as requested in the Petition.[106] Although there may be additional SIP provisions that are deficient, the EPA determined that it would first focus its review on the SIP provisions for which possible deficiencies had already been identified by the Petitioner.[107] Accordingly, the February 2013 proposal addressed only those states identified in the Petition, in order to use EPA and state resources most efficiently.

With respect to the specific additional SIP provisions identified by the commenters on the February 2013 proposal, the EPA also notes that it cannot take final action on any additional SSM-related SIP provisions without first providing an opportunity for public notice and comment with respect to those additional SIP provisions. The EPA agrees that an important objective of its action on the Petition is to provide complete, comprehensive and up-to-date guidance to all air agencies concerning SIP provisions that apply to emissions during SSM events. The EPA is endeavoring to do this by responding to the Petition fully and by updating its interpretation of the CAA in the SSM Policy to reflect the relevant statutory requirements and recent court decisions. All states should feel free to apply this revised guidance in reviewing their own SIP provisions and revising them as appropriate. The EPA may address other SSM-related provisions that may be inconsistent with EPA's SSM Policy and the CAA in a later separate notice-and-comment action(s). The EPA has authority to address those provisions separately.[108]

The EPA notes that with respect to the issue of affirmative defenses in SIP provisions, the Agency determined that it was necessary to amend its February 2013 proposal to take into consideration a subsequent court decision concerning the legal basis for such provisions. As explained in the SNPR and also in section IV of this document, the DC Circuit in the *NRDC* case decided that the CAA precludes any affirmative defense provisions that would operate to limit a court's jurisdiction or discretion to determine the appropriate remedy in an enforcement action. Thus, the EPA issued the SNPR to address this development in the law. Because of recent EPA actions and court decisions on this subject, the Agency determined that it was important to address not only the affirmative defense provisions identified in the Petition but also affirmative defense provisions that the EPA independently identified in six states' SIPs.[109] The SNPR was explicitly limited to the narrow concern of affirmative defense provisions, which was one of the types of issued specifically identified by the Petitioner. The EPA issued the SNPR with the same intention as that with which it issued the February 2013 proposal—so that the final action would provide guidance that reflects the EPA's updated interpretation of the CAA and would respond to the Petitioner's request that ''EPA find that all SIPs containing an SSM exemption or a provision that could be interpreted to affect EPA or citizen enforcement are substantially inadequate to comply with the requirements of the Clean Air Act and issue a call for each of the states with such a SIP to revise it in conformity with the requirements of the Act or otherwise remedy these defective SIPs.'' [110] The EPA included these six states' affirmative defense provisions in order to provide comprehensive guidance to all states concerning affirmative defense provisions in SIPs and to avoid confusion that may arise due to recent rulemakings and court decisions relevant to such provisions under the CAA.

The SIP call promulgated by the EPA in this action applies only to the particular SIP provisions identified in this document, and the scope of the SIP call for each state is limited to those provisions. However, if states of their own accord wish to revise SIP provisions, beyond those identified in this SIP call, that they believe are inconsistent with the SSM Policy and the CAA, the EPA will review and act on those SIP revisions in accordance with CAA sections 110(k), 110(l) and 193.

4. Comments that the EPA should create regulatory text in 40 CFR part 51 to forbid SSM exemptions in SIP provisions if the CAA precludes them.

Comment: Commenters argued that the EPA, before issuing a SIP call requiring states to revise SIP provisions containing exemptions for emissions during SSM events, should first have promulgated specific regulations articulating that such exemptions are precluded by the CAA. According to commenters, taking this approach would have given states more certainty and clarity and provided states with more time to develop SIP revisions consistent with those regulatory requirements. Commenters also asserted that it is not appropriate for the EPA to proceed with a SIP call to states without prior rulemaking to create regulatory provisions explicitly prohibiting SSM exemptions in SIPs, given that the Agency has previously approved the SIP provisions at issue.

Response: The EPA disagrees with the commenters' argument that the Agency must first promulgate regulations to make clear that exemptions for emissions during SSM events are not permissible in SIPs, prior to issuing this SIP call. The EPA likewise disagrees with the implication that its authority to promulgate a SIP call is restricted only to those issues for which there is specifically applicable regulatory text, as opposed to requirements related to statutory provisions, court decisions or other legal or factual bases for a determination that an existing SIP provision is substantially inadequate to meet CAA requirements. The EPA disagrees with the commenters for several reasons.

First, the CAA does not impose a general obligation upon the Agency to promulgate regulations applicable to all SIP requirements. Although the EPA has elected to promulgate regulations to address a broad variety of issues relevant to SIPs,[111] the Agency is not obligated to promulgate regulations

[106] February 2013 proposal, 78 FR 12459 (February 22, 2013).

[107] The SIP provisions for which the EPA proposed SIP calls in its February 2013 proposal were further limited to those for which the Petitioner specifically requested action, with three exceptions; the EPA proposed SIP calls for additional SIP provisions in Ohio, North Dakota and West Virginia (one each), for reasons explained in section IX of the February 2013 proposal.

[108] The EPA notes that it has received a separate petition for rulemaking requesting it to evaluate SIP provisions in the State of Wisconsin. The EPA is not taking action on that separate petition as part of this action but will take action on that petition in a future rulemaking.

[109] Of these six states in which the EPA independently identified affirmative defense provisions, two states (California and Texas) were not identified in the Petition. For another two of these states (New Mexico and Washington), the EPA had already reviewed other affirmative defense provisions specifically identified in the Petition and had already proposed SIP calls in the February 2013 proposal. For the other two states (South Carolina and West Virginia), the EPA had already reviewed and proposed SIP calls for provisions that were identified by the Petitioner but that did not include affirmative defenses.

[110] Petition at 14.

[111] *See, generally,* 40 CFR part 51 (including regulations applicable to many aspects of SIPs.

unless there is a specific statutory mandate that it do so.[112] In addition, the EPA has authority under section 301 to promulgate such regulations as it deems necessary to implement the CAA (*e.g.,* to fill statutory gaps left by Congress for the EPA to fill or to clarify ambiguous statutory language). With respect to SIP requirements, however, the EPA has elected to promulgate regulations or to issue guidance to states to address different requirements, as appropriate.[113] In short, there is no specific statutory requirement that the EPA promulgate regulations with respect to the types of deficiencies in SIP provisions at issue in this action prior to issuing a SIP call.

Second, the EPA has historically elected to address the key issues relevant to this SIP call action in guidance. Through a series of guidance documents, issued in 1982, 1983, 1999 and 2001, the EPA has previously explained its interpretations of the CAA with respect to SIP provisions that contain automatic SSM exemptions, discretionary SSM exemptions, the exercise of enforcement discretion for SSM events and affirmative defenses for SSM events. Starting in the 1982 SSM Guidance, the EPA explicitly acknowledged that it had previously approved some SIP provisions related to emissions during SSM events that it should not have, because the provisions were inconsistent with requirements for SIPs. In addition, the EPA has in rulemakings applied its interpretation of the CAA with respect to issues such as exemptions for emissions during SSM events, and these actions have been approved by courts.[114] Under these circumstances, the EPA does not agree that promulgation of generally applicable regulations was necessary to put states on notice of the Agency's interpretation of the CAA with respect to these issues, prior to issuance of a SIP call.

Finally, the EPA's authority under section 110(k)(5) is not limited, expressly or otherwise, solely to inadequacies related to regulatory requirements. To the contrary, section 110(k)(5) refers broadly to attainment and maintenance of the NAAQS, adequate mitigation of interstate transport and compliance with ''any requirement of'' the CAA. In addition, section 110(k)(5) specifically contemplates situations such as this one, ''whenever'' the EPA finds previously approved SIP provisions to be deficient. Nothing in the CAA requires the EPA to conduct a separate rulemaking clarifying its interpretation of the CAA prior to issuance of this SIP call. For the types of deficiencies at issue in this action, the EPA believes that the statutory requirements of the CAA itself and recent court decisions concerning those statutory provisions provide sufficient basis for this SIP call.

For the foregoing reasons, the EPA disagrees that before requiring states to revise SIPs that contain provisions with SSM exemptions, the EPA first must promulgate regulations explicitly stating that such exemptions are impermissible under the CAA. In addition, the EPA notes that although it is not promulgating generally applicable regulations in this action, it is nonetheless revising its guidance in the SSM Policy through rulemaking and has thereby provided states and other parties the opportunity to comment on the Agency's interpretation of the CAA with respect to this issue.

5. Comments that the EPA did not provide a sufficiently long comment period on the proposal in general or as contemplated in Executive Order 13563.

Comment: A number of commenters argued that the comment period provided by the EPA for the February 2013 proposal was ''at odds with'' Executive Order 13563. The commenters alleged that the comment period was ''unconscionably short,'' even so short as to be ''arbitrary and capricious'' because, in order to provide comments, ''impacted States and industries must perform the data collection and analysis necessary to evaluate the need for the proposed rule and its impacts.'' Further, the commenters alleged, the ''EPA's failure and refusal to perform any technical analyses of the feasibility of source operations after the elimination of SSM provisions or the likely capital and operating costs of additional control equipment required to meet numeric standards during all operational periods has denied the States, the affected parties, and the public a meaningful opportunity to evaluate and comment upon the proposed rule.'' Finally, one commenter asserted that Executive Order 13563 requires that ''[b]efore issuing a notice of proposed rulemaking, each agency, where feasible and appropriate, shall seek the views of those who are likely to be affected.''[115] The commenter claimed that because the EPA allegedly ''failed to seek the views of those who are likely to be affected and those who are potentially subject to such rulemaking, EPA's actions ignore the requirements of the Executive Order.''

Response: The EPA disagrees that it has not provided sufficiently long comment periods to address the specific issues relevant to this action. As described in section IV.D.1 of this document, the EPA has followed all steps of a notice-and-comment rulemaking, as governed by applicable statutes, regulations and executive orders, including a robust process for public participation. When the EPA initially proposed to take action on the Petition, in February 2013, it simultaneously solicited public comment on all aspects of its proposed response to the issues in the Petition and in particular on its proposed action with respect to each of the specific existing SIP provisions identified by the Petitioner as inconsistent with the requirements of the CAA. In response to requests, the EPA extended the public comment period for this proposal to May 13, 2013, which is 80 days from the date the proposed rulemaking was published in the **Federal Register** and 89 days from the date the proposed rulemaking was posted on the EPA's Web site.[116] The EPA deemed this extension appropriate because of the issues raised in the February 2013 proposal. The EPA also held a public hearing on March 12, 2013. In response to this proposed action, the EPA received approximately 69,000 public comments, including over 50 comment letters from state and local governments, over 150 comment letters from industry commenters, over 25 comment letters from public interest groups and many thousands of comments from individual commenters. Many of these comment

[112] *See, e.g.,* CAA section 169A(a)(4) (requiring the EPA to promulgate regulations governing the requirements relevant to SIP requirements for purposes of regional haze reduction).

[113] *See, e.g.,* ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992) (the ''General Preamble'' that continues to provide guidance recommendations to states for certain attainment plan requirements for various NAAQS); 40 CFR part 51, subpart Z (imposing regulatory requirements for certain attainment plan requirements for the 1997 $PM_{2.5}$ NAAQS).

[114] *See, e.g., Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000) (upholding the ''NO_X SIP Call'' to states requiring revisions to previously approved SIPs with respect to ozone transport and section 110(a)(2)(D)(i)(I)); ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21639 (April 18, 2011) (the EPA issued a SIP call to rectify SIP provisions dating back to 1980).

[115] *See* E.O. 13563 section 2(c).

[116] *See* ''State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Notice of extension of public comment period,'' 78 FR 20855 (April 8, 2013), in the rulemaking docket at EPA–HQ–OAR–2012–0322–0126.

letters were substantial and covered numerous issues.

Similarly, when the EPA ascertained that it was necessary to revise its proposed action on the Petition with respect to affirmative defenses in SIP provisions, the Agency issued the SNPR. In that supplemental proposal, in September 2014, the EPA fully explained the issues and took comment on the questions related to whether affirmative defense provisions are consistent with CAA requirements concerning the jurisdiction of courts in enforcement actions, and thus whether such provisions are consistent with fundamental CAA requirements for SIP provisions. The EPA provided a public comment period ending November 6, 2014, which is 50 days from the date the SNPR was published in the **Federal Register** and 62 days from the date the SNPR was posted on the EPA's Web site. The EPA believes that the comment period was sufficient given that the subject of the SNPR was limited to the narrow issue of whether affirmative defense provisions are consistent with CAA requirements. The EPA also held a public hearing on the SNPR on October 7, 2014 on the specific topic of the legitimacy of affirmative defense provisions in SIPs. In response to the SNPR, the EPA received over 20,000 public comments, including at least 9 comment letters from states and local governments, over 40 comment letters from industry commenters, at least 6 comment letters from public interest groups, and many thousands of comments from individual commenters.

Executive Order 13563 provides that each agency should ''afford the public a meaningful opportunity to comment through the Internet on any proposed regulation, with a comment period that should generally be *at least 60 days.*'' [117] The length of the Agency's comment period for the original proposed rulemaking well-exceeded this standard. The EPA also facilitated comment on the action by providing a full and detailed evaluation of the relevant issues in the February 2013 proposal, the background memorandum supporting the proposal and the SNPR.

When considering whether an agency has provided for adequate public input, reviewing courts are generally most concerned with the overall adequacy of the opportunity to comment. This, in turn, typically depends on steps the agency took to notify the public of information that is important to this action. Comment period length is only one factor that courts consider in this analysis, and courts have regularly found that comment periods of significantly shorter length than the 80 days provided here on the February 2013 proposal were reasonable in various circumstances.[118] Given the nature of the issues raised by the Petition, the EPA believes that the comment period was appropriate and sufficient to allow for full analysis of the issues and preparation of comments. The number of comments received on the February 2013 proposal, and the breadth of issues and level of detail provided by the commenters, both supportive and adverse, serve to support the EPA's view on this point.

The EPA also disagrees with respect to the claims of commenters that the comment period was insufficient because the EPA should provide time for commenters to evaluate and analyze fully the possible ultimate impacts of the SIP call upon particular sources, to determine what type of SIP revision by a state is appropriate in response to a SIP call, or to ascertain what specific new emission limitation or control measure requirement states should impose upon sources in such a future SIP revision. The EPA's action on the Petition concerning specific existing SIP provisions is focused upon whether those existing provisions meet fundamental legal requirements of the CAA for SIP provisions. The EPA is not required to provide a comment period for this action that allows states actually to determine which of the potential forms of SIP revision they may wish to undertake, or to complete those SIP revisions, as part of this rulemaking. The subsequent state and EPA rulemaking processes on the SIP revisions in response to this SIP call action will provide time for further evaluation of the issues raised by commenters.

As explained in the February 2013 proposal, the EPA does not interpret section 110(k)(5) to require it to ''prove causation'' concerning what precise impacts illegal SIP provisions are having on CAA requirements, such as attainment and maintenance of the NAAQS and enforcement of SIP requirements.[119] Nor is the EPA directing states to adopt a specific control measure in response to the SIP call; the decision as to how to revise the affected SIP provisions in response to the SIP call is left to the states. The state's response to the SIP call will be developed in future rulemaking actions at both the state and federal level which will similarly be subject to full notice-and-comment proceedings. In electing to proceed by SIP call under section 110(k)(5), rather than by error correction under section 110(k)(6), the EPA is providing affected states with the maximum time permitted by statute to determine how best to revise their SIP provisions, consistent with CAA requirements. During this process, the commenters and other stakeholders will have the opportunity to participate in the development of the SIP revision, including decisions such as how the state elects to revise the deficient SIP provisions (*e.g.,* merely to eliminate an exemption for SSM events or to impose an alternative emission limitation applicable to startup and shutdown).

The questions posed by the commenters about what specific emission limitations should apply during startup and shutdown events, what control measures will meet applicable CAA legal requirements, what control measures will be effective and cost-effective to meet applicable legal standards and other similar questions are exactly the sorts of issues that states will evaluate in the process of revising affected SIP provisions. Moreover, these are the same sorts of questions that the EPA will be evaluating when it reviews state SIP submissions made in response to the SIP call. The EPA is not required, by Executive Order 13563 or otherwise, to provide a comment period that would allow for all future actions in response to the SIP call to occur before issuing the SIP call. The EPA anticipates that the commenters will be able to participate actively in the actions that will happen in due course in response to this SIP call.

Finally, the EPA disagrees that it did not adequately seek the views of potentially affected entities prior to issuance of the February 2013 proposal. The EPA alerted the public to the existence of the Petition by soliciting comment on the settlement agreement that obligated the Agency to act upon it, in accordance with CAA section 113(g). Subsequently, EPA personnel communicated about the Petition and the issues it raised in various standing

[117] *See* E.O. 13563 section 2(b) (emphasis added).

[118] *See, e.g., Omnipoint Corp.* v. *Fed. Commc'ns Comm'n,* 78 F.3d 620, 629 (D.C. Cir. 1996) (approving a 7-day comment period); *Florida Power & Light Co.* v. *United States,* 846 F.2d 765, 772 (D.C. Cir. 1988) (holding a 15-day comment period to not be unreasonable under the governing circumstances); *Conn. Light & Power Co.* v. *NRC,* 673 F.2d 525, 534 (D.C. Cir. 1982) (holding 30 days not unreasonable in the particular situation); *Am. Farm Bureau Fedn* v. *United States EPA,* 984 F.Supp.2d 289, 333 (M.D. Pa. 2013) (holding that a 45-day comment period was adequate despite ''technical complexities of the regulations and issues raised'').

[119] This issue is addressed in more detail in section VIII.A.1 of this document.

meetings and conference calls with states and organizations that represent state and local air regulators.

6. Comments that this action is not ''nationally applicable'' for purposes of judicial review.

Comment: Commenters alleged that the SSM SIP call is not ''nationally applicable'' for purposes of judicial review. One state commenter cited *ATK Launch Systems* for the proposition that the specific language of the regulation being challenged indicates whether an action is nationally or locally/regionally applicable. Because a SIP provision subject to this SIP call is state-specific, the commenter argued, it is of concern only for that state and thus the SIP call is a locally applicable action.[120]

Response: The EPA disagrees with the commenter that the SIP call is not a nationally applicable action. In this action, the EPA is responding to a Petition that requires the Agency to reevaluate its interpretations of the CAA in the SSM Policy that apply to SIP provisions for all states across the nation. In so doing, the EPA is reiterating its interpretations with respect to some issues (*e.g.,* that SIP provisions cannot include exemptions for emissions during SSM events) and revising its interpretations with respect to others (*e.g.,* so that SIP provisions cannot include affirmative defenses for emissions during SSM events). In addition to reiterating and updating its interpretations with respect to SIP provisions in general, the EPA is also applying its interpretations to specific existing provisions in the SIPs of 41 states. Through this action the EPA is establishing a national policy that it is applying to states across the nation. As with many nationally applicable rulemakings, it is true that this action also has local or regional effects in the sense that EPA is requiring 36 individual states to submit revisions to their SIPs. However, through this action the EPA is applying the same legal and policy interpretation to each of these states. Thus, the underlying basis for the SIP call has ''nationwide scope and effect'' within the meaning of section 307(b)(1) as explained by the EPA in the February 2013 proposal. A key purpose of the CAA in channeling to the D.C. Circuit challenges to EPA rulemakings that have nationwide scope and effect is to minimize instances where the same legal and policy basis for decisions may be challenged in multiple courts of appeals, which instances would potentially lead to inconsistent judicial holdings and a patchwork application of the CAA across the country. We note that in the *ATK Launch* case cited by commenters, the U.S. Court of Appeals for the Tenth Circuit (Tenth Circuit) in fact transferred to the D.C. Circuit challenges to the designation of two areas in Utah that were part of a national rulemaking designating areas across the U.S. for the $PM_{2.5}$ NAAQS. In transferring the challenges to the D.C. Circuit, the Tenth Circuit noted that the designations rulemaking ''reached areas coast to coast and beyond'' and that the EPA had applied a uniform process and standard.[121] Significantly, in support of its decision to transfer the challenges to the D.C. Circuit, the Tenth Circuit stated: ''The challenge here is more akin to challenges to so-called 'SIP Calls,' which the Fourth and Fifth Circuits have transferred to the D.C. Circuit . . . Although each of the SIP Call petitions challenged the revision requirement as to a particular state, the SIP Call on its face applied the same standard to every state and mandated revisions based on that standard to states with non-conforming SIPs in multiple regions of the country.'' [122]

7. Comments that the EPA was obligated to address and justify the potential costs of the action and failed to do so correctly.

Comment: Several commenters alleged that the EPA has failed to address the costs associated with this rulemaking action appropriately and consistent with legal requirements. In particular, commenters alleged that the EPA is required to address costs of various impacts of this SIP call, including the costs that may be involved in changes to emissions controls or operation at sources and the costs to states to revise permits and revise SIPs in response to the SIP call.

Commenters also alleged that the EPA has failed to comply with Executive Order 12291, Executive Order 12866, Executive Order 13211, the Regulatory Flexibility Act and the Unfunded Mandates Reform Act.

One commenter supported the EPA's approach with respect to cost.

Response: The EPA disagrees with commenters concerning its compliance with the Executive Orders and statutes applicable to agency rulemaking in general. The EPA maintains that it did properly consider the costs imposed by this SIP call action, as required by law. As explained in the February 2013 proposal, to the extent that the EPA is issuing a SIP call to a state under section 110(k)(5), the Agency is only requiring a state to revise its SIP to comply with existing requirements of the CAA. The EPA's action, therefore, would leave to states the choice of how to revise the SIP provision in question to make it consistent with CAA requirements and of determining, among other things, which of several lawful approaches to the treatment of excess emissions during SSM events will be applied to particular sources. Therefore, the EPA considers the only direct costs of this rulemaking action to be those to states associated with preparation and submission of a SIP revision by those states for which the EPA issues a SIP call.[123] Examples of such costs could include development of a state rule, conducting notice and public hearing and other costs incurred in connection with a SIP submission. The EPA notes that it did not consider the costs of potential revisions to operating permits for sources to be a direct cost imposed by this action, because, as stated elsewhere in this document, the Agency anticipates that states will elect to delay any necessary revision of permits until the permits need to be reissued in the ordinary course after revision of the underlying SIP provisions.

The commenters also incorrectly claim that the EPA failed to comply with Executive Order 12291. That Executive Order was explicitly revoked by Executive Order 12866, which was signed by President Clinton on September 30, 1993.

The commenters are likewise incorrect that the EPA did not comply with Executive Order 12866. This action was not deemed ''significant'' on a basis of the cost it will impose as the commenters claimed. The EPA has already concluded that this action will not result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, of state, local or tribal governments or communities. The EPA instead determined that, as noted in both the February 2013 proposal (section X.A) and the SNPR (section VIII.A), this action is a ''significant regulatory action'' as that term is defined in Executive Order 12866 because it raises novel legal or policy issues. Accordingly, it was on that basis that the EPA submitted the February 2013 proposal, the SNPR and the final action to the Office of Management and Budget (OMB) for review. Changes made

[120] *See ATK Launch Systems, Inc.* v. *EPA,* 651 F.3d 1194 (10th Cir. 2011).

[121] *Id.,* 651 F.3d at 1197.

[122] *Id.,* 651 F.3d at 1199.

[123] *See* Memorandum, ''Estimate of Potential Direct Costs of SSM SIP Calls to Air Agencies,'' April 28, 2015, in the rulemaking docket.

in response to OMB review are documented in the docket for this action. The EPA believes it has fully complied with Executive Order 12866.

As stated in the February 2013 proposal, the EPA does not believe this is a ''significant energy action'' as defined in Executive Order 13211, because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. As described earlier, this action merely requires that states revise their SIPs to comply with existing requirements of the CAA. States have the choice of how to revise the deficient SIP provisions that are the subject of this action; there are a variety of different ways that states may treat the issue of excess emissions during SSM events consistent with CAA requirements for SIPs. This action merely prescribes the EPA's action for states regarding their obligations for SIPs under the CAA, and therefore it is not a ''significant energy action'' under Executive Order 13211.

With respect to the Regulatory Flexibility Act (RFA), as the EPA explained in the February 2013 proposal, courts have interpreted the RFA to require a regulatory flexibility analysis only when small entities will be subject to the requirements of the rule.[124] This action will not impose any requirements on small entities. Instead, it merely reiterates the EPA's interpretation of the statutory requirements of the CAA. To the extent that the EPA is issuing a SIP call to a state under section 110(k)(5), the EPA is only requiring the state to revise its SIP to comply with existing requirements of the CAA. In turn, the state will determine whether and how to regulate specific sources, including any small entities, through the process of deciding how to revise a deficient SIP provision. The EPA's action itself will not have a significant economic impact on a substantial number of small entities.

As the EPA explained in the February 2013 proposal, this action is not subject to the requirements of the Unfunded Mandates Reform Act (UMRA) because it does not contain a federal mandate that may result in expenditures of $100 million or more for state, local and tribal governments, in the aggregate, or the private sector in any one year. With respect to the impacts on sources, the EPA's action in this rulemaking is not directly imposing costs on any sources. The EPA's action is merely directing states to revise their SIPs in order to bring them into compliance with the legal requirements of the CAA for SIP provisions. In response to the SIP call, the states will determine how best to revise their deficient SIP provisions in order to meet CAA requirements. It is thus the states that will make the decisions concerning how best to revise their SIP provisions and will determine what impacts will ultimately apply to sources as a result of those revisions.

8. Comments that the EPA's action violates procedural requirements of the CAA or the APA, because the EPA is acting on the Petition, updating its SSM Policy and applying its interpretation of the CAA to specific SIP provisions in one action.

Comment: Commenters argued that the EPA's proposed action on the Petition, which includes simultaneous updating of its interpretations of the CAA in the SSM Policy and application of those revised interpretations to existing SIP provisions, is in violation of procedural requirements of the CAA and the APA. According to the commenters, the EPA's combination of actions is a ''subterfuge'' to avoid notice and comment on the proposed actions in the February 2013 proposal. The commenters claimed that the EPA could only take these actions through two or more separate rulemaking actions. By proposing to update its interpretation of the CAA in the SSM Policy through notice-and-comment rulemaking and proposing to apply its interpretation of the CAA through notice-and-comment rulemaking to existing SIP provisions, the commenters claimed, the EPA has prejudged the outcome of this action.

Response: The EPA does not agree that it was required to take this action in multiple separate rulemakings as claimed by the commenters. First, the EPA notes, the fact that the commenters' allegation—that the Agency failed to proceed by notice and comment—was raised in a comment letter submitted on the February 2013 proposal belies the commenters' overarching procedural argument that the EPA is failing to subject its interpretations of the CAA to notice-and-comment rulemaking. Second, although the EPA could elect to undertake two or more separate notice-and-comment rulemakings in order to answer the Petition, to revise its interpretations of the CAA in the SSM Policy and to evaluate existing provisions in state SIPs against the requirements of the CAA, there is no requirement for the Agency to do so. To the contrary, the EPA believes that it is preferable to take these interrelated actions in a combined rulemaking process. This combined approach allows the EPA to explain its actions comprehensively and in their larger context. The combined approach allows commenters to participate more meaningfully by considering together the proposed action on the Petition, the proposed interpretations of the CAA in the SSM Policy and the proposed application of the EPA's interpretation to specific SIP provisions. By addressing the interrelated actions together and comprehensively, the EPA is striving to be efficient with the resources of both regulators and regulated parties. Most importantly, by combining these actions the EPA is being responsive to the need for prompt evaluation of the SIP provisions at issue and for correction of those found to be legally deficient in a timely fashion. Far from ''prejudging'' the issues, the EPA explicitly sought comment on all aspects of the February 2013 proposal and sought additional comment on issues related to affirmative defense provisions in the SNPR. Naturally, the EPA's proposal and supplemental proposal reflected its best judgments on the proper interpretations of the CAA and application of those interpretations to the issues raised by the Petition, as of the time of the February 2013 proposal and the SNPR.

VI. Final Action in Response To Request That the EPA Limit SIP Approval to the Text of State Regulations and Not Rely Upon Additional Interpretive Letters From the State

A. What the Petitioner Requested

The Petitioner's third request was that when the EPA evaluates SIP revisions submitted by a state, the EPA should require ''all terms, conditions, limitations and interpretations of the various SSM provisions to be reflected in the unambiguous language of the SIPs themselves.'' [125] The Petitioner expressed concern that the EPA has previously approved SIP submissions with provisions that ''by their plain terms'' do not appear to comply with the EPA's interpretation of CAA requirements embodied in the SSM Policy and has approved those SIP submissions in reliance on separate ''letters of interpretation'' from the state that construe the provisions of the SIP submission itself to be consistent with the SSM Policy.[126] Because of this reliance on interpretive letters, the Petitioner argued that ''such constructions are not necessarily apparent from the text of the provisions and their enforceability may be difficult and unnecessarily complex and

[124] *See, e.g., Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000); *Mid-Tex Elec. Co-op, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985).

[125] Petition at 16.

[126] Petition at 14.

inefficient.'' [127] The Petitioner cited various past rulemaking actions to illustrate how EPA approval of ambiguous SIP provisions can inject unintended confusion for regulated entities, regulators, and the public in the future, especially in the context of future enforcement actions. Accordingly, the Petitioner requested that the EPA discontinue reliance upon interpretive letters when approving state SIP submissions, regardless of the circumstances. A more detailed explanation of the Petitioner's arguments appears in the 2013 February proposal.[128]

B. What the EPA Proposed

In the February 2013 proposal, the EPA proposed to deny the Petition with respect to this issue. The EPA explained the basis for this proposed disapproval in detail, including a discussion of the statutory provisions that the Agency interprets to permit this approach, an explanation of why this approach makes sense from both a practical and an efficiency perspective under some circumstances, and a careful explanation of the process by which EPA intends to rely on interpretive letters in order to assure that the concerns of the Petitioner with respect to potential future disputes about the meaning of SIP provisions should be alleviated.

C. What is being finalized in this action?

The EPA is taking final action to deny the Petition on this request. The EPA believes that it has statutory authority to rely on interpretive letters to resolve ambiguity in a SIP submission under appropriate circumstances and so long as the state and the EPA follow an appropriate process to assure that the rulemaking record properly reflects this reliance. To avoid any misunderstanding about the reasons for this denial or any misunderstandings about the circumstances under which, or the proper process by which, the EPA intends to rely interpretive letters, the Agency is repeating its views in this final action in detail.

As stated in the February 2013 proposal, the EPA agrees with the core principle advocated by the Petitioner, *i.e.,* that the language of regulations in SIPs that pertain to SSM events should be clear and unambiguous. This is necessary as a legal matter but also as a matter of fairness to all parties, including the regulated entities, the regulators, and the public. In some cases, the lack of clarity may be so significant that amending the state's regulation may be warranted to eliminate the potential for confusion or misunderstanding about applicable legal requirements that could interfere with compliance or enforcement. Indeed, as noted by the Petitioner, the EPA has requested that states clarify ambiguous SIP provisions when the EPA has subsequently determined that to be necessary.[129]

However, the EPA believes that the use of interpretive letters to clarify ambiguity or perceived ambiguity in the provisions in a SIP submission is a permissible, and sometimes necessary, approach under the CAA. Used correctly, and with adequate documentation in the **Federal Register** and the docket for the underlying rulemaking action, reliance on interpretive letters can serve a useful purpose and still meet the enforceability concerns of the Petitioner. So long as the interpretive letters and the EPA's reliance on them is properly explained and documented, regulated entities, regulators, and the public can readily ascertain the existence of interpretive letters relied upon in the EPA's approval that would be useful to resolve any perceived ambiguity. By virtue of being part of the stated basis for the EPA's approval of that provision in a SIP submission, the interpretive letters necessarily establish the correct interpretation of any arguably ambiguous SIP provision. In other words, the rulemaking record should reflect the shared state and EPA understanding of the meaning of a provision at issue at the time of the approval, which can then be referenced should any question about the provision arise in a future enforcement action.

In addition, reliance on interpretive letters to address concerns about perceived ambiguity can often be the most efficient and timely way to resolve concerns about the correct meaning of regulatory provisions. Both air agencies and the EPA are required to follow time- and resource-intensive administrative processes in order to develop and evaluate SIP submissions. It is reasonable for the EPA to exercise its discretion to use interpretive letters to clarify concerns about the meaning of regulatory provisions, rather than to require air agencies to reinitiate a complete administrative process merely to resolve perceived ambiguity in a provision in a SIP submission.[130] In particular, the EPA considers this an appropriate approach where reliance on such an interpretive letter allows the air agency and the EPA to put into place SIP provisions that are necessary to meet important CAA objectives and for which unnecessary delay would be counterproductive. For example, where an air agency is adopting emission limitations for purposes of attaining the NAAQS in an area, a timely letter from the air agency clarifying that an enforcement discretion provision is applicable only to air agency enforcement personnel and has no bearing on enforcement by the EPA or the public could help to assure that the provision is approved into the SIP promptly and thus allow the area to reach attainment more expeditiously than requiring the air agency to undertake a time-consuming administrative process to make a minor clarifying change in the regulatory text.

There are multiple reasons why the EPA does not agree with the Petitioner with respect to the alleged inadequacy of using interpretive letters to clarify specific ambiguities in a SIP submission and the SIP provisions that may ultimately result from approval of such a submission, provided this process is done correctly. First, under section 107(a), the CAA gives air agencies both the authority and the primary responsibility to develop SIPs that meet applicable statutory and regulatory requirements. However, the CAA generally does not specify exactly how air agencies are to meet the requirements substantively, nor does the CAA specify that air agencies must use specific regulatory terminology, phraseology, or format, in provisions submitted in a SIP submission. Air agencies each have their own requirements and practices with respect to rulemaking, making flexibility respecting terminology on the EPA's part appropriate, so long as CAA requirements are met.

As a prime example relevant to the SSM issue, CAA section 110(a)(2)(A) requires that a state's SIP shall include ''enforceable emission limitations and other control measures, means, or techniques (including economic incentives such as fees, marketable permits, and auctions of emissions rights) as well as schedules and

[127] Petition at 15.

[128] *See* February 2013 proposal, 78 FR 12459 at 12474 (February 22, 2013).

[129] *See, e.g.,* ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 76 FR 21639 at 21648 (April 18, 2011).

[130] CAA section 110(k) directs the EPA to act on SIP submissions and to approve those that meet statutory and regulatory requirements. Implicit in this authority is the discretion, through appropriate notice-and-comment rulemaking, to determine whether a given SIP provision meets such requirements, in reliance on the information that the EPA considers relevant for this purpose.

timetables for compliance as may be necessary or appropriate to meet the applicable requirements of'' the CAA. Section 302(k) of the CAA further defines the term ''emission limitation'' in important respects but nevertheless leaves room for variations of approach, stating that it is ''a requirement established by the State or Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice or operational standard promulgated under [the CAA].''

Even this most basic requirement of SIPs, the inclusion of enforceable ''emission limitations,'' allows air agencies discretion in how to structure or word the emission limitations, so long as the provisions meet fundamental legal requirements of the CAA.[131] Thus, by the explicit terms of the statute and by design, air agencies generally have considerable discretion in how they elect to structure or word their state regulations submitted to meet CAA requirements in a SIP.

Second, under CAA section 110(k), the EPA has both the authority and the responsibility to assess whether a SIP submission meets applicable CAA and regulatory requirements. Given that air agencies have authority and discretion to structure or word SIP provisions as they think most appropriate, so long as the SIP provisions meet CAA and regulatory requirements, the EPA's role is to evaluate whether those provisions in fact meet those legal requirements.[132] Necessarily, this process entails the exercise of judgment concerning the specific text of regulations, with regard both to content and to clarity. Because actions on SIP submissions are subject to notice-and-comment rulemaking, there is also the opportunity for other parties to identify SIP provisions that they consider problematic and to bring to the EPA's attention any concerns about ambiguity in the meaning of the SIP provisions under evaluation.

Third, careful review of regulatory provisions in a SIP submission can reveal areas of potential ambiguity. It is essential, however, that regulations are sufficiently clear that regulated entities, regulators and the public can all understand the SIP requirements. Where the EPA perceives ambiguity in draft SIP submissions, it endeavors to resolve those ambiguities through interactions with the relevant air agency even in advance of the SIP submission. On occasion, however, there may still remain areas of regulatory ambiguity in a SIP submission's provisions that the EPA identifies, either independently or as a result of public comments on a proposed action, for which resolution is both appropriate and necessary as part of the rulemaking action.

In such circumstances, the ambiguity may be so significant as to require the air agency to revise the regulatory text in its SIP submission in order to resolve the concern. At other times, however, the EPA may determine that with adequate explanation from the state, the provision is sufficiently clear and complies with applicable CAA and associated regulatory requirements. In some instances, the air agency may supply the explanation necessary to resolve any potential ambiguity in a SIP submission by sending an official letter from the appropriate authority. When the EPA bases its approval of a SIP submission in reliance on the air agency's official interpretation of the provision, that reading is explicitly incorporated into the EPA's action and is memorialized as the proper intended reading of the provision. In other words, the state and the EPA will have a shared understanding of the proper interpretation of the provision, and that interpretation will provide the basis for the approval of that provision into the SIP. The interpretation will also be clearly identified and presented for the public and regulated entities in the **Federal Register** document approving the SIP submission.

For example, in the Knoxville redesignation action that the Petitioner noted in the Petition, the EPA took careful steps to ensure that the perceived ambiguity raised by commenters was substantively resolved and fully reflected in the rulemaking record, *i.e.,* through inclusion of the interpretive letters in the rulemaking docket, quoting relevant passages from the letters in the **Federal Register**, and carefully evaluating the areas of potential ambiguity in response to public comments on a provision-by-provision basis. By discussing the resolution of the perceived ambiguity explicitly in the rulemaking record, the EPA assured that the correct meaning of that provision should be evident from the record, should any question concerning its meaning arise in a future dispute.

Finally, the EPA notes that while it is possible to reflect interpretive letters in the Code of Federal Regulations (CFR) or incorporate them into the regulatory text of the CFR in appropriate circumstances, there is no requirement to do so in all actions, and there are other ways for the public to have a clear understanding of the content of the SIP. First, for each SIP, the CFR contains a list or table of actions that reflects the various components of the approved SIP, including information concerning the submission of, and the EPA's action approving, each component. With this information, interested parties can readily locate the actual **Federal Register** document in which the EPA will have explained the basis for its approval in detail, including any interpretive letters that may have been relied upon to resolve any potential ambiguity in the SIP provisions. With this information, the interested party can also locate the docket for the underlying rulemaking and obtain a copy of the interpretive letter itself. Thus, if there is any debate about the correct reading of the SIP provision, either at the time of the EPA's approval or in the future, it will be possible to ascertain the mutual understanding of the air agency and the EPA of the correct reading of the provision in question at the time the EPA approved it into the SIP. Most importantly, regardless of whether the content of the interpretive letter is reflected in the CFR or simply described in the **Federal Register** preamble accompanying the EPA's approval of the SIP submission, this mutual understanding of the correct reading of that provision upon which the EPA relied will be the reading that governs, should that later become an issue.

The EPA notes that the existence of, or content of, an interpretive letter that is part of the basis for the EPA's approval of a SIP submission is in reality analogous to many other things related to that approval. Not everything that may be part of the basis for the SIP approval in the docket—including the proposal or final preambles, the technical support documents, responses to comments, technical analyses, modeling results, or docket memoranda—will be restated *verbatim,* incorporated into, or referenced in the CFR. These background materials remain part of the basis for the SIP

[131] The EPA notes that notwithstanding discretion in wording in regulatory provisions, many words have specific recognized legal meaning whether by statute, regulation, case law, dictionary definition, or common usage. For example, the term ''continuous'' has a specific meaning that must be complied with substantively, however the state may elect to word its regulatory provisions.

[132] *See, e.g., Luminant Generation* v. *EPA,* 714 F.3d 841 (5th Cir. 2013) (upholding the EPA's disapproval in part of affirmative defense provision with unclear regulatory text); *US Magnesium, LLC* v. *EPA,* 690 F.3d 1157, 1170 (10th Cir. 2012) (upholding the EPA's issuance of a SIP call to clarify a provision that could be interpreted in a way inconsistent with CAA requirements).

approval and remain available should they be needed in the future for any purpose. To the extent that there is any question about the correct interpretation of an ambiguous provision in the future, an interested party will be able to access the docket to verify the correct meaning of SIP provisions.

With regard to the Petitioner's concern that either actual or alleged ambiguity in a SIP provision could impede an effective enforcement action, the EPA believes that its current process for evaluating SIP submissions and resolving potential ambiguities, including the reliance on interpretive letters in appropriate circumstances with correct documentation in the rulemaking action, minimizes the possibility for any such ambiguity in the first instance. To the extent that there remains any perceived ambiguity, the EPA concludes that regulated entities, regulators, the public, and ultimately the courts, have recourse to use the administrative record to shed light on and resolve any such ambiguity as explained earlier in this document.

The EPA emphasizes that it is already the Agency's practice to assure that any interpretive letters are correctly and adequately reflected in the **Federal Register** and are included in the rulemaking docket for a SIP approval. Should the Petitioner or any other party have concerns about any ambiguity in a provision in a SIP submission, the EPA strongly encourages that they bring this ambiguity to the Agency's attention during the rulemaking action on the SIP submission so that it can be addressed in the rulemaking process and properly reflected in the administrative record. Should an ambiguity come to light later, the EPA encourages the Petitioner or any other party to bring that ambiguity to the attention of the relevant EPA Regional Office. If the Agency agrees that there is ambiguity in a SIP provision that requires clarification subsequent to final action on the SIP submission, then the EPA can work with the relevant air agency to resolve that ambiguity by various means.

D. Response to Comments Concerning Reliance on Interpretive Letters in SIP Revisions

The EPA received relatively few comments, both supportive and adverse, concerning the Agency's overarching decision to deny the Petition with respect to this issue. For clarity and ease of discussion, the EPA is responding to these comments, grouped by whether they were supportive or adverse, in this section of this document.

1. Comments that supported the EPA's interpretation of the CAA to allow reliance on interpretive letters to clarify ambiguities in state SIP submissions.

Comment: A number of state and industry commenters agreed with the EPA that the use of interpretive letters to clarify perceived ambiguity in the provisions in a SIP is a permissible, and sometimes necessary, approach to approving SIP submissions under the CAA when done correctly. Those commenters who supported the EPA's proposed action on the Petition did not elaborate upon their reasoning, but generally supported it as an efficient and reasonable approach to resolve ambiguities.

Response: The EPA agrees with the commenters who expressed support of the proposal based on practical considerations such as efficiency. These commenters did not, however, base their support for the proposed action on the EPA's interpretation of the CAA in the February 2013 proposal, nor did they acknowledge the parameters that the EPA itself articulated concerning the appropriate situations for such reliance and the process by which such reliance is appropriate. Thus, the EPA reiterates that reliance on interpretive letters to resolve ambiguities or perceived ambiguities in SIP submissions must be weighed by the Agency on a case-by-case basis, and such evaluation is dependent upon the specific facts and circumstances present in a specific SIP action and would follow the process described in the proposal.

2. Comments that opposed the EPA's interpretation of the CAA to allow reliance on interpretive letters to clarify ambiguities in state SIP submissions.

Comment: Other commenters disagreed with the EPA's proposed response to the Petition on this issue. One commenter opposed the Agency's reliance on interpretive letters under any circumstances and did not draw any factual or procedural distinctions between situations in which this approach might or might not be appropriate or correctly processed. This commenter argued that citizens should not be required ''to sift through a large and complex rulemaking docket in order to figure out the meaning and operation of state regulations.'' The commenter asserted that simply as a matter of ''good government,'' all state regulations approved as SIP provisions should be clear and unambiguous on their face. This commenter also expressed concern that courts could not or would not accord legal weight to interpretive letters created after state regulations were adopted and submitted to the EPA, or after the EPA's approval of the SIP submission occurred, and would view such letters as *post hoc* interpretations of no probative value. Another commenter added its view that reliance on interpretive letters is appropriate only when affected parties have the right to comment on the interpretive letters and the EPA's proposed use of them during the rulemaking in which the EPA relies on such letters to resolve ambiguities and before the Agency finally approves the SIP revision.

Response: As a general matter, the commenter opposing the EPA's reliance on interpretive letters in any circumstances because citizens would be required ''to sift through'' the docket did not provide specific arguments regarding the EPA's interpretation of the statute as stated in the February 2013 proposal. Consistent with the EPA's interpretation of the CAA, and as explained earlier in this document, the EPA agrees with the core principle that the language of regulations in SIPs that pertain to SSM events should be clear and unambiguous. A commenter argued that ''a fundamental principle of good government is making sure that all people know what the applicable law is. Having the applicable law manifest in a letter sitting in a filing cabinet in one office clearly does not qualify as good government.'' The EPA generally agrees on this point as well. As explained earlier in this document, the EPA allows the use of interpretive letters to clarify perceived ambiguity in the provisions of a SIP submission only when used correctly, with adequate documentation in both the **Federal Register** and the docket for the underlying rulemaking action. Section VI.B of this document explains how interested parties can use the list or table of actions that appears in the CFR and that reflects the various components of the approved SIP, to identify the **Federal Register** document wherein the EPA has explained the basis for its decision on any individual SIP provision. As such, the EPA does not envision a scenario whereby a citizen or a court would be unable to determine how the air agency and the EPA interpreted a specific SIP provision at the time of its approval into the SIP. Assuming there is any ambiguity in the provision, the mutual understanding of the state and the EPA as to the proper interpretation of that provision would be clear at the time of the approval of the SIP revision, as reflected in the **Federal Register** document for the final rule and the docket supporting that rule, which should answer any question about the correct interpretation of the term.

The same commenter also questioned whether ''courts can or will give any

legal weight to interpretative letters created after state regulations are adopted or SIP approvals occurred, in the face of industry defendant arguments that the SIP provisions do not accord with those *post hoc* interpretive letters.'' This commenter asserted that by not requiring all interpretations of the SSM provisions in the ''unambiguous language of the SIPs,'' the EPA is accepting ''great legal uncertainty'' as to whether judges will consider interpretive letters in enforcement actions. As a preliminary matter, as explained earlier in this document, this action does not apply to ''*post hoc*'' interpretive letters, *i.e.,* to situations where a state would submit an interpretive letter after the EPA's approval of the SIP. Through this action the EPA is confirming its view that it may use interpretive letters to clarify ambiguous SIP provisions only when those letters were submitted to the EPA during the evaluation of the SIP submission and before final approval of the SIP revision and were included in the final rulemaking docket and explicitly discussed in the **Federal Register** document announcing such final action.

In addition, as explained earlier in this document, once the EPA approves a SIP revision, it becomes part of the state's SIP identified in the CFR and thus becomes a federally enforceable regulation. In cases where the substance of the interpretive letter is provided in the CFR itself, either by copying the interpretation *verbatim* into the regulatory text or by incorporating the letter by reference, courts need not look further for the state and the Agency's agreed upon interpretation. The EPA's interpretation will be clearly reflected in the CFR. The EPA recognizes that actual or perceived regulatory ambiguity may become an issue in instances where the interpretive letter is reflected in the preamble to the final rulemaking but is not copied or incorporated by reference in the CFR text itself. It is important to note, however, that once included in the preamble to the final rule, the air agency's interpretation of the SIP provision, as reflected in the interpretive letter, becomes the EPA's promulgated interpretation as well. While the EPA recognizes that an agency's preamble guidance generally does not have the binding force of an agency's regulations, courts do view it as informative in understanding an agency's interpretation of its own regulation,[133] and courts accord an agency's interpretation of its own regulations a '' 'high level of deference,' accepting it 'unless it is plainly wrong.' ''[134] When reviewing a purportedly ambiguous agency regulation, courts have found that the agency's interpretation of its own regulation is ''controlling unless 'plainly erroneous or inconsistent with the regulation.' ''[135] Based on these settled legal principles, the EPA would expect a court in an enforcement action to look not only to the text of the regulation at issue but also to the preamble to the final rule. The preamble would contain an explanation of any interpretive letter from the state upon which the EPA relied in order to interpret any ambiguous SIP provisions.[136] As such, the EPA disagrees that it is ''accepting an unreasonable amount of legal uncertainty'' in future enforcement actions by allowing the use of interpretive letters to clarify SIP provisions where such letters are specifically discussed in the final rulemaking. The EPA reiterates that reliance on such interpretive letters is not appropriate in all circumstances, such as instances in which the state's SIP submission is so significantly ambiguous that it is necessary to request that the state revise the regulatory text before the EPA can approve it into the SIP.

Finally, a commenter stated its view that reliance on interpretive letters may be appropriate, but only when affected parties have the right to comment on the letter and the EPA's reliance on it during the rulemaking in which the letter is relied upon. The EPA has explained earlier in this document the proper circumstances under which such reliance may be appropriate and the proper process to be followed when reliance upon such letters is appropriate, but the EPA also notes that the process does not require that the letters always be made available for public comment. As explained earlier in this document, the EPA makes every attempt to identify ambiguities in state-submitted SIPs and requests states to submit interpretive letters to explain any ambiguities, before putting the proposed action on the SIP submission out for public notice and comment. On occasion, however, ambiguous provisions may inadvertently remain and are not identified until the notice-and-comment period has begun. As explained earlier in this document, sometimes these ambiguities are so significant that the EPA requires the state to resubmit its SIP submission altogether, which would entail another notice-and-comment period. When the EPA does not deem the ambiguity to be so significant as to warrant a revision to the state's regulatory text in the SIP submission, the Agency believes that resolution of the ambiguity through the submission of an interpretive letter, which then is incorporated into the EPA's action, reflected in the administrative record and memorialized as the proper intended reading of the provision, is appropriate.

This approach comports with well-established principles applicable to notice-and-comment rulemaking generally. One purpose of giving interested parties the opportunity to comment is to provide these parties the opportunity to bring areas of potential ambiguity in the proposal to an agency's attention so that the concerns may be addressed before the agency takes final action. If the APA did not allow the agency to consider comments and provide clarification when issuing its final action as necessary, this purpose would be defeated. Courts have held that so long as a final rule is a ''logical outgrowth'' of the proposed rule, adequate notice has been provided.[137] It is the EPA's practice to neither require a state to resubmit a SIP submission nor repropose action on the submission, so long as the clarification provided in the interpretive letter is a logical outgrowth of the proposed SIP provision. If an interested party believes that the EPA is incorrect in not requiring the state to revise its SIP submission or that the EPA should repropose action on a submission, including the clarification provided by the interpretive letter in the plain language of the SIP submission itself, that party does have recourse. The APA gives that party the opportunity to petition the EPA for rulemaking to reconsider the decision under 5 U.S.C. 553(e). For these reasons, the EPA believes that its process for using interpretive letters to clarify SIP

[133] *See, e.g., Howmet Corp.* v. *EPA,* 614 F.3d 544, 552 (D.C. Cir. 2010) (using preamble guidance to interpret an ambiguous regulatory provision); *Wyo. Outdoor Council* v. *U.S. Forest Serv.,* 165 F.3d 43, 53 (D.C. Cir. 1999) (''Although the preamble does not 'control' the meaning of the regulation, it may serve as a source of evidence concerning contemporaneous agency intent.'').

[134] *Howmet* at 549 (quoting *Gen Elec. Co.* v. *EPA,* 53 F.3d 1324, 1327 (D.C. Cir. 1990)).

[135] *Auer* v. *Robbins,* 519 U.S. 452, 461 (1997) (quoting *Robertson* v. *Methow Valley Citizens Council,* 490 U.S. 332, 359 (1989)).

[136] Indeed, the APA requires agencies to ''incorporate in the rules adopted a concise general statement of their basis and purpose,'' 5 U.S.C. 553(c), often referred to as the regulatory preamble. It would not make sense for a court to attempt to interpret the text of a regulation independently from its statutorily mandated statement of basis and purpose.

[137] *See, e.g., Shell Oil Co.,* 950 F.2d 741; *NRDC* v. *Thomas,* 838 F.2d 1224 (D.C. Cir. 1988); *South Terminal Corp.* v. *EPA,* 504 F.2d 646.

provisions, as articulated in this rulemaking, is appropriate.

VII. Clarifications, Reiterations and Revisions to the EPA's SSM Policy

A. Applicability of Emission Limitations During Periods of SSM

1. What the EPA Proposed

In the February 2013 proposal, the EPA reiterated its longstanding interpretation of the CAA that SIP provisions cannot include exemptions from emission limitations for excess emissions during SSM events. This has been the EPA's explicitly stated interpretation of the CAA with respect to SIP provisions since the 1982 SSM Guidance, and the Agency has reiterated this important point in the 1983 SSM Guidance, the 1999 SSM Guidance and the 2001 SSM Guidance. In accordance with CAA section 302(k), SIPs must contain emission limitations that ''limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.'' Court decisions confirm that this requirement for continuous compliance prohibits exemptions for excess emissions during SSM events.[138]

2. What Is Being Finalized in This Action

For the reasons explained in the February 2013 proposal, in the background memorandum supporting that proposal and in the EPA's responses to comments in this document, the EPA interprets the CAA to prohibit exemptions for excess emissions during SSM events in SIP provisions. This interpretation has long been reflected in the SSM Policy. The EPA acknowledges, however, that both states and the Agency have failed to adhere to the CAA consistently with respect to this issue in some instances in the past, and thus the need for this SIP call action to correct the existing deficiencies in SIPs. In order to be clear about this important point on a going-forward basis, the EPA is reiterating that emission limitations in SIP provisions cannot contain exemptions for emissions during SSM events.

Many commenters wrongly asserted that the EPA declared in the February 2013 proposal that all emission limitations in SIPs must be established as numerical limitations, or must be set at the same numerical level at all times. The EPA did not take this position. In the case of section 110(a)(2)(A), the statute does not include an explicit requirement that all SIP emission limitations must be expressed numerically. In practice, it may be that numerical emission limitations are the most appropriate from a regulatory perspective (*e.g.,* to be legally and practically enforceable) and thus the limitation would need to be established in this form to meet CAA requirements. The EPA did not, however, adopt the position ascribed to it by commenters, *i.e.,* that SIP emission limitations must always be expressed only numerically and must always be set at the same numerical level during all modes of source operation.

The EPA notes that some provisions of the CAA that govern standard-setting limit the EPA's own ability to set non-numerical standards.[139] Section 110(a)(2)(A) does not contain comparable explicit limits on non-numerical forms of emission limitation. Presumably, however, some commenters misunderstood the explicit statutory requirement for emission limitations to be ''continuous'' as a requirement that states must literally establish SIP emission limitations that would apply the same precise numerical level at all times. Evidently these commenters did not consider the explicit recommendations that the EPA made in the February 2013 proposal concerning creation of alternative emission limitations in SIP provisions that states may elect to apply to sources during startup, shutdown or other specifically defined modes of source operation.[140] As many of the commenters acknowledged, the EPA itself has recently promulgated emission limitations in NSPS and NESHAP regulations that impose different numerical levels during different modes of source operation or impose emission limitations that are composed of a combination of a numerical limitation during some modes of operation and a specific technological control requirement or work practice requirement during other modes of operation. In light of the court's decision in *Sierra Club* v. *Johnson,* the EPA has been taking steps to assure that its own regulations impose emission limitations that apply continuously, including during startup and shutdown, as required.[141]

Regardless of the reason for the commenters' apparent misunderstanding on this point, many of the commenters used this incorrect premise as a basis to argue that ''continuous'' SIP emission limitations may contain total exemptions for all emissions during SSM events. Therefore, in this final action the EPA wishes to be very clear on this important point, which is that SIP emission limitations: (i) Do not need to be numerical in format; (ii) do not have to apply the same limitation (*e.g.,* numerical level) at all times; and (iii) may be composed of a combination of numerical limitations, specific technological control requirements and/or work practice requirements, with each component of the emission limitation applicable during a defined mode of source operation. It is important to emphasize, however, that regardless of how the air agency structures or expresses a SIP emission limitation—whether solely as one numerical limitation, as a combination of different numerical limitations or as a combination of numerical limitations, specific technological control requirements and/or work practice requirements that apply during certain modes of operation such as startup and shutdown—the emission limitation as a whole must be continuous, must meet applicable CAA stringency requirements and must be legally and practically enforceable.[142]

Another apparent common misconception of commenters was that SIP provisions may contain exemptions for emissions during SSM events, so long as there is some other generic regulatory requirement of some kind somewhere else in the SIP that coincidentally applies during those exempt periods. The other generic regulatory requirements most frequently referred to by commenters are ''general duty'' type requirements, such as a general duty to minimize emissions at all times, a general duty to use good engineering judgment at all times, or a

[138] *See, e.g., Sierra Club* v. *Johnson,* 551 F.3d 1019, 1021 (D.C. Cir. 2008) (interpreting the definition of emission limitation in section 302(k) and section 112); *Mich. Dep't of Envtl. Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000) (upholding disapproval of SIP provisions because they contained exemptions applicable to SSM events); *US Magnesium, LLC* v. *EPA,* 690 F.3d 1157, 1170 (10th Cir. 2012) (upholding the EPA's issuance of a SIP call to a state to correct SSM-related deficiencies).

[139] *See, e.g.,* CAA section 112(h)(1) (authorizing design, equipment, work practice, or other operational emission limitations under certain conditions); 40 CFR 51.308(e)(1)(iii) (regulations applicable to regional haze plans).

[140] *See* February 2013 proposal, 78 FR 12459 at 12478 (February 22, 2013) (the recommended criteria for consideration in creation of SIP provisions that apply during startup and shutdown).

[141] 551 F.3d 1019 (D.C. Cir. 2008).

[142] The EPA notes that CAA section 123 explicitly prohibits certain intermittent or supplemental controls on sources. In a situation where an emission limitation is continuous, by virtue of the fact that it has components applicable during all modes of source operation, the EPA would not interpret the components that applied only during certain modes of operation, *e.g.,* startup and shutdown, to be prohibited intermittent or supplemental controls.

general duty not to cause a violation of the NAAQS at any time. To the extent that such other general-duty requirement is properly established and legally and practically enforceable, the EPA would agree that it may be an appropriate separate requirement to impose upon sources in addition to the (continuous) emission limitation. The EPA itself imposes separate general duties of this type in appropriate circumstances.[143] The existence of these generic provisions does not, however, legitimize exemptions for emissions during SSM events in a SIP provision that imposes an emission limitation.

In accordance with the definition of section 302(k), SIP emission limitations must be continuous and apply at all times. SIP provisions may be composed of a combination of numerical limitations, specific technological control requirements and/or work practice requirements, but those must be components of a continuously applicable SIP emission limitation. In addition, the SIP emission limitation must meet applicable stringency requirements during all modes of source operation (*e.g.,* be RACT for stationary sources located in a nonattainment area) and be legally and practically enforceable. General-duty requirements that are not clearly part of or explicitly cross-referenced in a SIP emission limitation cannot be viewed as a component of a continuous emission limitation. Even if clearly part of or explicitly cross-referenced in the SIP emission limitation, however, a given general-duty requirement may not be consistent with the applicable stringency requirements for that type of SIP provision during startup and shutdown. The EPA's recommendations for developing appropriate alternative emission limitations applicable during certain modes of source operation are discussed in section VII.B.2 of this document. In general, the EPA believes that a legally and practically enforceable alternative emission limitation applicable during startup and shutdown should be expressed as a numerical limitation, a specific technological control requirement or a specific work practice requirement applicable to affected sources during specifically defined periods or modes of operation.

3. Response to Comments

The EPA received a substantial number of comments, both supportive and adverse, concerning the issue of exemptions in SIP provisions for excess emissions during SSM events. Many of these comments raised the same core issues, albeit using slight variations on the arguments or variations on the combination and sequence of arguments. For clarity and ease of discussion, the EPA is responding to these comments, grouped by issue, in this section of this document.

a. Comments that the EPA's proposed action on the Petition is incorrect because some of the Agency's own regulations contain exemptions for emissions during SSM events.

Comment: Many commenters argued that the EPA is misinterpreting the CAA to preclude SIP provisions with exemptions for emissions during SSM events because some of the Agency's own existing NSPS and NESHAP rules contain such exemptions. Some commenters provided a list of existing NSPS or NESHAP standards that they claimed currently contain exemptions for emissions during SSM events. Commenters also noted that the NSPS general provisions at 40 CFR 60.11(d) excuse noncompliance with many NSPS during periods of startup and shutdown. Other commenters asserted that the EPA's interpretations in the February 2013 proposal are inconsistent with its longstanding interpretation of the Act because the EPA itself has a long history of adopting exceptions to numerical emission limitations for emissions during SSM events, citing to the NSPS general provisions at 40 CFR 60.8, the NSPS for Fossil-Fuel-Fired Steam Generators and for Electric Utility Steam Generating Units (40 CFR part 60, respectively subparts D and Da) and the NSPS for Industrial-Commercial-Institutional Steam Generating Units and for Small Industrial-Commercial-Institutional Steam Generating Units (40 CFR part 60, respectively subparts Db and Dc). Commenters claimed that recent revisions to 40 CFR part 60, subpart Da excluded periods of startup and shutdown from new PM standards. The commenters pointed to these facts or alleged facts as evidence that the EPA is interpreting the term ''emission limitation'' or other provisions of the statute inconsistently to preclude SSM exemptions in SIP provisions.

Response: Commenters are correct that many of the EPA's existing NSPS and NESHAP standards still contain exemptions from emission limitations during periods of SSM. The exemptions in these EPA regulations, however, predated the 2008 issuance of the D.C. Circuit decision in *Sierra Club* v. *Johnson,* in which the court held that emission limitations must be continuous and thus cannot contain exemptions for emissions during SSM events. Likewise, the NSPS general provisions in 40 CFR 60.8 that commenters identified as inconsistent also predate that 2008 court decision. Although these other EPA regulations that include exemptions for emissions during SSM events were not before the court in the *Sierra Club* case, the EPA's view is that the legal reasoning of the *Sierra Club* decision applies equally to these exemptions and that the exemptions are thus inconsistent with the CAA.

Consequently, since the *Sierra Club* decision, the EPA has eliminated exemptions in many existing federal emission limitations as these standards are revised or reviewed pursuant to CAA requirements, such as CAA sections 111(b)(1)(B), 112(d)(6) and 112(f)(2).[144] Similarly, the EPA has established emission standards that apply at all times, including during SSM events, when promulgating new NSPS and NESHAP standards to be consistent with the *Sierra Club* decision.[145] The EPA recognizes that the NSPS general provisions regulations also include exemptions for emissions during SSM events, but in promulgating new NSPS since the *Sierra Club* decision, the EPA has established emission limitations in the new NSPS that apply at all times thereby superseding those general provisions. Therefore, the EPA's action in this rulemaking is consistent with other actions that the EPA has taken since the *Sierra Club* decision concerning the issue of SSM exemptions.

The fact that the EPA has not completed the process of updating its own regulations to bring them into compliance with respect to CAA requirements concerning proper treatment of emissions during SSM events does not render this SIP call action arbitrary or capricious. The existence of a deficiency in an existing EPA regulation that has not yet been corrected does not alter the legal requirements imposed by the CAA upon states with respect to SIP provisions. Thus, for example, the EPA does not agree with commenters that the continued existence of SSM exemptions

[143] *See, e.g.,* ''Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews; Final rule,'' 77 FR 49489 at 49570, 49586 (August 16, 2012) (added general standards to apply at all times).

[144] *See, e.g.,* ''New Source Performance Standards Review for Nitric Acid Plants; Final rule,'' 77 FR 48433 (August 14, 2012) (example of NSPS emission limitation that no longer includes exemption for periods of startup or shutdown).

[145] *See, e.g.,* ''Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews; Final rule,'' 77 FR 49489 (August 16, 2012) (consistent with *Sierra Club* v. *Johnson,* the EPA has established standards in both rules that apply at all times).

in the general provisions applicable to the emission limitations in the Agency's own NSPS for Fossil-Fuel-Fired Steam Generators in 40 CFR part 60, subpart D, is evidence that exemptions for emissions during SSM events are permitted by the CAA.

The EPA acknowledges that correction of longstanding regulatory deficiencies by proper rulemaking procedures requires time and resources, not only for the EPA but also for states and affected sources. Hence, the EPA has elected to proceed via its authority under section 110(k)(5) and to provide states with the full 18 months allowed by statute for compliance with this action. This SIP call is intended to help assure that state SIP provisions are brought into line with CAA requirements for emission limitations, just as the EPA is undertaking a process to update its own regulations.

The EPA also specifically disagrees with the commenters' implication that 40 CFR 60.11(d) completely excuses noncompliance during periods of startup and shutdown. Rather, that provision imposes a separate affirmative obligation to maintain and operate the affected facility, including associated air pollution control equipment, in a manner consistent with good air pollution control practices at all times. The existence of this separate duty to minimize emissions, however, does not justify or excuse the existence of an exemption for emissions during SSM events from the emission limitations of an EPA NSPS. It is a separate obligation that sources must also meet at all times.

The EPA also disagrees with the commenters who argued that the Agency has recently created new exemptions for PM emissions during startup and shutdown events in the NSPS for Electric Utility Steam Generating Units in 40 CFR part 60, subpart Da. The EPA has not created new exemptions for emissions during startup and shutdown. To the contrary, the EPA has taken steps to assure that these regulations are consistent with the statutory definition of emission limitation and with the logic of the *Sierra Club* decision on a going-forward basis. In accordance with that decision, the revised emission limitations in subpart Da NSPS apply continuously. In revising subpart Da to establish requirements for sources on which construction, modification or reconstruction commenced after May 3, 2011, the EPA determined that it was appropriate to provide that the exemptions for emissions during SSM events in the General Provisions do not apply.[146] Although the *Sierra Club* v. *Johnson* decision specifically addressed the validity of SSM exemptions in NESHAP regulations, the EPA concluded that the court's focus on the definition of ''emission limitation'' in section 302(k) applied equally to any such SSM exemptions in NSPS regulations. Thus, for affected sources on which construction, modification or reconstruction starts after May 3, 2011, the General Provisions do not provide an exemption to compliance with the applicable emission limitations during SSM events.

For such sources, the emission limitation for PM in 40 CFR 60.42Da(a) imposes a numerical level of 0.03 lb/MMBtu that applies at all times except during startup and shutdown and specific work practices that apply during startup and shutdown.[147] The related emission limitation for opacity from such sources in 40 CFR 60.42Da(b) is 20 percent opacity at all times, except for one 6-minute period per hour of not more than 27 percent, and it applies at all times except during periods of startup and shutdown when the work practices for PM limit opacity. Commenters alleged that the EPA created an ''exemption'' from the PM emission limitations in subpart Da applicable to post-May 3, 2011, affected sources. That is simply incorrect. The revised regulations in subpart Da impose a numerical emission limitation that applies at all times except during startup and shutdown and impose specific work practice requirements that apply during startup and shutdown as a component of the emission limitation. Specifically, 40 CFR 60.42Da(e)(2) explicitly requires post-May 3, 2011, affected sources to comply with specific work practice standards in part 63, subpart UUUUU. The numerical emission limitation and the work practice requirement together comprise a continuous emission limitation and there is no exemption for emissions during startup and shutdown. The fact that the EPA has established different requirements for different periods of operation does not constitute creation of an exemption. These emission limitations have numerical limitations that apply during most periods and specific technological control requirements or work practice requirements that apply during startup and shutdown, but all periods of operation are subject to controls and no periods of operation are exempt from regulation. States are similarly able to alter their regulations, in response to this SIP call, to provide for emission limitations with different types of controls applicable during different modes of source operation, so long as those controls apply at all times and no periods are exempt from controls. As explained in section VII.A of this document, the EPA interprets section 110(a)(2)(A) to permit SIP provisions that are composed of a combination of numerical limitations, specific technological control requirements and/or work practice requirements, so long as the resulting emission limitations are continuous, meet applicable stringency requirements (*e.g.,* are RACT for sources in nonattainment areas) and are legally and practically enforceable.

The EPA also notes that the provisions of 40 CFR 60.42Da(b)(1) do not provide an ''exemption'' from the opacity standard. That section merely provides that the affected sources do not need to meet the opacity standard of the NSPS (at any time), if they have installed a PM continuous emission monitoring system (PM CEMS) to measure PM emissions continuously instead of relying on periodic stack tests to assure compliance with the PM emission limitation. One reason for the imposition of opacity standards on sources is to provide an effective means of monitoring for purposes of assuring source compliance with PM emission limitations and proper operation of PM emission controls on a continuous basis. If a source is subject to a sufficiently stringent PM limitation and has opted to install, calibrate, maintain and operate a PM CEMS to measure PM emissions, then it is reasonable for the EPA to conclude that an opacity emission limitation is not needed for that particular source for those purposes.[148] The direct measurement of PM, in conjunction with an appropriately stringent PM emission limitation that

[146] *See* 40 CFR 60.48Da(a). For affected facilities for which construction, modification, or reconstruction commenced after May 3, 2011, the applicable SO_2 emissions limit under § 60.43Da, NO_X emissions limit under § 60.44Da, and NO_X plus CO emissions limit under § 60.45Da apply at all times.

[147] The EPA notes that the emission standards for SO_2 in 40 CFR 60.43Da and for NO_X in 40 CFR 60.44Da, applicable to sources on which construction, modification or reconstruction commenced after May 3, 2011, also apply continuously and contain no exemptions for emissions during SSM events.

[148] For example, for NSPS regulations under subparts D, Da, Db and Dc of 40 CFR part 60, the EPA has deemed 0.030 lb/MMBtu to be a sufficiently stringent PM limitation for certain sources operating PM CEMS to conclude that an opacity emission limitation is not needed, on the basis that the contribution of filterable PM to opacity at PM levels of 0.030 lb/MMBtu or less is generally negligible, and sources with mass limits at this level or less will operate with little or no visible emissions (*i.e.,* less than 5 percent opacity). *See* 74 FR 5072 at 5073 (January 28, 2009).

applies continuously, is an appropriate means to assure adequate control of PM emissions on a continuous basis. States evaluating how best to replace impermissible SSM exemptions from opacity standards may wish to consider a similar approach, conditioned upon the use of PM CEMS and a sufficiently stringent PM emission limitation.

Finally, the EPA emphasizes that what is at issue in this action is the question of whether emission limitations in SIP provisions can include exemptions for emissions during SSM events. The EPA is reiterating its longstanding interpretation of the CAA with respect to this question, in the process of responding to the Petition, updating its SSM Policy and applying its current interpretations of the CAA to the specific SIP provisions at issue in this SIP call action. To the extent that commenters intend to point out that the EPA needs to address exemptions for emissions during SSM events in its own existing regulations, the Agency is already aware of that need due to recent judicial decisions and is proceeding to correct those regulations in due course.

b. Comments that the EPA's proposed action on the Petition is incorrect because the Agency has previously allowed the inclusion of exemptions for emissions during SSM events through approval of NSPS or NESHAP requirements into SIPs.

Comment: Commenters asserted that the EPA is being inconsistent because it has previously approved SIP submissions that rely on NSPS rules, including the SSM exemptions in those existing rules. The commenters argued that the EPA's current interpretation of the CAA to preclude SSM exemptions in SIP provisions is thus at odds with past guidance and practice.

Response: The EPA disagrees with the argument that past approval of SIP submissions that relied upon an NSPS or NESHAP with an SSM exemption is evidence that such exemptions should be permissible in SIP provisions in the future. In the 1999 SSM Guidance, the EPA addressed the related issue of whether states could create affirmative defenses in SIP provisions that would alter or add to the requirements of an existing EPA NSPS or NESHAP.[149] At that time, the EPA clearly stated that it would be inappropriate for a state to seek to ''deviate'' from the specific requirements of an NSPS or NESHAP when adopting that standard as a SIP provision, stating that ''[b]ecause EPA set these standards taking into account technological limitations, additional exemptions would be inappropriate.'' Thus, so long as a state did not alter the requirements of the existing NSPS or NESHAP by including additional affirmative defenses or exemptions, the EPA indicated that it would approve a SIP submission that included an NSPS or NESHAP.

The commenters' argument has brought to the EPA's attention that past guidance on this issue is in fact inconsistent with more recent legal developments. At the time of the 1999 SSM Guidance, the EPA was still of the belief that its own NSPS and NESHAP regulations could legitimately include exemptions for emissions during SSM events. In that light, recommending to states that they could rely on an EPA NSPS or NESHAP as an emission limitation in a SIP provision so long as they did not alter the NSPS or NESHAP in any fashion was logical. At that time, the reasoning was that NSPS and NESHAP standards were technology-based standards that, although neither designed nor intended to meet the separate legal requirements for SIP provisions, could be used to provide emission reductions creditable in SIPs. Since the 2008 D.C. Circuit decision in *Sierra Club* v. *Johnson,* however, it has been clear that NSPS and NESHAP standards themselves cannot contain such exemptions. The reasoning of the court was that exemptions for SSM events are impermissible because they contradict the requirement that emission limitations be ''continuous'' in accordance with the definition of that term in section 302(k). Although the court evaluated this issue in the context of EPA regulations under section 112, the EPA believes that this same logic extends to SIP provisions under section 110, which similarly must contain emission limitations as defined in the CAA. Section 110(a)(2)(A) requires states to have emission limitations in their SIPs to meet other CAA requirements, and any such emission limitations would similarly be subject to the definition of that term in section 302(k).

Accordingly, the EPA concludes that, prospectively, a state should not submit an NSPS or NESHAP for inclusion into its SIP as an emission limitation (whether through incorporation by reference or otherwise), unless that NSPS or NESHAP does not include an exemption for SSM events or unless the state otherwise takes action to exclude the SSM exemption from the standard as part of the SIP submission. Because SIP provisions must apply continuously, including during SSM events, the EPA can no longer approve SIP submissions that include any emission limitations with such exemptions, even if those emission limitations are NSPS or NESHAP regulations that the EPA has not yet revised to make consistent with CAA requirements. Alternatively, states may elect to adopt an existing NSPS or NESHAP as a SIP provision, so long as the state provision excludes the SSM exemption.[150] States may also wish to replace the SSM exemption with appropriately developed alternative emission limitations that apply during startup and shutdown in lieu of the SSM exemption. Otherwise, the EPA's approval of the deficient SSM exemption provisions into the SIP would contravene CAA requirements for SIP provisions and would potentially result in misinterpretation or misapplication of the standards by regulators, regulated entities, courts and members of the public. The EPA emphasizes that the inclusion of an NSPS or NESHAP as an emission limitation in a state's SIP (which approach, as noted in section VII.B.3 of this document, would be at the state's option) is different and distinct from reliance on such standards indirectly, such as sources of emission reductions that may be taken into account for SIP planning purposes in emissions inventories or attainment demonstrations. For these uses (*i.e.,* other than as direct emission limitations), states may continue to rely on EPA NSPS and NESHAP regulations, even those that have not yet been revised to remove inappropriate exemptions, in accordance with the requirements applicable to those SIP planning functions.

c. Comments that the EPA is misinterpreting the *Sierra Club* case because it applies only to MACT regulations and not to SIP provisions.

Comment: Many commenters claimed that the EPA incorrectly applies the holding in the *Sierra Club* decision to preclude exemptions for emissions during SSM events in SIP provisions and that the *Sierra Club* decision does not apply in this context. The commenters argued that the *Sierra Club* decision was directly dependent on the structure of CAA section 112 and cannot be extended to the different regulatory

[149] *See* 1999 SSM Guidance at Attachment p. 3.

[150] Under CAA section 116, states have the explicit general authority to regulate more stringently than the EPA. Indeed, under section 116 states can regulate sources subject to EPA regulations promulgated under section 111 or section 112 so long as they do not regulate them less stringently. Accordingly, the EPA believes that states may elect to adopt EPA regulations under section 111 or section 112 as SIP provisions and expressly eliminate the exemptions for emissions during SSM events.

structure that governs SIPs under CAA section 110.

The commenters further contended that in the SIP context, the underlying air quality pollution control requirement for SIPs is to attain NAAQS and no specific level of stringency is required, unlike section 112, and Congress gave states broad discretion in the design of their SIPs. Commenters asserted that the *Sierra Club* decision held only that the general-duty requirement in the section 112 regulations did not meet the stringency requirements of CAA section 112 and that this holding does not apply in the SIP context because in the SIP context no specific level of stringency is required.

Commenters also asserted that a general-duty requirement is an appropriate alternative standard for SSM events in the SIP context because CAA sections 302(k) and 110(a)(2)(A) give states broad authority to develop the mix of controls necessary and appropriate to implement the NAAQS. Other commenters contended that the *Sierra Club* decision does not preclude states from constructing a compliance regime that uses multiple methods to limit emissions as long as the overall compliance regime to minimize emissions is enforceable.

Commenters also suggested that the decision in *Kamp* v. *Hernandez* relied upon in the *Sierra Club* case affirmed EPA's approval of a state emission limitation in a SIP that specifically allowed and even expected a certain number of annual exceedances of the emission limit.[151] Some commenters argued that the *Sierra Club* decision should not be read to impose a ''continuous emissions limitation'' requirement and that to the extent it does, it was incorrectly decided.

Response: The EPA disagrees that the court's decision in *Sierra Club* v. *Johnson* has no relevance to this action. Of course that decision specifically addressed the validity of exemptions for emissions during SSM events in the Agency's own regulations promulgated under section 112. Naturally, that decision turned, in part, on the specific provisions of section 112 and the specific arguments that each of the litigants raised in that case. However, the decision also turned in large part on the explicit statutory definition of the term ''emission limitation'' in section 302(k), which requires such limitations to be ''continuous.''

In that litigation, the EPA itself had argued that the exemptions from the otherwise applicable MACT standards during SSM events were consistent with CAA requirements because the MACT standards and the separate ''general duty'' requirements ''together form an uninterrupted, *i.e.,* continuous'' emission limitation, because either the numerical limitation or the general duty applied at all times.[152] The *Sierra Club* court rejected this argument, in part because the general duty that EPA required sources to meet during SSM events was not itself consistent with section 112(d) and the EPA did not purport to act under section 112(h). Thus, the EPA agrees that the court in *Sierra Club* explicitly found that the SSM exemption in EPA's NESHAP general provision rules violated the CAA because the general duty to minimize emissions was not a section 112(d)-compliant standard and had not been justified by the EPA as a 112(h)-compliant standard. The court reasoned that when sections 112 and 302(k) are read together, there must be a continuous section 112-compliant standard. It is important to note that if the otherwise applicable numerical MACT standards had themselves applied at all times consistent with section 302(k), then there would have been no question that they were in fact continuous.

The EPA has concluded that the reasoning of the *Sierra Club* decision is correct and further supports the Agency's interpretations of the CAA with respect to SIP provisions. As explained in the February 2013 proposal, the EPA's longstanding SSM guidance has interpreted the CAA to prohibit exemptions for emissions during SSM events since at least 1982. The EPA has long explained that exemptions for emissions during SSM events are not permissible in SIP provisions, because they interfere with attainment and maintenance of the NAAQS, protection of PSD increments and improvement of visibility, and because they are inconsistent with the enforcement structure of the CAA. The EPA also noted that the definition of emission limitation in section 302(k) was part of the basis for its interpretation concerning SIP provisions.[153] In the February 2013 proposal, the EPA explained that the *Sierra Club* court's emphasis on the definition of the term emission limitation in section 302(k) further bolsters the Agency's basis for interpreting the CAA to preclude such exemptions in SIP provisions. In other words, under the CAA and the court's decision, emission limitations in SIP provisions as well as in NSPS and NESHAP regulations must be continuous, although they can impose different levels or forms of control during different modes of source operation.

The EPA also disagrees with the argument that the *Sierra Club* decision does not apply because section 110, unlike section 112, does not impose any specific level of ''stringency'' for SIP provisions. In accordance with section 110(a)(1), states are required to have SIPs that provide for attainment, maintenance and enforcement of the NAAQS in general. Pursuant to section 110(a)(2), states are required to have SIP provisions that meet many specific procedural and substantive requirements, including but not limited to, the explicit requirements of section 110(a)(2)(A) for emission limitations necessary to meet other substantive CAA requirements. In addition, however, states must have SIP provisions that collectively meet a host of other statutory requirements that also impose more specific stringency requirements. Merely by way of example, section 110(a)(2)(I) requires states with nonattainment areas to have SIP provisions that collectively meet part D requirements.[154] In turn, the different subparts of part D applicable to each NAAQS impose many requirements that require emission limitations in SIPs that meet various levels of stringency. Again, merely by way of example, states with nonattainment areas for PM under part D subpart 4 must have SIPs that include emission limitations that meet either the RACM and RACT level of stringency (if the nonattainment area is classified Moderate) or meet the BACM and BACT level of stringency (if the area is classified Serious).[155] There are similar requirements for states to impose emission limitations that must meet various levels of stringency for each of the NAAQS. Likewise, states must impose SIP emission limitations that meet BART and reasonable progress levels of stringency for regional haze program purposes[156] and must ensure that emission limitations meet BACT or LAER levels of stringency for PSD or nonattainment NSR permitting program

[151] 752 F.2d 1444 (9th Cir. 1985).

[152] *See* 551 F.3d 1019, 1026 (D.C. Cir. 2008).

[153] *See* 1999 SSM Guidance at 2, footnote 1 (citing the section 302(k) definition of emission limitations and emission standards).

[154] Sections 171–193 of CAA title I comprise part D.

[155] *See* CAA section 172(c)(2) (generally applicable attainment plan requirements including RACM and RACT); CAA section 189(a)(1) (requirements for areas classified Moderate); section 189(b) (requirements for areas classified Serious).

[156] *See* CAA section 169A(b)(2)(A).

purposes.[157] The EPA agrees that states have broad discretion in how to devise SIP provisions under section 110, but states nevertheless are required to devise SIP provisions that meet applicable statutory stringency requirements. In short, the argument that the *Sierra Club* decision is not germane because there are no comparable ''stringency'' requirements applicable to SIP provisions is simply in error. While it is true that SIP provisions do not need to meet section 112 levels of stringency, they must still be continuous under section 302(k) and meet applicable NAAQS, PSD and visibility requirements and stringency levels. In short, they cannot contain exemptions for emissions during SSM events.

Finally, the EPA does not agree with the commenters' view of the significance of the reference to the *Kamp* v. *Hernandez* decision by the court in the *Sierra Club* decision. The *Kamp* decision upheld the EPA's approval of a SIP provision that imposed an SO_2 emission limitation on a specific stationary source.[158] To the extent that the commenters believe that the *Kamp* decision stands for the principle that SIP emission limitations can be ''continuous'' even if they do not restrict emissions to the same numerical limitation at all times, this point is not in dispute. As explained in section VII.A of this document, the EPA agrees with this principle. If, however, the commenters believe that the *Kamp* decision instead indicates that SIP emission limitations may contain exemptions, such that no emission standard applies during some mode of source operation, then that is simply incorrect. The EPA-approved SIP provision at issue in *Kamp* did not itself allow for a certain number of ''exceedances'' of the emission limitation each year. The state emission limitation rule in that case was developed to ensure attainment and maintenance of the then applicable SO_2 NAAQS and the approved emission limitation for the source fluctuated but was continuous. It was the specifications of the SO_2 NAAQS standard that allowed for a certain number of ''exceedances'' each year. The NAAQS themselves are not ''emission limitations'' governed by section 302(k) and commonly have a statistical ''form'' that authorizes a set number of ''exceedances'' of the numerical level of the NAAQS before there is a ''violation'' of the NAAQS.[159] Thus, the EPA believes that the court in the *Sierra Club* decision properly cited the *Kamp* case as support for the fundamental proposition that emission limitations must be ''continuous.'' Moreover, the EPA notes that commenters did not address other reported decisions in which courts have upheld the Agency's disapproval of SIP submissions containing SSM exemptions.[160]

d. Comments that the EPA's proposed action contradicts a 2009 guidance document concerning the effect of the *Sierra Club* decision on SSM exemptions in existing standards.

Comment: A number of commenters suggested that the EPA's February 2013 proposal is inconsistent with a memorandum (in fact a public letter) issued by the Agency following the *Sierra Club* decision in which the D.C. Circuit vacated two EPA provisions that exempt sources from section 112(d) emission standards during periods of SSM (Kushner letter).[161] The commenters noted that the Kushner letter explained that many MACT standards have SSM exemptions that were not affected by the *Sierra Club* decision. They argued that the Kushner letter should be read to mean that no emission limitations other than the ones explicitly discussed within that letter would be affected by the court's holding that emission limitations under the CAA must be continuous.

Response: The EPA disagrees with these comments for several reasons. First, the commenters misinterpret the Kushner letter. The purpose of the Kushner letter was to explain the direct and immediate impact of the *Sierra Club* decision, which vacated the SSM exemption in EPA's NESHAP general provisions regulations. The Kushner letter explained that the vacatur would ''immediately and directly'' affect only the subset of NESHAP source category standards that incorporated the general provisions' exemption by reference, and that contain no other regulatory text exempting or excusing, in any way, compliance during SSM events, because only the general provisions' exemption was challenged and before the court in the *Sierra Club* case. However, the Kushner letter clearly stated that the legality of all NESHAP SSM exemption provisions was in question and that EPA would examine such provisions in light of the court's decision. Therefore, the commenters' suggestion that the Kushner letter supports a limited reading of the legal reasoning of the *Sierra Club* case is incorrect.

Second, the Kushner letter did not explicitly or implicitly address the issue of whether the CAA allows exemptions for emissions during SSM events in SIP provisions. That fact is unsurprising, in that at the time of the Kushner letter the EPA already had guidance in the SSM Policy (issued and reiterated in 1982, 1983, 1999 and 2001) that clearly stated the Agency's view that such exemptions are not permissible in SIP provisions, consistent with CAA requirements. It would also have been unnecessary for the Kushner letter discussing the impact of the *Sierra Club* decision on NESHAP standards to have mentioned that the statutory definition of emission limitation also precludes exemptions for SSM provisions in SIPs. The EPA had already made this point explicitly in the 1999 SSM Guidance, when it explained the reasons why such provisions would be contrary to CAA requirements for SIPs.[162] Thus, the EPA's guidance for SIP provisions concerning emissions during SSM events had already explicitly articulated that provisions with exemptions for SSM events could not be approved pursuant to CAA section 110(l), because that would interfere with a fundamental requirement of the CAA, *i.e.,* the definition of ''emission limitation'' in section 302(k).

Finally, the EPA disagrees that the Kushner letter could override the applicability of the logic of the *Sierra Club* decision to SIP provisions, even if the Agency had any such intentions. The D.C. Circuit's evaluation of the issue with respect to the EPA's own regulations was premised not solely upon the particular requirements of section 112 but also more broadly on the meaning and specific definition of the term ''emission limitation'' under the CAA. That definition applies to SIP provisions as well as to the EPA's own regulations. Because the SSM Policy in effect at the time of the *Sierra Club* decision and the time of the Kushner letter already stated that EPA interpreted the CAA to prohibit SIP provisions that exempt emissions during SSM events, there would have

[157] *See* CAA section 165(a)(4) and CAA section 173(a)(2).

[158] 753 F.3d 1444, 1452–53 (9th Cir. 1985).

[159] *See, e.g.,* 40 CFR 50.18 (24-hour $PM_{2.5}$ NAAQS met when 98th-percentile monitored value is less than or equal to 35 ug/m^3).

[160] *See, e.g., Mich. Dep't of Envtl. Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000) (upholding disapproval of SIP provisions because they contained exemptions applicable to SSM events); *US Magnesium, LLC* v. *EPA,* 690 F.3d 1157, 1170 (10th Cir. 2012) (upholding the EPA's issuance of a SIP call to a state to correct SSM-related deficiencies).

[161] *See* Letter from A. Kushner, Director, Office of Civil Enforcement, EPA/OECA, regarding ''*Vacatur of Startup, Shutdown, and Malfunction (SSM) Exemption (40 CFR 63.6(f)(1) and 63.6(h)(1)),*'' July 22, 2009, in the rulemaking docket.

[162] *See* 1999 SSM Guidance at 2, footnote 1.

been no need for the Kushner letter to speak to this issue.[163]

e. Comments that the EPA's proposed action on the Petition is incorrect because the Agency's recent MATS rule and Area Source Boiler rule regulations contain exemptions for emissions during SSM events.

Comment: Many commenters asserted that the EPA's February 2013 proposed action to find SIP provisions with exemptions for emissions during SSM events to be substantially inadequate is arbitrary and capricious because recent Agency NESHAP regulations under section 112 contain similar exemptions. Commenters pointed to recently promulgated rules such as the MATS rule[164] and the Area Source Boiler rule[165] as examples of NESHAP regulations that they claim contain similar exemptions. According to commenters, the emission limitations in EPA's own MATS rule ''allow excess emissions during SSM events,'' suggesting that the Agency created exemptions for such emissions.[166] Other commenters similarly argued that the EPA created emission limitations in the Area Source Boiler rule that do not apply ''continuously'' because the numerical limitations do not apply during startup and shutdown.[167] In short, these commenters argued that the EPA is being arbitrary and capricious because it is holding emission limitations in SIPs to a different and higher standard than emission limitations under its own NSPS and NESHAP regulations.

Response: The EPA disagrees with these commenters. The recent EPA rulemaking efforts that commenters claim are at odds with EPA's SIP call are completely consistent with the Agency's action today. First, as explained in the February 2013 proposal, the EPA has not taken the position that sources must be subject to SIP emission limitations that are set at the same numerical level at all times, or that are expressed as numerical limitations at all times. As the EPA stated, ''[i]f justified, the state can develop special emission limitations or control measures that apply during startup or shutdown if the source cannot meet the otherwise applicable emission limitation in the SIP.''[168] The EPA's 1999 SSM Guidance articulated that SIP provisions may include alternative emission limitations applicable during startup and shutdown as part of a continuously applicable emission limitation when properly developed and otherwise consistent with CAA requirements. Moreover, the EPA recommended specific criteria relevant to the creation of such alternative emission limitations. The EPA reiterated that guidance in the February 2013 proposal and is providing a clarified version of the guidance in this final action. This issue is addressed in more detail in section VII.B.2 of this document.

The EPA also disagrees with the assertion that it is holding state SIP provisions to a different standard than its own NSPS and NESHAP regulations. The EPA notes that SIP emission limitations and NSPS and NESHAP emission limitations are, of course, designed for different purposes (*e.g.,* to meet the NAAQS versus to reduce emissions of HAPs) and have to meet some different statutory requirements (*e.g.,* to be RACM versus be standards that are compliant with section 112). However, the EPA understands the commenters' claim to be more specifically that the Agency is applying a different interpretation of the term ''emission limitation'' and taking a different approach to the treatment of emissions during SSM events in its own regulations, even in recent regulations developed subsequent to the *Sierra Club* decision. The EPA believes that this argument reflects a misunderstanding of both the February 2013 proposal and what the Agency's own new regulations contain.

The MATS rule and the Area Source Boiler rule in fact illustrate how the EPA is creating emission limitations that apply continuously, with numerical limitations or combinations of numerical limitations and other specific technological control requirements or work practice requirements applicable during startup and shutdown, depending upon what is appropriate for the source category and the pollutants at issue. For example, in the MATS rule the EPA has promulgated regulations that impose emission limitations on various subcategories of sources to address HAP emissions. To do so, the EPA developed emission limitations to address the relevant pollutants using a combination of numerical emission limitations and work practices. The work practice requirements specifically apply to sources during startup and shutdown and are thus components of the continuously applicable emission limitations.[169]

Similarly, in the Area Source Boiler rule[170] the EPA has imposed emission limitations on affected sources for PM, mercury and CO. The specific emission limitations that apply vary depending upon the subcategory of boiler. The emission limitations include a combination of numerical emission limitations and work practice requirements that together apply during all modes of source operation. For some subcategories, the standards that apply during startup and shutdown differ from the standards that apply during other periods of operation. This illustrates what the EPA considers the correct approach to creating emission limitations: (i) The emission limitation contains no exemption for emissions during SSM events; (ii) the component of the emission limitation that applies during startup and shutdown is clearly stated and obviously is an emission limitation that applies to the source; (iii) the component of the emission limitation that applies during startup and shutdown meets the applicable stringency level for this type of emission limitation (in this case section 112); and (iv) the emission limitation contains requirements to make it legally and practically enforceable. In short, the Area Source Boiler rule established emission limitations that apply continuously, in accordance with the requirements of the CAA, and consistent with the court's decision in the *Sierra Club* decision. States with SIP provisions that are deficient because they contain automatic or discretionary exemptions for emissions during SSM events may wish to consider the Agency's own approach when they develop SIP revisions in response to this SIP call.

f. Comments that section 110(a)(2)(A) authorizes states to have SIP provisions with exemptions for emissions during SSM events because they are not ''emission limitations'' and are not

[163] *See, e.g.,* 1999 SSM Guidance, Attachment at 1 (''any provision that allows for an automatic exemption for excess emissions is prohibited'').

[164] The mercury and air toxics standards (MATS) rule for power plants regulates emissions from new and existing coal- and oil-fired electric utility steam generating units (EGUs) under 40 CFR part 63, subpart UUUUU.

[165] The Area Source Boiler rule regulates industrial, commercial and institutional boilers at area sources under 40 CFR part 63, subpart JJJJJJ.

[166] *See* MATS rule, requirements during startup, shutdown and malfunction, 77 FR 9304 at 9370 (February 16, 2012).

[167] *See* Area Source Boiler rule, notice of final action on reconsideration, periods of startup and shutdown, 78 FR 7487 at 7496 (February 1, 2013).

[168] *See* February 2013 proposal, 78 FR 12459 at 12488 (February 22, 2013).

[169] The EPA took final action on a petition for reconsideration concerning the MATS rule and the Utility NSPS that made certain revisions related to the emission limitations and work practices applicable during startup and shutdown. Those revisions did not, however, alter the basic structure of the emission limitations as numerical limitations, or numerical limitations with work practice components during startup and shutdown, depending upon the source category and the pollutants at issue. *See* 79 FR 68777 (November 19, 2014).

[170] 78 FR 7487 (February 1, 2013).

subject to the requirement to be ''continuous.''

Comment: Section 110(a)(2)(A) requires states to have SIPs that include emission limitations for purposes of imposing restrictions on sources of emissions in order to attain and maintain the NAAQS and to meet other CAA requirements. Some commenters noted that, in addition to ''emission limitations,'' section 110(a)(2)(A) also explicitly refers to ''other control measures, means, or techniques.'' Unlike the term ''emission limitation,'' which is defined in section 302(k), commenters contended that these ''other control[s]'' need not be continuous. Accordingly, these commenters argued that emission controls in SIP provisions that either contain, or are subject to, SSM exemptions can be viewed merely as examples of these ''other control measures, means, or techniques'' that are validly included in SIPs and that do not have to limit emissions from sources on a continuous basis. Specifically, these commenters asserted that the plain text of section 110(a)(2)(A) does not require SIPs to include only emission limitations but rather requires that SIPs include ''emission limitations,'' ''other control measures, means, or techniques,'' or a mixture thereof. Furthermore, according to some of these commenters, an interpretation of section 110(a)(2)(A) that requires all SIP provisions to be ''emission limitations,'' and thus subject to the requirement that they be continuous, would render the ''other control'' language in the statute superfluous.

Response: The EPA agrees with the commenters that SIPs do not have to be composed solely of numerical emission limitations, that SIPs can contain other forms of controls in addition to emission limitations and that certain forms of controls other than emission limitations may not need to apply to sources continuously. However, the EPA disagrees with the commenters' conclusion that the mere act of labeling certain SIP provisions as ''control measures, means, or techniques'' rather than as ''emission limitations'' can be a means to circumvent the requirement that emission limitations must regulate sources continuously. To the extent that there is any ambiguity in the requirements of section 110(a)(2), it is not reasonable to interpret the statute to allow the explicit requirement that emission limitations must be continuous to be negated in this fashion.

As an initial matter, the SIP provisions that contain automatic or discretionary exemptions during SSM events at issue in this SIP call excuse compliance with requirements that presumably were submitted to the EPA as emission limitations, were intended to limit emissions on a continuous basis or were otherwise included to ensure that the SIP contained continuous emission limitations. All of the SIP provisions at issue in this action provide automatic or discretionary exemptions from emission limitations that are formulated as restrictions on the ''quantity, rate, or concentration'' of emissions from affected sources, just as section 302(k) describes the purpose of an emission limitation. Longstanding EPA regulations applicable to SIPs require that states have a control strategy to provide for attainment and maintenance of the NAAQS.[171] The required ''control strategy'' is defined to be the combination of measures including, but not limited to, ''emission limitations,'' ''emission control measures applicable to in use motor vehicles'' and ''transportation control measures'' listed in section 108(f).[172] The regulatory definition of ''emission limitation'' applicable to SIP provisions tracks the statutory definition of section 302(k) and notably also does not define the term to allow exemptions for emissions during SSM events.[173] To the EPA's knowledge, none of the specific SIP provisions that contain or that are subject to the automatic or discretionary exemptions at issue in this SIP call action were developed by the states with the intention or expectation that absent the exemption they would not apply at all times when the source is in operation; *i.e.,* they impose restrictions on emissions that were intended to apply continuously when the source is emitting pollutants. Logically, the states intended the emission limitations to impose limits that apply continuously at all times when the affected sources are emitting pollutants or else there would have been no impetus to include any exemptions for emissions during SSM events.

However, even if the EPA were to accept the commenters' premise *arguendo*—that inclusion of an SSM exemption in a given SIP provision turns ''emission limitations'' into ''other control measures, means, or techniques,'' this would not be a reasonable reading of the requirements of section 110(a)(2)(A) and section 302(k) for several reasons. To the extent that either section 110(a)(2)(A) or section 302(k) is ambiguous with respect to this point, the EPA does not interpret the CAA to allow exemptions for emissions during SSM events in SIP provisions in the way advocated by the commenters.

First, section 110(a)(2)(A) explicitly requires that SIPs must contain emission limitations as necessary to meet various CAA requirements. Section 302(k) requires that such emission limitations must limit ''the quantity, rate, or concentrations of emissions of air pollutants on a *continuous* basis.'' Moreover, section 302(k) reiterates that the term ''continuous emission limitation'' also specifically includes ''any requirement relating to the operation or maintenance of a source to assure *continuous* emission reduction.'' Lest there be doubt, section 302(m) provides a definition for the related term ''means of emission limitation'' as ''a system of continuous emissions reduction (including the use of specific technology or fuels with specified pollution characteristics).'' In the *Sierra Club* v. *Johnson* decision, the D.C. Circuit concluded that the statutory definition of ''emission limitation'' in section 302(k) precludes exemptions for emissions during SSM events because such exemptions are inconsistent with the requirement for continuous controls.[174] Given the emphasis that the statute places on the requirement that sources be subject to continuous emission controls, and given the emphasis that courts have placed on the requirement that sources be subject to continuous controls on their emissions, the EPA believes that it is illogical that the statutory requirement for continuous controls on sources could be subverted merely by the act of labeling a given SIP provision a ''control measure'' rather than an ''emission limitation.'' The commenters' argument that if a given SIP provision contains an SSM exemption, it is merely a ''control measure[ ], mean[ ], or technique[ ]'' reduces the explicit requirement for continuous controls on emissions to a semantic exercise.

Second, the EPA believes that the commenters' reading of the statute to permit SIP provisions to contain an SSM exemption by virtue of what it is labeled is incorrect if taken to its logical extreme. The commenters' interpretation of section 110(a)(2)(A) would theoretically allow a SIP to contain no emission limitations whatsoever, merely a collection of requirements labeled ''control measures'' so that sources can be excused from having to limit emissions on a continuous basis. This result is contrary to judicially approved EPA

[171] *See, e.g.,* 40 CFR 51.100.

[172] *See, e.g.,* 40 CFR 51.100(n).

[173] *See* 40 CFR 51.100(z).

[174] *See Sierra Club* v. *Johnson,* 551 F.3d 1019, 1027–28 (citing CAA sections 112(d)(2), 302(k)).

interpretations of prior versions of the CAA as requiring all SIPs to include continuously applicable emission limitations and only requiring ''other'' additional controls ''as may be necessary'' to satisfy the NAAQS.[175] Additionally, this result is contrary to legislative history of the 1990 Clean Air Act Amendments, which indicates that in slightly revising this portion of section 110(a)(2)(A), Congress intended to merely ''combine and streamline'' previously existing SIP requirements into a single provision, not to vitiate statutory requirements concerning emission limitations.[176]

Finally, the EPA's interpretation of the requirements of section 110(a)(2) does not render the ''other control'' language in the statute superfluous as claimed by the commenters. In addition to emission limitations, the EPA interprets that section to allow other ''control measures, means or techniques'' as contemplated by the statute. For example, the EPA's regulations implementing SIP requirements explicitly enumerate nine separate types of measures that states may include in SIPs.[177] This list of nine different forms of potential SIP provisions to reduce emissions varies broadly, from measures that ''impose emission charges or taxes or other economic incentives or disincentives'' to ''changes in schedules or methods of operation of commercial or industrial facilities'' to ''any transportation control measure including those transportation measures listed in section 108(f).'' The EPA made clear that this list is not all-inclusive. In addition, the EPA has, when appropriate, approved SIP provisions that impose various forms of emissions controls that are not, by definition, emission limitations.[178] Thus, the commenters are in error in their belief that the EPA's reading of the statute to require that SIPs contain emission limitations that apply continuously ignores the other forms of potential measures that section 110(a)(2)(A) authorizes.

Section 110(a)(2) requires SIPs to include enforceable emission limitations and other controls ''as necessary or appropriate to meet the applicable requirements'' of the CAA. Regardless of whether commenters' semantic labeling arguments are valid in the abstract, they are not correct with respect to the fundamental CAA requirements for SIPs relating to continuous emission limitations. The automatic or discretionary exemptions for emissions during SSM events in the SIP provisions at issue in this SIP call authorize exemptions from statutorily required emission limitations. To the extent that such a SIP provision would functionally or legally exempt sources from regulation during SSM events, the SIP provision fails to be a continuously applicable enforceable emission limitation as required by the CAA. The fact that a SIP may also contain ''other control[s]'' as advocated by the commenters does not negate the statutory requirement that emission limitations must apply continuously.

g. Comments that the definition of ''emission limitation'' in section 302(k) does not require that all forms of emission limitations must apply continuously.

Comment: Section 110(a)(2)(A) requires that SIPs must contain emission limitations, and section 302(k) defines the term ''emission limitation'' to mean a limit on emissions from a source that applies continuously. A number of commenters disagreed that section 302(k) requires that *all* ''emission limitations'' have to be ''continuous.'' The commenters argued that section 302(k) establishes two distinct categories of emission limitations: (1) Requirements that ''limit[ ] the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction,'' and (2) requirements constituting a ''design, equipment, work practice or operational standard promulgated under this chapter.'' These commenters claimed that only the first purported category is emission limitations that must be continuous and that the second purported category is emission limitations that do not need to apply continuously. Accordingly, these commenters asserted that SIP provisions that are rendered noncontinuous by inclusion of exemptions for emissions during SSM events are still legally valid ''emission limitations'' because they fall within the second category. Other commenters separately contended that under section 302(k), SIP provisions imposing requirements ''relating to the operation or maintenance of sources'' do not need to be continuous, unlike those imposing requirements that limit ''the quantity, rate, or concentration of emissions or air pollutants.''

Response: The EPA disagrees with the commenters' view that section 302(k) establishes two discrete categories of emission limitations, only one of which must reduce continuous emissions on a continuous basis. The EPA acknowledges that the text of section 302(k) is ambiguous with respect to this point, but the Agency does not agree with the commenters' interpretation of the statute. The statutory text of section 302(k) begins with a catch-all definition of the term ''emission limitation'' as ''a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis . . . .''[179] The EPA believes that the rest of the first sentence in section 302(k), beginning with the word ''including,'' is best read as a list of examples of types of measures that satisfy this general definition. In other words, the remainder of the sentence provide examples of types of SIP provisions that could be used to limit emissions on a continuous basis, including any design standard, equipment standard, work practice standard or operational standard promulgated under the CAA, as well as ''any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.'' However, each of these forms of emission limitation would be required to apply at all times, or be required to apply in combination at all times, in order to meet the fundamental requirement that the emission limitation serves to limit emissions from the affected sources continuously. Thus, the EPA interprets the term ''emission limitation'' to permit emission limitations that are composed of a combination of numerical limitations, technological control requirements and/or work practice requirements, so long as they are components of an emission limitation that applies continuously. This interpretation accords with

[175] *See, e.g., Kennecott Copper Corp.* v. *Train,* 526 F.2d 1149, 1153 (9th Cir. 1975). The current version of section 110(a)(2)(A) is admittedly worded differently than the 1970 version. However, for purposes of these commenters the critical distinction is not that Congress changed the location of the word ''necessary'' but rather that Congress changed the subject that ''necessary'' modifies—and thus the entire scope of 110(a)(2)(A)—from satisfying the NAAQS to meeting ''applicable requirements'' of the entire CAA.

[176] *See, e.g.,* S. Rept. 101–228, at 20 (noting that the structure of section 110(a)(2)(A) as it appears today reflects congressional intent to ''combine and streamline'' previously existing SIP requirements into a single provision).

[177] *See* 40 CFR 51.100(n).

[178] *See, e.g.,* 71 FR 7683 (February 14, 2006) (approving as BACM the use of ''conservation management practices'' to control fugitive dust emissions from agricultural sources, including techniques that limit emissions only during certain activities or times); 68 FR 56181 (September 30, 2003) (approving as BACM an ''episodic wood burning curtailment'' program that restricts the use of wood-burning stoves based on predicted particulate matter concentrations).

[179] CAA section 302(k).

statutory context,[180] the legislative history regarding the definition of ''emission limitation,'' [181] judicial interpretations of section 302(k) [182] and the EPA's definition of ''emission limitation'' in its SIP regulations.[183] Accordingly, the EPA's interpretation of section 302(k) is reasonable.

The EPA also disagrees with the commenters who contended that the third clause of section 302(k) authorizes exemptions for emissions during SSM events in emission limitations. The commenters argued that requirements ''relating to the operation or maintenance of sources'' do not have to be continuous. The EPA believes that this reading of the statute is simply in error, because section 302(k) on its face provides that these requirements must ''assure continuous emission reduction.'' [184]

h. Comments that exemptions or affirmative defenses are not only not prohibited, but are actually required by the CAA because they are necessary to make an emission limitation ''reasonable'' or ''achievable'' for sources that cannot comply during SSM events.

Comment: Commenters argued that some emission limitations currently in SIPs are only ''reasonable'' or technologically ''achievable'' because they include exemptions or affirmative defenses applicable to emissions during SSM events. According to these commenters, without exemptions or affirmative defenses to excuse sources from compliance with the limits during SSM events, these emission limitations would not be reasonable or achievable as required by law. To support these contentions, commenters cited case law from the early 1970s to argue that the CAA *requires* emission limitations in SIP provisions to include exemptions or affirmative defenses for SSM events.

Response: The EPA agrees that SIP provisions should impose emission limitations that are reasonable and achievable by sources, so long as they are also consistent with the applicable legal requirements for that type of provision. The EPA acknowledges that in some cases, emission limitations may need to include alternative numerical limitations, technological controls or work practices during some modes of operation, such as startup and shutdown. As explained in detail in the February 2013 proposal and in this action, the EPA interprets the CAA to allow SIP provisions to include different numerical limitations or other control requirements as components of a continuously applicable emission limitation, so long as the SIP provision meets all other applicable requirements. However, the EPA disagrees with these commenters' conclusions that the need for ''reasonable'' and ''achievable'' emission limitations provides a legal justification for exemptions or affirmative defenses for excess emissions during SSM events.

First, many of the commenters erroneously presupposed that an emission limitation must continuously control emissions at the *same* rate, quantity, or concentration at all times. For sources or source categories that cannot comply with otherwise applicable emission limitations during certain modes of operation, such as startup and shutdown, the state may elect to develop alternative emission limitations applicable during those events as a component of the SIP provision. The EPA has provided recommended criteria for states to use in developing appropriate alternative emission limitations. Appropriate alternative emission limitations would ensure the existence of requirements that limit the quantity, rate or concentration of pollutants from the affected sources on a continuous basis, while also providing differing limitations tailored specifically to limit emissions during specified modes of source operation. As long as those differing limitations are components of a continuously applicable emission limitation that meets other applicable substantive requirements (*e.g.,* is RACT for stationary sources in nonattainment areas) and that is legally and practically enforceable, then such alternative emission limitations are valid. States are not required to create such alternative emission limitations, but to do so is an acceptable approach.

Second, these commenters pointed to no provision of the CAA requiring or allowing exemptions or affirmative defenses for SSM events. Instead, they contend that D.C. Circuit opinions in *Portland Cement Association* v. *Ruckelshaus* [185] and *Essex Chemical Corp.* v. *Ruckelshaus* [186] require SIPs to include exemptions for emissions during SSM events. As an initial matter, these cases predate amendments to the CAA that expressly defined ''emission limitation'' as a requirement that continuously limits emissions. Furthermore, even accepting these commenters' interpretations of those cases (which as explained below, EPA does not), any purported holdings to that effect have been further eroded by more recent case law from the D.C. Circuit and other courts. Most importantly, the *Sierra Club* v. *Johnson* decision has reiterated that emission limitations must apply continuously in order to comply with section 302(k), and the logic of *NRDC* v. *EPA* decision indicates that affirmative defense provisions are not appropriate because they purport to alter the jurisdiction of the courts.[187]

In addition to these more recent legal developments, however, the two earlier D.C. Circuit cases highlighted by commenters simply did not hold what commenters claim that they held. With respect to the *Portland Cement Association* decision, commenters selectively quoted from the case for the proposition that the D.C. Circuit had ''acknowledged'' that malfunctions are an inescapable aspect of industrial life and that EPA must make allowances for malfunctions when promulgating standards. The full sentence from the opinion, however, makes clear that the D.C. Circuit was merely summarizing the ''concern of manufacturers,'' not stating the court's own position.[188] To the contrary, the EPA believes that *Portland Cement* stands for the broader proposition that a system incorporating flexibility is reasonable and consistent with the overall intent of the CAA, and the EPA merely ''may'' take such flexibility into account.[189] As relevant to this action, the flexibility provided states to ensure continuous controls by developing alternative emission limitations is fully consistent with that view of the CAA. SIP provisions that include alternative emission limitations provide the sort of ''limited safety valve'' contemplated by the courts that can serve to make SIP emission limitations more achievable without authorizing complete exemptions for

[180] *See, e.g.,* CAA section 302(m) (defining ''means of emission limitation'' as a ''system of continuous emission reduction'').

[181] *See e.g.,* H.R. Rep. 95–294, at 92 (1977) (explaining that the definition of ''emission limitation,'' like the definition of ''standard of performance,'' was intended to ''ma[ke] clear that constant or continuous means of reducing emissions must be used to meet th[ose] requirements''); S. Rep. 95–127, at 94 (explaining that the definition of ''emission limitation'' was intended to ''clarify the committee's view that the only acceptable basic strategy is one based on continuous emission control,'' rather than ''unacceptable'' ''[i]ntermittent controls or dispersion techniques . . . .'').

[182] *See, e.g., Sierra Club* v. *Johnson,* 551 F.3d 1019, 1027–28 (D.C. Cir. 2008).

[183] *See* 40 CFR 51.100(n) (defining ''emission limitation'' as a requirement that limits emissions on a continuous basis).

[184] *See* CAA section 302(k).

[185] 486 F.2d 375 (D.C. Cir. 1973).

[186] 486 F.2d 427 (D.C. Cir. 1973).

[187] *See Sierra Club* v. *Johnson,* 551 F.3d 1019 (D.C. Cir. 2008); *NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir. 2014).

[188] *Portland Cement Ass'n,* 486 F.2d at 398.

[189] *Id.* at 399.

emissions during SSM events in violation of statutory requirements.[190]

Commenters also cited *Essex Chemical Corp.* for the proposition that SSM exemptions are necessary to ensure that standards are reasonable. This court decision, however, also did not hold that emission limitations must provide exemptions or affirmative defenses for excess emissions during SSM events. To the contrary, the petitioners' complaint in *Essex Chemical Corp.* was that EPA had ''fail[ed] to provide that *lesser standards, or* no standards at all, should apply when the stationary source is experiencing startup, shutdown, or mechanical malfunctions through no fault of the manufacturer.'' [191] It was these variant provisions that, in the court's opinion, ''appear[ed] necessary'' to ensure that the standards before it were reasonable.[192] Again, the EPA believes that emission limitations in SIP provisions may include alternative emission limitations that can provide those ''lesser standards'' that apply during startup and shutdown events consistent with the court's opinion but also ensure that emissions are continuously limited as required by the 1977 CAA Amendments defining ''emission limitation.''

As a legal matter, the court in *Essex Chemical* was reviewing a specific ''never to be exceeded'' standard for new and modified sources and addressed only whether the EPA's failure to provide some form of flexibility during SSM events was supported by the record; [193] the court was not interpreting whether the CAA inherently required such exemptions (rather than alternative limits) regardless of future developments in technology. Accordingly, the D.C. Circuit ultimately remanded the challenged standards to the EPA for reconsideration, not because SSM exemptions are mandatory but rather because of comments made by the EPA Acting Administrator and deficiencies identified in the administrative record with respect to ''never to be exceeded'' limits for those specific standards. In short, the *Essex Chemical* court did not hold that the CAA ''requires'' emission limitations to include exemptions for emissions during SSM events as suggested by commenters.

Furthermore, the EPA notes that the most salient legal holding of *Essex Chemical* with respect to achievability is not what the court said about the circumstances peculiar to the EPA's development of those specific standards but rather is the court's holding that standards of performance can be ''achievable'' even if there is no facility ''currently in operation which can at all times and under all circumstances meet the standards . . . .'' [194] Thus, the decision supports the EPA's conclusion that the CAA requires appropriately drawn emission limitations that apply on a continuous basis. As explained in section IV of this document, SIP provisions also cannot include the affirmative defenses advocated by commenters, because those are inconsistent with CAA provisions concerning the jurisdiction of the courts.

i. Comments that the EPA is requiring that all SIP emission limitations must be ''numerical'' at all times and set at the same numerical level at all times.

Comment: Many commenters on the February 2013 proposal evidently believed that the EPA was proposing an interpretation of the term ''emission limitation'' under section 302(k) that would requires all SIP provisions to impose numerical emission limits, and that such limits must be set at the same numerical level at all times. These commenters argued that numerical emission limitations are not required by the text of section 302(k). For example, commenters pointed to section 302(k)'s use of ''work practice or operational standard[s]'' as evidence that an emission limitation may be composed of more than merely numerical criteria. These commenters also reiterated their view that section 302(k) allows for or requires alternative limits during periods of SSM, including non-numerical alternative limits such as work practice or operational standards.

Response: At the outset, the EPA notes that it did not intend to imply that all emission limitations in SIP provisions must be expressed numerically, or that they must be set at the same numerical level for all modes of source operation. To the contrary, the EPA intended to indicate that states may elect to create emission limitations that include alternative emission limitations that apply during certain modes of source operation, such as startup and shutdown. This was the reason for inclusion of the recommended criteria for states to develop appropriate alternative emission limitations applicable during startup and shutdown in section VII.A of the February 2013 proposal. The EPA has provided similar recommended criteria in this final action (see section VII.B.2 of this document). The EPA agrees that neither section 110(a)(2)(A) nor section 302(k) inherently requires that SIP emission limitations must be expressed numerically. Furthermore, section 302(k) does not itself require imposition of numerical limitations or foreclose the use of higher numerical levels, specific technological controls or work practices during certain modes of operation.

Although some CAA programs may require or impose a presumption that emission limitations be expressed numerically, the text of section 110(a)(2)(A) and section 302(k) does not expressly state a preference for emission limitations that are in all cases numerical in form.[195] Rather, as many commenters pointed out, the critical aspect of an emission limitation in general is that it be a ''requirement . . . which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis . . . .'' [196] Accordingly, although other regulatory requirements may also apply, a non-numerical design standard, equipment standard, work practice standard or operational standard could theoretically meet the definition of ''emission limitation'' for purposes of section 302(k) if it continuously limited the quantity, rate or concentration of air pollutants.[197] By contrast, if a non-numerical requirement does not itself (or in combination with other components of the emission limitation) limit the quantity, rate or concentration of air pollutants on a continuous basis, then the non-numerical standard (or overarching requirement) does not meet the statutory definition of an emission limitation under section 302(k).

Finally, the EPA does not believe that section 110(a)(2)(A) or section 302(k) mandates that an emission limitation be composed of a single, uniformly applicable numerical emission limitation. As the EPA stated in the February 2013 proposal, ''[i]f sources in fact cannot meet the otherwise applicable emission limitations during planned events such as startup and shutdown, then an air agency can develop specific alternative

[190] *Id.* (citing *International Harvester,* 478 F.2d 615, 641 (D.C. Cir. 1973)).

[191] *Essex Chem. Corp* v. *Ruckelshaus,* 486 F.2d at 433 (emphasis added).

[192] *See id.*

[193] *Id.* (''the record does not support the 'never to be exceeded' standard currently in force'').

[194] *Essex Chem. Corp* v. *Ruckelshaus,* 486 F.2d 427, 433 (D.C. Cir. 1973).

[195] Numerical requirements or preferences for some emission limitations flow from substantive requirements of specific CAA programs, which are incorporated into section 110(a)(2)(A) by the requirement that SIPs ''include enforceable emission limitations . . . as may be necessary or appropriate to meet the applicable requirements of'' the CAA. CAA section 110(a)(2)(A).

[196] *See, e.g., id.,* section 112(h)(4).

[197] For example, emission limitations must meet the requirements of various substantive provisions of the CAA and must be legally and practically enforceable.

requirements that apply during such periods, so long as they meet other applicable CAA requirements.'' [198] As explained in the EPA's response in section VII.A.3 of this document regarding the meaning of the statutory term ''continuous,'' the critical aspect for purposes of section 302(k) is not whether the emission limitation is expressed as a static versus variable numerical limitation but rather whether as a whole it constitutes a requirement that limits emissions on a continuous basis. Furthermore, any emission limitation must also meet all other applicable CAA requirements concerning stringency and enforceability.

j. Comments that an emission limitation can be ''continuous'' even if it has different numerical limitations applicable during some modes of source operation or has a combination of numerical emission limitations and specific control technologies or work practices applicable during other modes of operation.

Comment: Several commenters argued that an emission limitation can be ''continuous'' under section 302(k) even if it provides different substantive requirements applicable during SSM events. One commenter illustrated this position with a hypothetical:

> [W]hile Section 302 requires ''emission limits'' to be ''continuous,'' it does not specify . . . that the same ''emission limit'' must apply at all times. That is, if a state chooses to require sources to comply with a 40% opacity limit during steady-state operations, the Act does not then require the state to apply that 40% limit at all times, including startup, shutdown and malfunction events.

Commenters pointed to a number of sources as justification for this position, including the text of section 302(k), relevant case law, legislative history of the 1977 CAA Amendments, prior EPA interpretations, and practical concerns.

Response: The EPA agrees with these commenters' conclusion that an ''emission limitation'' under section 302(k) does not need to be expressed as a static, inflexible limit on emissions. Rather, a SIP provision qualifying as an ''emission limitation'' consistent with section 302(k) must merely limit ''the quantity, rate, or concentration'' of emissions, and must do so ''on a continuous basis.'' The critical aspect for purposes of section 302(k) is that the SIP provision impose limits on emissions on a continuous basis, regardless of whether the emission limitation as a whole is expressed numerically or as a combination of numerical limitations, specific control technology requirements and/or work practice requirements, and regardless of whether the emission limitation is static or variable. For example, so long as the SIP provision meets other applicable requirements, it may impose different numerical limitations for startup and shutdown.

The EPA also agrees that the text of section 302(k) does not require states to impose emission limitations that include a static, inflexible standard. Rather, the term ''emission limitation'' is merely defined as a ''requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis. . . .'' The continuous limits imposed by emission limitations are a fundamental distinction between emission limitations and the other control measures, means or techniques that may also limit emissions.[199] The text of section 302(k), however, does not distinguish between a variable or static ''requirement'' that continuously limits emissions—all that is required is that the emissions are limited on a continuous basis.

This interpretation is consistent with prior EPA interpretations of section 302(k), as well as relevant case law. In *Kamp* v. *Hernandez,* the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit) upheld the EPA's interpretation of ''continuous'' in section 302(k), as requiring that ''some limitation on emissions, although not necessarily the same limitation, is always imposed'' on the source.[200] More recently, the D.C. Circuit favorably cited *Kamp* when holding that section 302(k) requires emission standards to limit emissions on a continuous basis and precludes exemptions for emissions during SSM events.[201]

Legislative history confirms that Congress was primarily concerned that there be constant or continuous means of reducing emissions—not that the nature of those controls could not be different during different modes of operation.[202] For example, legislative history from the 1977 CAA Amendments states that Congress added section 302(k)'s definition of ''emission limitation'' to:

> . . . ma[ke] clear that constant or continuous means of reducing emissions must be used to meet these requirements. By the same token, intermittent or supplemental controls or other temporary, periodic, or limited systems of control would not be permitted as a final means of compliance.[203]

Although this legislative history demonstrates congressional intent that any ''emission limitation'' would require limits on emissions at all times, this history does not necessarily indicate that the emission limitation must consist of a single static numerical limitation. Accordingly, this legislative history is consistent with the EPA's view that section 302(k) requires continuous limits on emissions and that variable (albeit still continuous) limits on emissions can qualify as an emission limitation for purposes of section 302(k).

Finally, although the EPA agrees with these commenters' conclusion, the EPA does not agree with these commenters' view that practical concerns *require* states in all cases to establish alternative emission limitations for modes of operation such as startup and shutdown within any continuously applicable emission limitation. Principles of cooperative federalism incorporated into section 110 allow states great leeway in developing SIP emission limitations, provided those limitations comply with applicable legal requirements.[204] States are thus not required to establish alternative emission limitations for any sources during startup and shutdown, but they may elect to do so. Neither the definition of ''emission limitation'' in section 302(k) nor the requirements of section 110(a)(2)(A) explicitly require states to develop emission limitations that include alternative emission limitations for periods of SSM, just as they do not explicitly preclude states from doing so.

[198] 78 FR 12459 at 12471.

[199] *See* CAA section 110(a)(2)(A).

[200] *Kamp* v. *Hernandez,* 752 F.2d 1444, 1452–53 (9th Cir. 1985) (citing *Chevron, U.S.A., Inc.* v. *Natural Res. Def. Council,* 467 U.S. 837 (1984)) (upholding EPA's ''broader definition of 'continuous' '' under section 302(k)).

[201] *Sierra Club* v. *Johnson,* 551 F.3d 1019, 1027–28 (D.C. Cir. 2008) (quoting *Kamp,* 752 F.2d at 1452).

[202] *See, e.g.,* H.R. Rep. 95–294, at 92 (1977) (explaining that the definition of ''emission limitation,'' like the definition of ''standard of performance,'' was intended to ''ma[ke] clear that constant or continuous means of reducing emissions must be used to meet th[ose] requirements''); S. Rep. 95–127, at 94 (explaining that the definition of ''emission limitation'' was intended to ''clarify the committee's view that the only acceptable basic strategy is one based on continuous emission control,'' rather than ''unacceptable'' ''[i]ntermittent controls or dispersion techniques . . . .'').

[203] H.R. Rep. 95–294, at 92 (1977), *as reprinted in* 1977 U.S.C.C.A.N. 1077, 1170); *Sierra Club* v. *Johnson,* 551 F.3d at 1027 (quoting the same); *Kamp* v. *Hernandez,* 752 F.2d at 1453–54 (quoting the same).

[204] As discussed above and elsewhere in this document, those requirements include satisfying the definition of ''emission limitation'' under CAA section 302(k), and being ''enforceable'' in accordance with section 110(a)(2)(A).

k. Comments that an emission limitation can be ''continuous'' even if it includes periods of exemptions from the emission limitation.

Comment: Commenters asserted that a requirement limiting emissions can be ''continuous'' even if a SIP provision includes periods of exemption from that limit. For example, some commenters contended that SSM exemptions only excuse compliance with emission limitations for a ''short duration,'' or ''brief'' period of time, and that these purportedly ephemeral interruptions should not be viewed as rendering the requirement noncontinuous. Other commenters contended that the EPA misinterpreted portions of the D.C. Circuit's opinion in *Sierra Club* v. *Johnson,*[205] interpreting section 302(k). Specifically, this group of commenters claimed that because the holding of that case was based on a combined reading of sections 112 and 302(k), the court's interpretation of the word ''continuous'' in section 302(k) does not extend outside the context of section 112. This included one commenter who suggested, in a one-sentence footnote, that ''[i]n the cooperative-federalism context''—presumably of section 110—''the standard of flexibility that Congress gave the States with respect to selecting the elements of their SIPs is not necessarily the same standard Congress set to govern EPA's responsibility to establish the NAAQS or section 112 standards.'' Still other commenters further argued that the EPA mischaracterized legislative history discussing ''continuous'' in section 302(k). According to these commenters, the context of legislative history on section 302(k) indicates that Congress did not intend for the word ''continuous'' to be given its plain meaning but rather intended to use ''continuous'' in relation only to specific types of intermittent controls.

Response: The EPA disagrees with these commenters. First, commenters' interpretation would contravene the plain meaning of ''continuous.'' Section 302(k) defines ''emission limitation'' as a requirement that ''limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis. . . .''[206] Although the word ''continuous'' is not separately defined in the Act, its plain and unambiguous meaning is ''uninterrupted.''[207] Accordingly, to the extent that a SIP provision provides for any period of time when a source is *not* subject to any requirement that limits emissions, the requirements limiting the source's emissions by definition cannot do so ''on a continuous basis.'' Such a source would not be subject to an ''emission limitation,'' as that term is defined under section 302(k). The same principle applies even for ''brief'' exemptions from limits on emissions, because such exemptions nevertheless render the emission limitation noncontinuous.

Second, the EPA disagrees with commenters' interpretation of the D.C. Circuit's opinion in *Sierra Club.* While the court's ultimate decision was based on ''sections 112 and 302(k) . . . read together,''[208] the court's analysis of what makes a standard ''continuous'' was based on section 302(k) alone.[209] Although the precise components of an emission limitation or standard may expand depending on which other provisions of the CAA are applicable, the bedrock definition for what it means to be an ''emission limitation'' under section 302(k) does not. Congress appeared to share the EPA's view that section 302(k) provides a bedrock definition of ''emission limitation'' applicable ''to all emission limitations under the act, not just to limitations under sections 110, 111, or 112 of the act.''[210] Accordingly, the D.C. Circuit's interpretation of section 302(k) applies equally in the context of SIP provisions developed by states as in the context of MACT standards developed by the EPA, even if additional requirements may be different.[211]

Finally, the EPA rejects commenters' contention that section 302(k)'s legislative history indicates that use of the word ''continuous'' in the definition of ''emission limitation'' was merely intended to prevent the use of intermittent controls or, even more narrowly, only dispersion techniques. While legislative history of the 1977 Amendments discusses at length the concerns associated with these types of controls, section 302(k) was not intended to merely prevent the narrow problem of intermittent controls. To the contrary, the House Report states that under section 302(k)'s definition of emission limitation, ''intermittent or supplemental controls *or other temporary, periodic, or limited systems of control* would not be permitted as a final means of compliance.''[212]

In explaining congressional intent behind adopting a statutory definition of ''emission limitation,'' the House Report articulated a rationale broader than would apply if Congress had merely intended to prohibit the tall stacks and dispersion techniques that commenters claim were targeted: ''Each source's prescribed emission limitation is the fundamental tool for assuring that ambient standards are attained and maintained. Without an enforceable emission limitation which will be *complied with at all times,* there can be no assurance that ambient standards will be attained and maintained.''[213] By contrast, Congress criticized limitations structured in ways that could not ''provide assurances that the emission limitation will be met at all times,'' or that would sometimes allow the ''emission limitation [to] be exceeded, perhaps by a wide margin . . . .''[214] Such flaws ''would defeat the remedy provision provided by section 304 of the act which allows citizens to assure compliance with emission limitations and other requirements of the act.''[215] Exemptions for emissions during SSM events have the same effects.[216]

In adopting section 302(k)'s definition of ''emission limitation,'' Congress did not merely intend to prohibit the use of intermittent controls as final compliance strategies—much less intermittent controls as narrowly defined by commenters to mean only dispersion techniques and certain ''tall stacks.'' Rather, Congress intended to eliminate the fundamental problems

[205] 551 F.3d 1019 (D.C. Cir. 2008).

[206] CAA section 302(k).

[207] *See Webster's Third New International Dictionary* 493–94 (Phillip Babcock Gove ed., Merriam-Webster 1993) (defining ''continuous'').

[208] *Sierra Club,* 551 F.3d at 1027.

[209] *See id.* (quoting H.R. Rep. 95–294, at 92 (1977), *as reprinted in* 1977 U.S.C.C.A.N. 1077, 1170); *see also Kamp* v. *Hernandez,* 752 F.2d at 1453–54 (quoting the same and coming to the same conclusion).

[210] *See* H.R. 95–294, at 92 (1977); *see also* section 302 (stating that the definitions appearing therein apply ''[w]hen used in this chapter'').

[211] The fact that CAA section 110 incorporates principles of cooperative federalism does not inevitably mean that the definition of ''emission limitation'' under section 302(k) changes depending on whether it is applied in the context of section 110 versus section 112. Accordingly, in the context of judicial interpretation of a statute, the U.S. Supreme Court has held that judges cannot ''give the same statutory text different meanings in different cases.'' *Clark* v. *Martinez,* 543 U.S. 371, 386 (2005). The EPA believes that the text and legislative history of section 302(k) evince congressional intent to consistently apply the definition of ''emission limitation'' under section 302(k) rather than to develop an inconsistent interpretation peculiar to section 110.

[212] H.R. 95–294, at 92 (emphasis added).

[213] *Id.* (emphasis added). The Senate Report expressed a similar sentiment. *See* S. Rep. No. 95–127, at 94–95 (1977) (explaining that the definition of ''emission limitation'' was intended ''to clarify the committee's view that the only acceptable *basic strategy* [for emission limitations in SIPs] is one based on continuous emission control'').

[214] *See* H.R. 95–294, at 92.

[215] *See id.*

[216] *See, e.g., NRDC* v. *EPA,* 749 F.3d 1055, 1064 (D.C. Cir. 2014) (holding that an affirmative defense for excess emissions during malfunctions contradicts the requirement that an emission limitation be ''continuous'').

that were illustrated by use of those controls.[217] SSM exemptions and affirmative defenses raise many of the same problems, and addressing those problems through this action fully accords with section 302(k)'s legislative history.

l. Comments that the ''as may be necessary or appropriate'' language in section 110(a)(2)(A) *per se* authorizes states to create exemptions in SIP emission limitations.

Comment: Some commenters contended that section 110(a)(2)(A) merely requires states to include emission limitations and other control measures in their SIPs ''as may be necessary or appropriate.'' These commenters interpreted that language as a broad delegation of discretion to states to develop SIP provisions that are necessary or appropriate to satisfy the particular needs of a state, as judged solely by that state. Some of the commenters argued that the EPA's interpretation of ''as may be necessary or appropriate'' would, in all circumstances, improperly substitute the EPA's judgment for that of the state concerning what emission limitations are necessary or appropriate. One commenter highlighted the EPA's proposal to deny the Petition with respect to a specific SIP provision of the South Carolina SIP that entirely exempts a source category from regulation.[218] According to this commenter, if the ''as may be necessary or appropriate'' language grants states the authority to exempt a source category from regulation entirely, then it must allow states to exempt sources selectively during SSM events.

Some commenters further argued that regardless of what the terms ''emission limitations'' or ''other control measures, means, or techniques'' mean, section 110(a)(2)(A) only requires states to include such emission controls in SIPs ''as may be necessary or appropriate'' to meet the NAAQS, or some requirement germane to attainment of the NAAQS, such as various technology-based standards or general principles of enforceability. Commenters also disagreed with the EPA's purported interpretation that the statutory phrase ''as may be necessary'' only qualifies what ''other control[s]'' are required, rather than also qualifying what emission limitations are required. According to these commenters, that interpretation is a vestige of the 1970 CAA and was foreclosed by textual changes in the 1977 CAA Amendments or, alternatively, the 1990 CAA Amendments.

Response: The EPA disagrees with the commenters' interpretation of the ''as may be necessary or appropriate'' language of section 110(a)(2)(A). As an initial matter, those commenters contending that section 110(a)(2)(A) is only concerned with what is ''necessary or appropriate'' to attain and maintain the NAAQS (or some requirement germane to the NAAQS) ignore the plain language of section 110(a)(2)(A). While the predecessor provisions to section 110(a)(2)(A) prior to the 1990 CAA Amendments did indeed speak in terms of emissions controls ''necessary to insure attainment and maintenance of [the NAAQS],'' [219] the statute in effect today requires controls ''necessary or appropriate *to meet the applicable requirements of this chapter,*'' [220]—*i.e.,* to meet the requirements of the CAA as a whole. Thus, at a minimum, the EPA interprets the phrase ''as may be necessary or appropriate'' to include what is necessary or appropriate to meet legal requirements of the CAA, including the requirement that emission limitations must apply on a continuous basis.

Regardless of whether all SIPs must always contain emission limitations, the text of the CAA is clear that the EPA is at a minimum tasked with determining whether SIPs include all emission limitations that are ''necessary'' (*i.e.,* required) ''to meet the applicable requirements of'' that CAA. Broadly speaking, this requires that the EPA determine whether the SIP meets the basic legal requirements applicable to all SIPs (*e.g.,* the requirements of section 110(a)(2)(A) through (M)), whether the SIP contains emission limitations necessary to meet substantive requirements of the Act (*e.g.,* RACT-level controls in nonattainment areas) and whether all emission limitations and other controls, as well as the schedules and timetables for compliance, are legally and functionally enforceable.

In every state subject to this SIP call, the EPA has previously concluded in approving the existing SIP provisions that the emission limitations are necessary to comply with legal requirements of the CAA. The states in question would not have developed and submitted them, and the EPA would not have approved them, unless the state and the EPA considered those emission limitations fulfilled a CAA requirement in the first instance. However, the automatic and discretionary exemptions for emissions during SSM events in the SIP provisions at issue in this action render those necessary emission limitations noncontinuous, and thus not meeting the statutory definition of ''emission limitations'' as defined in section 302(k). Accordingly, regardless of whether all SIPs must always include emission limitations, these specific SIP provisions fail to meet a fundamental requirement of the CAA because they do not impose the continuous emission limitations required by the Act.

The EPA also disagrees with the argument raised by commenters that its denial of the Petition with respect to a South Carolina SIP provision supports the validity of SSM exemptions in SIP emission limitations.[221] In that situation, the state determined that regulating the source category at issue was not a necessary or appropriate means of meeting the requirements of the CAA. The EPA's approval of that provision indicates that the Agency agreed with that determination. This factual scenario is not the same as one in which the state has determined that regulation of the source category *is* necessary or appropriate to meet CAA requirements. Once the determination is made that the source category must or should be regulated, then the SIP provisions developed by the state to regulate the source must meet applicable requirements. These include that any limits on emissions must be consistent with CAA requirements, including the requirement that any emission limitation limit emissions on a continuous basis. The EPA agrees that a state can validly determine that regulation of a source category is not necessary, so long as this is consistent with CAA requirements. This is not the same as allowing impermissible exemptions for emissions from a source category that must be regulated.

Finally, the EPA does not agree with commenters' allegations that that the EPA's interpretation of section 110(a)(2)(A) eliminates the states' discretion to take local concerns into account when developing their SIP provisions. Rather, for reasons discussed in more detail in the EPA's response in section V.D.2 of this document regarding cooperative federalism, the EPA's interpretation is

[217] *See, e.g.,* H.R. 95–294, at 94 (noting that the provision was intended to overcome ''objections'' to such measures, not merely the measures themselves); *id.* at 92 (indicating that the problems arise from ''temporary, periodic, or limited systems of control'' generally, not merely dispersion techniques or tall stacks).

[218] *See* 78 FR 12459 at 12512 (citing S.C. Code Ann. Regs. 61–62.5 St 5.2(I)(b)(14)).

[219] *See, e.g.,* Clean Air Act of 1970, Public Law 91–604, section 4(a), 84 Stat. 1676, 1680 (December 31, 1970).

[220] Section 110(a)(2)(A).

[221] *See* 78 FR 12459 at 12512 (citing S.C. Code Ann. Regs. 61–62.5 St 5.2(I)(b)(14)).

fully consistent with the principles of cooperative federalism codified in the CAA. As courts have concluded, although Congress provided states with ''considerable latitude in fashioning SIPs, the CAA 'nonetheless subjects the States to strict minimum compliance requirements' and gives EPA the authority to determine a state's compliance with the requirements.'' [222] This interpretation is also consistent with congressional intent that the EPA exercise supervisory responsibility to ensure that, *inter alia,* SIPs satisfy the broad requirements that section 110(a)(2) mandates that SIPs ''shall'' satisfy.[223] Where the EPA determines that a SIP provision does not satisfy legal requirements, the EPA is not substituting its judgment for that of the state but rather is determining whether the state's judgment falls within the wide boundaries of the CAA.

m. Comments that a ''general duty'' provision—or comparable generic provisions that require sources to ''exercise good engineering judgment,'' to ''minimize emissions'' or to ''not cause a violation of the NAAQS''—inoculate or make up for exemptions in specific emission limitations that apply to the source.

Comment: Numerous commenters argued that even if some of the SIP provisions with SSM exemptions identified in this SIP call are not themselves emission limitations, they are nevertheless *components* of valid emission limitations. According to these commenters, some SIPs contain separate ''general duty'' provisions that are not affected by SSM exemptions and thus have the effect of limiting emissions from sources during SSM events that are explicitly exempted from the emission limitations in the SIP. These general-duty provisions vary, but most of them: (1) Instruct sources to ''minimize emissions'' consistent with good air pollution control practices, (2) prohibit sources from emitting pollutants that cause a violation of the NAAQS, or (3) prohibit source operators from ''improperly operating or maintaining'' their facilities.

Commenters contended that these general-duty provisions are requirements that—either alone or in combination with other requirements—have the effect of limiting emissions on a continuous basis. In other words, the commenter asserted that these general-duty provisions impose limits on emissions during SSM events, when the otherwise applicable controls no longer apply. According to these commenters, SSM exemptions that excuse noncompliance with typical controls do not interrupt the continuous application of an ''emission limitation,'' because these general-duty provisions elsewhere in the SIP or in a separate permit are part of the emission limitation and apply even during SSM events.

Some commenters further argued that some SSM exemptions themselves demonstrate that sources remain subject to general-duty provisions during SSM events. These SSM exemptions require sources seeking to qualify for the exemption to demonstrate that, *inter alia,* they were at the time complying with certain general duties. Accordingly, these commenters contended that the SSM exemption itself demonstrates that sources remain subject to requirements that limit their emissions during SSM events, even when the source is excused from complying with other components of the overarching emission limitation.

Finally, as evidence that these general-duty clauses must be permissible under the CAA, some commenters pointed to similar federal requirements established by the EPA under the NSPS and NESHAP programs.[224] These commenters argued that the D.C. Circuit's decision in *Sierra Club* v. *Johnson* [225] was limited to circumstances unique to section 112 and does not support a *per se* prohibition on general-duty clauses operating as ''emission limitations.''

Response: The EPA disagrees with these comments. As described elsewhere in this response to comments, all ''emission limitations'' must limit emissions of air pollutants on a continuous basis.[226] The specific requirements of a SIP emission limitation must be discernible on the face of the provision, must meet the applicable substantive and stringency requirements of the CAA and must be legally and practically enforceable. The general-duty clauses identified by these commenters are not part of the putative emission limitations contained in these SIP provisions. To the contrary, these general-duty clauses are often located in different parts of the SIP and are often not cross-referenced or otherwise identified as part of the putative continuously applicable emission limitation.

Furthermore, the fact that a SIP provision includes prerequisites to qualifying for an SSM exemption does not mean those prerequisites are themselves an ''alternative emission limitation'' applicable during SSM events. The text and context of the SIP provisions at issue in this SIP call action make clear that the conditions under which sources qualify for an SSM exemption are not themselves components of an overarching emission limitation—*i.e.,* a requirement that limits emissions of air pollutants from the affected source on a continuous basis. Rather, these provisions merely identify the circumstances when sources are exempt from emission limitations.

Reviewing an example of the SIP provisions cited by commenters is illustrative of this point. For example, several commenters pointed to provisions in Alabama's SIP that excuse a source from complying with an otherwise applicable emission limitation only when the permittee ''took all reasonable steps to minimize emissions'' and the ''permitted facility was at the time being properly operated.'' According to commenters, the general duties in this provision—to take reasonable steps to minimize emissions, and to properly operate the facility—ensure that even during SSM events, the permittee remains subject to requirements limiting emissions.

However, a review of the provisions themselves in context—not selectively quoted—reveals that these general-duty provisions were included in the SIP not as components of an emission limitation but rather as components of an *exception* to that emission limitation. In order to qualify, the SIP requires the permittee to have taken ''all reasonable steps to minimize levels of emissions *that exceeded the emission standard*'' [227]—an acknowledgement that the emissions to be ''minimize[d]'' are those that ''exceed[]'' (*i.e.,* go beyond) the required limits of ''the emission standard.'' In case there were any doubt that the general-duty provisions identified are elements of an exemption from an emission limitation, rather than components of the emission limitation itself, the provisions apply during what the Alabama SIP calls ''[e]xceedances of *emission limitations*'' [228] and are found within a

[222] *Michigan* v. *EPA,* 213 F.3d 663, 687 (D.C. Cir. 2000) (quoting *Union Elec. Co.* v. *EPA,* 427 U.S. 246, 256–57 (1976)).

[223] With respect to section 110(a)(2)(A), this means that a SIP must at least contain legitimate, enforceable emission limitations to the extent they are necessary or appropriate ''to meet the applicable requirements'' of the Act. Likewise, SIPs cannot have enforcement discretion provisions or affirmative defense provisions that contravene the fundamental requirements concerning the enforcement of SIP provisions.

[224] *See, e.g.,* 40 CFR 63.6(e)(3).

[225] 551 F.3d 1019, 1027–28 (D.C. Cir. 2008).

[226] CAA section 302(k).

[227] Ala. Admin. Code Rule 335–3–14–.03(h)(2)(ii)(III) (emphasis added).

[228] *Id.* at 335–3–14–.03(h)(2)(ii) (emphasis added).

broader section addressing ''Exceptions to *violations of emission limitations*.'' [229] By exempting sources from compliance with ''the emission standard,'' these exemptions render the SIP emission limitation noncontinuous, contrary to section 302(k).[230]

The consequences for failing to satisfy the preconditions for an exemption further bolster the conclusion that these preconditions are not themselves part of an emission limitation. Failure to meet the ''general duty'' preconditions for an SSM exemption means that the source remains subject to the otherwise applicable emission limitation during the SSM event and is thus liable for violating the emission limitation. If those general duties were independent parts of an emission limitation (rather than merely preconditions for an exemption), then one would expect that periods of time could exist when the source was liable for violating those general duties rather than the default emission limitation.

The general-duty provisions that apply as part of the SSM exemption are not alternative emission limitations; they merely define an unlawful exemption to an emission limitation. States have discretion to fix this issue in a number of ways, including by removing the exceptions entirely, by replacing these exceptions with alternative emission limitations including specific control technologies or work practices that do ensure continuous limits on emissions or by reformulating the entire emission limitation.

In addition to the EPA's fundamental disagreement with commenters that these general-duty provisions are actually components of emission limitations, the EPA has additional concerns about whether many of these provisions could operate as stand-alone emission limitations even if they were properly identified as portions of the overall emissions limitations in the SIP.[231] Furthermore, some of these general-duty provisions do not meet the level of stringency required to be an ''emission limitation'' compliant with specific substantive provisions of the CAA applicable to SIP provisions.[232] Accordingly, while states are free to include general-duty provisions in their SIPs as separate additional requirements, for example, to ensure that owners and operators act consistent with reasonable standards of care, the EPA does not recommend using these background standards to bridge unlawful interruptions in an emission limitation.[233]

The NSPS and NESHAP emission standards and limitations that the EPA has issued since *Sierra Club* demonstrate the distinct roles played by emission limitations and general-duty provisions. The emission limitations themselves are clear and legally and functionally enforceable, and they are composed of obviously integrated requirements that limit emissions on a continuous basis during all modes of source operation. Crucially, the general-duty provisions in these post-*Sierra Club* regulations merely supplement the integrated emission limitation; they do not supplant the emission limitation, which independently requires continuous limits on emissions. As discussed elsewhere in this document, the fact that the EPA is in the process of updating its own regulations to comply with CAA requirements does not alter the legal requirements applicable to SIPs.

n. Comments that EPA's action on the petition is a ''change of policy.''

Comment: A number of commenters claimed that the EPA's action on the Petition is illegitimate because it is based upon a ''change of policy.'' Some commenters claimed that the EPA's reliance on the definition of ''emission limitation'' in section 302(k) and the requirements for SIP provisions in section 110(a)(2) as barring automatic exemptions are ''new.'' These commenters claimed that the EPA has historically relied on the fact that NAAQS are ambient-standard-based and that the EPA has relied also on the fact that SSM exemptions had potential adverse air quality impacts as the basis for interpreting the CAA to preclude exemptions. The commenters argued that this basis for the SSM Policy is evidenced by the fact that EPA itself historically included SSM exemptions in NSPS and NESHAP rules, which establish emission limitations that should be governed by section 302(k) as well.

Other commenters claimed that the EPA is changing its SSM Policy by seeking to revoke ''enforcement discretion'' exercised on the part of states, which the EPA specifically recognized as an acceptable approach in the 1983 SSM Guidance. A commenter asserted that ''fairness principles'' mean that the EPA cannot require a state to modify its SIP without substantial justification. The commenter further contended that the EPA's claim that it has a longstanding interpretation of the CAA that automatic exemptions are not allowed in SIP provisions is false; otherwise, the commenter argued, the EPA would not have approved some of the provisions at issue in the SIP call long after 1982. As evidence for this argument, the commenter pointed to the West Virginia regulations that provide an automatic exemption.

Finally, other commenters argued that the EPA's changed interpretation of the CAA requires an acknowledgement that the SSM Policy is being changed and a rational explanation for such change. These commenters noted that the EPA previously argued in a brief for the type of exemption provisions that it is now claiming are deficient, citing *Sierra Club* v. *Johnson,* No. 02–1135 (D.C. Cir. March 14, 2008). The commenters claimed that the EPA has provided no rational basis for its change in interpretation of the CAA concerning exemptions for emissions during SSM events.

Response: The EPA's longstanding position, at least since issuance of the 1982 SSM Guidance, is that SIP provisions providing an exemption from emission limitations for emissions during SSM events are prohibited by the CAA. The EPA's guidance documents issued in 1982 and 1983 expressly recognized that in place of exemptions, states should exercise enforcement discretion in determining whether to pursue a violation of an emission limitation. In the 1983 SSM Guidance, the EPA made recommendations for states that elected to adopt specific SIP provisions affecting their own exercise of enforcement discretion, so long as those provisions do not apply to enforcement discretion of the EPA or other parties under the citizen suit provision of the CAA. More than 15 years ago, in the 1999 SSM Guidance, the EPA reiterated its longstanding position that it is inappropriate for SIPs to exempt SSM emissions from compliance with emission limitations and repeated that instead of incorporating exemptions, enforcement discretion could be an appropriate tool. In addition, EPA clarified at that time that a narrowly tailored affirmative

[229] *Id.* at 335–3–14–.03(h) (emphasis added).

[230] *See* CAA section 302(k) (defining ''emission limitation'' and ''emission standard'').

[231] *See Sierra Club,* 551 F.3d at 1026 (discussing the EPA's prior determinations that ''compliance with the general duty on its own was insufficient to prevent the SSM exemption from becoming a 'blanket' exemption'').

[232] *See, e.g., Sierra Club* v. *Johnson,* 551 F.3d at 1027–28 (so holding with respect to section 112).

[233] For example, the EPA has concerns the some of these general-duty provisions, if at any point relied upon as the sole requirement purportedly limiting emissions, could undermine the ability to ensure compliance with SIP emission limitations relied on to achieve the NAAQS and other relevant CAA requirements at all times. *See* section 110(a)(2)(A), (C); *US Magnesium, LLC* v. *EPA,* 690 F.3d 1157, 1161–62 (10th Cir. 2012).

defense might also be an appropriate tool for addressing excess emissions in a SIP provision. However, in response to recent court decisions, and as discussed in detail in section IV of this document, the EPA no longer interprets the CAA to permit affirmative defense provisions in SIPs.

Although the EPA did not expressly rely on the definition of ''emission limitation'' in section 302(k) as the basis for its SSM Policy in each of these guidance documents, it did rely on the purpose of the NAAQS program and the underlying statutory provisions (including section 110) governing that program. In the 1999 SSM Guidance, however, the EPA indicated that the definition of emission limitation in section 302(k) was part of the basis for its position concerning SIP provisions.[234] After the EPA issued the 1999 SSM Guidance, the D.C. Circuit issued a decision holding that the definition of emission limitation in section 302(k) does not allow for periods when sources are not subject to emissions standards.[235] While the court's decision concerned the section 112 program addressing hazardous air pollutants, the EPA believes that the court's ruling concerning section 302(k) applies equally in the context of SIP provisions because the definition of emission limitation also applies to SIP requirements. That court's decision is consistent with and provides support for the EPA's longstanding position in the SSM Policy that exemptions from compliance with SIP emission limitations are not appropriate under the CAA.

Commenters claimed that by interpreting the CAA to prohibit exemptions for emissions during SSM events the EPA is revoking ''enforcement discretion'' exercised by the state. This is not true. As part of state programs governing enforcement, states can include regulatory provisions or may adopt policies setting forth criteria for how they plan to exercise their own enforcement authority. Under section 110(a)(2), states must have adequate authority to enforce provisions adopted into the SIP, but states can establish criteria for how they plan to exercise that authority. Such enforcement discretion provisions cannot, however, impinge upon the enforcement authority of the EPA or of others pursuant to the citizen suit provision of the CAA. The EPA notes that the requirement for adequate enforcement authority to enforce CAA requirements is likewise a bar to automatic exemptions from compliance during SSM events.

Commenters confused the EPA's evolution in describing the basis for its longstanding SSM Policy as a change in the SSM Policy itself. The EPA's interpretation of the CAA in the SSM Policy has not changed with respect to exemptions for emissions during SSM events. The EPA's discussion of the basis for its longstanding interpretation has evolved and become more robust over time as the EPA has responded to comments in rulemakings and in response to court decisions. In support of its interpretation of the CAA that exemptions for periods of SSM are not acceptable in SIPs, the EPA has long relied on its view that NAAQS are health-based standards and that exemptions undermine the ability of SIPs to attain and maintain the NAAQS, to protect PSD increments, to improve visibility and to meet other CAA requirements. By contrast, the EPA historically took the position that SSM exemptions were acceptable for certain technology-based standards, such as NSPS and NESHAP standards, and argued that position in the *Sierra Club* case cited by commenters. However, in that case, the court explicitly ruled against the EPA's interpretation, holding that exemptions for emissions during SSM events are precluded by the definition of ''emission limitation'' in CAA section 302(k). The *Sierra Club* court's rationale thus provided additional support for the EPA's longstanding position with respect to SSM exemptions in SIP provisions, and in more recent actions the EPA has relied on the reasoning from the court's decision as further support for its current SSM Policy. Thus, even if the EPA were proceeding under a ''change of policy'' here as the commenters claimed, the EPA has adequately explained the basis for its current SSM Policy, including the basis for any actual ''change'' in that guidance (*e.g.,* the actual change in the SSM Policy with respect to affirmative defense provisions in SIPs). Courts have upheld an agency's authority to revise its interpretation of a statute, so long as that change of interpretation is explained.[236]

o. Comments that the EPA's proposed action on the petition is based on a ''changed interpretation'' of the definition of ''emission limitation.''

Comment: Commenters claimed that the EPA's action on the Petition is based on a changed interpretation of the term ''emission limitation'' and that the Agency cannot apply that changed interpretation ''retroactively.'' One commenter cited several cases for the proposition that retroactivity is disfavored and that the EPA is applying this new interpretation retroactively to existing SIP provisions. The commenter claimed that the EPA approved the existing SIP provisions with full knowledge of what those provisions were and ''consistent with the provisions EPA itself adopted and courts required.'' The commenter characterized the SIP provisions for which the EPA is issuing a SIP call as ''enforcement discretion'' provisions and ''affirmative defense'' provisions for startup and shutdown. The commenter contended that the EPA does not have authority to issue a SIP call on the premise that the CAA is less flexible than the Agency previously thought. The commenter concluded that ''[t]he factors of repose, reasonable reliance, and settled expectations favor not imposing EPA's new interpretations.''

Response: The EPA disagrees that this SIP call action has ''retroactive'' effect. As recognized by the commenter, this SIP call action does not automatically change the terms of the existing SIP or of any existing SIP provision, nor does it mean that affected sources could be held liable in an enforcement case for past emissions that occurred when the deficient SIP provisions still applied. Rather, the EPA is exercising its clear statutory authority to call for the affected states to revise specific deficient SIP provisions so that the SIP provisions will comply with the requirements of the CAA prospectively and so that affected sources will be required to comply with the revised SIP provisions prospectively.

To the extent that a SIP provision complied with previous EPA interpretations of the CAA that the Agency has since determined are flawed, or to the extent that the EPA erroneously approved a SIP provision that was inconsistent with the terms of the CAA, the EPA disagrees that it is precluded from requiring the state to modify its SIP now so that it is consistent with the Act. In fact, that is precisely the type of situation that the SIP call provision of the CAA is designed to address. Specifically, section 110(k)(5) begins, ''[w]henever'' the EPA determines that an applicable implementation plan is inadequate to attain or maintain the NAAQS, to mitigate adequately interstate pollutant transport, or ''to otherwise comply with

[234] *See* 1999 SSM Guidance at 2, footnote 1. The EPA included section 302(k) among the statutory provisions that formed the basis for its interpretations of the CAA in that document.

[235] *Sierra Club,* 551 F.3d 1019 (D.C. Cir. 2008).

[236] The EPA emphasized this important point in the SNPR. *See* 79 FR 55919 at 55931.

any requirement'' of the Act, the EPA must call for the SIP to be revised. The commenter does not question that sections 110(a)(2) and 302(k) are requirements of the Act. Thus, the EPA has authority under section 110(k)(5) to call on states to revise their SIP provisions to be consistent with those requirements.

The EPA disagrees that the doctrines of ''repose,'' ''reasonable reliance'' and ''settled expectations'' preclude such an action. The CAA is clear that ''whenever'' the EPA determines that a SIP provision is inconsistent with the statute, ''the Administrator shall'' notify the state of the inadequacies and establish a schedule for correction. This language does not provide the Agency with discretion to consider the factors cited by the commenter in deciding whether to call for a SIP revision once it is determined to be flawed. Here, the EPA has determined that the SIP provisions at issue are flawed and thus the Agency was required to notify the states to correct the inadequacies.

p. Comments that the EPA should not encourage states to rely on enforcement discretion because this will inevitably lead to states' creating emission limitations that some sources cannot meet.

Comment: Commenters claimed that it is not appropriate for the EPA to encourage states to exercise enforcement discretion rather than to encourage them either to define periods when numerical emission limitations do not apply or to develop alternative emission limitations or other control measures. The commenters contended that inclusion of an enforcement discretion provision in a SIP is superfluous. The commenter cited to *Portland Cement,* where the D.C. Circuit court stated that ''an excessively broad theory of enforcement discretion might endanger securing compliance with promulgated standards.'' [237] The commenter also cited the *Marathon Oil* case in the Ninth Circuit in which the court rejected an approach that relied heavily on enforcement discretion. The commenter then asserted that sources are liable for violations and that ''[s]ources should not be required to litigate remedy for violations they cannot avoid.'' [238] The commenter concluded that it is ''unreasonable for EPA to subject itself to claims that it must exercise its federal enforcement authority in the event a state refuses to enforce unachievable standards, or for states to put source owners and operators in jeopardy of criminal prosecution for starting up a source with knowledge that a numerical emission limitation might be exceeded. In summary, the commenter appeared to argue that the EPA should require states to establish alternative numerical emission limitations or other control requirements during SSM events, rather than merely eliminating SSM exemptions and relying on enforcement discretion to address SSM emissions.

Response: The EPA disagrees with the commenter's suggestion that the EPA should discourage states from relying on enforcement discretion. Enforcement discretion is a valid state prerogative, long recognized by courts. However, the EPA agrees with the commenter that states should not adopt overly broad enforcement discretion provisions for inclusion in their SIPs. Section 110(a)(2) requires states to have adequate enforcement authority, and overly broad enforcement discretion provisions would run afoul of this requirement if they have the effect of precluding adequate state authority to enforce SIP requirements. The EPA also agrees that states may elect to include alternative emission limitations, whether expressed numerically or otherwise, for certain periods of normal operations, including startup and shutdown.

It is unclear precisely what the commenters are advocating when they suggest that sources should not be subject to litigating a remedy for violations they cannot avoid. The likely interpretation is that the commenters believe that excess emissions during unavoidable events should be automatically exempted (*i.e.,* not considered a violation). This approach was rejected by the court in *Sierra Club* v. *Johnson,* because it was not consistent with the definition of emission limitation in section 302(k).[239] As previously explained in the February 2013 proposal and in this document, the EPA believes that definition, and thus the court's holding in *Sierra Club,* is equally relevant for the SIP program.

With respect to a commenter's concerns about criminal enforcement, the EPA disagrees that sources will be unable to start operations because they will automatically be subject to criminal prosecution if an emission limitation is exceeded during a malfunction. Under CAA section 113(c), criminal enforcement for violation of a SIP can occur when a person knowingly violates a requirement or prohibition of an implementation plan ''during any period of federally assumed enforcement or more than 30 days after having been notified'' under the provisions governing notification that the person is violating that specific requirement of the SIP. The EPA is unaware of any jurisdictions where federally assumed enforcement is in force, and the EPA does not anticipate that this situation would arise often. Thus, in almost every case, criminal enforcement would not occur in the absence of a pending notification of a civil enforcement case and could then apply only for repeated violation of the activity at issue in that civil action. Moreover, the concern raised by the commenter is one that would exist if there is any requirement that applies during a period of malfunction beyond the owner's control. The commenter's preferred way to address this concern would be to exempt these periods from compliance with any requirements, an approach rejected by the *Sierra Club* court as inconsistent with the definition of ''emission limitation'' and an approach that the EPA's longstanding SSM Policy has explained is inconsistent with the purpose of the NAAQS program, which is to ensure public health is protected through attainment and maintenance of the NAAQS, protection of PSD increments, improvement of visibility and compliance with other requirements of the CAA.

Finally, to the extent that the commenter was advocating that the EPA should require states to develop SIP provisions that impose alternative emission limitations during certain modes of source operation such as startup and shutdown to replace SSM exemptions, the EPA notes that to require states to do so would not be consistent with the principles of cooperative federalism and could be misconstrued as the Agency's imposing a specific control requirement in contravention of the *Virginia* decision.[240] As the commenter elsewhere itself argued, states have broad discretion in how to develop SIP provisions to meet the objectives of the CAA, so long as those provisions also meet the legal requirements of the CAA. To the extent that a state would prefer to have emission limitations that apply continuously, without higher numerical levels or specific technological controls or work practice standards applicable during modes of operation such as startup and shutdown, that is the prerogative of the state, so long as the revised SIP provision otherwise meets

[237] 486 F.2d at 399 n.91.

[238] *Marathon Oil Co.* v. *Environmental Protection Agency,* 564 F.2d 1253 (9th Cir. 1977).

[239] 551 F.3d 1019 (D.C. Cir. 2008).

[240] *See Virginia* v. *EPA,* 108 F.3d 1397 (D.C. Cir. 1997) (SIP call remanded and vacated because, *inter alia,* the EPA had issued a SIP call that required states to adopt a particular control measure for mobile sources).

CAA requirements. If a state determines that it is reasonable to require a source to meet a specific emission limitation on a continuous basis and also decides to rely on its own enforcement discretion to determine whether a violation of that emission limit should be subject to enforcement, then the EPA believes that to do so is within the discretion of the state.

q. Comments that the EPA's action on the Petition is inconsistent with the Credible Evidence Rule.

Comment: A number of commenters raised concerns based upon how the EPA's statements in the February 2013 proposal relate to the Credible Evidence Rule issued in 1997.[241] For example, one commenter argued that throughout the February 2013 proposal, when the EPA stated that excess emissions during SSM events should be treated as ''violations'' of the applicable SIP emission limitations, the Agency was contradicting the Credible Evidence Rule and other provisions of law. The commenter emphasized that the determination of whether excess emissions during an SSM event are in fact a ''violation'' of the applicable SIP provisions must be made using the appropriate reference test method. In addition, the commenter asserted that whether any other form of information may be used as ''credible evidence'' of a violation must be evaluated by the trier of fact in a specific enforcement action. Another commenter raised a different argument based on the Credible Evidence Rule, claiming that the EPA's statements in the preamble to that rulemaking contradict the EPA's statements in the February 2013 proposal and support the need for exemptions for emissions during SSM events. The implication of the commenter is that any such EPA statements in connection with the Credible Evidence Rule would negate the Agency's interpretation of the statutory requirements for SIP provisions as interpreted in the SSM Policy since at least 1982, the decision of the court in the *Sierra Club* case or any other actions such as the recent issuance of EPA regulations with no such SSM exemptions.

Response: The EPA agrees, in part, with the commenters who expressed concern that the Agency's statements in the February 2013 proposal could be misconstrued as a definitive determination that the excess emissions during any and all SSM events are automatically a violation of the applicable emission limitation, without factual proof of that violation, and without the existence and scope of that violation being decided by the appropriate trier of fact. The EPA agrees that the alleged violation of the applicable SIP emission limitation, if not conceded by the source, must be established by the party bearing the burden of proof in a legal proceeding. The degree to which evidence of an alleged violation may derive from a specific reference method or any other credible evidence must be determined based upon the facts and circumstances of the exceedance of the emission limitations at issue.[242] This is a basic principle of enforcement actions under the CAA, but the EPA wishes to make this point clearly in this final action to avoid any unintended confusion between the legal standard creating the enforceable obligation and the evidentiary standard for proving a violation of that obligation.

The EPA's general statements in the February 2013 proposal, the SNPR and this final action about treatment of SSM emissions as a violation pertain to another basic principle, *i.e.,* that SIP provisions cannot treat emissions during SSM events as exempt, because this is inconsistent with CAA requirements. Thus, when the EPA explains that these emissions must be treated as ''violations'' in SIP provisions, this is meant in the sense that states with SSM exemptions need to remove them, replace them with alternative emission limitations that apply during startup and shutdown or eliminate them by revising the emission limitation as a whole. Once impermissible SSM exemptions are removed from the SIP, then any excess emissions during such events may be the subject of an enforcement action, in which the parties may use any appropriate evidence to prove or disprove the existence and scope of the alleged violation and the appropriate remedy for an established violation. To be clear, the fact that these emissions are currently exempt through inappropriate SIP provisions is a deficiency that the EPA is addressing in this action. Thus, the EPA disagrees with the commenters' suggestion that these emissions are never to be treated as violations simply because a deficient SIP provision currently includes an SSM exemption. Once the SIP provisions are corrected, the excess emissions may be addressed through the legal structure for establishing an enforceable violation, which then may be proven using appropriate evidence, including test method evidence or other credible evidence. This means that excess emissions that occur during an SSM event will be treated for enforcement purposes in exactly the same manner as excess emissions that occur outside of SSM events. The EPA acknowledges that the limitation that applies during a startup or shutdown event might ultimately be different (whether higher or lower) than the limitation that applies at other times, if the state elects to replace the SSM exemption with an appropriate alternative emission limitation in response to this SIP call action.

The EPA also disagrees with commenters who claimed that statements by the Agency in the Credible Evidence Rule final rule preamble support the inclusion of exemptions for SSM events in SIP provisions. The commenter is correct that at that time, the EPA held the view that emission limitations in its own NSPS could be considered ''continuous,'' notwithstanding the fact that they contained ''specifically excused periods of noncompliance'' (*i.e.,* exemptions from emission limitations during SSM events).[243] Similarly, at that time the EPA relied on a number of reported court decisions discussed in the preamble for the Credible Evidence Rule for determining at that time that NSPS could contain such exemptions in order to make the emission limitations ''reasonable.'' However, after the court's decision in the *Sierra Club* case interpreting the definition of emission limitation in section 302(k), these EPA statements in the preamble for the Credible Evidence Rule are no longer correct and thus do not apply to the EPA's action in this document.

First, the EPA notes that these prior statements related to the Credible Evidence Rule specifically addressed not SIP provisions but rather the provisions of the Agency's own technologically based NSPS. The statements in the document make no reference to SIP provisions, which is unsurprising given that EPA's SSM Policy at the time indicated that no such SSM exemptions are appropriate in SIP provisions. Second, the EPA's justification for exemptions from emission limitations during SSM events in NSPS was made prior to the 2008

[241] *See* ''Credible Evidence Revisions; Final rule,'' 62 FR 8314 (February 24, 1997).

[242] For example, the degree to which data from continuous opacity monitoring systems (COMS) is evidence of violations of SIP opacity or PM mass emission limitations is a factual question that must be resolved on the facts and circumstances in the context of an enforcement action. *See, e.g., Sierra Club* v. *Pub. Ser* v. *Co. of Colorado, Inc.,* 894 F.Supp. 1455 (D. Colo. 1995) (allowing use of COMS data to prove opacity limit violations).

[243] *Id.,* 62 FR 8314, 8323–24.

decision of the court in the *Sierra Club* case. The EPA's interpretation of the statute and the case law to justify exemptions for emissions during SSM events in that 1997 document is no longer correct. Finally, the EPA in its own new NESHAP and NSPS regulations is now providing no exemptions for emissions during SSM events and is imposing specific numerical limitations or other control requirements on sources that apply to affected sources at all times, including during SSM events.[244] Thus, the statements in the 1997 Credible Evidence Rule preamble relied upon by commenters do not render the EPA's interpretation of the CAA with respect to SSM exemptions in SIP provisions in this action incorrect.

For clarity, the EPA emphasizes that it is in no way reopening, revising or otherwise amending the Credible Evidence Rule in this action. The EPA is merely responding to commenters who characterized the relationship between Agency statements in that rulemaking action and this SIP call action. The EPA also emphasizes that no changes to the Credible Evidence Rule should be necessary as a result of this rulemaking.

r. Comments that exemptions in opacity standards should be permissible because opacity is not a NAAQS pollutant.

Comment: Many state and industry commenters argued that the EPA should interpret the CAA to allow SIP provisions that impose opacity emission limitations to contain exemptions for SSM events or for other modes of source operation. The reasons given by commenters ranged broadly, but they included assertions that opacity is not a criteria pollutant, that opacity limitations serve no purpose other than as a tool to monitor PM control device performance, that there is no reliable correlation between opacity and PM mass, that there are circumstances during which sources may not be capable of meeting the otherwise applicable SIP opacity standards and that opacity is not an ''air pollutant.'' Commenters also argued that because SIP opacity standards were originally established when the NAAQS applied to ''total suspended particles'' (TSP), rather than the current PM_{10} and $PM_{2.5}$, this alone should be a reason to allow SSM exemptions now that the NAAQS have been revised and the indicator species changed. Some of the commenters acknowledged that their underlying concern is that requirements for COMS on certain sources have rendered it much easier to monitor exceedances of SIP opacity limits and to bring enforcement actions for alleged violations.

Response: The EPA agrees with many of the points made by commenters but not with the conclusion that the commenters drew from these points, *i.e.,* that exemptions for SSM events are appropriate in SIP provisions that impose opacity emission limitations.

First, although the EPA agrees that opacity itself is not a criteria pollutant and that there is thus no NAAQS for opacity, this does not mean that SIP opacity limitations are not ''emission limitations'' subject to the requirements of section 110(a)(2)(A) and do not need to be continuous. As the commenters often conceded, opacity is a surrogate for PM emissions for which there are NAAQS, and opacity has served this purpose since the beginning of the SIP program in the 1970s. SIP provisions that impose opacity emission limitations often date back to the earliest phases of the SIP program. From the outset, such opacity limitations have provided an important regulatory tool for implementing the PM NAAQS and for limiting PM emissions from sources. To this day, states continue to use opacity limitations in SIP provisions and the EPA continues to use opacity limitations in its own NSPS and NESHAP regulations, as necessary, for specific source categories.[245] EPA regulations applicable to SIPs explicitly define the term ''emission limitation'' to include opacity limits.[246] It is also important to note that these SIP provisions impose opacity emission limitations that sources must meet independently; *i.e.,* opacity limitations are independent ''emission limitations'' under section 110(a)(2)(A) that must, consistent with section 302(k), ''limit[ ] the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.'' These opacity emission limitations in SIP provisions are not stated conditionally as opacity limits that sources do not need to meet if they are otherwise in compliance with PM mass emission limitations or with any other CAA requirements. Thus, the fact that opacity is not itself a criteria pollutant is irrelevant.

Second, although the EPA agrees that SIP opacity limitations also provide an important means of monitoring control device performance and thus indirectly provide a means to monitor compliance with PM emission limitations as well, this does not mean that opacity limits do not need to meet the statutory requirements for SIP emission limitations. Historically, opacity limits have been an important tool for implementation of the PM NAAQS, and in particular for the implementation and enforcement of PM mass limitations on sources to help attain and maintain the PM NAAQS. The EPA agrees that opacity is a useful tool to indicate overall operation and maintenance of a source and its emission control devices, such as electrostatic precipitators or baghouses. SIP opacity limitations provided this tool even before modern instruments that measure PM emissions on a direct, continuous basis existed. At a minimum, elevated opacity indicates potential problems with source design, operation or maintenance, or potential problems with incorrect operation of pollution control devices, especially at the elevated levels of many existing opacity standards. Well-run sources should be in compliance with typical SIP opacity limits. Opacity exceeding the applicable limitations can be indicative of problems that justify further investigation by sources and regulators, such as conducting a stack test to determine compliance with PM mass emission limitations. Not all sources have or will have PM CEMS, or have PM CEMS at all emission points, to monitor PM emissions directly, nor do PM CEMS necessarily obviate the need for opacity standards to regulate condensables, and thus there is a continued need for opacity emission limitations in SIPs. The continued need for SIP opacity limitations for this and other purposes contradicts the commenters' arguments concerning the validity of SSM exemptions.

Third, the EPA agrees that the precise correlation between opacity and PM mass emissions is not always known for a specific source under all operating conditions, unless there is parallel testing and measurement of the opacity and the PM emissions to determine the correlation at that particular source. Similarly, parametric monitoring can be used to establish such a correlation. Nevertheless, there is commonly a positive correlation between PM and opacity and thus elevated opacity is often indicative of additional PM

[244] *See, e.g.,* 40 CFR 60.42Da, where paragraph (e)(1) applies a numerical PM emission limitation at all times except during periods of startup and shutdown, and paragraph (e)(2) applies work practice standards during periods of startup and shutdown.

[245] *See, e.g.,* 40 CFR 60.42Da(b). The EPA's revised NSPS for this category imposes an opacity limit of 20 percent at all times, except for one 6-minute period per hour when the opacity may rise to 27 percent. Notably, as an option, sources may elect to install PM CEMS and be subject only to the revised particulate matter emission limitation.

[246] *See* 40 CFR 51.100(z) (defining the term ''emission limitation'' as limits on ''the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirements which limit the level of opacity'').

emissions from a source. Even in those instances where a precise correlation is not available, however, the use of opacity as a means to assure the reduction of PM emissions and to monitor source compliance remains a valid approach to regulation of PM from sources. In any event, the absence of a precise correlation between opacity and PM does not justify the complete exemptions from SIP opacity limitations during SSM events that the commenters advocate and instead suggests that it may be appropriate to replace such exemptions with valid and enforceable alternative numerical limitations or other control requirements as a component of the SIP opacity emission limitation that applies during startup and shutdown. Opacity emission limitations in SIPs must meet the statutory requirements for emission limitations.

Fourth, the EPA agrees with commenters that for some sources some PM controls cannot operate, or operate at full effectiveness and ideal efficiency, during startup and shutdown. Accordingly, as the commenters implicitly recognized, the resulting increases in PM emissions can result in elevated opacity and thus exceedances of the applicable SIP opacity emission limitations. In those situations where it is true that no additional emissions controls are available or would function more effectively to reduce PM emissions, and hence to reduce opacity, it may be appropriate for states to consider imposing an alternative opacity emission limitation applicable during startup and shutdown. As discussed in section VII.B.2 of this document, the EPA provides recommendations to states concerning how to develop such alternative emission limitations. To the extent that sources believe that a SIP provision with a higher opacity level for startup and shutdown may be justified, they may seek these alternative limitations from the state and they can presumably advocate for opacity standards that are tailored to reflect the correlation between PM mass and opacity at a specific source. Significantly, however, even if it is appropriate to impose a somewhat higher opacity limitation for some sources during specifically defined modes of operation such as startup and shutdown, that does not justify the total exemptions from SIP opacity emission limitations during SSM events that the commenters advocated. To provide total exemptions from SIP opacity emission limitations during SSM events does not provide any incentive for sources to be better designed, operated, maintained and controlled to reduce emissions, nor does it comply with the most basic requirement that SIP emission limitations be continuous in accordance with section 302(k). As explained in section X.B of this document, the SIP revisions in response to this SIP call action will need to be consistent with the requirements of sections 110(k)(3), 110(l) and 193 as well as any other applicable requirements.

Fifth, the EPA notes that few commenters seriously argued that SIP provisions for opacity do not fit within the plain language of section 110(a)(2)(A) or the definition of ''emission limitation'' in section 302(k) or in EPA regulations applicable to SIP provisions. Section 110(a)(2)(A) requires SIPs to contain such enforceable emission limitations ''as may be necessary and appropriate to meet the applicable requirements of'' the CAA. Opacity limitations in SIP provisions are necessary and appropriate for a variety of reasons already described, including as a means to reduce PM emissions, as a means to monitor source compliance and to provide for more effective enforcement. Opacity limitations in SIP provisions also easily fit within the concept of a limit on the ''quantity, rate or concentration of air pollutants'' that relates to the ''operation or maintenance of a source to assure continuous emission reduction and any design, equipment, work practice or operational standard'' under the CAA, as provided in section 302(k). The term ''air pollutant'' is defined broadly in section 302(g) to mean ''any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive . . . substance or matter which is emitted into or otherwise enters the ambient air.'' Even if opacity is not itself an air pollutant, it is clearly a means of monitoring and limiting emissions of PM from sources and is thus encompassed within the definition of ''emission limitation'' in section 302(k).[247] Significantly, existing EPA regulations applicable to SIP provisions already explicitly define the term ''emission limitation'' to include opacity limitations.[248]

Finally, the EPA does not agree with commenters who argued that because SIP opacity limitations were often originally imposed when the PM NAAQS was for TSP, it is legally acceptable to have exemptions for emissions during SSM events now that the PM NAAQS use PM_{10} and $PM_{2.5}$ as the indicator species. On a factual level, it is obvious that SIP provisions for opacity limitations are expressed in terms of percentage ''opacity'' unrelated to the size of the particles. Opacity represents the degree to which emissions reduce the transmission of light and obscures the view of an object in the background. In general, the more particles which scatter or absorb light that passes through an emissions point, the more light will be blocked, thus increasing the opacity percentage of the emissions plume. The EPA agrees that variables such as the size, number and composition of the particles in the emissions can result in variations in the percentage of opacity. Notwithstanding the changes in the NAAQS, however, both states and the EPA have continued to rely on opacity limitations because they serve the same purposes for the current PM_{10} and $PM_{2.5}$ NAAQS (and other purposes such as the regulation of HAPs under section 112) that they previously did for the TSP NAAQS. Indeed, as the PM NAAQS have been revised to provide better protection of public health, the need for such opacity limitations continues unless there is a better means to monitor source compliance, such as PM CEMS. As with other SIP emission limitations, the EPA interprets the CAA to preclude SSM exemptions in opacity standards.

s. Comments that exemptions from SIP opacity limitations for excess emissions during SSM events should be allowed because such emissions are difficult to monitor or to control.

Comment: Several commenters argued that the EPA's proposal of a SIP call for SIP opacity emission limitations that include an SSM exemption is arbitrary and capricious because it is difficult or impossible to monitor or measure opacity during SSM events. According to commenters, there is no compliance methodology to determine whether opacity limitations are met during SSM events and this is the reason that the EPA's own general provisions for NSPS and NESHAP exclude emissions during SSM events as ''not representative'' of source operation. In the absence of a specific methodology to demonstrate compliance, the commenters argued that expecting sources to comply with any opacity emission limitations during SSM events is arbitrary and capricious. The commenters asserted that in light of this, the EPA must interpret the CAA to allow exemptions for SSM events in SIP opacity provisions.

A number of commenters also argued that because emission controls for PM do not function, or do not function as effectively or efficiently, during certain

[247] *See Sierra Club* v. *TVA,* 430 F.3d 1337, 1340 (11th Cir. 2005).

[248] *See* 40 CFR 51.100(z).

modes of source operation, the EPA should interpret the CAA to permit exemptions for SSM events in opacity emission limitations. Many commenters explained that certain types of emission controls at certain types of sources only operate at specific temperatures or under specific conditions. For example, many commenters stated that existing pollution control devices on certain categories of stationary sources do not operate, or do not operate as effectively or efficiently, during startup and shutdown. Based upon this assertion, the commenters argued that the EPA should interpret the CAA to allow total exemptions from SIP opacity emission limitations during such periods.

Commenters also characterized the EPA's February 2013 proposal as ''particularly unreasonable'' with respect to SSM exemptions in SIP opacity limitations, because those limitations should be allowed to exclude elevated opacity during periods when PM emissions controls devices are ''not expected to operate correctly.'' According to commenters, treating the higher opacity during SSM events ''as a violation simply because it is indicating something that is expected is ridiculous.'' As an example, the commenters specifically mentioned occurrences such as when a source's electrostatic precipitator (ESP) is not functioning or is not functioning properly as periods during which there should be an exemption from SIP opacity emission limitations.

Response: The EPA agrees with some of the points made by commenters but does not agree with the conclusions that the commenters drew from these points, *i.e.,* that alleged difficulties in monitoring, measuring or controlling opacity during some modes of source operation in general justify complete exemptions from opacity emission limitations during SSM events.

First, the EPA does not agree with the argument that there is no ''compliance methodology'' available for purposes of verifying compliance with SIP opacity limitations. Since the earliest phases of the SIP program, Reference Method 9 has been available as a means of verifying a source's compliance with applicable SIP opacity emission limitations. Whatever concerns the commenters may have with this test method, it is a valid method and it continues to be used as a means of verifying source compliance with opacity limitations and a source of evidence for determining whether there are violations of such emission limitations.[249] Sources routinely monitor and certify to their compliance with SIP opacity limitations based upon Method 9. In addition, COMS have been available, and in some cases are required, as another means of monitoring emissions and verifying compliance with opacity emission limitations. With respect to COMS, commenters expressed concerns that they are not always accurate, are not always properly calibrated or are not always the reference test method for SIP opacity emission limitations, and other similar arguments. In this rulemaking, the EPA is not addressing these allegations concerning COMS but merely noting that COMS are an available means of monitoring opacity from sources and in appropriate circumstances can provide data meeting the EPA's criteria as credible evidence to be used to determine compliance with emission limitations.

Second, the EPA does not agree that the fact that its regulations concerning performance tests in 40 CFR 63.7(e) for NESHAP and in 40 CFR 60.8(c) for NSPS exclude SSM emissions for purposes of evaluation of emissions under normal operating conditions provides a justification for SSM exemptions from opacity emission limitations in SIP provisions. The D.C. Circuit decision in *Sierra Club* has already indicated that such exemptions are not permissible in emission limitations and vacated the general provisions applicable to NESHAP. In the case of the exemption language in 40 CFR 60.8(c) relevant to NSPS, the EPA acknowledges that it has not yet taken action to revise the language to eliminate that exemption. However, in promulgating new NSPS regulations subsequent to the *Sierra Club* decision, the EPA is including emission limitations for newly constructed, reconstructed and modified sources that apply continuously and including provisions expressly stating that the SSM exemptions in the General Provisions do not apply. The EPA notes that the commenter is also in error because the performance tests are intended to be a means of evaluating emissions from sources during periods that are representative of source operation.

Third, the EPA does not agree with the premise that because certain forms or types of emission controls do not work, or do not work as effectively or efficiently, during certain modes of operation at some sources, it necessarily follows that sources should be totally exempt from emission limitations during such periods. The EPA interprets the CAA to require that SIP emission limitations be continuous. As explained in section VII.A of this document, emission limitations do not necessarily need to be expressed numerically, can have higher numerical levels during certain modes of operation, and may be composed of a combination of numerical limitations, specific technological control requirements and/or work practice requirements during certain modes of operation, so long as these emission limitations meet applicable CAA stringency requirements and are legally and practically enforceable. If it is factually accurate that a given source category requires a higher opacity limit during periods such as startup and shutdown, then the state may elect to develop one consistent with other CAA requirements. The EPA has provided guidance to states with criteria to consider in revising their SIP provisions to replace exemptions with an appropriate alternative emission limitation for such purposes. The EPA emphasizes that even if it is the case that existing control measures cannot operate, or cannot operate as effectively or efficiently, during startup and shutdown at a particular source, this does not legally justify a complete exemption from SIP emission limitations and may merely indicate that additional emission controls or work practices are necessary when the existing control measures are insufficient to meet the applicable SIP emission limitation. The EPA is taking this approach with its own recent NSPS and NESHAP regulations, when appropriate, in order to ensure that its own emission limitations are consistent with CAA requirements.

Finally, the EPA also disagrees with the logic of commenters that argued in favor of exemptions from SIP opacity limitations during periods when a source is most likely to violate them, *e.g.,* when the source's control devices are not functioning. Even if exemptions from SIP opacity emission limitations were legally permissible under the CAA, which they are not, it would be illogical to excuse compliance with the standards during the precise periods when opacity standards are most

[249] The EPA notes that one commenter characterized SIP opacity limits as ''archaic'' and suggested that the Agency should issue a SIP call requiring their removal from SIPs entirely. Unless and until regulators and sources have a better means of monitoring compliance with PM emission limitations on a continuous basis, such as through installation of PM CEMS, the EPA believes that opacity limits will continue to be a necessary part of emission limitations. There will continue to be sources of emissions for which it will not be cost-effective or technologically viable to require the installation of PM CEMS or for which opacity standards will be needed as a means of regulating condensables.

needed to monitor source compliance with SIP emission limitations and provide incentives to avoid and promptly correct malfunctions; *i.e.,* it would be illogical to require no legal restriction on emissions when the sources are most likely to be emitting the most air pollutants. Inclusion of exemptions for exceedances of SIP opacity limitations during such periods would remove incentives to design, maintain and operate the source correctly, and to promptly correct malfunctions, in order to assure that it meets the applicable SIP emission limitations. By exempting excess emissions during such events, the provision would undermine the enforcement structure of the CAA in section 113 and section 304, through which the air agency, the EPA and citizens are authorized to assure that sources meet their obligations. The EPA emphasizes that while exemptions from SIP limitations are not permissible in SIP provisions, states may elect to impose appropriate alternative emission limitations. They may include alternative numerical limitations, control technologies or work practices that apply during modes of operation such as startup and shutdown, so long as all components of the SIP emission limitation meet all applicable CAA requirements.

t. Comments that exemptions in SIP opacity limitations should be permissible for ''maintenance,'' ''soot-blowing'' or other normal modes of source operation.

Comment: A number of industry commenters argued that the EPA should interpret the CAA to allow exemptions from SIP opacity limitations for ''maintenance.'' The commenters stated that during maintenance, sources must shut down operations and control devices while the source is cleaned or repaired. During such periods, the commenters explained, a ventilation system operated to protect workers at the source could result in monitored exceedances of a SIP opacity limitation. Commenters specifically argued that although COMS data may suggest violations of opacity standards during such periods, the fact that the source is not combusting fuel during maintenance should mean that the opacity emission limitation does not apply at such times. According to commenters, opacity limitations are only intended to reflect the performance of pollution control equipment while the source is operating and thus have no relevance during periods of maintenance. Other commenters made comparable arguments with respect to soot-blowing, asserting that the high opacity levels during this activity are ''indicative of normal ESP operation, not poor performance.'' In other words, the commenters argued that opacity limitations should contain complete exemptions for opacity emitted during soot-blowing on the theory that the elevated emissions during this mode of operation show that the control measure on a source is functioning properly. The commenters further argued that considering emissions during soot-blowing for purposes of PM limitations is appropriate, but not for purposes of opacity limitations, because of the way in which regulators developed the respective emission limitations.

Response: The EPA does not agree that exemptions from SIP opacity limitations are appropriate for any mode of source operation, whether during SSM events or during other normal, predictable modes of source operation. To the extent that there are legitimate technological reasons why sources are able to meet only a higher opacity limitation during certain modes of operation, it does not follow that this constraint justifies complete exemption from any standard or any alternative technological control or work practice in order to reduce opacity during such periods. Providing a complete exemption for opacity during these modes of source operation, and no specific alternative emission limitation during such periods, removes incentives for sources to be properly designed, maintained and operated to reduce emissions during such periods.

With respect to maintenance, the EPA does not agree with commenters that total exemptions from opacity emission limitations during such activities are consistent with CAA requirements for SIP provisions. As the EPA has stated repeatedly in its interpretation of the CAA in the SSM Policy, maintenance activities are predictable and planned activities during which sources should be expected to comply with applicable emission limitations.[250] The premise of the commenters advocating for such exemptions for all emissions during maintenance is evidently that nothing can be done to limit PM emissions and thus limit opacity during maintenance activities, and the EPA disagrees with that general premise. To the extent appropriate, however, states may elect to create alternative emission limitations applicable to opacity during maintenance periods, so long as they are consistent with CAA requirements. The EPA provides recommendations for alternative emission limitations in section VII.B.2 of this document.

With respect to soot-blowing, the EPA likewise does not agree that total exemptions from opacity limitations during such periods are consistent with CAA requirements. As with maintenance in general, soot-blowing is an intentional, predictable event within the control of the source. The commenters' implication is that nothing whatsoever could be done to limit opacity during such activities, and the EPA believes that this is both inaccurate and not a justification for sources' being subject to no standards whatsoever during soot-blowing. In addition, the EPA disagrees with the commenters' claim that exemptions from opacity emission limitations during soot-blowing are legally permissible because this allegedly shows that the control devices for opacity and PM are in fact performing correctly. This argument incorrectly presupposes that the sole reason for SIP opacity emission limitations is as a means of better evaluating control measure performance. This is but one reason for SIP opacity limitations. Moreover, the EPA notes, excusing opacity during soot-blowing has the diametrically opposite effect of the actual purpose of the control devices and can result in much higher emissions as opposed to encouraging limiting these emission with other forms of controls.

Finally, the EPA notes, the commenters' argument that whether opacity limitations should apply during soot-blowing depends upon whether the emissions were or were not accounted for in the applicable PM emissions is also based upon an incorrect premise. Even if the PM emission limitation applicable to a source was developed to include the emissions during soot-blowing specifically, it does not follow that sources should be completely exempted from opacity limitations during such periods. As the commenters themselves frequently acknowledged, when compared to other enforcement tools, SIP opacity provisions often provide a much more effective and continuous means of determining source compliance with SIP PM limitations and control measure performance. A typical SIP opacity provision imposes an emission limitation such as 20 percent opacity at all times, except for 6 minutes per hour when those emissions may rise to 40 percent opacity. Well-maintained and

[250] *See* 1982 SSM Guidance at Attachment p. 2; 1983 SSM Guidance at Attachment p. 3. The EPA notes that it also did not interpret the CAA to permit affirmative defense provisions for planned events under its prior 1999 SSM Guidance on the grounds that sources should be expected to operate in accordance with applicable SIP emission limitations during maintenance. This interpretation was upheld in *Luminant Generation* v. *EPA,* 714 F.3d 841 (5th Cir. 2013).

well-operated sources should be able to meet such SIP opacity limitations. Given that properly designed, maintained and operated sources should typically have opacity substantially below these levels, elevated opacity at a source is a good indication that the source may not be in compliance with its applicable PM limitations.

u. Comments that elimination of exemptions from SIP opacity emission limitations during SSM events will compel states to alter the averaging period of opacity limitations so as to allow sources to have elevated emissions during SSM events.

Comment: Commenters argued that if exemptions for excess emissions during SSM events are not legally permissible in SIP opacity emission limitations, then states will have no option but to alter the existing opacity limitations. The commenters argued that if the SSM exemptions are removed, then the averaging time should be ''greatly extended'' and the numerical limits ''should be significantly increased.''

Response: The EPA agrees that SIP provisions for opacity that contain exemptions for SSM events at issue in this action must be revised to eliminate the exemptions. States may elect to do this by merely removing the exemptions, by replacing the exemptions with appropriate alternative emission limitations that apply in place of the exemptions or, as the commenters evidently advocate, by a total overhaul of the emission limitation. The EPA disagrees, however, with the commenters' contentions that removal of the SSM exemptions would necessarily result in extensions of the averaging time or increases of the numerical levels in the existing SIP opacity emission limitations. In some cases, extension of the averaging period and elevation of the numerical limitations may in fact be appropriate. In other cases, however, it may instead be appropriate to reduce the existing numerical opacity limitations, given improvements in control technology since the original imposition of the limits and the need for additional PM emission reductions from the affected sources due to more recent revisions to the PM NAAQS. Thus, the EPA notes, a total revision of some of the SIP opacity limitations at issue in this action may indeed be the proper course for states to consider. The implications of the commenters' argument, however, are that existing opacity limitations will automatically need to be revised in order to allow sources to continue to emit as usual and that states and sources may ignore improvements that have been made in source design, operation, maintenance or controls to reduce emissions. The EPA emphasizes that the removal of impermissible SSM exemptions should not be perceived as an opportunity to provide new *de facto* exemptions for these emissions by manipulation of the averaging time and the numerical level of existing opacity emission limitations.

In any event, the EPA is not in this final action deciding how states must revise SIP opacity emission limitations but is merely issuing a SIP call directing the affected states to eliminate existing automatic and discretionary exemptions for excess emissions during SSM events. The affected states will elect how best to respond to this SIP call, whether by simply removing the exemptions, by replacing the exemptions with appropriate alternative emission limitations applicable to startup and shutdown or other normal modes of operation or by a complete overhaul of the SIP provision in question. In particular, where the affected sources are located in designated nonattainment areas, there may be a need to evaluate additional controls that are needed for attainment planning purposes that were not necessary when the emission limitation was first adopted. Whichever approach a state determines to be most appropriate, the resulting SIP submission to revise the existing deficient provisions will be subject to review by the EPA pursuant to sections 110(k)(3), 110(l) and 193. Considerations relevant to this issue are discussed in section X.B of this document.

B. Alternative Emission Limitations During Periods of Startup and Shutdown

1. What the EPA Proposed

In the February 2013 proposal, the EPA reiterated its longstanding interpretation of the CAA that SIP provisions cannot include exemptions from emission limitations for emissions during SSM events but may include different requirements that apply to affected sources during startup and shutdown. Since the 1982 SSM Guidance, the EPA has clearly stated that startup and shutdown are part of the normal operation of a source and should be accounted for in the design and operation of the source. Thus, the EPA has long concluded that sources should be required to meet the applicable SIP emission limitations during normal modes of operation including startup and shutdown.[251] In the 1983 SSM Guidance, the EPA explained that it may be appropriate to exercise enforcement discretion for violations that occur during startup and shutdown under proper circumstances. In the 1999 SSM Guidance, the EPA further explained that it interprets the CAA to permit SIP emission limitations that include alternative emission limitations specifically applicable during startup and shutdown. In the context of making recommendations to states for how to address emissions during startup and shutdown, the EPA provided seven criteria for states to evaluate in establishing appropriate alternative emission limitations. The specific purpose for these recommendations was to take into account technological limitations that might prevent compliance with the otherwise applicable emission limitations. As explained in detail in the February 2013 proposal, the EPA did not intend these criteria to be the basis for the creation of exemptions from SIP emission limitations during startup and shutdown, because the Agency interprets the CAA to prohibit such exemptions.

In the February 2013 proposal, the EPA also repeated its guidance concerning establishment of alternative emission limitations that apply to sources during startup and shutdown, in those situations where the sources cannot meet the otherwise applicable SIP emission limitations. As explained in section VII.A of the February 2013 proposal, the EPA interprets the CAA to require that SIP emission limitations must be continuous and thus to prohibit exemptions for emissions during startup and shutdown. This does not, however, mean that every SIP emission limitation must be expressed as a numerical limitation or that it must impose the same limitations during all modes of source operation. The EPA's interpretation of the CAA with respect to SIP provisions is that SIP emission limitations: (i) Do not need to be numerical in format; (ii) do not have to apply the same limitation (*e.g.,* numerical level) at all times; and (iii) may be composed of a combination of numerical limitations, specific technological control requirements and/

[251] Some commenters on the February 2013 proposal focused great attention on whether startup and shutdown are modes of ''normal'' source operation. The EPA assumes that every source is designed, maintained and operated with the expectation that the source will at least occasionally start up and shut down, and thus these modes of operation are ''normal'' in the sense that they are to be expected. The EPA used this term in the ordinary sense of the word to distinguish between such predictable modes of source operation and genuine ''malfunctions,'' which are by definition supposed to be unpredictable and unforeseen events that could not have been precluded by proper source design, maintenance and operation.

or work practice requirements, with each component of the emission limitation applicable during a defined mode of source operation. Regardless of how an air agency elects to express the emission limitation, however, the emission limitation must limit emissions from the affected sources on a continuous basis. Thus, if there are different numerical limitations or other control requirements that apply during startup and shutdown, those must be clearly stated components of the emission limitation, must meet the applicable level of control required for the type of SIP provision (*e.g.,* be RACT for sources located in nonattainment areas) and must be legally and practicably enforceable.

2. What Is Being Finalized in This Action

The EPA is reiterating its interpretation of the CAA to allow SIP emission limitations to include components that apply during specific modes of source operation, such as startup and shutdown, so long as those components together create a continuously applicable emission limitation that meets the relevant substantive requirements and requisite level of stringency for the type of SIP provision at issue and is legally and practically enforceable. In addition, the EPA is updating the specific recommendations to states for developing such alternative emission limitations described in the February 2013 proposal, by providing in this document some additional explanation and revisions to the text of its recommended criteria regarding alternative emission limitations.

The EPA's longstanding position is that the CAA does not allow SIP provisions that include exemptions from emission limitations for excess emissions that occur during startup and shutdown. The EPA reiterates that exemptions from SIP emission limitations are also not permissible for excess emissions that occur during other periods of normal source operation. A number of SIP provisions identified in the Petition create automatic or discretionary exemptions from otherwise applicable emission limitations during periods such as ''maintenance,'' ''load change,'' ''soot-blowing,'' ''on-line operating changes'' or other similar normal modes of operation. Like startup and shutdown, the EPA considers all of these to be modes of normal operation at a source, for which the source can be designed, operated and maintained in order to meet the applicable emission limitations and during which the source should be expected to control and minimize emissions. Accordingly, exemptions for emissions during these periods of normal source operation are not consistent with CAA requirements. Excess emissions that occur during planned and predicted periods should be treated as violations of any applicable emission limitations.

However, the EPA interprets the CAA to allow SIPs to include alternative emission limitations for modes of operation during which an otherwise applicable emission limitation cannot be met, such as may be the case during startup or shutdown. The alternative emission limitation, whether a numerical limitation, technological control requirement or work practice requirement, would apply during a specific mode of operation as a component of the continuously applicable emission limitation. For example, an air agency might elect to create an emission limitation with different levels of control applicable during specifically defined periods of startup and shutdown than during other normal modes of operation. All components of the resulting emission limitation must meet the substantive requirements applicable to the type of SIP provision at issue, must meet the applicable level of stringency for that type of emission limitation and must be legally and practically enforceable. The EPA will evaluate a SIP submission that establishes a SIP emission limitation that includes alternative emission limitations applicable to sources during startup and shutdown consistent with its authority and responsibility pursuant to sections 110(k)(3), 110(l) and 193 and any other CAA provision substantively germane to the SIP revision. Absent a properly established alternative emission limitation for these modes of operation, a source should be required to comply with the otherwise applicable emission limitation.

In addition, the EPA is providing in this document some additional explanation and clarifications to its recommended criteria for developing alternative emission limitations applicable during startup and shutdown. The EPA continues to recommend that, in order to be approvable (*i.e.,* meet CAA requirements), alternative requirements applicable to the source during startup and shutdown should be narrowly tailored and take into account considerations such as the technological limitations of the specific source category and the control technology that is feasible during startup and shutdown. Accordingly, the EPA continues to recommend the seven specific criteria enumerated in section III.A of the Attachment to the 1999 SSM Guidance as appropriate considerations for SIP provisions that establish alternative emission limitations that apply to startup and shutdown. The EPA repeated those criteria in the February 2013 proposal as guidance to states for developing components of emission limitations that apply to sources during startup, shutdown or other specific modes of source operation to meet CAA requirements for SIP provisions.

Comments received on the February 2013 proposal suggested that the purpose of the recommended criteria may have been misunderstood by some commenters. The criteria were phrased in such a way that commenters may have misinterpreted them to be criteria to be applied by a state retrospectively (*i.e.,* after the fact) to an individual instance of emissions from a source during an SSM period, in order to establish whether the source had exceeded the applicable emission limitation. This was not the intended purpose of the recommended criteria at the time of the 1999 SSM Guidance, nor is it the intended purpose now.

The EPA seeks to make clear in this document that the recommended criteria are intended as guidance to states developing SIP provisions that include emission limitations with alternative emission limitations applicable to specifically defined modes of source operation such as startup and shutdown. A state may choose to consider these criteria in developing such a SIP provision. The EPA will use these criteria when evaluating whether a particular alternative emission limitation component of an emission limitation meets CAA requirements for SIP provisions. Any SIP revision establishing an alternative emission limitation that applies during startup and shutdown would be subject to the same procedural and substantive review requirements as any other SIP submission.

Based on comment on the February 2013 proposal, the EPA is updating the criteria to make clear that they are recommendations relevant for development of appropriate alternative emission limitations in SIP provisions. Thus, in this document, the EPA is providing a restatement of its recommended criteria that reflects clarifying but not substantive changes to the text of those criteria. One clarifying change is removal of the word ''must'' from the criteria, to better convey that these are recommendations to states concerning how to develop an approvable SIP provision with alternative requirements applicable to

startup and shutdown and to make clear that other approaches might also be consistent with the CAA in particular circumstances.

The clarified criteria for developing and evaluating alternative emission limitations applicable during startup and shutdown are as follows:

(1) The revision is limited to specific, narrowly defined source categories using specific control strategies (*e.g.,* cogeneration facilities burning natural gas and using selective catalytic reduction);

(2) Use of the control strategy for this source category is technically infeasible during startup or shutdown periods;

(3) The alternative emission limitation requires that the frequency and duration of operation in startup or shutdown mode are minimized to the greatest extent practicable;

(4) As part of its justification of the SIP revision, the state analyzes the potential worst-case emissions that could occur during startup and shutdown based on the applicable alternative emission limitation;

(5) The alternative emission limitation requires that all possible steps are taken to minimize the impact of emissions during startup and shutdown on ambient air quality;

(6) The alternative emission limitation requires that, at all times, the facility is operated in a manner consistent with good practice for minimizing emissions and the source uses best efforts regarding planning, design, and operating procedures; and

(7) The alternative emission limitation requires that the owner or operator's actions during startup and shutdown periods are documented by properly signed, contemporaneous operating logs or other relevant evidence.

It may be appropriate for an air agency to establish alternative emission limitations that apply during modes of source operation other than during startup and shutdown, but any such alternative emission limitations should be developed using the same criteria that the EPA recommends for those applicable during startup and shutdown.

3. Response to Comments

The EPA received a number of comments, both supportive and adverse, concerning the issue of how air agencies may replace existing exemptions for emissions during SSM events with alternative emission limitations that apply during startup, shutdown or other normal modes of source operation. The majority of these comments were critical of the EPA's position but did not base this criticism on an interpretation of specific CAA provisions. For clarity and ease of discussion, the EPA is responding to these comments, grouped by issue, in this section of this document.

a. Comments that as a technical matter sources cannot meet emission limitations (or cannot be accurately monitored) during startup and shutdown.

Comment: Several commenters claimed that as a technical matter, SIP emission limitations cannot be met or that monitoring to ensure compliance with emission limitations cannot occur during startup and shutdown. Commenters raised ''practical concerns'' with the EPA's proposal as it applies to emissions during SSM at electric generating units (EGUs). The commenters claimed that it is incorrect to treat periods of startup and shutdown as part of ''normal source operation'' and claimed that it is fundamentally incorrect to characterize all periods of startup and shutdown as planned events. The commenters claimed that many air pollution control devices (APCDs) are subject to technical, operational or safety constraints that prevent use or optimization during startup and shutdown periods. The commenters requested the EPA to continue the practice of allowing states to provide ''protection'' from enforcement for excess emissions during startup and shutdown. The commenters claimed that the EPA's premise for this action is that startup and shutdown events are planned and sources should be able to meet limits applicable during these normal operations. The commenters asserted that the proposal does not recognize technical and operational limits and that it conflicts with the EPA's own acknowledgement in the proposal that there are sometimes technical, operational and safety limits that may prevent compliance with emission limitations during startup and shutdown. The commenters also noted that the type of equipment that a control device is attached to may affect the time it takes for a control device to reach optimization. Further, the commenters identified control technologies that cannot achieve reductions until specific temperatures are reached and other technologies that cannot be used during startup and/or shutdown because of technical limitations or safety concerns. Finally, the commenters noted that the geographical location and/or weather can have an effect on the operation of a source and control devices during startup and shutdown.

Commenters raised specific concerns regarding pollution controls for EGUs. The commenters claimed that startup and shutdown events are unavoidable at EGUs even though they may be planned. The commenters also attached appendices providing an explanation of why emissions are higher for startup and shutdown for certain types of EGUs. The commenters claimed that the ''EPA's proposal to eliminate the States' SSM provisions, and prohibit them from adopting any provisions for startups and shutdowns, could force sources to comply with emission limitations during periods when they were never meant to apply, thus rendering those emissions limitations unachievable.'' The commenters also noted that the permits for their sources all require that the sources minimize the magnitude and duration of emissions during SSM. The implication of this latter comment is that a general duty to minimize emissions is sufficient to justify the exemption of all emissions during SSM events in the underlying SIP provisions.

Response: Although intended as criticism of the EPA's proposed action, these comments in fact support the Agency's position that states should consider startup and shutdown events as they promulgate standards for specific industries or even for specific sources. The commenters seem to suggest that because some equipment or sources cannot during startup and shutdown meet the emission limits that apply during ''regular'' operation, no limit or standards should apply during startup and shutdown. The EPA disagrees. As the court in *Sierra Club* held, emission limitations must apply at ''all times.'' That is not to say that the emission limitation must impose the same numerical limitation or impose the same other control requirement at all times. As explained at length in section VII.A of this document, the EPA interprets the CAA to allow SIP emission limitations that may be a combination of numerical limitations, technological control measures and/or work practice requirements, so long as the resulting emission limitations are properly developed to meet CAA requirements and are legally and practically enforceable. As the commenters noted, the EPA does recognize that some control equipment cannot be operated at all or in the same manner during every mode of normal operations.

In its 1999 SSM Guidance, the EPA expressly recognized that an appropriate way for a state to address such technological limitations is to set alternative emission limitations that apply during periods of startup and shutdown as part of the SIP emission

limitation.[252] In these cases the state should consider how the control equipment works in determining what standards should apply during startup and shutdown. In addition, as noted by commenters, such standards may vary based on location (*e.g.,* standards in a hot and humid area may differ from those adopted for a cool and dry area). Some equipment during startup and shutdown may be unable to meet the same emission limitation that applies during steady-state operations and so alternative limitations for startup and shutdown may be appropriate.[253] However, for many sources, it should be feasible to meet the same emission limitation that applies during steady-state operations also during startup and shutdown.[254] These are issues for the state to consider in developing specific regulations as they revise the deficient SIP provisions identified in this action. The EPA emphasizes that the state has discretion to determine the best means by which to revise a deficient provision to eliminate an automatic or discretionary SSM exemption, so long as that revision is consistent with CAA requirements. The EPA will work with the states as they consider possible revisions to deficient provisions.

The EPA recognizes that a malfunction may cause a source to shut down in a manner different than in a planned shutdown, and in that case, such a shutdown would typically be considered part of the malfunction event. However, as part of the normal operation of a facility, sources typically will also have periodic or otherwise scheduled startup and shutdown of equipment, and steps to limit emissions during this type of event are or can be planned for. The EPA disagrees with the suggestion of commenters that because some startup or shutdown events may be unplanned, all startup and shutdown events should be exempt from compliance with any requirements. For those events that are planned, the state should be able to establish requirements to regulate emissions, such as a numerical limitation, technological control measure or work practice standard that will apply as a part of the revised emission limitation. When unplanned startup or shutdown events are part of a malfunction, they should be treated the same as a malfunction; however, as with malfunctions, startup and shutdown events cannot be exempted from compliance with SIP requirements. Questions of liability and remedy for violations that result from malfunctions are to be resolved in the context of an enforcement action, if such an action occurs.

b. Comments that it is impossible, unreasonable or impractical for states to develop emission limitations that apply during startup and shutdown to replace existing exemptions.

Comment: A number of commenters suggested that it will be difficult for states to develop emission limits that apply during startup and shutdown. One state commenter reasoned that alternative emission limits are applied to facilities in that state through individual permits on a case-by-case basis and claimed that there are 500 permitted facilities in the state. The commenter contended that ''non-steady-state'' limits would need to be set for startup and shutdown for all 500 permitted facilities and that such an effort would be ''time, resource, and data intensive.'' The state commenter further contended that it would be unreasonable to require the state to include such limits ''for every source'' in the SIP because ''permit modifications would need to occur every time there is a new emission source, a source ceases to operate, or an emission-related regulation is changed.''

A local government commenter stated that to establish limits for startup and shutdown that also demonstrate compliance with the NSR regulations (including protection of the NAAQS and PSD increments and maintenance of BACT or LAER) would be a difficult, time-consuming task that was mostly impractical.

An industry commenter claimed that the EPA is encouraging states to adopt numerical alternative emission limitations in their SIP provisions that would apply during startup and shutdown. The commenter claimed that adequate and accurate emissions data are necessary to do so and that such information is not generally available for existing equipment or, in many cases, for new equipment. Furthermore, the commenter asserted, even if an emission limit could be established for startup and shutdown, there are no current approved test measures to verify compliance during such modes of operation. Even where data are available, the commenter alleged, the data may not be representative of actual conditions because of limitations related to low-load conditions. If a state lacks information to conclude that a limit can be met, the commenter argued, the state should not be required to establish numerical limits but should instead be allowed ''to specify that numerical standards do not apply to those conditions or that those conditions are exempt, or should be allowed to establish work practice standards.''

Response: The comments of the state commenter seem to be based on the premise that all sources will be unable to meet otherwise applicable SIP emission limitations during periods of startup and shutdown. The EPA anticipates that many types of sources should be able during startup and shutdown to meet the same emission limitation that applies during full operation. Additionally, even where a specific type of operation may not during startup and/or shutdown be able to meet an emission limitation that applies during full operation, the state should be able to develop appropriate limitations that would apply to those types of operations at all similar types of facilities. The EPA believes that there will be limited, if any, cases where it may be necessary to develop source-specific emission requirements for startup and/or shutdown. In any event, this is a question that is best addressed by each state in the context of the revisions to the SIP provisions at issue in this action. To the extent that there are appropriate reasons to establish an emission limitation with alternative numerical, technological control and/or work practice requirements during startup or shutdown for certain categories of sources, this SIP call action provides the state with the opportunity to do so.

As to the commenter's concern that such alternative emission limitations should not be included in a state's SIP, the EPA disagrees. The SIP needs to reflect the control obligations of sources, and any revision or modification of those obligations should not be occurring through a separate process, such as a permit process, which would not ensure that ''alternative'' compliance options do not weaken the SIP. The SIP is a combination of state statutes, regulations and other requirements that the EPA approves for demonstrating attainment and maintenance of the NAAQS, protection of PSD increments, improvement of visibility and compliance with other

[252] *See* 1999 SSM Guidance, Attachment at 4–5.

[253] The EPA notes that it has taken this approach in its own recent actions establishing emission limitations for sources. *See, e.g.,* ''National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters; Final rule; notice of final action on reconsideration,'' 78 FR 7137 (January 31, 2013) (example of work practice requirement for startup as a component of a continuous emission limitation).

[254] The EPA notes that it has taken this approach in its own recent actions establishing emission limitations for sources. *See, e.g.,* ''National Emission Standards for Hazardous Air Pollutants Residual Risk and Technology Review for Flexible Polyurethane Foam Production; Final rule,'' 79 FR 48073 (August 15, 2014) (example of NESHAP emission limitation that is continuous and does not include a different component for periods of startup or shutdown).

CAA requirements. As discussed in section X.B of this document, any revisions to obligations in the SIP need to occur through the SIP revision process and must comply with sections 110(k)(3), 110(l) and 193 and any other applicable substantive requirements of the CAA.

As to concerns that a SIP revision will be necessary every time a new source comes into existence, an existing source is permanently retired or a new regulation is promulgated, the EPA does not see these as significant concerns. Unless the startup or shutdown process for an individual source is truly unique to that source, then existing SIP provisions for sources within the same industrial category should be able to apply to any new source. Moreover, assuming any new source is subject to permitting obligations, then any applicable startup and shutdown issues should already be resolved in developing the permit for such source. The state could choose to incorporate that permit by reference into the SIP at the time it next modifies its SIP. Further, assuming that there is a source-specific regulation for a source in the SIP (a circumstance that the EPA believes would occur only rarely), the state is not obligated to remove such provision when the source is retired. Rather, the state could leave the provision in its rules or remove such a provision the next time it submits another SIP revision or when it chooses to do a ''cleanup'' of the SIP, an activity that numerous states have taken from time to time. Finally, whenever a new regulation is promulgated is precisely the time that a state should be considering the appropriate provisions that would apply during startup and shutdown, as that is the time when the state is considering what is necessary to comply with the CAA and what is necessary to meet attainment, maintenance or other requirements of the CAA.

The local government commenter contended that establishing limits for startup and shutdown that also demonstrate compliance with the NSR regulations (including protection of the NAAQS and PSD increments and imposition of BACT- or LAER-level controls) would be a difficult, time-consuming task that was impractical. The commenter did not provide an explanation of how this would be difficult. The implication of the comment is that a SIP provision that provides an exemption or an affirmative defense for emissions during startup and shutdown would be compliant with the statutory requirements and NSR regulations (including attainment of the NAAQS and protecting PSD increments). That is incorrect because the EPA does not interpret the CAA to allow such exemptions or affirmative defenses for purposes of NSR regulations. The suggestion that a SIP provision that does not regulate emissions during startup and shutdown would be more likely to address NAAQS attainment and to protect PSD increments than would a SIP provision that does regulate such emissions is illogical. The EPA further notes that the Agency's interpretation of the CAA, explicitly set forth in a 1993 guidance document, has been that periods of startup and shutdown must be addressed in any new source permit.[255] Moreover, the EPA explained in the February 2013 proposal, in the SNPR and in the background memorandum accompanying the February 2013 proposal concerning the legal basis for this action why exemptions and affirmative defenses applicable to emissions during SSM events are not consistent with CAA requirements for SIP provisions.

c. Comments that the EPA should ''authorize'' states to replace SSM exemptions with ''work practice'' standards developed by the EPA in its own recent NESHAP and NSPS rules.

Comment: Commenters suggested that the EPA should allow states to use work practice standards to address emissions during startup and shutdown. The NESHAP rules cited by commenters included the Industrial Boiler MACT rule[256] and the MATS rule, and the NSPS rules cited by the commenters included the NSPS for Electric Utility Steam Generating Units (40 CFR part 60, subpart Da) and the gas turbine NSPS as examples of where the EPA itself has established work practice standards rather than numerical emission limitations for periods of startup and shutdown. The commenters suggested that where these work practice standards are already in place, states should be able to rely on the work practice standards rather than having to create new SIP provisions.

Response: The EPA agrees that states may adopt work practice standards to address periods of startup and shutdown as a component of a SIP emission limitation that applies continuously. Adoption of work practice standards from a NESHAP or NSPS as a component of an emission limitation to satisfy SIP requirements is addressed in this document not as a requirement or even as a recommendation but rather as an approach that a state may use at its option. The EPA cannot foretell the extent to which this optional approach of adopting other existing standards to satisfy SIP requirements may benefit an individual state. For a state choosing to use this approach, such work practice standards must meet the otherwise applicable CAA requirements (*e.g.,* be a RACT-level control for the source as part of an attainment plan requirement) and the necessary parameters to make it legally and practically enforceable (*e.g.,* have adequate recordkeeping, reporting and/or monitoring requirements to assure compliance). However, it cannot automatically be assumed that emission limitation requirements in recent NESHAP and NSPS are appropriate for all sources regulated by SIPs. The universe of sources regulated under the federal NSPS and NESHAP programs is not identical to the universe of sources regulated by states for purposes of the NAAQS. Moreover, the pollutants regulated under the NESHAP (*i.e.,* HAPs) are in many cases different than those that would be regulated for purposes of attaining and maintaining the NAAQS, protecting PSD increments, improving visibility and meeting other CAA requirements.[257] Thus, the EPA cannot say as a matter of law that those federal regulations establish emission limitation requirements appropriate for all of the sources that states are regulating in their SIPs or for the purpose for which they are being regulated. The EPA believes, however, that those federal regulations and the technical materials in the public record for those rules may provide assistance for states as they develop and consider regulations for sources in their states and may be appropriate for adoption by the state in certain circumstances. In particular, the NSPS regulations should provide very relevant information for sources of the same type, size and control equipment type, even if the sources were not constructed or modified within a date range that would make them subject to the NSPS. The EPA therefore encourages states to explore these approaches, as well as any other relevant information available, in

[255] *See* Memorandum from John B. Rasnic, EPA/OAQPS, January 28, 1993, in the rulemaking docket at EPA–HQ–OAR–2012–0322–0022.

[256] The Industrial Boiler MACT rule regulates industrial, commercial and institutional boilers and process heaters at major sources under 40 CFR part 63, subpart DDDDD.

[257] While some HAPs are also VOCs or particulate matter, many HAPs are not. Moreover, there are many VOCs and types of particulate matter that are not HAPs and thus are not regulated under the MACT standards. The MACT standards also do not address other criteria pollutants or pollutant precursors from sources that may be relevant for SIP purposes.

determining what is appropriate for revised SIP provisions.

d. Comments that if states remove existing SSM exemptions and replace them with alternative emission limitations that apply during startup and shutdown events, this would automatically be consistent with the requirements of CAA section 193.

Comment: Commenters stated that section 193 was included in the CAA to prohibit states from modifying regulations in place prior to November 15, 1990, unless the modification ensures equivalent or greater reductions of the pollutant. The commenters asserted that to the extent a state replaces ''general excess emissions exclusions and/or affirmative defense provisions'' such amendments would *per se* be more stringent than the provisions they replace. The commenters also contended that any replacement SIP provision that spells out more clearly how a source will operate ensures equivalent or greater emission reductions. The commenters urged the EPA to clarify that any revisions pursuant to a final SIP call would not be considered ''backsliding.''

Response: The EPA agrees with the commenters that any SIP submission made by a state in response to this SIP call action will need to comply with the requirements of section 193 of the CAA, if that section applies to the SIP provision at issue. In addition, such SIP provision will also need to comply with section 110(l), which requires that SIP revisions do not interfere with attainment, reasonable progress or any other applicable requirement of the CAA. However, it is premature to draw the conclusion that any SIP revision made by a state in response to this SIP call will automatically meet the requirements of section 110(l) and section 193. Such a conclusion could only be made in the context of reviewing the actual SIP revision. The EPA will address this issue, for each SIP revision in response to this SIP call action, at the time that it proposes and finalizes action on the SIP revision, and any comments on this issue can be raised during those individual rulemaking actions. The EPA provides additional guidance to states on the analysis needed to comply with section 110(l) and section 193 in section X.B of this document.

C. Director's Discretion Provisions Pertaining to SSM Events

1. What the EPA Proposed

In the February 2013 proposal, the EPA stated and explained in detail the reasons for its belief that the CAA prohibits unbounded director's discretion provisions in SIPs, including those provisions that purport to authorize unilateral revisions to, or exemptions from, SIP emission limitations for emissions during SSM events.[258]

2. What Is Being Finalized in This Action

The EPA is reiterating its interpretation of the CAA with respect to unbounded director's discretion provisions applicable to emissions during SSM events, which is that SIP provisions cannot contain director's discretion to alter SIP requirements, including those that allow for variances or outright exemptions for emissions during SSM events. This interpretation has been clear with respect to emissions during SSM events in the SSM Policy since at least 1999. In the 1999 SSM Guidance, the EPA stated that it would not approve SIP revisions ''that would enable a State director's decision to bar EPA's or citizens' ability to enforce applicable requirements.'' [259] Director's discretion provisions operate to allow air agency personnel to make just such unilateral decisions on an *ad hoc* basis, up to and including the granting of complete exemptions for emissions during SSM events, thereby negating any possibility of enforcement for what would be violations of the otherwise applicable emission limitation. Given that the EPA interprets the CAA to bar exemptions from SIP emission limitations for emissions during SSM events in the first instance, the fact that director's discretion provisions operate to authorize these exemptions on an *ad hoc* basis compounds the problem. The EPA acknowledges, however, that both states and the Agency have, in some instances, failed to adhere to the requirements of the CAA with respect to this issue consistently in the past, and thus the need for this SIP call to correct existing deficiencies in SIPs.[260] In order to be clear about its interpretation of the CAA with respect to this point on a going-forward basis, the EPA is reiterating in this action that SIP provisions cannot contain unbounded director's discretion provisions, including those that operate to allow for variances or outright exemptions from SIP emission limitations for excess emissions during SSM events.

Many commenters on the February 2013 proposal opposed the EPA's interpretation of the CAA with respect to director's discretion provisions simply on the grounds that states are *per se* entitled to have unfettered discretion with respect to the content of their SIP provisions. Other commenters argued that any director's discretion provision is merely a manifestation of an air agency's general ''enforcement discretion.'' Some commenters simply asserted that recent court decisions by the Fifth Circuit definitively establish that the CAA does not prohibit SIP provisions that include director's discretion, regardless of whether those provisions contain any limitations whatsoever on the exercise of that discretion.[261] The commenters did not, however, address the specific statutory interpretations that the EPA set forth in the February 2013 proposal to explain why SIP provisions that authorize unlimited director's discretion are prohibited by CAA provisions applicable to SIP revisions.

As explained in detail in the February 2013 proposal and in section VII.C of this document, the EPA interprets the CAA to prohibit SIP provisions that include unlimited director's discretion to alter the SIP emission limitations applicable to sources, including those that operate to allow exemptions for emissions from sources during SSM events. The EPA believes that such provisions that operate to authorize total exemptions from emission limitations on an *ad hoc* basis are especially problematic. Given that the EPA interprets section 110(a)(2)(A) and section 302(k) to preclude exemptions for emissions during SSM events in emission limitations in the first instance, it is also impermissible for states to have SIP provisions that authorize such exemptions on an *ad hoc* basis. These provisions functionally allow the air agency to impose its own enforcement discretion decisions on the EPA and other parties by granting exemptions for emissions that should be treated as violations of the applicable SIP emission limitations. Provisions that functionally allow such exemptions are also inconsistent with requirements of the CAA related to enforcement

[258] *See* February 2013 proposal, 78 FR 12459 at 12485–86.

[259] *See* 1999 SSM Guidance at 3.

[260] In this action, the EPA is addressing the specific SIP provisions with director's discretion provisions that the Petitioner listed in the Petition. In the event that there are other such impermissible director's discretion provisions in existing SIPs, the EPA will address those provisions in a later action.

[261] For example, commenters on the February 2013 proposal cited two decisions of the Fifth Circuit within which the court cited a prior EPA approval of a SIP revision in Georgia that contained director's discretion provisions supposedly comparable to those at issue in the Fifth Circuit cases. These provisions were not included in the Petition and the EPA is not reexamining those provisions as part of this action.

including: (i) The general requirements of section 110(a)(1) that SIPs provide for enforcement; (ii) the section 110(a)(2)(A) requirement that the specific emission limitations and other contents of SIPs be enforceable; and (iii) the section 110(a)(2)(C) requirement that SIPs contain a program to provide for enforcement. Moreover, these provisions operate to interfere with the enforcement structure of the CAA provided in section 113 and section 304, through which the EPA and other parties have authority to seek enforcement for violations of CAA requirements, including SIP emission limitations.

There are two ways in which such a provision can be consistent with CAA requirements: (1) When the exercise of director's discretion by the state agency to alter or eliminate the SIP emission limitation can have no effect for purposes of federal law unless and until the EPA ratifies that state action with a SIP revision; or (2) when the director's discretion authority is adequately bounded such that the EPA can ascertain in advance, at the time of approving the SIP provision, how the exercise of that discretion to alter the SIP emission limitations for a source could affect compliance with other CAA requirements. If the provision includes director's discretion that could result in violation of any other CAA requirement for SIPs, then the EPA cannot approve the provision consistent with the requirements of section 110(k)(3) and section 110(l). For example, a director's discretion provision that authorizes state personnel to excuse source compliance with SIP emission limitations during SSM events could not be approved because the provision would run afoul of the requirement that sources be subject to emission limitations that apply continuously, consistent with section 302(k).

3. Response to Comments

The EPA received a number of comments, both supportive and adverse, concerning the issue of director's discretion provisions in SIPs. The majority of these comments were critical of the EPA's position but did not base this criticism on an interpretation of specific CAA provisions. For clarity and ease of discussion, the EPA is responding to these comments, grouped by issue, in this section of this document.

a. Comments that broad state discretion in how to develop SIP provisions includes the authority to create provisions that include director's discretion variances or exemptions for excess emission during SSM events.

Comment: A number of state and industry commenters argued that because states have great discretion when developing SIP provisions in general, this necessarily includes the ability to create director's discretion provisions in SIPs that authorize state personnel to grant unilateral variances or exemptions for emissions during SSM events. According to commenters, the overarching principle of ''cooperative federalism'' and court decisions concerning the division of regulatory responsibilities between the states and the EPA support their view that states can create SIP provisions that provide authority to alter the SIP emission limitations or other requirements via director's discretion provisions without restriction.

Response: The EPA disagrees with the commenters' view that director's discretion provisions in SIPs are *per se* permissible because of the principles of cooperative federalism. As explained in more detail in section V.D.2 of this document, states and the EPA each have authorities and responsibilities under the CAA. With respect to SIPs, under section 107(a) the states have primary responsibility for assuring attainment of the NAAQS within their borders. Under section 110(a) the states have a statutory duty to develop and submit a SIP that provides for the attainment, maintenance and enforcement of the NAAQS, as well as meeting many other CAA requirements and objectives. The specific procedural and substantive requirements that states must meet for SIPs are set forth in section 110(a)(1) and section 110(a)(2) and in other more specific requirements throughout the CAA (*e.g.,* the attainment plan requirements for each of the NAAQS as specified in part D). By contrast, the EPA has its own statutory authorities and responsibilities, including the obligation to review new SIP submissions for compliance with CAA procedural and substantive requirements pursuant to sections 110(k)(3), 110(l) and 193. In addition, the EPA has authority to assure that previously approved SIP provisions continue to meet CAA requirements, whether through the SIP call authority of section 110(k)(5) or the error correction authority of section 110(k)(6).

As the EPA explained in detail in the February 2013 proposal, SIP provisions that include unbounded director's discretion to alter the otherwise applicable emission limitations are inconsistent with CAA requirements. Such provisions purport to authorize air agency personnel unilaterally to change or to eliminate the applicable SIP emission limitations for a source without meeting the requirements for a SIP revision. Pursuant to the EPA's own responsibilities under sections 110(k)(3), 110(l) and 193 and any other CAA provision substantively germane to the specific SIP provision at issue, it would be inappropriate for the Agency to approve a SIP provision that automatically preauthorized the state unilaterally to revise the SIP emission limitation without meeting the applicable procedural and substantive statutory requirements for a SIP revision. Section 110(i) prohibits modification of SIP requirements for stationary sources by either the state or the EPA, except through specified processes. The EPA's implementing regulations applicable to SIP provisions likewise impose requirements for a specific process for the approval of SIP revisions.[262] In addition, section 116 explicitly prohibits a state from adopting or enforcing regulations for sources that are less stringent than what is required by the emission limitations in its SIP, *i.e.,* the emission limitation previously approved by the EPA as meeting the requirements of the CAA applicable to that specific SIP provision. It is a fundamental tenet of the CAA that states cannot unilaterally change SIP provisions, including the emission limitations within SIP provisions, without the EPA's approval of the change through the appropriate process. This core principle has been recognized by multiple courts.[263]

b. Comments that director's discretion provisions are an exercise of ''enforcement discretion.''

Comment: Several state and industry commenters asserted that the EPA was wrong to interpret the CAA to preclude director's discretion provisions, because such provisions are merely an exercise of a state's traditional ''enforcement discretion.''

Response: The EPA disagrees that a director's discretion provision in a SIP is a valid exercise of enforcement discretion. Normally, the concept of enforcement discretion is understood to mean that a regulator has discretion to determine whether a specific violation

[262] *See, e.g.,* 40 CFR 51.104(d) and 40 CFR 51.105.

[263] *See, e.g., Sierra Club* v. *TVA,* 430 F.3d 1337, 1346 (11th Cir. 2005) (''If a state wants to add, delete, or otherwise modify a SIP provision, it must submit the proposed change to EPA for approval''); *Duquesne Light Co.* v. *EPA,* 698 F.2d 456, 468 n.12 (D.C. Cir. 1983) (''with certain enumerated exceptions, states do not have the power to take any action modifying any requirement of their SIPs, without approval from EPA''); *Train* v. *NRDC,* 421 U.S. 60, 92 (1975) (''[A] polluter is subject to existing requirements until such time as he obtains a variance, and variances are not available under the revision authority until they have been approved by both the State and the Agency'').

of the law by a source warrants enforcement and to determine the nature of the remedy to seek for any such violation. The EPA of course agrees that states have enforcement discretion of this type and that the states may exercise such enforcement discretion as they see fit, as does the Agency itself. However, the EPA does not agree that air agencies may create SIP provisions that operate to eliminate the ability of the EPA or citizens to enforce the emission limitations of the SIP. The EPA stated clearly in the 1999 SSM Guidance that it would not approve SIP provisions that ''would enable a State director's decision to bar EPA's or citizens' ability to enforce applicable requirements.'' [264] The Agency explained at that time that such an approach is inconsistent with the requirements of the CAA applicable to the enforcement of SIPs.

The commenters' argument was that states may create SIP provisions through which they may unilaterally decide that the emissions from a source during an SSM event should be exempted, such that the emissions cannot be treated as a violation by anyone. A common formulation of such a provision provides only that the source needs to notify the state regulatory agency that an exceedance of the emission limitations occurred and to report that the emissions were the result of an SSM event. If those minimal steps occur, then such provisions commonly authorize state personnel to make an administrative decision that the emissions in question were not a ''violation'' of the applicable emission limitation. It may be entirely appropriate for the state agency to elect not to bring an enforcement action based on the facts and circumstances of a given SSM event, as a legitimate exercise of its own enforcement discretion. However, by creating a SIP provision that in effect authorizes the state agency to alter or suspend the otherwise applicable SIP emission limitations unilaterally through the granting of exemptions, the state agency would functionally be revising the SIP with respect to the emission limitations on the source. This revision of the applicable emission limitation would have occurred without satisfying the requirements of the CAA for a SIP revision. As a result of this *ad hoc* revision of the SIP emission limitation, the EPA and other parties would be denied the ability to exercise their own enforcement discretion. This is contrary to the fundamental enforcement structure of the CAA, as provided in section 113 and section 304, through which the EPA and other parties are authorized to bring enforcement actions for violations of SIP emission limitations. The state's decision not to exercise its own enforcement discretion cannot be a basis on which to eliminate the legal rights of the EPA and other parties to seek to enforce.

The commenters also suggested that the director's discretion provisions authorizing exemptions for SSM events are nonsegregable parts of the emission limitations, *i.e.,* that states have established the numerical limitations at overly stringent levels specifically in reliance on the existence of exemptions for any emissions during SSM events. Although commenters did not provide facts to support the claims that states set more stringent emission limitations in reliance on SSM exemptions, in general or with respect to any specific emission limitation, the EPA acknowledges that this could possibly have been the case in some instances. Even if a state had taken this approach, however, it does not follow that SIP provisions containing exemptions for SSM events are legally permissible. Emission limitations in SIPs must be continuous. When a state takes action in response to this SIP call to eliminate the director's discretion provisions or otherwise to revise them, the state may elect to overhaul the emission limitation entirely in order to address this concern. So long as the resulting revised SIP emission limitation is continuous and meets the requirements of sections 110(k)(3), 110(l) and 193 and any other sections that are germane to the type of SIP provision at issue, the state has discretion to revise the provision as it determines best.

c. Comments that the EPA's having previously approved a SIP provision that authorizes the granting of variances or exemptions for SSM events through the exercise of director's discretion renders the provision consistent with CAA requirements.

Comment: Several state and industry commenters argued that the EPA's past approval of a SIP provision with a director's discretion feature automatically means that the exercise of that authority (whether to revise the applicable SIP emission limitations unilaterally or to grant *ad hoc* exemptions from SIP emission limitations) is valid under the CAA. One commenter asserted that because the EPA has previously approved such a provision, ''that discretion is itself part of the SIP, and the exercise of discretion in no way modifies SIP requirements.'' Another commenter argued that director's discretion provisions in SIPs are *per se* valid because ''[a]ll of the SIP provisions went through a public procedure at the time of their initial SIP approval.''

Response: First, the EPA disagrees with the theory that a SIP provision that includes director's discretion authority for state personnel to modify or grant exemptions from SIP emission limitations unilaterally is valid merely by virtue of the fact that the Agency previously approved it. By definition, when the EPA makes a finding of substantial inadequacy and issues a SIP call, that signifies that the Agency previously approved a SIP provision that does not meet CAA requirements, whether that deficiency existed at the time of the original approval or arose later. The EPA has explicit authority under section 110(k)(5) to require that a state eliminate or revise a SIP provision that the Agency previously approved, whenever the EPA finds an existing SIP provision to be substantially inadequate to meet CAA requirements. The fact that the EPA previously approved it does not mean that a deficient provision may remain in the SIP forever once the Agency determines that it is deficient.

Second, the EPA disagrees that the fact that a SIP provision underwent public process at the time of its original creation by the state, or at the time of its approval by EPA as part of the SIP, means *per se* that the provision is consistent with CAA requirements. If an existing SIP provision is deficient because it in effect allows a state to revise existing SIP emission limitations without meeting the many explicit statutory requirements for a SIP revision, the fact that the revision that created the impermissible provision itself met the proper procedural requirements for a SIP revision is irrelevant. Even perfect compliance with the procedural requirements for a SIP revision at the time of its development by the state or its approval by the EPA does not override a substantive deficiency in the provision, nor does it preclude the later issuance of a SIP call to correct a substantive deficiency.

Third, the EPA disagrees with the circular logic that because a deficient provision with director's discretion currently exists in a SIP, it means that exercise of the director's discretion to grant variances or outright exemptions to sources for emissions during SSM events is therefore consistent with CAA requirements for SIPs. An unbounded director's discretion provision that authorizes an air agency to alter or eliminate the otherwise applicable SIP emission limitation functionally allows the state to revise the SIP emission

[264] 1999 SSM Guidance at 3.

limitation without meeting the requirements for a SIP revision. In particular, when such provisions authorize state personnel to grant outright exemptions from the SIP emission limitations, this is tantamount to a revision of the SIP emission limitation without complying with the procedural and substantive requirements of the CAA applicable to SIP revisions, including section 110(l), section 193 and any other substantive requirements applicable to the particular SIP emission limitation in question.

d. Comments that director's discretion provisions in SIPs are not prohibited by the CAA, based on recent judicial decisions.

Comment: A number of state and industry commenters argued that nothing in the CAA explicitly prohibits states from having SIP provisions that include director's discretion authorization for state personnel to modify or eliminate existing SIP provisions unilaterally, with or without any process or within any limiting parameters. In support of this proposition, the commenters cited recent decisions of the Fifth Circuit in two cases concerning the EPA's disapproval of SIP submissions from the state of Texas. Commenters argued that the EPA's interpretation of the CAA to prohibit director's discretion provisions in SIPs is incorrect in light of the decision of the court in *Texas* v. *EPA.*[265] According to commenters, the court's decision establishes that no provision of the CAA bars such provisions. To support this contention, one commenter quoted the court's decision extensively, highlighting the statement, ''. . . the EPA has invoked the term 'director discretion' as if that term were an independent and authoritative standard, and has not linked the term to the language of the CAA.'' Similarly, the commenters cited another decision of that court in the *Luminant* director's discretion case.[266] From that decision, commenters quoted the court's statement that the ''EPA had no legal basis to demand 'replicable' limitations on the Director's discretion'' and the succeeding sentence, ''[n]ot once in its proposed or final disapproval, or in its argument before this court, has the EPA pointed to any applicable provision of the Act or its regulations that includes a 'replicability' standard.'' These commenters did not, however, address the specific statutory provisions identified by the EPA in the February 2013 proposal and the explanation that the Agency provided with respect to this issue.

Response: The EPA disagrees that either decision cited by commenters stands for the definitive proposition they assert, *i.e.,* that director's discretion provisions in SIPs are not precluded by the CAA. In *Luminant Generation Co.* v. *EPA* (the *Luminant* director's discretion case), the court evaluated the EPA's disapproval of a SIP submission from the state of Texas that created SIP provisions to implement minor source permitting requirements. The EPA disapproved the SIP submission for several reasons, one of which was based on the director's discretion provision prohibiting use of the standard permit for a pollution control project that the director determines raises health concerns or threatens the NAAQS. The EPA was concerned that this provision gave the director of the state agency discretion to make case-by-case decisions about what the specific permit terms would be for each source, without sufficient parameters or limitations on the exercise of that authority. Thus, the EPA reasoned that without any boundaries on the exercise of this authority for director's discretion, it would be impossible for the Agency to know in advance (*i.e.,* at the time of acting on the SIP submission) whether the state agency would only use that discretion in a way that would result in permits with terms consistent with meeting CAA requirements.[267] As the EPA explained in the rulemaking at issue in the *Luminant* director's discretion case, ''[t]here are no replicable conditions in the PCP Standard Permit that specify how the [TCEQ] Director's discretion is to be implemented'' for the individual case-by-case determinations.[268] In other words, the EPA was being asked to approve a SIP provision without knowing how the SIP provision would actually be implemented and thus without knowing whether the results would be consistent with applicable CAA requirements.

As the commenters stated, the court in the *Luminant* director's discretion case vacated the EPA's disapproval of the SIP submission for several reasons, including the rejection of the Agency's argument that it could not approve the SIP submission due to the director's discretion feature of the SIP provisions and the resulting lack of ''replicability.''[269] The court found that the EPA ''failed to identify a single provision of the Act that Texas's program violated, let alone explain its reasons for reaching its conclusion.''[270] With respect to the director's discretion issue, phrased in terms of ''replicability,'' the court found that ''[n]ot once in its proposed or final disapproval, or in its argument before this court, has the EPA pointed to any applicable provision of the Act or its regulations that include a 'replicability' standard.''

The EPA believes that the court's decision in the *Luminant* director's discretion case is distinguishable on several important grounds. Most importantly, the court rejected the EPA's disapproval of the SIP submission because the Agency had not provided an adequate explanation of why the director's discretion provision at issue was inconsistent with the requirements of the CAA for SIP provisions. The court emphasized the absence of any explanation in the administrative record for the proposed or final actions that

[265] 690 F.3d 670 (5th Cir. 2012).

[266] *Luminant Generation Co.* v. *EPA,* 675 F.3d 917 (5th Cir. 2012). Throughout this document, the EPA refers to this as the *Luminant* director's discretion case, to distinguish it from another *Luminant case cited in this document, Luminant Generation* v. *EPA,* 714 F.3d 841 (5th Cir. 2013).

[267] The EPA notes that the court in the *Luminant* director's discretion case focused on the fact that the director's discretion provision included the discretion to require more of sources, if there ''are health effects concerns or the potential to exceed the [NAAQS],'' and the court expressed that it did not understand why that requirement was not alone adequate to allay the Agency's concerns. *Luminant Generation Co.* v. *EPA,* 675 F.3d 917, 929 n.11. The EPA's primary concern, although not clearly articulated in the rulemaking record, was that at the time of acting on the SIP submission, there was no way for the Agency to know in advance what the state would require of any source in the first instance, let alone what additional things the state might require in situations where it unilaterally decided that more might be necessary in any given permit.

[268] *See* ''Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD), Nonattainment NSR (NNSR) for the 1997 8-Hour Ozone Standard, NSR Reform, and a Standard Permit; Proposed rule,'' 74 FR 48467 at 48476 (September 23, 2009).

[269] The term ''replicable'' was taken from EPA guidance concerning SIP provisions for attainment plans. As a ''fundamental principle'' for SIP provisions and permits, the EPA explained that the requirements imposed upon sources should be ''replicable''; *i.e.,* if they contain ''procedures for changing the rule, interpreting the rule, or determining compliance with the rule, the procedures are sufficiently specific and nonsubjective so that two independent entities applying the same procedures would obtain the same result.'' *See* General Preamble, 57 FR 13498 at 13568 (April 16, 1992). The EPA's intent in using this term, although not clearly expressed in the rulemaking record, has been to indicate that a properly constructed SIP provision with an appropriate degree of discretion and flexibility would contain sufficient specifications and limits on the exercise of that discretion such that the Agency could adequately evaluate the provision at the time of its submission. Absent sufficient limits on the discretion, the EPA could not properly evaluate how exercise of the discretion could affect compliance with CAA requirements.

[270] 675 F.3d 917, 924 (5th Cir. 2012).

explained which specific provisions of the CAA preclude such a provision and why. In the February 2013 proposal and in this document, the EPA has identified and explained the specific CAA provisions that operate to preclude unbounded director's discretion provisions in SIPs.

Second, the court in the *Luminant* director's discretion case based its decision in part on the view that the specific director's discretion provision at issue in that case would always result in more stringent regulation of affected sources and always entail exercise of the discretion in a way that would protect the NAAQS.[271] Although its view was not articulated clearly in the record, the EPA did not agree with that assessment because it was not possible to evaluate in advance how the director's discretion authority would in fact be exercised. By contrast, the SIP provisions at issue in this action are not structured in such a way as to allow the exercise of discretion only to make the emission limitations *more stringent.* To the contrary, the director's discretion provisions at issue in this action authorize the state agencies to excuse sources from compliance with the otherwise applicable SIP emission limitation during SSM events. Were the sources seeking these discretionary exemptions meeting the applicable SIP emission limitations, they would not need an exemption. It logically follows that sources are seeking these exemptions because their emissions during such events are higher than the otherwise applicable emission limitation allows. Unlike the specific director's discretion provision at issue in the *Luminant* director's discretion case, which the court said ''can only serve to protect the NAAQS,'' the exercise of the director's discretion authority in the SIP provisions at issue in this action can operate to make the emission limitations less stringent and can thereby undermine attainment and maintenance of the NAAQS, protection of PSD increments, improvement of visibility and achievement of other CAA objectives.

In the *Texas* decision, the court evaluated the EPA's disapproval of another SIP submission from the state of Texas that pertained to requirements for the permitting program for minor sources. The EPA had disapproved the submission for several different reasons, including that the Agency believed the specific provisions at issue provided the state agency with too much director's discretion authority to decide what, if any, monitoring, recordkeeping and reporting requirements should be imposed on any individual affected source in its permit. The EPA concluded that if at the time it was evaluating the SIP provision for approval it could not reasonably anticipate how the state agency would exercise the discretion authorized in the provision, this made the submission unapprovable ''for being too vague and not replicable.'' [272] The *Texas* court disagreed. The court concluded that the ''degree of discretion conferred on the TCEQ director cannot sustain the EPA's rejection of the MRR requirements'' and that the EPA insisted on ''some undefined limit on a director's discretion . . . based on a standard that the CAA does not empower the EPA to enforce.'' [273]

The EPA believes that the decision of the court in *Texas* v. *EPA* is also distinguishable with respect to the issue of whether director's discretion provisions are consistent with CAA requirements. First, the *Texas* court based its decision primarily on the conclusion that the EPA had failed to identify and explain the provisions of the CAA that (i) preclude approval of SIP provisions that include unbounded director's discretion or (ii) impose a requirement for ''replicability'' in the exercise of director's discretion. The *Texas* court emphasized that although the EPA disapproved the SIP submission for failure to meet CAA requirements, the court found that the EPA ''is yet to explain why.'' [274] The court further reasoned that ''the EPA has invoked the term 'director discretion' as if that term were an independent and authoritative standard, and has not linked the term to language of the CAA.'' [275] Later in the opinion the court explicitly emphasized that because it was reviewing the EPA's decisionmaking process in the disapproval action, the court could not consider any basis for the disapproval that was not articulated by the EPA in the rulemaking record.[276] The EPA is explaining its interpretation of the relevant CAA provisions in this action.

Second, the *Texas* court also asserted its own conclusion that there is nothing in the CAA that pertains to director's discretion in SIP provisions or to any limitations on the exercise of such discretion. As the court stated it:

> There is, in fact, no independent and authoritative standard in the CAA or its implementing regulations requiring that a state director's discretion be cabined in the way that the EPA suggests. Therefore, the EPA's insistence on some undefined limit on a director's discretion is . . . based on a standard that the CAA does not empower the EPA to enforce.

However, the court reached this conclusion based upon the administrative record before it and reiterated that it could not consider any basis for the disapproval not articulated by the EPA in the rulemaking record: ''We are reviewing an agency's decisionmaking process, so the agency's action must be upheld, if at all, on the basis articulated by the agency itself.'' [277] Given the court's conclusion that the EPA had failed to provide any explanation as to why the CAA precludes director's discretion provisions in the challenged rulemaking, the EPA believes that the court did not have the opportunity to consider the Agency's rationale that is provided in this action. In the February 2013 proposal and in this document, the EPA is heeding the court's admonishment to explain in the rulemaking record the statutory basis for the Agency's interpretation of the CAA to prohibit director's discretion provisions that are inadequately bounded. As explained in this action, SIP provisions that functionally authorize a state agency to amend existing SIP emission limitations applicable to a source unilaterally without a SIP revision are contrary to multiple specific provisions of the CAA that pertain to SIP revisions.

Third, the *Texas* court emphasized that, notwithstanding the apparent flexibility that the director's discretion provision provided to the state agency with respect to deciding on the level of monitoring, recordkeeping and reporting to be imposed on each source by permit, the state's regulations explicitly prohibited relaxations of the level of control. The court gave weight to the explicit wording of the specific provision at issue in the case which provided that ''[t]he existing level of control may not be lessened for any facility.'' [278] The EPA does not agree that the specific requirements for monitoring, recordkeeping and reporting for a given source are unrelated to the level of control. In any event, the director's discretion provisions of the type at issue in this

[271] *Luminant Generation Co.* v. *EPA,* 675 F.3d 917, 929 n.11 (''The provision at issues states: ''This standard permit must not be used [if] the executive director determines there are health effects concerns or the potential to exceed a [NAAQS] . . . until those concerns are addressed to the satisfaction of the executive director.'').

[272] *Id.,* 690 F.3d 670, 680.

[273] *Id.,* 690 F.3d 670, 682.

[274] *Id.,* 690 F.3d 670, 681.

[275] *Id.*

[276] *Id.,* 690 F.3d 670, 682.

[277] *Id.,* 690 F.3d 670, 682.

[278] *Id.,* 690 F.3d 670, 681.

action are not limited to those that would not ''lessen'' the level of control. To the contrary, the provisions at issue in this SIP call action authorize state agency personnel to grant outright exemptions from otherwise applicable SIP emission limitations during SSM events. Thus, the EPA concludes that this portion of the reasoning of the *Texas* decision would not apply to the current action.

Finally, the *Texas* court viewed the fact that the EPA had previously approved similar director's discretion provisions in Texas and in Georgia as evidence that such provisions must be consistent with CAA requirements. The EPA acknowledges that it has, from time to time, approved SIP submissions that it should not have, whether through failure to recognize an issue, through a misunderstanding of the facts, through a mistaken interpretation of the law or as a result of other such circumstances. Congress itself clearly recognized that the EPA may occasionally take incorrect action on SIP submissions, whether incorrect at the time of the action or as a result of later events. Section 110(k)(5) and section 110(k)(6) both provide the EPA with explicit authority to address past approvals of SIP submissions that turn out to have been mistakes, whether at the time of the original approval or as a result of later developments. The fact that the EPA has explicit authority to issue a SIP call establishes that Congress anticipated that the Agency may at some point approve a SIP provision that it should not have approved because the provision is substantially inadequate to meet CAA requirements. The EPA does not agree, however, that its approval of a comparable SIP provision at some time in the past negates the Agency's authority to disapprove a current SIP submission that fails to meet applicable procedural or substantive requirements. A challenger of the disapproval can always argue that the inconsistency between the prior approval and the later disapproval is evidence that the EPA is being arbitrary and capricious in its interpretation of the statute—but at bottom the correct question is whether the Agency is correctly interpreting the CAA in the disapproval action currently being challenged. The fact that the EPA may have approved another SIP submission with a comparable defect in the past does not override the requirements of the CAA.

Significantly, the commenters apparently make the same mistake as the EPA did in the rulemakings at issue in the cited court decisions, by not adequately addressing the relevant statutory provisions that apply to SIP provisions in general and apply to revisions of existing EPA-approved SIP provisions in particular. The commenters failed to consider the core problem with unbounded director's discretion provisions (*i.e.,* that such provisions allow for unilateral revision, relaxation or exemption from SIP emission limitations, without adequate evaluation by the EPA and the public). As a result, the commenters do not address the proper application of CAA provisions that govern SIP revisions and the rationale for requiring that such SIP revisions be reviewed by the EPA in accordance with the explicit requirements of sections 110(k)(3), 110(l) and 193 and the other requirements germane to the SIP provision at issue (*e.g.,* RACT-level controls for sources located in nonattainment areas). Indeed, the commenters did not acknowledge the inherent problem with director's discretion provisions, which is that such provisions have the potential to undermine SIP emission limitations dramatically through *ad hoc* exemptions for excess emissions during SSM events. By allowing for exemptions for emissions during SSM events, these provisions also remove the incentives for sources to be properly designed, maintained and operated so that they will comply continuously with SIP emission limitations during all modes of source operation.

The EPA notes that the commenters did not acknowledge or address the specific explanation that the Agency provided in the February 2013 proposal, including the EPA's identification of the specific statutory provisions applicable to the revision of SIP provisions. Because these commenters did not address the EPA's explanation of the CAA provisions that it interprets to preclude director's discretion provisions in SIPs, the commenters have not provided substantive comment concerning the EPA's interpretation of the CAA on this issue. The commenters did not dispute the EPA's interpretation of the CAA on this particular point on statutory grounds. Rather, the commenters argued based on their own policy preferences for an approach to director's discretion provisions that would allow sources to receive *ad hoc* exemptions for excess emissions during SSM events without the need for imposition of an appropriate alternative SIP emission limitation, for adequate public process for development of such an alternative SIP emission limitation or for oversight by the EPA of any revision to the applicable SIP emission limitations as required by the CAA.

e. Comments opposed to the EPA's approach on the premise that there is no ''director's discretion'' concern if the SIP provision creates a permit program through which state officials grant sources variances or exemptions from otherwise applicable SIP provisions.

Comment: State commenters argued that they have imposed sufficient boundaries on the exercise of director's discretion provisions in their SIPs, by virtue of the fact that they grant sources variances or exemptions from SIP emission limitations through a permitting program. Commenters stated that their permitting program provides a more structured process and an opportunity for public input into the decisions concerning variances or exemptions. Moreover, they argued that state law does provide preconditions to the granting of variances or exemptions and thus these are not granted automatically. Based upon these procedural requirements, the commenters contended that their exercise of director's discretion is not ''unbounded'' as the EPA suggested in the February 2013 proposal.

Response: The EPA acknowledges that a permitting program can provide a more structured and consistent process than may be provided in a SIP for granting variances and exemptions from SIP emission limitations and related requirements and may provide more opportunity for public participation in those decisions. However, to the extent that the end result of this permitting process is that a given source is given a less stringent emission limitation than the otherwise applicable SIP emission limitation or is given an outright exemption from the SIP emission limitation, this result still functionally constitutes a revision of the SIP emission limitation without meeting the statutory requirements for a SIP revision. The EPA is not authorized to approve a program that in essence allows a SIP revision without compliance with the applicable statutory requirements in sections 110(k)(3), 110(l) and 193 and any other provision that is germane to the particular SIP emission limitation at issue.

The EPA emphasizes that air agencies always retain the ability to regulate sources more stringently than required by the provisions in its SIP. Section 116 explicitly provides, with certain limited exceptions, that states retain the authority to regulate emissions from sources. Unless preempted from controlling a particular source, nothing precludes states from regulating sources more stringently than otherwise required to meet CAA requirements, so long as they meet CAA requirements. However, if there is an applicable

emission limitation in a SIP provision (or an EPA regulation promulgated pursuant to sections 111 or 112), section 116 explicitly stipulates, ''such State or political subdivision may not adopt or enforce any emission standard or emission limitation which is less stringent than the standard or limitation under such plan or limitation.'' Thus, a state could elect to regulate a source more stringently than required by a specific SIP emission limitation (*e.g.,* by imposing a more stringent numerical emission limitation on a particular source or by imposing additional recordkeeping, reporting and monitoring requirements in addition to those of the SIP provision), but the state cannot weaken or eliminate the SIP emission limitation (*e.g.,* by granting exemptions from applicable SIP emission limitations for emissions during SSM events). If a state elects to alter an emission limitation in a SIP provision, the state must do so in accordance with the statutory provisions applicable to SIP revisions.

Finally, the EPA notes, if a state elects to use a permitting process as a source-by-source means of imposing more stringent emission limitations or additional requirements on sources, doing so can be an acceptable approach. So long as the underlying SIP provisions are adequate to provide the requisite level of control or requirements to assure enforceability, a state is free to use a permitting program to impose additional requirements above and beyond those provided in the SIP.

D. Enforcement Discretion Provisions Pertaining to SSM Events

1. What the EPA Proposed

In the February 2013 proposal, the EPA explained in detail that it believes that the CAA allows states to adopt SIP provisions that impose reasonable limits upon the exercise of enforcement discretion by air agency personnel, so long as those provisions do not apply to the EPA or other parties. The EPA believes that its interpretation of the CAA with respect to enforcement discretion provisions applicable to emissions during SSM events has been clear in the SSM Policy. In the 1982 SSM Guidance and the 1983 SSM Guidance, the EPA indicated that states could elect to adopt SIP provisions that include criteria that apply to the exercise of enforcement discretion by state personnel. In the 1999 SSM Guidance, the EPA emphasized that it would not approve such provisions if they would operate to impose the state's enforcement discretion decisions upon the EPA or other parties because this would be inconsistent with requirements of title I of the CAA.[279] The EPA acknowledged, however, that both the states and the Agency have failed to adhere to the CAA with respect to this issue in the past, and thus the need for this SIP call action to correct the existing deficiencies in SIPs.

2. What Is Being Finalized in This Action

In order to be clear about this important point on a going-forward basis, the EPA is reiterating that SIP provisions cannot contain enforcement discretion provisions that would bar enforcement by the EPA or citizens for any violation of SIP requirements if the state elects not to enforce.

The EPA has previously issued a SIP call to a state specifically for purposes of clarifying an existing SIP provision to assure that regulated entities, regulators and courts will not misunderstand the correct interpretation of the provision.[280] As the EPA stated in that action:

> . . . SIP provisions that give exclusive authority to a state to determine whether an enforcement action can be pursued for an exceedance of an emission limit are inconsistent with the CAA's regulatory scheme. EPA and citizens, and any court in which they seek to file an enforcement claim, must retain the authority to independently evaluate whether a source's exceedance of an emission limit warrants enforcement action.[281]

The EPA has explained in previous iterations of its SSM Policy that a fundamental principle of the CAA with respect to SIP provisions is that the provisions must be enforceable not only by the state but also by the EPA and others pursuant to the citizen suit authority of section 304. Accordingly, the EPA has long stated that SIP provisions cannot be structured such that a decision by the state not to enforce may bar enforcement by the EPA or other parties.

3. Response to Comments

The EPA received a small number of comments concerning the issue of ambiguous enforcement discretion provisions in SIPs. For clarity and ease of discussion, the EPA is responding to these comments, grouped by issue, in this section of this document.

a. Comments that supported the clarification of ambiguous enforcement discretion provisions in general but opposed the EPA's views with respect to specific SIP provisions.

Comment: Environmental group commenters disagreed with the EPA's proposed denial of the Petition with respect to specific enforcement discretion provisions in the SIPs of several states. The commenters contended that the SIP provisions are too ambiguous for courts to recognize that the exercise of enforcement discretion by state personnel did not preclude enforcement by the EPA or others.

Response: The EPA disagrees with these comments. In the February 2013 proposal, the EPA explained how it reads the specific enforcement discretion provisions in the SIPs of each of these states. The EPA explained its evaluation of these provisions in detail. In comments submitted on the February 2013 proposal, the states in question agreed with the EPA's reading of the provisions. Each state agreed that these provisions only applied to air agency personnel and not to the EPA or any other party. Thus, the EPA believes that there should be no dispute about the proper interpretation of these SIP provisions in any potential future enforcement action.

b. Comments that opposed the EPA's issuing SIP calls to obtain state agency clarification of ambiguous enforcement discretion provisions in SIPs.

Comment: One commenter asserted that requiring states to correct an ambiguous ''enforcement discretion'' provision in its SIP in order to eliminate ''perceived ambiguity'' is a ''waste of resources.'' Although agreeing that a state's exercise of enforcement discretion cannot affect enforcement by the EPA or other parties under the citizen suit provision, the commenter believed that the existence of ambiguous provisions that could be misconstrued by a court to bar enforcement by the EPA or others if the state elects not to enforce is not a significant concern.

Response: The EPA agrees with the commenter that a state's legitimate exercise of enforcement discretion not to enforce in the event of violations of SIP provisions should have no bearing whatsoever on whether the EPA or others may seek to enforce for the same violations. However, the Agency disagrees with the commenter concerning whether some SIP provisions need to be clarified in order to assure that this principle is adhered to in practice in enforcement actions. For example, if on the face of an approved SIP provision the state

[279] *See* 1999 SSM Guidance at 3.

[280] *See* ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 75 FR 70888 at 70892–93 (November 19, 2010) (proposed SIP call, *inter alia,* to rectify an enforcement discretion provision that in fact appeared to bar enforcement by the EPA or citizens if the state decided not to enforce).

[281] *See id.*

appears to have the unilateral authority to decide that a specific event is not a ''violation'' or if it otherwise appears that if the state elects not to pursue enforcement for such violation then no other party may do so, then that SIP provision fails to meet fundamental legal requirements for enforcement under the CAA. If the SIP provision appears to provide that the decision of the state not to enforce for an exceedance of the SIP emission limit bars the EPA or others from bringing an enforcement action, then that is an impermissible imposition of the state's enforcement discretion decisions on other parties. The EPA has previously issued a SIP call to resolve just such an ambiguity, and its authority to do so has been upheld.[282] Given that the commenter agrees with the underlying principle that a state's exercise of enforcement discretion should have no bearing on the exercise of enforcement authority of the EPA or citizens, the Agency presumes that the commenter would not in fact oppose a SIP revision to clarify that point. Moreover, the commenter would not be harmed by such a SIP revision and would have no basis upon which to challenge it. As the clarification of the ambiguous SIP provision should be in the interest of all involved, including the regulated entities, the regulators and the public, the EPA does not believe that resources used to eliminate such ambiguities would be wasted.

E. Affirmative Defense Provisions in SIPs During Any Period of Operation

As explained in detail in the SNPR, the EPA believes that the CAA prohibits affirmative defense provisions in SIPs. The EPA acknowledges that since the 1999 SSM Guidance, the Agency had interpreted the CAA to allow narrowly tailored affirmative defense provisions. However, the EPA's interpretation of the statute was based on arguments that have since been rejected by the DC Circuit in the *NRDC* v. *EPA* decision. The EPA received a substantial number of comments, both supportive and adverse, concerning the issue of affirmative defense provisions in SIPs. These comments and the EPA's responses to them are discussed in section IV.D of this document.

F. Relationship Between SIP Provisions and Title V Regulations

As the EPA explained in the February 2013 proposal, the SIP provisions identified in the Petition highlighted an area of potential ambiguity or conflict between the SSM Policy applicable to SIP provisions and the EPA's regulations applicable to CAA title V operating permit provisions. The EPA has promulgated regulations in 40 CFR part 70 applicable to state operating permit programs and in 40 CFR part 71 applicable to federal operating permit programs.[283] Under each set of regulations, the EPA has provided that permits may contain, at the permitting authority's discretion, an ''emergency provision.''[284]

The regulatory parameters applicable to such emergency provisions in operating permits are the same for state operating permit program regulations and the federal operating permit program regulations. The definition of emergency is identical in the regulations for each program.[285]

Thus, if there is an emergency event meeting the regulatory definition, then the EPA's regulations for operating permit programs provide for an ''affirmative defense'' to enforcement for noncompliance with technology-based standards during the emergency event, provided the source can demonstrate through specified forms of evidence that the event and the permittee's actions during and after the event met a number of specific requirements.[286]

The Petitioner did not directly request that the EPA evaluate the existing regulatory provisions applicable to operating permits in 40 CFR part 70 and 40 CFR part 71, and the EPA is not revising those provisions in this action. In its February 2013 proposal, the EPA explained that while it was proposing to allow narrowly drawn affirmative defense provisions for malfunctions in SIPs, SIP provisions that were modeled after the regulations in 40 CFR part 70 and 40 CFR part 71 were still in conflict with the EPA's interpretation of the CAA for SIP provisions and thus could not be allowed.[287] However, as explained in the SNPR, the reasoning in the subsequent *NRDC* v. *EPA* court decision is that even narrowly defined affirmative defense provisions in SIPs are no longer consistent with the CAA.[288] Accordingly, regardless of whether affirmative defense provisions in SIPs were defined more narrowly than were the provisions applicable to operating permits under 40 CFR part 70 and 40 CFR part 71, they cannot be included in SIPs. For these reasons, the EPA has evaluated the specific SIP provisions identified in the Petition and is taking final action to find substantial inadequacy and to issue a SIP call for those SIP provisions that include features that are inappropriate for SIPs, regardless of whether those provisions contain terms found in other regulations.

Additionally, we are not taking action in this rulemaking to alter the emergency provisions found in 40 CFR part 70 and 40 CFR part 71. Those regulations, which are applicable to title V operating permits, may only be changed through appropriate rulemaking to revise parts 70 and 71. Further, any existing permits that contain such emergency provisions may only be changed through established permitting procedures. The EPA is considering whether to make changes to 40 CFR part 70 and 40 CFR part 71, and if so, how best to make those changes. In any such action, EPA would also intend to address the timing of any changes to existing title V operating permits. Until that time, as part of normal permitting process, the EPA encourages permitting authorities to consider the discretionary nature of the emergency provisions when determining whether to continue to include permit terms modeled on those provisions in operating permits that the permitting authorities are issuing in the first instance or renewing.

G. Intended Effect of the EPA's Action on the Petition

As in the 2001 SSM Guidance, the EPA is endeavoring to be particularly clear about the intended effect of its final action on the Petition, of its clarifications and revisions to the SSM Policy and of its application of the updated SSM Policy to the specific existing SIP provisions discussed in section IX of this document.

First, the EPA only intends its actions on the larger policy or legal issues raised by the Petitioner to inform the public of the EPA's current views on the requirements of the CAA with respect to SIP provisions related to SSM events. Thus, for example, the EPA's proposed grant of the Petitioner's request that the EPA interpret the CAA to disallow all affirmative defense provisions is intended to convey that the EPA has

[282] *See* ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision; Proposed rule,'' 76 FR 21639 (April 18, 2011).

[283] *See* 40 CFR 70.1–70.12; 40 CFR 71.1–71.27.

[284] *See* 40 CFR 70.6(g); 40 CFR 71.6(g). The EPA also notes that states are not required to adopt the ''emergency provision'' contained in 40 CFR 70.6(g) into their state operating permit programs, and many states have chosen not to do so. *See, e.g.,* ''Clean Air Act Full Approval of Partial Operating Permit Program; Allegheny County; Pennsylvania; Direct final rule,'' 66 FR 55112 at 55113 (November 1, 2001).

[285] *See* 40 CFR 70.6(g)(1); 40 CFR 71.6(g)(1).

[286] 40 CFR 70.6(g)(3); 40 CFR 71.6(g)(3).

[287] *See* February 2013 proposal, 78 FR 12459 at 12481–82.

[288] *See* SNPR, 79 FR 55919 at 55929–30.

changed its views about such provisions and that its prior views expressed in the 1999 SSM Guidance and related rulemakings on SIP submissions were incorrect. In this fashion, the EPA's action on the Petition provides updated guidance relevant to future SIP actions.

Second, the EPA only intends its actions on the specific existing SIP provisions identified in the Petition to be applicable to those provisions. The EPA does not intend its action on those specific provisions to alter the current status of any other existing SIP provisions relating to SSM events. The EPA must take later rulemaking actions, if necessary, in order to evaluate any comparable deficiencies in other existing SIP provisions that may be inconsistent with the requirements of the CAA. Again, however, the EPA's actions on the Petition provide updated guidance on the types of SIP provisions that it believes would be consistent with CAA requirements in future rulemaking actions.

Third, the EPA does not intend its action on the Petition to affect immediately any existing permit terms or conditions regarding excess emissions during SSM events that reflect previously approved SIP provisions. The EPA's finding of substantial inadequacy and a SIP call for a given state provides the state time to revise its SIP in response to the SIP call through the necessary state and federal administrative process. Thereafter, any needed revisions to existing permits will be accomplished in the ordinary course as the state issues new permits or reviews and revises existing permits. The EPA does not intend the issuance of a SIP call to have automatic impacts on the terms of any existing permit.

Fourth, the EPA does not intend its action on the Petition to alter the emergency defense provisions at 40 CFR 70.6(g) and 40 CFR 71.6(g), *i.e.,* the title V regulations pertaining to ''emergency provisions'' permissible in title V operating permits. The EPA's regulations applicable to title V operating permits may only be changed through appropriate rulemaking procedures and existing permit terms may only be changed through established permitting processes.

Fifth, the EPA does not intend its interpretations of the requirements of the CAA in this action on the Petition to be legally dispositive with respect to any particular current enforcement proceedings in which a violation of SIP emission limitations is alleged to have occurred. The EPA handles enforcement matters by assessing each situation, on a case-by-case basis, to determine the appropriate response and resolution. For purposes of alleged violations of SIP provisions, however, the terms of the applicable SIP provision will continue to govern until that provision is revised following the appropriate process for SIP revisions, as required by the CAA.

Finally, the EPA does intend this final action, developed through notice and comment, to be the statement of its most current SSM Policy, reflecting the EPA's interpretation of CAA requirements applicable to SIP provisions related to excess emissions during SSM events. In this regard, the EPA is adding to and clarifying its prior statements in the 1999 SSM Guidance and making the specific changes to that guidance as discussed in this action. Thus, this final notice for this action will constitute the EPA's SSM Policy on a going-forward basis.

VIII. Legal Authority, Process and Timing for SIP Calls

A. SIP Call Authority Under Section 110(k)(5)

1. General Statutory Authority

The CAA provides a mechanism for the correction of flawed SIPs, under CAA section 110(k)(5), which provides that ''[w]henever the Administrator finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant national ambient air quality standards, to mitigate adequately the interstate pollutant transport described in section [176A] of this title or section [184] of this title, or to otherwise comply with any requirement of [the Act], the Administrator shall require the State to revise the plan as necessary to correct such inadequacies. The Administrator shall notify the State of the inadequacies and may establish reasonable deadlines (not to exceed 18 months after the date of such notice) for the submission of such plan revisions.''

By its explicit terms, this provision authorizes the EPA to find that a state's existing SIP is ''substantially inadequate'' to meet CAA requirements and, based on that finding, to ''require the State to revise the [SIP] as necessary to correct such inadequacies.'' This type of action is commonly referred to as a ''SIP call.'' [289]

Significantly, CAA section 110(k)(5) explicitly authorizes the EPA to issue a SIP call ''whenever'' the EPA makes a finding that the existing SIP is substantially inadequate, thus providing authority for the EPA to take action to correct existing inadequate SIP provisions even long after their initial approval, or even if the provisions only become inadequate due to subsequent events.[290] The statutory provision is worded in the present tense, giving the EPA authority to rectify any deficiency in a SIP that currently exists, regardless of the fact that the EPA previously approved that particular provision in the SIP and regardless of when that approval occurred.

It is also important to emphasize that CAA section 110(k)(5) expressly directs the EPA to take action if the SIP provision is substantially inadequate, not just for purposes of attainment or maintenance of the NAAQS but also for purposes of ''any requirement'' of the CAA. The EPA interprets this reference to ''any requirement'' of the CAA on its face to authorize reevaluation of an existing SIP provision for compliance with those statutory and regulatory requirements that are germane to the SIP provision at issue. Thus, for example, a SIP provision that is intended to be an ''emission limitation'' for purposes of a nonattainment plan for purposes of the 1997 $PM_{2.5}$ NAAQS must meet various applicable statutory and regulatory requirements, including requirements of CAA section 110(a)(2)(A) such as enforceability, the definition of the term ''emission limitation'' in CAA section 302(k), the level of emissions control

[289] The EPA also has other discretionary authority to address incorrect SIP provisions, such as the authority in CAA section 110(k)(6) for the EPA to correct errors in prior SIP approvals. The authority in CAA section 110(k)(5) and CAA section 110(k)(6) can sometimes overlap and offer alternative mechanisms to address problematic SIP provisions. In this instance, the EPA believes that the mechanism provided by CAA section 110(k)(5) is the better approach, because using the mechanism of the CAA section 110(k)(6) error correction would eliminate the affected emission limitations from the SIP potentially leaving no emission limitation in place, whereas the mechanism of the CAA section 110(k)(5) SIP call will keep the provisions in place during the pendency of the state's revision of the SIP and the EPA's action on that revision. In the case of provisions that include impermissible automatic exemptions or discretionary exemptions, the EPA believes that retention of the existing SIP provision is preferable to the absence of the provision in the interim.

[290] *See, e.g., Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000) (upholding the ''NO_X SIP Call'' to states requiring revisions to previously approved SIPs with respect to ozone transport and section 110(a)(2)(D)(i)(I)); ''Action to Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call; Final rule,'' 75 FR 77698 (December 13, 2010) (the EPA issued a SIP call to 13 states because the endangerment finding for GHGs meant that these previously approved SIPs were substantially inadequate because they did not provide for the regulation of GHGs in the PSD permitting programs of these states as required by CAA section 110(a)(2)(C) and section 110(a)(2)(J)); ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21639 (April 18, 2011) (the EPA issued a SIP call to rectify SIP provisions dating back to 1980).

required to constitute a ''reasonably available control measure'' in CAA section 172(c)(1) and the other applicable statutory requirements for the implementation of the 1997 $PM_{2.5}$ NAAQS. Failure to meet any of those applicable requirements could constitute a substantial inadequacy suitable for a SIP call, depending upon the facts and circumstances. By contrast, that same SIP provision should not be expected to meet specifications of the CAA that are completely irrelevant for its intended purpose, such as the unrelated requirement of CAA section 110(a)(2)(G) that the state have general legal authority comparable to CAA section 303 for emergencies.

Use of the term ''any requirement'' in CAA section 110(k)(5) also reflects the fact that SIP provisions could be substantially inadequate for widely differing reasons. One provision might be substantially inadequate because it fails to prohibit emissions that contribute to violations of the NAAQS in downwind areas many states away. Another provision, or even the same provision, could be substantially inadequate because it also infringes on the legal right of members of the public who live adjacent to the source to enforce the SIP. Thus, the EPA has previously interpreted CAA section 110(k)(5) to authorize a SIP call to rectify SIP inadequacies of various kinds, both broad and narrow in terms of the scope of the SIP revisions required.[291] On its face, CAA section 110(k)(5) authorizes the EPA to take action with respect to SIP provisions that are substantially inadequate to meet any CAA requirements, including requirements relevant to the proper treatment of excess emissions during SSM events.

An important baseline question is whether a given deficiency renders the SIP provision ''substantially inadequate.'' The EPA notes that the term ''substantially inadequate'' is not defined in the CAA. Moreover, CAA section 110(k)(5) does not specify a particular form of analysis or methodology that the EPA must use to evaluate SIP provisions for substantial inadequacy. Thus, under *Chevron* step 2, the EPA is authorized to interpret this provision reasonably, consistent with the provisions of the CAA. In addition, the EPA is authorized to exercise its discretion in applying this provision to determine whether a given SIP provision is substantially inadequate. To the extent that the term ''substantially inadequate'' is ambiguous, the EPA believes that it is reasonable to interpret the term in light of the specific purposes for which the SIP provision at issue is required, and thus whether the provision meets the fundamental CAA requirements applicable to such a provision.

The EPA does not interpret CAA section 110(k)(5) to require a showing that the effect of a SIP provision that is facially inconsistent with CAA requirements is causally connected to a particular adverse impact. For example, the plain language of CAA section 110(k)(5) does not require direct causal evidence that excess emissions have occurred during a specific malfunction at a specific source and have literally caused a violation of the NAAQS in order to conclude that the SIP provision is substantially inadequate.[292] A SIP provision that purports to exempt a source from compliance with applicable emission limitations during SSM events, contrary to the requirements of the CAA for continuous emission limitations, does not become legally permissible merely because there is not definitive evidence that any excess emissions have resulted from the exemption and have literally caused a specific NAAQS violation.[293]

Similarly, the EPA does not interpret CAA section 110(k)(5) to require direct causal evidence that a SIP provision that improperly undermines enforceability of the SIP has resulted in a specific failed enforcement attempt by any party. A SIP provision that has the practical effect of barring enforcement by the EPA or through a citizen suit, either because it would bar enforcement if an air agency elects to grant a discretionary exemption or to exercise its own enforcement discretion, is inconsistent with fundamental requirements of the CAA.[294] Such a provision also does not become legally permissible merely because there is not definitive evidence that the state's action literally undermined a specific attempted enforcement action by other parties. Indeed, the EPA notes that these impediments to effective enforcement likely have a chilling effect on potential enforcement in general. The possibility for effective enforcement of emission limitations in SIPs is itself an important principle of the CAA, as embodied in CAA sections 113 and 304.

The EPA's interpretation of CAA section 110(k)(5) is that the fundamental integrity of the CAA's SIP process and structure are undermined if emission limitations relied upon to meet CAA requirements related to protection of public health and the environment can be violated without potential recourse. For example, the EPA does not believe that it is authorized to issue a SIP call to rectify an impermissible automatic exemption provision only after a violation of the NAAQS has occurred, or only if that NAAQS violation can be directly linked to the excess emissions that resulted from the impermissible automatic exemption by a particular source on a particular day. If the SIP contains a provision that is inconsistent with fundamental requirements of the CAA, that renders the SIP provision substantially inadequate.

The EPA notes that CAA section 110(k)(5) can also be an appropriate tool to address ambiguous SIP provisions that could be read by a court in a way that would violate the requirements of the CAA. For example, if an existing SIP provision concerning the state's exercise of enforcement discretion is sufficiently ambiguous that it could be construed to preclude enforcement by the EPA or through a citizen suit if the state elects to deem a given SSM event not a violation, then that could render the provision substantially inadequate by interfering with the enforcement structure of the CAA.[295] If a court could

[291] *See, e.g.,* ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' 63 FR 57356 (October 27, 1998) (the EPA issued a SIP call to 23 states requiring them to rectify the failure to address interstate transport of pollutants as required by section 110(a)(2)(D); ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21639 (April 18, 2011) (the EPA issued a SIP call to one state requiring it to rectify several very specific SIP provisions).

[292] *See US Magnesium, LLC* v. *EPA,* 690 F.3d 1157 (10th Cir. 2012) (upholding the EPA's interpretation of section 110(k)(5) to authorize a SIP call when the SIP provisions are inconsistent with CAA requirements).

[293] The EPA notes that the GHG SIP call did not require ''proof'' that the failure of a state to address GHGs in a given PSD permit ''caused'' particularized environmental impacts; it was sufficient that the state's SIP failed to meet the current fundamental legal requirements for regulation of GHGs in accordance with the CAA. *See* ''Action to Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call; Final rule,'' 75 FR 77698 (December 13, 2010).

[294] *See* ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 74 FR 21639 at 21641 (April 18, 2011); *see also US Magnesium, LLC* v. *EPA,* 690 F.3d 1157, 1168 (10th Cir. 2012) (upholding the EPA's interpretation of section 110(k)(5) to authorize a SIP call when the state's SIP provision worded so that state decisions whether a given excess emissions event constituted a violation interfered with enforcement by the EPA or citizens for such event).

[295] Courts have on occasion interpreted SIP provisions to limit the EPA's enforcement authority as a result of ambiguous SIP provisions. *See, e.g., U.S.* v. *Ford Motor Co.,* 736 F.Supp. 1539 (W.D. Mo. 1990) and *U.S.* v. *General Motors Corp.,* 702 F.Supp. 133 (N.D. Texas 1988) (the EPA could not pursue enforcement of SIP emission limitations

construe the ambiguous SIP provision to bar enforcement, then the EPA believes that it may be appropriate to take action to eliminate that uncertainty by requiring the state to revise the ambiguous SIP provision. Under such circumstances, it may be appropriate for the EPA to issue a SIP call to assure that the SIP provisions are sufficiently clear and consistent with CAA requirements on their face.[296]

In this instance, the Petition raised questions concerning the adequacy of existing SIP provisions that pertain to the treatment of excess emissions during SSM events. The SIP provisions identified by the Petitioner generally fall into four major categories: (i) Automatic exemptions; (ii) exemptions as a result of director's discretion; (iii) provisions that appear to bar enforcement by the EPA or through a citizen suit if the state decides not to enforce through exercise of enforcement discretion; and (iv) affirmative defense provisions that purport to limit or eliminate a court's jurisdiction to assess liability and impose remedies for exceedances of SIP emission limitations. The EPA believes that each of these types of SIP deficiency potentially justifies a SIP call pursuant to CAA section 110(k)(5), if the Agency determines that a SIP call is the proper means to rectify an existing deficiency in a SIP.

2. Substantial Inadequacy of Automatic Exemptions

The EPA believes that SIP provisions that provide an automatic exemption from otherwise applicable emission limitations are substantially inadequate to meet CAA requirements. A typical SIP provision that includes an impermissible automatic exemption would provide that a source has to meet a specific emission limitation, except during startup, shutdown and malfunction, and by definition any excess emissions during such events would not be violations and thus there could be no enforcement based on those excess emissions. The EPA's interpretation of CAA requirements for SIP provisions has been reiterated multiple times through the SSM Policy and actions on SIP submissions that pertain to this issue. The EPA's longstanding view is that SIP provisions that include automatic exemptions for excess emissions during SSM events, such that the excess emissions during those events are not considered violations of the applicable emission limitations, do not meet CAA requirements. Such exemptions undermine the attainment and maintenance of the NAAQS, protection of PSD increments and improvement of visibility, and SIP provisions that include such exemptions fail to meet these and other fundamental requirements of the CAA.

The EPA interprets CAA sections 110(a)(2)(A) and 110(a)(2)(C) to require that SIPs contain ''emission limitations'' to meet CAA requirements. Pursuant to CAA section 302(k), those emission limitations must be ''continuous.'' Automatic exemptions from otherwise applicable emission limitations thus render those limits less than continuous as required by CAA sections 302(k), 110(a)(2)(A) and 110(a)(2)(C), thereby inconsistent with a fundamental requirement of the CAA and thus substantially inadequate as contemplated in CAA section 110(k)(5).

This inadequacy has far-reaching impacts. For example, air agencies rely on emission limitations in SIPs in order to provide for attainment and maintenance of the NAAQS. These emission limitations are often used by air agencies to meet various requirements including: (i) In the estimates of emissions for emissions inventories; (ii) in the determination of what level of emissions meets various statutory requirements such as ''reasonably available control measures'' in nonattainment SIPs or ''best available retrofit technology'' in regional haze SIPs; and (iii) in critical modeling exercises such as attainment demonstration modeling for nonattainment areas or increment use for PSD permitting purposes.

Because the NAAQS are not directly enforceable against individual sources, air agencies rely on the adoption and enforcement of these generic and specific emission limitations in SIPs in order to provide for attainment and maintenance of the NAAQS, protection of PSD increments and improvement of visibility, and to meet other CAA requirements. Automatic exemption provisions for excess emissions eliminate the possibility of enforcement for what would otherwise be clear violations of the relied-upon emission limitations and thus eliminate any opportunity to obtain injunctive relief that may be needed to protect the NAAQS or meet other CAA requirements. Likewise, the elimination of any possibility for penalties for what would otherwise be clear violations of the emission limitations, regardless of the conduct of the source, eliminates any opportunity for penalties to encourage appropriate design, operation and maintenance of sources and to encourage efforts by source operators to prevent and to minimize excess emissions in order to protect the NAAQS or to meet other CAA requirements. Removal of this monetary incentive to comply with the SIP reduces a source's incentive to design, operate, and maintain its facility to meet emission limitations at all times.

3. Substantial Inadequacy of Director's Discretion Exemptions

The EPA believes that SIP provisions that allow discretionary exemptions from otherwise applicable emission limitations are substantially inadequate to meet CAA requirements for the same reasons as automatic exemptions, but for additional reasons as well. A typical SIP provision that includes an impermissible ''director's discretion'' component would purport to authorize air agency personnel to modify existing SIP requirements under certain conditions, *e.g.,* to grant a variance from an otherwise applicable emission limitation if the source could not meet the requirement in certain circumstances.[297] If such provisions are sufficiently specific, provide for sufficient public process and are sufficiently bounded, so that it is possible to anticipate at the time of the EPA's approval of the SIP provision how that provision will actually be applied and the potential adverse impacts thereof, then such a provision might meet basic CAA requirements. In essence, if it is possible to anticipate and evaluate in advance how the exercise of enforcement discretion could impact compliance with other CAA requirements, then it may be possible to determine in advance that the preauthorized exercise of director's discretion will not interfere with other CAA requirements, such as providing for attainment and maintenance of the

where states had approved alternative emission limitations under procedures the EPA had approved in the SIP); *Florida Power & Light Co.* v. *Costle,* 650 F.2d 579, 588 (5th Cir. 1981) (the EPA to be accorded no discretion in interpreting state law). The EPA does not agree with the holdings of these cases, but they illustrate why it is reasonable to eliminate any uncertainty about enforcement authority by requiring a state to remove or revise a SIP provision that could be read in a way inconsistent with the requirements of the CAA.

[296] *See US Magnesium, LLC* v. *EPA,* 690 F.3d 1157, 1170 (10th Cir. 2012) (upholding the EPA's use of SIP call authority in order to clarify language in the SIP that could be read to violate the CAA, even if a court has not yet interpreted the language in that way).

[297] The EPA notes that problematic ''director's discretion'' provisions are not limited only to those that purport to authorize alternative emission limitations from those required in a SIP. Other problematic director's discretion provisions could include those that purport to provide for discretionary changes to other substantive requirements of the SIP, such as applicability, operating requirements, recordkeeping requirements, monitoring requirements, test methods, and alternative compliance methods.

NAAQS. Most director's discretion-type provisions cannot meet this basic test.

Unless it is possible at the time of the approval of the SIP provision to anticipate and analyze the impacts of the potential exercise of the director's discretion, such provisions functionally could allow *de facto* revisions of the approved emission limitations required by the SIP without complying with the process for SIP revisions required by the CAA. Sections 110(a)(1) and (2) of the CAA impose procedural requirements on states that seek to amend SIP provisions. The elements of CAA section 110(a)(2) and other sections of the CAA, depending upon the subject of the SIP provision at issue, impose substantive requirements that states must meet in a SIP revision. Section 110(i) of the CAA prohibits modification of SIP requirements for stationary sources by either the state or the EPA, except through specified processes.[298] Section 110(k) of the CAA imposes procedural and substantive requirements on the EPA for action upon any SIP revision. Sections 110(l) and 193 of the CAA both impose additional procedural and substantive requirements on the state and the EPA in the event of a SIP revision. Chief among these many requirements for a SIP revision would be the necessary demonstration that the SIP revision in question would not interfere with any requirement concerning attainment and reasonable further progress or ''any other applicable requirement of'' the CAA to meet the requirements of CAA section 110(l).

Congress presumably imposed these many explicit requirements in order to assure that there is adequate public process at both the air agency and federal level for any SIP revision and to assure that any SIP revision meets the applicable substantive requirements of the CAA. Although no provision of the CAA explicitly addresses whether a ''director's discretion'' provision by that term is acceptable, the EPA interprets the statute to prohibit such provisions unless they would be consistent with the statutory and regulatory requirements that apply to SIP revisions.[299] A SIP provision that purports to give broad and unbounded director's discretion to alter the existing legal requirements of the SIP with respect to meeting emission limitations would be tantamount to allowing a revision of the SIP without meeting the applicable procedural and substantive requirements for such a SIP revision. The EPA's approval of a SIP provision that purported to allow unilateral revisions of the emission limitations in the SIP by the state, without complying with the statutory requirements for a SIP revision, would itself be contrary to fundamental procedural and substantive requirements of the CAA.

For this reason, the EPA has long discouraged the creation of new SIP provisions containing an impermissible director's discretion feature and has also taken actions to remove existing SIP provisions that it had previously approved in error.[300] In recent years, the EPA has also recommended that if an air agency elects to have SIP provisions that contain a director's discretion feature, then to be consistent with CAA requirements the provisions must be structured so that any resulting variances or other deviations from the emission limitation or other SIP requirements have no federal law validity, unless and until the EPA specifically approves that exercise of the director's discretion as a SIP revision. Barring such a later ratification by the EPA through a SIP revision, the exercise of director's discretion is only valid for state (or tribal) law purposes and would have no bearing in the event of an action to enforce the provision of the SIP as it was originally approved by the EPA.

The EPA's evaluation of the specific SIP provisions of this type identified in the Petition indicates that none of them provides sufficient process or sufficient bounds on the exercise of director's discretion to be permissible. Most on their face would allow potentially limitless exemptions from SIP requirements with potentially dramatic adverse impacts inconsistent with the objectives of the CAA. More importantly, however, each of the identified SIP provisions goes far beyond the limits of what might theoretically be a permissible director's discretion provision, by authorizing state personnel to create case-by-case exemptions from the applicable emission limitations or other requirements of the SIP for excess emissions during SSM events. Given that the EPA interprets the CAA not to allow exemptions from SIP emission limitations for excess emissions during SSM events in the first instance, it follows that providing such exemptions through the *ad hoc* mechanism of a director's discretion provision is also not permissible and compounds the problem.

As with automatic exemptions for excess emissions during SSM events, a provision that allows discretionary exemptions would not meet the statutory requirements of CAA sections 110(a)(2)(A) and 110(a)(2)(C) that require SIPs to contain ''emission limitations'' to meet CAA requirements. Pursuant to CAA section 302(k), those emission limitations must be ''continuous.'' Discretionary exemptions from otherwise applicable emission limitations render those limits less than continuous, as is required by CAA sections 110(a)(2)(A) and 110(a)(2)(C), and thereby inconsistent with a fundamental requirement of the CAA and thus substantially inadequate as contemplated in section CAA 110(k)(5). Such exemptions undermine the objectives of the CAA such as protection of the NAAQS and PSD increments, and they fail to meet other fundamental requirements of the CAA.

[298] Section 110(i) of the Act states that ''no order, suspension, plan revision or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator'' except in compliance with the CAA's requirements for promulgation or revision of a plan, with limited exceptions. *See, e.g.,* ''Approval and Disapproval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation 1; Notice of proposed rulemaking,'' 75 FR 42342 at 42344 (July 21, 2010) (proposing to disapprove ''director discretion'' provisions as inconsistent with CAA requirements and noting that ''[s]ection 110(i) specifically prohibits States, except in certain limited circumstances, from taking any action to modify any requirement of a SIP with respect to any stationary source, except through a SIP revision''), finalized as proposed at 76 FR 4540 (January 26, 2011); ''Corrections to the California State Implementation Plan,'' 69 FR 67062 at 67063 (November 16, 2004) (noting that ''a state-issued variance, though binding as a matter of State law, does not prevent EPA from enforcing the underlying SIP provisions unless and until EPA approves that variance as a SIP revision''); *Industrial Environmental Association* v. *Browner,* No. 97–71117 at n.2 (9th Cir. May 26, 2000) (noting that the EPA has consistently treated individual variances granted under state variance provisions as ''modifications of the SIP requiring independent EPA approval'').

[299] *See, e.g.,* EPA's implementing regulations at 40 CFR 51.104(d) (''In order for a variance to be considered for approval as a revision to the [SIP], the State must submit it in accordance with the requirements of this section'') and 51.105 (''Revisions of a plan, or any portion thereof, will not be considered part of an applicable plan until such revisions have been approved by the Administrator in accordance with this part.'').

[300] *See, e.g.,* ''Approval and Disapproval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation 1,'' 76 FR 4540 (January 26, 2011) (partial disapproval of SIP submission based on inclusion of impermissible director's discretion provisions); ''Correction of Implementation Plans; American Samoa, Arizona, California, Hawaii, and Nevada State Implementation Plans; Notice of proposed rulemaking,'' 61 FR 38664 (July 25, 1996) (proposed SIP correction to remove, pursuant to CAA section 110(k)(6), several variance provisions from American Samoa, Arizona, California, Hawaii, and Nevada SIPs), finalized at 62 FR 34641 (June 27, 1997); ''Approval and Promulgation of Implementation Plans; Corrections to the Arizona and Nevada State Implementation Plans; Direct final rule,'' 74 FR 57051 (November 3, 2009) (rulemaking to remove, pursuant to CAA section 110(k)(6), variance provisions from Arizona and Nevada SIPs).

In addition, discretionary exemptions undermine effective enforcement of the SIP by the EPA or through a citizen suit, because often there may have been little or no public process concerning the exercise of director's discretion to grant the exemptions, or easily accessible documentation of those exemptions, and thus even ascertaining the possible existence of such *ad hoc* exemptions will further burden parties who seek to evaluate whether a given source is in compliance or to pursue enforcement if it appears that the source is not. Where there is little or no public process concerning such *ad hoc* exemptions, or there is inadequate access to relevant documentation of those exemptions, enforcement by the EPA or through a citizen suit may be severely compromised. As explained in the 1999 SSM Guidance, the EPA does not interpret the CAA to allow SIP provisions that would allow the exercise of director's discretion concerning violations to bar enforcement by the EPA or through a citizen suit. The exercise of director's discretion to exempt conduct that would otherwise constitute a violation of the SIP would interfere with effective enforcement of the SIP. Such provisions are inconsistent with and undermine the enforcement structure of the CAA provided in CAA sections 113 and 304, which provide independent authority to the EPA and citizens to enforce SIP provisions, including emission limitations. Thus, SIP provisions that allow discretionary exemptions from applicable SIP emission limitations through the exercise of director's discretion are substantially inadequate to comply with CAA requirements as contemplated in CAA section 110(k)(5).

4. Substantial Inadequacy of Improper Enforcement Discretion Provisions

The EPA believes that SIP provisions that pertain to enforcement discretion but could be construed to bar enforcement by the EPA or through a citizen suit if the air agency declines to enforce are substantially inadequate to meet CAA requirements. A typical SIP provision that includes an impermissible enforcement discretion provision specifies certain parameters for when air agency personnel should pursue enforcement action, but is worded in such a way that the air director's decision defines what constitutes a ''violation'' of the emission limitation for purposes of the SIP, *i.e.,* by defining what constitutes a violation, the air agency's own enforcement discretion decisions are imposed on the EPA or citizens.[301]

The EPA's longstanding view is that SIP provisions cannot enable an air agency's decision concerning whether or not to pursue enforcement to bar the ability of the EPA or the public to enforce applicable requirements.[302] Such enforcement discretion provisions in a SIP would be inconsistent with the enforcement structure provided in the CAA. Specifically, the statute provides explicit independent enforcement authority to the EPA under CAA section 113 and to citizens under CAA section 304. Thus, the CAA contemplates that the EPA and citizens have authority to pursue enforcement for a violation even if the air agency elects not to do so. The EPA and citizens, and any court in which they seek to pursue an enforcement claim for violation of SIP requirements, must retain the authority to evaluate independently whether a source's violation of an emission limitation warrants enforcement action. Potential for enforcement by the EPA or through a citizen suit provides an important safeguard in the event that the air agency lacks resources or ability to enforce violations and provides additional deterrence. Accordingly, a SIP provision that operates at the air agency's election to eliminate the authority of the EPA or the public to pursue enforcement actions would undermine the enforcement structure of the CAA and would thus be substantially inadequate to meet fundamental requirements in CAA sections 113 and 304.

5. Substantial Inadequacy of Affirmative Defense Provisions

The EPA believes that SIP provisions that provide an affirmative defense for excess emissions during SSM events are substantially inadequate to meet CAA requirements. A typical SIP provision that includes an impermissible affirmative defense operates to limit or eliminate the jurisdiction of federal courts to assess liability or to impose remedies in an enforcement proceeding for exceedances of SIP emission limitations. Some affirmative defense provisions apply broadly, whereas others are components of specific emission limitations. Some provisions use the explicit term ''affirmative defense,'' whereas others are structured as such provisions but do not use this specific terminology. All of these provisions, however, share the same legal deficiency in that they purport to alter the statutory jurisdiction of federal courts under section 113 and section 304 to determine liability and to impose remedies for violations of CAA requirements, including SIP emission limitations. Accordingly, an affirmative defense provision that operates to limit or to eliminate the jurisdiction of the federal courts would undermine the enforcement structure of the CAA and would thus be substantially inadequate to meet fundamental requirements in CAA sections 113 and 304. By undermining enforcement, such provisions also are inconsistent with fundamental CAA requirements such as attainment and maintenance of the NAAQS, protection of PSD increments and improvement of visibility.

B. SIP Call Process Under Section 110(k)(5)

Section 110(k)(5) of the CAA provides the EPA with authority to determine whether a SIP is substantially inadequate to attain or maintain the NAAQS or otherwise comply with any requirement of the CAA. Where the EPA makes such a determination, the EPA then has a duty to issue a SIP call.

In addition to providing general authority for a SIP call, CAA section 110(k)(5) sets forth the process and timing for such an action. First, the statute requires the EPA to notify the state of the final finding of substantial inadequacy. The EPA typically provides notice to states by a letter from the Assistant Administrator for the Office of Air and Radiation to the appropriate state officials in addition to publication of the final action in the **Federal Register**.

Second, the statute requires the EPA to establish ''reasonable deadlines (not to exceed 18 months after the date of such notice)'' for states to submit corrective SIP submissions to eliminate the inadequacy in response to the SIP call. The EPA proposes and takes comment on the schedule for the submission of corrective SIP revisions in order to ascertain the appropriate timeframe, depending on the nature of the SIP inadequacy.

Third, the statute requires that any finding of substantial inadequacy and notice to the state be made public. By undertaking a notice-and-comment rulemaking, the EPA assures that the air agencies, affected sources and members of the public all are adequately

[301] *See, e.g.,* ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 75 FR 70888 at 70892 (November 19, 2010). The SIP provision at issue provided that information concerning a malfunction ''shall be used by the executive secretary in determining whether a violation has occurred and/or the need of further enforcement action.'' This SIP language appeared to give the state official exclusive authority to determine whether excess emissions constitute a violation.

[302] *See* 1999 SSM Guidance at 3.

informed and afforded the opportunity to participate in the process. Through the February 2013 proposal, the SNPR and this final notice, the EPA is providing a full evaluation of the issues raised by the Petition and has used this process as a means of giving clear and up-to-date guidance concerning SIP provisions relevant to the treatment of excess emissions during SSM events that is consistent with CAA requirements.

If the state fails to submit the corrective SIP revision by the deadline established in this final notice, CAA section 110(c) authorizes the EPA to ''find[ ] that [the] State has failed to make a required submission.'' [303] Once the EPA makes such a finding of failure to submit, CAA section 110(c)(1) requires the EPA to ''promulgate a Federal implementation plan at any time within 2 years after the [finding] . . . unless the State corrects the deficiency, and [the EPA] approves the plan or plan revision, before [the EPA] promulgates such [FIP].'' Thus, if the EPA finds that the air agency failed to submit a complete SIP revision that responds to this SIP call, or if the EPA disapproves such SIP revision, then the EPA will have an obligation under CAA section 110(c)(1) to promulgate a FIP no later than 2 years from the date of the finding or the disapproval, if the deficiency has not been corrected before that time.[304]

The finding of failure to submit a revision in response to a SIP call or the EPA's disapproval of that corrective SIP revision can also trigger sanctions under CAA section 179. If a state fails to submit a complete SIP revision that responds to a SIP call, CAA section 179(a) provides for the EPA to issue a finding of state failure. Such a finding starts mandatory 18-month and 24-month sanctions clocks. The two sanctions that apply under CAA section 179(b) are the 2-to-1 emission offset requirement for all new and modified major sources subject to the nonattainment NSR program and restrictions on highway funding. However, section 179 leaves it to the EPA to decide the order in which these sanctions apply. The EPA issued an order of sanctions rule in 1994 but did not specify the order of sanctions where a state fails to submit or submits a deficient SIP revision in response to a SIP call.[305] In the February 2013 proposal, as the EPA has done in other SIP calls, the EPA proposed that the 2-to-1 emission offset requirement will apply for all new sources subject to the nonattainment NSR program beginning 18 months following such finding or disapproval unless the state corrects the deficiency before that date. The EPA proposed that the highway funding restrictions sanction will also apply beginning 24 months following such finding or disapproval unless the state corrects the deficiency before that date. Finally, the EPA proposed that the provisions in 40 CFR 52.31 regarding staying the sanctions clock and deferring the imposition of sanctions would also apply. In this action, the EPA is finalizing the order of sanctions as proposed in the February 2013 proposal and finalizing its decision concerning the application of 40 CFR 52.31.

Mandatory sanctions under CAA section 179 generally apply only in nonattainment areas. By its definition, the emission offset sanction applies only in areas required to have a part D NSR program, *i.e.,* areas designated nonattainment. Section 179(b)(1) expressly limits the highway funding restriction to nonattainment areas. Additionally, the EPA interprets the section 179 sanctions to apply only in the area or areas of the state that are subject to or required to have in place the deficient SIP and for the pollutant or pollutants that the specific SIP element addresses. For example, if the deficient provision applies statewide and applies for all NAAQS pollutants, then the mandatory sanctions would apply in all areas designated nonattainment for any NAAQS within the state. In this case, the EPA will evaluate the geographic scope of potential sanctions at the time it makes a determination that the air agency has failed to make a complete SIP submission in response to this SIP call, or at the time it disapproves such a SIP submission. The appropriate geographic scope for sanctions may vary depending upon the SIP provisions at issue.

C. SIP Call Timing Under Section 110(k)(5)

When the EPA finalizes a finding of substantial inadequacy and a SIP call for any state, CAA section 110(k)(5) requires the EPA to establish a SIP submission deadline by which the state must make a SIP submission to rectify the identified deficiency. Pursuant to CAA section 110(k)(5), the EPA has authority to set a SIP submission deadline that is up to 18 months from the date of the final finding of inadequacy.

The EPA proposed to establish a date 18 months from the date of promulgation of the final finding for the state to respond to the SIP call. After further evaluation of this issue and consideration of comments on the proposed SIP call, the EPA has decided to finalize the proposed schedule. Thus, the SIP submission deadline for each of the states subject to this SIP call will be November 22, 2016. Thereafter, the EPA will review the adequacy of that new SIP submission in accordance with the CAA requirements of sections 110(a), 110(k), 110(l) and 193, including the EPA's interpretation of the CAA reflected in the SSM Policy as clarified and updated through this rulemaking.

The EPA is providing the maximum time permissible under the CAA for a state to respond to a SIP call. The EPA believes that it is appropriate to provide states with the full 18 months authorized under CAA section 110(k)(5) in order to allow states sufficient time to make SIP revisions following their own SIP development process. During this time, the EPA recognizes, an affected state will need to revise its state regulations, provide for public input, process the SIP revision through the state's own procedures and submit the SIP revision to the EPA. Such a schedule will allow for the necessary SIP development process to correct the deficiencies, yet still achieve the necessary SIP improvements as expeditiously as practicable. There may be exceptions, particularly in states that have adopted especially time-consuming procedures for adoption and submission of SIP revisions. The EPA acknowledges that the longstanding existence of many of the provisions at issue, such as automatic exemptions for SSM events, may have resulted in undue reliance on them as a compliance mechanism by some sources. As a result, development of appropriate SIP revisions may entail reexamination of the applicable emission limitations themselves, and this process may require the maximum time allowed by the CAA. For example, if circumstances do not allow the state to develop alternative emission limitations within that time, the state may find it necessary to remove the automatic exemptions in an initial responsive SIP revision and establish alternative emission limitations in a later SIP revision. Nevertheless, the EPA encourages the affected states to make the necessary revisions in as timely a fashion as possible and encourages the states to work with the respective EPA Regional

[303] CAA section 110(c)(1)(A).

[304] The 2-year deadline does not necessarily apply to FIPs following disapproval of a tribal implementation plan.

[305] *See* ''Selection of Sequence of Mandatory Sanctions for Findings Made Pursuant to Section 179 of the Clean Air Act,'' 59 FR 39832 (August 4, 1994), codified at 40 CFR 52.31.

Office as they develop the SIP revisions. The EPA intends to review and act upon the SIP submissions as promptly as resources will allow, in order to correct these deficiencies in as timely a manner as possible. Recent experience with several states that elected to correct the deficiencies identified in the February 2013 proposal in advance of this final action suggests that these SIP revisions can be addressed efficiently through cooperation between the air agencies and the EPA.

The EPA notes that the SIP call for affected states finalized in this action is narrow and applies only to the specific SIP provisions determined to be inconsistent with the requirements of the CAA. To the extent that a state is concerned that elimination of a particular aspect of an existing emission limitation, such as an impermissible exemption, will render that emission limitation more stringent than the state originally intended and more stringent than needed to meet the CAA requirements it was intended to address, the EPA anticipates that the state will revise the emission limitation accordingly, but without the impermissible exemption or other feature that necessitated the SIP call. With adequate justification, this SIP revision might, *e.g.,* replace a numerical emission limitation with an alternative control method (design, equipment, work practice or operational standard) as a component of the emission limitation applicable during startup and/or shutdown periods.

The EPA emphasizes that its authority under CAA section 110(k)(5) does not extend to requiring a state to adopt a particular control measure in its SIP revision in response to the SIP call. Under principles of cooperative federalism, the CAA vests air agencies with substantial discretion in how to develop SIP provisions, so long as the provisions meet the legal requirements and objectives of the CAA.[306] Thus, the inclusion of a SIP call to a state in this action should not be misconstrued as a directive to the state to adopt a particular control measure. The EPA is merely requiring that affected states make SIP revisions to remove or revise existing SIP provisions that fail to comply with fundamental requirements of the CAA. The states retain discretion to remove or revise those provisions as they determine best, so long as they bring their SIPs into compliance with the requirements of the CAA.[307] Through this rulemaking action, the EPA is reiterating, clarifying and updating its interpretations of the CAA with respect to SIP provisions that apply to emissions from sources during SSM events in order to provide states with comprehensive guidance concerning such provisions.

Finally, the EPA notes that under section 553 of the Administrative Procedure Act, 5 U.S.C. 553(d), an agency rule should not be ''effective'' less than 30 days after its publication, unless certain exceptions apply including an exception for ''good cause.'' In this action, the EPA is simultaneously taking final action on the Petition, issuing its revised SSM Policy guidance to states for SIP provisions applicable to emissions during SSM events and issuing a SIP call to 36 states for specific existing SIP provisions that it has determined to be substantially inadequate to meet CAA requirements. Section 110(k)(5) provides that the EPA must notify states affected by a SIP call and must establish a deadline for SIP submissions by affected states in response to a SIP call not to exceed 18 months after the date of such notification. The EPA is notifying affected states of this final SIP call action on May 22, 2015. Thus, regardless of the effective date of this action, the deadline for submission of SIP revisions to address the specific SIP provisions that the EPA has identified as substantially inadequate will be November 22, 2016. In addition, the EPA concludes that there is good cause for this final action to be effective on May 22, 2015, the day upon which the EPA provided notice to the states, because any delayed effective date would be unnecessary given that CAA section 110(k)(5) explicitly provides that the deadline for submission of the required SIP revisions runs from the date of notification to the affected states, not from some other date, and shall not exceed 18 months.

D. Response to Comments Concerning SIP Call Authority, Process and Timing

The EPA received a wide range of comments on the February 2013 proposal and the SNPR questioning the scope of the Agency's authority to issue this SIP call action under section 110(k)(5), the process followed by EPA for this SIP call action, or the timing that the EPA provided for response to this SIP call action. Although there were numerous comments on these general topics, the majority of the comments raised the same questions and made similar arguments (*e.g.,* that the EPA has an obligation under section 110(k)(5) to ''prove'' not only that an exemption for SSM events in a SIP emission limitation is contrary to the explicit legal requirements of the CAA but also that this illegal exemption ''caused'' a specific violation of the NAAQS at a particular monitor on a particular day). For clarity and ease of discussion, the EPA is responding to these overarching comments, grouped by topic, in this section of this document.

1. Comments that section 110(k)(5) requires the EPA to ''prove causation'' to have authority to issue a SIP call.

Comment: Numerous state and industry commenters argued that the EPA has no authority to issue a SIP call with respect to a given SIP provision unless and until the Agency first proves definitively that the provision has caused a specific harm, such as a specific violation of the NAAQS in a specific area. These commenters generally focused upon the ''attainment and maintenance'' clause of section 110(k)(5) and did not address the ''comply with any requirement of'' the CAA clause.

For example, many industry commenters opposed the EPA's interpretation of section 110(k)(5) on the grounds that the Agency had failed to provide a specific technical analysis ''proving'' how the SIP provisions failed to provide for attainment or maintenance of the NAAQS. For areas attaining the NAAQS, commenters asserted that there should be a presumption that existing SIP provisions are adequate if they have resulted in attainment of the NAAQS. For areas violating the NAAQS, commenters claimed that the EPA is required to conduct a technical analysis to determine if there is a ''nexus between the provisions that are the subject of its SSM SIP Call Proposal and the specific pollutants for which attainment has not been achieved.'' Other industry commenters argued that in order to have authority to issue a SIP call, the EPA must prove through a technical analysis that a given SIP provision ''is'' substantially inadequate, not that it ''may be.'' These commenters claimed that the EPA has not shown how any of the SIP provisions at issue in this action ''threatens the NAAQS, fails to sufficiently mitigate interstate transport, or comply with any other

[306] *See Virginia* v. *EPA,* 108 F.3d 1397 (D.C. Cir. 1997) (SIP call remanded and vacated because, *inter alia,* the EPA had issued a SIP call that required states to adopt a particular control measure for mobile sources).

[307] Notwithstanding the latitude states have in developing SIP provisions, the EPA is required to assure that states meet the basic legal criteria for SIPs. *See Michigan* v. *EPA,* 213 F.3d 663, 686 (D.C. Cir. 2000) (upholding NO_x SIP call because, *inter alia,* the EPA was requiring states to meet basic legal requirement that SIPs comply with section 110(a)(2)(D), not dictating the adoption of a particular control measure).

CAA requirement.'' Many industry commenters questioned whether exempt emissions during SSM events pose any attainment-related concerns, making assertions such as: ''[i]nfrequent malfunction, startup and shutdown events at a limited number of stationary sources are likely to have no effect on attainment.''

Many state commenters made similar arguments, based on the specific attainment or nonattainment status of areas in their respective states. For example, one state commenter claimed that the EPA failed to make required technical findings that the specific provisions the Agency identified as legally deficient ''are so substantially inadequate that the State cannot attain or maintain the NAAQS or otherwise comply with the CAA.'' The commenter claimed that the EPA should have evaluated all of the state's emission limitations, emission inventories and attainment and maintenance demonstrations for the NAAQS, rather than focusing on these individual SIP provisions. In order to demonstrate substantial inadequacy under section 110(k)(5), the state claimed, the EPA ''must point to facts'' that show ''the State cannot attain or maintain the NAAQS or comply with the CAA'' if the provisions remain in the SIP. Other states made comparable arguments with respect to the SIP provisions at issue in their SIPs and claimed that the EPA is required to establish how the provisions caused or contributed to a specific violation of a NAAQS in those states.

By contrast, many environmental group commenters and individual commenters took the opposite position concerning what is necessary to support a finding of substantial inadequacy under section 110(k)(5). These commenters argued that that the EPA may issue a SIP call not only where it determines that a SIP is substantially inadequate to attain or maintain a NAAQS with a technical analysis but also where the Agency determines that the SIP is substantially inadequate ''to comply with any requirement of the Act.'' The commenters noted that the EPA identified specific statutory provisions of the CAA with which the SIP provisions at issue in this action do not comply. For example, these commenters agreed with the EPA's view that SIP provisions with automatic or discretionary exemptions for emissions during SSM events do not meet the fundamental requirements that SIP emission limitations must apply to limit emissions from sources on a continuous basis, in accordance with sections 110(a)(2)(A), 110(a)(2)(C) and 302(k). In addition to arguing that failure to meet legal requirements of the CAA is a sufficient basis for a SIP call, some commenters provided additional support to illustrate how SIP provisions with deficiencies such as automatic or discretionary exemptions for emissions during SSM events result in large amounts of excess emissions that would otherwise be violations of the applicable emission limitations.

Response: The EPA disagrees with the argument that it has no authority to issue a SIP call under section 110(k)(5) unless the Agency provides a factual or technical analysis to demonstrate that the SIP provision at issue caused a specific environmental harm or undermined a specific enforcement case. As explained in the February 2013 proposal, in the SNPR and in this final action, the EPA interprets its authority under section 110(k)(5) to authorize a SIP call for not only provisions that are substantially inadequate for purposes of attainment or maintenance of the NAAQS but also those provisions that are substantially inadequate for purposes of ''any requirement'' of the CAA.[308] To be clear, the EPA can also issue a SIP call whenever it determines that a SIP as a whole, or a specific SIP provision, is deficient because the SIP did not prevent specific violations of a NAAQS, at a specific monitor, on a specific date. However, that is not the extent of the EPA's authority under section 110(k)(5).

On its face, section 110(k)(5) does not impose any explicit requirements with respect to what specific form of factual or analytical basis is necessary for issuance of a SIP call. Because the statute does not prescribe the basis on which the EPA is to make a finding of substantial inadequacy, the Agency interprets section 110(k)(5) to provide discretion concerning what is necessary to support such a finding. The Agency believes that the nature of the factual or analytical basis necessary to make a finding is dependent upon the specific nature of the substantial inadequacy in a given SIP provision.

For example, when the EPA issued the NO_X SIP Call to multiple states because their SIPs failed to address interstate transport adequately in accordance with section 110(a)(2)(D)(i)(I), the Agency did base that SIP call on a detailed factual analysis including ambient air impacts.[309] In that situation, the specific requirement of the CAA at issue was the statutory obligation of each state to have a SIP that contains adequate provisions to prohibit emissions from sources ''in amounts'' that ''contribute significantly to nonattainment in, or interfere with maintenance by, any other State'' with respect to the NAAQS. Because of the phrase ''in amounts,'' the EPA considered it appropriate to evaluate whether each state's SIP was substantially inadequate to comply with section 110(a)(2)(D)(i)(I) through a detailed analysis of the emissions from the state and their impacts on other states. Moreover, given the use of ambiguous terms in section 110(a)(2)(D)(i)(I) such as ''contribute significantly,'' the EPA concluded that it was appropriate to conduct a detailed analysis to quantify the amount of emissions that each of the affected states needed to eliminate in order to comply with section 110(a)(2)(D)(i)(I) for the specific NAAQS in question. However, the EPA's decision to determine these facts and to conduct these analyses as a basis for that particular SIP call action was due to the nature of the SIP deficiency at issue and the wording of section 110(a)(2)(D)(i)(I). The EPA has similarly issued other SIP calls for which the Agency determined that a specific factual or technical analysis was appropriate to support the finding of substantial inadequacy.[310]

Not all situations, however, require the same type of detailed factual analysis to support the finding of substantial inadequacy. For example, when the EPA issued the PSD GHG SIP call to 13 states for failure to have a PSD permitting program that properly addresses GHG emissions, the Agency did not need to base that SIP call action on a detailed factual analysis of ambient air impacts.[311] In that situation, the statutory requirement of the CAA in question was the obligation of each state SIP under section 110(a)(2)(C) to

[308] *See* February 2013 proposal, 78 FR 12459 at 12483–89 (February 22, 2013); SNPR, 79 FR 55919 at 55935.

[309] *See* ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' 63 FR 57356 (October 27, 1998).

[310] *See, e.g.,* ''Finding of Substantial Inadequacy of Implementation Plan; Call for Iowa State Implementation Plan Revision,'' 76 FR 41424 (July 14, 2011) (SIP call to Iowa due to $PM_{2.5}$ NAAQS violations in Muscatine area); ''Approval and Promulgation of State Implementation Plans; Call for Sulfur Dioxide SIP Revisions for Billings/Laurel, MT [Montana],'' 58 FR 41430 (August 4, 1993) (SIP call to Montana due to modeled violations of the SO_2 NAAQS).

[311] *See* ''Action to Ensure Authority to Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions; Finding of Substantial Inadequacy and SIP Call,'' 75 FR 77698 (December 13, 2010). The EPA notes that a number of petitioners challenged this SIP call on various grounds, but the court ultimately determined that they did not have standing. *Texas* v. *EPA,* 726 F.3d 180 (D.C. Cir. 2013).

include a PSD permitting program that addresses all federally regulated air pollutants, including GHGs. In that action, the EPA made a finding that the SIPs of 13 states were substantially inadequate to ''comply with any requirement'' of the CAA because the PSD permitting programs in their EPA-approved SIPs did not apply to GHG emissions from new and modified sources. Accordingly, the EPA issued a SIP call to the 13 states because their SIPs failed to comply with specific legal requirements of the CAA. This failure to meet an explicit CAA legal requirement to address GHG emissions in permits for sources as required by statute did not require the EPA to provide a technical analysis of the specific environmental impacts that this substantial inadequacy would cause. For this type of SIP deficiency, it was sufficient for the EPA to make a factual finding that the affected states had SIPs that failed to meet this fundamental legal requirement.[312] The EPA has issued other SIP calls for which the Agency made a finding that a state's failure to meet specific legal requirement of the CAA for SIPs was a substantial inadequacy without the need to provide a technical air quality analysis relating to NAAQS violations.[313]

The EPA believes that the most relevant precedent for what is necessary to support a finding of substantial inadequacy in this action is the SIP call that the Agency previously issued to the state of Utah for deficient SIP provisions related to the treatment of excess emissions during SSM events.[314] In that SIP call action, the EPA made a finding that two specific provisions in the state's SIP were substantially inadequate because they were inconsistent with legal requirements of the CAA. For one of the provisions that included an exemption for emissions during ''upsets'' (*i.e.,* malfunctions), the EPA explained:

> Contrary to CAA section 302(k)'s definition of emission limitation, the exemption [in the provision] renders emission limitations in the Utah SIP less than continuous and, contrary to the requirements of CAA sections 110(a)(2)(A) and (C), undermines the ability to ensure compliance with SIP emissions limitations relied on to achieve the NAAQS and other relevant CAA requirements at all times. Therefore, the [provision] renders the Utah SIP substantially inadequate to attain or maintain the NAAQS or to comply with other CAA requirements such as CAA sections 110(a)(2)(A) and (C) and 302(k), CAA provisions related to prevention of significant deterioration (PSD) and nonattainment NSR permits (sections 165 and 173), and provisions related to protection of visibility (section 169A).[315]

For a second provision, the EPA made a finding of substantial inadequacy because the provision interfered with the enforcement structure of the CAA. The EPA explained:

> This provision appears to give the executive secretary exclusive authority to determine whether excess emissions constitute a violation and thus to preclude independent enforcement action by EPA and citizens when the executive secretary makes a non-violation determination. This is inconsistent with the enforcement structure under the CAA, which provides enforcement authority not only to the States, but also to EPA and citizens. . . . Because it undermines the envisioned enforcement structure, it also undermines the ability of the State to attain and maintain the NAAQS and to comply with other CAA requirements related to PSD, visibility, NSPS, and NESHAPS.[316]

In the Utah SIP call rulemaking, the EPA received similar adverse comments arguing that the Agency has no authority under section 110(k)(5) to issue a SIP call without a factual analysis that proves that the deficient SIP provisions caused a specific environmental harm, such as a NAAQS violation. Commenters in that rulemaking likewise argued that the EPA was required to prove a causal connection between the excess emissions that occurred during a specific exempt malfunction and a specific violation of the NAAQS. In response to those comments, the EPA explained:

> [W]e need not show a direct causal link between any specific unavoidable breakdown excess emissions and violations of the NAAQS to conclude that the SIP is substantially inadequate. It is our interpretation that the fundamental integrity of the CAA's SIP process and structure is undermined if emission limits relied on to meet CAA requirements can be exceeded without potential recourse by any entity granted enforcement authority by the CAA. We are not restricted to issuing SIP calls only after a violation of the NAAQS has occurred or only where a specific violation can be linked to a specific excess emissions event.[317]

The EPA's interpretation of section 110(k)(5) in the Utah action was directly challenged in *US Magnesium, LLC* v. *EPA*.[318] Among other claims, the petitioners argued that the EPA did not have authority for the SIP call because the Agency had not ''set out facts showing that the [SIP provision] has prevented Utah from attaining or maintaining the NAAQS or otherwise complying with the CAA.'' Thus, the same arguments raised by commenters in this action have previously been advanced and rejected by the EPA and the courts. The court expressly upheld the EPA's interpretation of section 110(k)(5), concluding:

> Certainly, a SIP could be deemed substantially inadequate because air-quality records showed that actions permitted under the SIP resulted in NAAQS violations, but the statute can likewise apply to a situation like this, where the EPA determines that a SIP is no longer consistent with the EPA's understanding of the CAA. In such a case, the CAA permits the EPA to find that a SIP is substantially inadequate to comply with the CAA, which would allow the EPA to issue a SIP call under CAA section 110(k)(5).[319]

Finally, the EPA disagrees with the commenters on this specific point because it is not a logical construction of section 110(k)(5). The implication of the commenters' argument is that if a given area is in attainment, then the question of whether the SIP provisions meet applicable legal requirements is irrelevant. If a given area is not in attainment, then the implication of the commenter's argument is that the EPA must prove that the legally deficient SIP provision factually caused the violation of the NAAQS or else the legal deficiency is irrelevant. In the latter case, the logical extension of the commenter's argument is that no matter how deficient a SIP provision is to meet applicable legal requirements, the EPA is foreclosed from directing the state to correct that deficiency unless and until there is proof of a specific environmental harm caused, or specific enforcement case thwarted, by that deficiency. Such a reading is inconsistent with both the letter and the intent of section 110(k)(5).

2. Comments that the EPA must make specific factual findings to meet the

[312] *Id.,* 75 FR 77698 at 77705–07.

[313] *See, e.g.,* ''Finding of Substantial Inadequacy of Implementation Plan; Call for California State Implementation Plan Revision,'' 68 FR 37746 (June 25, 2003) (SIP call to California for failure to meet legal requirements of section 110(a)(2)(C), section 110(a)(2)(I), and section 110(a)(2)(E) because of exemptions for agricultural sources from NNSR and PSD permitting requirements); ''Credible Evidence Revisions,'' 62 FR 8314 at 8327 (February 24, 1997) (discussing SIP calls requiring states to revise their SIPs to meet CAA requirements with respect to the use of any credible evidence in enforcement actions for SIP violations).

[314] *See* ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision; Proposed rule,'' 76 FR 21639 (April 18, 2011).

[315] *Id.,* 76 FR 21639 at 21641. The EPA also found the first provision substantially inadequate because it operated to create an additional exemption for emissions during malfunctions that modified the existing emission limitations in some federal NSPS and NESHAP that the state had incorporated by reference into its SIP. The EPA's 1999 SSM Guidance had indicated that state SIP provisions could not validly alter NSPS or NESHAP.

[316] *Id.*

[317] *Id.,* 76 FR 21639 at 21643.

[318] 690 F.3d 1157 (10th Cir. 2012).

[319] *Id.* 690 F.3d at 1168.

requirements of section 110(a)(2)(H)(ii) to have authority to issue a SIP call.

Comment: A number of commenters argued that even if section 110(k)(5) does not require the EPA to provide a technical analysis to support a finding of substantial inadequacy, section 110(a)(2)(H)(ii) does impose this obligation. The commenters noted that section 110(a)(2)(H)(ii) requires states to revise their SIPs ''whenever the Administrator finds on the basis of information available to the Administrator that the plan is substantially inadequate.'' The commenters claimed that this statutory language imposes a requirement for the EPA to ''find'' the SIP inadequate and ''clearly indicates that a SIP Call must be justified by factual findings supported by record evidence.''

One commenter argued that the use of the word ''finds'' should be read in light of the dictionary definition of ''find''—''to discover by study or experiment.'' The commenter noted that courts commonly hold that agencies must draw a link between the facts and a challenged agency decision. To support this basic principle of administrative law, the commenter cited a litany of cases including: *Motor Vehicle Mfrs Ass'n* v. *State Farm Mut. Auto Ins. Co.,* 463 U.S. 29, 43 (1983); *Appalachian Power Co.* v. *EPA,* 251 F.3d 1026, 1034 (D.C. Cir. 2001); *Tex Tin Corp.* v. *EPA,* 992 F.2d 353, 356 (D.C. Cir. 1993); *Nat'l Gypsum* v. *EPA,* 968 F.2d 40, 43–44 (D.C. Cir. 1992); *Michigan* v. *EPA,* 213 F.3d 663, 681 (D.C. Cir. 2000). Thus, the commenter suggested that the statutory language of section 110(a)(2)(H)(ii) requires a specific factual or technical demonstration concerning the ambient air impacts of an inadequate SIP provision, even if the language of section 110(k)(5) does not.

Another commenter argued that the phrase ''on the basis of information available to the Administrator'' in section 110(a)(2)(H)(ii) means that the EPA must not only consider the specific terms of the SIP provisions relative to the legal requirements of the statute but must also consider other information that is ''available,'' including how the provisions have been affecting air quality or enforcement since approval. In support of this proposition, the commenter cited 1970 legislative history for section 110(a)(2)(H):

> Whenever the Secretary or his representative finds from new information developed after the plan is approved that the plan is not or will not be adequate to achieve promulgated ambient air quality standards he must notify the appropriate States and give them an opportunity to respond to the new information.[320]

Thus, the commenter concluded that the EPA must not only find that the SIP is facially inconsistent with the legal requirements of the CAA but also find it ''substantially inadequate'' to achieve the goals of the requirements as a factual matter before issuing a SIP call. The implication of the commenter's argument is that section 110(a)(2)(H)(ii) imposes additional limitations upon the EPA's authority to issue a SIP call.

Response: The EPA disagrees that it has not made the findings necessary to support the present SIP call action. The thrust of the commenters' argument is that the facts that the EPA ''finds'' or the ''information'' upon which the EPA bases such a finding can *only* be technical or scientific facts proving that a given SIP provision resulted in emissions that caused a specific violation of the NAAQS. As with section 110(k)(5), however, nothing in section 110(a)(2)(H)(ii) compels such a narrow reading. The plain language of section 110(a)(2)(H)(ii) does not support the commenters' arguments. To the extent that section 110(a)(2)(H)(ii) is ambiguous, however, the EPA does not interpret it to require the types of technical findings claimed by the commenters in the case of SIP provisions that do not meet legal requirements of the CAA. To the contrary, the EPA interprets the statutory language to leave to the Agency's discretion what facts or information are necessary to find that a given SIP provision is substantially inadequate. In short, the EPA's ''finding'' may be a finding that a SIP provision does not meet applicable legal requirements without definitive proof that this legal deficiency caused a specific outcome, such as a specific impact on the NAAQS or a specific enforcement action.

First, section 110(a)(2)(H)(ii) does not on its face directly address the scope of the EPA's authority, unlike section 110(k)(5). Section 110(a)(2)(H)(ii) appears in section 110(a)(2), which contains a listing of specific structural or program requirements that each state's SIP must include. In the case of section 110(a)(2)(H)(ii), the CAA requires each state to have provisions in its SIP that ''provide for revision of such plan'' in the event that the EPA issues a SIP call. Given that section 110(k)(5) is the provision that directly addresses the EPA's authority to issue a SIP call, section 110(a)(2)(H)(ii) should not be interpreted in a way that contradicts or curtails the broad authority provided in section 110(k)(5). The EPA does not interpret section 110(k)(5) to require proof that a given SIP provision caused a specific environmental harm or undermined a specific enforcement action in order to find the provision substantially inadequate. If the provision fails to meet fundamental legal requirements of the CAA for SIP provisions, that alone is sufficient.

Second, even if read in isolation, section 110(a)(2)(H)(ii) does not specify what type of finding the EPA is required to make or specify the way in which the Agency should make such a finding. The EPA agrees that this section of the CAA describes findings that the EPA makes ''on the basis of information available to the Administrator that the plan is substantially inadequate to attain'' the NAAQS. This section does not, however, expressly state that the ''information'' in question must be a particular form of information, nor does it expressly require any specified form of technical analysis such as modeling that demonstrates that a particular SIP deficiency caused a violation of the NAAQS. Because the term ''information'' is not limited in this way, the EPA interprets it to mean whatever form of information is relevant to the finding in question. For certain types of deficiencies, the EPA may determine that such a technical analysis is appropriate, but that does not mean that it is required as a basis for all findings of substantial inadequacy.[321]

Third, section 110(a)(2)(H)(ii), like section 110(k)(5), is not limited to findings related exclusively to attainment of the NAAQS. Section 110(a)(2)(H)(ii) also expressly refers to findings by the EPA that a SIP is substantially inadequate ''to otherwise comply with any additional requirements established under'' the CAA. The EPA interprets this explicit reference to ''any additional requirements'' to include any legal requirements applicable to SIP provisions, such as the requirement that emission limitations must apply continuously. The commenters misconstrue section 110(a)(2)(H)(ii) to

[320] *See* S. Rep No. 91–1196 at 55–56 (1970).

[321] *See, e.g.,* ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone; Final rule,'' 63 FR 57355 (October 27, 1998) (EPA found that the SIPs of multiple states did not adequately control emissions that resulted in significant contribution to nonattainment in other states); ''Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call; Final rule,'' 75 FR 77697 (December 13, 2010) (EPA found that the SIPs of multiple states did not meet the legal requirements for PSD permitting for GHG emissions).

refer exclusively to provisions that are literally found to cause a specific violation of the NAAQS. The EPA acknowledges that the legislative history quoted by the commenters discusses findings related to a failure of a SIP to attain the NAAQS, but the passage quoted does not explain the meaning of ''new information'' any more specifically than the statute, nor does the passage explain why the actual statutory text of section 110(a)(2)(H)(ii) now refers to findings related to failures to meet ''any additional requirements'' of the CAA.[322] Moreover, the commenters did not address the changes to the CAA in 1977 that added to the statutory language to refer to other requirements, nor did they address the changes to the CAA in 1990 that added section 110(k)(5), which refers to all other requirements of the CAA. The EPA believes that the more recent changes to the statute in fact support its view that section 110(a)(2)(H)(ii) entails compliance with the legal requirements of the CAA, not the narrow reading advocated by the commenters.

Fourth, the EPA disagrees with the commenters' arguments that it did not make factual ''findings'' to support this SIP call. To the contrary, the EPA has made numerous factual determinations with regard to the specific SIP provisions at issue. For example, for those SIP provisions that include automatic exemptions for emissions during SSM events, the EPA has found that the provisions are inconsistent with the definition of ''emission limitation'' in section 302(k) and that SIP provisions that allow sources to exceed otherwise applicable emission limitations during SSM events may interfere with attainment and maintenance of the NAAQS. The EPA has also made the factual determination that other SIP provisions that authorize director's discretion exemptions during SSM events are inconsistent with the statutory provisions applicable to the approval and revision of SIP provisions. The EPA has found that overbroad enforcement discretion provisions are inconsistent with the enforcement structure of the CAA in that they could be interpreted to allow the state to make the final decision whether such emissions are violations, thus impeding the ability of the EPA and citizens to enforce the emission limitations of the SIP. Similarly, the EPA has found, consistent with the court's decision in *NRDC* v. *EPA,* that affirmative defenses in SIP provisions are inconsistent with CAA requirements because they operate to alter or eliminate the jurisdiction of the courts to determine liability and impose penalties. In short, the EPA has made the factual findings that specific provisions are substantially inadequate to meet requirements of the CAA, as contemplated in both section 110(a)(2)(H)(ii) and section 110(k)(5).

Finally, the EPA notes that the cases cited by the commenters to support their contentions concerning the factual basis for agency decisions are not relevant to the specific question at hand. The correct question is whether section 110(a)(2)(H)(ii) requires the type of factual or technical analysis that they claim. None of the cases they cited address this specific issue. By contrast, the decision of the Tenth Circuit in *US Magnesium, LLC* v. *EPA* is much more relevant. In that decision, the court concluded that the EPA's authority under section 110(k)(5) is not restricted to situations where a deficient SIP provision caused a specific violation of the NAAQS and the exercise of that authority does not require specific factual findings that the provision caused such impacts.[323]

3. Comments that the EPA lacks authority to issue a SIP call because it is interpreting the term ''substantial inadequacy'' incorrectly.

Comment: Some commenters claimed that although the term ''substantially inadequate'' is not defined in the statute, the EPA made no effort to interpret the term. Citing *Qwest Corp.* v. *FCC,* 258 F.3d 1191, 1201–02 (10th Cir. 2001), the commenters argued that the EPA is not entitled to any deference to its interpretation of the term ''substantial inadequacy.''

Other commenters acknowledged that the EPA took the position that the term ''substantially inadequate'' is not defined in the CAA and that the Agency can establish an interpretation of that provision under *Chevron* step 2. However, these commenters disagreed that the EPA's interpretation of the term in the February 2013 proposal was reasonable. In particular, the commenters disagreed with the EPA's view that once a SIP provision is found to be ''facially inconsistent'' with a specific legal requirement of the CAA, nothing more is required to find the provision ''substantially inadequate'' to ''comply with'' that requirement. Commenters claimed that the EPA's interpretation conflicts with the statute because it ignores the statutory requirement that a SIP call be based on inadequacies that are ''substantial'' and that the interpretation does not meet the ''high bar'' Congress established before states could be required to undertake the difficult task of revising a SIP.

State commenters claimed that the requirement that the EPA must determine that the SIP is ''substantially'' inadequate establishes a heavy burden for the EPA. The commenters relied on a dictionary definition of ''substantially'' as meaning ''considerable in importance, value, degree, amount, or extent.'' The commenters argued that when modifying the word ''inadequate,'' the use of the modifier ''substantially'' in section 110(k)(5) enhances the degree of proof required. Thus, the commenters argued that the EPA cannot just assume that the provisions may prevent attainment of the NAAQS.

Other industry commenters disagreed that the term ''substantially inadequate'' is ambiguous but claimed that even if it were, the EPA's own interpretation is vague and ambiguous. The commenters asserted that the EPA's statement that it must evaluate the adequacy of specific SIP provision ''in light of the specific purposes for which the SIP provision at issue is required'' and with respect to whether the provision meets ''fundamental legal requirements applicable to such a provision'' is not a reasonable interpretation of the statutory language. Furthermore, the commenters argued, the EPA's interpretation of section 110(k)(5) to authorize a SIP call in the absence of any causal evidence that the SIP provision at issue causes a particular environmental impact reads out of the statute ''the explicit requirement that a SIP call related to NAAQS be made only where the state plan is substantially inadequate to attain or maintain the relevant standard.''

Response: The EPA disagrees with commenters who claimed that the Agency did not explain its interpretation of section 110(k)(5) in general, or the term ''substantially inadequate'' in particular, in the February 2013 proposal. To the contrary, the EPA provided an explanation of why it considers section 110(k)(5) to be ambiguous and provided a detailed explanation of how the Agency is interpreting and applying that statutory language to the specific SIP provisions at issue in this action.[324] Moreover, the EPA explained why it believes that the four major types of

[322] The EPA notes that the significance of this 1970 legislative history was raised in *US Magnesium, LLC* v. *EPA,* 690 F.3d 1157, 1166 (10th Cir. 2012). That court found the legislative history ''inapposite'' simply because it did not pertain to section 110(k)(5) which Congress added to the CAA in 1990. This legislative history passage is of limited significance in this action as well.

[323] *Id.,* 690 F.3d 1157, 1166.

[324] *See* February 2013 proposal, 78 FR 12459 at 12483–88.

provisions at issue are inconsistent with applicable legal requirements of the CAA and thus substantially inadequate. In the SNPR, the EPA reiterated its interpretation of section 110(k)(5) with respect to affirmative defense provisions in SIPs but updated that interpretation in response to the logic of the more recent court decision in *NRDC* v. *EPA.* Thus, the commenters' reliance on the *Qwest* decision is not appropriate, because the EPA did explain its interpretation of the statute and it is not one that is contrary to the statute. A more appropriate precedent is the decision in *US Magnesium, LLC* v. *EPA,* in which the same court upheld the EPA's interpretation of its authority under section 110(k)(5). In short, the EPA believes that section 110(k)(5) provides the EPA with discretion to determine what constitutes a substantial inadequacy and to determine the appropriate basis for such a finding in light of the relevant CAA requirements at issue. Thus, the commenters are in error that the EPA did not articulate its interpretation of section 110(k)(5).

The EPA also disagrees with those commenters who argued that the Agency has ignored or misinterpreted the term ''substantial'' in this action. As many commenters acknowledged, this term is not defined in the statute. Their reliance on a dictionary definition, however, is based on the incorrect premise that a failure to comply with the legal requirements of the CAA for SIP provisions is not ''considerable in importance, value, degree, amount, or extent.''

First, the commenters' argument ignores the full statutory language of section 110(k)(5) in which the EPA is authorized to issue a SIP call whenever it determines that a given SIP provision is inadequate, not only because of impacts on attainment of the NAAQS but also upon a failure to meet ''any other requirement'' of the CAA. As explained in the February 2013 proposal and in the SNPR, the EPA interprets its authority under section 110(k)(5) to encompass any type of deficiency, including failure to meet specific legal requirements of the CAA for SIP provisions. Failure to comply with these legal requirements can have the effect of interfering with attainment and maintenance of the NAAQS (*e.g.,* by allowing unlimited emissions from sources during SSM events), but the failure to comply with the legal requirements is in and of itself a basis for a SIP call.

Second, the commenters' argument implies that failure of a SIP provision to meet a legal requirement of the CAA is not a ''substantial'' inadequacy. The EPA strongly disagrees with the view that complying with applicable legal requirements is not an important consideration in general, and not important with respect to the specific legal defects at issue here. For example, the EPA considers a SIP provision that does not apply continuously because it contains SSM exemptions to be substantially inadequate because it fails to meet legal requirements of sections 110(a)(2)(A), 110(a)(2)(C) and 302(k). In particular, failure to meet the legal requirements for an emission limitation as contemplated in section 302(k) is a ''substantial'' inadequacy. The EPA is not alone in this view; the D.C. Circuit in the *Sierra Club* v. *Johnson* case held that emission limitations must be continuous and cannot contain SSM exemptions. If inclusion of SSM exemptions in emission limitations were not a ''substantial'' deficiency from the court's perspective, presumably the court would have ruled differently. As another example, the EPA considers the inclusion of affirmative defenses in SIP provisions that operate to alter the jurisdiction of the courts to be a substantial inadequacy. Again, the EPA's view that SIP provisions cannot interfere with the enforcement structure of the CAA set forth in section 113 and section 304 is not unreasonable. The court's decision in *NRDC* v. *EPA* held that EPA regulations cannot alter or eliminate the jurisdiction of courts to determine liability and impose remedies in judicial enforcement cases and this same logic extends to the states in SIP provisions. Contrary to the arguments of the commenters, the EPA reasonably interprets the term ''substantial'' in section 110(k)(5) to include compliance with the legal requirements of the CAA applicable to SIP provisions.

Third, the EPA notes that its reading of section 110(k)(5) does not ''read out of the statute'' the statutory language that SIP provisions can be substantially inadequate ''to attain or maintain the relevant NAAQS'' as claimed by the commenters. The EPA agrees that SIP provisions can be found substantially inadequate for this specific reason, but it is the commenters who read words out of section 110(k)(5) by disregarding the portion of the statute that also authorizes a SIP call whenever a SIP provision does not ''comply with any requirement of'' the CAA. Indeed, the EPA believes that SIP provisions that fail to meet the specific legal requirements of the CAA are very likely to have these impacts as well; *e.g.,* the unlimited emissions authorized by SSM exemptions can interfere with attainment and maintenance of the NAAQS. The EPA believes that Congress consciously included these fundamental legal requirements in order to assure that SIP provisions will achieve the objectives of the CAA, such as attainment and maintenance of the NAAQS. For example, legislative history for section 302(k) indicates that Congress intentionally required that emission limitations apply continuously in order to assure that they would achieve these goals as well as be consistent with the enforcement structure of the CAA.[325]

4. Comments that the EPA lacks authority to issue a SIP call because it is required to ''quantify'' the magnitude of any alleged SIP deficiency in order to establish that it is substantial.

Comment: A number of commenters argued that, in addition to failing to provide a required technical analysis to support a SIP call, the EPA was also failing to quantify in advance the degree of inadequacy that is necessary for a given SIP provision to be substantially inadequate. The commenters asserted that the EPA has a burden to define in advance what amount of inadequacy is ''substantial,'' before the Agency can require states to comply with a SIP call. Some commenters made this argument based upon their experience with prior SIP call rulemakings, such as the NO_X SIP call in which the Agency performed such an analysis. Other commenters, however, evidently based this argument upon their reading of the D.C. Circuit's decision in *EME Homer City Generation, L.P.* v. *EPA.*[326] Some commenters also argued that ''all'' past EPA SIP calls have been based upon a specific technical analysis concerning the sufficiency of a SIP to provide for attainment and maintenance of a NAAQS and that this establishes that such an analysis is always required.

Response: The EPA disagrees that section 110(k)(5) requires the Agency to ''quantify'' the degree of inadequacy in a given SIP provision before issuing a SIP call. As explained in detail in the February 2013 proposal and this document, the EPA interprets section 110(k)(5) to authorize the Agency to determine the nature of the analysis necessary to make a finding that a SIP provision is substantially inadequate. The EPA agrees that for certain SIP call actions, such as the NO_X SIP call, the

[325] *See, e.g.,* H.R. 95–294, at 92 (1977) (referring to emission limitations as a fundamental tool for assuring attainment and maintenance of the NAAQS and stating that unless they are ''complied with at all times, there can be no assurance that ambient standards will be attainment and maintained.''

[326] 696 F.3d 7, 29 (D.C. Cir. 2012) *rev'd,* 134 S. Ct. 1584 (2014).

specific nature of the SIP call in question for section 110(a)(2)(D)(i) did warrant a technical evaluation of whether the emissions from sources in particular states were significantly contributing to violations of a NAAQS in other states. Thus, the EPA elected to perform a specific form of analysis to determine whether emissions from sources in certain states significantly contributed to violations of the NAAQS in other states, and if so, what degree of reductions were necessary to remedy that interstate transport.

The nature of the SIP deficiencies at issue in this action does not require that type of technical analysis and does not require a ''quantification'' of the extent of the deficiency. In this action, the EPA is promulgating a SIP call action that directs the affected states to revise existing SIP provisions with specific legal deficiencies that make the provisions inconsistent with fundamental legal requirements of the CAA for SIPs, *e.g.,* automatic exemptions for emissions during SSM events or affirmative defense provisions that limit or eliminate the jurisdiction of courts to determine liability and impose remedies for violations. Accordingly, the EPA has determined that it is not necessary to establish that these deficiencies literally caused a specific violation of the NAAQS on a particular day or undermined a specific enforcement case. It is sufficient that the provisions fail to meet a legal requirement of the CAA and thus are substantially inadequate as provided in section 110(k)(5).

5. Comments that the EPA's interpretation of substantial inadequacy would override state discretion in development of SIP provisions.

Comment: Some state and industry commenters argued that the EPA's interpretation of its authority under section 110(k)(5) is wrong because it is inconsistent with the principle of cooperative federalism. These commenters asserted that the EPA's interpretation of the term ''substantially inadequate,'' as explained in the February 2013 proposal, would allow the Agency to dictate that states revise their SIPs without any consideration of whether the states' preferred control measures affect attainment of the NAAQS, thereby expanding the EPA's role in CAA implementation. Consequently, these commenters concluded, the EPA's interpretation of section 110(k)(5) is neither ''reasonable'' nor ''a permissible construction of the statute'' under the principles of *Chevron* deference.[327]

Response: The EPA disagrees with the commenters' view of the cooperative-federalism relationship established in the CAA, as explained in detail in section V.D.2 of this document. Because the commenters are misconstruing the respective responsibility and authorities of the states and the EPA under cooperative federalism, the Agency does not agree that its interpretation of section 110(k)(5) is ''unreasonable'' for this reason under the principles of *Chevron.* As explained in detail in the February 2013 proposal, the EPA interprets its authority under section 110(k)(5) to include the ability to require states to revise their SIP provisions to correct the types of deficiencies at issue in this action.

Section 110(k)(5) explicitly authorizes the EPA to issue a SIP call for a broad range of reasons, including to address any SIP provisions that relate to attainment and maintenance of the NAAQS, to interstate transport, or to any other requirement of the CAA.[328] The EPA's authority and responsibility to review SIP submissions in the first instance is to assure that they meet all applicable procedural and substantive requirements of the CAA, in accordance with the requirements of sections 110(k)(3), 110(l) and 193. The EPA's authority and responsibility under the CAA includes assuring that SIP provisions comply with specific statutory requirements, such as the requirement that emission limitations apply to sources continuously. The CAA imposes these statutory requirements in order to assure that the larger objectives of SIPs are achieved, such as the attainment and maintenance of the NAAQS, protection of PSD increments, improvement of visibility and providing for effective enforcement. The CAA imposes this authority and responsibility upon the EPA when it first evaluates a SIP submission for approval. Likewise, after the initial approval, section 110(k)(5) authorizes the EPA to require states to revise their SIPs whenever the Agency later determines that to be necessary to meet CAA requirements. This does not in any way allow the EPA to interfere in the states' selection of the control measures they elect to impose to satisfy CAA requirements relating to NAAQS attainment and maintenance, provided that those selected measures comply with all CAA requirements such as the need for continuous emissions limitations. Accordingly, the EPA believes that its interpretation of section 110(k)(5) is fully consistent with the letter and the purpose of the principles of cooperative federalism.

6. Comments that the EPA cannot issue a SIP call for an existing SIP provision unless the provision was deficient at the time the state originally developed and submitted the provision for EPA approval.

Comment: Commenters argued that the EPA is using the SIP call to require states to change SIP provisions that were acceptable at the time they were originally approved and argued that section 110(k)(5) cannot be used for that purpose. Specifically, one commenter asserted that section 110(k)(5) provides that findings of substantial inadequacy shall ''subject the State to the requirements of this chapter to which the State was subject *when it developed and submitted the plan for which such finding was made*.'' (Emphasis added by commenter.) The implication of the commenters' argument is that a SIP provision only needs to meet the requirements of the CAA that were applicable at the time the state originally developed and submitted the provision for EPA approval. Because the EPA has no authority to issue a SIP call under their preferred reading of section 110(k)(5), the commenters claimed, the EPA would have to use its authority under section 110(k)(6) and would have to establish that the original approval of each of the provisions at issue in this action was in error.

Response: The EPA disagrees with this reading of section 110(k)(5). As an initial matter, the commenter takes the quoted excerpt of the statute out of context. The quoted language follows ''to the extent the Administrator deems appropriate.'' Thus, it is clear when the statutory provision is read in full that the EPA has discretion in specifying the requirements to which the state is subject and is not limited to specifying only those requirements that applied at the time the SIP was originally ''developed and submitted.'' Moreover, this cramped reading of section 110(k)(5) is not a reasonable interpretation of the statute because by this logic, the EPA could never require states to update grossly out-of-date SIP provisions so long as the provisions originally met CAA requirements. Given that the CAA creates a process by which

[327] *Chevron, U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.,* 467 U.S. 837, 843–44 (1984).

[328] *See, e.g., US Magnesium, LLC* v. *EPA,* 690 F.3d 1157, 1168 (10th Cir. 2012) (citing 42 U.S.C. 7410(k)(5)) (holding that the EPA may issue a SIP call not only based on NAAQS violations, but also whenever ''EPA determines that a SIP is no longer consistent with the EPA's understanding of the CAA''); *id.* at 1170 (upholding the EPA's authority ''to call a SIP in order to clarify language in the SIP that could be read to violate the CAA,'' even absent a pertinent judicial finding).

the EPA is required to establish and to update the NAAQS on a continuing basis, and states are required to update and revise their SIPs on a continuing basis, the Agency believes that Congress would not have intended that SIP provisions remain static for all time simply because they were adequate when first developed and approved. Such an interpretation would mean that subsequent legally significant events such as amendments of the CAA, court decisions interpreting the CAA and new or revised EPA regulations are not relevant to the continuing adequacy of existing SIP provisions. Similarly, such an interpretation would mean that facts arising later could never provide a basis for a SIP call, *e.g.,* to address interstate transport that was not evident at the time of the original development and approval of the SIP provisions or that needs to be addressed further because of a revised NAAQS.

The commenters also argued that if a state's SIP provision was flawed at the time the EPA approved it, then the Agency's only alternative for addressing the deficient provision is through the error correction authority of section 110(k)(6). The EPA disagrees. The CAA provides a number of tools to address flawed SIPs and the EPA does not interpret these provisions to be mutually exclusive. While the EPA could potentially have relied on section 110(k)(6) to remove the deficient provisions at issue in this action, the Agency believes that section 110(k)(5) authority also provides a means to address flawed SIP provisions. As explained in the February 2013 proposal, the EPA specifically considered the relative merits of reliance on section 110(k)(5) and section 110(k)(6) and determined that the former was a better approach for this action.[329] In the present circumstances, the EPA is not addressing a single targeted flaw, *i.e.,* a specific SIP revision that was flawed. Moreover, the EPA is not only dealing with a multitude of states in this action, but also in many cases with numerous SIP provisions developed over the years by a specific state. The provisions at issue often are included in several different places in a complex SIP and can affect multiple emission limitations in the SIP that apply to sources for purposes of multiple NAAQS.

Comparing the SIP call and error correction approaches, the EPA concluded that the SIP call authority under section 110(k)(5) provides the better approach for this action, in that it allows the states to evaluate the overall structure of their existing SIPs and determine how best to modify the affected SIP provisions in order to address the identified deficiencies. By contrast, use of the error correction authority under section 110(k)(6) would result in immediate disapproval and removal of existing SIP provisions from the SIP, which could cause confusion in terms of what requirements apply to sources. Moreover, the EPA's disapproval of a SIP submission through an error correction that reverses a prior SIP approval of a required SIP provision starts a ''sanctions clock,'' and sanctions would apply if the state has not submitted a revised SIP within 18 months. Similarly, the EPA would be required to promulgate a FIP if the Agency has not approved a revised SIP submission from the state within 24 months. In comparison, the sanctions and federal plan ''clocks'' would not start under the SIP call approach unless and until the state fails to submit a SIP revision in response to this SIP call, or unless and until the EPA disapproves that SIP submission. As explained in the February 2013 proposal, the EPA determined that the SIP call process was a better procedure through which to address the deficient SIP provisions at issue in this action.

7. Comments that the EPA failed to consider how excess emissions resulting from SSM exemptions would affect compliance with specific NAAQS, including NAAQS with different averaging periods or different statistical forms.

Comment: In addition to general claims that the EPA failed to provide required technical analysis to support the proposed SIP call to states for automatic and discretionary SSM exemptions, commenters specifically argued that the EPA is required to establish that these exemptions have caused violations in light of the considerations such as the averaging time or statistical form of specific NAAQS. The implication of the commenters' argument is that in order to demonstrate that a given SIP provision with an SSM exemption is substantially inadequate under section 110(k)(5), the EPA has to establish definitively that the emissions during SSM events would cause a violation of a particular NAAQS. This would potentially include an evaluation of the impacts of the exempted emissions on NAAQS with different averaging periods, *e.g.,* impacts on an annual NAAQS, a 24-hour NAAQS, or a 1-hour NAAQS, and impacts on NAAQS with different statistical forms, *e.g.,* a NAAQS that measures attainment by an annual arithmetical mean versus one that is measured by a 98th-percentile value. Moreover, commenters alluded to the difficulty of ascertaining definitively how emissions of specific precursor pollutants during a given exempted SSM event would affect attainment of one or more NAAQS.

To support the argument that the validity of SSM exemptions must be evaluated with respect to specific NAAQS, the commenters relied upon recent modeling guidance for the 1-hour NO_2 NAAQS in which, the commenters claimed, the EPA directed states to disregard emissions during SSM events for purposes of demonstrating compliance with that NAAQS. The commenters claimed that the cited EPA guidance supports their argument that emissions from a source during any specific SSM event are unlikely to cause a violation of the 1-hour NO_2 NAAQS. Accordingly, the commenters argued that the EPA has no authority to interpret the CAA to preclude exemptions for emissions during SSM events without first demonstrating that the exempt emissions cause NAAQS violations.

Response: As explained in the February 2013 proposal, and in response to other comments in this action, the EPA does not interpret section 110(k)(5) to require a specific technical analysis to support a SIP call related to legal deficiencies in SIP provisions. In section 110(k)(5), Congress left it to the Agency's discretion to determine what type and level of analysis is necessary to establish that a SIP provision is substantially inadequate. As explained in the February 2013 proposal, the EPA does not need to define the precise contours of its authority under section 110(k)(5) for all potential types of SIP deficiencies in this action. For purposes of this action, it is sufficient that the SIP provisions at issue are inconsistent with applicable requirements. While an ambient air quality impact analysis may be appropriate to support a SIP call with respect to certain requirements of the CAA, *e.g.,* a SIP call for failure to have SIP provisions to prevent significant contribution to nonattainment in another state in accordance with section 110(a)(2)(D)(i)(I), the EPA does not interpret the CAA to require such an analysis in all instances. In particular, where the substantial inadequacy is related to a failure to meet a fundamental legal requirement for SIP provisions, such as the requirement in section 302(k) that emission limitations apply continuously, the EPA does not believe that such a technical analysis is required.

[329] *See* February 2013 proposal, 78 FR 12459 at 12483, n.72.

For example, section 302(k) does not differentiate between the legal requirements applicable to SIP emission limitations for an annual NAAQS versus for a 1-hour NAAQS, nor between any NAAQS based upon the statistical form of the respective standards. In addition to being supported by the text of section 302(k), the EPA's interpretation of the requirement for sources to be subject to continuous emission limitations is also the most logical given the consequences of the commenters' theory. The commenters' argument provides additional practical reasons to support the EPA's interpretation of the CAA to preclude exemptions for emissions during SSM events from SIP emission limitations as a basic legal requirement for all emission limitations.

The EPA agrees that to ascertain the specific ambient impacts of emissions during a given SSM event can sometimes be difficult. This difficulty can be exacerbated by factors such as exemptions in SIP provisions that not only excuse compliance with emission limitations but also affect reporting or recordkeeping related to emissions during SSM events. Determining specific impacts of emissions during SSM events can be further complicated by the fact that the limited monitoring network for the NAAQS in many states may make it more difficult to establish that a given SSM event at a given source caused a specific violation of the NAAQS. Even if a NAAQS violation is monitored, it may be the result of emissions from multiple sources, including multiple sources having an SSM event simultaneously. The different averaging periods and statistical forms of the NAAQS may make it yet more difficult to determine the impacts of specific SSM events at specific sources, perhaps until years after the event occurred. By the commenters' own logic, there could be situations in which it is functionally impossible to demonstrate definitively that emissions during a given SSM event at a single source caused a specific violation of a specific NAAQS.

The commenters' argument, taken to its logical extension, could result in situations where a SIP emission limitation is only required to be continuous for purposes of one NAAQS but not for another, based on considerations such as averaging time or statistical form of the NAAQS. Such situations could include illogical outcomes such as the same emission limitation applicable to the same source simultaneously being allowed to contain exemptions for emissions during SSM events for one NAAQS but not for another. For example, purely hypothetically under the commenters' premise, a given source could simultaneously be required to comply with a rate-based NO_X emission limitation continuously for purposes of a 1-hour NO_2 NAAQS but not be required to do so for purposes of an annual NO_2 NAAQS, or the source could be required to comply continuously with the same NOx limitation for purposes of the 8-hour ozone NAAQS and the 24-hour $PM_{2.5}$ NAAQS but not be required to do so for purposes of the annual $PM_{2.5}$ NAAQS. Add to this the further complication that the source may be located in an area that is designated nonattainment for some NAAQS and attainment for other NAAQS, and thus subject to emission limitations for attainment and maintenance requirements simultaneously.

Under the commenters' premise, the same SIP emission limitation, subject to the same statutory definition in section 302(k), could validly include SSM exemptions for purposes of some NAAQS but not others. Such a system of regulation would make it unnecessarily hard for regulated entities, regulators and other parties to determine whether a source is in compliance. The EPA does not believe that this is a reasonable interpretation of the requirements of the CAA, nor of its authority under section 110(k)(5). This unnecessary confusion is easily resolved simply by interpreting the CAA to require that a source subject to a SIP emission limitation for NO_X must meet the emission limitation continuously, in accordance with the express requirement of section 302(k), thus making SSM exemptions impermissible. The EPA does not agree that the term ''emission limitation'' can reasonably be interpreted to allow noncontinuous emission limitations for some NAAQS and not others. The D.C. Circuit has already made clear that the term ''emission limitation'' means limits that apply to sources continuously, without exemptions for SSM events.

Finally, the EPA disagrees with the specific arguments raised by commenters concerning the modeling guidance for the 1-hour NO_2 NAAQS.[330] As relevant here, that guidance provides recommendations about specific issues that arise in modeling that is used in the PSD program for purposes of demonstrating that proposed construction will not cause or contribute to a violation of the 1-hour NO_2 NAAQS. Thus, as an initial matter, the EPA notes that the context of that guidance relates to determining the extent of emission reductions that a source needs to achieve in order to obtain a permit under the PSD program, which is distinct from the question of whether an emission limitation in a permit must assure continuous emission reductions.

The commenters argued that this EPA guidance ''allows sources to completely exclude all emissions during startup and shutdown scenarios.'' This characterization is inaccurate for a number of reasons. First, the guidance in question is only intended to address certain modeling issues related to predictive modeling to demonstrate that proposed construction will not cause or contribute to violation of the 1-hour NO_2 NAAQS, for purposes of determining whether a PSD permit may be issued and whether the emission limitations in the permit will require sufficient emission reductions to avoid a violation of this standard.

Second, to the extent that the guidance indicates that air quality considerations might in certain circumstances and for certain purposes be relevant to determining what emission limitations should apply to a source, that does not mean a source may legally have an exemption from compliance with existing emissions limitations during SSM events. In the guidance cited by the commenter, the EPA did recommend that under certain circumstances, it may be appropriate to model the projected impact of the source on the NAAQS without taking into account ''intermittent'' emissions from sources such as emergency generators or emissions from particular kinds of ''startup/shutdown'' operations.[331] However, the EPA did not intend this to suggest that emissions from sources during SSM events may validly be treated as exempt in SIP emission limitations. Within the same guidance document, the EPA stated unequivocally that the guidance ''has no effect on or relevance to existing policies and guidance regarding excess emissions that may occur during startup and shutdown.'' The EPA explained further that ''all emissions from a new or modified source are subject to the applicable permitted emission limits and may be subject to enforcement concerning such excess emissions, regardless of whether a portion of those emissions are not included in the modeling demonstration based on the

[330] *See* Memorandum, ''Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO_2 National Ambient Air Quality Standard,'' from T. Fox, EPA/OAQPS, to Regional Air Division Directors, March 1, 2011.

[331] *Id.* at 2.

guidance provided here.'' [332] In other words, even if a state elects not to include intermittent emissions from some types of startup and shutdown events in certain modeling exercises, this does not mean that sources can be excused from compliance with the emission limitation during startup and shutdown, via an exemption for such emissions.

Third, the guidance does not say that all SSM emissions may be considered intermittent and excluded from the modeling demonstration. The guidance explicitly recommends that the modeling be based on ''emission scenarios that can logically be assumed to be relatively continuous or which occur frequently enough to contribute significantly to the annual distribution of daily maximum 1-hour concentrations'' and gives the example that it may be appropriate to include startup and shutdown emissions from a peaking unit at a power plant in the modeling demonstration because those units go through frequent startup/shutdown cycles.[333] Thus, the guidance does not support commenters' premise that the EPA must evaluate the air quality impacts from SSM events in SIP actions to determine that SSM exemptions in SIP provisions are substantially inadequate to meet fundamental requirements of the CAA.

8. Comments that this SIP call action is inconsistent with 1976 EPA guidance for such actions.

Comment: One commenter argued that the EPA misinterpreted the term ''substantially inadequate'' in the February 2013 proposal because the Agency is reading this term differently than in the past. In support of this contention, the commenter pointed to a 1976 guidance document from the EPA concerning the question of when a SIP may be substantially inadequate. The commenter argued that the EPA is wrong to interpret that term to mean anything other than a demonstrated failure to provide for factual attainment of the NAAQS. According to the commenter, the content of the 1976 guidance indicates that the EPA is obligated to conduct a specific analysis to determine the air quality impact of an alleged inadequacy in a SIP provision and to establish and document the specific air quality impacts of the inadequacy.

Response: The EPA disagrees with the commenter for multiple reasons. First, the 1976 document referred to by the commenter was the EPA's guidance on the requirements of the CAA as it was embodied in 1970, not as Congress substantially amended it in 1990. The 1976 guidance pertained not to the current SIP call provision at section 110(k)(5) but rather to the requirements of section 110(a)(2)(H). This is particularly significant because the 1990 CAA Amendments added section 110(k)(5) to the statute. Although section 110(a)(2)(H) remains in the statute, it is primarily a requirement applicable to state ''infrastructure'' SIP obligations through which states are required to have state law authority to meet the structural SIP elements required in section 110(a)(2).[334] In reviewing SIPs for compliance with section 110(a)(2)(H), the EPA verifies that state SIPs include the legal authority to respond to any SIP call. By contrast, the EPA's authority to issue a SIP call under section 110(k)(5) is worded broadly, explicitly including the authority to make a finding of substantial inadequacy not only for failure to attain or maintain the NAAQS but also for failures related to interstate transport or ''otherwise to comply with any requirement of'' the CAA.

Second, even setting aside that the guidance is not relevant to the EPA's authority under section 110(k)(5), the 1976 guidance on its face did not purport to define the full contours of the term ''substantially inadequate'' in section 110(a)(2)(H). The 1976 guidance stated explicitly that ''it is difficult to develop comprehensive guidelines for all cases'' and only listed ''[s]ome factors that could be considered'' in evaluating whether a state's SIP is substantially inadequate.[335] While the EPA acknowledges that these factors were primarily focused upon ambient air considerations as suggested by the commenter, they were not limited to that topic. Moreover, the EPA stated that factors ''other than air quality and emission data must be considered'' and provided several examples, including potential amendments to the CAA under consideration at that point in time that might change state SIP obligations and thus create the need for a SIP call. More significantly, nothing in the 1976 guidance indicated that the EPA should or would ignore legal deficiencies in existing SIP provisions or that legal deficiencies are not relevant to the question of whether a SIP would provide for attainment of the NAAQS.

Third, the EPA notes that the commenter did not advocate that the Agency follow the 1976 guidance with respect to other issues, *e.g.,* that the EPA would initiate the obligations of states to revise their SIPs simply by making an announcement of substantial inadequacy ''without proposal''; that states would be required to make the necessary SIP revision within 12 months; or that states should make those revisions by no later than July 1, 1977.

The EPA has fully articulated its interpretation of the term ''substantial inadequacy'' in section 110(k)(5) in the February 2013 proposal. As explained in the proposal, the EPA interprets its current authority to include the issuance of a SIP call for the types of legal deficiencies identified in this action. In order to establish that these legal deficiencies are substantial inadequacies, the EPA does not interpret section 110(k)(5) to require the Agency to document precisely how each deficiency factually undermines the objectives of the CAA, such as attainment and maintenance of the NAAQS in a particular location on a particular date. It is sufficient that these provisions are inconsistent with the legal requirements for SIP provisions set forth in the CAA that are intended to assure that SIPs in fact do achieve the intended objectives.

10. Comments that because the EPA has misinterpreted the statutory terms ''emission limitation'' and ''continuous,'' the EPA has not established a substantial inadequacy.

Comment: Many state and industry commenters disagreed with the EPA's interpretation of the CAA to prohibit SSM exemptions in SIP provisions. These arguments took many tacks, based on the interpretation of various statutory provisions, the applicability of the court decision in *Sierra Club* v. *Johnson,* alleged inconsistencies related to this requirement in the EPA's own NSPS and NESHAP regulations and a variety of other arguments. In particular, many commenters argued that the EPA was misinterpreting the statutory terms ''emission limitation'' and ''continuous'' in section 302(k) to preclude automatic or discretionary exemptions for emissions during SSM events in SIP provisions. As an extension of these arguments, commenters also argued that the EPA lacks authority under section 110(k)(5) to issue a SIP call when it has incorrectly interpreted a relevant statutory term as the basis for finding a SIP provision to be substantially inadequate.

[332] *Id.* at 11.

[333] *Id.* at 9.

[334] *See* Memorandum, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Section 110(a)(1) and 110(a)(2),'' from Stephen D. Page, Director, OAQPS, to Regional Air Directors, Regions 1–10, September 13, 2013, at page 51 (explaining that a state meets section 110(a)(2)(H) by having authority to revise its SIP in response to a SIP call).

[335] *Id.* at 10–11.

Response: The EPA disagrees that it lacks authority to issue this SIP call on the grounds claimed by the commenters. As explained in detail in the February 2013 proposal and in this final action, the EPA has long interpreted the CAA to preclude SSM exemptions in SIP provisions. This interpretation has been stated by the EPA since at least 1982, reiterated in subsequent SSM Policy guidance documents, applied in a number of notice and comment rulemakings and upheld by courts.

With respect to the arguments that the EPA has incorrectly interpreted the terms ''emission limitation'' and ''continuous'' in this action, the EPA has responded in detail in section VII.A.3 of this document and need not repeat those responses here. In short, the EPA is interpreting those terms consistent with the relevant statutory language and consistent with the decision of the court in *Sierra Club* v. *Johnson.* Because the specific SIP provisions identified in this action with automatic or discretionary exemptions for emissions during SSM events do not limit emissions from the affected sources continuously, the EPA has found these provisions substantially inadequate to meet CAA requirements in accordance with section 110(k)(5).

11. Comments that section 110(k)(5) imposes a ''higher burden of proof'' upon the EPA than section 110(l) and that section 110(l) requires the EPA to conduct a specific technical analysis of the impacts of a SIP revision.

Comment: Commenters argued that the EPA is misinterpreting section 110(k)(5) to authorize a SIP call using a lower ''standard'' than the section 110(l) ''standard'' that requires disapproval of a new SIP provision in the first instance. The commenters stated that section 110(k)(5) requires a determination by the EPA that a SIP provision is ''substantially inadequate'' to meet CAA requirements in order to authorize a SIP call, whereas section 110(l) provides that the EPA must disapprove a SIP revision provision only if it ''would interfere with'' CAA requirements. Thus, the commenters asserted that ''the SIP call standard is higher than the SIP revision standard.'' The commenters further argued that it would be ''illogical and contrary to the CAA to interpret section 110 to establish a lower standard for calling a previously approved SIP and demanding revisions to it than for disapproving that SIP in the first place.'' For purposes of section 110(l), the commenters claimed, the EPA ''is required'' to rely on specific ''data and evidence'' that a given SIP revision would interfere with CAA requirements and this requirement is thus imposed by section 110(k)(5) as well. In support of this reasoning, the commenters relied on prior court decisions pertaining to the requirements of section 110(l).

Response: The EPA disagrees with the commenters' interpretations of the relative ''standards'' of section 110(k)(5) and section 110(l) and with the commenters' views on the court decisions pertaining to section 110(l). In addition, the EPA notes that the commenters did not fully address the related requirements of section 110(k)(3) concerning approval and disapproval of SIP provisions, of section 302(k) concerning requirements for emission limitations or of any other sections of the CAA that are substantively germane to specific SIP provisions and to enforcement of SIP provisions in general.[336]

The commenters argued that, by the ''plain language'' of the CAA and because of ''common sense,'' Congress intended the section 110(k)(5) SIP call standard to be ''higher'' than the section 110(l) SIP revision. The EPA disagrees that this is a question resolved by the ''plain language.'' To the contrary, the three most relevant statutory provisions, section 110(k)(3), section 110(l), and section 110(k)(5), are each to some degree ambiguous and are likewise ambiguous with respect to how they operate together to apply to newly submitted SIP provisions versus existing SIP provisions. Section 110(k)(3) requires the EPA to approve a newly submitted SIP provision ''if it meets all of the applicable requirements of [the CAA].'' Implicitly, the EPA is required to disapprove a SIP provision if it does not meet all applicable CAA requirements. Section 110(l) provides that the EPA may not approve any SIP revision that ''would interfere with . . . any other applicable requirement of [the CAA].'' Section 110(k)(5) provides that the EPA shall issue a SIP call ''whenever'' the Agency finds an existing SIP provision ''substantially inadequate . . . to otherwise comply with [the CAA].'' None of the core terms in each of the three provisions is defined in the CAA. Thus, whether the ''would interfere with'' standard of section 110(l) is *per se* a ''lower'' standard than the ''substantially inadequate'' standard of section 110(k)(5) as advocated by the commenters is not clear on the face of the statute, and thus the EPA considers these terms ambiguous.

As explained in detail in the February 2013 proposal, the EPA interprets its authority under section 110(k)(5) broadly to include authority to require a state to revise an existing SIP provision that fails to meet fundamental legal requirements of the CAA.[337] The commenters raise a valid point that section 110(l) and section 110(k)(5), as well as section 110(k)(3), facially appear to impose somewhat different standards. However, the EPA does not agree that the proper comparison is necessarily between section 110(k)(5) and section 110(l) but instead would compare section 110(k)(5) and section 110(k)(3). Section 110(l) is primarily an ''anti-backsliding'' provision, meant to assure that if a state seeks to revise its SIP to change *existing* SIP provisions that the EPA has previously determined *did meet* CAA requirements, then there must be a showing that the revision of the existing SIP provisions (*e.g.,* a relaxation of an emission limitation) would not interfere with attainment of the NAAQS, reasonable further progress or any other requirement of the CAA. By contrast, section 110(k)(3) is a more appropriate point of comparison because it directs the EPA to approve a SIP provision ''that meets all applicable requirements'' of the CAA and section 110(k)(5) authorizes the EPA to issue a SIP call for previously approved SIP provisions that it later determines do not ''comply with any requirement'' of the CAA.

Notwithstanding that each of these three statutory provisions applies to different stages of the SIP process, all three of them explicitly make compliance with the legal requirements of the CAA a part of the analysis. At a minimum, the EPA believes that Congress intended these three sections, working together, to ensure that SIP provisions must meet all applicable legal CAA requirements when they are initially approved and to ensure that SIP provisions continue to meet CAA requirements over time, allowing for potential amendments to the CAA, changes in interpretation of the CAA by the EPA or courts or simply changed facts. With respect to compliance with the applicable legal requirements of the

[336] CAA section 110(k)(5) states that ''[w]henever the [EPA] finds that the applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant [NAAQS], to mitigate adequately [ ] interstate pollutant transport . . ., or to otherwise comply with any requirement of [the CAA], the [EPA] shall require the State to revise the plan as necessary to correct such inadequacies.'' Section 110(l) states that, in the event a state submits a SIP revision, the EPA ''shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress . . . or any other applicable requirement of [the CAA].'' Section 110(k)(3) states that the EPA ''shall approve such submittal . . . if it meets all the requirements of [the CAA].''

[337] *See* February 2013 proposal, 78 FR 12459 at 12483–88.

CAA, the EPA does not interpret section 110(k)(5) as setting a *per se* ''higher'' standard. Under section 110(l), the EPA is likewise directed not to approve a SIP revision that is not consistent with legal requirements imposed by the CAA, including those relevant to SIP provisions such as section 302(k). Pursuant to section 110(l), the EPA would not be authorized to approve a SIP revision that contradicts requirements of the CAA; pursuant to section 110(k)(5) the EPA is authorized to direct states to correct a SIP provision that it later determines does not meet the requirements of the CAA.

The EPA also disagrees with the commenters' characterization of the requirements of section 110(l) and their arguments based on court decisions concerning section 110(l). Commenters rely on the decision in *Ky. Res Council* v. *EPA* to support their argument that section 110(l) requires the EPA to disapprove a SIP revision only if it ''would interfere'' with a requirement of the CAA, not if it ''could interfere'' with such requirements.[338] From this decision, the commenters argue that the EPA is required to conduct a specific technical analysis under section 110(l) to determine the specific impacts of the revision on attainment and maintenance of the NAAQS and argue that by inference this must therefore also be required by section 110(k)(5). To the extent that court decisions concerning section 110(l) are relevant, these court decisions do not support the commenters' position.

First, the EPA notes that the commenters mischaracterize section 110(l) as requiring a particular form or method of analysis to support approval or disapproval of a SIP revision. Section 110(l) does not contain any such explicit requirement or specifications. The EPA interprets section 110(l) only to require an analysis that is appropriate for the particular SIP revision at issue, and that analysis can take different forms or different levels of complexity depending on the facts and circumstances relevant to the SIP revision. Like section 110(l), the EPA believes that section 110(k)(5) does not specify a particular form of analysis necessary to find a SIP provision substantially inadequate.

Second, the commenters mischaracterize the primary decision that they rely upon. The court in *Ky. Res Council* v. *EPA* expressly discussed the fact that section 110(l) does not specify precisely how any such analysis should be conducted and deferred to the EPA's reasonable interpretation of what form of analysis is appropriate for a given SIP revision.[339] Indeed, the decision stands for the proposition that the EPA does *not* necessarily have to develop an attainment demonstration in order to evaluate the impacts of a SIP revision, *i.e.* ''prove'' whether the revision will interfere with attainment, maintenance, reasonable further progress or any other requirements of the CAA. Thus, the commenters' argument that section 110(k)(5) has to require a specific technical analysis of impacts on attainment and maintenance because section 110(l) does so is simply in error.

Third, the section 110(1) cases cited by the commenters did not involve SIP revisions in which states sought to change existing SIP provisions so that they would fail to meet the specific CAA requirements at issue in this action. For example, none of the cases involved the EPA's approval of a new automatic exemption for emissions during SSM events. Had the state submitted a SIP revision that failed to meet applicable requirements of the CAA for SIP provisions, such as changing existing SIP emission limitations so that they would thereafter include SSM exemptions, then the EPA would have had to disapprove them.[340] The challenged rulemaking actions at issue in the cases relied upon by the commenters involved SIP revision changes unrelated to the specific legal requirements at issue in this action. Accordingly, the EPA's evaluation of those SIP revisions focused upon other issues, such as whether the revision would factually result in emissions that would interfere with attainment and maintenance of the NAAQS, that were relevant to the particular provisions at issue in those cases.

12. Comments that the EPA is misinterpreting *US Magnesium* and that the decision provides no precedent for this action.

Comment: A number of industry commenters argued that the EPA's reliance on the decision of the Tenth Circuit in *US Magnesium, LLP* v. *EPA* is misplaced.[341] According to the commenters, the EPA did not correctly interpret the decision and is misapplying it in acting upon the Petition. The commenters asserted that the decision provides no precedent for this action because it was decided upon issues different from those at issue here. Commenters also argued that the court did not reach an important issue because the petitioner had failed to comment on it, *i.e.,* the argument that the EPA had not defined the term ''substantially inadequate'' in the rulemaking.[342]

Response: The EPA disagrees with the commenters on this point. The EPA of course acknowledges that the court in *US Magnesium* did not address the full range of issues related to the correct treatment of emissions during SSM events in SIP provisions that were raised in the Petition, *e.g.,* the court did not need to address the legal basis for affirmative defense provisions in SIPs because of the nature of the SIP provisions at issue in that case. However, the *US Magnesium* court evaluated many of the same key questions raised in this rulemaking and reached decisions that are very relevant to this action.

First, the *US Magnesium* court specifically upheld the EPA's SIP call action requiring the state to remove or revise a SIP provision that included an automatic exemption for emissions from sources during ''upsets,'' *i.e.,* malfunctions. In doing so, the court was fully aware of the reasons why the EPA interprets the CAA to prohibit such exemptions, because they violate statutory requirements including section 302(k), section 110(a)(2)(A) and (C), and other requirements related to attainment and maintenance of the NAAQS. The court explained at length the EPA's reasoning about why the SIP provisions were inconsistent with CAA requirements for SIP provisions.[343]

Second, the court specifically upheld the EPA's SIP call action requiring the state to revise its SIP to remove or revise another SIP provision that could be interpreted to give state personnel the authority to determine unilaterally whether excess emissions from sources are a violation of the applicable emission limitation and thereby preclude any enforcement action by the EPA or citizens.

Third, the court also upheld the EPA's authority to issue a SIP call requiring a state ''to clarify language in the SIP that could be read to violate the CAA, when a court has not yet interpreted the language in that way.'' Indeed, the court opined that ''in light of the potential conflicts'' between competing interpretations of the SIP provision,

[338] *See* 467 F.3d 986 (6th Cir. 2006).

[339] *See* 467 F.3d at 995 (rejecting claim that section 110(l) required a modeled attainment demonstration to prove that the SIP revision would meet applicable CAA requirements).

[340] The EPA notes that the one exception to this, of course, is the Agency's recent approval of new SIP provisions in Texas that created an affirmative defense for malfunctions. As discussed elsewhere in this document, however, the EPA has determined that such provisions do not meet CAA requirements and is thus issuing a SIP call for those provisions.

[341] *See* 690 F.3d 1157 (10th Cir. 2012).

[342] *Id.,* 690 F.3d 1167, n.3.

[343] *Id.,* 690 F.3d at 1159–63.

''seeking revision of the SIP was prudent, not arbitrary or capricious.'' [344]

Fourth, the court explicitly upheld the EPA's reasonable interpretation of section 110(k)(5) to authorize a SIP call when a state's SIP provision is substantially inadequate to meet applicable legal requirements, without making ''specific factual findings'' that the deficient provision resulted in a NAAQS violation. The EPA interpreted the CAA to allow a SIP call if the Agency ''determined that aspects of the SIP undermine the fundamental integrity of the CAA's SIP process and structure, regardless of whether or not the EPA could point to specific instances where the SIP allowed violations of the NAAQS.'' The *US Magnesium* court explicitly agreed that section 110(k)(5) authorizes issuance of a SIP call ''where the EPA determines that a SIP is no longer consistent with the EPA's understanding of the CAA.'' [345]

Fifth, the court rejected claims that the EPA was requiring states to comply with the SSM Policy guidance rather than the CAA requirements, and the court noted that the Agency had undertaken notice-and-comment rulemaking to evaluate whether the SIP provisions at issue were consistent with CAA requirements.[346]

Sixth, the court rejected the claim that the EPA was interpreting the requirements of the CAA incorrectly because the EPA is in the process of bringing its own NSPS and NESHAP regulations into line with CAA requirements for emission limitations, in accordance with the *Sierra Club* v. *Johnson* decision.[347] The court noted that the EPA is now correcting SSM exemptions in its own regulations, and thus its prior interpretation of the CAA, rejected by the court in *Sierra Club* v. *Johnson,* did not make the SIP call to Utah arbitrary and capricious.[348]

On these and many other issues, the EPA believes that the court's decision in *US Magnesium* provides an important and correct precedent for the Agency's interpretation of the CAA in this action. The commenters' apparent disagreement with the court does not mean that the decision is not relevant to this action. The commenters specifically argued that the *US Magnesium* court did not reach the issue of whether the EPA had ''defined'' the term ''substantial inadequacy'' in the challenged rulemaking because the petitioner had not raised this point in comments. The EPA does not necessarily agree that ''defining'' the full contours of the term is a necessary step for a SIP call, but regardless of that fact the Agency did explain its interpretation of the term ''substantial inadequacy'' with respect to the SIP provisions at issue in the February 2013 proposal, the SNPR and this final action.

13. Comments that EPA has to evaluate a SIP ''as a whole'' to have the authority to issue a SIP call.

Comment: Many state and industry commenters argued that the EPA cannot evaluate individual SIP provisions in isolation and that the Agency is required to evaluate the entire SIP and any related permit requirements in order to determine if a specific SIP provision is substantially inadequate. In particular, some commenters argued that the EPA was wrong to focus upon the exemptions in SIP emission limitations for emissions during SSM events without considering whether some other requirement of the SIP or of a permit might operate to override or otherwise modify the exemptions. Many of the commenters asserted that other ''general duty'' clause requirements, elsewhere in other SIP provisions or in permits for individual sources, make the SSM exemptions in SIP emission limitations valid under the CAA.[349] These other requirements were often general duty-type standards that require sources to minimize emissions, to exercise good engineering judgment or not to cause a violation of the NAAQS. The implication of the commenters' arguments is that such general-duty requirements legitimize an SSM exemption in a SIP emission limitation—even if they are not explicitly a component of the SIP provision, if they are not incorporated by reference in the SIP provision and if they are not adequate to meet the applicable substantive requirements for that type of SIP provision.

Response: The EPA disagrees with the basic premise of the commenters that the EPA cannot issue a SIP call directing a state to correct a facially deficient SIP provision without first determining whether an unrelated and not cross-referenced provision of the SIP or of a permit might potentially apply in such a way as to correct the deficiency. As explained in section VII.A.3 of this document, the EPA believes that all SIP provisions must meet applicable requirements of the CAA, including the requirement that they apply continuously to affected sources. In reviewing the specific SIP provisions identified in the Petition, the EPA determined that many of the provisions include explicit automatic or discretionary exemptions for emissions during SSM events, whether as a component of an emission limitation or as a provision that operates to override the otherwise applicable emission limitation. Based on the EPA's review of these provisions, neither did they apply ''continuously'' as required by section 302(k) nor did they include cross-references to any other limitations that applied during such exempt periods to potentially provide continuous limitations. To the extent that the SIP of a state contained any other requirements that applied during such periods, that fact was not plain on the face of the SIP provision. If the EPA was unable to ascertain what, if anything, applied during these explicitly exempt periods, then the Agency concludes that regulated entities, members of and the public, and the courts will have the same problem. The EPA has authority under section 110(k)(5) to issue a SIP call requiring a state to clarify a SIP provision that is ambiguous or unclear such that the provision can lead to misunderstanding and thereby interfere with effective enforcement.[350]

To the extent that an affected state believes that the EPA has overlooked another valid provision of the SIP that would cure the substantial inadequacy that the Agency has identified in this action, the state may seek to correct the deficient SIP provision by properly revising it to remove the impermissible exemption or affirmative defense and replacing it with the requirements of the other SIP provision or by including a clear cross-reference that clarifies the applicability of such provision as a component of the specific emission limitation at issue. The state should make this revision in such a way that the SIP emission limitation is clear on its face as to what the affected sources are required to do during all modes of operation. The emission limitation should apply continuously, and what is required by the emission limitation under any mode of operation should be

[344] *Id.,* 690 F.3d at 1170.

[345] *Id.,* 690 F.3d at 1168.

[346] *Id.,* 690 F.3d at 1168.

[347] *Id.,* 690 F.3d at 1169.

[348] *Id.,* 690 F.3d at 1170.

[349] The EPA notes that other commenters on the February 2013 proposal made similar arguments with respect to affirmative defense provisions in their SIPs, asserting that other SIP provisions or terms in permits provided additional criteria that would have made the affirmative defense provisions at issue consistent with the EPA's interpretation of the CAA in the 1999 SSM Guidance. *See, e.g.,* Comment from Virginia Department of Environmental Quality at 1–2, in the rulemaking docket at EPA–HQ–OAR–2012–0322–0613. Because the EPA no longer interprets the CAA to allow any affirmative defense provisions, these comments are not germane.

[350] *See US Magnesium, LLC* v. *EPA,* 690 F.3d 1157, 1169 (10th Cir. 2012).

readily ascertainable by the regulated entities, the regulators and the public. The EPA emphasizes, however, that each revised SIP emission limitation must meet the substantive requirements applicable to that type of provision (*e.g.,* impose RACM/RACT-level controls on sources located in nonattainment areas) and must be legally and practically enforceable (*e.g.,* have sufficient recordkeeping, reporting and monitoring requirements). The revised SIP emission limitation must be consistent with all applicable CAA requirements.

14. Comments that the EPA inappropriately is ''using guidance'' as a basis for the SIP call action.

Comment: State and industry commenters asserted that the EPA is relying on guidance as the basis for issuing this SIP call action and argued that the EPA cannot issue a SIP call based on guidance. The commenters argued that the EPA guidance provided in the SSM Policy is not binding and that states thus have the flexibility to develop SIP provisions that are not in conformance with EPA guidance. Some commenters claimed that if the EPA wishes to make the interpretations of the CAA in its SSM Policy binding upon states, then it must do so through a notice-and-comment rulemaking and must codify those requirements in binding regulations in the CFR. The commenters argued that states should not be subject to a SIP call for existing provisions in their SIPs on the basis that they do not conform to guidance in the SSM Policy. Some commenters acknowledged that the EPA is providing notice and comment on its SSM Policy through this action, but still they contended that the EPA's interpretation of the CAA is not binding upon states unless the Agency codifies its updated SSM Policy in regulations in the CFR.

Response: The EPA disagrees with arguments that the Agency has acted inappropriately by relying on its interpretations of the CAA set forth in the SSM Policy in issuing this SIP call. As explained in the February 2013 proposal, the SSM Policy is merely guidance. It is correct that guidance documents are nonbinding. However, the guidance provides the EPA's recommendations concerning how best to interpret the statutory requirements of the CAA that are binding. Moreover, the EPA's interpretation of the CAA in the SSM Policy can become binding once the Agency adopts and applies that interpretation through notice-and-comment rulemaking. The EPA is issuing this SIP call action through notice-and-comment rulemaking and has specifically taken comment on its interpretations of the CAA as they apply to the specific SIP provisions at issue in this action. Thus, the EPA is requiring the affected states to comply with the requirements of the CAA, not with the SSM Policy guidance itself.[351]

The EPA also disagrees with commenters that in order to rely on its interpretation of the CAA in the SSM Policy, the EPA must first issue regulatory provisions applicable to SIP provisions. There is no such general obligation for the EPA to codify its interpretations of the CAA in regulatory text. Unless Congress has specifically directed the EPA to promulgate regulations for a particular purpose, the EPA has authority and discretion to promulgate such regulations as it deems necessary or helpful in accordance with its authority under section 301. With respect to issues concerning proper treatment of excess emissions during SSM events in SIP provisions, the EPA has historically proceeded by issuance of guidance documents. In this action, the EPA is undergoing notice-and-comment rulemaking to update and revise its guidance and to apply that guidance to specific existing SIP provisions. Thus, the EPA is not required to promulgate specific implementing regulations as a precondition to making a finding of substantial inadequacy to address existing deficient SIP provisions.

15. Comments that the EPA's redesignation and approval of a maintenance plan for an area in a state with a SIP that has provisions at issue in the SIP call establishes that all provisions in the SIP meet CAA requirements.

Comment: Commenters argued that the ''EPA's allegations that SSM provisions could threaten the NAAQS is contradicted by'' the fact that the ''EPA has consistently approved re-designation requests and attainment and maintenance plans, notwithstanding SSM provisions.'' According to these commenters, ''[t]he fact that EPA has already approved numerous re-designation requests . . . indicates that EPA has already (and in many cases, very recently) admitted that the [State SIPs are] fully approved, sufficient to achieve the NAAQS, and fully enforceable.'' The commenters argued that the appropriate time for the EPA to have addressed any issues concerning deficient SIP provisions applicable to emissions during SSM events was ''in the context of its review and approval of [maintenance] plans.'' Because the EPA has been approving maintenance plans for areas in states subject to this SIP call action, the commenters believed, this ''is evidence that the Agency has not viewed SSM-related emissions as a threat to attainment or maintenance of the NAAQS.'' In essence, these commenters argued that the EPA's redesignation of any area in any of the states at issue in this rulemaking indicates that the SIPs of these states fully meet all CAA requirements and that there are no deficiencies whatsoever in the SIPs of these states.

Response: The EPA disagrees with the commenters' premise that the Agency's approval of redesignation requests and maintenance plans for certain nonattainment areas, notwithstanding the presence of impermissible provisions related to emissions during SSM events that may have been present in the SIP for those areas, is evidence that the EPA does not view SSM-related emissions as a threat to attainment or maintenance of the NAAQS. Contrary to the theory of the commenters, the EPA's redesignation of an area to attainment does not mean that the SIP for the state in question fully meets each and every requirement of the CAA.

The CAA sets forth the general criteria for redesignation of an area from nonattainment to attainment in section 107(d)(3)(E). These criteria include a determination by the EPA that the area has attained the relevant standard (section 107(d)(3)(E)(i)) and that the EPA has fully approved the applicable implementation plan for the area for purposes of redesignation (section 107(d)(3)(E)(ii) and (v)). The EPA must also determine that the improvement in air quality in the area is due to reductions that are permanent and enforceable (section 107(d)(3)(E)(iii)) and that the EPA has fully approved a maintenance plan for the area under section 175A (section 107(d)(3)(E)(iv)).

For purposes of redesignation, the EPA has long held that SIP requirements that are not linked with a particular nonattainment area's designation and classification, including certain section 110 requirements, are not ''applicable'' for purposes of evaluating compliance with the specific redesignation criteria in CAA sections 107(d)(3)(E)(ii) and (v).[352] The EPA maintains this

[351] The EPA's reliance on interpretations of the CAA in the SSM Policy through notice-and-comment rulemakings has previously been upheld by several courts. *See, e.g., US Magnesium, LLC* v. *EPA,* 690 F.3d 1157, 1168 (10th Cir. 2012) (upholding the EPA's SIP call to Utah for existing SIP provisions); *Mich. Dep't of Envtl. Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000) (upholding the EPA's disapproval of a SIP submission).

[352] *See, e.g.,* ''Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Arizona;

interpretation because these requirements remain applicable after an area is redesignated to attainment. For at least the past 15 years, the EPA has applied this interpretation with respect to requirements to which a state will continue to be subject after the area is redesignated.[353] Courts reviewing the EPA's interpretation of the term ''applicable'' in section 107(d)(3) in the context of requirements applicable for redesignation have generally agreed with the Agency.[354]

The EPA therefore approves redesignation requests in many instances without passing judgment on every part of a state's existing SIP, if it finds those parts of the SIP are not ''applicable'' for purposes of section 107(d)(3). For example, the EPA recently approved Arizona's request to redesignate the Phoenix-Mesa 1997 8-hour ozone nonattainment area and its accompanying maintenance plan, while recognizing that Arizona's SIP may contain affirmative defense provisions that are not consistent with CAA requirements.[355] In that case, the EPA explicitly noted that approval of the redesignation of the Phoenix-Mesa nonattainment area did not relieve Arizona or Maricopa County of its obligation to remove the affirmative defense provisions from the SIP, if the EPA was to take later action to require correction of the Arizona SIP with respect to those provisions.[356]

The EPA also disagrees with commenters to the extent they suggest that the Agency must use the redesignation process to evaluate whether any existing SIP provisions are legally deficient. The EPA has other statutory mechanisms through which to address existing deficiencies in a state's SIP, and courts have agreed that the EPA retains the authority to issue a SIP call to a state pursuant to CAA section 110(k)(5) even after redesignation of a nonattainment area in that state.[357] The EPA recently addressed this issue in the context of redesignating the Ohio portion of the Huntington-Ashland (OH–WV–KY) nonattainment area to attainment for the $PM_{2.5}$ NAAQS.[358] In response to comments challenging the proposed redesignation due to the presence of certain SSM provisions in the Ohio SIP, the EPA concluded that the provisions at issue did not provide a basis for disapproving the redesignation request.[359] In so concluding, the EPA noted that the SSM provisions and related SIP limitations at issue in that state were already approved into the SIP and thus ''permanent and enforceable'' for the purposes of meeting section 107(d)(3)(E)(iii) and that the Agency has other statutory mechanisms for addressing any problems associated with the SSM provisions.[360] The EPA emphasizes that the redesignation of areas to attainment does not relieve states of the responsibility to remove legally deficient SIP provisions either independently or pursuant to a SIP call. To the contrary, the EPA maintains that it may determine that deficient provisions such as exemptions or affirmative defense provisions applicable to SSM events are contrary to CAA requirements and take action to require correction of those provisions even after an area is redesignated to attainment for a specific NAAQS. This interpretation is consistent with prior redesignation actions.

In some cases, the EPA has stated that the presence of illegal SSM provisions does constitute grounds for denying a redesignation request. For example, the EPA issued a proposed disapproval of Utah's redesignation requests for Salt Lake County, Utah County and Ogden City PM_{10} nonattainment areas.[361] However, the specific basis for the proposed disapproval in that action, which was one of many SIP deficiencies identified by EPA, was the state's inclusion in the submission of new provisions not previously in the SIP that would have provided blanket exemptions from compliance with emission standards during SSM events. Those SSM exemptions were not in the previously approved SIP, and the EPA declined to approve them in connection with the redesignation request because such provisions are inconsistent with CAA requirements. In most redesignation actions, states have not sought to create new SIP provisions that are inconsistent with CAA requirements as part of their redesignation requests or maintenance plans.

Finally, the EPA disagrees with commenters that approval of a maintenance plan for any area has the result of precluding the Agency from later finding that certain SIP provisions are substantially inadequate under the CAA on the basis that those provisions may interfere with attainment or maintenance of the NAAQS or fail to meet any other legal requirement of the CAA. The approval of a state's redesignation request and maintenance plan for a particular NAAQS is not the conclusion of the state's and the EPA's responsibilities under the CAA but rather is one step in the process Congress established for identifying and addressing the nation's air quality problems on a continuing basis. The redesignation process allows states with nonattainment areas that have attained the relevant NAAQS to provide the EPA with a demonstration of the control measures that will keep the area in attainment for 10 years, with the caveat that the suite of measures may be revisited if necessary and must be revisited with a second maintenance plan for the 10 years following the initial 10-year maintenance period.

Moreover, it is clear from the structure of section 175A maintenance plans that Congress understood that the EPA's approval of a maintenance plan is not a guarantee of future attainment air quality in a nonattainment area. Rather, Congress foresaw that violations of the NAAQS could occur following a redesignation of an area to attainment and therefore required section 175A maintenance plans to include contingency measures that a state could implement quickly in response to a violation of a standard. The notion that the EPA's approval of a maintenance plan must be the last word with regard to the contents of a state's SIP simply does not comport with the framework Congress established in the CAA for redesignations. The EPA has continuing authority and responsibility to assure that a state's SIP meets CAA

Redesignation of the Phoenix-Mesa Nonattainment Area to Attainment for the 1997 8-Hour Ozone Standard; Proposed rule,'' 79 FR 16734 at 16739 n.22 (March 26, 2014).

[353] *See, e.g.,* 73 FR 22307 at 22312–13 (April 25, 2008) (proposed redesignation of San Joaquin Valley; the EPA concluded that section 110(a)(2)(D) transport requirements are not applicable under section 110(d)(3)(E)(v) because they ''continue to apply to a state regardless of the designation of any one particular area in the state''); 62 FR 24826 at 24829–30 (May 7, 1997) (redesignation of Reading, Pennsylvania, Area; the EPA concluded that the additional controls required by section 184 were not ''applicable'' for purposes of section 107(d)(3)(E) because ''they remain in force regardless of the area's redesignation status'').

[354] *See Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004); *Wall* v. *EPA,* 265 F.3d 426, 438 (6th Cir. 2001). *But see Sierra Club* v. *EPA,* Nos. 12–3169, 12–3182, 12–3420 (6th Cir. Mar. 18, 2015), *petition for reh'g en banc filed.*

[355] 79 FR 55645 (September 17, 2014).

[356] *Id.* at 55648. The EPA notes that it has included the deficient SIP provisions that include the affirmative defenses in this action, thereby illustrating that it can take action to address a SIP deficiency separately from the redesignation action, where appropriate.

[357] *See Southwestern Pennsylvania Growth Alliance* v. *EPA,* 114 F.3d 984 (6th Cir. 1998) (Redesignation of Cleveland-Akron-Lorain area determined valid even though the Agency subsequently proposed a SIP call to require Ohio and other states to revise their SIPs to mitigate ozone transport to other states).

[358] *See* 77 FR 76883 (December 31, 2012).

[359] *Id.* at 76891–92.

[360] The EPA notes that the provisions at issue in the redesignation action are included in this SIP call, thus illustrating that the Agency can address these deficient provisions in a context other than a redesignation request.

[361] 74 FR 62717 (December 1, 2009).

requirements, even after approving a redesignation request for a particular NAAQS.

In conclusion, the EPA is not required to reevaluate the validity of all previously approved SIP provisions as part of a redesignation. The existence of provisions such as impermissible exemptions and affirmative defenses applicable during SSM events in an approved SIP does not preclude the EPA's determination that emission reductions that have provided for attainment and that will provide for maintenance of a NAAQS in a nonattainment area are ''permanent and enforceable,'' as those terms are meant in section 107(d)(3), or that the state has met all applicable requirements under section 110 and part D relevant for the purposes of redesignation. Finally, if the EPA separately determines that the state's SIP is deficient after the redesignation of the area to attainment, the Agency can issue a SIP call requiring a corrective SIP revision. Redesignation of areas to attainment in no way relieves states of their continuing responsibilities to remove deficient SIP provisions from their SIPs in the event of a SIP call.

16. Comments that in issuing a SIP call the EPA is ''dictating'' to states how to regulate their sources and taking away their discretion to adopt appropriate control measures of their own choosing in developing a SIP.

Comment: Several commenters claimed that the EPA's SIP call action removes discretion that states would otherwise have under the CAA. Commenters claimed that the action has the effect of unlawfully directing states to impose a particular control measure by requiring the state to regulate all periods of operation for any source it chooses to regulate. Because the alternative emission limitations and work practice standards that the EPA asserts are necessary under the statutory definition of ''emissions limitation'' are not real options in some cases, the commenters claimed, the EPA's proposal is the type of mandate that the court in the *Virginia* decision found to have violated the CAA.[362] Other commenters also cited to the *Virginia* decision, as well as citing to the U.S. Supreme Court's decision in *Train* v. *NRDC,* in which the Court held that ''so long as the ultimate effect of a State's choice of emissions limitations is compliance with the national standards, the State is at liberty to adopt whatever mix of emissions limitations it deems best suited to its particular situation.[363] The commenters concluded that the EPA cannot prescribe the specific terms of SIP provisions applicable to SSM events absent evidence that the provisions undermine the NAAQS or are otherwise inconsistent with the Act.

Commenters claimed that states are provided substantial discretion under the Act in how to develop SIPs and that the EPA's SIP call action is inconsistent with this long-recognized discretion because it limits the states to one option: ''Eliminate any consideration of unavoidable emissions during planned startups and shutdowns and adopt only an extremely limited affirmative defense for unavoidable emissions during a malfunction.'' The commenters claimed that other options available to states include ''justifying existing provisions, adopting alternative numeric emission limitations, work practice standards, additional operational limitations, or revising existing numeric emission limitations and/or their associated averaging times to create a sufficient compliance margin for unavoidable SSM emissions.''

The commenters further asserted that the EPA's February 2013 proposal contained inconsistent statements about how the Agency expects states to respond to the SIP call. For example, according to one commenter, the EPA states in one place that startup and shutdown emissions above otherwise applicable limits must be considered a violation yet elsewhere discusses the fact that states can adopt alternative emission limitations for startup and shutdown. The commenter also asserted that the EPA recommended that states could elect to adopt the an approach to emissions during startup and shutdown like that of the EPA's recent MATS rule but that the EPA then failed to explain that the MATS rule contains ''exemptions'' for emissions during startup and shutdown that apply so long as the source meets the general work practice standards in the rule. This commenter claimed that the EPA's own approach is inconsistent with statements in the February 2013 proposal that states should treat all startups and shutdowns as ''normal operations.''

Response: The EPA disagrees with the commenter's claims that the SIP call violates the structure of ''cooperative federalism'' that Congress enacted for the SIP program in the CAA. Under this structure, the EPA establishes NAAQS and reviews state plans to ensure that they meet the requirements of the CAA. States take primary responsibility for developing plans to attain and maintain the NAAQS, but the EPA is required to step in if states fail to adopt plans that meet the statutory requirements. As the court in *Virginia* recognized, Congress gave states discretion in choosing the ''mix of controls'' necessary to attain and maintain the NAAQS. *See also Train* v. *NRDC,* 421 U.S. 60, 79, 95 (1975). The U.S. Supreme Court first recognized this program of cooperative federalism in *Train,* and the Court stated:

> The Act gives the Agency no authority to question the wisdom of a State's choices of emissions limitations if they are part of a plan which satisfies the standards of § 110(a)(2) . . . [S]o long as the ultimate effect of a State's choice of emissions limitations is compliance with the national standards, the State is at liberty to adopt whatever mix of emissions limitations it deems best suited to its particular situation.

The issue in that case concerned whether changes to requirements that would occur before the area was required to attain the NAAQS were variances that should be addressed pursuant to the provision governing SIP revisions or were ''postponements'' that must be addressed under section 110(f) of the CAA of 1970, which contained prescriptive criteria. The court concluded that the EPA reasonably interpreted section 110(f) not to restrict a state's choice of the mix of control measures needed to attain the NAAQS and that revisions to SIPs that would not impact attainment of the NAAQS by the attainment date were not subject to the limits of section 110(f). While the court recognized that states had discretion in determining the appropriate emissions limitations, it also recognized that the SIP must meet the standards of section 110(a)(2). In *Virginia,* the issue was whether at the request of the Ozone Transport Commission the EPA could mandate that states adopt specific motor vehicle emission standards more stringent than those mandated by CAA sections 177 and 202 for regulating emissions from motor vehicles.

As the EPA has consistently explained in its SSM Policy, the Agency does not believe that exemptions from compliance with any applicable SIP emission limitation requirements during periods of SSM are consistent with the obligation of states in SIPs, including the requirements to demonstrate that plans will attain and maintain the NAAQS, protect PSD increments and improve visibility. If a source is free from any obligation during periods of SSM, there is nothing restraining those emissions and such emissions could cause or contribute to an exceedance or violation of the NAAQS. Moreover, neither the state nor citizens would have authority to take enforcement

[362] 108 F.3d at 1410.

[363] 421 U.S. 60, 79 (1975).

action regarding such emissions. Also, even if historically such excess emissions have not caused or contributed to an exceedance or violation, this would not mean that they could not do so at some time in the future. Finally, given that there are many locations where air quality is not monitored such that a NAAQS exceedance or violation could be observed, the inability to demonstrate that such excess emissions have not caused or contributed to an exceedance or violation would not be proof that they have not. Thus, the EPA has long held that exemptions from emission limitations for emissions during SSM events are not consistent with CAA requirements, including the obligation to attain and maintain the NAAQS and the requirement to ensure adequate enforcement authority.

Despite claims by the commenter to the contrary, the EPA has not mandated the specific means by which states should regulate emissions from sources during startup and shutdown events. Requiring states to ensure that periods of startup and shutdown are regulated consistent with CAA requirements is not tantamount to prescribing the specific means of control that the state must adopt. By the SIP call, the EPA has simply explained the statutory boundaries to the states for SIP provisions, and the next step is for the states to revise their SIPs consistent with those boundaries. States remain free to choose the ''mix of controls,'' so long as the resulting SIP revisions meet CAA requirements. The EPA agrees with the commenter who notes several options available to the states in responding to the SIP call. The commenter stated that there are various options available to states, such as ''adopting alternative numeric emission limitations, work practice standards, additional operational limitations, or revising existing numeric emission limitations and/or their associated averaging times to create a sufficient compliance margin for unavoidable SSM emissions.'' However, the state must demonstrate how that mix of controls for all periods of operation will ensure attainment and maintenance of the NAAQS or meet other required goals of the CAA relevant to the SIP provision, such as visibility protection. For example, if a state chooses to modify averaging times in an emission limitation to account for higher emissions during startup and shutdown, the state would need to consider and demonstrate to the EPA how the variability of emissions over that averaging period might affect attainment and maintenance of a NAAQS with a short averaging period (*e.g.,* how a 30-day averaging period for emissions can ensure attainment of an 8-hour NAAQS). One option noted by the commenter, ''justifying existing provisions,'' does not seem promising, based on the evaluation that the EPA has performed as a basis for this SIP call action. If by justification, the commenter simply means that the state may seek to justify continuing to have an exemption for emissions during SSM events, the EPA has already determined that this is impermissible under CAA requirements.

The EPA regrets any confusion that may have resulted from its discussion in the preamble to the February 2013 proposal. The EPA's statement that startup and shutdown emissions above otherwise applicable limitations must be considered a violation is simply another way of stating that states cannot exempt sources from complying with emissions standards during periods of startup and shutdown. This is not inconsistent with the EPA's statement that states can develop alternative requirements for periods of startup and shutdown where emission limitations that apply during steady-state operations could not be feasibly met. In such a case, startup and shutdown emissions would not be exempt from compliance but rather would be subject to a different, but enforceable, standard. Then, only emissions that exceed such alternative emission limitations would constitute violations.

17. Comments that because areas are in attainment of the NAAQS, SIP provisions such as automatic exemptions for excess emissions during SSM events are rendered valid under the CAA.

Comment: Commenters argued that SSM exemptions should be permissible in SIP provisions applicable to areas designated attainment because, they asserted, there is evidence that the exemptions do not result in emissions that cause violations of the NAAQS. To support this contention, the commenters observed that a number of states with SSM exemptions in SIP provisions at issue in this SIP call are currently designated attainment in all areas for one or all NAAQS and also that some of these states had areas that previously were designated nonattainment for a NAAQS but subsequently have come into attainment. Thus, the commenters asserted, the SIP provisions that the EPA identified as deficient due to SSM exemptions must instead be consistent with CAA requirements because these states are in attainment. The commenters claimed that because these areas have shown they are able to attain and maintain the NAAQS or to achieve emission reductions, despite SSM exemptions in their SIP provisions, the EPA's concerns with respect to SSM exemptions are unsupported and unwarranted. Based on the premise that SSM exemptions are not inconsistent with CAA requirements applicable to areas that are attaining the NAAQS, the commenters claimed that such provisions cannot be substantially inadequate to meet CAA requirements.

Response: The EPA disagrees with the commenters' view that, so long as the provisions apply in areas designated attainment, the CAA allows SIP provisions with exemptions for emissions during SSM events. The commenters based their argument on the incorrect premise that SIP provisions applicable to sources located in attainment areas do not also have to meet fundamental CAA requirements such as sections 110(a)(2)(A), 110(a)(2)(C) and 302(k). Evidently, the commenters were only thinking narrowly of the statutory requirements applicable to SIP provisions in SIPs for purposes of part D attainment plans, which are by design intended to address emissions from sources located in nonattainment areas and to achieve attainment of the NAAQS in such areas. The EPA does not interpret the fundamental statutory requirements applicable to SIP provisions (*e.g.,* that they impose continuous emission limitations) to apply exclusively in nonattainment areas; these requirements are relevant to SIP provisions in general.

The statutory requirements applicable to SIPs are not limited to areas designated nonattainment. To the contrary, section 107(a) imposes the responsibility on each state to attain and maintain the NAAQS ''within the entire geographic areas comprising such State.'' The requirement to maintain the NAAQS in section 107(a) clearly applies to areas that are designated attainment, including those that may previously have been designated nonattainment. Similarly, section 110(a)(1) explicitly requires states to have SIPs with provisions that provide for the implementation, maintenance and enforcement of the NAAQS. By inclusion of ''maintenance,'' section 110(a)(1) clearly encompasses areas designated attainment as well as nonattainment. The SIPs that states develop must also meet a number of more specific requirements set forth in section 110(a)(2) and other sections of the CAA relevant to particular air quality issues (*e.g.,* the requirements for attainment plans for the different NAAQS set out in more detail in part D). Among those basic requirements that

states must meet in SIPS are section 110(a)(2)(C), requiring a permitting program applicable to sources in areas designated attainment, and section 110(a)(2)(D)(i)(II), requiring SIP provisions to prevent interference with protection of air quality in areas designated attainment in other states. Part C, in turn, imposes additional requirements on states with respect to prevention of significant deterioration of air quality in areas designated attainment. Although the EPA agrees that the CAA distinguishes between, and imposes different requirements upon, areas designated attainment versus nonattainment, there is no indication that the statute distinguishes between the basic requirements for emission limitations in these areas, including that they be continuous.

Section 110(a)(2)(A) requires states to include ''emission limitations'' in their SIPs ''as may be necessary or appropriate to meet applicable requirements of'' the CAA. The EPA notes that the commenters have raised other arguments concerning the precise meeting of ''necessary or appropriate'' (*see* section VII.A.3 of this document), but in this context the Agency believes that because states are required to have SIPs that provide for ''maintenance'' of the NAAQS it is clear that the general requirements for emission limitations in SIPs are not limited to areas designated nonattainment. Section 110(a)(2)(A) contains no language distinguishing between emission limitations applicable in attainment areas and emission limitations applicable in nonattainment areas. Significantly, the definition of the term ''emission limitation'' in section 302(k) likewise makes no distinction between requirements applicable to sources in attainment areas versus nonattainment areas. The EPA sees no basis for interpreting the term ''emission limitation'' differently for attainment areas and nonattainment areas, with respect to whether such emission limitations must impose continuous controls on the affected sources. Most importantly, section 110(a)(2)(A) does explicitly require that any such emission limitations must ''meet the applicable requirements'' of the CAA, and the EPA interprets this to include the requirement that emission limitations apply continuously, *i.e.,* contain no exemptions for emissions during SSM events. This requirement applies equally in all areas, including attainment and nonattainment areas.

The EPA's interpretation of the CAA in the SSM Policy has long extended to SIP provisions applicable to attainment areas as well as to nonattainment areas. Since at least 1982, the SSM Policy has stated that SIP provisions with SSM exemptions are inconsistent with requirements of the CAA to provide both for attainment and maintenance of the NAAQS, *i.e.,* inconsistent with requirements applicable to both nonattainment and attainment areas.[364] Since at least 1999, the EPA's SSM Policy has clearly stated that SIP provisions with SSM exemptions are inconsistent with protection of PSD increments in attainment areas.[365] The EPA provided its full statutory analysis with respect to SSM exemptions and CAA requirements applicable to areas designated attainment in the background memorandum accompanying the February 2013 proposal.[366]

Finally, the EPA disagrees with the commenters' theory that, absent proof that the SIP deficiency has caused or will cause a specific violation of the NAAQS, the Agency lacks authority to issue a SIP call for SIP provisions that apply only in areas attaining the NAAQS. This argument is inconsistent with the plain language of section 110(k)(5). Section 110(k)(5) authorizes the EPA to issue a SIP call whenever the SIP is substantially inadequate to attain or maintain the NAAQS, to mitigate interstate transport or to comply with any other CAA requirement. The explicit reference to a SIP's being inadequate to maintain the NAAQS clearly indicates that the EPA has authority to make a finding of substantial inadequacy for a SIP provision applicable to attainment areas, not only for a SIP provision applicable to nonattainment areas. In addition, section 110(k)(5) explicitly authorizes the EPA to issue a SIP call not only in instances related to a specific violation of the NAAQS but rather whenever the Agency determines that a SIP provision is inadequate to meet requirements related to attainment and maintenance of the NAAQS or any other applicable requirement of the Act, including when the provision is inadequate to meet the fundamental legal requirements applicable to SIP provisions. Were the EPA's authority limited to issuing a SIP call only in the event an area was violating the NAAQS, section 110(k)(5) would not explicitly include requirements related to ''maintenance'' and would not explicitly include the statement ''otherwise comply with any requirement of [the CAA].''

18. Comments that the EPA's initial approval of these deficient provisions, or subsequent indirect approval of them through action on other SIP submissions, establishes that these provisions meet CAA requirements.

Comment: A number of commenters argued that because the EPA initially approved the SIP provisions at issue in this rulemaking, this establishes that these provisions meet CAA requirements. Other commenters argued that subsequent actions on other SIP submissions in effect override the fact that the SIP provisions at issue are legally deficient. For example, an industry commenter asserted that there have been ''dozens of instances where EPA has reviewed Alabama SIP revision submittals'' and the EPA has never indicated ''that it believed these rules to be inconsistent with the CAA.'' Other state commenters made similar arguments suggesting that the EPA's original approval of these provisions, and the fact that the EPA has not previously taken action to require states to revise them, indicates that they are not deficient.

Response: The EPA disagrees with these commenters. The fact that the EPA once approved a SIP provision does not mean that the SIP provision is *per se* consistent with the CAA, or consistent with the CAA notwithstanding any later legal or factual developments. This is demonstrated by the very existence of the SIP call provision in section 110(k)(5), whereby the EPA may find that an ''applicable implementation plan for any area is substantially inadequate to attain or maintain the relevant [NAAQS] . . . or to otherwise comply with any requirement of'' the CAA. This SIP call authority expressly authorizes the EPA to direct a state to revise its SIP to remedy any substantial inadequacy, including failures to comply with legal requirements of the CAA. By definition, when the EPA promulgates a SIP call, this means that the Agency has previously approved the provision into the SIP, rightly or wrongly. The SIP call provision would be meaningless if a SIP provision were considered perpetually consistent with CAA requirements after it was originally approved, and merely because of that prior approval as commenters suggest. In the February 2013 proposal, the EPA acknowledged its own responsibility in approving provisions that were inconsistent with CAA requirements.

The EPA also disagrees with the argument that the Agency's action on other intervening SIP submissions from a state over the years since the approval

[364] *See* 1982 SSM Guidance, Attachment at 1.

[365] *See* 1999 SSM Guidance at 2.

[366] *See* Memorandum, ''Statutory, Regulatory, and Policy Context for this Rulemaking,'' February 4, 2013, in the rulemaking docket at EPA–HQ–OAR–2012–0322–0029.

of the original deficient SIP provision in some way negates the original deficiency. The industry commenter pointed to ''dozens of instances where EPA reviewed Alabama SIP revision submittals'' as times when the EPA should have addressed any SSM-related deficient SIP provisions. However, the EPA's approval of other SIP revisions does not necessarily entail reexamination and reapproval of every provision in the SIP. The EPA often only examines the specific provision the state seeks to revise in the SIP submission without reexamining all other provisions in the SIP. The EPA sometimes broadens its review if commenters bring other concerns to the Agency's attention during the rulemaking process that are relevant to the SIP submission under evaluation.

19. Comments that exemptions for excess emissions during exempt SSM events would not distort emissions inventories, SIP control measure development or modeling, because the EPA's regulations and guidance concerning ''rule effectiveness'' adequately account for these emissions, and therefore the proposed SIP calls are not needed or justified.

Comment: One commenter argued that provisions allowing exemptions or affirmative defenses for excess emissions during startup and shutdown are consistent with a state's authority under CAA section 110 and that this is evidenced by the fact that the EPA has issued guidance on ''rule effectiveness'' that plainly takes into account a ''discount'' factor in a state's demonstration of attainment when it chooses to adopt startup/shutdown provisions. This commenter cited the EPA's definition of ''rule effectiveness'' at 40 CFR 51.50 and EPA guidance on demonstrating attainment of $PM_{2.5}$ and regional haze air quality goals.[367]

Response: The EPA disagrees with the characterization in this comment of past EPA guidance and with the conclusion that the fact of the existence of EPA guidance on ''rule effectiveness'' would support the claim that the CAA provides authority for exemptions or affirmative defenses for excess emissions during startup and shutdown. The EPA's definition of ''rule effectiveness'' at 40 CFR 51.50 does not refer to startup and shutdown; it refers only to ''downtime, upsets, decreases in control efficiencies, and other deficiencies in emission estimates,'' and once defined the term ''rule effectiveness'' is not subsequently used within 40 CFR part 51 in any way that would indicate that it is meant to capture the effect of exemptions during startup and shutdown. The EPA guidance on demonstrating attainment of $PM_{2.5}$ and regional haze goals cited by the commenter also does not address rule effectiveness or excess emissions during startup and shutdown. The terms ''startup'' and ''shutdown'' do not appear in the attainment demonstration guidance. The EPA did issue a different guidance document in 1992 on rule effectiveness,[368] but that document focused only on the preparation of emissions inventories for 1990, not on demonstrating attainment of NAAQS or regional haze goals. Moreover, the 1992 guidance document addressed ways of estimating actual 1990 emissions in light of the likelihood of a degree of source noncompliance with applicable emission limitations, not on the emissions that would be permissible in light of the absence of a continuous emission limitation applicable during startup and shutdown. The terms ''startup'' and ''shutdown'' do not appear in the 1992 guidance. In 2005, the EPA replaced the 1992 guidance document on rule effectiveness as part of providing guidance for the implementation of the 1997 ozone and $PM_{2.5}$ NAAQS.[369] Like the 1992 guidance, the 2005 guidance associated ''rule effectiveness'' with the issue of noncompliance and did not provide any specific advice on quantifying emissions that could be legally emitted because of SSM exemptions in SIPs. To avoid misunderstanding, the 2005 guidance included a question and answer on startup and shutdown emissions to the effect that emissions during startup and shutdown should be included in ''actual emissions.'' This question and answer included the statement, ''[L]ess preferably, [emissions during startup, shutdown, upsets and malfunctions] can be accounted for using the rule effectiveness adjustment procedures outlined in this guidance.'' However, other than in this question and answer, the 2005 guidance does not mention emissions during startup and shutdown events; it focuses on issues of noncompliance with applicable emission limitations. The fact that the 1992 guidance document did not intend for ''rule effectiveness'' to encompass SIP-exempted emissions during startup and shutdown, and that the 2005 guidance also did not, is confirmed by a statement in a more recent draft EPA guidance document:

> In addition to estimating the actual emissions during startup/shutdown periods, another approach to estimate startup/shutdown emissions is to adjust control parameters via the emissions calculation parameters of rule effectiveness or primary capture efficiency. *Using these parameters for startup/shutdown adjustments is not their original purpose,* but can be a simple way to increase the emissions and still have a record of the routine versus startup/shutdown portions of the emissions. (Emphasis added.)[370]

Furthermore, as explained in the proposals for this action and in this document, the EPA believes that it is a fundamental requirement of the CAA that SIP emission limitations be continuous, which therefore precludes exemptions for excess emissions during startup and shutdown. At bottom, although it is true that these guidance documents indicated that one less preferable way to account for startup and shutdown emissions could be through the rule effectiveness analysis, this does not in any way indicate that exemptions from emissions limitations would be appropriate for such periods.

Comment: A commenter argued that the EPA has not shown any substantial inadequacy with respect to CAA requirements but that the closest the EPA comes to identifying a substantial inadequacy is in the EPA's discussion of its concern regarding the impacts of SSM exemptions on the development of accurate emissions inventories for air quality modeling and other SIP planning. This commenter and another commenter in particular noted a passage in the February 2013 proposal that stated that emission limitations in SIPs are used to meet various requirements for attainment and maintenance of the NAAQS and that all of these uses typically assume continuous source compliance with emission limitations.[371] These commenters disagreed with the EPA's statement that all of these uses typically assume continuous source compliance with

[367] The commenter appears to have been meaning to cite to the draft EPA guidance document ''Draft Guidance for Demonstrating Attainment of Air Quality Goals for $PM_{2.5}$ and Regional Haze,'' January 2, 2001. This draft guidance on $PM_{2.5}$ and Regional Haze was combined with similar guidance on ozone in the final guidance document ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,'' April 2007, EPA–454/B–07–002.

[368] ''Guidelines for Estimating and Applying Rule Effectiveness for Ozone/CO State Implementation Plan Base Year Inventories,'' November 1992, EPA–4S2JR–92.010.

[369] ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' Appendix B, August 2005, EPA–454/R–05–001.

[370] ''Draft Emissions Inventory Guidance for Implementation of Ozone [and Particulate Matter]* National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' April 11, 2014, page 62.

[371] February 2013 proposal, 78 FR 12459 at 12485.

applicable emission limitations, and the commenters cited several EPA guidance documents and statements that, they believe, address SSM and ensure that states do not simply assume continuous compliance. These commenters in addition cited to footnote 4 of the EPA's 1999 SSM Guidance.[372] The commenters argued that as long as states are complying with the EPA's inventory and modeling rules and guidance, SSM exemptions and similar applicability provisions have no negative impact on SIP planning.

Response: The EPA acknowledges that the cited statement in the February 2013 proposal, that various types of required analysis used to develop SIPs or permits ''typically assume continuous source compliance with emission limitations,'' was an oversimplification of a complex situation. However, the EPA disagrees with the commenters' assertion that the EPA's inventory rules and other guidance are sufficient to ensure that SSM exemptions, where they still exist in SIPs, have no negative impact on SIP planning. Also, if the EPA were to allow them, such exemptions could become more prevalent and have a larger negative effect. More importantly, regardless of how SSM exemptions may or may not negatively impact things like emissions inventories, as explained elsewhere in this document, the EPA believes that it is a fundamental requirement of the CAA that SIP emission limitations be continuous, which therefore precludes exemptions for excess emissions during SSM events.

Generally, the EPA's guidance and rules do not say that it is correct for estimates of source emissions used in SIP development to be based on an assumption of continuous compliance with the SIP emission limitations even if the SIP contains exemptions for SSM periods. Rather, the EPA has generally emphasized that SIPs and permits should be based on the best available information on actual emissions, including in most cases the effects of known or reasonably anticipatable noncompliance with emission limitations that do apply.[373] Because the EPA's longstanding SSM Policy has interpreted the Act to prohibit exemptions during SSM events, it has not been a focus of EPA guidance to explain to states how to take account of such exemptions. As the commenters have pointed out, some aspects of some EPA guidance documents have some relationship to the issue of accounting for SSM exemptions. Nevertheless, taken together, the EPA's guidance does not and cannot ensure that emission estimates used in developing SIPs and permits correctly reflect actual emissions in all cases in which SSM exemptions still exist in SIPs, particularly for sources that, unlike all or most of the sources represented by these two commenters, are not subject to continuous emissions monitoring. For a source not subject to continuous emissions monitoring, when excess emissions during SSM events are exempted by a SIP—whether automatically, on a special showing or through director's discretion—it is much more likely that those emissions would not be quantified and reported to the air agency such that they could be accounted for in SIP and permit development. For example, when the SIP includes exemptions for excess emissions during SSM events, there may be no motive for a source to perform a special stack test during a SSM period in which there is no applicable emission limitation and possibly no legal basis for an air agency to require such a stack test. It would also be unusual to find well-documented emission factors for such transient operation that could be used in place of source-specific testing.

As explained in a response provided earlier in this document, the EPA guidance documents also cited by these commenters in fact do not address how the effect of exemptions in SIPs for excess emissions during startup and shutdown can be accounted for in an attainment or maintenance demonstration. The cited 1992 ''rule effectiveness'' guidance in regard to issues such as noncompliance in the form of non-operation of control equipment, malfunctions, poor maintenance and deterioration of control equipment was meant to address how the issues affected emissions in 1990, not in a future year when the NAAQS must be attained. The 2005 guidance also did not provide any particular advice on how ''rule effectiveness'' concepts could be used to estimate emissions during exempt SSM periods. Given that the EPA's longstanding SSM Policy has been that exemptions for excess emissions during SSM events are not permissible, the EPA had no reason to provide guidance on how attainment demonstrations should account for such exemptions.

The commenters are right to infer that the EPA does believe that where exemptions for excess emissions during anticipatable events still remain in current SIPs, attainment demonstrations ideally should account for them. Indeed, the EPA's guidance has recommended that all emissions during startup and shutdown events be included in both historical and projected emissions inventories.[374] However, as long as exemptions for excess emissions during SSM events have the effect of making such excess emissions not be violations and thus not reportable as violations, it will be difficult for air agencies to have confidence that they have sufficient knowledge of the magnitude, location and timing of such emissions as would be needed to accurately account for those emissions in attainment demonstrations, especially for NAAQS with averaging periods of one day or less. The EPA has promulgated emissions inventory reporting rules, but these rules apply requirements to air agencies rather than to the sources that would have actual knowledge of startup and shutdown events and emissions. To make a complying inventory data submission to the EPA, an air agency does not have to obtain from sources information on the magnitude and timing of emissions during SSM events for which an exemption applies, and to the EPA's knowledge most air agencies do not obtain this information. The EPA's emissions inventory rules require the reporting of historical annual-total emissions only (and in some areas ''typical'' seasonal and/or daily emissions for certain pollutants), not day-to-day emissions. Actual emissions during SSM events should be included in these annual emissions. While data formats are available from the EPA to allow a state to segregate the total annual emissions during SSM events

[372] The EPA interprets the citation ''*See supra* pp. 21–24'' as being intended to refer to those pages of ''Guidelines for Estimating and Applying Rule Effectiveness for Ozone/CO State Implementation Plan Base Year Inventories,'' November 1992, EPA–4S2JR–92.010, which this commenter did not refer to by title.

[373] New source permitting under the PSD program is an exception to the principle that the effects of noncompliance should be included in estimates of source emissions. The air quality impact analysis for a proposed PSD permit is based on an assumption that the source will operate without malfunctions. However, it may be necessary in this type of analysis to consider excess emissions that are the result of poor maintenance, careless operation or other preventable conditions. *See* 40 CFR part 51, appendix W, section 8.1.2, footnote a.

[374] For example, *see* ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' Appendix B, August 2005, EPA–454/R–05–001. A recent draft EPA guidance on the preparation of emissions inventories for attainment demonstrations recognizes that, in contrast to startup and shutdown emissions, emissions during malfunctions are not predictable and do not need to be included in projected inventories for the future year of attainment. *See* ''Draft Emissions Inventory Guidance for Implementation of Ozone [and Particulate Matter]* National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' April 11, 2014, page 62.

from annual emissions during other type of operation, to segregate the emissions is not a requirement and few states do so. Moreover, the EPA's emissions inventory rules require reporting on most sources only on an ''every third year'' basis, which means that unless an air agency has authority to and does require more information from sources than is needed to meet the air agency's reporting obligation to the EPA, the air agency will not be in a position to know whether and how, between the triennial inventory reports, excess emissions during startup and shutdown may be changing due to variations in source operation and possibly affecting attainment or maintenance. Thus, the EPA's emissions inventory rules provide air agencies only limited leverage in terms of ability to obtain detailed information from sources regarding the extent to which actual emissions during SSM events may be unreported in emissions inventories, due to SIP exemptions. The EPA believes that when exemptions for excess emissions during SSM events are removed from SIPs, thereby making high emissions during SSM events specifically reportable deviations from emission limitations for more sources than now report them as such, it will be easier for air agencies to understand the timing and magnitude of event-related emissions that can affect attainment and maintenance. However, this belief is not the basis for this SIP call action, only an expected useful outcome of it.

Footnote 4 of the EPA's 1999 SSM Guidance suggested that ''[s]tates may account for [potential worst-case emissions that could occur during startup and shutdown] by including them in their routine rule effectiveness estimates.'' This statement in the 1999 document's footnote may seem at odds with the statement in this response that the ''rule effectiveness'' concept was not meant to embrace excess emissions during startup and shutdown that were allowed because of SIP exemptions. However, the footnote is attached to text that addresses ''worst-case'' emissions that are higher than allowed by the applicable SIP, because that text speaks about the required demonstration to support a SIP revision containing an affirmative defense for violations of applicable SIP emission limitations. Thus, estimates of such worst-case emissions would reflect the effects of noncompliance, which is within the intended scope of the EPA's ''rule effectiveness'' guidance. Footnote 4 was not referring to the issue of how to account for the effect of SSM exemptions.[375]

Comment: A number of commenters stated their understanding that the EPA has proposed SIP calls as a way of improving air agencies' implementation of EPA-specified requirements in emissions inventory or modeling, and they stated that if this is the EPA's concern then the EPA should address the issue in that context.

Response: To clarify its position, the EPA explains here that while it believes that approvable SIP revisions in response to the proposed SIP calls will have the benefit of providing information on actual emissions during SSM events that can improve emissions inventories and modeling, the availability of this additional information is not the basis for the SIP calls that are being finalized. The EPA believes that it is a fundamental requirement of the CAA that SIP emission limitations be continuous, which therefore precludes exemptions for excess emissions during startup and shutdown.

Comment: An air agency commenter stated that facilities in its state are required to submit data on all annual emissions, including emissions from startup and shutdown operation (and malfunctions), as part of its annual emissions inventory, and that it takes these emissions into consideration as part of SIP development.

Response: The EPA appreciates the efforts of this commenter to develop SIPs that account for all emissions. However, these efforts and whatever degree of success the commenter enjoys do not change the fundamental requirement of the CAA that SIP emission limitations be continuous, which therefore precludes exemptions for excess emissions during startup and shutdown.

Comment: A commenter argued that even to the extent SSM emissions present some level of uncertainty in model-based air quality projections, that uncertainty is small compared to other sources of uncertainty in modeling analyses, and so SSM emissions will not have any significant impact on attainment demonstrations or any underlying air quality modeling analysis.

Response: In support of this very general statement, the commenter provided only its own assessment of its own experience and the similar opinion of unnamed permitting agencies. In any case, this SIP call action is not based on any EPA determination about how modeling uncertainties due to SSM exemptions in SIPs compare to other modeling uncertainties.

20. Comments that exemptions for excess emissions during SSM events are not a concern with respect to PSD and protection of PSD increments.

Comment: Commenters asserted that the EPA has not adequately explained the basis for its concerns about the impact of emissions during SSM events on PSD increments.

Response: The EPA disagrees. As explained in detail in the background memorandum included in the docket for this rulemaking,[376] CAA section 110(a)(2)(C) requires that a state's SIP must include a PSD program to meet CAA requirements for attainment areas.[377] In addition, section 161 explains that ''[e]ach [SIP] shall contain emission limitations and such other measures as may be necessary . . . to prevent significant deterioration of air quality for such region . . . designated . . . as attainment or unclassifiable.'' Specifically, each SIP is required to contain measures assuring that certain pollutants do not exceed designated maximum allowable increases over baseline concentrations.[378] These maximum allowable increases are known as PSD increments. Applicable EPA regulations require states to include in their SIPs emission limitations and such other measures as may be necessary in attainment areas to assure protection of PSD increments.[379] Authorizing sources in attainment areas to exceed SIP emission limitations during SSM events compromises the protection of these increments.

The commenters' concerns seem to be focused on PSD permitting for individual sources rather than on emission limitations in SIPs. The commenters asserted that the EPA already adequately accounts for all emissions during SSM events when calculating the baseline and increment consumption and expressed concern about the potential for ''double counting'' of emissions by counting them both toward the baseline and against increment. The EPA agrees that

[375] In light of the *NRDC* v. *EPA* decision, affirmative defense provisions are not allowed in SIPs any longer, so this aspect of the 1999 SSM Guidance is no longer relevant.

[376] *See* Memorandum, ''Statutory, Regulatory, and Policy Context for this Rulemaking,'' February 4, in the rulemaking docket at EPA–HQ–OAR–2012–0322–0029.

[377] ''Each implementation plan . . . shall . .ensp;. include a program to provide for . . . regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that [NAAQS] are achieved, including a permit program as required in . . . part C.'' CAA section 110(a)(2)(C).

[378] CAA section 163.

[379] *See* 40 CFR 51.166(c).

emissions should not be double-counted and has regulatory requirements in place to ensure that emissions are either attributed to the baseline or counted against increment but not both.[380] Nevertheless, permitting agencies base their calculations of both the baseline and increment consumption on air quality data representing actual emissions from sources.[381] As explained more fully in the background memorandum accompanying the February 2013 proposal, the EPA is concerned that as a result of SSM exemptions in SIPs, inventories of actual emissions often do not include an accurate accounting of excess emissions that occur during SSM events. Moreover, the models used to calculate increment consumption typically assume continuous source compliance with applicable emission limitations.[382] Authorizing exceedances of emission limitations during SSM events would compromise the accuracy of the projections made by these models. Accurate calculations of the baseline and increment consumption rely on the correct accounting of all emissions, including those occurring during SSM events. Without accurate data, the EPA cannot be certain that state agencies are calculating baseline or increment consumption correctly or that increments in attainment areas are not being exceeded. For the foregoing reasons, the EPA is concerned that SSM exemptions in SIPs compromise the ability of the PSD program to protect air quality increments.

21. Comments that because ambient air quality has improved over the duration of the CAA through various regulatory programs such as the Acid Rain Program, this disproves that SIP provisions including exemptions for excess emissions during SSM events pose any concerns with respect to protection of public health and the environment.

Comment: Industry commenters claimed that because ambient air quality data show that air quality has been consistently improving over a period of years, this proves that exemptions for emissions during SSM events do not impede the ability of areas to attain and maintain the NAAQS. The commenters provided a chart showing percentage reduction in emissions of the various NAAQS pollutants ranging from 52 percent reduction in NO_X between 1980 and 2010 to 83 percent reduction in direct PM_{10} emissions for that same time period. The commenters further claimed that a significant portion of the recent emissions reductions have been achieved by electric utilities. The commenters also provided charts and graphs showing reductions in pollutants under the CAA Acid Rain Program. The commenters further claimed that the states in which they operate—Alabama, Florida, Georgia, Mississippi and North Carolina—are meeting the NAAQS, with isolated exceptions. The commenters further stated that, although the EPA recently has promulgated several new NAAQS, the attainment plans for those standards are not yet due, and thus the new standards cannot justify the SIP call. The commenters concluded by noting that the states' success in achieving the various NAAQS, even as the NAAQS have been strengthened, demonstrates that the existing SSM exemptions in SIP provisions identified by the EPA do not ''place the NAAQS at risk.'' Regarding visibility, the commenters noted that plans to show progress in meeting the regional haze goal were due in 2013 and that evidence shows that visibility is also improving notwithstanding the existing SSM exemptions.

Response: The EPA agrees that many areas in the U.S. have made great strides in improving ambient air quality under the CAA. However, excess emissions from sources during SSM events have the potential to undermine that progress and are also inconsistent with the requirements of the CAA, as discussed elsewhere in the February 2013 proposal and in this final action. The EPA notes that the fact that an area has attained the NAAQS does not demonstrate that emissions during SSM events do not have the potential to undermine attainment or maintenance of the NAAQS, interfere with protection of PSD increments or interfere with visibility. For certain pollutants, such as lead or SO_2, a single source could have a single SSM event that could cause an exceedance of the NAAQS that would otherwise not have occurred. It is through its SIP that a state demonstrates that it has in place an air quality management program that will attain and maintain the NAAQS on an ongoing basis, and so it is critical that the state, through its SIP provisions, can ensure that emissions during normal source operation including startup and shutdown events do not exceed levels relied on for purposes of developing attainment and maintenance plans. Similarly, SIP provisions designed to protect visibility must also meet requirements of the CAA, and exemptions for emissions during SSM events would likewise have the potential to undermine visibility objectives of the CAA. Thus, it is not appropriate to exempt emissions during these SSM events from compliance with emission limitations in SIPs. As explained in this final action, the state has flexibility in choosing how to regulate source during these periods of operation, and sources do not necessarily have to be subject to the same numerical emissions limitations or the same other control requirements during startup and shutdown that apply during other modes of operation. However, SIP emission limitations must be continuous, and thus sources must be subject to requirements that apply at all times including during startup and shutdown.

22. Comments that the EPA's position that SIP provisions such as automatic exemptions for excess emissions during SSM events hinder effective enforcement for violations is incorrect, because there have been a number of citizen suits brought under the CAA.

Comment: According to industry commenters, the EPA's argument that deficient SIP provisions concerning emissions during SSM events limit enforcement of violations of emissions limitations under sections 113 and 304 is inaccurate, because ''the facts show that SSM provisions do not preclude or hinder enforcement of any CAA requirements.'' The commenters provided a list of ''recent'' enforcement actions and asserted that ''[t]he sheer number of cases demonstrates that the existing regulations provide ample opportunity for enforcement.'' The commenters cited to litigation brought by citizen groups that the commenters asserted has resulted in settlements including ''injunctive relief and supplemental environmental projects (''SEPs'') worth tens of millions, if not hundreds of millions, of dollars.'' The commenters also cited to one example to suggest that ''whereas EPA and/or States may use enforcement discretion'' in certain types of cases, ''citizen groups do not.''

[380] *See* 40 CFR 51.166 and 52.21.

[381] *See* CAA section 169(4) (defining baseline concentration); 40 CFR 51.166(b)(13)(i) (setting forth what is included in baseline concentration; 40 CFR 52.21(b)(13)(i) (same). The **Federal Register** document promulgating the revised PSD regulations also explained this point. In that document, the EPA explained, ''[B]aseline concentrations reflect actual air quality in an area. Increment consumption or expansion is directly related to baseline concentration. Any emissions not included in the baseline are counted against the increment. The complementary relationship between the concepts supports using the same approach for calculating emissions contributions to each.'' 45 FR 52676, 52718 (August 7, 1980). ''Actual emissions'' is defined in 40 CFR 51.166(b)(21)(i) and 52.21(b)(21)(i).

[382] *See* 45 FR 52717 (''increment consumption and expansion should be based primarily on actual emissions increases and decreases, which can be presumed to be allowable emissions for sources subject to source-specific emissions limitations.'').

Response: The EPA disagrees with the commenters' logic that the mere existence of enforcement actions negates the concern that deficient SIP provisions interfere with effective enforcement of SIP emission limitations. The EPA believes that deficient SIP provisions can interfere with effective enforcement by air agencies, the EPA and the public to assure that sources comply with CAA requirements, contrary to the fundamental enforcement structure provided in CAA sections 113 and 304. For example, automatic or discretionary exemption provisions for excess emissions during SSM events by definition completely eliminate the possibility of enforcement for what may otherwise be clear violations of emissions limitations during those times. Affirmative defense provisions purport to alter or eliminate the statutory jurisdiction of courts to determine liability or to impose remedies for violations. These types of provisions eliminate the opportunity to obtain injunctive relief or penalties that may be needed to ensure appropriate efforts to design, operate and maintain sources so as to prevent and to minimize excess emissions, protect the NAAQS and PSD increments and meet other CAA requirements. Similarly, the exemption of sources from liability for excess emissions during SSM events eliminates incentives to minimize emissions during those times. These exemptions thus reduce deterrence of future violations from the same sources or other sources during these periods.

In the February 2013 proposal, the EPA discussed in detail an enforcement case that illustrates and supports the Agency's position.[383] In that case, citizen suit plaintiffs sought to bring an enforcement action against a source for thousands of self-reported exceedances of emission limitations in the source's operating permit. The source asserted that those exceedances were not ''violations,'' through application of a permit provision that mirrored an underlying Georgia SIP provision. The U.S. Court of Appeals for the Eleventh Circuit (Eleventh Circuit) ultimately determined that the provision created an ''affirmative defense'' for SSM emissions that shielded the source from liability for numerous violations. The court noted that even if the approved provision in Georgia's SIP was inconsistent with the EPA's guidance on the proper treatment of excess emissions during SSM events, the defendant could rely on the provision because the EPA had not taken action through rulemaking to rectify any discrepancy.[384] In this final action on the Petition, the EPA has determined that the specific SIP provision at issue in that case is deficient for several reasons. Had that deficient SIP provision not been in the SIP at the time of the enforcement action, then the provision would not have had any effect on the outcome of the case. Instead, the courts would have evaluated the alleged violations and imposed any appropriate remedies consistent with the applicable CAA provisions, rather than in accordance with the SIP provision that imposed the state's enforcement discretion preferences on other parties contrary to their rights under the CAA.

As the outcome of this case demonstrates, the mere fact that a number of enforcement actions have been filed does not mean that the deficient SIP provisions identified by the EPA in this SIP call action do not hinder effective enforcement under sections 113 and 304. To the contrary, that case illustrates exactly how conduct that might otherwise be a clear violation of the applicable SIP emission limitations by a source was rendered immune from enforcement through the application of a provision that operated to excuse liability for violations and potentially allowed unlimited excess emissions during SSM events.

The commenters cited 15 other enforcement cases brought by government and citizen groups over a span of 17 years, but the commenters do not indicate whether any SIP provisions relevant to emissions during SSM events were involved, nor do the commenters indicate whether any provisions at issue in this SIP call action were involved in any of the enforcement cases it cited.[385] Even if an enforcement action has been initiated, the EPA's fundamental point remains: SIP provisions that exempt what would otherwise be a violation of SIP emissions limitations can undermine effective enforcement during times when the CAA requires continuous compliance with such emissions limitations. By interfering with enforcement, such provisions undermine the integrity of the SIP process and the rights of parties to seek enforcement for violation of SIP emission limitations.

A number of commenters on the February 2013 proposal indicated that, from their perspective, a primary benefit of automatic or discretionary exemptions in SIP provisions applicable to emissions during SSM events is to shield sources from liability. Similarly, commenters on the SNPR indicated that, from their perspective, a key benefit of affirmative defense provisions is to prevent what is in their opinion inappropriate enforcement action for violations of SIP emission limitations during SSM events. The EPA does not agree that the purpose of SIP provisions should be to preclude or impede effective enforcement of SIP emission limitations. To the contrary, the potential for enforcement for violations of CAA requirements is a key component of the enforcement structure of the CAA. To the extent that commenters are concerned about inappropriate enforcement actions for conduct that is not in violation of CAA requirements, the EPA believes that the sources already have the ability to defend against any such invalid claims in court.

23. Comments that the EPA's alleged inclusion of ''exemptions'' or ''affirmative defenses'' in enforcement consent decrees negates the Agency's interpretation of the CAA to prohibit them in SIP provisions.

Comment: One industry commenter claimed that the EPA has itself recently promulgated an exemption for emissions during SSM events. The commenter cited an April 1, 2013, settlement agreement in a CAA enforcement case against Dominion Energy as an example. According to the commenter, this settlement agreement ''provides allowances for excess emissions during startup and shutdown'' and ''allows an EGU to operate without the ESP when it is not practicable.'' The commenter characterized this as the creation of an exemption from the applicable emission limitations during startup and shutdown. The commenter further alleged that the settlement agreement ''provides for an affirmative defense to stipulated penalties for excess emissions occurring during start up and shutdown.'' The commenter intended the fact that the EPA agrees to this type

[383] *See* February 2013 proposal, 78 FR 12459 at 12504–05.

[384] *See Sierra Club* v. *Georgia Power Co.,* 443 F.3d 1346 (11th Cir. 2006).

[385] Even if these cases did all involve SIP provisions relevant to SSM events, the sampling of cases cited by the commenter still do not prove the commenter's point. The commenter indicated that 11 of the 15 cited cases resulted in settlement. The EPA presumes that neither party admitted any fault in these settlements and it remains unknown whether the court would have found the existence of a violation. In addition, because these cases were settled, it is unknown whether exemption or affirmative defense provisions would have prevented the court from finding liability for violation of a CAA emissions limitation that would otherwise have applied. In one additional case cited by the commenter, the court determined that the defendant successfully asserted an affirmative defense to alleged violations of a 6-minute 40-percent opacity limit. The outcome of this case evidently supports the EPA's concerns about the impacts of such provisions.

of provision in an enforcement settlement agreement to establish that affirmative defense provisions must also be valid in SIP provisions so that sources can assert them in the event of any violation of SIP emission limitations.

Response: The EPA disagrees with the commenter concerning the EPA's purported creation of exemptions for SSM events in enforcement consent decrees or settlement agreements. Consent decrees or settlement agreements negotiated by the EPA to resolve enforcement actions do not raise the same concerns as automatic exemptions for excess emissions during SSM periods or any other provisions that the EPA has found substantially inadequate in this SIP call action.

The EPA has the authority to enter consent decrees and settlement agreements in its enforcement cases and uses this discretion to resolve these cases. Settlements aim to achieve the best possible result for a given case, taking into account its specific circumstances and risks, but are still compromises between the parties to the litigation.

The EPA also disagrees with comments that attempt to equate affirmative defense provisions in SIPs with affirmative defense clauses that the EPA and defendants agree to contractually in a consent decree or settlement agreement to resolve an enforcement case. Some consent decrees and settlement agreements that the EPA enters into contain provisions referred to as ''affirmative defenses'' that apply only with respect to whether a source must pay stipulated penalties specified in the consent decree or settlement agreement. However, the EPA does not believe these agreements are counter to CAA requirements. The provisions in these contractual agreements are distinguishable from affirmative defense provisions in SIPs for excess emissions during SSM events. Affirmative defenses to stipulated penalties apply only in the limited context of violations of the contract terms of the consent decree or settlement agreement.

Significantly, these affirmative defense provisions apply only to the stipulated penalties of the consent decree or settlement agreement and do not carry over for incorporation into the source's permit. Most importantly, these affirmative defense provisions do not affect the penalty for violations of CAA requirements in general or of SIP emission limitation violations in particular. Further, a consent decree is itself a court order, and where these provisions have been used in a consent decree they are sanctioned by the court and cannot be seen as a compromise of the court's own jurisdiction or authority. Indeed, the specific consent decree cited by the commenter contains exactly these types of ''affirmative defense'' provisions that are applicable only to the stipulated penalties imposed contractually by the consent decree and that do not operate to create any other form of affirmative defense applicable more broadly.

The EPA's use of these provisions in enforcement consent decrees or settlement agreements is not inconsistent with the EPA's interpretation of the CAA to preclude such provisions in SIPs. The EPA interprets the CAA to preclude such affirmative defenses in SIP provisions because they purport to alter or eliminate the jurisdiction of courts to find liability or to impose remedies for CAA violations in the event of judicial enforcement. No such concern is presented by the types of provisions in consent decrees or settlement agreements raised by the commenters, because the terms of such agreements must be approved and sanctioned by a court.

24. Comments that the EPA should provide more than 18 months for the SIP call because state law administrative process can take longer than that.

Comment: Several state and industry commenters claimed that states will need longer than 18 months to submit SIPs in response to a SIP call. One state commenter argued generally that more time is needed for the state to ''change rules and submit a proposed SIP revision'' but did not provide any detail on how much more time is needed. The commenter concluded that a ''total of five years'' is needed for both the state to complete its actions and for facilities ''to change operating procedures or add hardware.'' Another state commenter claimed states would need at least 3 years to submit revised plans and cited to 40 CFR 51.166(a)(6) as providing a 3-year window for submission of SIP revisions.

An industry commenter asserted that it has taken EPA numerous years to address the startup and shutdown provisions in its own MACT standards and that states will need a similar amount of time to ''unspin'' the SSM provisions from SIP emission limitations and replace them with new requirements. The commenter pointed to the difficulty of modifying multiple permits and source-specific or source-category specific regulations. The commenter urged the EPA to provide much more time that the 18 months allowed by statute for a SIP call through ''a transition period of a reasonable length far exceeding 48 months.''

Another industry commenter stated that more time is necessary but recognized that the maximum statutory period is 18 months. The commenter supported the EPA's providing states with the full 18 months to submit SIP revisions, because that time is needed in order for the states to undertake the necessary technical analyses to support the SIP revisions and in order to allow for the state rulemaking processes.

Response: The EPA recognizes that rule development and the associated administrative processes can be complex and time-consuming for states and for the Agency. Thus, the EPA is providing the maximum period allowed under CAA section 110(k)(5)—18 months—for states to submit SIP revisions in response to the SIP call. The EPA does not have authority under the statute to provide states with a longer period of time to submit these SIP submissions. To assist states in responding to this SIP call, the EPA is providing updated and comprehensive guidance concerning CAA requirements applicable to SIP provisions with respect to emissions during SSM events. Ideally, this guidance will allow states and the EPA to address the existing deficiencies as efficiently as possible, given the statutory schedules applicable to both states and the Agency.

The commenter who cited to 40 CFR 51.166(a)(6) is incorrect that it provides authority for the EPA to grant states 3 years to correct SIPs in response to a SIP call. The regulatory provision cited by the commenter is part of the EPA's regulations for the PSD program and simply provides that if the EPA amends that section of the PSD regulations, then a state will have 3 years to make a SIP submission to revise its SIP to meet the new PSD requirements in response to such amendments. This final action does not amend the PSD regulations and 40 CFR 51.166(a)(6) is not implicated. Under CAA section 110(k)(5), the EPA is only authorized to provide a maximum period of 18 months for states to submit SIP revisions to rectify the SIP deficiencies.

25. Comments that EPA should issue an interim enforcement policy, with respect to enforcement between the time that states revise SIP requirements and source permits are revised to reflect those changes.

Comment: One commenter argued that if the EPA finalizes the proposed SIP call for provisions applicable to emissions during SSM events, it will take state regulators a significant period of time to ''disaggregate'' the effect of those deficient provisions on various

other SIP provisions and the requirements of source operating permits. Because these corrections to SIP provisions and permit requirements will take time to occur, the commenter asserted that ''a transition period of reasonable length far exceeding 48 months will be needed to shield industry from enforcement.'' The commenter thus requested that the EPA impose such a transition period. In addition, the commenter suggested that the EPA should create ''an interim enforcement policy'' to shield sources and allow reliance on affirmative defense provisions ''even after SIPs are corrected until permits reflect those changes.'' The commenter posed this request based upon concern that there will be industry confusion concerning what requirements apply to individual sources until permits are revised to reflect the correction of the deficient SIP provisions.

Response: The EPA agrees with the commenter that it will take time for states to make the necessary SIP revisions in response to this SIP call, for the EPA to evaluate and act upon those SIP submissions and subsequently for states or the Agency to revise operating permits in the ordinary course to reflect the corrected state SIPs. As explained in the February 2013 proposal, the EPA consciously elected to proceed via its SIP call authority under section 110(k)(5) and to provide the statutory maximum of 18 months for the submission of corrective SIP revisions. The EPA chose this path specifically in order to provide states with time to revise their deficient SIP provisions correctly and in the manner that they think most appropriate, consistent with CAA requirements. The EPA also explicitly acknowledged that during the pendency of the SIP revision process, and during the time that it will take for permit terms to be revised in the ordinary course, sources will remain legally authorized to emit in accordance with current permit terms.[386]

The EPA is in this final action reiterating that the issuance of the SIP call action does not automatically alter any provisions in existing operating permits. By design, sources for which emission limitations are incorporated in permits will thus have a *de facto* transition period during which they can take steps to assure that they will ultimately meet the revised SIP provisions (*e.g.,* by changing their equipment or mode of operation to meet an appropriate emission limitation that applies during startup and shutdown instead of relying on exemptions). Sources subject to permit requirements will thus have yet more time (beyond the 18 months allowed for the SIP revision in response to this SIP call action) over the permit review cycle to take steps to meet revised permit terms reflecting the revised SIP provisions. However, the EPA does not agree with the commenter that there is a need for a ''transition period'' to ''shield'' sources from enforcement. The EPA's objective in this action is to eliminate impermissible SIP provisions that exempt emissions during SSM events or otherwise interfere with effective enforcement for violations that occur during such events. Further delaying the time by which sources will be expected to comply with SIP provisions that are consistent with CAA requirements is inappropriate. Moreover, the primary purpose of SIP provisions is not to shield sources from liability for violations of CAA requirements but rather to assure that sources are required to meet CAA requirements.

The EPA shares the commenter's concern that there is the potential for confusion on the part of sources or other parties in the interim period between the correction of deficient SIP provisions and the revision of source operating permits in the ordinary course. However, the EPA presumes that most sources required to have a permit, especially a title V operating permit, are sufficiently sophisticated and aware of their legal rights and responsibilities that the possibility for confusion on the part of sources should be very limited. Likewise, by making clear in this final action that sources will continue to be authorized to operate in accordance with existing permit terms until such time as the permits are revised after the necessary SIP revision, the EPA anticipates that other parties should be on notice of this fact as well. Regardless of the potential for confusion by any party, the EPA believes that the legal principle of the ''permit shield'' is well known by regulated entities, regulators, courts and other interested parties. Accordingly, the EPA is not issuing any ''enforcement policy'' in connection with this SIP call action.

26. Comments that a SIP call directing states to eliminate exemptions for excess emissions during SSM events is a ''paper exercise'' or ''exalts form over substance.''

Comment: A number of commenters argued that by requiring states to correct deficient SIP provisions, such as by requiring removal of exemptions for emissions during SSM events, this SIP call action will not result in any environmental benefits. For example, state commenters claimed that they will not be able simply to revise regulations to eliminate startup and shutdown exemptions. Instead, the commenters claimed, the states will need to revise the emissions limitations completely in order to take into account the EPA's interpretation of the CAA that such exemptions are impermissible. The commenters asserted that rewriting the state regulations will produce no reduction in emissions or improvement in air quality and will merely impose burdens upon states to change existing regulations. The implication of the commenters' argument is that states will merely revise SIP emission limitations to allow the same amount of emissions during SSM events by some other means, rather than by establishing emission limitations that would encourage sources to be designed, operated and maintained in a fashion that would better control those emissions.

Response: The EPA does not agree with the commenters' assertion that revisions to the affected SIP provisions in response to this SIP call action will produce no emissions reductions or improvements in air quality. The EPA recognizes that some states may elect to develop revised emission limitations that provide for alternative numerical limitations, control technologies or work practices applicable during startup and shutdown that differ from requirements applicable during other modes of source operation. Other states may elect to develop completely revised emission limitations and elevate the level of the numerical emission limitation that applies at all times to account for greater emissions during startup and shutdown. However, any such revised emission limitations must comply with applicable substantive CAA requirements relevant to the type of SIP provision at issue, *e.g.* be RACM and RACT for sources located in nonattainment areas, and must meet other requirements for SIP revisions such as in sections 110(k)(3), 110(l) and 193.

The EPA believes that revision of the existing deficient SIP provisions has the potential to decrease emissions significantly in comparison to existing provisions, such as those that authorize unlimited emissions during startup and shutdown. Elimination of automatic and director's discretion exemptions for emissions during SSM events should encourage sources to reduce emissions during startup and shutdown and to take steps to avoid malfunctions. Elimination of inappropriate enforcement discretion provisions and affirmative defense provisions should

[386] *See* February 2013 proposal, 78 FR 12459 at 12482.

provide increased incentive for sources to be properly designed, operated and maintained in order to reduce emissions at all times. The EPA also anticipates that revision of older SIP emission limitations in light of more recent technological advances in control technology, and in light of more recent NAAQS, has the potential to result in significant emission control and air quality improvements. In any event, by bringing these provisions into compliance with CAA requirements, the EPA believes that the resulting SIP provisions will support the fundamental integrity of the SIP process and structure, both substantively and with respect to enforceability.

27. Comments that the EPA should make its interpretation of the CAA with respect to SSM exemptions applicable only ''prospectively'' and not require states to correct existing deficient provisions.

Comment: Commenters argued that the EPA should not issue a SIP call to states for existing SIP provisions and should only require states to comply with its interpretations of the CAA ''prospectively.'' One commenter argued that the SIP provisions at issue in this SIP call action were approved by the EPA in the past and have largely been ''upheld through several EPA refinements and guidance on SSM since then.'' The commenter estimated that the proposed SIP call would require states to reestablish emission limits for thousands of existing sources or could require existing sources to comply with emission limitations that did not originally take into account emissions during SSM events. The commenter characterized the EPA's action on the Petition as a change of policy with which the EPA should only require states to meet prospectively, putting states ''on notice'' that the EPA will evaluate future SIP submissions under a different test applicable only to new sources going forward.

Other commenters argued that the EPA cannot require states to revise their SIP provisions if this would have the effect of making existing sources have to comply with the revised SIP. According to the commenters, existing sources should be ''grandfathered'' and should not have to change their control strategies or modes of operation to meet the revised SIP requirements. The commenters asserted that issuance of a SIP call without grandfathering existing sources would ''retroactively'' require sources to comply with the new SIP provisions and ''suddenly'' render sources noncompliant, even though they were in compliance with the SIP when they were originally designed, financed and built. The commenter claimed that the SIP call would ''change the legal structure for commercial transactions that have already taken place.'' The thrust of the commenters' argument is that sources, once built, should never be subjected to any additional pollution control requirements once they are in existence.

Response: The EPA disagrees with the commenters' suggestions for multiple reasons. At the outset, the EPA notes that the only significant actual ''change'' in the Agency's SSM Policy in this action is the determination that affirmative defense provisions are not permissible in SIP provisions. Since the 1999 SSM Guidance, the EPA had interpreted the CAA to allow such affirmative defense provisions, so long as they were limited only to civil penalties and very narrowly drawn consistent with criteria recommended by the Agency. As fully explained in section IV of this document, however, the EPA has determined in light of the court's decision in *NRDC* v. *EPA* that the CAA does not permit SIP provisions that operate to alter or eliminate the jurisdiction of the courts to determine liability and impose remedies in judicial enforcement actions.[387] In other respects, this action primarily consists of the EPA's taking action to assure that SIP provisions are consistent with the CAA as the Agency has interpreted it in the SSM Policy for many years.

In addition, it is not appropriate for the EPA to allow states to retain deficient SIP provisions that would continue to excuse existing sources from complying with the revised SIP provisions in perpetuity or that would only require that future sources comply with such revised SIP provisions. The commenters advocate for ''grandfathering'' that would authorize current sources to continue to operate under existing deficient SIP provisions (*e.g.,* with exemptions for SSM emissions or with affirmative defense provisions) while requiring only new sources to comply with revised SIP provisions that meet CAA requirements. The EPA understands the practical reasons why the commenters make this suggestion, but such an approach would be grossly unfair both to new sources and to the communities affected by emissions from the old sources, as well as flatly inconsistent with the requirements of the CAA for SIP provisions. Existing sources will not be required to comply with the revised SIP emission limitations until the SIPs are updated, and if they are subject to permit requirements the sources may continue to operate consistent with those permits until the operating permits are revised to reflect the revised SIP requirements, but after that time current sources will be required to comply. Thus, sources will not immediately be in noncompliance with any requirements. The EPA has authority to issue a SIP call at any time that it determines a SIP provision is substantially inadequate, even if it mistakenly thought that the SIP provision was adequate at some time in the past. Sources will be on notice of the SIP call and the state's administrative process to respond to it long before they will be required to comply with a revised SIP provision, and those sources will have ample opportunity to participate in the rulemakings establishing new requirements at both the state and federal level.

Finally, the EPA notes, the need for states to establish new emission limitations and change permit terms for many sources should not be viewed as an unusual occurrence. The need to reexamine existing SIP provisions and permit terms applicable to sources in response to this SIP call action is comparable to the process that states would undertake to update their SIPs as necessary to meet new and evolving CAA requirements, including future revised NAAQS. For example, under section 110(a)(1) and section 110(a)(2) states are already required to reexamine and potentially to revise their SIP provisions whenever the EPA promulgates a new or revised NAAQS. States already need to reexamine emission limitations required by section 110(a)(2)(A) and other relevant sections of the CAA in their SIPs on a regular basis as the NAAQS are revised (*e.g.,* the potential need to revisit what is RACT for a specific source category with respect to a new NAAQS), as new legal requirements are created (*e.g.* the potential need to address interstate transport including compliance with any applicable FIP addressing a SIP deficiency with respect to this issue), or as new emissions control technologies are developed (*e.g.,* what is RACT for a pollutant may evolve with technological developments). Thus, as a general matter, states already engage in periodic review of their SIP provisions on a regular basis, and the potential need to update the emissions limitations applicable to sources and thereafter the

[387] The EPA notes, however, that many of the affirmative defense type provisions at issue in this action were also not consistent with the Agency's interpretation of the CAA in the 1999 SSM Guidance. Thus, even in the absence of the *NRDC* v. *EPA* decision, these provisions were not consistent with the EPA's prior interpretation of the CAA for such provisions.

need to update the permits applicable to those sources is part of that process. This SIP call action simply directs the affected states to address specific deficiencies in their SIP provisions as part of this normal evolutionary process.

28. Comments that directing states to correct their existing SIP provisions will require many sources to change terms of their operating permits.

Comment: A number of commenters opposed the February 2013 proposal because of the administrative burden the action would impose on air agencies and sources. Commenters asserted that requiring states to remove affirmative defense provisions for startup and shutdown from SIPs and to develop alternative emission limitations for such periods of operation instead is unreasonable. Other commenters argued that requiring removal of the deficient SIP provisions would impose enormous and time-consuming burdens on permitting authorities and the regulated community associated with the development of new or revised emissions limitations for startup and shutdown, the revision of SIPs and the revision of permits to incorporate such revised emision limitations. Another commenter asserted that sources only accepted numerical limits in permits with the understanding that they also had the benefit of affirmative defenses in the event of exceedances of those numerical emission limits during periods of SSM. The commenter thus argued that sources would seek to revise the permit limits in order to account for the absence of such affirmative defenses.

Response: The EPA acknowledges the concerns raised by commenters concerning the need for air agencies to revise the deficient SIP provisions at issue in this action, as well as the need for the EPA to review the resulting SIP revisions. The EPA does not agree, however, with the commenters' argument that the need for these administrative actions is a justification for leaving the deficient provisions unaddressed.

The EPA also acknowledges that the SIP revisions initiated by this SIP call action will result in the removal of deficient provisions such as automatic and discretionary SSM exemptions, overly broad enforcement discretion provisions and affirmative defense provisions. These SIP revisions will ultimately need to be reflected in revised operating permit terms for sources. This SIP call action will not, however, have an automatic impact on any permit terms and conditions, and the resource burden to revise permits will be spread over many years. After a state makes the necessary revisions to its SIP provisions, any needed revisions to operating permits to reflect the revised SIP provisions will occur in the ordinary course as the state issues new permits or reviews and revises existing permits. For example, in the case of title V operating permits, permits with more than 3 years remaining will be reopened to add new applicable requirements within 18 months of the promulgation of the requirements. If a permit has less than 3 years remaining, the new applicable requirement will be added at renewal.[388]

IX. What is the EPA's final action for each of the specific SIP provisions identified in the Petition or by the EPA?

A. Overview of the EPA's Evaluation of Specific SIP Provisions

In reviewing the Petitioner's concerns with respect to the specific SIP provisions identified in the Petition, the EPA notes that most of the provisions relate to a small number of common issues. Many of these provisions are as old as the original SIPs that the EPA approved in the early 1970s, when the states and the EPA had limited experience in evaluating the provisions' adequacy, enforceability and consistency with CAA requirements.

In some instances the EPA does not agree with the Petitioner's reading of the provision in question, or with the Petitioner's conclusion that the provision is inconsistent with the requirements of the CAA. However, given the common issues that arise for multiple states in the Petition as well as in the EPA's independent evaluation, there are some overarching conceptual points that merit discussion in general terms. Thus, this section IX.A of the document provides a general discussion of each of the overarching points, including a summary of what the EPA proposed to determine with respect to the relevant SIP provisions collectively. The EPA received comments on the proposed determinations from affected states, the Petitioner and other commenters. A detailed discussion of the comments received with the EPA's responses is provided in the Response to Comment document available in the docket for this rulemaking.

Sections IX.B through IX.K of this document name the specific SIP provisions identified in the Petition or by the EPA, including a summary of what the EPA proposed and followed by the EPA's stated final action with respect to each SIP provision.

[388] *See* 40 CFR 70.7(f)(1)(i).

1. Automatic Exemption Provisions

A significant number of provisions identified by the Petitioner pertain to existing SIP provisions that create automatic exemptions for excess emissions during periods of SSM. Some of these provisions also pertain to exemptions for excess emissions that occur during maintenance, load change or other types of normal source operation. These provisions typically provide that a source subject to a specific SIP emission limitation is exempted from compliance during SSM, so that the excess emissions are defined as not violations. Most of these provisions are artifacts of the early phases of the SIP program, approved before state and EPA regulators recognized the implications of such exemptions. Whatever the genesis of these existing SIP provisions, however, these automatic exemptions from emission limitations are not consistent with the CAA, as the EPA has stated in its SSM Policy since at least 1982.

After evaluating the Petition, the EPA proposed to determine that a number of states have existing SIP provisions that create impermissible automatic exemptions for excess emissions during malfunctions or during startup, shutdown or other types of normal source operation. In those instances where the EPA agreed that a SIP provision identified by the Petitioner contained such an exemption contrary to the requirements of the CAA, the EPA proposed to grant the Petition and accordingly to issue a SIP call to the appropriate state.

2. Director's Discretion Exemption Provisions

Another category of problematic SIP provision identified by the Petitioner is exemptions for excess emissions that, while not automatic, are exemptions for such emissions granted at the discretion of state regulatory personnel. In some cases, the SIP provision in question may provide some minimal degree of process and some parameters for the granting of such discretionary exemptions, but the typical provision at issue allows state personnel to decide unilaterally and without meaningful limitations that what would otherwise be a violation of the applicable emission limitation is instead exempt. Because the state personnel have the authority to decide that the excess emissions at issue are not a violation of the applicable emission limitation, such a decision would transform the violation into a nonviolation, thereby barring enforcement by the EPA or others.

The EPA refers to this type of provision as a ''director's discretion'' provision, and the EPA interprets the CAA generally to forbid such provisions in SIPs because they have the potential to undermine fundamental statutory objectives such as the attainment and maintenance of the NAAQS and to undermine effective enforcement of the SIP. As described in sections VII.C and VIII.A.3 of this document, unbounded director's discretion provisions purport to allow unilateral revisions of approved SIP provisions without meeting the applicable statutory substantive and procedural requirements for SIP revisions. The specific SIP provisions at issue in the Petition are especially inappropriate because they purport to allow discretionary creation of case-by-case exemptions from the applicable emission limitations, when the CAA does not permit any such exemptions in the first instance. The practical impact of such provisions is that in effect they transform an enforcement discretion decision by the state (*e.g.,* that the excess emission from a given SSM event should be excused for some reason) into an exemption from compliance that also prevents enforcement by the EPA or through a citizen suit. The EPA's longstanding SSM Policy has interpreted the CAA to preclude SIP provisions in which a state's exercise of its own enforcement discretion bars enforcement by the EPA or through a citizen suit. Where the EPA agreed that a SIP provision identified by the Petitioner contained such a discretionary exemption contrary to the requirements of the CAA, the EPA proposed to grant the Petition and to call for the state to rectify the problem.

3. State-Only Enforcement Discretion Provisions

The Petitioner identified existing SIP provisions in many states that ostensibly pertain to parameters for the exercise of enforcement discretion by state personnel for violations due to excess emissions during SSM events. The EPA's SSM Policy has consistently encouraged states to utilize traditional enforcement discretion within appropriate bounds for such violations and, in the 1982 SSM Guidance, explicitly recommended criteria that states might consider in the event that they elected to formalize their enforcement discretion with provisions in the SIP. The intent has been that such enforcement discretion provisions in a SIP would be ''state-only,'' meaning that the provisions apply only to the state's own enforcement personnel and not to the EPA or to others.

The EPA determined that a number of states have SIP provisions that, when evaluated carefully, could reasonably be construed to allow the state to make enforcement discretion decisions that would purport to foreclose enforcement by the EPA under CAA section 113 or by citizens under section 304. In those instances where the EPA agreed that a specific provision could have the effect of impeding adequate enforcement of the requirements of the SIP by parties other than the state, the EPA proposed to grant the Petition and to take action to rectify the problem. By contrast, where the EPA's evaluation indicated that the existing provision on its face or as reasonably construed could not be read to preclude enforcement by parties other than the state, the EPA proposed to deny the Petition, and the EPA invited comment on this issue in particular to assure that the state and the EPA have a common understanding that the provision does not have any impact on potential enforcement by the EPA or through a citizen suit. This process was intended to ensure that there is no misunderstanding in the future that the correct reading of the SIP provision would not bar enforcement by the EPA or through a citizen suit when the state elected to exercise its own enforcement discretion.

In the February 2013 proposal, the EPA noted that another method by which to eliminate any potential ambiguity about the meaning of these enforcement discretion provisions would be for the state to revise its SIP to remove the provisions. Because these provisions are only applicable to the state, the EPA's view was, and still is, that the provisions need not be included within the SIP. Thus, the EPA supports states that elect to revise their SIPs to remove these provisions to avoid any unnecessary confusion.

4. Affirmative Defense Provisions

The Petitioner asked the EPA to rescind its SSM Policy element that interpreted the CAA to allow SIPs to include affirmative defenses for violations due to excess emissions during any type of SSM events. Related to this request, the Petitioner asked the EPA to find that states with SIPs containing an affirmative defense to monetary penalties for excess emissions during SSM events are substantially inadequate because they do not comply with the CAA. If the EPA were to deny the Petitioner's request that the EPA revise its interpretation of the CAA, the Petitioner asked that the EPA in the alternative require states with SIPs that contain such affirmative defense provisions to revise them so that they are consistent with the EPA's 1999 SSM Guidance for excess emissions during SSM events and to issue a SIP call to states with provisions inconsistent with the EPA's interpretation of the CAA.

The Petitioner drew no distinction between affirmative defense provisions for malfunctions versus affirmative defense provisions for startup and shutdown or other normal modes of operation. As explained in section IV.B of the February 2013 proposal, the EPA did make such distinction in its proposed response to the Petition, at that time proposing to revise its SSM Policy to reflect an interpretation of the CAA that affirmative defense provisions applicable during startup and shutdown were not appropriate but reasoning that affirmative defense provisions remained appropriate for violations when due to malfunction events. Thus, in the February 2013 proposal, the EPA proposed to issue a SIP call to a state to rectify a problem with an affirmative defense provision only if the provision included an affirmative defense that was applicable to excess emissions during startup and shutdown or included an affirmative defense that was applicable to excess emissions during malfunctions but was inconsistent with the criteria recommended in the EPA's SSM Policy.

Subsequent to that February 2013 proposal, a federal court ruled that the CAA precludes authority of the EPA to create affirmative defense provisions applicable to private civil suits. The *NRDC* v. *EPA* decision pertained to a challenge to the EPA's NESHAP regulations issued pursuant to CAA section 112 to regulate hazardous air pollutants from sources that manufacture Portland cement.[389] As explained in detail in section V of the SNPR, the court's decision in *NRDC* v. *EPA* compelled the Agency to revise its interpretation of the CAA concerning the legal basis for affirmative defense provisions. As a result, the EPA proposed in the SNPR to further revise its SSM Policy with respect to affirmative defense provisions applicable to excess emissions during SSM events (as described in section V of the SNPR) and to apply its revised interpretation of the CAA to specific provisions in the SIPs of particular states (as described in section VII of the SNPR).

For some of the affirmative defense provisions identified by the Petitioner, the EPA in the SNPR reproposed granting of the Petition but proposed a revised basis for its proposed findings of inadequacy and SIP calls. For other affirmative defense provisions identified

[389] *NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir. 2014).

by the Petitioner, the EPA in the SNPR reversed its prior proposed denial of the Petition, and it newly proposed findings of inadequacy and SIP calls. Further, for some affirmative defense provisions that were not explicitly identified by the Petitioner, the EPA in the SNPR proposed findings of inadequacy and SIP calls for additional affirmative defense provisions that were not explicitly identified by the Petitioner.

B. Affected States in EPA Region I

1. Maine

As described in section IX.B.1 of the February 2013 proposal, the Petitioner first objected to a specific provision in the Maine SIP that provides an exemption for certain boilers from otherwise applicable SIP visible emission limits during startup and shutdown (06–096–101 Me. Code R. § 3). Second, the Petitioner objected to a provision that empowers the state to ''exempt emissions occurring during periods of unavoidable malfunction or unplanned shutdown from civil penalty under section 349, subsection 2'' (06–096–101 Me. Code R. § 4).

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to 06–096–101 Me. Code R. § 3 and 06–096–101 Me. Code R. § 4.

Consequently, the EPA proposed to find that 06–096–101 Me. Code R. § 3 and 06–096–101 Me. Code R. § 4 are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to 06–096–101 Me. Code R. § 3 and 06–096–101 Me. Code R. § 4. Accordingly, the EPA is finding that these provisions are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call to Maine to correct its SIP with respect to these provisions. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Maine SIP that the EPA received and considered during the development of this rulemaking.

2. New Hampshire

As described in section IX.B.2 of the February 2013 proposal, the Petitioner objected to two generally applicable provisions in the New Hampshire SIP that allow emissions in excess of otherwise applicable SIP emission limitations during ''malfunction or breakdown of any component part of the air pollution control equipment.'' The Petitioner argued that the challenged provisions provide an automatic exemption for excess emissions during the first 48 hours when any component part of air pollution control equipment malfunctions (N.H. Code R. Env-A 902.03) and further provide that ''[t]he director may . . . grant an extension of time or a temporary variance'' for excess emissions outside of the initial 48-hour time period (N.H. Code R. Env-A 902.04). Second, the Petitioner objected to two specific provisions in the New Hampshire SIP that provide source-specific exemptions for periods of startup for ''any process, manufacturing and service industry'' (N.H. Code R. Env-A 1203.05) and for pre-June 1974 asphalt plants during startup, provided they are at 60-percent opacity for no more than 3 minutes (N.H. Code R. Env-A 1207.02).

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to N.H. Code R. Env-A 902.03, N.H. Code R. Env-A 1203.05 and N.H. Code R. Env-A 902.04. Also for reasons explained fully in the February 2013 proposal, the EPA proposed to deny the Petition with respect to N.H. Code R. Env-A 1207.02.

Consequently, the EPA proposed to find that N.H. Code R. Env-A 902.03, N.H. Code R. Env-A 1203.05 and N.H. Code R. Env-A 902.04 were substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions. Through comments submitted on the February 2013 proposal, however, the EPA has ascertained that the versions of N.H. Code R. Env-A 902.03 and N.H. Code R. Env-A 902.04 identified in the Petition and evaluated in the February 2013 proposal are no longer in the state's SIP. In November 2012, the EPA approved a SIP revision that replaced N.H. Code R. Env-A 902.03 and N.H. Code R. Env-A 902.04 with a new version of Env-A 900 that does not contain the deficient provisions identified in the February 2013 proposal.[390] These provisions no longer exist for purposes of state or federal law. In addition, the EPA has determined that the version of N.H. Code R. Env-A 1203.05 identified in the Petition and the February 2013 proposal is no longer in the state's SIP as a result of another SIP revision.[391] Because these three provisions are no longer components of the EPA-approved SIP for the state of New Hampshire, the Petition is moot with respect to these provisions and there is no need for a SIP call with respect to these no longer extant provisions.

In this final action, the EPA is denying the Petition with respect to N.H. Code R. Env-A 902.03, N.H. Code R. Env-A 902.04, N.H. Code R. Env-A 1203.05 and N.H. Code R. Env-A 1207.02. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the New Hampshire SIP that the EPA received and considered during the development of this rulemaking.

3. Rhode Island

As described in section IX.B.3 of the February 2013 proposal, the Petitioner objected to a generally applicable provision in the Rhode Island SIP that allows for a case-by-case petition procedure whereby a source can obtain a variance from state personnel under R.I. Gen. Laws § 23–23–15 to continue to operate during a malfunction of its control equipment that lasts more than 24 hours, if the source demonstrates that enforcement would constitute undue hardship without a corresponding benefit (25–4–13 R.I. Code R. § 16.2).

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to 25–4–13 R.I. Code R. § 16.2.

Consequently, the EPA proposed to find that 25–4–13 R.I. Code R. § 16.2 is substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to this provision.

In this final action, the EPA is granting the Petition with respect to 25–4–13 R.I. Code R. § 16.2. Accordingly, the EPA is finding that this provision is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to this provision. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Rhode Island SIP that the EPA received and considered during the development of this rulemaking.

[390] *See* ''Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Reasonably Available Control Technology for the 1997 8-Hour Ozone Standard; Direct final rule,'' 77 FR 66388 (November 5, 2012).

[391] *See* ''Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Reasonably Available Control Technology Update To Address Control Techniques Guidelines Issued in 2006, 2007, and 2008; Direct final rule,'' 77 FR 66921 (November 8, 2012).

C. Affected State in EPA Region II

New Jersey

As described in section IX.C.1 of the February 2013 proposal, the Petitioner objected to two specific provisions in the New Jersey SIP that allow for automatic exemptions for excess emissions during emergency situations. The Petitioner objected to the first provision because it provides industrial process units that have the potential to emit sulfur compounds an exemption from the otherwise applicable sulfur emission limitations where ''[t]he discharge from any stack or chimney [has] the sole function of relieving pressure of gas, vapor or liquid under abnormal emergency conditions'' (N.J. Admin. Code 7:27–7.2(k)(2)). The Petitioner objected to the second provision because it provides electric generating units (EGUs) an exemption from the otherwise applicable NO_X emission limitations when the unit is operating at ''emergency capacity,'' also known as a ''MEG alert,'' which is statutorily defined as a period in which one or more EGUs is operating at emergency capacity at the direction of the load dispatcher in order to prevent or mitigate voltage reductions or interruptions in electric service, or both (N.J. Admin. Code 7:27–19.1).

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to N.J. Admin. Code 7:27–7.2(k)(2). Also for reasons explained fully in the February 2013 proposal, the EPA proposed to deny the Petition with respect to N.J. Admin. Code 7:27–19.1.

Consequently, the EPA proposed to find that N.J. Admin. Code 7:27–7.2(k)(2) is substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to this provision.

In this final action, the EPA is granting the Petition with respect to N.J. Admin. Code 7:27–7.2(k)(2) and denying the Petition with respect to N.J. Admin. Code 7:27–19.1. Accordingly, the EPA is finding that the provision in N.J. Admin. Code 7:27–7.2(k)(2) is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to this provision. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the New Jersey SIP that the EPA received and considered during the development of this rulemaking.

D. Affected States in EPA Region III

1. Delaware

As described in section IX.D.1 of the February 2013 proposal, the Petitioner objected to seven provisions in the Delaware SIP that provide exemptions during startup and shutdown from the otherwise applicable SIP emission limitations. The seven source-specific and pollutant-specific provisions that provide exemptions during periods of startup and shutdown are: 7–1100–1104 Del. Code Regs § 1.5 (Particulate Emissions from Fuel Burning Equipment); 7–1100–1105 Del. Code Regs § 1.7 (Particulate Emissions from Industrial Process Operations); 7–1100–1108 Del. Code Regs § 1.2 (Sulfur Dioxide Emissions from Fuel Burning Equipment); 7–1100–1109 Del. Code Regs § 1.4 (Emissions of Sulfur Compounds From Industrial Operations); 7–1100–1114 Del. Code Regs § 1.3 (Visible Emissions); 7–1100–1124 Del. Code Regs § 1.4 (Control of Volatile Organic Compound Emissions); and 7–1100–1142 Del. Code Regs § 2.3.5 (Specific Emission Control Requirements).

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to 7–1100–1104 Del. Code Regs § 1.5, 7–1100–1105 Del. Code Regs § 1.7, 7–1100–1108 Del. Code Regs § 1.2, 7–1100–1109 Del. Code Regs § 1.4, 7–1100–1114 Del. Code Regs § 1.3, 7–1100–1124 Del. Code Regs § 1.4 and 7–1100–1142 Del. Code Regs § 2.3.5.

Consequently, the EPA proposed to find that 7–1100–1104 Del. Code Regs § 1.5, 7–1100–1105 Del. Code Regs § 1.7, 7–1100–1108 Del. Code Regs § 1.2, 7–1100–1109 Del. Code Regs § 1.4, 7–1100–1114 Del. Code Regs § 1.3, 7–1100–1124 Del. Code Regs § 1.4 and 7–1100–1142 Del. Code Regs § 2.3.5 are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to 7–1100–1104 Del. Code Regs § 1.5, 7–1100–1105 Del. Code Regs § 1.7, 7–1100–1108 Del. Code Regs § 1.2, 7–1100–1109 Del. Code Regs § 1.4, 7–1100–1114 Del. Code Regs § 1.3, 7–1100–1124 Del. Code Regs § 1.4 and 7–1100–1142 Del. Code Regs § 2.3.1.6 (updated to § 2.3.1.6 from earlier identification as § 2.3.5). Accordingly, the EPA is finding that these provisions are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to these provisions.

2. District of Columbia

As described in section IX.D.2 of the February 2013 proposal, the Petitioner objected to five provisions in the District of Columbia (DC) SIP as being inconsistent with the CAA and the EPA's SSM Policy. The Petitioner first objected to a generally applicable provision in the DC SIP that allows for discretionary exemptions during periods of maintenance or malfunction (D.C. Mun. Regs. tit. 20 § 107.3). Secondly, the Petitioner objected to the alternative limitations on stationary sources for visible emissions during periods of ''start-up, cleaning, soot blowing, adjustment of combustion controls, or malfunction,'' (D.C. Mun. Regs. tit. 20 § 606.1) and, for fuel-burning equipment placed in initial operation before January 1977, alternative limits for visible emissions during startup and shutdown (D.C. Mun. Regs. tit. 20 § 606.2). The Petitioner also objected to the exemption from emission limitations for emergency standby engines (D.C. Mun. Regs. tit. 20 § 805.1(c)(2)). Finally, the Petitioner objected to the provision in the DC SIP that provides an affirmative defense for violations of visible emission limitations during ''unavoidable malfunction'' (D.C. Mun. Regs. tit. 20 § 606.4).

For reasons explained in the February 2013 proposal, the EPA proposed to grant the Petition with respect to D.C. Mun. Regs. tit. 20 § 107.3 and D.C. Mun. Regs. tit. 20 §§ 606.1 and 606.2. Also for reasons explained in the February 2013 proposal, the EPA proposed to deny the Petition with respect to D.C. Mun. Regs. tit. 20 § 805.1(c)(2). Also for reasons explained in the February 2013 proposal, the EPA proposed to grant the petition with respect to D.C. Mun. Regs. tit. 20 § 606.4 on the basis that it was not a permissible affirmative defense provision consistent with the requirements of the CAA as interpreted in the EPA's SSM Policy at the time.

Subsequently, for reasons explained in the SNPR, the EPA reproposed granting of the Petition with respect to the affirmative defense provision in D.C. Mun. Regs. tit. 20 § 606.4, but it proposed to revise the basis for the finding of substantial inadequacy and the SIP call for this provision.

Consequently, the EPA proposed to find that D.C. Mun. Regs. tit. 20 § 107.3, D.C. Mun. Regs. tit. 20 §§ 606.1 and 606.2 and D.C. Mun. Regs. tit. 20 § 606.4 are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to D.C. Mun. Regs. tit. 20 § 107.3, D.C. Mun. Regs. tit. 20 §§ 606.1 and 606.2 and D.C. Mun. Regs. tit. 20 § 606.4 and is denying the Petition with respect to D.C. Mun. Regs. tit. 20 § 805.1(c)(2). Accordingly, the EPA is finding that the provisions in D.C. Mun. Regs. tit. 20 § 107.3, D.C. Mun. Regs. tit. 20 §§ 606.1 and 606.2 and D.C. Mun. Regs. tit. 20 § 606.4 are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call to the District of Columbia to correct its SIP with respect to these provisions. This action is fully consistent with what the EPA proposed in February 2013 as revised in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the DC SIP that the EPA received and considered during the development of this rulemaking.

3. Virginia

As described in section IX.D.3 of the February 2013 proposal, the Petitioner objected to a generally applicable provision in the Virginia SIP that allows for discretionary exemptions during periods of malfunction (9 Va. Admin. Code § 5–20–180(G)). First, the Petitioner objected because this provision provides an exemption from the otherwise applicable SIP emission limitations. Second, the Petitioner objected to the discretionary exemption for excess emissions during malfunction because the provision gives the state the authority to determine whether a violation ''shall be judged to have taken place.'' Third, the Petitioner argued that while the regulation provides criteria, akin to an affirmative defense, by which the state must make such a judgment that the event is not a violation, the criteria ''fall far short of EPA policy at the time'' and the provision ''fails to establish any procedure through which the criteria are to be evaluated.''

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to 9 Va. Admin. Code § 5–20–180(G). Also for reasons explained in the February 2013 proposal, the EPA proposed to grant the Petition with respect to this provision on the basis that it was not a permissible affirmative defense provision consistent with the requirements of the CAA as interpreted in the EPA's SSM Policy.

Subsequently, for reasons explained in the SNPR, the EPA reproposed granting of the Petition with respect to 9 Va. Admin. Code § 5–20–180(G), but it proposed to revise the basis for the finding of substantial inadequacy and the SIP call for this provision.

Consequently, the EPA proposed to find that 9 Va. Admin. Code § 5–20–180(G) is substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to this provision.

In this final action, the EPA is granting the Petition with respect to 9 Va. Admin. Code § 5–20–180(G) and the EPA is thus issuing a SIP call with respect to this provision. This action is fully consistent with what the EPA proposed in February 2013 as revised in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Virginia SIP that the EPA received and considered during the development of this rulemaking.

4. West Virginia

As described in section IX.D.4 of the February 2013 proposal, the Petitioner made four types of objections identifying inadequacies regarding SSM provisions in West Virginia's SIP. First, the Petitioner objected to three specific provisions in the West Virginia SIP that allow for automatic exemptions from emission limitations, standards, and monitoring and recordkeeping requirements for excess emission during startup, shutdown, or malfunction (W. Va. Code R. § 45–2–9.1, W. Va. Code R. § 45–7–10.3 and W. Va. Code R. § 45–40–100.8). Second, the Petitioner objected to seven discretionary exemption provisions because these provisions provide exemptions from the otherwise applicable SIP emission limitations. The Petitioner noted that the provisions allow a state official to ''grant an exception to the otherwise applicable visible emissions standards'' due to ''unavoidable shortage of fuel'' or ''any emergency situation or condition creating a threat to public safety or welfare'' (W. Va. Code R. § 45–2–10.1), to permit excess emissions ''due to unavoidable malfunctions of equipment'' (W. Va. Code R. § 45–3–7.1, W. Va. Code R. § 45–5–13.1, W. Va. Code R. § 45–6–8.2, W. Va. Code R. § 45–7–9.1 and W. Va. Code R. § 45–10–9.1) and to permit exceedances where the limit cannot be ''satisfied'' because of ''routine maintenance'' or ''unavoidable malfunction'' (W. Va. Code R. § 45–21–9.3). Third, the Petitioner objected to the alternative limit imposed on hot mix asphalt plants during periods of startup and shutdown in W. Va. Code R. § 45–3–3.2 because it was ''not sufficiently justified'' under the EPA's SSM Policy regarding source category-specific rules. Fourth, the Petitioner objected to a discretionary provision allowing the state to approve an alternative visible emission standard during startups and shutdowns for manufacturing processes and associated operations (W. Va. Code R. § 45–7–10.4). The Petitioner argued that such a provision ''allows a decision of the state to preclude enforcement by EPA and citizens.''

For reasons explained in the February 2013 proposal, the EPA proposed to grant the Petition with respect to W. Va. Code R. § 45–2–9.1, W. Va. Code R. § 45–7–10.3 and W. Va. Code R. § 45–40–100.8 on the basis that each of these provisions allows for automatic exemptions. Also for reasons explained in the February 2013 proposal, the EPA proposed to grant the Petition with respect to W. Va. Code R. § 45–2–10.1, W. Va. Code R. § 45–3–7.1, W. Va. Code R. § 45–5–13.1, W. Va. Code R. § 45–6–8.2, W. Va. Code R. § 45–7–9.1, W. Va. Code R. § 45–10–9.1 and W. Va. Code R. § 45–21–9.3 on the basis that these provisions allow for discretionary exemptions from otherwise applicable SIP emission limitations. Further, for reasons explained in the February 2013 proposal, the EPA proposed to grant the Petition with respect to W. Va. Code R. § 45–3–3.2, W. Va. Code R. § 45–2–10.2 and W. Va. Code R. § 45–7–10.4. The W. Va. Code R. § 45–3–3.2 applies to a broad category of sources and is not narrowly limited to a source category that uses a specific control strategy, as required by the EPA's SSM Policy interpreting the CAA. Similarly, W. Va. Code R. § 45–2–10.2 is inconsistent with the EPA's SSM Policy interpreting the CAA because it is an alternative limit that allows for discretionary exemptions from otherwise applicable SIP emission limitations.[392] The W. Va. Code R. § 45–

[392] As explained in the February 2013 proposal, the Petitioner specifically focused on concern with W. Va. Code R. § 45–2–10.1, but the same issue affects W. Va. Code R. § 45–2–10.2, and so the EPA similarly proposed to issue a SIP call with respect to the latter provision. *See* 78 FR 12459 at 12500, n.111. W. Va. Code R. § 45–2–10.2 is an alternative limit that applies during periods of maintenance. In the February 2013 proposal, the EPA noted that this provision was inconsistent with the EPA's SSM Policy interpreting the CAA because it was an alternative limit that specifically applied during periods of maintenance. Although the EPA originally contemplated that an alternative emission limitation could appropriately apply only during startup or shutdown, the EPA recognizes in section VII.B of this document that it may be appropriate for an air agency to establish alternative emission limitations that apply during modes of source operation other than during startup and shutdown, but any such alternative emission limitations should be developed using the same criteria that the EPA recommends for those applicable during startup and shutdown. The alternative emission limitation applicable during maintenance does not appear to have been developed using the

Continued

7–10.4 allows state officials the discretion to establish alternative visible emissions standards during startup and shutdown upon application.

Subsequently, for reasons explained fully in the SNPR, the EPA identified one affirmative defense provision in the West Virginia SIP in W. Va. Code R. § 45–2–9.4 that was not identified by the Petitioner, and the EPA proposed to make a finding of substantial inadequacy and to issue a SIP call for this provision.

Consequently, the EPA proposed to find that W. Va. Code R. § 45–2–9.1, W. Va. Code R. § 45–7–10.3, W. Va. Code R. § 45–40–100.8, W. Va. Code R. § 45–2–10.1, W. Va. Code R. § 45–3–7.1, W. Va. Code R. § 45–5–13.1, W. Va. Code R. § 45–6–8.2, W. Va. Code R. § 45–7–9.1, W. Va. Code R. § 45–10–9.1, W. Va. Code R. § 45–21–9.3, W. Va. Code R. § 45–3–3.2 and W. Va. Code R. § 45–7–10.4, which are provisions identified by the Petitioner, and W. Va. Code R. § 45–2–10.2 and W. Va. Code R. § 45–2–9.4, which are provisions identified by the EPA, are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to the West Virginia SIP provisions identified by the Petitioner. Accordingly, the EPA is finding that the provisions in W. Va. Code R. § 45–2–9.1, W. Va. Code R. § 45–7–10.3, W. Va. Code R. § 45–40–100.8, W. Va. Code R. § 45–2–10.1, W. Va. Code R. § 45–3–7.1, W. Va. Code R. § 45–5–13.1, W. Va. Code R. § 45–6–8.2, W. Va. Code R. § 45–7–9.1, W. Va. Code R. § 45–10–9.1, W. Va. Code R. § 45–21–9.3, W. Va. Code R. § 45–3–3.2 and W. Va. Code R. § 45–7–10.4, which are provisions identified by the Petitioner, and W. Va. Code R. § 45–2–10.2 and W. Va. Code R. § 45–2–9.4, which are provisions identified by the EPA, are substantially inadequate to meet CAA requirements. The EPA is thus issuing a SIP call to West Virginia to correct its SIP with respect to these provisions. This action is fully consistent with what the EPA proposed in February 2013 as revised in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the West Virginia SIP that the EPA received and considered during the development of this rulemaking.

E. Affected States and Local Jurisdictions in EPA Region IV

1. Alabama

As described in section IX.E.1 of the February 2013 proposal, the Petitioner objected to two generally applicable provisions in the Alabama SIP that allow for discretionary exemptions during startup, shutdown or load change (Ala Admin Code Rule 335–3–14–.03(1)(h)(1)), and during emergencies (Ala Admin Code Rule 335–3–14–.03(1)(h)(2)).

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to Ala Admin Code Rule 335–3–14–.03(1)(h)(1) and Ala Admin Code Rule 335–3–14–.03(1)(h)(2).

Consequently, the EPA proposed to find that Ala Admin Code Rule 335–3–14–.03(1)(h)(1) and Ala Admin Code Rule 335–3–14–.03(1)(h)(2) are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to Ala Admin Code Rule 335–3–14–.03(1)(h)(1) and Ala Admin Code Rule 335–3–14–.03(1)(h)(2). Accordingly, the EPA is finding that these provisions are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to these provision. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Alabama SIP that the EPA received and considered during the development of this rulemaking.

2. Florida

As described in section IX.E.2 of the February 2013 proposal, the Petitioner objected to three specific provisions in the Florida SIP that allow for generally applicable automatic exemptions for excess emissions during SSM (Fla. Admin. Code Ann Rule 62–210.700(1)), for fossil fuel steam generators during startup and shutdown (Fla. Admin. Code Ann Rule 62–210.700(2)), and for such sources during boiler cleaning and load change (Fla. Admin. Code Ann Rule 62–210.700(3)).[393] After objecting to the three provisions that create the exemptions, the Petitioner noted that the related provision in Fla. Admin. Code Ann Rule 62–210.700(4) reduces the potential scope of the exemptions in the other three provisions if the excess emissions at issue are caused entirely or in part by things such as poor maintenance but that it does not eliminate the impermissible exemptions.

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to Fla. Admin. Code Ann Rule 62–210.700(1), Fla. Admin. Code Ann Rule 62–210.700(2), Fla. Admin. Code Ann Rule 62–210.700(3) and Fla. Admin. Code Ann Rule 62–210.700(4).

Consequently, the EPA proposed to find that Fla. Admin. Code Ann Rule 62–210.700(1), Fla. Admin. Code Ann Rule 62–210.700(2), Fla. Admin. Code Ann Rule 62–210.700(3) and Fla. Admin. Code Ann Rule 62–210.700(4) are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to Fla. Admin. Code Ann Rule 62–210.700(1), Fla. Admin. Code Ann Rule 62–210.700(2), Fla. Admin. Code Ann Rule 62–210.700(3) and Fla. Admin. Code Ann Rule 62–210.700(4). Accordingly, the EPA is finding that these provisions are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to these provisions. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Florida SIP that the EPA received and considered during the development of this rulemaking.

3. Georgia

As described in section IX.E.3 of the February 2013 proposal, the Petitioner objected to a provision in the Georgia SIP that provides for exemptions for excess emissions during SSM under certain circumstances (Ga. Comp. R. & Regs. 391–3–1–.02(2)(a)(7)). The Petitioner acknowledged that this provision of the Georgia SIP includes some conditions for when sources may be entitled to seek the exemption under state law, such as when the source has

recommended criteria for such alternative emission limitations. In addition, the EPA finds that this provision, like W. Va. Code R. § 45–2–10.1, is also deficient because it allows for discretionary exemptions from otherwise applicable SIP emission limitations. As noted in the proposal, such provisions that authorize director's discretion exemptions are impermissible in SIPs.

[393] The EPA notes that in the February 2013 proposal, it incorrectly cited Fla. Admin. Code Ann Rule 52.201.700 when it intended to cite Rule 52.210.700. The transposition of numbers was a typographical error. Commenters on the proposal correctly recognized that the EPA intended to instead refer to Fla. Admin. Code Ann Rule 52.210.700. *See, e.g.,* comment letter received from the Florida Department of Environmental Protection, May 13, 2013, in the rulemaking docket at EPA–HQ–OAR–2012–0322–0878.

used ''best operational practices'' to minimize emissions during the SSM event.

First, the Petitioner objected because the provision creates an exemption from the applicable emission limitations by providing that the excess emissions ''shall be allowed'' subject to certain conditions. Second, the Petitioner argued that although the provision provides some ''substantive criteria,'' the provision does not meet the criteria the EPA recommended at the time for an affirmative defense provision consistent with the requirements of the CAA in the EPA's SSM Policy. Third, the Petitioner asserted that the provision is not a permissible ''enforcement discretion'' provision applicable only to state personnel, because it ''is susceptible to interpretation as an enforcement exemption, precluding EPA and citizen enforcement as well as state enforcement.''

For reasons explained in the February 2013 proposal, the EPA proposed to grant the Petition with respect to Ga. Comp. R. & Regs. 391–3–1–.02(2)(a)(7). Also for reasons explained in the February 2013 proposal, the EPA proposed to grant the Petition with respect to this provision on the basis that it was not a permissible affirmative defense provision consistent with the requirements of the CAA and the EPA's recommendations in the EPA's SSM Policy at the time.

Subsequently, for reasons explained in the SNPR, the EPA reproposed granting of the Petition with respect to Ga. Comp. R. & Regs. 391–3–1–.02(2)(a)(7), but it proposed to revise the basis for the finding of substantial inadequacy and the SIP call for this provision.

Consequently, the EPA proposed to find that Ga. Comp. R. & Regs. 391–3–1–.02(2)(a)(7) is substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to this provision.

In this final action, the EPA is granting the Petition with respect to Ga. Comp. R. & Regs. 391–3–1–.02(2)(a)(7). Accordingly, the EPA is finding that this provision is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to this provision. This action is fully consistent with what the EPA proposed in February 2013 as revised in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Georgia SIP that the EPA received and considered during the development of this rulemaking.

4. Kentucky

As described in section IX.E.4 of the February 2013 proposal, the Petitioner objected to a generally applicable provision that allows discretionary exemptions from otherwise applicable SIP emission limitations in Kentucky's SIP (401 KAR 50:055 § 1(1)).

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to 401 KAR 50:055 § 1(1).

Consequently, the EPA proposed to find that 401 KAR 50:055 § 1(1) is substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to this provision.

In this final action, the EPA is granting the Petition with respect to 401 KAR 50:055 § 1(1). Accordingly, the EPA is finding that this provision is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to this provision. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Kentucky SIP that the EPA received and considered during the development of this rulemaking.

5. Kentucky: Jefferson County

As described in section IX.E.5 of the February 2013 proposal, the Petitioner objected to a generally applicable provision in the Jefferson County Air Regulations 1.07 because it provided for discretionary exemptions from compliance with emission limitations during SSM. The provision required different demonstrations for exemptions for excess emissions during startup and shutdown (Regulation 1.07 § 3), malfunction (Regulation 1.07 § 4 and § 7) and emergency (Regulation 1.07 § 5 and § 7). Second, the Petitioner objected to the affirmative defense for emergencies in Jefferson County Air Regulations 1.07.

For reasons explained in the February 2013 proposal, the EPA proposed to grant the Petition with respect to provisions in the Jefferson County Air Regulations 1.07.

Subsequently, for reasons explained fully in the SNPR, the EPA reversed its prior proposed granting of the Petition with respect to Jefferson County Air Regulations 1.07. For Jefferson County, Kentucky, the provisions for which the EPA proposed in February 2013 to grant the Petition were subsequently removed from the SIP. Thus, in the SNPR, the EPA proposed instead to deny the Petition.[394] As explained in the SNPR, the state of Kentucky has revised the SIP provisions applicable to Jefferson County and eliminated the SIP inadequacies identified in the February 2013 proposal document. The EPA has already approved the necessary SIP revisions.[395] Accordingly, the EPA's final action on the Petition does not include a finding of substantial inadequacy and SIP call for Jefferson County, Kentucky.

In this final action, the EPA is denying the Petition with respect to Jefferson County Air Regulations 1.07. This action is fully consistent with what the EPA proposed in February 2013 as revised in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Kentucky SIP that the EPA received and considered during the development of this rulemaking.

6. Mississippi

As described in section IX.E.6 of the February 2013 proposal, the Petitioner objected to two generally applicable provisions in the Mississippi SIP that allow for affirmative defenses for violations of otherwise applicable SIP emission limitations during periods of upset, *i.e.,* malfunctions (11–1–2 Miss. Code R. § 10.1) and unavoidable maintenance (11–1–2 Miss. Code R. § 10.3). First, the Petitioner objected to both of these provisions based on its assertion that the CAA allows no affirmative defense provisions in SIPs. Second, the Petitioner asserted that even if affirmative defense provisions were permissible under the CAA, the affirmative defenses in these provisions ''fall far short of the EPA policy at the time.'' The Petitioner also objected to a generally applicable provision that provides an exemption from otherwise applicable SIP emission limitations during startup and shutdown (11–1–2 Miss. Code R. § 10.2).

For reasons explained in the February 2013 proposal, the EPA proposed to grant the Petition with respect to 11–1–2 Miss. Code R. § 10.1 and 11–1–2 Miss. Code R. § 10.3. Also for reasons explained in the February 2013 proposal, the EPA proposed to grant the petition with respect to these provisions on the basis that they were not appropriate as an affirmative defense provisions because they were

[394] *See* SNPR, 79 FR 55919 at 55925.

[395] *See* Approval and Promulgation of Implementation Plans; Kentucky; Approval of Revisions to the Jefferson County Portion of the Kentucky SIP; Emissions During Startups, Shutdowns, and Malfunctions, 79 FR 33101 (June 10, 2014).

inconsistent with fundamental requirements of the CAA. Also for reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to 11–1–2 Miss. Code R. § 10.2.

Subsequently, for reasons explained in the SNPR, the EPA reproposed granting of the Petition with respect to the affirmative defense provisions in 11–1–2 Miss. Code R. § 10.1 and 11–1–2 Miss. Code R. § 10.3, but it proposed to revise the basis for the finding of substantial inadequacy and the SIP call for these provisions.

Consequently, the EPA proposed to find that 11–1–2 Miss. Code R. § 10.1, 11–1–2 Miss. Code R. § 10.2 and 11–1–2 Miss. Code R. § 10.3 are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to 11–1–2 Miss. Code R. § 10.1, 11–1–2 Miss. Code R. § 10.2 and 11–1–2 Miss. Code R. § 10.3. Accordingly, the EPA is finding that these provisions are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to these provisions. This action is fully consistent with what the EPA proposed in February 2013 as revised in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Mississippi SIP that the EPA received and considered during the development of this rulemaking.

7. North Carolina

As described in section IX.E.7 of the February 2013 proposal, the Petitioner objected to two generally applicable provisions in the North Carolina SIP that provide exemptions for emissions exceeding otherwise applicable SIP emission limitations at the discretion of the state agency during malfunctions (15A N.C. Admin. Code 2D.0535(c)) and during startup and shutdown (15A N.C. Admin. Code 2D.0535(g)).

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to 15A N.C. Admin. Code 2D.0535(c) and 15A N.C. Admin. Code 2D.0535(g).

Consequently, the EPA proposed to find that 15A N.C. Admin. Code 2D.0535(c) and 15A N.C. Admin. Code 2D.0535(g) are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to 15A N.C. Admin. Code 2D.0535(c) and 15A N.C. Admin. Code 2D.0535(g). Accordingly, the EPA is finding that these provisions are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to these provisions. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the North Carolina SIP that the EPA received and considered during the development of this rulemaking.

8. North Carolina: Forsyth County

As described in section IX.E.8 of the February 2013 proposal, the Petitioner objected to two generally applicable provisions in the Forsyth County Code that provide exemptions for emissions exceeding otherwise applicable SIP emission limitations at the discretion of a local official during malfunctions (Forsyth County Code, ch. 3, 3D.0535(c)) and startup and shutdown (Forsyth County Code, ch. 3, 3D.0535(g)).

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to Forsyth County Code, ch. 3, 3D.0535(c) and Forsyth County Code, ch. 3, 3D.0535(g).

Consequently, the EPA proposed to find that Forsyth County Code, ch. 3, 3D.0535(c) and Forsyth County Code, ch. 3, 3D.0535(g) are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to Forsyth County Code, ch. 3, 3D.0535(c) and Forsyth County Code, ch. 3, 3D.0535(g). Accordingly, the EPA is finding that these provisions are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to these provisions. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the North Carolina SIP that the EPA received and considered during the development of this rulemaking.

9. South Carolina

As described in section IX.E.9 of the February 2013 proposal, the Petitioner objected to three provisions in the South Carolina SIP, arguing that they contained impermissible source category- and pollutant-specific exemptions. The Petitioner characterized these provisions as providing exemptions from opacity limits for fuel-burning operations for excess emissions that occur during startup or shutdown (S.C. Code Ann. Regs. 61–62.5 St 1(C)), exemptions from NO_X limits for special-use burners that are operated less than 500 hours per year (S.C. Code Ann. Regs. 61–62.5 St 5.2(I)(b)(14)) and exemptions from sulfur limits for kraft pulp mills for excess emissions that occur during SSM events (S.C. Code Ann. Regs. St 4(XI)(D)(4)).

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to S.C. Code Ann. Regs. 61–62.5 St 1(C) and S.C. Code Ann. Regs. St 4(XI)(D)(4). Also for reasons explained fully in the February 2013 proposal, the EPA proposed to deny the Petition with respect to S.C. Code Ann. Regs. 61–62.5 St 5.2(I)(b)(14).

Subsequently, for reasons explained fully in the SNPR, the EPA identified one affirmative defense provision in the South Carolina SIP in S.C. Code Ann. Regs. 62.1, Section II(G)(6) that was not identified by the Petitioner, and the EPA proposed to make a finding of substantial inadequacy and to issue a SIP call for this provision.

Consequently, the EPA proposed to find that the provisions in S.C. Code Ann. Regs. 61–62.5 St 1(C), S.C. Code Ann. Regs. St 4(XI)(D)(4) and S.C. Code Ann. Regs. 62.1, Section II(G)(6) are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to S.C. Code Ann. Regs. 61–62.5 St 1(C), S.C. Code Ann. Regs. St 4(XI)(D)(4) and S.C. Code Ann. Regs. 62.1, Section II(G)(6) and denying the Petition with respect to S.C. Code Ann. Regs. 61–62.5 St 5.2(I)(b)(14). Accordingly, the EPA is finding that the provisions in S.C. Code Ann. Regs. 61–62.5 St 1(C), S.C. Code Ann. Regs. St 4(XI)(D)(4) and S.C. Code Ann. Regs. 62.1, Section II(G)(6) are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to these provisions. This action is fully consistent with what the EPA proposed in February 2013 as revised in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the South Carolina SIP that the EPA received and considered during the development of this rulemaking.

10. Tennessee

As described in section IX.E.10 of the February 2013 proposal, the Petitioner objected to three provisions in the Tennessee SIP. First, the Petitioner objected to two provisions that authorize a state official to decide whether to ''excuse or proceed upon'' (Tenn. Comp. R. & Regs. 1200–3–20–.07(1)) violations of otherwise applicable SIP emission limitations that occur during ''malfunctions, startups, and shutdowns'' (Tenn. Comp. R. & Regs. 1200–3–20–.07(3)). Second, the Petitioner objected to a provision that excludes excess visible emissions from the requirement that the state automatically issue a notice of violation for all excess emissions (Tenn. Comp. R. & Regs. 1200–3–5–.02(1)). This provision states that ''due allowance may be made for visible emissions in excess of that permitted in this chapter which are necessary or unavoidable due to routine startup and shutdown conditions.''

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to Tenn. Comp. R. & Regs. 1200–3–20–.07(1), Tenn. Comp. R. & Regs. 1200–3–20–.07(3) and Tenn. Comp. R. & Regs. 1200–3–5–.02(1).

Consequently, the EPA proposed to find that Tenn. Comp. R. & Regs. 1200–3–20–.07(1), Tenn. Comp. R. & Regs. 1200–3–20–.07(3) and Tenn. Comp. R. & Regs. 1200–3–5–.02(1) are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to Tenn. Comp. R. & Regs. 1200–3–20–.07(1), Tenn. Comp. R. & Regs. 1200–3–20–.07(3) and Tenn. Comp. R. & Regs. 1200–3–5–.02(1). Accordingly, the EPA is finding that these provisions are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to these provisions. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Tennessee SIP that the EPA received and considered during the development of this rulemaking.

11. Tennessee: Knox County

As described in section IX.E.11 of the February 2013 proposal, the Petitioner objected to a provision in the Knox County portion of the Tennessee SIP that bars evidence of a violation of SIP emission limitations from being used in a citizen enforcement action (Knox County Regulation 32.1(C)). The provision specifies that ''[a] determination that there has been a violation of these regulations or orders issued pursuant thereto shall not be used in any law suit brought by any private citizen.''

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to Knox County Regulation 32.1(C). For instance, the regulation was inconsistent with requirements related to credible evidence.

Consequently, the EPA proposed to find that Knox County Regulation 32.1(C) is substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to this provision.

In this final action, the EPA is granting the Petition with respect to Knox County Regulation 32.1(C). Accordingly, the EPA is finding that this provision is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to this provision. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Tennessee SIP that the EPA received and considered during the development of this rulemaking.

12. Tennessee: Shelby County

As described in section IX.E.12 of the February 2013 proposal, the Petitioner objected to a provision in the Shelby County Code (Shelby County Code § 16–87) that addresses enforcement for excess emissions that occur during ''malfunctions, startups, and shutdowns'' by incorporating by reference the state's provisions in Tenn. Comp. R. & Regs. 1200–3–20. Shelby County Code § 16–87 provides that ''all such additions, deletions, changes and amendments as may subsequently be made'' to Tennessee's regulations will automatically become part of the Shelby County Code.

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to Shelby County Code § 16–87.

Consequently, the EPA proposed to find that Shelby County Code § 16–87 is substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to this provision.

In this final action, the EPA is granting the Petition with respect to Shelby County Code § 16–87. Accordingly, the EPA is finding that this provision is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to this provision. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Tennessee SIP that the EPA received and considered during the development of this rulemaking.

F. Affected States in EPA Region V

1. Illinois

As described in section IX.F.1 of the February 2013 proposal, the Petitioner objected to three generally applicable provisions in the Illinois SIP which together have the effect of providing discretionary exemptions from otherwise applicable SIP emission limitations. The Petitioner noted that the provisions invite sources to request, during the permitting process, advance permission to continue to operate during a malfunction or breakdown, and, similarly to request advance permission to ''violate'' otherwise applicable emission limitations during startup (Ill. Admin. Code tit. 35 § 201.261). The Illinois SIP provisions establish criteria that a state official must consider before granting the advance permission to violate the emission limitations (Ill. Admin. Code tit. 35 § 201.262). However, the Petitioner asserted, the provisions state that, once granted, the advance permission to violate the emission limitations ''shall be a prima facie defense to an enforcement action'' (Ill. Admin. Code tit. 35 § 201.265).

Further, the Petitioner objected to the use of the term ''prima facie defense'' in Ill. Admin. Code tit. 35 § 201.265, arguing that the term is ''ambiguous in its operation.'' The Petitioner argued that the provision is not clear regarding whether the defense is to be evaluated ''in a judicial or administrative proceeding or whether the Agency determines its availability.'' Allowing defenses to be raised in these undefined contexts, the Petitioner argued, is ''inconsistent with the enforcement structure of the Clean Air Act.''

For reasons explained in the February 2013 proposal, the EPA proposed to grant the Petition with respect to Ill. Admin. Code tit. 35 § 201.261, Ill. Admin. Code tit. 35 § 201.262 and Ill. Admin. Code tit. 35 § 201.265.

Subsequently, for reasons explained fully in the SNPR, the EPA reproposed granting of the Petition with respect to the affirmative defense provisions in Ill. Admin. Code tit. 35 § 201.261, Ill. Admin. Code tit. 35 § 201.262 and Ill.

Admin. Code tit. 35 § 201.265, but it proposed to revise the basis for the finding of substantial inadequacy and the SIP call for these provisions.

Consequently, the EPA proposed to find that Ill. Admin. Code tit. 35 § 201.261, Ill. Admin. Code tit. 35 § 201.262 and Ill. Admin. Code tit. 35 § 201.265 are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to Ill. Admin. Code tit. 35 § 201.261, Ill. Admin. Code tit. 35 § 201.262 and Ill. Admin. Code tit. 35 § 201.265. Accordingly, the EPA is finding that these provisions are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to these provisions. This action is fully consistent with what the EPA proposed in February 2013 as revised in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Illinois SIP that the EPA received and considered during the development of this rulemaking.

2. Indiana

As described in section IX.F.2 of the February 2013 proposal, the Petitioner objected to a generally applicable provision in the Indiana SIP that allows for discretionary exemptions during malfunctions (326 Ind. Admin. Code 1–6–4(a)). The Petitioner noted that the provision is ambiguous because it states that excess emissions during malfunction periods ''shall not be considered a violation'' if the source demonstrates that a number of conditions are met (326 Ind. Admin. Code 1–6–4(a)), but the provision does not specify to whom or in what forum such demonstration must be made.

If the demonstration was required to have been made in a showing to the state, the Petitioner argued, the provision would give a state official the sole authority to determine that the excess emissions were not a violation and could thus be read to preclude enforcement by the EPA or citizens in the event that the state official elects not to treat the excess emissions as a violation. If instead, as the Petitioner noted, the demonstration was required to have been made in an enforcement context, the provision could be interpreted as providing an affirmative defense.

For reasons explained in the February 2013 proposal, the EPA proposed to grant the Petition with respect to 326 Ind. Admin. Code 1–6–4(a).

Subsequently, for reasons explained fully in the SNPR, the EPA reproposed granting of the Petition with respect to 326 Ind. Admin. Code 1–6–4(a), but it proposed to revise the basis for the finding of substantial inadequacy and the SIP call for this provision.

Consequently, the EPA proposed to find that 326 Ind. Admin. Code 1–6–4(a) is substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to this provision.

In this final action, the EPA is granting the Petition with respect to 326 Ind. Admin. Code 1–6–4(a). Accordingly, the EPA is finding that this provision is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to this provision. This action is fully consistent with what the EPA proposed in February 2013 as revised in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Indiana SIP that the EPA received and considered during the development of this rulemaking.

3. Michigan

As described in section IX.F.3 of the February 2013 proposal, the Petitioner objected to a generally applicable provision in Michigan's SIP, Mich. Admin. Code r. 336.1916, that provides for an affirmative defense to monetary penalties for violations of otherwise applicable SIP emission limitations during periods of startup and shutdown.

For reasons explained in the February 2013 proposal, the EPA proposed to grant the Petition with respect to Mich. Admin. Code r. 336.1916.

Subsequently, for reasons explained fully in the SNPR, the EPA reproposed granting of the Petition with respect to the affirmative defense provision in Mich. Admin. Code r. 336.1916, but it proposed to revise the basis for the finding of substantial inadequacy and the SIP call for this provision.

Consequently, the EPA proposed to find that Mich. Admin. Code r. 336.1916 substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to this provision.

In this final action, the EPA is granting the Petition with respect to Mich. Admin. Code r. 336.1916. Accordingly, the EPA is finding that this provision is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to this provision. This action is fully consistent with what the EPA proposed in February 2013 as revised in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Michigan SIP that the EPA received and considered during the development of this rulemaking.

4. Minnesota

As described in section IX.F.4 of the February 2013 proposal, the Petitioner objected to a provision in the Minnesota SIP that provides automatic exemptions for excess emissions resulting from flared gas at petroleum refineries when those flares are caused by SSM (Minn. R. 7011.1415).

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to Minn. R. 7011.1415.

Consequently, the EPA proposed to find that Minn. R. 7011.1415 is substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to this provision.

In this final action, the EPA is granting the Petition with respect to Minn. R. 7011.1415. Accordingly, the EPA is finding that this provision is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to this provision. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Minnesota SIP that the EPA received and considered during the development of this rulemaking.

5. Ohio

As described in section IX.F.5 of the February 2013 proposal, the Petitioner objected to a generally applicable provision in the Ohio SIP that allows for discretionary exemptions during periods of scheduled maintenance (Ohio Admin. Code 3745–15–06(A)(3)). The Petitioner also objected to two source category-specific and pollutant-specific provisions that provide for discretionary exemptions during malfunctions (Ohio Admin. Code 3745–17–07(A)(3)(c) and Ohio Admin. Code 3745–17–07(B)(11)(f)). The Petitioner also objected to a source category-specific provision in the Ohio SIP that allows for an automatic exemption from applicable emission limitations and requirements during periods of startup, shutdown, malfunction, or regularly scheduled maintenance activities (Ohio Admin. Code 3745–14–11(D)). Finally, the Petitioner objected to five provisions that contain exemptions for Hospital/Medical/Infectious Waste Incinerator (HMIWI) sources during startup, shutdown, and malfunction—Ohio

Admin. Code 3745–75–02(E), Ohio Admin. Code 3745–75–02(J), Ohio Admin. Code 3745–75–03(I), Ohio Admin. Code 3745–75–04(K) and Ohio Admin. Code 3745–75–04(L).

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to Ohio Admin. Code 3745–15–06(A)(3), Ohio Admin. Code 3745–17–07(A)(3)(c), Ohio Admin. Code 3745–17–07(B)(11)(f) and Ohio Admin. Code 3745–14–11(D). Also for reasons explained fully in the February 2013 proposal, the EPA proposed to deny the Petition with respect to Ohio Admin. Code 3745–75–02(E), Ohio Admin. Code 3745–75–02(J), Ohio Admin. Code 3745–75–03(I), Ohio Admin. Code 3745–75–04(K) and Ohio Admin. Code 3745–75–04(L), on the basis that they are not part of the Ohio SIP and thus cannot represent a substantial inadequacy in the SIP. In addition, for reasons explained fully in the February 2013 proposal, the EPA proposed to find that another provision, Ohio Admin. Code 3745–15–06(C), is substantially inadequate to meet CAA requirements and proposed to issue a SIP call with respect to this provision, even though the Petitioner did not request that the EPA evaluate this provision. As explained in the February 2013 proposal, the EPA determined that Ohio Admin. Code 3745–15–06(C) was the regulatory mechanism in the SIP by which exemptions are granted in the two provisions to which the Petitioner did object.

Consequently, the EPA proposed to find that the provisions in Ohio Admin. Code 3745–15–06(A)(3), Ohio Admin. Code 3745–17–07(A)(3)(c), Ohio Admin. Code 3745–17–07(B)(11)(f), Ohio Admin. Code 3745–14–11(D) and Ohio Admin. Code 3745–15–06(C) are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to Ohio Admin. Code 3745–15–06(A)(3), Ohio Admin. Code 3745–17–07(A)(3)(c), Ohio Admin. Code 3745–17–07(B)(11)(f), Ohio Admin. Code 3745–14–11(D) and Ohio Admin. Code 3745–15–06(C) are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to these provisions. Also in this final action, the EPA is denying the Petition with respect to Ohio Admin. Code 3745–75–02(E), Ohio Admin. Code 3745–75–02(J), Ohio Admin. Code 3745–75–03(I), Ohio Admin. Code 3745–75–04(K) and Ohio Admin. Code 3745–75–04(L). This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Ohio SIP that the EPA received and considered during the development of this rulemaking.

G. Affected States in EPA Region VI

1. Arkansas

As described in section IX.G.1 of the February 2013 proposal, the Petitioner objected to two provisions in the Arkansas SIP. First, the Petitioner objected to a provision that provides an automatic exemption for excess emissions of VOC for sources located in Pulaski County that occur due to malfunctions (Reg. 19.1004(H)). Second, the Petitioner objected to a separate provision that provides a ''complete affirmative defense'' for excess emissions that occur during emergency conditions (Reg. 19.602). The Petitioner argued that this provision, which the state may have modeled after the EPA's title V regulations, is impermissible because its application is not clearly limited to operating permits.

For reasons explained in the February 2013 proposal, the EPA proposed to grant the Petition with respect to Reg. 19.1004(H) and Reg. 19.602.

Subsequently, for reasons explained fully in the SNPR, the EPA reproposed granting of the Petition with respect to the affirmative defense provision in Reg. 19.602, but it proposed to revise the basis for the finding of substantial inadequacy and the SIP call for this provision.

Consequently, the EPA proposed to find that Reg. 19.1004(H) and Reg. 19.602 [396] are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to Reg. 19.1004(H) and Reg. 19.602. Accordingly, the EPA is finding that these provisions are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to these provisions. This action is fully consistent with what the EPA proposed in February 2013 as revised in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Arkansas SIP that the EPA received and considered during the development of this rulemaking.

2. Louisiana

As described in section IX.G.2 of the February 2013 proposal, the Petitioner objected to several provisions in the Louisiana SIP that allow for automatic and discretionary exemptions from SIP emission limitations during various situations, including startup, shutdown, maintenance and malfunctions. First, the Petitioner objected to provisions that provide automatic exemptions for excess emissions of VOC from wastewater tanks (LAC 33:III.2153(B)(1)(i)) and excess emissions of NO_X from certain sources within the Baton Rouge Nonattainment Area (LAC 33:III.2201(C)(8)). The LAC 33:III.2153(B)(1)(i) provides that control devices ''shall not be required'' to meet emission limitations ''during periods of malfunction and maintenance on the devices for periods not to exceed 336 hours per year.'' Similarly, LAC 33:III.2201(C)(8) provides that certain sources ''are exempted'' from emission limitations ''during start-up and shutdown . . . or during a malfunction.'' Second, the Petitioner objected to provisions that provide discretionary exemptions to various emission limitations. Three of these provisions provide discretionary exemptions from otherwise applicable SO_2 and visible emission limitations in the Louisiana SIP for excess emissions that occur during certain startup and shutdown events (LAC 33:III.1107, LAC 33:III.1507(A)(1) and LAC 33:III.1507(B)(1)), while the other two provide such exemptions for excess emissions from nitric acid plants during startups and ''upsets'' (LAC 33:III.2307(C)(1)(a) and LAC 33:III.2307(C)(2)(a)).

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to LAC 33:III.2153(B)(1)(i) and LAC 33:III.2201(C)(8) on the basis that these provisions allow for automatic exemptions for excess emissions from otherwise applicable SIP emission limitations. Also for reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to LAC 33:III.1107(A), LAC 33:III.1507(A)(1), LAC 33:III.1507(B)(1), LAC 33:III.2307(C)(1)(a) and LAC 33:III.2307(C)(2)(a) on the basis that

[396] In a final action published March 4, 2015 (80 FR 11573), the EPA approved revisions of the Arkansas SIP pertaining to the regulation and permitting of $PM_{2.5}$. Among the approved revisions was a change to Reg. 19.602, to capitalize the letter ''C'' in that regulation's title, ''Emergency Conditions''). To the extent the EPA's recent action affected Reg. 19.602, that action was only a ministerial matter and should not be construed as reapproval of the provision on its merits. That action does not affect the basis on which the EPA proposed to find Reg. 19.602 substantially inadequate in the February 2013 proposal.

these provisions allow impermissible discretionary exemptions.

Consequently, the EPA proposed to find that LAC 33:III.2153(B)(1)(i), LAC 33:III.2201(C)(8), LAC 33:III.1107(A), LAC 33:III.1507(A)(1), LAC 33:III.1507(B)(1), LAC 33:III.2307(C)(1)(a) and LAC 33:III.2307(C)(2)(a) are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to LAC 33:III.2153(B)(1)(i), LAC 33:III.2201(C)(8), LAC 33:III.1107(A), LAC 33:III.1507(A)(1), LAC 33:III.1507(B)(1), LAC 33:III.2307(C)(1)(a) and LAC 33:III.2307(C)(2)(a). Accordingly, the EPA is finding that these provisions are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to these provisions. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Louisiana SIP that the EPA received and considered during the development of this rulemaking.

3. New Mexico

As described in section IX.G.3 of the February 2013 proposal, the Petitioner objected to three provisions in the New Mexico SIP that provide affirmative defenses for excess emissions that occur during malfunctions (20.2.7.111 NMAC), during startup and shutdown (20.2.7.112 NMAC) and during emergencies (20.2.7.113 NMAC).

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to 20.2.7.111 NMAC, 20.2.7.112 NMAC and 20.2.7.113 NMAC.

Subsequently, for reasons explained fully in the SNPR, the EPA reproposed granting of the Petition with respect to the affirmative defense provisions in 20.2.7.111 NMAC, 20.2.7.112 NMAC and 20.2.7.113 NMAC, but it proposed to revise the basis for the finding of substantial inadequacy and the SIP call for these provisions.

Consequently, the EPA proposed to find that the provisions in 20.2.7.111 NMAC, 20.2.7.112 NMAC and 20.2.7.113 NMAC are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to 20.2.7.111 NMAC, 20.2.7.112 NMAC and 20.2.7.113 NMAC. Accordingly, the EPA is finding that these provisions are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to these provisions. This action is fully consistent with what the EPA proposed in February 2013 as revised in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the New Mexico SIP that the EPA received and considered during the development of this rulemaking.

4. New Mexico: Albuquerque-Bernalillo County

The Petitioner did not identify any provisions in the SIP for the state of New Mexico that specifically apply in the Albuquerque-Bernalillo County area, which is why this area was not explicitly addressed in the February 2013 proposal.

Subsequently, for reasons explained fully in the SNPR, the EPA identified three affirmative defense provisions in the SIP for the state of New Mexico that apply in the Albuquerque-Bernalillo County area, and the EPA proposed to make a finding of substantial inadequacy and to issue a SIP call for these provisions. These provisions provide affirmative defenses available to sources for excess emissions that occur during malfunctions (20.11.49.16.A NMAC), during startup and shutdown (20.11.49.16.B NMAC) and during emergencies (20.11.49.16.C NMAC).

In this final action, the EPA is finding that the provisions in 20.11.49.16.A NMAC, 20.11.49.16.B NMAC and 20.11.49.16.C NMAC are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to these provisions. The EPA notes that removal of 20.11.49.16.A NMAC, 20.11.49.16.B NMAC and 20.11.49.16.C NMAC from the SIP will render 20.11.49.16.D NMAC, 20.11.49.16.E, 20.11.49.15.B (15) (concerning reporting by a source of intent to assert an affirmative defense for a violation), a portion of 20.11.49.6 NMAC (concerning the objective of establishing affirmative defense provisions) and 20.11.49.18 NMAC (concerning actions where a determination has been made under 20.11.49.16.E NMAC) superfluous and no longer operative, and the EPA thus recommends that these provisions be removed as well. This action is fully consistent with what the EPA proposed in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the New Mexico SIP that the EPA received and considered during the development of this rulemaking.

5. Oklahoma

As described in section IX.G.4 of the February 2013 proposal, the Petitioner objected to two provisions in the Oklahoma SIP that together allow for discretionary exemptions from emission limitations during startup, shutdown, maintenance and malfunctions (OAC 252:100–9–3(a) and OAC 252:100–9–3(b)).

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to OAC 252:100–9–3(a) and OAC 252:100–9–3(b).

Consequently, the EPA proposed to find that OAC 252:100–9–3(a) and OAC 252:100–9–3(b) are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to OAC 252:100–9–3(a) and OAC 252:100–9–3(b). Accordingly, the EPA is finding that these provisions are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to these provisions. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Oklahoma SIP that the EPA received and considered during the development of this rulemaking.

6. Texas

The Petitioner did not identify in the June 2011 petition any provisions in the SIP for the state of Texas, which is why this state was not explicitly addressed in the February 2013 proposal.

Subsequently, for reasons explained fully in the SNPR, the EPA identified four affirmative defense provisions in the SIP for the state of Texas, and the EPA proposed to make a finding of substantial inadequacy and to issue a SIP call for these provisions. These provisions provide affirmative defenses available to sources for excess emissions that occur during upsets (30 TAC 101.222(b)), unplanned events (30 TAC 101.222(c)), upsets with respect to opacity limits (30 TAC 101.222(d)) and unplanned events with respect to opacity limits (30 TAC 101.222(e)).

In this final action, the EPA is finding that the provisions in 30 TAC 101.222(b), 30 TAC 101.222(c), 30 TAC 101.222(d) and 30 TAC 101.222(e) are substantially inadequate to meet CAA requirements and the EPA is thus

issuing a SIP call with respect to these provisions. This action is fully consistent with what the EPA proposed in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Texas SIP that the EPA received and considered during the development of this rulemaking.

H. Affected States in EPA Region VII

1. Iowa

As described in section IX.H.1 of the February 2013 proposal, the Petitioner objected to a specific provision in the Iowa SIP that allows for automatic exemptions from otherwise applicable SIP emission limitations during periods of startup, shutdown or cleaning of control equipment (Iowa Admin. Code r. 567–24.1(1)). Also, the Petitioner objected to a provision that empowers the state to exercise enforcement discretion for violations of the otherwise applicable SIP emission limitations during malfunction periods (Iowa Admin. Code r. 567–24.1(4)).

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to Iowa Admin. Code r. 567–24.1(1) on the basis that this provision allows for exemptions from the otherwise applicable SIP emission limitations. Also for reasons explained fully in the February 2013 proposal, the EPA proposed to deny the Petition with respect to Iowa Admin. Code r. 567–24.1(4) on the basis that the provision is on its face clearly applicable only to Iowa state enforcement personnel and that the provision thus could not reasonably be read by a court to foreclose enforcement by the EPA or through a citizen suit where Iowa state personnel elect to exercise enforcement discretion.

Consequently, the EPA proposed to find that Iowa Admin. Code r. 567–24.1(1) is substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to this provision.

In this final action, the EPA is granting the Petition with respect to Iowa Admin. Code r. 567–24.1(1). Accordingly, the EPA is finding that this provision is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to this provision. Also in this final action, the EPA is denying the Petition with respect to Iowa Admin. Code r. 567–24.1(4). This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Iowa SIP that the EPA received and considered during the development of this rulemaking.

2. Kansas

As described in section IX.H.2 of the February 2013 proposal, the Petitioner objected to three provisions in the Kansas SIP that allow for exemptions for excess emissions during malfunctions and necessary repairs (K.A.R. § 28–19–11(A)), scheduled maintenance (K.A.R. § 28–19–11(B)), and certain routine modes of operation (K.A.R. § 28–19–11(C)).

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to K.A.R. § 28–19–11(A), K.A.R. § 28–19–11(B) and K.A.R. § 28–19–11(C).

Consequently, the EPA proposed to find that K.A.R. § 28–19–11(A), K.A.R. § 28–19–11(B) and K.A.R. § 28–19–11(C) are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to K.A.R. § 28–19–11(A), K.A.R. § 28–19–11(B) and K.A.R. § 28–19–11(C). Accordingly, the EPA is finding that these provisions are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to these provisions. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Kansas SIP that the EPA received and considered during the development of this rulemaking.

3. Missouri

As described in section IX.H.3 of the February 2013 proposal, the Petitioner objected to two provisions in the Missouri SIP that could be interpreted to provide discretionary exemptions. The first provides exemptions for visible emissions exceeding otherwise applicable SIP opacity limitations (Mo. Code Regs. Ann. tit 10, § 10–6.220(3)(C)). The second provides authorization to state personnel to decide whether excess emissions ''warrant enforcement action'' where a source submits information to the state showing that such emissions were ''the consequence of a malfunction, start-up or shutdown.'' (Mo. Code Regs. Ann. tit 10, § 10–6.050(3)(C)).

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to Mo. Code Regs. Ann. tit 10, § 10–6.220(3)(C) on the basis that this provision could be read to allow for exemptions from the otherwise applicable SIP emission limitations through a state official's unilateral exercise of discretionary authority that is insufficiently bounded and includes no additional public process at the state or federal level. Also for reasons explained fully in the February 2013 proposal, the EPA proposed to deny the Petition with respect to Mo. Code Regs. Ann. tit 10, § 10–6.050(3)(C) on the basis that the provision is on its face clearly applicable only to Missouri state enforcement personnel and that the provision thus could not reasonably be read by a court to foreclose enforcement by the EPA or through a citizen suit where Missouri state personnel elect to exercise enforcement discretion.

Consequently, the EPA proposed to find that the provision in Mo. Code Regs. Ann. tit 10, § 10–6.220(3)(C) is substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to this provision.

In this final action, the EPA is granting the Petition with respect to Mo. Code Regs. Ann. tit 10, § 10–6.220(3)(C). Accordingly, the EPA is finding that this provision is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to this provision. Also in this final action, the EPA is denying the Petition with respect to Mo. Code Regs. Ann. tit 10, § 10–6.050(3)(C). This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Missouri SIP that the EPA received and considered during the development of this rulemaking.

4. Nebraska

As described in section IX.H.4 of the February 2013 proposal, the Petitioner objected to two provisions in the Nebraska SIP. First, the Petitioner objected to a generally applicable provision that provides authorization to state personnel to decide whether excess emissions ''warrant enforcement action'' where a source submits information to the state showing that such emissions were ''the result of a malfunction, start-up or shutdown'' (Neb. Admin. Code Title 129 § 11–35.001). Second, the Petitioner objected to a specific provision in Nebraska state law that contains exemptions for excess emissions at hospital/medical/infectious

waste incinerators (HMIWI) during SSM (Neb. Admin. Code Title 129 § 18–004.02).

For reasons explained fully in the February 2013 proposal, the EPA proposed to deny the Petition with respect to Neb. Admin. Code Title 129 § 11–35.001. Also for reasons explained fully in the February 2013 proposal, the EPA proposed to deny the Petition with respect to Neb. Admin. Code Title 129 § 18–004.02 on the basis that this regulation is not part of the Nebraska SIP and thus cannot represent an inadequacy in the SIP.

In this final action, the EPA is denying the Petition with respect to Neb. Admin. Code Title 129, Chapter 35, Section 001 (correction to citation, as per comment received from Nebraska DEQ, from earlier identification as Neb. Admin. Code Title 129 § 11–35.001) and Neb. Admin. Code Title 129 § 18–004.02.

This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any other comments specific to the Nebraska SIP that the EPA received and considered during the development of this rulemaking.

5. Nebraska: Lincoln-Lancaster

As described in section IX.H.5 of the February 2013 proposal, the Petitioner objected to a generally applicable provision in the Lincoln-Lancaster County Air Pollution Control Program (Art. 2 § 35), which governs the Lincoln-Lancaster County Air Pollution Control District of Nebraska, that is parallel ''in all aspects pertinent to this analysis'' to Neb. Admin. Code Title 129 § 11–35.001. (Note that as per comment subsequently received from Nebraska DEQ, the correct citation is Neb. Admin. Code Title 129, Chapter 35, Section 001.)

For reasons explained fully in the February 2013 proposal, the EPA proposed to deny the Petition with respect to Art. 2 § 35, on the basis that this provision is on its face clearly applicable only to Lincoln-Lancaster County enforcement personnel and that the provision thus could not reasonably be read by a court to foreclose enforcement by the EPA or through a citizen suit where personnel from Lincoln-Lancaster County elect not to bring an enforcement action.

In this final action, the EPA is denying the Petition with respect to Art. 2 § 35. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any other comments specific to the Nebraska SIP that the EPA received and considered during the development of this rulemaking.

I. Affected States in EPA Region VIII

1. Colorado

As described in section IX.I.1 of the February 2013 proposal, the Petitioner objected to two affirmative defense provisions in the Colorado SIP that provide for affirmative defenses to qualifying sources during malfunctions (5 Colo. Code Regs § 1001–2(II.E)) and during periods of startup and shutdown (5 Colo. Code Regs § 1001–2(II.J)).

For reasons explained in the February 2013 proposal, the EPA proposed to grant the Petition with respect to 5 Colo. Code Regs § 1001–2(II.J). Also for reasons explained in the February 2013 proposal, the EPA proposed to deny the Petition with respect to 5 Colo. Code Regs § 1001–2(II.E) on the basis that it included an affirmative defense applicable to malfunction events that was consistent with the requirements of the CAA as interpreted by the EPA in the 1999 SSM Guidance.

Subsequently, for reasons explained fully in the SNPR, the EPA reproposed granting of the Petition with respect to the affirmative defense provision in 5 Colo. Code Regs § 1001–2(II.J) applicable to startup and shutdown, but it proposed to revise the basis for the finding of substantial inadequacy and the SIP call for this provision. Also for reasons explained in the SNPR, the EPA reversed its prior proposed denial of the Petition with respect to the affirmative defense provision 5 Colo. Code Regs § 1001–2(II.E) applicable to malfunctions.

Consequently, the EPA proposed to find that the provisions in 5 Colo. Code Regs § 1001–2(II.J) and 5 Colo. Code Regs § 1001–2(II.E) are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to 5 Colo. Code Regs § 1001–2(II.J) and 5 Colo. Code Regs § 1001–2(II.E). Accordingly, the EPA is finding that the provisions in 5 Colo. Code Regs § 1001–2(II.J) and 5 Colo. Code Regs § 1001–2(II.E) are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call to Colorado to correct its SIP with respect to these provisions. This action is fully consistent with what the EPA proposed in February 2013 as revised in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Colorado SIP that the EPA received and considered during the development of this rulemaking.

2. Montana

As described in section IX.I.2 of the February 2013 proposal, the Petitioner objected to an exemption from otherwise applicable emission limitations for aluminum plants during startup and shutdown (Montana Admin. R 17.8.334).

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to ARM 17.8.334.

Consequently, the EPA proposed to find that ARM 17.8.334 is substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to this provision.

In this final action, the EPA is granting the Petition with respect to ARM 17.8.334. Accordingly, the EPA is finding that ARM 17.8.334 is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to this provision. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Montana SIP that the EPA received and considered during the development of this rulemaking.

3. North Dakota

As described in section IX.I.3 of the February 2013 proposal, the Petitioner objected to two provisions in the North Dakota SIP that create exemptions from otherwise applicable emission limitations. The first provision creates exemptions from a number of cross-referenced opacity limits ''where the limits specified in this article cannot be met because of operations and processes such as, but not limited to, oil field service and drilling operations, but only so long as it is not technically feasible to meet said specifications'' (N.D. Admin. Code § 33–15–03–04(4)). The second provision creates an implicit exemption for ''temporary operational breakdowns or cleaning of air pollution equipment'' if the source meets certain conditions (N.D. Admin. Code § 33–15–05–01(2)(a)(1)).

For reasons explained in the February 2013 proposal, the EPA proposed to grant the Petition with respect to N.D. Admin. Code 33–15–03–04.4 (cited in the Petition as N.D. Admin. Code § 33–15–03–04(4)) and also with respect to a

provision to which the Petitioner cited but did not explicitly object, N.D. Admin. Code 33–15–03–04.3 (cited in the Petition as N.D. Admin. Code § 33–15–03–04(3)). Also for reasons explained in the February 2013 proposal, the EPA proposed to grant the Petition with respect to N.D. Admin. Code 33–15–05–01.2a(1) (cited in the Petition as N.D. Admin. Code § 33–15–05–01(2)(a)(1)).

Subsequently, the state of North Dakota removed N.D. Admin. Code 33–15–03–04.4 and N.D. Admin. Code 33–15–05–01.2.a(1) and eliminated the SIP inadequacies with respect to those two of the three provisions identified in the February 2013 proposal notice. The EPA has already approved the necessary SIP revisions for those two provisions.[397] Thus, the EPA's final action on the Petition does not need to include a finding of substantial inadequacy and SIP call for those two provisions.

In this final action, the EPA is granting the Petition with respect to N.D. Admin. Code 33–15–03–04.3 and denying the Petition with respect to N.D. Admin. Code 33–15–03–04.4 and N.D. Admin. Code 33–15–05–01.2.a(1). Accordingly, the EPA is finding that the provision in N.D. Admin. Code 33–15–03–04.3 is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call to North Dakota to correct its SIP with respect to this provision. This action is fully consistent with what the EPA proposed in February 2013 with respect to this provision. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the North Dakota SIP that the EPA received and considered during the development of this rulemaking.

4. South Dakota

As described in section IX.I.4 of the February 2013 proposal, the Petitioner objected to a provision in the South Dakota SIP that creates exemptions from otherwise applicable SIP emission limitations (S.D. Admin, R. 74:36:12:02(3)). The Petitioner asserted that the provision imposes visible emission limitations on sources but explicitly excludes emissions that occur ''for brief periods during such operations as soot blowing, start-up, shut-down, and malfunctions.''

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to S.D. Admin, R. 74:36:12:02(3).

Consequently, the EPA proposed to find that S.D. Admin, R. 74:36:12:02(3) is substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to this provision.

In this final action, the EPA is granting the Petition with respect to S.D. Admin, R. 74:36:12:02(3). Accordingly, the EPA is finding that S.D. Admin, R. 74:36:12:02(3) is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to this provision. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the South Dakota SIP that the EPA received and considered during the development of this rulemaking.

5. Wyoming

As described in section IX.I.5 of the February 2013 proposal, the Petitioner objected to a specific provision in the Wyoming SIP that provides an exemption for excess PM emissions from diesel engines during startup, malfunction and maintenance (WAQSR Chapter 3, section 2(d), cited as ENV–AQ–1 Wyo. Code R. § 2(d) in the Petition). The provision exempts emission of visible air pollutants from diesel engines from applicable SIP limitations ''during a reasonable period of warmup following a cold start or where undergoing repairs and adjustment following malfunction.''

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to WAQSR Chapter 3, section 2(d) (cited as ENV–AQ–1 Wyo. Code R. § 2(d) in the Petition).

Subsequently, the state of Wyoming revised WAQSR Chapter 3, section 2(d) and eliminated the SIP inadequacies identified in the February 2013 proposal document with respect to this provision. The EPA has already approved the necessary SIP revision for this provision.[398] Thus, the EPA's final action on the Petition does not need to include a finding of substantial inadequacy and SIP call for this provision.

In this final action, the EPA is denying the Petition with respect to WAQSR Chapter 3, section 2(d). Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Wyoming SIP that the EPA received and considered during the development of this rulemaking.

J. Affected States and Local Jurisdictions in EPA Region IX

1. Arizona

As described in section IX.J.1 of the February 2013 proposal, the Petitioner objected to two provisions in the Arizona Department of Air Quality's (ADEQ) Rule R18–2–310, which provide affirmative defenses for excess emissions during malfunctions (AAC Section R18–2–310(B)) and for excess emissions during startup or shutdown (AAC Section R18–2–310(C)).

For reasons explained in the February 2013 proposal, the EPA proposed to deny the Petition with respect to AAC Section R18–2–310(B) on the basis that it included an affirmative defense applicable to malfunction events that was consistent with the CAA as interpreted by the EPA in the 1999 SSM Guidance.

Also for reasons explained in the February 2013 proposal, the EPA proposed to grant the Petition with respect to AAC Section R18–2–310(C).

Subsequently, for reasons explained fully in the SNPR, the EPA reversed its prior proposed denial of the Petition with respect to the affirmative defense provision AAC Section R18–2–310(B) applicable to malfunctions. Also for reasons explained in the SNPR, the EPA reproposed granting of the Petition with respect to the affirmative defense provision in AAC Section R18–2–310(C) applicable to startup and shutdown, but it proposed to revise the basis for the finding of substantial inadequacy and the SIP call for this provision.

Consequently, the EPA proposed to find that the provisions in AAC Section R18–2–310(B) and AAC Section R18–2–310(C) are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to AAC Section R18–2–310(B) and AAC Section R18–2–310(C). Accordingly, the EPA is finding that the provisions in AAC Section R18–2–310(B) and AAC Section R18–2–310(C) are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to these provisions. This action is fully consistent with what the EPA proposed in February 2013 as revised in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments

[397] *See* ''Approval and Promulgation of Implementation Plans; North Dakota; Revisions to the Air Pollution Control Rules,'' 79 FR 63045 (October 22, 2014).

[398] *See* ''Approval and Promulgation of Implementation Plans; Wyoming; Revisions to the Air Quality Standards and Regulations,'' 79 FR 62859 (October 21, 2014).

specific to the Arizona SIP that the EPA received and considered during the development of this rulemaking.

2. Arizona: Maricopa County

As described in section IX.J.2 of the February 2013 proposal, the Petitioner objected to two provisions in the Maricopa County Air Pollution Control Regulations that provide affirmative defenses for excess emissions during malfunctions (Maricopa County Air Pollution Control Regulation 3, Rule 140, § 401) and for excess emissions during startup or shutdown (Maricopa County Air Pollution Control Regulation 3, Rule 140, § 402). These provisions in Maricopa County Air Quality Department (MCAQD) Rule 140 are similar to the affirmative defense provisions in ADEQ R18–2–310.

For reasons explained in the February 2013 proposal, the EPA proposed to deny the Petition with respect to Maricopa County Air Pollution Control Regulation 3, Rule 140, § 401 on the basis that it included an affirmative defense applicable to malfunction events that was consistent with the CAA as interpreted by the EPA in the 1999 SSM Guidance. Also for reasons explained in the February 2013 proposal, the EPA proposed to grant the Petition with respect to Maricopa County Air Pollution Control Regulation 3, Rule 140, § 402.

Subsequently, for reasons explained fully in the SNPR, the EPA reversed its prior proposed denial of the Petition with respect to the affirmative defense provision Maricopa County Air Pollution Control Regulation 3, Rule 140, § 401 applicable to malfunctions. Also for reasons explained in the SNPR, the EPA reproposed granting of the Petition with respect to the affirmative defense provision in Maricopa County Air Pollution Control Regulation 3, Rule 140, § 402 applicable to startup and shutdown, but it proposed to revise the basis for the finding of substantial inadequacy and the SIP call for this provision.

Consequently, the EPA proposed to find that the provisions in Maricopa County Air Pollution Control Regulation 3, Rule 140, § 401 and Maricopa County Air Pollution Control Regulation 3, Rule 140, § 402 are substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to these provisions.

In this final action, the EPA is granting the Petition with respect to Maricopa County Air Pollution Control Regulation 3, Rule 140, § 401 and Maricopa County Air Pollution Control Regulation 3, Rule 140, § 402. Accordingly, the EPA is finding that these provisions are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to these provisions. This action is fully consistent with what the EPA proposed in February 2013 as revised in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Arizona SIP that the EPA received and considered during the development of this rulemaking.

3. Arizona: Pima County

As described in section IX.J.3 of the February 2013 proposal, the Petitioner objected to a provision in the Pima County Department of Environmental Quality's (PCDEQ) Rule 706 that pertains to enforcement discretion.

For reasons explained fully in the February 2013 proposal, the EPA proposed to deny the Petition with respect to PCDEQ Rule 706.

In this final action, the EPA is denying the Petition with respect to PCDEQ Rule 706. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Arizona SIP that the EPA received and considered during the development of this rulemaking.

4. California: Eastern Kern Air Pollution Control District

The Petitioner did not identify any provisions in the SIP for the state of California, which is why this state was not explicitly addressed in the February 2013 proposal.

Subsequently, for reasons explained fully in the SNPR, the EPA identified an affirmative defense provision in the SIP for the state of California applicable in the Eastern Kern Air Pollution Control District (APCD), and the EPA proposed to make a finding of substantial inadequacy and to issue a SIP call for this provision. The affirmative defense is included in Kern County ''Rule 111 Equipment Breakdown.'' This SIP provision provides an affirmative defense available to sources for excess emissions that occur during a breakdown condition (*i.e.,* malfunction).

In this final action, the EPA is finding that Kern County Rule 111 Equipment Breakdown in the California SIP applicable in the Eastern Kern APCD [399] is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to this provision. This action is fully consistent with what the EPA proposed in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the California SIP that the EPA received and considered during the development of this rulemaking.

5. California: Imperial County Air Pollution Control District

The Petitioner did not identify any provisions in the SIP for the state of California, which is why this state was not explicitly addressed in the February 2013 proposal.

Subsequently, for reasons explained fully in the SNPR, the EPA identified an affirmative defense provision in the SIP for the state of California applicable in the Imperial Valley APCD, and the EPA proposed to make a finding of substantial inadequacy and to issue a SIP call for this provision. The affirmative defense is included in Imperial County ''Rule 111 Equipment Breakdown.'' This SIP provision provides an affirmative defense available to sources for excess emissions that occur during a breakdown condition (*i.e.,* malfunction).

In this final action, the EPA is finding that Imperial County ''Rule 111 Equipment Breakdown'' in the California SIP applicable in the Imperial Valley APCD is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to this provision. This action is fully consistent with what the EPA proposed in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the California SIP that the EPA received and considered during the development of this rulemaking.

6. California: San Joaquin Valley Unified Air Pollution Control District

The Petitioner did not identify any provisions in the SIP for the state of California, which is why this state was not explicitly addressed in the February 2013 proposal.

Subsequently, for reasons explained fully in the SNPR, the EPA identified affirmative defense provisions in the SIP for the state of California applicable in the San Joaquin Valley Unified APCD, and the EPA proposed to make a finding of substantial inadequacy and to issue a SIP call for these provisions. The affirmative defenses are included in: (i) Fresno County ''Rule 110 Equipment

[399] The EPA is in this final action making a finding of substantial inadequacy and issuing a SIP call for Kern County Rule 111 Equipment Breakdown in the California SIP as it applies in each the Eastern Kern APCD and the San Joaquin Valley Unified APCD.

Breakdown''; (ii) Kern County ''Rule 111 Equipment Breakdown''; (iii) Kings County ''Rule 111 Equipment Breakdown''; (iv) Madera County ''Rule 113 Equipment Breakdown''; (v) Stanislaus County ''Rule 110 Equipment Breakdown''; and (vi) Tulare County ''Rule 111 Equipment Breakdown.'' Each of these SIP provisions provides an affirmative defense available to sources for excess emissions that occur during a breakdown condition (*i.e.,* malfunction).

In this final action, the EPA is finding that the following six provisions in the California SIP applicable in the San Joaquin Valley Unified APCD are substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to these provisions: (i) Fresno County ''Rule 110 Equipment Breakdown''; (ii) Kern County ''Rule 111 Equipment Breakdown''; (iii) Kings County ''Rule 111 Equipment Breakdown''; (iv) Madera County ''Rule 113 Equipment Breakdown''; (v) Stanislaus County ''Rule 110 Equipment Breakdown''; and (vi) Tulare County ''Rule 111 Equipment Breakdown.'' [400] This action is fully consistent with what the EPA proposed in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the California SIP that the EPA received and considered during the development of this rulemaking.

K. Affected States in EPA Region X

1. Alaska

As described in section IX.K.1 of the February 2013 proposal, the Petitioner objected to a provision in the Alaska SIP that provides an excuse for ''unavoidable'' excess emissions that occur during SSM events, including startup, shutdown, scheduled maintenance and ''upsets'' (Alaska Admin. Code tit. 18 § 50.240). The provision provides: ''Excess emissions determined to be unavoidable under this section will be excused and are not subject to penalty. This section does not limit the department's power to enjoin the emission or require corrective action.'' The Petitioner also stated that the provision is worded as if it were an affirmative defense but it uses criteria for enforcement discretion.

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to Alaska Admin. Code tit. 18 § 50.240 on the basis that, to the extent the provision was intended to be an affirmative defense, it was not a permissible affirmative defense provision consistent with the requirements of the CAA as interpreted in the EPA's 1999 SSM Guidance.

Subsequently, for reasons explained in the SNPR, the EPA reproposed granting of the Petition with respect to Alaska Admin. Code tit. 18 § 50.240, but it proposed to revise the basis for the finding of substantial inadequacy and the SIP call for this provision.

Consequently, the EPA proposed to find that Alaska Admin. Code tit. 18 § 50.240 is substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to this provision.

In this final action, the EPA is granting the Petition with respect to Alaska Admin. Code tit. 18 § 50.240. Accordingly, the EPA is finding that this provision is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to this provision. This action is fully consistent with what the EPA proposed in February 2013 as revised in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Alaska SIP that the EPA received and considered during the development of this rulemaking.

2. Idaho

As described in section IX.K.2 of the February 2013 proposal, the Petitioner objected to a provision in the Idaho SIP that appears to grant enforcement discretion to the state as to whether to impose penalties for excess emissions during certain SSM events (Idaho Admin. Code r. 58.01.01.131).

For reasons explained fully in the February 2013 proposal, the EPA proposed to deny the Petition with respect to Idaho Admin. Code r. 58.01.01.131.

In this final action, the EPA is denying the Petition with respect to Idaho Admin. Code r. 58.01.01.131. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Idaho SIP that the EPA received and considered during the development of this rulemaking.

3. Oregon

As described in section IX.K.3 of the February 2013 proposal, the Petitioner objected to a provision in the Oregon SIP that grants enforcement discretion to the state to pursue violations for excess emissions during certain SSM events (Or. Admin. R. 340–028–1450).

For reasons explained fully in the February 2013 proposal, the EPA proposed to deny the Petition with respect to Or. Admin. R. 340–028–1450.

In this final action, the EPA is denying the Petition with respect to Or. Admin. R. 340–028–1450. This action is fully consistent with what the EPA proposed in February 2013. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Oregon SIP that the EPA received and considered during the development of this rulemaking.

4. Washington

As described in section IX.K.4 of the February 2013 proposal, the Petitioner objected to a provision in the Washington SIP that provides an excuse for ''unavoidable'' excess emissions that occur during certain SSM events, including startup, shutdown, scheduled maintenance and ''upsets'' (Wash. Admin. Code § 173–400–107). The provision provides that ''[e]xcess emissions determined to be unavoidable under the procedures and criteria under this section shall be excused and are not subject to penalty.'' The Petitioner argued that this provision excuses excess emissions in violation of the CAA and the EPA's SSM Policy, which require all such emissions to be treated as violations of the applicable SIP emission limitations. The Petitioner also stated that the provision is worded as if it were an affirmative defense but it uses criteria for enforcement discretion.

For reasons explained fully in the February 2013 proposal, the EPA proposed to grant the Petition with respect to Wash. Admin. Code § 173–400–107 on the basis that, to the extent the provision was intended to be an affirmative defense, it was not a permissible affirmative defense provision consistent with the requirements of the CAA as interpreted in the EPA's 1999 SSM Guidance.

Subsequently, for reasons explained in the SNPR, the EPA reproposed granting of the Petition with respect to Wash. Admin. Code § 173–400–107, but it proposed to revise the basis for the finding of substantial inadequacy and the SIP call for this provision.

Consequently, the EPA proposed to find that Wash. Admin. Code § 173–400–107 is substantially inadequate to meet CAA requirements and thus proposed to issue a SIP call with respect to this provision.

[400] The EPA is in this final action making a finding of substantial inadequacy and issuing a SIP call for Kern County Rule 111 Equipment Breakdown in the California SIP as it applies in each the Eastern Kern APCD and the San Joaquin Valley Unified APCD.

In this final action, the EPA is granting the Petition with respect to Wash. Admin. Code § 173–400–107. Accordingly, the EPA is finding that this provision is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to this provision. This action is fully consistent with what the EPA proposed in February 2013 as revised in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Washington SIP that the EPA received and considered during the development of this rulemaking.

5. Washington: Energy Facility Site Evaluation Council

The Petitioner did not identify any provisions in the SIP for the state of Washington that specifically apply to the Energy Facility Site Evaluation Council (EFSEC) area, which is why this area was not explicitly addressed in the February 2013 proposal.

Subsequently, for reasons explained fully in the SNPR, the EPA identified affirmative defense provisions in the SIP for the state of Washington that relate to the EFSEC, and the EPA proposed to make a finding of substantial inadequacy and to issue a SIP call for these provisions in Wash. Admin. Code § 463–39–005. In the EFSEC portion of the SIP, Wash. Admin. Code § 463–39–005 adopts by reference Wash. Admin. Code § 173–400–107, thereby incorporating the affirmative defenses applicable to startup, shutdown, scheduled maintenance and ''upsets'' that the EPA is also finding substantially inadequate in Wash. Admin. Code § 173–400–107 (see section IX.K.4 of this document).

In this final action, the EPA is finding that Wash. Admin. Code § 463–39–005 is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to this provision. This action is fully consistent with what the EPA proposed in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Washington SIP that the EPA received and considered during the development of this rulemaking.

6. Washington: Southwest Clean Air Agency

The Petitioner did not identify any provisions in the SIP for the state of Washington that specifically apply in the portion of the state regulated by the Southwest Clean Air Agency (SWCAA),[401] which is why this area was not explicitly addressed in the February 2013 proposal.

Subsequently, for reasons explained fully in the SNPR, the EPA identified affirmative defense provisions in the SIP for the state of Washington that apply in the portion of the state regulated by SWCAA, and the EPA proposed to make a finding of substantial inadequacy and to issue a SIP call for these provisions. The affirmative defenses are included in the SIP in SWAPCA ''400–107 Excess Emissions.'' This SIP section provides an affirmative defense available to sources for excess emissions that occur during startup and shutdown, maintenance and ''upsets'' (*i.e.,* malfunctions). It is identical to Wash. Admin. Code § 173–400–107 in all respects except that SWAPCA 400–107(3) contains a more stringent requirement for the reporting of excess emissions.

In this final action, the EPA is finding that SWAPCA ''400–107 Excess Emissions'' in the Washington SIP applicable in the area regulated by SWCAA is substantially inadequate to meet CAA requirements and the EPA is thus issuing a SIP call with respect to this provision. This action is fully consistent with what the EPA proposed in the SNPR. Please refer to the Response to Comment document available in the docket for this rulemaking concerning any comments specific to the Washington SIP that the EPA received and considered during the development of this rulemaking.

X. Implementation Aspects of EPA's SSM SIP Policy

A. Recommendations Concerning Alternative Emission Limitations for Startup and Shutdown

In response to a SIP call concerning an existing automatic or discretionary exemption for excess emissions during SSM events, the EPA anticipates that a state may elect to create an alternative emission limitation that applies during startup and shutdown events (or during any other normal mode of operation during which the exemption may have applied) as a revised element or component of the existing emission limitation. The EPA emphasizes that states have discretion to revise the identified deficient provisions by any means they choose, so long as the revised provision is consistent with CAA requirements for SIP provisions. If a state elects to create an alternative emission limitation to replace an existing exemption, there are several issues that the state should consider.

First, as explained in sections VII.B and XI of this document, the EPA has longstanding guidance that provides recommendations to states concerning the development of alternative emission limitations applicable during startup and shutdown to replace exemptions in existing SIP provisions. The EPA first provided this guidance in the 1999 SSM Guidance but has reiterated and clarified its guidance in this action. The EPA recommends that states consider the seven clarified criteria described in sections VII.B and XI of this document when developing new alternative emission limitations to replace automatic or discretionary exemptions, in order to assure that the revised provisions submitted to the EPA for approval meet basic CAA requirements for SIP emission limitations.

Second, the EPA reiterates that SIP emission limitations that are expressed as numerical limitations do not necessarily have to require the same numerical level of emissions during all modes of normal source operation. Under appropriate circumstances consistent with the criteria that the EPA recommends for alternative emission limitations, it may be appropriate to have a numerical emission limitation that has a higher numerical level applicable during specific modes of source operation, such as during startup and shutdown. For example, if a rate-based NO_X emission limitation in the SIP applies to a specific source category, then it may be appropriate for that emission limitation to have a higher numerical standard applicable during defined periods of startup or shutdown. Such an approach can be consistent with SIP requirements, so long as that higher numerical level for startup or shutdown is properly established and is legally and practically enforceable, and so long as other overarching CAA requirements are also met. However, alternative emission limitations applicable during startup and shutdown cannot be inappropriately high or an effectively unlimited or uncontrolled level of emissions, as those would constitute impermissible *de facto* exemptions for emissions during certain modes of operation.

Third, the EPA reiterates that SIP emission limitations do not necessarily have to be expressed in terms of a numerical level of emissions. There are many sources for which a numerically expressed emission limitation will be the most appropriate and will result in

[401] The EPA notes that the SWCAA was formerly named, and in some places in the SIP still appears, as the ''Southwest Air Pollution Control Authority'' or ''SWAPCA.'' The EPA anticipates that the name will be updated in the SIP in due course as the state revises the SIP.

the most legally and practically enforceable SIP requirements.[402] However, the EPA recognizes that for some source categories, under some circumstances, it may be appropriate for the SIP emission limitation to include a specific technological control requirement or specific work practice requirement that applies during specified modes of source operation such as startup and shutdown. For example, if the otherwise applicable numerical SO_2 emission limitation in the SIP is not achievable, and the otherwise required SO_2 control measure is not effective during startup and shutdown and/or measurement of emissions during startup and shutdown is not reasonably feasible, then it may be appropriate for that emission limitation to impose a different control measure, such as use of low sulfur coal, applicable during defined periods of startup and shutdown in lieu of a numerically expressed emission limitation. Such an approach can be consistent with SIP requirements, so long as that alternative control measure applicable during startup and shutdown is properly established and is legally and practically enforceable as a component of the emission limitation, and so long as other overarching CAA requirements are also met.

Fourth, the EPA notes that revisions to replace existing automatic or discretionary exemptions for SSM events with alternative emission limitations applicable during startup and shutdown also need to meet the applicable overarching CAA requirements with respect to the SIP emission limitation at issue. For example, if the emission limitation is in the SIP to meet the requirement that the source category be subject to RACT level controls for NO_X for purposes of the ozone NAAQS, then the state should assure that the higher numerical level or other control measure that will apply to NO_X emissions during startup and shutdown does constitute a RACT level of control for such sources for such pollutant during such modes of operation.

Finally, the EPA notes that states should not replace automatic or discretionary exemptions for excess emissions during SSM events with alternative emission limitations that are a generic requirement such as a ''general duty to minimize emissions'' provision or an ''exercise good engineering judgment'' provision.[403] While such provisions may serve an overarching purpose of encouraging sources to design, maintain and operate their sources correctly, such generic clauses are not a valid substitute for more specific emission limitations that apply during normal modes of operation such as startup and shutdown.

B. Recommendations for Compliance With Section 110(l) and Section 193 for SIP Revisions

In response to a SIP call for any type of deficient provision, the EPA anticipates that each state will determine the best way to revise its SIP provisions to bring them into compliance with CAA requirements. In this action the EPA is only identifying the provisions that need to be revised because they violate fundamental requirements of the CAA and providing guidance to states in the SSM Policy concerning the types of provisions that are and are not permissible with respect to the treatment of excess emissions during SSM events. The EPA recognizes that one important consideration for air agencies as they evaluate how best to revise their SIP provisions in response to this SIP call is the nature of the analysis that will be necessary for the resulting SIP revisions under section 110(l) and section 193. The EPA is therefore providing in this document general guidance on this important issue in order to assist states with SIP revisions in response to the SIP call.

Section 110(k)(3) directs the EPA to approve SIP submissions that comply with applicable CAA requirements and to disapprove those that do not. Under section 110(l), the EPA is prohibited from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress or any other requirements of the CAA. To illustrate different ways in which section 110(l) and section 193 may apply in the evaluation of future SIP submissions in response to the SIP call, the EPA anticipates that there are several common scenarios that states may wish to consider when revising their SIPs:

Example 1: A state elects to revise an existing SIP provision by removing an existing automatic exemption provision, director's discretion provision, enforcement discretion provision or affirmative defense provision, without altering any other aspects of the SIP provision at issue (*e.g.,* elects to retain the emission limitation for the source category but eliminate the exemption for emissions during SSM events). Although the EPA must review each SIP submission for compliance with section 110(l) and section 193 on the facts and circumstances of the revision, the Agency believes in general that this type of SIP revision should not entail a complicated analysis to meet these statutory requirements. Presumably, removal of the impermissible components of preexisting SIP provisions would not constitute backsliding, would in fact strengthen the SIP and would be consistent with the overarching requirement that the SIP revision be consistent with the requirements of the CAA. Accordingly, the EPA believes that this type of SIP revision should not entail a complicated analysis for purposes of section 110(l). If the SIP revision is also governed by section 193, then elimination of the deficiency will likewise presumably result in equal or greater emission reductions and thus comply with section 193 without the need for a more complicated analysis. The EPA has recently evaluated a SIP revision to remove specific SSM deficiencies in this manner.[404]

Example 2: A state elects to revise its SIP provision by replacing an automatic exemption for excess emissions during startup and shutdown events with an appropriate alternative emission limitation (*e.g.,* a different numerical limitation or different other control requirement) that is explicitly applicable during startup and shutdown as a component of the revised emission limitation. Although the EPA must review each SIP revision for compliance with section 110(l) and section 193 on the facts and circumstances of the revision, the Agency believes in general that this type of SIP revision should not entail a complicated analysis to meet these statutory requirements. Presumably, the replacement of an automatic exemption applicable to startup and shutdown with an appropriate alternative emission limitation would not constitute backsliding, would strengthen the SIP and would be consistent with the overarching requirement that the SIP revision be consistent with the

[402] The EPA notes that in the CAA there is a presumption in favor of numerical emission limitations for purposes of section 112 and section 169, but section 110(a) does not include such an explicit presumption. However, there may be sources for which a numerically expressed emission limitation is the one that is most legally and practically enforceable, even during startup and shutdown, and for which a numerically expressed emission limitation is thus most appropriate.

[403] The EPA notes that the ''general duty'' imposed under CAA section 112(r) is a separate standard, in addition to the otherwise applicable emission limitations and is not in lieu of those requirements.

[404] *See* ''Approval and Promulgation of Implementation Plans; Kentucky; Approval of Revisions to the Jefferson County Portion of the Kentucky SIP; Emissions During Startups, Shutdowns, and Malfunctions,'' proposed at 78 FR 29683 (May 21, 2013), finalized at 79 FR 33101 (June 10, 2014).

requirements of the CAA. The state should develop that alternative emission limitation in accordance with the EPA's guidance recommendations for such provisions to assure that it would meet CAA requirements.[405] In addition, that alternative emission limitation would both need to meet the overarching CAA applicable requirements that the emission limitation is designed and intended to meet (*e.g.,* RACT-level controls for the source category in an attainment area for a NAAQS) and need to be legally and practically enforceable (*e.g.,* have adequate recordkeeping, reporting, monitoring or other features requisite for enforcement). If a state has developed the alternative emission limitation consistent with these criteria, then the EPA anticipates that the revision of the emission limitation to replace the exemption with an alternative emission limitation applicable to startup and shutdown would not be backsliding, would be a strengthening of the SIP and would be consistent with the requirement of section 110(l) that a SIP revision be consistent with the requirements of the CAA. Similarly, if section 193 applies to the emission limitation that the state is revising, then the replacement of an exemption applicable to emissions during startup and shutdown with an appropriately developed alternative emission limitation that explicitly applies during startup and shutdown would presumably result in equal or greater emission reductions and thus should meet the requirements of section 193 without the need for a more complicated analysis.

Example 3: A state elects to revise an existing SIP provision not merely by removal of an existing automatic exemption provision, director's discretion provision, enforcement discretion provision or affirmative defense provision, but by the removal of the deficiency combined with a total revision of the emission limitation. The EPA anticipates that there may be emission limitations for which a state may elect to do such a wholesale revision of the SIP provision as part of eliminating an impermissible component of the existing provision (*e.g.,* removal of an automatic exemption applicable to emissions during SSM events through a complete revision of the emission limitation to create a different emission limitation that applies at all times, including during SSM events). In developing a completely revised SIP provision, the state should assure that the replacement provision meets the applicable overarching CAA requirements that the provision is designed and intended to meet, is legally and practically enforceable and is not less stringent than the prior SIP provision. The EPA believes in general that this type of SIP revision may require a more in-depth analysis to meet these statutory requirements of section 110(l) and section 193. To the extent that there is any concern that the revised SIP provision is less stringent than the provision it replaces, then there will need to be a careful evaluation as to whether the revised provision would interfere with any applicable requirement concerning attainment and reasonable further progress and with any other applicable requirement of the CAA. Presumably, however, so long as the state has properly developed the revised emission limitation to assure that it meets the overarching CAA requirements and to assure that it will not result in a less stringent emission limitation, then the complete revision of the emission limitation would not constitute backsliding, would be a strengthening of the SIP and thereby would comply with section 110(l). If the SIP revision is also governed by section 193, then there will also need to be an analysis to assure that the revision will result in equal or greater emission reductions and thus comply with section 193. To the extent that there is concern that the revision would result in a less stringent emission limitation than the preexisting emission limitation, then a more complex analysis would likely be required.

The EPA emphasizes that each SIP revision must be evaluated for compliance with section 110(l) and section 193 on the facts and circumstances of the specific revision, but these examples are intended to provide general guidance on the considerations and the nature of the analysis that may be appropriate for different types of SIP revisions. States should contact their respective EPA Regional Offices (see the **SUPPLEMENTARY INFORMATION** section of this document) for further recommendations and assistance concerning the analysis appropriate for specific SIP revisions in response to this SIP call.

XI. Statement of the EPA's SSM SIP Policy as of 2015

The EPA's longstanding interpretation of the CAA is that SIP provisions cannot include exemptions from emission limitations for emissions during SSM events. In order to be permissible in a SIP, an emission limitation must be applicable to the source continuously, *i.e.,* cannot include periods during which emissions from the source are legally or functionally exempt from regulation. Regardless of its form, a fully approvable SIP emission limitation must also meet all substantive requirements of the CAA applicable to such a SIP provision, *e.g.,* the statutory requirement of section 172(c)(1) for imposition of RACM and RACT on sources located in designated nonattainment areas.

This section of the document provides more specific guidance on the appropriate treatment of emissions during SSM events in SIP provisions, replacing the EPA's prior guidance issued in memoranda of 1982, 1983, 1999 and 2001. The more extended explanations and interpretations provided in other sections of this document are also applicable, should a situation arise that is not sufficiently covered by this section's more concise policy statement. This SSM Policy as of 2015 is a policy statement and thus constitutes guidance. As guidance, this SSM Policy as of 2015 does not bind states, the EPA or other parties, but it does reflect the EPA's interpretation of the statutory requirements of the CAA. The EPA's evaluation of any SIP provision, whether prospectively in the case of a new provision in a SIP submission or retrospectively in the case of a previously approved SIP submission, must be conducted through a notice-and-comment rulemaking in which the EPA will determine whether a given SIP provision is consistent with the requirements of the CAA and applicable regulations.

A. Definitions

The term *alternative emission limitation* means, in this document, an emission limitation in a SIP that applies to a source during some but not all periods of normal operation (*e.g.,* applies only during a specifically defined mode of operation such as startup or shutdown). An alternative emission limitation is a component of a continuously applicable SIP emission limitation, and it may take the form of a control measure such as a design, equipment, work practice or operational standard (whether or not numerical). This definition of the term is independent of the statutory use of the term ''alternative means of emission limitation'' in sections 111(h)(3) and 112(h)(3), which pertain to the conditions under which the EPA may pursuant to sections 111 and 112 promulgate emission limitations, or components of emission limitations,

[405] These recommendations are discussed in detail in section VII.B.2 of this document.

that are not necessarily in numeric format.

The term *automatic exemption* means a generally applicable provision in a SIP that would provide that if certain conditions existed during a period of excess emissions, then those exceedances would not be considered violations of the applicable emission limitations.

The term *director's discretion provision* means, in general, a regulatory provision that authorizes a state regulatory official unilaterally to grant exemptions or variances from otherwise applicable emission limitations or control measures, or to excuse noncompliance with otherwise applicable emission limitations or control measures, which would be binding on the EPA and the public.

The term *emission limitation* means, in the context of a SIP, a legally binding restriction on emissions from a source or source category, such as a numerical emission limitation, a numerical emission limitation with higher or lower levels applicable during specific modes of source operation, a specific technological control measure requirement, a work practice standard, or a combination of these things as components of a comprehensive and continuous emission limitation in a SIP provision. In this respect, the term *emission limitation* is defined as in section 302(k) of the CAA. By definition, an emission limitation can take various forms or a combination of forms, but in order to be permissible in a SIP it must be applicable to the source continuously, *i.e.,* cannot include periods during which emissions from the source are legally or functionally exempt from regulation. Regardless of its form, a fully approvable SIP emission limitation must also meet all substantive requirements of the CAA applicable to such a SIP provision, *e.g.,* the statutory requirement of section 172(c)(1) for imposition of reasonably available control measures and reasonably available control technology (RACM and RACT) on sources located in designated nonattainment areas.

The term *excess emissions* means the emissions of air pollutants from a source that exceed any applicable SIP emission limitation. In particular, this term includes those emissions above the otherwise applicable SIP emission limitation that occur during startup, shutdown, malfunction or other modes of source operation, *i.e.,* emissions that would be considered violations of the applicable emission limitation but for an impermissible automatic or discretionary exemption from such emission limitation.

The term *malfunction* means a sudden and unavoidable breakdown of process or control equipment.

The term *shutdown* means, generally, the cessation of operation of a source for any reason. In this document, the EPA uses this term in the generic sense. In individual SIP provisions it may be appropriate to include a specifically tailored definition of this term to address a particular source category for a particular purpose.

The term *SSM* refers to startup, shutdown or malfunction at a source. It does not include periods of maintenance at such a source. An SSM event is a period of startup, shutdown or malfunction during which there are exceedances of the applicable emission limitations and thus excess emissions.

The term *startup* means, generally, the setting in operation of a source for any reason. In this document, the EPA uses this term in the generic sense. In an individual SIP provision it may be appropriate to include a specifically tailored definition of this term to address a particular source category for a particular purpose.

B. Emission Limitations in SIPs Must Apply Continuously During All Modes of Operation, Without Automatic or Discretionary Exemptions or Overly Broad Enforcement Discretion Provisions That Would Bar Enforcement by the EPA or by Other Parties in Federal Court Through a Citizen Suit

In accordance with CAA section 302(k), SIPs must contain emission limitations that ''limit the quantity, rate, or concentration of emissions of air pollutants on a continuous basis.'' All of the specific requirements of a SIP emission limitation must be discernible in the SIP, for clarity preferably within a single section or provision; must meet the applicable substantive and stringency requirements of the CAA; and must be legally and practically enforceable.

To the extent that a SIP provision allows any period of time when a source is *not* subject to any requirement that limits emissions, the requirements limiting the source's emissions by definition cannot do so ''on a continuous basis.'' Such a source would not be subject to an ''emission limitation,'' as required by the definition of that term under section 302(k). However, the CAA allows SIP provisions that include numerical limitations, specific technological control requirements and/or work practice requirements that limit emissions during startup and shutdown as components of a continuously applicable emission limitation, as discussed in section XI.C of this document.

Accordingly, automatic or discretionary exemption provisions applicable during SSM events are impermissible in SIPs. This impermissibility applies even for ''brief'' exemptions from limits on emissions, because such exemptions nevertheless render the limitation noncontinuous. Furthermore, the fact that a SIP provision includes prerequisites to qualifying for an SSM exemption does not mean those prerequisites are themselves an ''alternative emission limitation'' applicable during SSM events.

Automatic exemptions. A typical SIP provision that includes an impermissible automatic exemption would provide that a source has to meet a specific emission limitation during all modes of operation except startup, shutdown and malfunction; by definition any excess emissions during such events would not be violations and thus there could be no enforcement based on those excess emissions. With respect to automatic exemptions from emission limitations in SIPs, the EPA's longstanding interpretation of the CAA is that such exemptions are impermissible because they are inconsistent with the fundamental requirements of the CAA. Automatic exemptions from otherwise applicable emission limitations render those emission limitations less than continuous as required by CAA sections 302(k), 110(a)(2)(A) and 110(a)(2)(C), thereby inconsistent with a fundamental requirement of the CAA and thus substantially inadequate as contemplated in CAA section 110(k)(5).

Discretionary exemptions. A typical SIP provision that includes an impermissible ''director's discretion'' component would purport to authorize air agency personnel to modify existing SIP requirements under certain conditions, *e.g.,* to grant a variance from an otherwise applicable emission limitation if the source could not meet the requirement in certain circumstances.[406] Director's discretion provisions operate to allow air agency personnel to make unilateral decisions on an *ad hoc* basis, up to and including the granting of complete exemptions for

[406] The EPA notes that problematic ''director's discretion'' provisions are not limited only to those that purport to authorize alternative emission limitations from those required in a SIP. Other problematic director's discretion provisions include those that purport to provide for discretionary changes to other substantive requirements of the SIP, such as applicability, operating requirements, recordkeeping requirements, monitoring requirements, test methods or alternative compliance methods.

emissions during SSM events, thereby negating any possibility of enforcement for what would be violations of the otherwise applicable emission limitation. With respect to such director's discretion provisions in SIPs, the EPA interprets the CAA to prohibit these if they provide unbounded discretion to allow what would amount to a case-specific revision of the SIP without meeting the statutory requirements of the CAA for SIP revisions. In particular, the EPA interprets the CAA to preclude SIP provisions that provide director's discretion authority to create discretionary exemptions for violations when the CAA would not allow such exemptions in the first instance.

If an air agency elects to have SIP provisions that contain a director's discretion feature, then to be consistent with CAA requirements the provisions must be structured so that any resulting variances or other deviations from the emission limitation or other SIP requirements have no federal law validity, unless and until the EPA specifically approves that exercise of the director's discretion as a SIP revision. Barring such a later ratification by the EPA through a SIP revision, the exercise of director's discretion is only valid for state (or tribal) law purposes and would have no bearing in the event of an action to enforce the provision of the SIP as it was originally approved by the EPA.

Adoption of the EPA's NSPS or NESHAP that have not yet been revised. The EPA has recently begun revising and will continue to revise NSPS and NESHAP as needed, to make the EPA's regulations consistent with CAA requirements by removing exemptions and affirmative defense provisions applicable to SSM events, and generally on the same legal basis as for this action. A state should not submit an NSPS or NESHAP for inclusion into its SIP as an emission limitation (whether through incorporation by reference or otherwise) unless either: (i) That NSPS or NESHAP does not include an exemption or affirmative defense for SSM events; or (ii) the state takes action as part of the SIP submission to render such exemption or affirmative defense inapplicable to the SIP emission limitation. Because SIP provisions must apply continuously, including during SSM events, the EPA can no longer approve SIP submissions that include any emission limitations with such exemptions, even if those emission limitations are NSPS or NESHAP regulations that the EPA has not yet revised to make consistent with CAA requirements. Alternatively, states may elect to adopt an existing NSPS or NESHAP as a SIP provision, so long as the SIP provision excludes the exemption or affirmative defense applicable to SSM events.[407] States may also wish to replace the SSM exemption in NSPS or NESHAP regulations with appropriately developed alternative emission limitations that apply during startup and shutdown in lieu of the SSM exemption. Otherwise, the EPA's approval of the deficient SSM exemption provisions into the SIP would contravene CAA requirements for SIP provisions and would potentially result in misinterpretation or misapplication of the standards by regulators, regulated entities, courts and members of the public. The EPA emphasizes that the inclusion of an NSPS or NESHAP as an emission limitation in a state's SIP is different and distinct from reliance on such standards indirectly, such as reliance on the NSPS or NESHAP as a source of emission reductions that may be taken into account for SIP planning purposes in emissions inventories or attainment demonstrations. For those uses, states may continue to rely on the EPA's NSPS and NESHAP regulations, even those that have not yet been revised to remove inappropriate exemptions, in accordance with the requirements applicable to those SIP planning functions.

Other modes of normal operation. SIPs also may not create automatic or discretionary exemptions from otherwise applicable emission limitations during periods such as ''maintenance,'' ''load change,'' ''soot-blowing,'' ''on-line operating changes'' or other similar normal modes of operation. Like startup and shutdown, the EPA considers all of these to be modes of normal operation at a source, for which the source can be designed, operated and maintained in order to meet an applicable emission limitations and during which the source should be expected to control and minimize emissions. Excess emissions that occur during planned and predicted periods should be treated as violations of applicable emission limitations. Accordingly, exemptions for emissions during these periods of normal source operation are not consistent with CAA requirements.

It may be appropriate for an air agency to establish an alternative numerical limitation or other form of control measure that applies during these modes of source operation, as for startup and shutdown events, but any such alternative emission limitation should be developed using the same criteria that the EPA recommends for alternative emission limitations applicable during startup and shutdown. Similarly, any SIP provision that includes an emission limitation for sources that includes alternative emission limitations applicable to modes of operation such as ''maintenance,'' ''load change,'' ''soot-blowing'' or ''on-line operating changes'' must also meet the applicable level of stringency for that type of emission limitation and be practically and legally enforceable.

C. Emission Limitations in SIPs May Contain Components Applicable to Different Modes of Operation That Take Different Forms, and Numerical Emission Limitations May Have Differing Levels and Forms for Different Modes of Operation

There are approaches other than exemptions that would be consistent with CAA requirements for SIP provisions that states can use to address excess emissions during certain events. While automatic exemptions and director's discretion exemptions from otherwise applicable emission limitations for SSM events are not consistent with the CAA, SIPs may include criteria and procedures for the use of enforcement discretion by air agency personnel, as described in section XI.E of this document. Similarly, SIPs may, rather than exempt excess emissions, include emission limitations that subject those emissions to alternative numerical limitations or other control requirements during startup and shutdown events or other normal modes of operation, so long as those components of the emission limitations meet applicable CAA requirements and are legally and practically enforceable.

The EPA does not interpret section 110(a)(2) or section 302(k) to require that an emission limitation in a SIP provision be composed of a single, uniformly applicable numerical emission limitation. The text of section 110(a)(2) and section 302(k) does not require states to impose emission limitations that include a static, inflexible standard. The critical aspect for purposes of section 302(k) is that the SIP provision impose limits on emissions on a continuous basis, regardless of whether the emission

[407] Under CAA section 116, states have the explicit general authority to regulate more stringently than the EPA. Indeed, under section 116 states can regulate sources subject to EPA regulations promulgated under section 111 or section 112 so long as they do not regulate them less stringently. According, the EPA believes that states may elect to adopt EPA regulations under section 111 or section 112 as SIP provisions and expressly eliminate the exemptions for emissions during SSM events.

limitation as a whole is expressed numerically or as a combination of numerical limitations, specific control technology requirements and/or work practice requirements applicable during specific modes of operation, and regardless of whether the emission limitation is static or variable. Thus, emission limitations in SIP provisions do not have to be composed solely of numerical emission limitations applicable at all times. For example, so long as the SIP provision meets other applicable requirements, it may impose different numerical limitations for startup and shutdown. Also, for example, SIPs can contain numerical emission limitations applicable only to some periods and other forms of controls applicable only to some periods, with certain periods perhaps subject to both types of limitation. Thus, SIP emission limitations: (i) Do not need to be numerical in format; (ii) do not have to apply the same limitation (*e.g.,* numerical level) at all times; and (iii) may be composed of a combination of numerical limitations, specific technological control requirements and/or work practice requirements, with each component of the emission limitation applicable during a defined mode of source operation. In practice, it may be that numerical emission limitations are the most appropriate from a regulatory perspective (*e.g.,* to be legally and practically enforceable) and thus the emission limitation would need to be established in this form to meet CAA requirements. It is important to emphasize, however, that regardless of how the state structures or expresses a SIP emission limitation—whether solely as one numerical limitation, as a combination of different numerical limitations or as a combination of numerical limitations, specific technological control requirements and/or work practice requirements that apply during certain modes of operation such as startup and shutdown—the emission limitation as a whole must be continuous, must meet applicable CAA stringency requirements and must be legally and practically enforceable.[408]

Startup and shutdown are part of the normal operation of a source and should be accounted for in the design and operation of the source.[409] It should be possible to determine an appropriate form and degree of emission control during startup and shutdown and to achieve that control on a regular basis. Thus, sources should be required to meet defined SIP emission limitations during startup and shutdown. However, the EPA interprets the CAA to permit SIP emission limitations that include alternative emission limitations specifically applicable during startup and shutdown. Regarding startup and shutdown periods, the EPA considers the following to be the correct approach to creating an emission limitation: (i) The emission limitation contains no exemption for emissions during SSM events; (ii) the component of any alternative emission limitation that applies during startup and shutdown is clearly stated and obviously is an emission limitation that applies to the source; (iii) the component of any alternative emission limitation that applies during startup and shutdown meets the applicable stringency level for this type of emission limitation; and (iv) the emission limitation contains requirements to make it legally and practically enforceable. Section XI.D of this document contains more specific recommendations to states for developing alternative emission limitations.

In contrast to startup and shutdown, a malfunction is unpredictable as to the timing of the start of the malfunction event, its duration and its exact nature. The effect of a malfunction on emissions is therefore unpredictable and variable, making the development of an alternative emission limitation for malfunctions problematic. There may be rare instances in which certain types of malfunctions at certain types of sources are foreseeable and foreseen and thus are an expected mode of source operation. In such circumstances, the EPA believes that sources should be expected to meet the otherwise applicable emission limitation in order to encourage sources to be properly designed, maintained and operated in order to prevent or minimize any such malfunctions. To the extent that a given type of malfunction is so foreseeable and foreseen that a state considers it a normal mode of operation that is appropriate for a specifically designed alternative emission limitation, then such alternative should be developed in accordance with the recommended criteria for alternative emission limitations. The EPA does not believe that generic general-duty provisions, such as a general duty to minimize emissions, is sufficient as an alternative emission limitation for any type of event including malfunctions.

States developing SIP revisions to remove impermissible exemption provisions from emissions limitations may choose to consider reassessing particular emission limitations, for example to determine whether limits originally applicable only during non-SSM periods can be revised such that well-managed emissions during planned operations such as startup and shutdown would not exceed the revised emission limitation, while still protecting air quality and meeting other applicable CAA requirements. Such a revision of an emission limitation will need to be submitted as a SIP revision for EPA approval if the existing limitation to be changed is already included in the SIP or if the existing SIP relies on the particular existing emission limitation to meet a CAA requirement.

Some SIPs contain other generic regulatory requirements frequently referred to as ''general duty'' type requirements, such as a general duty to minimize emissions at all times, a general duty to use good engineering judgment at all times or a general duty not to cause a violation of the NAAQS at any time. To the extent that such other general-duty requirement is properly established and legally and practically enforceable, the EPA would agree that it may be an appropriate separate requirement to impose upon sources in addition to the (continuous) emission limitation. The EPA itself imposes separate general duties of this type in appropriate circumstances. The existence of these generic provisions does not, however, legitimize exemptions for emissions during SSM events in a SIP provision that imposes an emission limitation.

General-duty requirements that are not clearly part of or explicitly cross-referenced in a SIP emission limitation cannot be viewed as a component of a continuous emission limitation. Even if clearly part of or explicitly cross-referenced in the SIP emission limitation, however, a given general-duty requirement may not be consistent with the applicable stringency requirements for SIP provisions that should apply during startup and

[408] The EPA notes that CAA section 123 explicitly prohibits certain intermittent or supplemental controls on sources. In a situation where an emission limitation is continuous, by virtue of the fact that it has components applicable during all modes of source operation, the EPA would not interpret the components that applied only during certain modes of operation, *e.g.,* startup and shutdown, to be prohibited intermittent or supplemental controls.

[409] Every source is designed, maintained and operated with the expectation that the source will at least occasionally start up and shut down, and thus these modes of operation are ''normal'' in the sense that they are to be expected. The EPA uses this term in the ordinary sense of the word to distinguish between such predictable modes of source operation and genuine ''malfunctions,'' which are by definition supposed to be unpredictable and unforeseen events that could not have been precluded by proper source design, maintenance and operation.

shutdown. In general, the EPA believes that a legally and practically enforceable alternative emission limitation applicable during startup and shutdown should be expressed as a numerical limitation, a specific technological control requirement or a specific work practice applicable to affected sources during specifically defined periods or modes of operation. Accordingly, while states are free to include general-duty provisions in their SIPs as separate additional requirements, for example, to ensure that owners and operators act consistent with reasonable standards of care, the EPA does not recommend using these background standards to bridge unlawful interruptions in an emission limitation.[410]

D. Recommendations for Development of Alternative Emission Limitations Applicable During Startup and Shutdown

A state can develop special, alternative emission limitations that apply during startup or shutdown if the source cannot meet the otherwise applicable emission limitation in the SIP. SIP provisions may include alternative emission limitations for startup and shutdown as part of a continuously applicable emission limitation when properly developed and otherwise consistent with CAA requirements. However, if a non-numerical requirement does not itself (or in combination with other components of the emission limitation) limit the quantity, rate or concentration of air pollutants on a continuous basis, then the non-numerical standard (or overarching requirement) does not meet the statutory definition of an emission limitation under section 302(k).

In cases in which measurement of emissions during startup and/or shutdown is not reasonably feasible, it may be appropriate for an emission limitation to include as a component a control for startup and/or shutdown periods other than a numerically expressed emission limitation.

The federal NESHAP and NSPS regulations and the technical materials in the public record for those rules may provide assistance for states as they develop and consider emission limitations and alternative emission limitations for sources in their states, and definitions of startup and shutdown events and work practices for them found in these regulations may be appropriate for adoption by the state in certain circumstances. In particular, the NSPS regulations should provide very relevant information for sources of the same type, size and control equipment type, even if the sources were not constructed or modified within a date range that would make them subject to the NSPS. The EPA therefore encourages states to explore these approaches.

The EPA recommends that, in order to be approvable (*i.e.,* meet CAA requirements), alternative requirements applicable to the source during startup and shutdown should be narrowly tailored and take into account considerations such as the technological limitations of the specific source category and the control technology that is feasible during startup and shutdown. The EPA recommends the following seven specific criteria as appropriate considerations for developing emission limitations in SIP provisions that apply during startup and shutdown:

(1) The revision is limited to specific, narrowly defined source categories using specific control strategies (*e.g.,* cogeneration facilities burning natural gas and using selective catalytic reduction);

(2) Use of the control strategy for this source category is technically infeasible during startup or shutdown periods;

(3) The alternative emission limitation requires that the frequency and duration of operation in startup or shutdown mode are minimized to the greatest extent practicable;

(4) As part of its justification of the SIP revision, the state analyzes the potential worst-case emissions that could occur during startup and shutdown based on the applicable alternative emission limitation;

(5) The alternative emission limitation requires that all possible steps are taken to minimize the impact of emissions during startup and shutdown on ambient air quality;

(6) The alternative emission limitation requires that, at all times, the facility is operated in a manner consistent with good practice for minimizing emissions and the source uses best efforts regarding planning, design, and operating procedures; and

(7) The alternative emission limitation requires that the owner or operator's actions during startup and shutdown periods are documented by properly signed, contemporaneous operating logs or other relevant evidence.

If a state elects to create an emission limitation with different levels of control applicable during specifically defined periods of startup and shutdown than during other normal modes of operation, then the resulting emission limitation must meet the substantive requirements applicable to the type of SIP provision at issue, meet the applicable level of stringency for that type of emission limitation and be legally and practically enforceable. Alternative emission limitations applicable during startup and shutdown cannot allow an inappropriately high level of emissions or an effectively unlimited or uncontrolled level of emissions, as those would constitute impermissible *de facto* exemptions for emissions during certain modes of operation.

E. Enforcement Discretion Provisions

One approach other than exemptions that would be consistent with CAA requirements for SIP provisions that states can use to address excess emissions during SSM events is to include in the SIP criteria and procedures for the use of enforcement discretion by air agency personnel. SIPs may contain such provisions concerning the exercise of discretion by the air agency's own personnel, but such provisions cannot bar enforcement by the EPA or by other parties through a citizen suit.

Pursuant to the CAA, all parties with authority to bring an enforcement action to enforce SIP provisions (*i.e.,* the state, the EPA or any parties who qualify under the citizen suit provision of section 304) have enforcement discretion that they may exercise as they deem appropriate in any given circumstances. For example, if the event that causes excess emissions is an actual malfunction that occurred despite reasonable care by the source operator to avoid malfunctions, then each of these parties may decide that no enforcement action is warranted. In the event that any party decides that an enforcement action is warranted, then it has enforcement discretion with respect to what remedies to seek from the court for the violation (*e.g.,* injunctive relief, compliance order, monetary penalties or all of the above), as well as the type of injunctive relief and/or amount of monetary penalties sought.[411]

As part of state programs governing enforcement, states can include regulatory provisions or may adopt policies setting forth criteria for how they plan to exercise their own

[410] For example, the EPA has concerns the some general-duty provisions, if at any point relied upon as the sole requirement purportedly limiting emissions, could undermine the ability to ensure compliance with SIP emission limitations relied on to achieve the NAAQS and other relevant CAA requirements at all times. *See* section 110(a)(2)(A), (C); *US Magnesium, LLC* v. *EPA,* 690 F.3d 1157, 1161–62 (10th Cir. 2012).

[411] The EPA notes that only the state and the Agency have authority to seek criminal penalties for knowing and intentional violation of CAA requirements. The EPA has this explicit authority under CAA section 113(c).

enforcement authority. Under section 110(a)(2), states must have adequate authority to enforce provisions adopted into the SIP, but states can establish criteria for how they plan to exercise that authority. Such enforcement discretion provisions cannot, however, impinge upon the enforcement authority of the EPA or of others pursuant to the citizen suit provision of the CAA. Such enforcement discretion provisions in a SIP would be inconsistent with the enforcement structure provided in the CAA. Specifically, the statute provides explicit independent enforcement authority to the EPA under CAA section 113 and to citizens under CAA section 304. Thus, the CAA contemplates that the EPA and citizens have authority to pursue enforcement for a violation even if the state elects not to do so. The EPA and citizens, and any federal court in which they seek to pursue an enforcement claim for violation of SIP requirements, must retain the authority to evaluate independently whether a source's violation of an emission limitation warrants enforcement action. Potential for enforcement by the EPA or through a citizen suit provides an important safeguard in the event that the state lacks resources or ability to enforce violations and provides additional deterrence. Accordingly, a SIP provision that operates at the state's election to eliminate the authority of the EPA or the public to pursue enforcement actions in federal court would undermine the enforcement structure of the CAA and would thus be substantially inadequate to meet fundamental requirements of the CAA.

Also, states should not adopt overly broad enforcement discretion provisions for inclusion in their SIPs, even for their own personnel. Section 110(a)(2) requires states to have adequate enforcement authority, and overly broad enforcement discretion provisions would run afoul of this requirement if they have the effect of precluding adequate state authority to enforce SIP requirements. If such provisions are sufficiently specific, provide for sufficient public process and are sufficiently bounded, so that it is possible to anticipate at the time of the EPA's approval of the SIP provision how that provision will actually be applied and the potential adverse impacts thereof, then such a provision might meet basic CAA requirements. In essence, if it is possible to anticipate and evaluate in advance how the exercise of enforcement discretion could affect compliance with other CAA requirements, then it may be possible to determine in advance that the preauthorized exercise of director's discretion will not interfere with other CAA requirements, such as providing for attainment and maintenance of the NAAQS.

When using enforcement discretion in determining whether an enforcement action is appropriate in the case of excess emissions during a malfunction, satisfaction of the following criteria should be considered:

(1) To the maximum extent practicable the air pollution control equipment, process equipment or processes were maintained and operated in a manner consistent with good practice for minimizing emissions;

(2) Repairs were made in an expeditious fashion when the operator knew or should have known that applicable emission limitations were being exceeded. Off-shift labor and overtime were utilized, to the extent practicable, to ensure that such repairs were made as expeditiously as practicable;

(3) The amount and duration of the excess emissions (including any bypass) were minimized to the maximum extent practicable during periods of such emissions;

(4) All possible steps were taken to minimize the impact of the excess emissions on ambient air quality; and

(5) The excess emissions are not part of a recurring pattern indicative of inadequate design, operation or maintenance.

F. Affirmative Defense Provisions in SIPs

The EPA believes that SIP provisions that function to alter the jurisdiction or discretion of the federal courts under CAA section 113 and section 304 to determine liability and to impose remedies are inconsistent with fundamental legal requirements of the CAA, especially with respect to the enforcement regime explicitly created by statute. Affirmative defense provisions by their nature purport to limit or eliminate the authority of federal courts to find liability or to impose remedies through factual considerations that differ from, or are contrary to, the explicit grants of authority in section 113(b) and section 113(e). These provisions are not appropriate under the CAA, no matter what type of event they apply to, what criteria they contain or what forms of remedy they purport to limit or eliminate.

Section 113(b) provides courts with explicit jurisdiction to determine liability and to impose remedies of various kinds, including injunctive relief, compliance orders and monetary penalties, in judicial enforcement proceedings. This grant of jurisdiction comes directly from Congress, and the EPA is not authorized to alter or eliminate this jurisdiction under the CAA or any other law. With respect to monetary penalties, CAA section 113(e) explicitly includes the factors that federal courts and the EPA are required to consider in the event of judicial or administrative enforcement for violations of CAA requirements, including SIP provisions. Because Congress has already given federal courts the jurisdiction to determine what monetary penalties are appropriate in the event of judicial enforcement for a violation of a SIP provision, neither the EPA nor states can alter or eliminate that jurisdiction by superimposing restrictions on that jurisdiction and discretion granted by Congress to the courts. Accordingly, pursuant to section 110(k) and section 110(l), the EPA cannot approve any such affirmative defense provision in a SIP. If such an affirmative defense provision is included in an existing SIP, the EPA has authority under section 110(k)(5) to require a state to remove that provision.

Couching an affirmative defense provision in terms of merely defining whether the emission limitation applies and thus whether there is a ''violation,'' as suggested by some commenters, is also problematic. If there is no ''violation'' when certain criteria or conditions for an ''affirmative defense'' are met, then there is in effect no emission limitation that applies when the criteria or conditions are met; the affirmative defense thus operates to create an exemption from the emission limitation. As explained in the February 2013 proposal, the CAA requires that emission limitations must apply continuously and cannot contain exemptions, conditional or otherwise. This interpretation is consistent with the decision in *Sierra Club* v. *Johnson* concerning the term ''emission limitation'' in section 302(k).[412] Characterizing the exemptions as an ''affirmative defense'' runs afoul of the requirement that emission limitations must apply continuously.

The EPA wishes to be clear that the absence of affirmative defense provisions in SIPs does not alter the legal rights of sources under the CAA. In the event of an enforcement action for an exceedance of a SIP emission limitation, a source can elect to assert any common law or statutory defenses that it determines are supported, based upon the facts and circumstances surrounding the alleged violation.

[412] 551 F.3d 1019 (D.C. Cir. 2008).

Under section 113(b), courts have explicit authority to impose injunctive relief, issue compliance orders, assess monetary penalties or fees and impose any other appropriate relief. Under section 113(e), federal courts are required to consider the enumerated statutory factors when assessing monetary penalties, including ''such other factors as justice may require.'' For example, if the exceedance of the SIP emission limitation occurs due to a malfunction, that exceedance is a violation of the applicable emission limitation but the source retains the ability to defend itself in an enforcement action and to oppose the imposition of particular remedies or to seek the reduction or elimination of monetary penalties, based on the specific facts and circumstances of the event. Thus, elimination of a SIP affirmative defense provision that purported to take away the statutory jurisdiction of the federal court to exercise its authority to impose remedies does not disarm sources in potential enforcement actions. Sources retain all of the equitable arguments they could have made under an affirmative defense provision; they must simply make such arguments to the reviewing court as envisioned by Congress in section 113(b) and section 113(e).

Once impermissible SSM exemptions are removed from the SIP, then any excess emissions during such events may be the subject of an enforcement action, in which the parties may use any appropriate evidence to prove or disprove the existence and scope of the alleged violation and the appropriate remedy for an established violation. Any alleged violation of an applicable SIP emission limitation, if not conceded by the source, must be established by the party bearing the burden of proof in a legal proceeding. The degree to which evidence of an alleged violation may derive from a specific reference method or any other credible evidence must be determined based upon the facts and circumstances of the exceedance of the emission limitation at issue.[413] Congress vested the federal courts with the authority to judge how best to weigh the evidence in an enforcement action.

[413] For example, the degree to which data from continuous opacity monitoring systems (COMS) is evidence of violations of SIP opacity or PM mass emission limitations is a factual question that must be resolved on the facts and circumstances in the context of an enforcement action. *See, e.g., Sierra Club* v. *Pub. Serv. Co. of Colorado, Inc.,* 894 F.Supp. 1455 (D. Colo. 1995) (allowing use of COMS data to prove opacity limit violations).

G. Anti-Backsliding Considerations

The EPA recognizes that one important consideration for air agencies as they evaluate how best to revise their SIP provisions in response to this SIP call is the nature of the analysis that will be necessary for the resulting SIP revisions under section 110(k)(3), section 110(l) and section 193. Under section 110(l), the EPA is prohibited from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress or any other requirements of the CAA. Section 193 prohibits states from modifying regulations in place prior to November 15, 1990, unless the modification ensures equivalent or greater reductions of the pollutant. SIP revision must be evaluated for compliance with section 110(l) and section 193 on the facts and circumstances of the specific revision. Section X of this document provides three example scenarios in which a state might remove an impermissible SSM provision from its SIP, including how sections 110(l) and 193 considerations might apply. These examples are intended to provide general guidance on the considerations and the nature of the analysis that may be appropriate for different types of SIP revisions. Air agencies should contact their respective EPA Regional Offices (see the **SUPPLEMENTARY INFORMATION** section of this document) for further recommendations and assistance concerning the analysis appropriate for specific SIP revisions involving changes in SSM provisions.

XII. Environmental Justice Consideration

The final action restates the EPA's interpretation of the statutory requirements of the CAA. Through the SIP calls issued to certain states as part of this SIP call action under CAA section 110(k)(5), the EPA is only requiring each affected state to revise its SIP to comply with existing requirements of the CAA. The EPA's action therefore leaves to each affected state the choice as to how to revise the SIP provision in question to make it consistent with CAA requirements and to determine, among other things, which of the several lawful approaches to the treatment of excess emissions during SSM events will be applied to particular sources. The EPA has not performed an environmental justice analysis for purposes of this action, because it cannot geographically locate or quantify the resulting source-specific emission reductions. Nevertheless, the EPA believes this action will provide environmental protection for all areas of the country.

XIII. References

The following is a list of documents that are specifically referenced in this document. Some listed documents also include a document ID number associated with the docket for this rulemaking.

1. 1982 SSM Guidance (Memorandum to Regional Administrators, Region I–X from Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation, Subject: Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions, dated September 28, 1982), EPA–HQ–OAR–2012–0322–0005.
2. 1983 SSM Guidance (Memorandum to Regional Administrators, Region I–X from Kathleen M. Bennett, Assistant Administrator for Air, Noise and Radiation, Subject: Policy on Excess Emissions During Startup, Shutdown, Maintenance, and Malfunctions, dated February 15, 1983), EPA–HQ–OAR–2012–0322–0006.
3. 1999 SSM Guidance (Memorandum to EPA Regional Administrators, Regions I–X from Steven A. Herman and Robert Perciasepe, USEPA, Subject: State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup, and Shutdown, dated September 20, 1999), EPA–HQ–OAR–2012–0322–0007.
4. 2001 SSM Guidance (Memorandum to EPA Regional Administrators, Regions I–X from Eric Schaeffer, Director, Office of Regulatory Enforcement, Office of Enforcement and Compliance Assurance, and John S. Seitz, Director, Office of Air Quality Planning and Standards, Office of Air and Radiation, dated December 5, 2001), EPA–HQ–OAR–2012–0322–0038.
5. ''Action to Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Substantial Inadequacy and SIP Call; Final rule,'' 75 FR 77698 (December 13, 2010), EPA–HQ–OAR–2012–0322–0014.
6. *Am. Farm Bureau Fedn* v. *United States EPA,* 984 F.Supp.2d 289 (M.D. Pa. 2013).
7. *Appalachian Power Co.* v. *EPA,* 249 F.3d 1032 (D.C. Cir. 2001).
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9. ''Approval and Disapproval and Promulgation of Air Quality Implementation Plans; Colorado; Revisions to Regulation 1; Notice of proposed rulemaking,'' 75 FR 42342 (July 21, 2010), EPA–HQ–OAR–2012–0322–0015, finalized as proposed at 76 FR 4540 (January 26, 2011), EPA–HQ–OAR–2012–0322–0016.
10. ''Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Reasonably Available Control Technology for the 1997 8-Hour Ozone Standard; Direct final rule,'' 77 FR 66388 (November 5, 2012).

11. ''Approval and Promulgation of Air Quality Implementation Plans; New Hampshire; Reasonably Available Control Technology Update To Address Control Techniques Guidelines Issued in 2006, 2007, and 2008; Direct final rule,'' 77 FR 66921 (November 8, 2012).
12. ''Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Redesignation, Maintenance Plan, and Emissions Inventories for Reading; Ozone Redesignations Policy Change; Final rule,'' 62 FR 24826 (May 7, 1997).
13. ''Approval and Promulgation of Air Quality Implementation Plans; Utah; Redesignation Request and Maintenance Plan for Salt Lake County; Utah County; Ogden City PM_{10} Nonattainment Area; Proposed rule,'' 74 FR 62717 (December 1, 2009).
14. ''Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Arizona; Redesignation of Phoenix-Mesa Area to Attainment for the 1997 8-Hour Ozone Standard; Final rule,'' 79 FR 55645 (September 17, 2014).
15. ''Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of the Ohio Portion of the Huntington-Ashland 1997 Annual Fine Particulate Matter Nonattainment Area to Attainment; Final rule,'' 77 FR 76883 (December 31, 2012).
16. ''Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; State of Arizona; Redesignation of the Phoenix-Mesa Nonattainment Area to Attainment for the 1997 8-Hour Ozone Standard; Proposed rule,'' 79 FR 16734 (March 26, 2014).
17. ''Approval and Promulgation of Implementation Plans; Arkansas; Revisions for the Regulation and Permitting of Fine Particulate Matter; Final rule,'' 80 FR 11573 (March 4, 2015).
18. ''Approval and Promulgation of Implementation Plans; Corrections to the Arizona and Nevada State Implementation Plans; Direct final rule,'' 74 FR 57051 (November 3, 2009), EPA–HQ–OAR–2012–0322–0018.
19. ''Approval and Promulgation of Implementation Plans; Designation of Areas for Air Quality Planning Purposes; State of California; PM–10; Revision of Designation; Redesignation of the San Joaquin Valley Air Basin PM–10 Nonattainment Area to Attainment; Approval of PM–10 Maintenance Plan for the San Joaquin Valley Air Basin; Approval of Commitments for the East Kern PM–10 Nonattainment Area; Proposed rule,'' 73 FR 22307 (April 25, 2008).
20. ''Approval and Promulgation of Implementation Plans; Kentucky; Approval of Revisions to the Jefferson County Portion of the Kentucky SIP; Emissions During Startups, Shutdowns, and Malfunctions,'' proposed at 78 FR 29683 (May 21, 2013) and finalized at 79 FR 33101 (June 10, 2014), EPA–HQ–OAR–2012–0322–0890.
21. ''Approval and Promulgation of Implementation Plans; North Dakota; Revisions to the Air Pollution Control Rules; Final rule,'' 79 FR 63045 (October 22, 2014).
22. ''Approval and Promulgation of Implementation Plans; Texas; Excess Emissions During Startup, Shutdown, Maintenance, and Malfunction Activities,'' 75 FR 68989 (November 10, 2010), EPA–HQ–OAR–2012–0322–0892.
23. ''Approval and Promulgation of Implementation Plans; Texas; Revisions to the New Source Review (NSR) State Implementation Plan (SIP); Prevention of Significant Deterioration (PSD), Nonattainment NSR (NNSR) for the 1997 8-Hour Ozone Standard, NSR Reform, and a Standard Permit; Proposed rule,'' 74 FR 48467 (September 23, 2009).
24. ''Approval and Promulgation of Implementation Plans; Wyoming; Revisions to the Air Quality Standards and Regulations,'' 79 FR 62859 (October 21, 2014).
25. ''Approval and Promulgation of State Implementation Plans; Call for Sulfur Dioxide SIP Revisions for Billings/Laurel, MT [Montana],'' 58 FR 41430 (August 4, 1993).
26. ''Approval and Promulgation of State Implementation Plans; Michigan,'' 63 FR 8573 (February 20, 1998), EPA–HQ–OAR–2012–0322–0023.
27. *Arizona Public Service Co.* v. *EPA,* 562 F.3d 1116 (10th Cir. 2009).
28. *ATK Launch Systems, Inc.* v. *EPA,* 651 F.3d 1194 (10th Cir. 2011).
29. *Auer* v. *Robbins,* 519 U.S. 452 (1997).
30. CAA of 1970, Pub. L. 91–604, section 4(a), 84 Stat. 1676 (December 31, 1970).
31. *Catawba County, North Carolina* v. *EPA,* 571 F.3d 20 (D.C. Cir. 2009).
32. *Chevron, U.S.A., Inc.* v. *Natural Res. Def. Council, Inc.,* 467 U.S. 837 (1984).
33. ''Clean Air Act Full Approval of Partial Operating Permit Program; Allegheny County; Pennsylvania; Direct final rule,'' 66 FR 55112 (November 1, 2001), EPA–HQ–OAR–2012–0322–0020.
34. *Conn. Light & Power Co.* v. *NRC,* 673 F.2d 525 (D.C. Cir. 1982).
35. ''Correction of Implementation Plans; American Samoa, Arizona, California, Hawaii, and Nevada State Implementation Plans; Notice of proposed rulemaking,'' 61 FR 38664 (July 25, 1996), EPA–HQ–OAR–2012–0322–0034, finalized at 62 FR 34641 (June 27, 1997), EPA–HQ–OAR–2012–0322–0035.
36. ''Corrections to the California State Implementation Plan,'' 69 FR 67062 (November 16, 2004), EPA–HQ–OAR–2012–0322–0017.
37. ''Credible Evidence Revisions; Final rule,'' 62 FR 8314 (February 24, 1997).
38. ''Draft Emissions Inventory Guidance for Implementation of Ozone [and Particulate Matter]* National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' April 11, 2014.
39. *EME Homer City Generation, L.P.* v. *EPA,* 696 F.3d 7 (D.C. Cir. 2012) *rev'd,* 134 S. Ct. 1584 (2014).
40. ''Emissions Inventory Guidance for Implementation of Ozone and Particulate Matter National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations,'' Appendix B, August 2005, EPA–454/R–05–001.
41. ''Federal Implementation Plan for the Billings/Laurel, MT [Montana], Sulfur Dioxide Area,'' 73 FR 21418 (April 21, 2008), EPA–HQ–OAR–2012–0322–0009.
42. *FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502 (2009).
43. February 2013 proposal (''State Implementation Plans: Response to Petition for Rulemaking; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown, and Malfunction; Proposed rule,'' 78 FR 12459, February 22, 2013), EPA–HQ–OAR–2012–0322–0055.
44. ''Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone,'' 63 FR 57356 (October 27, 1998), EPA–HQ–OAR–2012–0322–0037.
45. ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 76 FR 21639 (April 18, 2011), EPA–HQ–OAR–2012–0322–0010.
46. ''Finding of Substantial Inadequacy of Implementation Plan; Call for Utah State Implementation Plan Revision,'' 75 FR 70888 (November 19, 2010), EPA–HQ–OAR–2012–0322–0012.
47. ''Finding of Substantial Inadequacy of Implementation Plan; Call for Iowa State Implementation Plan Revision,'' 76 FR 41424 (July 14, 2011).
48. ''Finding of Substantial Inadequacy of Implementation Plan; Call for California State Implementation Plan Revision,'' 68 FR 37746 (June 25, 2003).
49. *Florida Power & Light Co.* v. *Costle,* 650 F.2d 579 (5th Cir. 1981).
50. *Florida Power & Light Co.* v. *United States,* 846 F.2d 765 (D.C. Cir. 1988).
51. ''Guidance on the Use of Models and Other Analyses for Demonstrating Attainment of Air Quality Goals for Ozone, $PM_{2.5}$, and Regional Haze,'' April 2007, EPA–454/B–07–002.
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53. H. Rept. 101–490.
54. H.R. 95–294 (1977).
55. *Howmet Corp.* v. *EPA,* 614 F.3d 544 (D.C. Cir. 2010).
56. *Industrial Environmental Association* v. *Browner,* No. 97–71117 (9th Cir. May 26, 2000).
57. *Ky. Res Council* v. *EPA,* 467 F.3d 986 (6th Cir. 2006).
58. *Luminant Generation* v. *EPA,* 714 F.3d 841 (5th Cir. 2013) [EPA–HQ–OAR–2012–0322–0881], *cert. denied,* 134 S. Ct. 387 (2013).

59. Memorandum, ''Additional Clarification Regarding Application of Appendix W Modeling Guidance for the 1-hour NO_2 National Ambient Air Quality Standard,'' from T. Fox, EPA/OAQPS, to Regional Air Division Directors, March 1, 2011.
60. Memorandum, ''Estimate of Potential Direct Costs of SSM SIP Calls to Air Agencies,'' April 28, 2015.
61. Memorandum, ''Guidance on Infrastructure State Implementation Plan (SIP) Elements under Clean Air Act Section 110(a)(1) and 110(a)(2),'' from Stephen D. Page, Director, OAQPS, to Regional Air Directors, Regions 1–10, September 13, 2013.
62. Memorandum, ''Statutory, Regulatory, and Policy Context for this Rulemaking,'' February 4, 2013, EPA–HQ–OAR–2012–0322–0029 (Background Memorandum).
63. *Mich. Dep't of Envtl. Quality* v. *Browner,* 230 F.3d 181 (6th Cir. 2000).
64. *Michigan* v. *EPA,* 213 F.3d 663 (D.C. Cir. 2000).
65. *Mid-Tex Elec. Co-op, Inc.* v. *FERC,* 773 F.2d 327 (D.C. Cir. 1985).
66. *Montana Sulphur & Chemical Co.* v. *EPA,* 666 F.3d 1174 (9th Cir. 2012) [EPA–HQ–OAR–2012–0322–0032], *cert. denied,* 133 S. Ct. 409 (2012).
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69. ''National Emission Standards for Hazardous Air Pollutants Residual Risk and Technology Review for Flexible Polyurethane Foam Production; Final rule,'' 79 FR 48073 (August 15, 2014).
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74. *North Dakota* v. *EPA,* 730 F.3d 750 (8th Cir. 2013), *cert. denied,* 134 S. Ct. 2662 (2014).
75. *NRDC* v. *EPA,* 749 F.3d 1055 (D.C. Cir. 2014), EPA–HQ–OAR–2012–0322–0885.
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77. ''Oil and Natural Gas Sector: Reconsideration of Additional Provisions of New Source Performance Standards; Final rule,'' 79 FR 79017 (December 31, 2014).
78. ''Oil and Natural Gas Sector: Reconsideration of Additional Provisions of New Source Performance Standards; Proposed rule,'' 79 FR 41752 (July 17, 2014).
79. *Omnipoint Corp.* v. *Fed. Commc'ns Comm'n,* 78 F.3d 620 (D.C. Cir. 1996).
80. Petition (''Petition to Find Inadequate and Correct Several State Implementation Plans under Section 110 of the Clean Air Act Due to Startup, Shutdown, Malfunction, and/or Maintenance Provisions,'' on behalf of Sierra Club, dated June 30, 2011), EPA–HQ–OAR–2012–0322–0003.
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82. ''Requirements for Preparation, Adoption, and Submittal of Implementation Plans; Approval and Promulgation of Implementation Plans; Final rules,'' 45 FR 52676 (August 7, 1980).
83. ''Standards of Performance for Fossil-Fuel-Fired Steam Generators for Which Construction Is Commenced After August 17, 1971; Standards of Performance for Electric Utility Steam Generating Units for Which Construction Is Commenced After September 18, 1978; Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units; and Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units; Final rule,'' 74 FR 5072 (January 28, 2009).
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87. *Sierra Club* v. *EPA,* 375 F.3d 537 (7th Cir. 2004).
88. *Sierra Club* v. *Georgia Power Co.,* 443 F.3d 1346 (11th Cir. 2006).
89. *Sierra Club* v. *Johnson,* 551 F.3d 1019 (D.C. Cir. 2008), EPA–HQ–OAR–2012–0322–0048.
90. *Sierra Club* v. *Pub. Serv. Co. of Colorado, Inc.,* 894 F.Supp. 1455 (D. Colo. 1995).
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92. *Southwestern Pennsylvania Growth Alliance* v. *EPA,* 114 F.3d 984 (6th Cir. 1998).
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96. *Tex Tin Corp.* v. *EPA,* 992 F.2d 353 (D.C. Cir. 1993).
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99. *U.S.* v. *Ford Motor Co.,* 736 F.Supp. 1539 (W.D. Mo. 1990).
100. *U.S.* v. *General Motors Corp.,* 702 F.Supp. 133 (N.D. Texas 1988).
101. *Union Elec. Co.* v. *EPA,* 427 U.S. 246 (1976).
102. *US Magnesium, LLC* v. *EPA,* 690 F.3d 1157 (10th Cir. 2012), EPA–HQ–OAR–2012–0322–0031.
103. *Virginia* v. *EPA,* 108 F.3d 1397 (D.C. Cir. 1997).
104. *Wall* v. *EPA,* 265 F.3d 426 (6th Cir. 2001).
105. *Wyo. Outdoor Council* v. *U.S. Forest Serv.,* 165 F.3d 43 (D.C. Cir. 1999).

XIV. 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 a ''significant regulatory action'' that was submitted to the Office of Management and Budget (OMB) for review because it raises novel legal or policy issues. Any changes made in response to OMB recommendations have been documented in the docket.

B. Paperwork Reduction Act (PRA)

This action does not impose an information collection burden under the PRA. This action merely reiterates the EPA's interpretation of the statutory requirements of the CAA and does not require states to collect any additional information. Through the SIP calls issued to certain states as part of this action under CAA section 110(k)(5), the EPA is only requiring each affected state to revise its SIP to comply with existing requirements of the CAA.

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. Any 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 this rule. This action

will not impose any requirements on small entities. Instead, the action merely reiterates the EPA's interpretation of the statutory requirements of the CAA. Through the SIP calls issued to certain states as part of this SIP call action under CAA section 110(k)(5), the EPA is only requiring each affected state to revise its SIP to comply with existing requirements of the CAA. The EPA's action therefore leaves to each affected state the choice as to how to revise the SIP provision in question to make it consistent with CAA requirements and to determine, among other things, which of the several lawful approaches to the treatment of excess emissions during SSM events will be applied to particular sources.

D. Unfunded Mandates Reform Act (UMRA)

This action does not contain any federal mandate as described in UMRA, 2 U.S.C. 1531–1538, and does not significantly or uniquely affect small governments. The action imposes no new enforceable duty on any state, local or tribal governments or the private sector. The regulatory requirements of this action apply to certain states for which the EPA is issuing a SIP call. To the extent that such affected states allow local air districts or planning organizations to implement portions of the state's obligation under the CAA, the regulatory requirements of this action do not significantly or uniquely affect small governments because those governments have already undertaken the obligation to comply with the CAA.

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. In this action, the EPA is not addressing any tribal implementation plans. This action is limited to states. 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, in prescribing the EPA's action for states regarding their obligations for SIPs under the CAA, it implements specific standards established by Congress in statutes.

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

This action is not a ''significant energy action'' because it is not likely to have a significant adverse effect on the supply, distribution or use of energy. This action merely prescribes the EPA's action for states regarding their obligations for SIPs under the CAA.

I. National Technology Transfer and Advancement Act (NTTAA)

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 action is intended to ensure that all communities and populations across the affected states, including minority, low-income and indigenous populations overburdened by pollution, receive the full human health and environmental protection provided by the CAA. This action concerns states' obligations regarding the treatment they give, in rules included in their SIPs under the CAA, to excess emissions during startup, shutdown and malfunctions. This action requires that certain states bring their treatment of these emissions into line with CAA requirements, which will lead to certain sources' having greater incentives to control emissions during such events.

K. Determination Under Section 307(d)

Pursuant to CAA section 307(d)(1)(V), the Administrator determines that this action is subject to the 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.''

L. 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).

XV. Judicial Review

The Administrator determines that this action is ''nationally applicable'' within the meaning of section 307(b)(1) of the CAA. This action in scope and effect extends to numerous judicial circuits because the action on the Petition extends to states throughout the country. In these circumstances, section 307(b)(1) and its legislative history authorize the Administrator to find the action to be of ''nationwide scope or effect'' and thus to indicate the venue for challenges to be in the D.C Circuit. Thus, any petitions for review must be filed in the U.S. Court of Appeals for the District of Columbia Circuit.

In addition, pursuant to CAA section 307(d)(1)(V), the EPA is determining that this rulemaking action is subject to the requirements of section 307(d), which establish procedural requirements specific to rulemaking under the CAA. In the event there is a judicial challenge to this action and a court determines that the EPA has erred with respect to any portion of this action, the EPA intends the components of this action to be severable.

XVI. Statutory Authority

The statutory authority for this action is provided by CAA section 101 *et seq.* (42 U.S.C. 7401 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Affirmative defense, Air pollution control, Carbon dioxide, Carbon dioxide equivalents, Carbon monoxide, Excess emissions, Greenhouse gases, Hydrofluorocarbons, Incorporation by reference, Intergovernmental relations, Lead, Methane, Nitrogen dioxide, Nitrous oxide, Ozone, Particulate matter, Perfluorocarbons, Reporting and recordkeeping requirements, Startup, shutdown and malfunction, State implementation plan, Sulfur hexafluoride, Sulfur oxides, Volatile organic compounds.

Dated: May 22, 2015.

Gina McCarthy,

Administrator.

[FR Doc. 2015–12905 Filed 6–11–15; 8:45 am]

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Part V

Nuclear Regulatory Commission

10 CFR Part 71

Revisions to Transportation Safety Requirements and Harmonization With International Atomic Energy Agency Transportation Requirements; Final Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Part 71

[NRC–2008–0198]

RIN 3150–AI11

Revisions to Transportation Safety Requirements and Harmonization With International Atomic Energy Agency Transportation Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC), in consultation with the U.S. Department of Transportation (DOT), is amending its regulations for the packaging and transportation of radioactive material. These amendments make conforming changes to the NRC's regulations based on the International Atomic Energy Agency's (IAEA) 2009 standards for the international transportation of radioactive material and maintain consistency with the DOT's regulations. In addition, these amendments re-establish restrictions on materials that qualify for the fissile material exemption, clarify requirements, update administrative procedures, and make editorial changes.

DATES: *Effective date:* This rule is effective July 13, 2015. *Incorporation by reference:* The incorporation by reference of certain publications listed in the regulation is approved by the Director of the Federal Register as of July 13, 2015.

ADDRESSES: Please refer to Docket ID NRC–2008–0198 when contacting the NRC about the availability of information for this final rule. You may obtain publicly-available information related to this final rule by any of the following methods:

- Federal rulemaking Web site: Go to *http://www.regulations.gov* and search for Docket ID NRC–2008–0198. 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 final rule.
- NRC 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 Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the **SUPPLEMENTARY INFORMATION** section.
- NRC PDR: You may examine and purchase copies of public documents at the NRC PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Solomon Sahle, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–3781; email: *Solomon.Sahle@nrc.gov.*

SUPPLEMENTARY INFORMATION:

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VI. Plain Writing
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VIII. Paperwork Reduction Act Statement
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I. Background

The NRC regulates the transportation of radioactive material under part 71 of Title 10 of the *Code of Federal Regulations* (10 CFR). Periodically, the IAEA revises its regulations related to transportation of radioactive material. The NRC evaluated changes in the 2009 edition of the IAEA's ''Regulations for the Safe Transport of Radioactive Material'' (TS–R–1) and identified a number of areas in 10 CFR part 71 that needed to be revised to maintain compatibility with the IAEA's regulations. Accordingly, the NRC developed a proposed rule to amend 10 CFR part 71, and published it for comment in the **Federal Register** on May 16, 2013 (78 FR 28988).

The NRC is now publishing its final rule. Together with a related DOT final rule amending Title 49 of the *Code of Federal Regulations* (49 CFR) [79 FR 40590, July 11, 2014], these actions bring United States regulations into general accord with TS–R–1, and maintain consistency between NRC and DOT regulations. The NRC's final rule also revises 10 CFR part 71 to: (1) Update administrative procedures for the quality assurance program requirements described in subpart H of 10 CFR part 71; (2) re-establish restrictions on material that qualifies for the fissile material exemption; (3) clarify the requirements for a general license; 4) clarify the responsibilities of certificate holders and licensees when making preliminary safety determinations on packaging to be used for transporting radioactive material; and 5) make editorial changes.

Compatibility With IAEA and Consistency With DOT Transportation Regulations

The IAEA was formed by member nations to promote safe, secure, and peaceful nuclear technologies. It establishes safety standards to protect public health and safety and to minimize the danger to life and property, and has developed safety standards for the safe transport of radioactive material in TS–R–1. Copies of TS–R–1 may be obtained from the United States distributors, Bernan, 15200 NBN Way, P.O. Box 191, Blue Ridge Summit, PA 17214; telephone: 1–800–865–3457; email: *customercare@bernan.com,* or Renouf Publishing Company Ltd., 812 Proctor Ave., Ogdensburg, NY 13669–2205; telephone: 1–888–551–7470; email: *orders@renoufbooks.com.* An electronic copy of TS–R–1 may be found at the following IAEA Web site: *http://www-pub.iaea.org/MTCD/publications/PDF/Pub1384_web.pdf.*

These IAEA safety standards and regulations were developed in consultation with IAEA Member States, and reflect an international consensus on what is needed to provide for a high level of safety. By providing a global framework for the consistent regulation of the transport of radioactive material, TS–R–1 facilitates international commerce and contributes to the safe conduct of international trade involving radioactive material. By periodically revising its regulations to be compatible with IAEA and DOT regulations, the NRC is able to remove inconsistencies that could impede international commerce and reflect knowledge gained in scientific and technical advances and accumulated expericence.

This rulemaking harmonizes the NRC's regulations with the IAEA's transportation regulations in TS–R–1 and aligns with the DOT regulations. The regulations in TS–R–1 represent an accepted set of requirements that provide a high level of safety in the

packaging and transportation of radioactive materials and provides for a basis and framework that facilitates the development of internationally-consistent regulations. Internationally consistent regulations for the transportation and packaging of radioactive material reduce impediments to trade; facilitate international cooperation; and, when the regulations provide a high level of safety, can reduce risks associated with the import and export of radioactive material.

In November 2012, the IAEA issued revised standards for the safe transport of radioactive material and designated them as ''Specific Safety Requirements Number SSR–6'' (SSR–6). The present NRC rulemaking does not incorporate the SSR–6 requirements, because doing so would require significant changes to the NRC rule, and it would need to be re-published for further comment. The NRC will consider any necessary changes related to SSR–6 in a future rulemaking after consulting with the DOT, rather than further delay finalizing this rulemaking.

Historically, the NRC has coordinated its revisions to 10 CFR part 71 with the DOT, because the DOT and the NRC co-regulate transport of radioactive materials in the United States. The roles of the DOT and the NRC in the co-regulation of the transportation of radioactive materials are documented in a memorandum of understanding (MOU) (44 FR 38690; July 2, 1979). Consistent with this MOU, the NRC has coordinated its efforts with the DOT during this rulemaking, and representatives from the NRC and DOT have advised and consulted with one another. This final rule has been coordinated with DOT to ensure that consistent regulatory standards are maintained between NRC and DOT radioactive material transportation regulations, and to ensure coordinated publication of the final rules by both agencies. On July 11, 2014, the DOT published its final rule titled, ''Hazardous Materials: Compatibility with the Regulations of the International Atomic Energy Agency'' in the **Federal Register** (79 FR 40590) with an effective date of October 1, 2014, and a mandatory compliance date of July 13, 2015.

Fissile Material Exemption

The NRC is re-establishing restrictions on material that will qualify for the 10 CFR 71.15 fissile material exemption. In 10 CFR 71.15 (''Exemption from classification as fissile material''), the exemption in paragraph (d) is being revised. The 10 CFR 71.15 exemptions were formerly set forth in 10 CFR 71.53. In 1997, the NRC issued an emergency final rule (62 FR 5907; February 10, 1997) that revised the 10 CFR 71.53 regulations on fissile material exemptions and general license provisions that apply to fissile material.

Based on the public comments on the 1997 emergency final rule, the NRC contracted with the Oak Ridge National Laboratory (ORNL) to review the fissile material exemptions and general license provisions, study the regulatory and technical bases associated with these regulations, and perform criticality model calculations for different mixtures of fissile materials and moderators. The results of the ORNL study were documented in NUREG/CR–5342,[1] and the NRC published a notice of the availability of this document in the **Federal Register** (63 FR 44477; August 19, 1998). The ORNL study confirmed that the emergency final rule was needed to provide safe transportation of packages with special moderators that are shipped under the general license and fissile material exemptions, but concluded that the revised regulations may have been excessive for shipments where water moderation is the only concern. The ORNL study also recommended that the NRC revise 10 CFR part 71 as it applied to the requirement specific to uranium enriched in uranium-235 (U–235) to a maximum of 1 percent by weight, and with a total plutonium and uranium-233 (U–233) content of up to 1 percent of the mass of U–235. Specifically, as discussed in NUREG/CR–5342, ORNL recommended that (1) a definition of ''homogeneity'' be developed that could be clearly understood for use with uranium enriched to a maximum of 1 percent and (2) the term ''lattice arrangement'' be clarified or not used. Alternatively, ORNL suggested that the moderator criteria restricting the mass of beryllium, carbon, or heavy water (deuterium oxide) to less than 0.1 percent of the fissile mass should be maintained, which would remove the need to provide definitions such as ''homogeneous'' and ''lattice arrangement'' that are difficult to define and to apply practically.

The NRC chose to implement this ORNL suggestion, as reflected in a 2002 rulemaking regarding 10 CFR part 71 (67 FR 21390; April 30, 2002). Similar to the present rulemaking, the NRC in 2002 proposed to make the NRC's regulations more consistent and compatible with IAEA's standards. Additionally, the NRC proposed to make changes to the fissile material exemption requirements to address the unintended economic impact of the 1997 final rule. In a final rule dated January 26, 2004 (69 FR 3698), the NRC removed the restriction (then stated in 10 CFR 71.53(b)) that, to qualify for the fissile material exemption, uranium enriched in U–235 must be distributed homogeneously throughout the package and may not form a lattice arrangement within the package. In addition, the 2004 final rule re-designated the section for fissile material exemptions from § 71.53 to § 71.15.

Although the NRC determined in 2004 that the limits on restricted moderators were sufficient to assure subcriticality for all moderators of concern, the NRC now believes that additional restrictions are needed to have a sufficient margin of criticality safety for shipments of material under the low-enriched fissile material exemption. Therefore, the NRC is revising 10 CFR 71.15(d) in this final rule by reinstating the requirement removed in 2004 that, for uranium enriched to a maximum of 1 percent to be exempted, the fissile material must be distributed homogeneously throughout the package contents and not form a lattice arrangement. Further technical details regarding the basis for now revising 10 CFR 71.15(d) are discussed in Section II.M of this document.

Quality Assurance Program Approvals

The regulations of 10 CFR part 71 require that licensees and certificate holders have quality assurance programs approved by the Commission as satisfying the applicable provisions of subpart H of 10 CFR part 71. Unlike 10 CFR part 50, there are no specific requirements in 10 CFR part 71 addressing changes to an NRC-approved quality assurance program. Once a 10 CFR part 71 quality assurance program is approved, no changes to the program may be made without further NRC approval, because a change would alter the program and make it an unapproved program. Consequently, the process has been overly burdensome and inefficient for both the licensee and the NRC. For example, under the existing 10 CFR part 71 requirements, a change in the quality assurance program to correct typographical errors or punctuation must be submitted to and approved by the NRC.

In 2004, the NRC changed the renewal period for quality assurance program approvals issued under 10 CFR part 71 from 5 years to 10 years in order to

[1] NUREG/CR–5342, ''Assessment and Recommendations for Fissile-Material Packaging Exemptions and General Licenses within 10 CFR part 71,'' July 1998, ADAMS Accession No. ML12139A419.

reduce the unnecessary regulatory burden of some administrative actions. This change was announced in ''NRC Regulatory Information Summary (RIS) 2004–18, Expiration Date for 10 CFR part 71 Quality Assurance Program Approvals,'' dated December 1, 2004 (ADAMS Accession No. ML042160293).

Under the new 10 CFR 71.106, the NRC will allow some changes to be made to quality assurance programs previously approved under 10 CFR part 71 without obtaining additional NRC approval. The process for making changes to approved quality assurance program descriptions will now be similar to the process that the NRC has used to approve changes that are made to the quality assurance program descriptions for nuclear power plants licensed under 10 CFR part 50 through the provisions at § 50.54(a), and will result in a more consistent approach for allowing changes to approved quality assurance programs.

The NRC also will re-issue NRC Form 311 without an expiration date. The 24-month period for reporting changes will begin on the date of the NRC approval of a quality assurance program issued with no expiration date, as specified by the date of signature at the bottom of NRC Form 311. The changes being made to the quality assurance program approval process are discussed further in Sections II .H, II.I, and II.J of this document.

II. Discussion

A. What action is the NRC taking?

The NRC is amending its regulations to make them more consistent and compatible with the IAEA's international transportation regulations TS–R–1. These revisions are also consistent with the DOT's hazardous materials regulations, and maintain a consistent framework for regulating the transportation and packaging of radioactive material.

In addition, the NRC is revising 10 CFR part 71 to: (1) Update administrative procedures for the quality assurance program requirements described in subpart H of 10 CFR part 71; (2) re-establish criticality safety restrictions on certain material that qualifies for the fissile material exemption; (3) clarify the requirements for a general license; (4) clarify the responsibilities of certificate holders and licensees when making preliminary determinations; and (5) make editorial changes.

B. Who is affected by this action?

This action affects: (1) NRC licensees authorized by a specific or general NRC license to receive, possess, use, or transfer licensed material, if the licensee delivers that material to a carrier for transport, or transports the material outside of the site of usage as specified in the NRC license, or transports that material on public highways; (2) holders of, and applicants for a Certificate of Compliance (CoC); and (3) holders of a 10 CFR part 71, subpart H quality assurance program approval. This action would also affect holders of quality assurance program approvals under appendix B of 10 CFR part 50 or subpart G of 10 CFR part 72 to the extent that those approvals apply to transport packaging as specified in 10 CFR 71.101(f), ''Previously approved programs.'' This action also changes requirements that are matters of compatibility with Agreement States. Agreement States will need to update their regulations, as appropriate, at which time those licensees in Agreement States will need to meet the revised Agreement State regulations.

C. What changes are being made to increase the compatibility with the IAEA's regulations, TS–R–1, and the consistency with the DOT's regulations?

The NRC is revising its regulations in 10 CFR part 71 to be more consistent or compatible with the international transportation regulations. These changes also improve or maintain consistency between 10 CFR part 71 and the DOT's regulations to maintain a consistent framework for the transportation and packaging of radioactive material. To accomplish these goals, the NRC is revising 10 CFR part 71 as follows:

1. The concept of processing ores for purposes other than radioactive material content is added to the provisions that apply to natural materials and ores in the exemptions for low-level materials in § 71.14.

2. The NRC is adopting the scoping statement paragraph 107(f) of TS–R–1, which addresses non-radioactive solid objects with radioactive substances present on any surface in quantities not in excess of certain levels. In conjunction with this change, a definition of ''contamination'' corresponding to the definition in TS–R–1 is added to § 71.4.

3. The following definitions in 10 CFR 71.4 (''Definitions'') are amended to reflect the current definitions in TS–R–1: ''Criticality Safety Index (CSI)''; ''Low Specific Activity (LSA) material''; and ''Uranium—natural, depleted, enriched.'' When the NRC last revised subsection (1)(i) of the definition for LSA material, the NRC added the modifier ''not,'' which resulted in this component of the NRC definition being inconsistent with the DOT and IAEA definitions. The NRC is correcting this so that LSA material includes material intended to be processed for its radionuclides.

4. The NRC is adopting the use of the Class 5 impact test prescribed in the International Organization for Standardization's (ISO) Document 2919, ''Radiation protection—Sealed radioactive sources—General requirements and classification,'' Second Edition (February 15, 1999), ISO 2919:1999(E),[2] for special form radioactive material, provided the mass is less than 500 grams.

5. The NRC is incorporating by reference (A) ISO Document 2919, and (B) ISO Document 9978, ''Radiation protection—Sealed radioactive sources—Leakage test methods,'' First Edition (February 15, 1992), ISO 9978:1992(E).

6. The description of billet used in the percussion test in § 71.75(b)(2)(ii) is corrected by replacing ''edges'' with ''edge.''

7. The definition of ''Special form radioactive material'' in § 71.4 is revised to allow special form radioactive material that is successfully tested in accordance with the current requirements to be transported as special form radioactive material, if the testing was completed before the effective date of the final rule.

8. In appendix A of 10 CFR part 71, footnote h to californium-252 (Cf-252) (alternate A_1 and A_2 values for domestic use of Cf-252) in Table A–1, ''A_1 and A_2 Values for Radionuclides,'' is eliminated. The A_1 and A_2 values in the table for Cf-252 are updated to be consistent with the IAEA values in TS–R–1.

9. Krypton-79 (Kr-79) values are added to Table A–1 and Table A–2, ''Exempt Material Activity Concentrations and Exempt Consignment Activity Limits for Radionuclides.'' The A_1 and A_2 values in Table A–1, the activity concentration for exempt material, and the activity limit for exempt consignment are consistent with the IAEA's values in TS–R–1.

10. Footnote a to Table A–1 is revised to include the list of parent radionuclides whose A_1 and A_2 values include contributions from daughter radionuclides with half-lives of less than 10 days. These additions conform to footnote a to Table 2, ''Basic Radionuclide Values,'' in TS–R–1 with the exception of argon-42 (Ar-42) and

[2] *http://pbadupws.nrc.gov/docs/ML0036/ML003686268.pdf.*

tellurium-118 (Te-118), which appear in footnote a to Table 2 in TS–R–1 but do not appear within Table A–1.

11. Footnote c to Table A–1 is moved to the A_1 values and revised to clarify that only the activity for iridium-192 (Ir-192) in special form may be determined from a measurement of the rate of decay or a measurement of the radiation level at a prescribed distance.

12. In Appendix A, Table A–2, the activity limit in Table A–2 for exempt consignment for tellurium-121m (Te-121m) is revised to be consistent with the new IAEA value in TS–R–1.

13. The list of parent radionuclides and their progeny included in secular equilibrium in footnote b to Table A–2 is revised to be consistent with the list accompanying Table 2 in TS–R–1.

14. The descriptive language in Table A–3, ''General Values for A_1 and A_2,'' of appendix A under the heading ''Contents'' is revised to be consistent with the IAEA descriptions in Table 3, ''Basic Radionuclide Values for Unknown Radionuclides or Mixtures,'' in TS–R–1 (2009 edition). ''Only alpha emitting nuclides are known to be present'' is replaced with ''Alpha emitting nuclides, but no neutron emitters, are known to be present.'' The phrase ''No relevant data are available'' is replaced with the phrase ''Neutron emitting nuclides are known to be present or no relevant data are available.'' Additionally, footnote a is added to the new language ''Alpha emitting nuclides, but no neutron emitters, are known to be present'' stipulating that if beta or gamma emitting nuclides are known to be present, the A_1 value of 0.1 terabecquerel (TBq) (2.7 Ci) should be used.

D. How is the NRC changing the exemption for materials with low activity levels?

The NRC is revising its 10 CFR 71.14(a)(1) exemption for natural materials and ores containing naturally occurring radionuclides to reflect changes in the scope of TS–R–1.

The TS–R–1 includes statements that describe its activities included within the scope of this IAEA regulation. It also has a list of material to which TS–R–1 does not apply, hereafter referred to as ''non-TS–R–1 material.'' Included in the list of non-TS–R–1 materials are natural materials and ores containing naturally occurring radionuclides. These natural materials and ores are not intended to be processed for their radionuclides and are classified as non-TS–R–1 materials, provided that the activity concentration for the material does not exceed 10 times the activity concentration for exempt material specified in Table A–2 of Appendix A.

The NRC previously established its 10 CFR 71.14(a)(1) exemption from the requirements of 10 CFR part 71 for licensees who ship or carry certain natural materials and ores designated as low-level materials. The exemption allows the transport of certain qualifying natural material or ore without the material being regulated as a hazardous material during transportation. However, all applicable NRC regulations in other 10 CFR parts continue to apply to these natural materials and ores. The current exemption in § 71.14(a)(1) is consistent with the 1996 edition of TS–R–1 (as amended in 2000) and 49 CFR 173.401(b), as they apply to natural materials and ores containing naturally occurring radionuclides. The NRC is updating this exemption to include the shipment of natural materials and ores containing naturally occurring radionuclides that have been processed, which will retain consistency with the DOT's regulations and harmonize the NRC's regulations with the current TS–R–1. This exemption continues to be limited to those natural materials and ores containing naturally occurring radionuclides whose activity concentrations may be up to 10 times the activity concentration specified in Table A–2 of appendix A.

The NRC is also revising the definition of LSA–I material in 10 CFR 71.4 (*i.e.,* material intended to be processed for its radionuclides) so that it applies to uranium and thorium ores, concentrates of uranium and thorium ores, and other ores containing naturally occurring radionuclides that are intended to be processed for their radionuclides. The low-level material exemption at § 71.14(b)(3), which includes packages containing only LSA material, will now apply to LSA–I material.

With the revision of the definition of LSA–I material, uranium and thorium ores, concentrates of uranium and thorium ores, and other ores containing naturally occurring radionuclides that are intended to be processed for these radionuclides may be able to qualify for the low-level material exemption in § 71.14(b)(3), provided that the other restrictions are satisfied. The restrictions include: (1) The package contains only LSA–I or Surface Contaminated Object (SCO)–I material or (2) the LSA or SCO material has an external radiation dose rate of less than 10 millisieverts per hour (mSv/h) (1 rem per hour (rem/h)) at a distance of 3 meters from the unshielded material. Section 71.14 provides an exemption from the requirements of 10 CFR part 71, with the exception of §§ 71.5 and 71.88. Section 71.5 references the DOT's regulations in 49 CFR parts 107, 171 through 180, and 390 through 397. If the DOT's regulations are not applicable to a shipment of licensed material, then § 71.5 requires licensees to conform to the referenced DOT standards and regulations to the same extent as if the shipment were subject to the DOT's regulations. Section 71.88 will continue to apply to the material because its applicability is not limited by any of the exemptions in 10 CFR part 71.

Natural material or ore that has been incorporated into a manufactured product, such as an article, instrument, component of a manufactured article or instrument, or consumer item, will not qualify for the low-level material exemption for natural materials and ores containing naturally occurring radionuclides. Slags, sludges, tailings, residues, bag house dust, oil scale, and washed sands that are the byproducts of processing or refining are examples that may contain natural material or ore that has been processed, are examples of material that may still qualify for the exemption, provided that the processed material has not been incorporated into a manufactured product.

The NRC is adding a definition for ''contamination'' to § 71.4 in conjunction with the new exemption in 10 CFR 71.14(a)(3) to include non-radioactive solid objects with substances present on any surface not exceeding the levels used to define contamination. Contamination is defined as quantities in excess of 0.4 Bq/cm^2 (1×10^{-5} $\mu Ci/cm^2$) for beta and gamma emitters and low toxicity alpha emitters, or 0.04 Bq/cm^2 (1×10^{-6} $\mu Ci/cm^2$) for all other alpha emitters. The derived values used in the definition are conservative with respect to transportation. Quantities of radioactive substances below these values will result in small amounts of exposure during normal conditions of transportation and will contribute insignificant exposures under accident conditions.

E. How is the qualification of special form radioactive material changing?

The IAEA has incorporated in TS–R–1 the Class 4 and Class 5 impact tests in ISO 2919:1999(E), the Class 6 temperature test in ISO 2919:1999(E), and the leaktightness tests in ISO 9978:1992(E). The NRC is updating the alternate tests in § 71.75 that may be used for the qualification of special form radioactive material by incorporating by reference the Class 4 and Class 5 impact tests and the Class 6 temperature test

prescribed in the ISO document ISO 2919:1999(E). The NRC is also incorporating by reference the leaktightness tests specified in ISO document 9978:1992(E).

The Class 4 impact test in ISO 2919:1999(E) replaces the impact test in § 71.75(d) and will be available for use with specimens that have a mass that is less than 200 grams. The Class 5 impact test, which is being added, will allow use of an ISO impact test for specimens that have a mass that is less than 500 grams. The updated ISO impact tests maintain the requirement that the mass of the hammer used in the test is greater than 10 times the mass of the specimen.

The Class 6 temperature test in ISO 2919:1999(E) replaces the temperature test in § 71.75(d). The Class 6 temperature test in ISO 2919:1999(E) is more stringent than the test that it replaces because it requires the same specimen to be used for both portions of the temperature test. The Class 6 temperature test will continue to be more stringent than the testing required by § 71.75(b).

The leaktightness tests prescribed in ISO 9978:1992(E) replace the tests in ISO/TR 4826.[3] The consensus standard ISO 9978:1992(E) has replaced ISO/TR 4826:1979(E), which has been withdrawn by ISO. The NRC has determined that the leaktightness tests prescribed in ISO 9978:1992(E) provide an equivalent level of radiological safety as the leaching assessment procedure in § 71.75(c).

The NRC is revising the definition of ''Special form radioactive material'' in § 71.4 to allow material tested using the current requirements to continue to be treated as special form material, provided that the testing was completed before the effective date of the final rule. This will allow material tested using requirements in effect at the time of the testing to continue to be used. The NRC is revising the reference in § 71.4, which went into effect on March 31, 1996, by changing the date of the revision from January 1, 1983, to January 1, 1996.

The NRC is replacing ''edges'' with ''edge'' to describe the billet used for the percussion test in § 71.75(b)(2). The edge corresponds to the circular edge at the face of the billet. This revision clarifies the description of the billet and maintains consistency with the language used by the DOT in 49 CFR 173.469.

[3] *http://www.iso.org/iso/iso_catalogue/catalogue_tc/catalogue_detail.htm?csnumber=10804.*

F. What changes are being made to 10 CFR part 71, Appendix A, ''Determination of A_1 and A_2 Values''?

The NRC is changing the following items in appendix A:

1. Determination of the quantity of radioactive material that can be shipped in a package that contains both special form and normal form radioactive material.

The final rule specifically addresses how to calculate the limit of the activity that may be transported in a Type A package, if the package contains both special form and normal form radioactive material and the identities and activity limits for the radionuclides are known.

2. Table A–1, ''A_1 and A_2 Values for Radionuclides.''

The values in Table A–1 have been revised to make the values in 10 CFR part 71 consistent with the values in Table 2, ''Basic Radionuclide Values,'' in TS–R–1. Specifically, the final rule: (1) Adds an entry for Kr-79, which is now found in Table 2 in TS–R–1; (2) adopts the A_1 and A_2 values for Cf-252; (3) revises footnote a to include the list of parent radionuclides whose A_1 and A_2 values include contributions from daughter radionuclides with half-lives of less than 10 days; and (4) moves and revises footnote c, which formerly applied to all Ir-192, so that the footnote applies only to Ir-192 in special form material.

The IAEA added an entry for Kr-79 in Table 2 of TS–R–1. The NRC is adopting the same radionuclide-specific values for Kr-79 in Table A–1 in 10 CFR part 71. The radionuclide-specific values replace the generic values in Table A–3, which were previously used for Kr-79. The radiological criteria underlying the A_1 and A_2 values for Kr-79 have not changed, but the radionuclide-specific values were derived using radionuclide-specific information and better reflect the radiological hazard of Kr-79 than the generic values that they are replacing.

The IAEA revised the A_1 value for Cf-252 to the value that previously applied to domestic transportation. The NRC is adopting the A_1 value for Cf-252, which will apply to both international and domestic transportation, and is adopting the IAEA value for A_2. As a result, the final rule removes the A_2 value that formerly applied only to domestic transportation. Making this change improves the harmonization of 10 CFR part 71 with TS–R–1.

The final rule revises footnote a to Table A–1 that identifies the A_1 and A_2 values that include contributions from daughter radionuclides that have a half-life less than 10 days. The list corresponds to the radionuclides listed in footnote a to Table 2 in TS–R–1, with the exception of argon-42 (Ar-42) and tellurium-118 (Te-118). Argon-42 and Te-118 are not included because they do not appear within Table A–1 in 10 CFR part 71.

Footnote c to Table A–1 has been revised to clarify that the activity of Ir-192 in special form may be determined from a measurement of the rate of decay or a measurement of the radiation level at a prescribed distance from the source.

3. Table A–2, ''Exempt Material Activity Concentrations and Exempt Consignment Activity Limits for Radionuclides.''

The final rule revises Table A–2 to make the values in 10 CFR part 71 consistent with the values in TS–R–1 and adds an entry for Kr-79 adopted from Table 2 of TS–R–1. The final rule also updates the list of parent radionuclides and their progeny in footnote b to Table A–2 by removing the chains for the parent radionuclides cerium-134 (Ce-134), radon-220 (Rn-220), thorium-226 (Th-226), and U-240 and by adding the chain for the parent radionuclide silver-108m (Ag-108m) to make the footnote consistent with footnote (b) in Table 2 of TS–R–1. The activity limit for exempt consignment for Te-121m has also been updated to match the values in TS–R–1.

Materials that have an activity concentration that is less than the activity concentration for exempt material pose a very low radiological risk. The activity limit for exempt consignment has been established for the transportation of material in small quantities so that the total activity is unlikely to result in any significant radiological exposure. This is the case, even for material that exceeds the activity concentration for exempt material.

Previously, Kr-79 was not listed in Table A–2 and instead values from Table A–3, ''General Values for A_1 and A_2,'' in appendix A were used to determine the activity concentration for exempt material and the activity limit for exempt consignment for Kr-79. Radionuclide-specific values for the activity concentration for exempt material and the activity limit for exempt consignment have been derived for Kr-79 and are now included in TS–R–1. The final rule adds an entry for Kr-79 to Table A–2 in 10 CFR part 71 to be consistent with TS–R–1.

In TS–R–1, the IAEA revised the activity limit for exempt consignment for Te-121m. The change to the activity level for exempt consignment for Te-121m, which is based on new analyses and information, is consistent

with the objectives of the exemption values. To conform to International Commission on Radiological Protection (ICRP) and IAEA changes, the activity limit for exempt consignment for Te-121m in Table A–2 of 10 CFR part 71 is changed from 1×10^5 Bq (2.7×10^{-6} Ci) to 1×10^6 Bq (2.7×10^{-5} Ci).

The IAEA has revised the list of parent radionuclides and their progeny included in secular equilibrium in footnote (b) to Table 2 in TS–R–1. This revision arose from the adoption of the nuclide-specific basic radionuclide values from the Basic Safety Standards (IAEA Safety Series No. 115, ''International Basic Safety Standards for Protection against Ionizing Radiation and for the Safety of Radiation Sources'' (1996)) for use in transportation. The list of parent radionuclides and their progeny was modified by adding the decay chain for Ag-108m and by removing the decay chains for Ce-134, Rn-220, Th-226, and U–240. The list of parent radionuclides and their progeny included in secular equilibrium presented in footnote b to Table A–2 is revised to be consistent with the changes to the list in TS–R–1.

4. Table A–3, ''General Values for A_1 and A_2.''

In the 2005 edition of TS–R–1, the IAEA revised Table 2, ''Basic Radionuclide Values for unknown radionuclides or mixtures.'' The values are now in Table 3 in the 2009 edition of TS–R–1. The table divides unknown radionuclides and mixtures into three groups, with a row for each group. The first column of each row provides a descriptive phrase for contents that are suitable for that group. The NRC is adopting the new descriptive phrases in Table A–3 of 10 CFR part 71.

The descriptive phrase for the first group, ''Only beta or gamma emitting radionuclides are known to be present,'' is not being changed. The phrase for the second group, ''Only alpha emitting nuclides are known to be present,'' is being changed to ''Alpha emitting nuclides, but no neutron emitters, are known to be present.'' The phrase for the third group, ''No relevant data are available,'' is being changed to ''Neutron emitting nuclides are known to be present or no relevant data are available.''

Some users have assigned alpha-emitting radionuclides that also emit beta particles or gamma rays to the third group, when it was intended that they be assigned to the second group. The change in the descriptive phrase for the second group is intended to reduce the confusion caused by the current phrase because all alpha emitting radionuclides also emit other particles and/or gamma rays. The change in the descriptive phrase for the third group is intended to clarify that neutron-emitting radionuclides, or alpha emitters that also emit neutrons, such as Cf-252, Cf-254 and curium-248 (Cm-248), should be assigned to the third group.

It is intended that when groups of radionuclides are based on the total alpha activity and the total beta and gamma activity, the lowest radionuclide values (A_1 or A_2) for the alpha emitters or the beta or gamma emitters, respectively, are used. Consequently, an A_1 value of 1 TBq (2.7 Ci) and an A_2 value of 9×10^{-5} TBq (2.4×10^{-3} Ci) are used for a group containing both alpha emitting radionuclides and beta or gamma emitting radionuclides.

5. Other changes that correct formulas and their descriptions in section IV of appendix A.

The NRC is making several corrections to the formulas and the descriptions of the formulas that address mixtures of radionuclides in section IV of appendix A in 10 CFR part 71. These changes involve formatting and typographical changes in the formulas and their descriptions.

G. How will the responsibilities of certificate holders and licensees change with these amendments?

The final rule revises § 71.85(a)–(c) to make certificate holders, not licensees, responsible for making the required preliminary determinations before the first use of any package for shipping radioactive material. The preliminary determinations involve evaluating, testing, and marking the packaging. The DOT's requirements in 49 CFR 173.22 require that the person offering a hazardous material for shipping make determinations relating to the manufacturing, assembly, and marking of the packaging or container. New § 71.85(d) will require licensees to ascertain that the certificate holders have made the required preliminary determinations. Note that before each shipment, licensees must still make the findings required by the existing § 71.87(a)–(k) provisions, to ensure the continued safety of packages containing radioactive material.

The NRC is revising § 71.85, because it is more appropriate to assign the responsibility to certificate holders for evaluating, testing, and marking the packaging. Only certificate holders are authorized to design and fabricate packages, and only certificate holders have a full scope quality assurance program approval. By assigning the responsibility for making the preliminary determinations to the certificate holder, the NRC streamlines the implementation of its regulations, and the revisions to § 71.85 also better reflect current practice.

Reflecting the revisions to § 71.85(a)–(c) previously discussed, conforming changes are made to the § 71.101 Quality Assurande (QA) provisions, to clarify that only certificate holders and applicants for a CoC have QA responsibilities regarding the fabrication and testing of packages. In this regard, references to licensees §§ 71.101(a) and (c)(2) have been removed.

H. Why is renewal of my quality assurance program description not necessary?

The duration of quality assurance program approvals issued under 10 CFR part 71 is a matter of practice and is not specified in the regulations. The NRC has limited the duration of the quality assurance program approval by assigning an expiration date to NRC Form 311, ''Quality Assurance Program Approval for Radioactive Material Packages.'' The inclusion of an expiration date provided an opportunity for the NRC to periodically review the quality assurance programs and for the NRC to maintain periodic contact with the quality assurance program approval holders.

The NRC is changing its practice regarding the duration of its quality assurance program approvals. The NRC will no longer limit the duration of its quality assurance program approvals issued under 10 CFR part 71. The NRC is amending 10 CFR part 71 to implement this change in order to make the periodic communication between the NRC and the quality assurance program approval holders more efficient. The NRC will reissue NRC Form 311 without an expiration date.

The NRC is still requiring quality assurance program approval holders to periodically report changes in their quality assurance program description to the NRC. However, the NRC has determined that with the continuing contact between the NRC and the quality assurance program approval holders, requiring the renewal of quality assurance program approvals is no longer necessary. Every 24 months, each quality assurance program approval holder is required to report those changes that do not reduce commitments made to the NRC in a quality assurance program description. Regarding quality assurance program description changes that reduce commitments made to the NRC, such changes will continue to require NRC approval.

The NRC expects that this new process will provide the NRC with

adequate assurance that the quality assurance program approval holders will continue to maintain and implement their approved quality assurance programs, while reducing regulatory burden and the expenditure of NRC resources.

I. What changes can be made to a quality assurance program description without seeking prior NRC approval?

Previously, quality assurance program descriptions approved under 10 CFR part 71 could not be changed without NRC approval. Therefore, all changes to 10 CFR part 71 quality assurance programs, irrespective of their significance or importance to safety, were required to be submitted to the NRC for approval. Licensees with quality assurance programs approved under 10 CFR part 50, may make some changes to their quality assurance program without NRC approval, in accordance with 10 CFR 50.54. Under the final rule, the NRC will allow some changes to be made to quality assurance programs previously approved under 10 CFR part 71 without obtaining additional NRC approval. As indicated previously, the new process for making changes to approved quality assurance program descriptions under 10 CFR part 71 will be similar to the process that the NRC has used to approve changes that are made to the quality assurance program descriptions for nuclear power plants and will result in a more consistent NRC-wide approach. As stated previously in II.H, quality assurance program description changes that reduce commitments made to the NRC will continue to require NRC approval. For such changes, the following information will need to be provided for NRC review: A description of the proposed changes, the reason for the changes, and the basis for concluding that the revised program incorporating the changes will continue to satisfy the requirements of 10 CFR part 71, subpart H.

Quality assurance program approval holders will no longer be required to submit for NRC approval changes to their quality assurance program descriptions under 10 CFR part 71, if those changes do not reduce the commitments that they have made to the NRC. For example, administrative changes (*e.g.,* revisions to format, font size or style, paper size for drawings and graphics, or revised paper color) and clarifications, spelling corrections, and non-substantive editorial or punctuation changes will not require NRC approval. Five types of non-substantive changes that will no longer require NRC approval are being codified in the new 10 CFR 71.106(b) provisions. Changes to reporting responsibilities, functional responsibilities, and functional relationships may be substantive and have the potential to reduce commitments made to the NRC. Such changes will therefore still require prior NRC approval before being implemented, and quality assurance program approval holders will still be required to maintain records of all quality assurance program changes.

J. How frequently do I submit periodic updates on my quality assurance program description to the NRC?

Under the revised requirements, every 24 months, quality assurance program approval holders will be required to report changes to their approved quality assurance program that do not reduce any commitments in their quality assurance program descriptions. Such changes will no longer require NRC approval before they can be implemented. If a quality assurance program approval holder has not made any changes to its approved quality assurance program description during the preceding 24-month period, the approval holder will be required to report this to the NRC.

The NRC inspection program relies on having current information about the quality assurance program available to the NRC. By requiring that the most important changes be submitted to the NRC for approval before they are implemented, and with the periodic reporting of non-substantive changes every 24 months, the NRC will have current information for its inspection program. The NRC considers the 24-month reporting period as providing an appropriate balance between the burden placed on the quality assurance program approval holders and the need to ensure that the NRC has current information for its oversight of these quality assurance programs.

As previously stated in Section I, the NRC will re-issue NRC Form 311 without an expiration date. The 24-month period for reporting of changes will begin on the date of the NRC approval of a quality assurance program issued with no expiration date, as specified by the date of signature at the bottom of NRC Form 311. By making these changes, the NRC is seeking to balance the regulatory burden for submitting and reviewing this information with the NRC's need to ensure that the NRC has current information.

K. How do the requirements in Subpart H, ''Quality Assurance,'' change with the removal of footnote 2 in 10 CFR 71.103?

The NRC is removing footnote 2 in § 71.103 regarding the use of the term ''licensee'' in subpart H because it is no longer necessary. The removal of the footnote does not change the quality assurance requirements in subpart H. The footnote regarding use of the term ''licensee'' was included to clarify that the quality assurance requirements in subpart H apply to whatever design, fabrication, assembly, and testing of a package is accomplished before a package approval is issued. The terms ''certificate holder'' and ''applicant for a CoC'' were added to the requirements in subpart H in a previous rulemaking to make explicit the application of those quality assurance requirements to certificate holders and applicants for a CoC. Although removing the footnote will not change the quality assurance requirements, other changes to subpart H in this rulemaking clarify which requirements apply to users of NRC-certified packaging and which apply to applicants for, or holders of CoCs, which are the entities that are performing design, fabrication, assembly, and testing of the package before a package approval is issued.

L. What changes are being made to general licenses?

The NRC is changing the requirements for general licenses on the use of an NRC-approved package (§ 71.17) and use of a foreign-approved package (§ 71.21). In § 71.17, the NRC is revising the general license requirements to clarify the conditions for obtaining a general license and the responsibilities of the general licensee. A quality assurance program approved by the NRC that satisfies the provisions of subpart H of 10 CFR part 71 is required in order to be granted the general license. The changes clarify that the licensee is responsible for maintaining copies of the appropriate documents, such as the CoC, or other approval of the package, the documents associated with the use and maintenance of the packaging, and the actions that are to be taken before shipment with the package. The changes also clarify that the notifications to the NRC, as required in § 71.17(c)(3), are a responsibility of the licensee, rather than a condition for obtaining the license. The changes to §§ 71.17 and 71.21 do not change the current notification process nor the required timing or content of the notification required by § 71.17(c)(3) or any other

reporting requirements relating to package use or, when required, the prior notification of shipments.

The changes also update the reference in § 71.21(a) from 49 CFR 171.12 to 49 CFR 171.23 to reflect a DOT final rule published on May 3, 2007 (72 FR 25162), that previously moved the requirements.

M. How is the exemption from classification as fissile material (10 CFR 71.15) changing?

The NRC is revising § 71.15(d) criteria that, if satisfied, exempt certain material from being classified as fissile material. Material within the scope of § 71.15 is exempt from the fissile material package standards and criticality safety requirements stated in §§ 71.55 and 71.59.

The objective of the fissile material exemptions in § 71.15 is to facilitate the safe transport of low-risk (*e.g.,* small quantities or low concentrations) fissile material. This is done by exempting shipments of these materials from the packaging requirements and the criticality safety assessments required for fissile material transportation so that the shipments may take place without specific NRC approval. A lower amount of regulatory oversight is acceptable for these shipments because the exemptions were established to ensure safety under all credible transportation conditions. Provided that the exempt material is packaged consistent with the radioactive and hazardous properties of the material, there are no additional packaging or transport requirements for exempt fissile material beyond those noted in the specific exemption. In order to ensure criticality safety, the exemptions were evaluated using assumptions that, as part of the criticality safety assessment for package designs approved to transport fissile material, the fissile material can be released from the packaging during transport, may reconfigure into a worst-case geometric arrangement, may combine with material from other transport vehicles, and may be subject to the fire and water immersion.

The reactivity of uranium enriched in U–235 depends on the level of enrichment, the presence of moderators, and heterogeneity effects. Hydrogen is the most efficient moderator and water is the most common material containing large quantities of hydrogen; therefore, water is the typical moderating material of interest in criticality safety. The maximum enrichment in U–235 allowed to qualify for the fissile material exemption in § 71.15(d) is 1 percent by weight, which is slightly less than the minimum critical enrichment for an infinite, homogeneous mixture of enriched uranium and water.[4] The minimum critical enrichment is the enrichment necessary for a system to have a neutron multiplication factor of one. Systems containing homogeneous mixtures of uranium enriched to less than the minimum critical enrichment (*e.g.,* a homogenous mixture of uranium enriched to a maximum of 1 percent) are not capable of obtaining criticality, irrespective of the mass or size of the system. The fissile material exemption in § 71.15(d) also limits the quantity of some less common moderating materials (beryllium, graphite, and hydrogenous material enriched in deuterium), because the presence of these materials has the potential to reduce the minimum critical enrichment, thereby increasing the potential for criticality with uranium of lower enrichment. Therefore, homogeneous materials containing uranium enriched to no more than 1 percent by weight and subject to the noted restrictions on moderators are inherently safe from a potential criticality and do not need to be limited by mass or size to be subcritical during transport. However, uranium enriched to less than 5 percent by weight is most reactive when it is in a heterogeneous configuration; therefore, the minimum critical enrichment is lower for an optimized heterogeneous system than for an optimized homogeneous system of the same material. In consideration of this fact, requirements have been added to § 71.15(d) in order to clarify the need for homogeneity in the material.

The exemption for uranium enriched to a maximum of 1 percent at § 71.15(d) includes a limit on moderators that increases the reactivity of the low-enriched fissile material, but it does not include limits on heterogeneity. In contrast, TS–R–1 allows the uranium enriched to a maximum of 1 percent by weight to be distributed essentially homogeneously throughout the material and requires that if the U–235 is in metallic, oxide, or carbide forms then it cannot form a lattice arrangement, but TS–R–1 does not limit the amount of beryllium, graphite, or hydrogenous material enriched in deuterium. In its supplemental guidance to TS–R–1, TS–G–1.1 ''Advisory Material for the IAEA Regulations for the Safe Transport of Radioactive Material,''[5] the IAEA indicated that ''[t]here is agreement that homogeneous mixtures and slurries are those in which the particles in the mixture are uniformly distributed and have a diameter no larger than 127 μm [(5×10^{-3} in.)].'' The homogeneity requirement in TS–R–1 is intended to prevent latticing of slightly enriched uranium in a moderating medium.

An analysis performed by the DOE indicated that large arrays of uranium with enrichment of 1 percent by weight of U–235, which qualify for the fissile material exemption at § 71.15(d), could exceed an effective neutron multiplication factor (k_{eff}) of 0.95 when optimally moderated by water. The DOE analysis was performed assuming five shipments under normal conditions and two shipments under accident conditions. Shipping the material under the exemption would have resulted in a lower margin of safety with respect to criticality than is allowed for shipments using approved fissile material packages, because shipments using the fissile material packages, by design, will typically use a k_{eff} of 0.95 as an upper limit. Because such a shipment, as was analyzed by the DOE, could both qualify for the fissile material exemption for low-enriched fissile material and have a k_{eff} greater than 0.95, the NRC believes that additional restrictions on low-enriched fissile material shipped under the fissile material exemption in § 71.15(d) are warranted.

As discussed in Section I of this document, the NRC in 2004 removed exemption provisions regarding homogeneous distribution and lattice arrangement. Although the NRC had determined that the limits on restricted moderators were sufficient to assure subcriticality for all moderators of concern, the NRC now believes that additional restrictions are needed to have a sufficient margin of safety for shipments of material under the low-enriched fissile material exemption. Therefore, the NRC is reinstating the requirement that, for uranium enriched to a maximum of 1 percent to be exempted, the fissile material must be distributed homogeneously throughout the package contents and not form a lattice arrangement. Some variability in the distribution and enrichment of the uranium enriched to a maximum of 1 percent is permissible, provided that the maximum enrichment does not exceed 1 percent. The total measured mass of U–233 and plutonium, plus two times the measurement uncertainty, must be less than 1.0 percent of the mass of U–235 in the material. The total measured mass of beryllium, graphite, and hydrogenous material enriched in deuterium, plus two times the measurement uncertainty, must be less than 5.0 percent of the uranium mass. Although there are heterogeneity effects

[4] H.C. Paxton and N. L. Pruvost, Critical Dimensions of Systems Containing U–235, Pu-239, and U–233, LA–10860–MS, Los Alamos National Laboratory (1987).

[5] *http://www-pub.iaea.org/MTCD/publications/PDF/Pub1109_scr.pdf.*

at very small scales, the NRC does not believe that it is necessary to require homogeneity with respect to particle size. Further, the NRC does not consider it to be credible to accumulate the volume and regularity of fissile material particles necessary for small-scale heterogeneity to introduce criticality concerns. Small volumes of heterogeneity may exist for material shipped under this exemption, provided that a significant fraction of the fissile material is homogeneous and mixed with non-fissile material, or the lumps of fissile material are spaced in a largely irregular arrangement. The homogeneity criterion, allowing some variability in the distribution of fissile material, is consistent with the IAEA's regulations, which require that the fissile nuclides be essentially homogenously distributed. Restricting the variability in concentration is not sufficient for limiting the reactivity of the uranium enriched to a maximum of 1 percent; therefore, the NRC is reinstating the lattice prevention criterion. The contents of the package must not involve concentrations of fissile material separated by non-fissile material in a regular, lattice-like arrangement. Although the lattice prevention requirement in TS–R–1 is limited to uranium present in metallic, oxide, or carbide form, the NRC believes that this restriction is too narrow and should apply irrespective of the form of uranium.

N. What other changes is the NRC making to its regulations for the packaging and transportation of radioactive material?

A requirement in § 71.19(a) that implemented transitional arrangements (''grandfathering'') expired on October 1, 2008, and § 71.19(a) was designated as ''reserved.'' Because this entry is no longer needed, paragraphs (b) through (e) have been redesignated as paragraphs (a) through (d). In the redesignated paragraph (b)(2), transitional language that is no longer needed has been removed because the transitional period has expired and the requirement now applies to all previously approved packages used for a shipment to a location outside of the United States.

The reference to § 71.20 in § 71.0 has been removed, because § 71.20 has expired and is no longer included in the regulations.

In § 71.31, the reference to § 71.13 has been changed to § 71.19. In § 71.91, the reference to § 71.10 has been changed to § 71.14. These changes will correct references that were not updated when the requirements were redesignated in 2004.

O. When do these proposed amendments become effective?

This rule is effective July 13, 2015. Compliance with the amendments adopted in this final rule is required beginning July 13, 2015. Agreement States, under their formal agreements with the NRC, have 3 years after the effective date of the rule to adopt the changes.

III. Opportunities for Public Participation

The proposed rule was published on May 16, 2013 (78 FR 28988), for a 75-day public comment period that ended on July 30, 2013. The NRC received eight comments from Federal agencies, States, licensees, industry organizations, and individuals. Copies of the public comments are available in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852; or at *http://www.regulations.gov* under Docket ID NRC–2008–0198.

IV. Public Comment Analysis

In general, there was a range of stakeholder views concerning the proposed rule. Two commenters voiced general support of the NRC's efforts to harmonize 10 CFR part 71 with the DOT's and the IAEA's regulations. Three other commenters indicated support for the proposed revisions to the definition of LSA group I, with two of those commenters stating their view that this proposed revision corrected a longstanding error in the NRC's regulations that created an incompatibility with existing DOT regulations. Other commenters voiced general support for the proposed revisions to quality assurance requirements and for provisions related to exempted low-level material. The comments and responses have been grouped into five topical areas: New and Revised Definitions, Exemptions for Low-level Materials, Quality Assurance, Technical Requirements, and Other. To the extent possible, all of the comments on a particular subject are grouped together.

The NRC specifically requested input on three subjects: (1) Frequency for reporting changes to an approved quality assurance program; (2) clarity of new restrictions on low-enriched fissile material in § 71.15(d); and (3) the cumulative effects of this rulemaking, including influence of other regulatory actions, unintended consequences, and reasonableness of the cost benefit estimates. These subjects are addressed within the appropriate area grouping. A discussion summarizing the comments and providing the NRC's comment responses follows. The NRC finds that the comments did not require any changes to the proposed rule's provisions.

A. New and Revised Definitions

A.1 Contamination

Comment: One commenter was concerned that DOT had stated in its parallel proposed rule **Federal Register** notice that the DOT did not have the regulatory authority to establish a radioactive material unrestricted transfer (free release) limit and was leaving it to the NRC as to whether the NRC would continue a longstanding provision of the DOT's regulations that allowed conveyances that meet the return to service (RTS) standards to be released without applying NRC licensing requirements. The commenter stated that with the DOT and the NRC adopting the same definition of ''*contamination,*'' and excluding conveyances with contamination below the limits established by that definition, it was the commenter's view that the transportation requirements of the DOT and the NRC are not applicable to such conveyances. It was also the commenter's view that by adopting the DOT's definition for *contamination,* the NRC is continuing the long-held position that, for materials below the level that meet the definition of contamination for conveyances in transportation or storage incidental to transportation, conveyances in transportation do not need to be licensed.

Response: The NRC does not agree with the commenter's views, because they are contrary to existing general provisions in 10 CFR part 71. Specifically, 10 CFR 71.0(b) states that the 10 CFR part 71 requirements ''are in addition to, and not in substitution for,'' NRC requirements in other 10 CFR parts. Additionally, existing 10 CFR 71.0(c) states that no provision in 10 CFR part 71 ''authorizes possession of licensed material.'' Therefore, the new definition of *contamination* in § 71.4, and the new exemption for contamination in § 71.14(a)(3) applicable to transport of material, are sufficiently clear, and should not be misconstrued as providing relief from the provisions of any other applicable parts of 10 CFR, in particular with respect to the licensing of on-site materials, (also see response to comment D.4.).

Comment: One commenter stated that although the application of the definition of contamination provides a

regulatory path for the release of conveyances, the current language found in 49 CFR 173.443(c) and the associated table of contamination limits should be incorporated into the NRC's regulations as an authorized method to remove conveyances from licensed control when the conveyances are limited to the transportation of contaminated or potentially contaminated material or storage for future such transportation.

Response: The comment does not provide a sufficient basis to incorporate this DOT regulation into NRC's regulations. The DOT and the NRC share regulatory responsibility for the safety of radioactive materials in transport. To avoid duplication of effort and imposing unnecessary burden, the respective roles of the two agencies are delineated in the DOT/NRC MOU. Under this MOU, the NRC recognizes the DOT's authority to define and regulate the safety of Class 7 Hazardous Materials (radioactive materials) in transport. The NRC requires its licensees to comply with the DOT's regulations when transporting radioactive materials. The DOT has issued regulations for safe transport of radioactive materials by all modes, including requirements addressing residual contamination on conveyances, and the NRC believes the DOT regulations regarding contaminated conveyances are adequate to protect public health and safety. Accordingly, the NRC sees no need to duplicate the DOT's conveyance provisions in 10 CFR. Note also that the NRC issues licenses to persons to possess, use, and transfer radioactive materials; the NRC does not license conveyances.

Comment: One commenter stated that the NRC, by defining contamination, is establishing a de minimis quantity. The commenter believed that this is a sensible view given the minimal potential for contamination in transportation or storage pending future transportation and that this approach constitutes a sound application of the NRC's risk-informed, performance-based approach. The commenter indicated, however, that it would be helpful, given the many stakeholders and Agreement State regulators, that this position be clearly stated in the NRC's regulations. Specifically, the commenter recommended that the proposed § 71.14(a)(3) exemption be modified (as indicated by the underlined text) to state: ''(3) Non-radioactive solid objects with radioactive substances present on any surfaces in quantities not in excess of the levels cited in the definition of contamination in § 71.4 of this part. *Such objects in the transportation process, or in storage pending future transportation, need not be licensed under this chapter.''*

Response: The NRC finds that the wording of the new exemption provision in 10 CFR 71.14(a)(3), as proposed, is sufficiently clear, and therefore is not accepting the proposed modification. The scope of this new exemption is limited to the NRC's transportation regulations in 10 CFR part 71. The NRC licensees are not being exempted from meeting the requirements stated in other applicable 10 CFR parts, (also see response to Comment A.1 and Comment D.4.).

A.2 Special Form Radioactive Material

Comment: Although one commenter voiced general support for the revised definition of *special form radioactive material* in § 71.4, another commenter was concerned that the new language being added to revised paragraph (3) of the definition, ''. . . and special form material that was successfully tested before July 13, 2015 . . .,'' is unclear. The commenter noted that the existing language contained within paragraph (3) uses the term ''special form encapsulation'' and that this term was consistent with the commenter's understanding of the intent of these changes as discussed in the **Federal Register** notice. However, the commenter stated that using the term special form ''material,'' rather than ''encapsulation'' is ambiguous as to whether the revised language is meant to apply to a special form that is a single solid piece of material only, or whether the rule aims to grandfather special form designs including encapsulations that were designed and constructed after the earlier dates cited in the paragraph. For clarity and consistency, the commenter recommended replacing the proposed ''special form material'' term with the term ''special form encapsulation'' in paragraph (3) of the revised definition.

Response: Special form radioactive material may be either encapsulated or a single solid piece; using the term ''special form encapsulation'' would not refer to a single solid piece. The NRC is choosing to use the broader ''special form material'' term so that the revised definition will: (1) Permit the continued use of encapsulations authorized under the existing definition, and (2) cover special form materials as authorized in the DOT's regulation (see 49 CFR 173.469(e)).

A.3 Other

Comment: One commenter recommended adding a new definition to 10 CFR 71.4 to define ''radiation level'' as: ''the radiation dose-equivalent rate expressed in millisieverts per hour or mSv/h (millirem per hour or mrem/h). It consists of the sum of the dose equivalent rates from all types of ionizing radiation present including alpha, beta, gamma, and neutron radiation. Neutron flux densities may be used to determine neutron radiation levels according to Table 1.''

Response: The NRC declines to add the requested definition of ''radiation level'' to 10 CFR 71.4 for the following reasons. ''Radiation'' is already defined in 10 CFR part 20 (''Standards for Protection Against Radiation''), and this term includes all the types of ionizing radiation that are referenced in the comment. Additionally, the term ''radiation'' applies to all types of NRC licensees, in accordance with the 10 CFR 20.1002 scoping provisions.

B. Exemptions for Low-Level Materials

Comment: One commenter stated that the discussion contained within the **Federal Register** notice appears to indicate that natural material that has been processed could qualify for the exemption if it is not included in a manufactured product, such as an article, instrument, component of a manufactured article or instrument, or consumer item. The commenter was concerned that there appears to be a discrepancy between this statement and the language in the proposed rule regarding intent to be processed for the use of radionuclides.

Response: The comment does not specify the exemption provisions that are of concern, but as indicated in this response, the NRC assumes that those in 10 CFR 71.14 are at issue. The NRC does not find there is any discrepancy between the revised 71.14(a)(1) exemption, and the existing 71.14(b)(3)(ii) exemption that is not being revised. The NRC is revising the 10 CFR 71.14(a)(1) exemption to include natural material and ores containing naturally occurring radionuclides that: (1) Are either in their natural state, or have only been processed for purposes other than for the extraction of the radionuclides, and (2) are not intended to be processed for the use of these radionuclides, provided that they do not exceed 10 times the activity concentration values listed in Table A–2 or Table A–3, as appropriate. Natural material or ore that has been processed but has not been incorporated into a manufactured product, such as an article, instrument, component of a manufactured article or instrument, or consumer item, would be within the scope of this revised exemption. A licensee is exempt from all the requirements of 10 CFR part 71 with

respect to shipment or carriage of this material.

The NRC is also revising the definition of LSA–I in 10 CFR 71.4 to include uranium and thorium ores, concentrates of uranium and thorium ores, and other ores containing naturally occurring radionuclides that are intended to be processed for the use of radioactive materials. Under existing 71.14(b)(3)(ii), a licensee is exempt from all the requirements of 10 CFR part 71, other than §§ 71.5 and 71.88, with respect to shipment or carriage of packages containing LSA–I, provided the packages do not contain any fissile material, or the material is exempt from classification as fissile material under § 71.15. As revised, the NRC finds that the definition of LSA–I is adequate to ensure that material is properly characterized; therefore, it is clear to the user when the exemption provisions in 71.14(b)(3)(ii) would apply.

Comment: One commenter noted that the IAEA's 2012 edition of SSR–6 did not include the phrase ''or have only been processed for purposes other than for the extraction of the radionuclides, and which are not intended to be processed for the use of these radionuclides.'' The commenter was concerned that given the length of time it can take to promulgate a rulemaking, the NRC should consider revising its proposed 10 CFR 71.14(a)(1) text to be consistent with the current SSR–6. Specifically, Section 107 of SSR–6 states that regulations do not apply to any of the following:

> (f) Natural material and ores containing naturally occurring radionuclides, which may have been processed, provided the activity concentration of the material does not exceed 10 times the values specified in Table 2, or calculated in accordance with paras 403(a) and 404–407. For natural materials and ores containing naturally occurring radionuclides that are not in secular equilibrium the calculation of the activity concentration shall be performed in accordance with para. 405.

The commenter therefore recommended revising the proposed 10 CFR 71.14(a)(1) provisions to exempt ''Natural material and ores containing naturally occurring radionuclides that are either in their natural state, or have been processed, provided the activity concentration of the material does not exceed 10 times the applicable radionuclide activity concentration values specified in Appendix A, Table A–2, or Table A–3, of this part.''

Response: The NRC is choosing not to make the commenter's recommended revisions. The DOT/NRC MOU recognizes the DOT as the Federal agency responsible for the definition of radioactive material in transit. After careful consideration, the DOT chose not to remove the intended use-clause in its current proposed rule, in part because the rule is intended to achieve compatibility with the 2009 Edition of the IAEA regulations, not the 2012 Edition. Publication of the 2012 Edition in October 2012, did not allow adequate time for the NRC and DOT to effectively evaluate the changes as part of this rulemaking effort. There are other changes in the 2012 Edition that also are not reflected in either the proposed DOT or NRC rulemakings. The NRC will consider any necessary changes related to SSR–6 in a future rulemaking after consulting with DOT, rather than to further delay finalizing this rulemaking. The NRC is choosing not to make such changes unilaterally, since doing so would create a conflict between DOT and NRC regulatory requirements. Not only would conflicting requirements and definitions contradict long-standing policy to establish a uniform, national hazardous material transportation safety system, such conflicts could likely create uncertainty within the regulated community and prove to be unenforceable.

C. Quality Assurance Program

Comment: Three commenters voiced support of proposed changes to 10 CFR part 71 relating to the quality assurance program approvals. One of these commenters stated that the proposed changes would (1) streamline the process of maintaining an approved program, (2) contribute to implementation of continued improvement efforts by the approval holders, and (3) ensure the level of safety afforded shipments will not be diminished. Another of these commenters believed that the proposal would better risk inform U.S. regulations and harmonize the U.S. regulations with international rules. A different commenter disagreed with the proposed approach and recommended that 10 CFR 71.38(c) only extend the expiration dates to 10 years. The proposed rule would have removed the quality assurance expiration provision in order to minimize the impact on the applicants while still requiring a licensee to submit all documentation, including the quality assurance program, for review when renewing their license.

Response: The NRC expects that parties who already have an approved QA program will receive an updated completed approval form identifying the removal of the expiration. Essentially, this is no different than what has been expected of the receipt of the previous QA program approval, except that this will be the last and only receipt if no changes affecting QA commitments occur. For future applicants, the original QA program approval will be issued with no expiration date. But any changes affecting QA commitments must still be submitted to the NRC for approval, including any such changes that are part of a license renewal request. The NRC therefore finds that there is no need to adopt the commenter's recommended 10-year expiration provision.

Comment: One commenter stated that while it agreed with the philosophy of the proposed 10 CFR 71.106, which will allow a licensee to make changes to the quality assurance program, it recommended mirroring 10 CFR 35.26 by adding the following rule language:

(1) The revision has been reviewed and approved by management.

(2) Affected individuals are instructed on the revised program before the changes are implemented.

(3) A record of this instruction be created and maintained.''

Response: The NRC agrees with the commenter that management review and approval, appropriate instruction or training prior to implementation, and record keeping, are key attributes of effectively managing changes. The specific language referenced from 10 CFR 35.26 has not been added because these requirements are already embedded in the existing regulations.

The NRC finds that the first two recommended additions to proposed 10 CFR 71.106 are not necessary, because they are adequately addressed by the existing general provisions of 10 CFR 71.105 (''Quality assurance program''). Regarding management review and approval of non-substantive revisions to a quality assurance program, existing § 71.105(d) states in relevant part that management of organizations involved in a licensee's or CoC holder's quality assurance program ''shall review regularly the status and adequacy of that part of the quality assurance program they are executing.'' The NRC finds that this existing requirement adequately ensures management oversight of quality assurance programs. Regarding the recommended need to have affected individuals instructed on the revised QA program before the changes are implemented, existing § 71.105(d) states in relevant part that a licensee or CoC holder ''shall provide for indoctrination and training of personnel performing activities affecting quality, as necessary to assure that suitable proficiency is achieved and maintained.'' The NRC finds that this existing requirement adequately ensures that affected

individuals will be properly instructed before any QA program changes are implemented.

Regarding the third recommendation to have records of these instructions created and maintained, the NRC finds that this addition to proposed 10 CFR 71.106 is not necessary, because it is adequately addressed by the existing criteria stated in § 71.135 (''Quality assurance records''). Specifically, § 71.135 states in relevant part that a licensee or CoC holder must maintain written records, and that such records include instructions pertaining to the ''required qualifications of personnel.'' The NRC finds that this existing requirement adequately ensures that training records will be created and maintained.

Comment: Regarding proposed 10 CFR 71.106, a commenter requested that corresponding changes be made to 10 CFR part 72, subpart G. The commenter recommended that the NRC initiate action to make similar and compatible changes to 10 CFR part 72, subpart G, so that all QA program changes that do not reduce commitments could be implemented without prior NRC approval.

Response: The NRC agrees with the commenter's recommendation, and will consider making the recommended changes to 10 CFR part 72 during a future rulemaking. However, changes to 10 CFR part 72 are outside the scope of this 10 CFR part 71 rulemaking. Note that existing sets of parallel QA provisions in 10 CFR 71.101(f) and 10 CFR 72.140(d) allow for a single QA program to meet both the requirements of 10 CFR part 71 and 10 CFR part 72.

D. Technical Requirements

D.1 Latticing/Homogeneity

Comment: One commenter recommended that clarifying language be provided relating to the prevention of latticing and also homogeneity as it relates to the exemption for uranium enriched up to 1 percent. The commenter noted that similar language to the proposed language existed in earlier versions of the regulations, and that NUREG/CR 5342 recommended that the terms ''lattice arrangement'' and ''homogeneity'' either be removed or defined.

Response: The intent of the fissile material exemptions in 10 CFR 71.15 is to facilitate the safe transport of small quantities or low concentrations of fissile material. This is accomplished by exempting such fissile material from the criticality safety requirements in 10 CFR 71.55 and 71.59 that are generally applicable to fissile material transportation packages. Since these packaging requirements are not applicable pursuant to the 10 CFR 71.15 exemptions, it is conservatively assumed that (a) small quantities or low concentrations of fissile material can be released from packaging during transport, (b) this material may configure into a worst-case geometric arrangement, and (c) the fissile material may be subject to the fire and water immersion conditions assumed for transportation criticality analyses performed for approved packages under 10 CFR 71.55. The 10 CFR 71.15 exemptions are intended to ensure that criticality safety is maintained under all credible transportation conditions, although it is recognized that unlikely scenarios may be conceived which can make almost any amount or concentration of material become a criticality safety concern. As indicated in the comment, the NRC is restoring former lattice arrangement and homogeneous distribution provisions, as discussed in the following section, regarding the revised 10 CFR 71.15(d) exemption requirement.

Uranium enriched to less than 5.0 weight percent U–235 is generally more reactive in a heterogeneous configuration than when it is distributed homogeneously within a transportation package. The fissile exemption for uranium enriched to a maximum of 1.0 weight percent U–235 in 10 CFR 71.15(d) is based on the fact that this enrichment level is slightly less than the minimum critical U–235 enrichment for infinite homogeneous mixtures of uranium and water. Accordingly, 10 CFR 71.15(d) as revised requires that the fissile material be distributed homogeneously within its transportation package, and excludes from the exemption's scope situations where fissile ''lumps'' or lattice arrangements of fissile material are present within the package. The 10 CFR 71.15(d) exemption language continues to exclude large quantities (less than 5 percent of the uranium mass) of low-absorbing moderators (beryllium, graphite, or hydrogenous material enriched in deuterium). These requirements will preclude fissile material arrangements in packages that can potentially result in criticality at U–235 enrichments less than 1 weight percent.

Homogeneity and lattice arrangement are well understood terms in the criticality safety community. *Nuclear Criticality Safety—Theory and Practice* (Knief, 1998), states that heterogeneous systems are generally defined as any mixtures of fissile and moderator materials with uniformly distributed fissile material particles larger than ~0.1 mm. Additionally, the IAEA Safety Guide TS–G–1.1, Advisory Material for the IAEA Regulations for the Safe Transport of Radioactive Material, contains a description of essentially homogeneous materials as ''those in which the particles in the mixture are uniformly distributed and have a diameter no larger than 127 microns (0.127 mm).'' Lattice arrangement means a fixed, repeating configuration of separate fissile material lumps. A nuclear fuel assembly is an example of a lattice arrangement.

For the exemption in 10 CFR 71.15(d), small volumes of heterogeneity may exist, provided that a significant fraction of fissile material is homogeneous and mixed with non-fissile material, or lumps of fissile material are in a largely irregular arrangement. Further, heterogeneous effects in a package due to large fissile material lumps/particles or lattice arrangements of fissile material would only affect criticality safety in a regular or near-optimal configuration over a large volume. Large quantities of fissile material (kilograms of U–235) and regions of heterogeneity on the order of a cubic meter in size are necessary before a system could adversely affect the validity of the 1 weight percent U–235 enrichment limit for this fissile exemption.

D.2 Container Closure Verification

Comment: One commenter was concerned that requiring the closure of waste containers be verified by two independent inspectors prior to shipment in a licensed package was not risk-informed. The commenter believed that this new requirement was based on an incident with an iridium source. The commenter stated that the majority of low-level radioactive waste (LLRW) containers transported in licensed packages are LSA group II materials that exhibit a few areas of elevated dose rates that can exceed 1 R/hr at 3 meters and that this dose rate limit is the main reason licensed shipping packages are employed for transport of large containers of commercial LLRW in the United States. The commenter believes that the risk from LSA material does not warrant the dual container closure independent inspection requirement and that such requirements should be limited to concentrated radioactive sources similar to the one involved in the incident with an iridium source.

Response: The NRC's proposed rule did not address this topic. The NRC neither has at present, nor is it proposing, a requirement that ''waste containers be verified by two independent inspectors prior to

shipment in a licensed package.'' Because this comment raises issues that are outside the scope of this rulemaking, it will not be further addressed here.

Comment: A commenter stated that containers of activated metal loaded underwater cannot be sealed because the water must be allowed to drain from the containers prior to shipment. Since activated metal is not dispersible, sealing of the waste container should not be required.

Response: The NRC's proposed rule did not include such a requirement. Because this comment raises issues that are outside the scope of this rulemaking, it will not be further addressed here.

D.3 Activity Limit for Type B Packages

Comment: One commenter stated concerns that the new calculations to limit the activity that a licensed Type B package may contain are not risk informed for LSA group II low-level waste that commercial power plants routinely ship. The commenter believes that these new calculations were imposed because of an incident with an iridium source, and therefore, such calculation requirements should be limited to the shipment of concentrated radioactive sources similar to the one involved in the event.

Response: The commenter misconstrues the proposed change in the calculations regarding iridium. The NRC is not proposing any changes regarding when Type B packages are required for LSA shipments. Under existing regulations, Type B packaging is required for LSA when the material has an external radiation dose greater than 10 mSv/h (1 rem/h), at a distance of 3 meters from the unshielded material. Therefore, the need for Type B packaging for LSA material is directly based on the dose rate from, not the activity of, the material. Further, iridium sources do not meet the existing 10 CFR 71.4 definition of LSA II (ii). The proposed change regarding iridium pertains only to the placement of an explanatory footnote in 10 CFR part 71, appendix A, Table A–1, to make clear that the activity of special form iridium sources may be determined through measurement at a prescribed distance from the source.

Comment: A commenter stated that the NRC is now requiring registered users of licensed packages to conduct and provide radiolysis calculations on hydrogen gas generation. The commenter does not believe a requirement for such calculations is risk informed. Combustible Gas generation within a licensed transport package is a valid concern. According to the commenter, based on past history, the source of combustible gas generation from commercial LLRW is not from radiolysis, but rather from biological sources (methane) or rusting of waste container internals (hydrogen) noted as bulging drums. The commenter is not aware of any calculation method for biological or rusting combustible gas generation.

Response: This comment does not provide sufficient technical basis for evaluation. The NRC is not aware of any requirement that registered users of licensed packages conduct and provide radiolysis calculations on hydrogen gas generation. Nor is the NRC aware of any history showing that commercial LLRW is generating combustible gas from either biological sources (methane) or rusting of waste container internals. The topics discussed in this comment are outside the scope of this rulemaking.

D.4 Storage of Radioactive Material Containers

Comment: One commenter had concerns that the proposed revision to the DOT's and the NRC's regulations may have the unintended consequence of severely complicating the storage of radioactive material containers and conveyances when they are not in use. The DOT's rule essentially defines ''returned to service (RTS)'' conveyances not in use for Class 7 material as radioactive material; therefore, it implies that a radioactive material license is necessary to store these RTS conveyances when they are not transporting Class 7 material. The commenter is concerned that this would impose a significant burden on industry processors as there are no licensed facilities that have sufficient capacity to store the inventory of gondola rail cars and other conveyances. The commenter does not believe that the DOT has demonstrated, nor that in fact there exists, a health and safety justification for imposing new restrictions on the storage of conveyances while not in use. The commenter recommends that the NRC should amend § 71.14(a) to add a paragraph 4 that would read as follows: ''(4) Transport vehicles with radioactive substances meeting the return to service provisions of 49 CFR 173.443(c) in effect on September 13, 2004, when in transport of contaminated or potentially contaminated material or empty vehicles in storage pending future such transportation. Such vehicles need not be licensed under this chapter.''

Response: The NRC disagrees with this comment, because adding the requested exemption to § 71.14(a) would be contrary to existing general provisions in 10 CFR part 71. Specifically, 10 CFR 71.0(b) states that the 10 CFR part 71 requirements ''are in addition to, and not in substitution for,'' NRC requirements in other 10 CFR parts. Also, existing 10 CFR 71.0(c) states that no provision in 10 CFR part 71 ''authorizes possession of licensed material.'' The suggestion that NRC use its 10 CFR part 71 transport regulations to exempt certain transport vehicles from the need to have an NRC license is therefore not permissible. Furthermore, under the DOT/NRC MOU, the DOT is responsible for regulation of Class 7 (radioactive) material in transport. The DOT is responsible for all transport modes, including highway and railway conveyances. The DOT has established radiation dose rate and removable contamination levels for returning exclusive use vehicles to service. However, allowing exemption or release from licensing of radioactive material, including conveyances not in service, at these levels would not be compatible with current and generally accepted radiation protection practices, (also see response to comment A.1).

E. Other

E.1 Agreement State Compatibility

Comment: One commenter recommended that the compatibility for the new proposed 10 CFR 71.85(d) be changed to 'NRC' since paragraphs (a) through (c) are being revised to compatibility ''NRC.''

Response: The NRC disagrees with this comment. As stated in the 2013 statement of considerations in the **Federal Register** notice of the proposed rule, paragraphs (a) through (c) of § 71.85 would be designated as Compatibility Category NRC because as revised they would apply exclusively to certificate holders, and granting package approvals to certificate holders is an action reserved to the NRC. New § 71.85(d) applies to NRC licensees and licensees in Agreement States that use the packages. This new requirement has been designated as Compatibility Category ''B'' because it applies to activities that have direct and significant effects in multiple jurisdictions, and Agreement States should adopt program elements essentially identical to those of NRC to achieve nationwide consistency.

Comment: One commenter recommended that the Agreement States be offered 3 years to implement these changes when they are finalized by the NRC.

Response: Agreement States, under their formal agreements with the NRC, have 3 years after the effective date of the rule to adopt the changes.

E.2 Cumulative Effect of Regulation

Comment: Section III.P of the **Federal Register** notice for the proposed rule asked, ''Do other regulatory actions influence the implementation of the proposed requirements?'' One commenter answered ''yes'' to this question and stated that the creation of 10 CFR part 37 and the revisions of 10 CFR parts 35 and 61 should take precedence over this 10 CFR part 71 revision. The commenter indicated this revision would also add to the workload of Agreement State staff needing to revise their applicable regulations.

Response: The NRC agrees with the commenter that implementation of this rulemaking will impact the Agreement States that are currently implementing changes related to the recent promulgation of other rule changes such as 10 CFR part 37. However, these 10 CFR part 71 amendments are necessary to make the NRC's regulations conform to the IAEA's regulations for the international transportation of radioactive material, and to maintain consistency with the DOT's regulations. Agreement States may, and often do, combine the action of making their regulations compatible with multiple NRC rule changes in one State rulemaking action, which can somewhat reduce overall effort. Regarding the added burden that may result from future changes to 10 CFR parts 35 and 61, it is uncertain when the final rule changes for those parts may be approved by the Commission and promulgated.

V. Section-by-Section Analysis

Section 71.0 Purpose and Scope

Paragraph (d)(1) has been revised to delete § 71.20 from the list of sections in which a general license is issued without requiring the NRC to issue a package approval. The list of sections has been revised to add §§ 71.21 through 71.23.

Section 71.4 Definitions

The definition of ''contamination'' has been added and is now consistent with the definition of contamination in the DOT's regulations in 49 CFR 173 and TS–R–1.

The definition of ''Criticality Safety Index (CSI)'' has been revised to be more consistent with the definition in the DOT's regulations in 49 CFR 173 and TS–R–1 by addressing overpacks and freight containers in the definition.

The definition of ''Low Specific Activity (LSA) material'' has been revised so that it is more consistent with the definition in the DOT's regulations in 49 CFR 173 and TS–R–1 by revising paragraphs (1)(i) and (1)(ii). In paragraph (1)(i), the definition is changed to make the description of LSA–I material apply to material that is intended to be processed for the use of the uranium, thorium, and other naturally occurring radionuclides. In paragraph (1)(ii), the definition is changed to clarify consideration of compounds or mixtures regardless of the form (solid or liquid).

The definition of ''Special form radioactive material'' has been revised to allow special form radioactive material that was successfully tested using the current requirements of § 71.75(d) to continue to qualify as special form material, if the testing was completed before September 10, 2015. The reference to the version of 10 CFR part 71 in effect on March 31, 1996, is corrected by changing 1983 to 1996.

The definition of ''Uranium—natural, depleted, enriched'' has been revised by adding ''(which may be chemically separated)'' to paragraph (1), which applies to natural uranium.

Section 71.6 Information Collection Requirements: OMB Approval

Paragraph (b) is revised to add § 71.106 to the list of sections with information collections.

Section 71.14 Exemption for Low-Level Materials

Paragraph (a)(1) has been revised to allow natural material and ores that contain naturally occurring radionuclides and that have been processed for purposes other than the extraction of the radionuclides, to qualify for the exemption. Natural material or ore that has been processed but has not been incorporated into a manufactured product, such as an article, instrument, component of a manufactured article or instrument, or consumer item, could qualify for the exemption. Slags, sludges, tailings, residues, bag house dust, oil scale, and washed sands that are the byproducts of processing or refining are considered to be a natural material and could qualify for the exemption, provided that they were not incorporated into a manufactured product. To qualify for this exemption, the activity concentration of the natural material or ore cannot exceed 10 times the activity concentration values, and the material cannot be intended to be processed for the use of the radionuclides. A reference to Table A–3 in appendix A is added as a source of activity concentration values that may be used to determine whether natural material or ore will qualify for the exemption. Table A–3 provides activity concentration values for exempt material that are used for individual radionuclides whose identities are known but which are not listed in Table A–2.

Paragraph (a)(2) has been revised to add a reference to Table A–3 in appendix A Table A–3 provides activity concentration values for exempt material that are used for individual radionuclides whose identities are known but which are not listed in Table A–2.

Paragraph (a)(3) has been added to provide an exemption for non-radioactive solid objects that have radioactive substances present on the surfaces of the object, provided that the quantity of radioactive substances is below the quantity used to define contamination. The definition of ''contamination'' has been added to § 71.4.

Section 71.15 Exemption From Classification as Fissile Material

Paragraph (d), which applies to fissile material in the form of uranium enriched in U–235 to a maximum of 1 percent by weight, has been revised. To qualify under the revised exemption, the fissile material will need to be distributed homogeneously and not form a lattice arrangement within the package. The revision re-establishes restrictions on material that qualifies for the fissile material exemption.

Section 71.17 General License: NRC-Approved Package

Paragraph (c) is revised to clarify that the general licensee must comply with the requirements in § 71.17(c)(1) through (c)(3).

Section 71.19 Previously Approved Package

Paragraphs (b) through (e) are redesignated as (a) through (d).

In redesignated (b)(2), the phrase ''After December 31, 2003'' is deleted. This will not change the requirement that packages used for a shipment to a location outside the United States will continue to be subject to multilateral approval as defined in the DOT's regulations in 49 CFR 173.403 because all such shipments will occur after December 31, 2003.

Section 71.21 General License: Use of Foreign Approved Package

Paragraph (a) is revised to update the reference to 49 CFR 171.12 to 49 CFR 171.23.

Paragraph (d) is revised to clarify that the general licensee must comply with the requirements in § 71.21(d)(1) and (d)(2). Paragraph (d)(2) is revised by deleting its second sentence, which provided an exemption from quality

assurance provisions in subpart H for design, construction, and fabrication activities. As revised, § 71.21(d)(2) will require general licensees to comply ''with the terms and conditions of the certificate and revalidation, and with the applicable requirements of subparts A, G, and H'' of 10 CFR part 71. Because the quality assurance provisions in subpart H for design, construction, and fabrication activities are not applicable to a general licensee, the exemption was not needed.

Section 71.31 Contents of Application

In paragraph (b), the reference to § 71.13 is changed to § 71.19. This change was inadvertently omitted during a previous rulemaking, when certain sections were renumbered.

Section 71.38 Renewal of a Certificate of Compliance

The title of this section is revised to remove the reference to the renewal of quality assurance program approvals. The section is revised to be limited to the renewal of CoCs by removing all references to quality assurance program approvals. The NRC is changing its practice regarding the duration of quality assurance program approvals. Quality assurance program approvals will not have an expiration date and the NRC will revise the current quality assurance program approvals so that they will not have an expiration date. The renewal of a quality assurance program approval is unnecessary. Paragraphs (a), (b) and (c) have also been revised for clarity.

Section 71.70 Incorporations by Reference

This section is added to incorporate by reference the consensus standards referenced in § 71.75: ISO 9978:1992(E), ''Radiation protection—Sealed radioactive sources—Leakage test methods''; and ISO 2919:1999(E), ''Radiation protection—Sealed radioactive sources—General requirements and classification.'' Interested parties, including members of the general public, can purchase the 1992 version of ISO 9978 from the American National Standards Institute, 25 West 43rd Street, 4th floor, New York, NY 10036, 212–642–4900, *http://www.ansi.org*, or *info@ansi.org.* Interested parties, including members of the general public can purchase the 1999 version of ISO 2919 on *http://www.amazon.com.* The materials incorporated by reference can also be examined at the NRC's Public Document Room, O1–F21, 11555 Rockville Pike, Rockville, Maryland 20852 or at the NRC Library located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852; telephone: 301–415–5610; email: *Library.Resource@nrc.gov.* The materials incorporated by reference are each available for under $126. Accordingly, the NRC has determined that materials incorporated by reference are reasonably available to all interested parties, including members of the general public.

Section 71.75 Qualification of Special Form Radioactive Material

In paragraph (a)(5), the 1992 edition of ISO 9978 has been incorporated by reference for the alternate leak test methods for the qualification of special form material. The ISO/TR 4826 has been withdrawn by ISO and replaced by ISO 9978:1992(E). This change makes 10 CFR part 71 consistent with the DOT's requirements in 49 CFR 173, which incorporated ISO 9978:1992(E) in 2004.

In paragraph (b)(2)(ii), the description of the billet used in the percussion test has been changed to provide better clarity and to maintain consistency with the language used by the DOT in 49 CFR 173.469 by replacing ''edges'' with ''edge.'' The edge corresponds to the circular edge at the face of the billet.

In paragraph (b)(2)(iii), the description of the sheet of lead used in the percussion test is changed to correct the thickness of the sheet of lead used in the percussion test to indicate that the thickness must not be more than 25 mm (1 inch) thick to be consistent with the thickness in TS–R–1.

In paragraph (d), subparagraphs (d)(1)(i) and (d)(1)(ii) have been added. Also, the 1999 edition of ISO 2919 has been incorporated by reference, replacing the reference to the 1980 edition of ISO 2919 for the alternate Class 4 impact test in paragraph (d)(1)(i) and the alternate Class 6 temperature test in paragraph (d)(2). The availability and other language incorporating this standard by reference is moved to new § 71.70. Paragraph (d)(1)(ii) allows the Class 5 impact tests prescribed in the 1999 edition of ISO 2919 to be used in place of the impact and percussion tests in paragraphs (b)(1) and (b)(2), if the specimen weighs less than 500 grams.

Section 71.85 Preliminary Determinations

In paragraphs (a), (b), and (c), ''licensee'' is replaced by ''certificate holder.'' The NRC experience is that these determinations are performed by the certificate holders who manufacture the package. This change will make the requirements consistent with current practice, because only certificate holders will have a quality assurance program approval that will allow them to conduct the required tests under an approved quality assurance program. Paragraph (d) is added to address the responsibilities of licensees using a package for transportation. Although certificate holders are required to make the preliminary determinations under paragraphs (a), (b), and (c), licensees are responsible for ensuring that these determinations have been made before their first use of the packaging.

Section 71.91 Records

In paragraph (a), the reference to § 71.10 is changed to § 71.14. This reference was not updated when § 71.10 was redesignated as § 71.14.

Section 71.101 Quality Assurance Requirements

Paragraph (a) is revised by deleting its first reference to licensees in order to clarify that with respect to the design, fabrication, testing, and modification of packaging, only certificate holders and applicants for a CoC are subject to the quality assurance requirements. Note that consistent with the existing 71.101(c)(1) QA-program-approval requirements, under 71.101(a), as revised, licensees are still subject to quality assurance requirements with respect to their use of packages when shipping radioactive material.

The provisions of 71.101(c)(2) are revised by removing the reference to licensees in the first sentence. This will remove the overlap between § 71.101(c)(1) and (c)(2) by making it clear that licensees must notify the NRC before their first use of any package as required under § 71.101(c)(1), and certificate holders and applicants for a CoC will notify the NRC before the fabrication, testing, or modification of a package as required under § 71.101(c)(2).

Section 71.103 Quality Assurance Organization

Footnote 2 is removed from paragraph (a). The activities described in the footnote are performed by certificate holders and applicants for a CoC. The footnote is unnecessary, because the requirements no longer rely on the use of the term ''licensee'' for those activities performed by certificate holders and applicants for a CoC.

Section 71.106 Changes to a Quality Assurance Program

This new section is added to establish requirements that will apply to changes to quality assurance programs. It allows some changes to a quality assurance program to be made without obtaining the prior approval of the NRC. Previously, all changes, no matter how

insignificant, had to be approved by the NRC before they could be implemented. These provisions will allow changes to quality assurance programs that do not reduce commitments, such as those that involve administrative improvements and clarifications and editorial changes, to be made and implemented without NRC approval. Quality assurance program approval holders will still be required to get NRC approval before making changes to their quality assurance programs that would reduce their commitments to the NRC.

Paragraph (a) will establish the requirements that will apply when a holder of a quality assurance program approval intends to make a change in its quality assurance program that would reduce its commitments to the NRC. The holder of a quality assurance program approval will be required to identify the change, the reason for the change, and the basis for concluding that the revised program incorporating the change will continue to satisfy the requirements of subpart H of 10 CFR part 71 that apply.

Paragraph (a)(2) will require that each holder of a quality assurance program approval maintain quality assurance program changes as records. These records will need to be maintained as required in § 71.135.

Paragraph (b) will allow the holder of a quality assurance program approval to make changes to its quality assurance program that will not reduce its commitments to the NRC and identify the changes that will not be considered as reducing its commitments to the NRC.

Paragraph (c) will require that records be maintained documenting any changes to the quality assurance program.

Section 71.135 Quality Assurance Records

This section is revised to include those quality assurance records that apply to changes that are made to previously approved quality assurance programs. The second sentence is revised to include in the list of the types of records to be maintained the changes to the quality assurance program as required by new § 71.106.

Appendix A Determination of A_1 and A_2

In paragraphs IV.a. through IV.f., the equations and accompanying text are revised to make minor corrections. In paragraphs IV.a. and IV.b., the description of the equations will make it explicit that B(i) is the activity of radionuclide i in special form and normal form in paragraphs IV.a. and IV.b., respectively.

Current paragraphs IV.c. through IV.f. are redesignated as paragraphs IV.d. through IV.g. New paragraph IV.c. is added and provides an equation to be used for determining the quantity of radioactive material that can be shipped in a package that contains both special form and normal form radioactive material. This equation increases the consistency between appendix A and TS–R–1.

In paragraph V., the existing text is redesignated as paragraph V.a. Paragraph V.b. is added to provide direction on calculating the exempt activity concentration for a mixture and the exempt consignment activity limit of a mixture when the identity of each radionuclide is known, but the individual activities of some radionuclides are not known.

Table A–1 is revised to change the A_1 value for Cf-252 from 5.0×10^{-2} TBq to 1.0×10^{-1} TBq, and from 1.4 Ci to 2.7 Ci. Footnote h is deleted, and the following corresponding changes are made: (1) The reference to footnote h is removed from Cf-252, (2) footnote i is redesignated as footnote h, and (3) the entry for molybdenum-99 (Mo-99) is revised to identify footnote h instead of footnote i. Footnote c in the entry for Ir-192 is moved, so that it is clear that it applies only to iridium in special form. Footnote c is revised to specifically state that the activity of iridium in special form may be determined through measurement at a prescribed distance from the source. Table A–1 is revised to include values for Kr-79. The A_1 and A_2 values for Kr-79 correspond to the A_1 and A_2 values in TS–R–1 and the specific activity is 4.2×10^4 TBq/g (1.1×10^6 Ci/g). The entry for Kr-81 is revised to reflect that it is no longer the first entry for the isotopes of krypton. In addition, footnote a is revised to identify the A_1 and/or A_2 values that include contributions from daughter radionuclides with half-lives of less than 10 days.

Table A–2 is revised to include values for Kr-79, reflect changes in TS–R–1 for the activity limit for exempt consignment for Te-121m and in the list of parent radionuclides and their progeny included in secular equilibrium in Table A–2 in footnote b. The value for the activity concentration for exempt material for Kr-79 is 1.0×0^3 Bq/g (2.7×10^{-8} Ci/g) and the value for the activity limit for exempt consignment is 1.0×10^5 Bq (2.7×10^{-6} Ci). The activity limit for exempt consignment for Te-121m is revised from 1×10^5 Bq (2.7×10^{-6} Ci) to 1×10^6 Bq (2.7×10^{-5} Ci). In footnote b, the chains for the parent radionuclides Ce-134, Rn-220, Th-226, and U-240 are removed, and a chain for Ag-108m is added. This makes footnote b to Table A–2 consistent with footnote b to Table 2 in TS–R–1.

Table A–3 is revised to reflect changes in TS–R–1. In the second entry, the descriptive phrase ''only alpha emitting radionuclides are known to be present'' is changed to ''alpha emitting nuclides, but no neutron emitters, are known to be present'' to reduce the confusion caused by the current phrase because all alpha emitting radionuclides also emit other particles and/or gamma rays. In the third entry, the descriptive phrase ''no relevant data are available'' is changed to ''neutron emitting nuclides are known to be present or no relevant data are available'' to clarify that neutron-emitting radionuclides, or alpha emitters that also emit neutrons, such as Cf-252, Cf-254, and Cm-248, should be assigned to the third group. Footnote a indicates the appropriate value of A_1 for a group containing both alpha emitting radionuclides and beta or gamma emitting radionuclides when groups of radionuclides are based on the total alpha activity and the total beta and gamma activity.

VI. Plain Writing

The Plain Writing Act of 2010 (Pub. L. 111–274) requires Federal agencies to write documents in a clear, concise, well-organized manner that also follows other best practices appropriate to the subject or field and the intended audience. The NRC has attempted to use plain language in promulgating this rule consistent with the Federal Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883).

VII. Finding of No Significant Environmental Impact: Availability

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, not to prepare an environmental impact statement for this final rule. The Commission has concluded on the basis of an Environmental Assessment (ADAMS Accession No. ML15105A527) that this final rule is not a major Federal action significantly affecting the quality of the human environment.

Many of the changes fall under a categorical exclusion for which the Commission has previously determined that such actions, neither individually nor cumulatively, will have significant impacts on the human environment. The categorical exclusions in 10 CFR 51.22(c)(2) and 10 CFR 51.22(c)(3) were used in the Environmental Assessment.

The categorical exclusion at 10 CFR 51.22(c)(2) applies to amendments to 10 CFR part 71 that are corrective or of a minor or non-policy nature and do not substantially modify the regulations.

The categorical exclusion at 10 CFR 51.22(c)(3) applies to amendments to 10 CFR part 71 that relate to—(1) procedures for filing and reviewing applications for licenses or construction permits or early site permits or other forms of permission or for amendments to or renewals of licenses or construction permits or early site permits or other forms of permission; (2) recordkeeping requirements; (3) reporting requirements; (4) education, training, experience, qualification, or other employment suitability requirements; or (5) actions on petitions for rulemaking relating to these amendments.

Those changes not qualifying for a categorical exclusion were evaluated for their environmental impacts and include changes to (1) definitions, (2) the exemption of low-level materials, (3) the fissile material exemption for low-enriched fissile material, (4) alternate tests that may be used for the qualification of special form material, (5) preliminary determinations; (6) the A_1 and A_2 values for radionuclides, and (7) the exempt material activity concentrations and exempt consignment activity limits for radionuclides. The effects of these changes are addressed in more detail in the Environmental Assessment. The changes to the fissile material exemption will further reduce the potential for criticality during the transport of low-enriched fissile material under the fissile material exemption. Other changes, such as those relating to the exemption of low-level material, the A_1 and A_2 values for radionuclides, and the exempt material activity concentrations and exempt consignment activity limits for radionuclides have been found to have small or very small impacts. Some natural material and ore may be shipped without being regulated as hazardous material. The low-level material exemption is changed to allow some additional material to be transported without being regulated as hazardous material. The amount of transported material affected by this change is a very small fraction of the material that already qualifies for the exemption and will allow no greater activity than is already allowed for material that may already be transported under the exemption. Although there are changes to A_1 and A_2 values used to determine the type of packaging, the exempt material activity concentrations, and the exempt consignment activity limits for some radionuclides, the approach for determining the appropriate values has not changed, so there are very small impacts from these changes.

VIII. Paperwork Reduction Act Statement

This final rule contains new or amended information collection requirements that are subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). These requirements were approved by the Office of Management and Budget, approval number 3150–0008. The burden to the public for these information collections is estimated to be a reduction of 1,700 hours (an average reduction of 55 hours per response), including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. Send comments on any aspect of these information collections, including suggestions for reducing the burden, to the FOIA, Privacy, and Information Collections Branch (T–5 F53), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by email to *INFOCOLLECTS.RESOURCE@NRC.GOV*; and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0008), Office of Management and Budget, Washington, DC 20503 or by email to *oira_submission@omb.eop.gov.*

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, a request for information or an information collection requirement unless the requesting document displays a currently valid OMB control number.

IX. Congressional Review Act

This action is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

X. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule affects NRC licensees who transport or deliver to a carrier for transport, relatively large quantities of radioactive material in a single package; holders of a 10 CFR part 71, subpart H, quality assurance program description issued under 10 CFR parts 50, 71, or 72; and holders of a CoC for a transportation package. These entities do not typically fall within the scope of the definition of ''small entities'' set forth in the Regulatory Flexibility Act or the size standards adopted by the NRC in 10 CFR 2.810.

XI. Regulatory Analysis

The NRC has prepared a regulatory analysis (ADAMS Accession No. ML14237A383) of this final rule. The analysis examines the costs and benefits of the alternatives considered by the Commission.

The analysis is available for inspection in the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852; or at *http://www.regulations.gov* under Docket ID NRC–2008–0198.

XII. Backfitting and Issue Finality

The NRC has determined that the backfit rule (§§ 50.109, 70.76, 72.62, or 76.76) and the issue finality provisions in 10 CFR part 52 do not apply to this final rule, because this final rule does not establish any provisions that will impose backfits as defined in 10 CFR Chapter I. Therefore, a backfit analysis is not required for this final rule, and the NRC did not prepare a backfit analysis for this final rule.

XIII. Criminal Penalties

For the purpose of Section 223 of the Atomic Energy Act of 1954, as amended (AEA), the Commission is amending 10 CFR part 71 under one or more of Sections 161b, 161i, or 161o of the AEA. Willful violations of the rule will be subject to criminal enforcement.

XIV. Compatibility of Agreement State Regulations

Under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs'' approved by the Commission on June 30, 1997, and published in the **Federal Register** (62 FR 46517; September 3, 1997), this rule is a matter of compatibility between the NRC and the Agreement States, thereby providing consistency among the Agreement States' and the NRC's requirements. The NRC analyzed the rule in accordance with the procedure established within part III, ''Categorization Process for NRC Program Elements,'' of Handbook 5.9 to Management Directive 5.9, ''Adequacy and Compatibility of Agreement State Programs'' (ADAMS Accession No. ML041770094). The compatibility categories assigned to the affected sections of 10 CFR part 71 are presented

in the Compatibility Table in this section.

There are four compatibility categories (A, B, C, and D). In addition, the NRC program elements can also be identified as having particular health and safety significance or as being reserved solely to the NRC. Compatibility Category A is assigned to those program elements that are basic radiation protection standards and scientific terms and definitions that are necessary to understand radiation protection concepts. An Agreement State should adopt Compatibility Category A program elements in an essentially identical manner to provide uniformity in the regulation of agreement material on a nationwide basis. Compatibility Category B is assigned to those program elements that apply to activities that have direct and significant effects in multiple jurisdictions. An Agreement State should adopt Compatibility Category B program elements in an essentially identical manner. Compatibility Category C is assigned to those program elements that do not meet the criteria of Compatibility Category A or B, but the essential objectives of which an Agreement State should adopt to avoid conflict, duplication, gaps, or other conditions that would jeopardize an orderly pattern in the regulation of agreement material on a nationwide basis. An Agreement State should adopt the essential objectives of the Compatibility Category C program elements. Compatibility Category D is assigned to those program elements that do not meet any of the criteria of Compatibility Category A, B, or C and, therefore, do not need to be adopted by Agreement States for purposes of compatibility. Health and Safety (H&S) are program elements that are not required for compatibility but are identified as having a particular health and safety role (*i.e.,* adequacy) in the regulation of agreement material within the State. Although not required for compatibility, the State should adopt program elements in this H&S category based on those of the NRC that embody the essential objectives of the NRC program elements because of particular health and safety considerations. Compatibility Category NRC is assigned to those program elements that address areas of regulation that cannot be relinquished to Agreement States under the AEA or the provisions of 10 CFR. These program elements are not adopted by the Agreement States.

The following table lists the parts and sections that are revised and their corresponding categorization under the ''Policy Statement on Adequacy and Compatibility of Agreement State Programs.'' A bracket around a category means that the section may have been adopted elsewhere, and it is not necessary to adopt it again. The presence or absence of a bracket does not affect the compatibility category or the degree of uniformity required when an Agreement State adopts the requirement. The Agreement States have 3 years from the effective date of the final rule to adopt compatible regulations.

COMPATIBILITY TABLE

Section	Change	Subject	Compatibility	
			Existing	New [1]
71.0(d)(1)	Revised	Purpose and Scope	D	D.
71.4	New	Definition Contamination		[B].
71.4	Revised	Definition Criticality Safety Index (CSI).	[B]	[B].
71.4	Revised	Definition Low Specific Activity (LSA) material.	[B]	[B].
71.4	Revised	Definition Special form radioactive material.	[B]	[B].
71.4	Revised	Definition Uranium—natural, depleted, enriched.	[B]	[B].
71.6	Revised	Information Collection Requirements: OMB Approval.	D	D.
71.14(a)(1)	Revised	Exemption for low-level materials.	[B]	[B].
71.14(a)(2)	Revised	Exemption for low-level materials.	[B]	[B].
71.14(a)(3)	New	Exemption for low-level materials.		[B].
71.15(d)	Revised	Exemption from classification as fissile material.	[B]	[B].
71.17	Removal of brackets on Compatibility Category.	General license: NRC-approved package.	[B]	B.
71.17(c)	Revised	General license: NRC-approved package.	[B]	B.
71.19	Revised	Previously approved package.	NRC	NRC.
71.21	Removal of brackets on Compatibility Category.	General license: Use of foreign approved package.	[B]	B.
71.21(a)	Revised	General license: Use of foreign approved package.	[B]	B.

COMPATIBILITY TABLE—Continued

Section	Change	Subject	Compatibility	
			Existing	New [1]
71.21(d)	Revised	General license: Use of foreign approved package.	[B]	B.
71.31(b)	Revised	Contents of application	NRC	NRC.
71.38	Retitled and revised	Renewal of a certificate of compliance.	NRC	NRC.
71.70	New	Incorporations by reference.		NRC
71.75	Revised	Qualification of special form radioactive material.	NRC	NRC.
71.85(a)	Revised	Preliminary determinations.	[B]	NRC.
71.85(b)	Revised	Preliminary determinations.	[B]	NRC.
71.85(c)	Revised	Preliminary determinations.	[B]	NRC.
71.85(d)	New	Preliminary determinations.	—	B.
71.91(a)	Revised	Records	D	C.
71.91(b)	Revised Compatibility Category.	Records	D	NRC.
71.91(c)	Revised Compatibility Category.	Records	D	C.
71.91(d)	Revised Compatibility Category.	Records	D	C.
71.101(a)	Revised	Quality assurance requirements.	D—For those States which have no users of Type B packages—other than industrial radiography**. C—Those States which have users of Type B packages—other than industrial radiography**. **Note: § 71.101(g) indicates that QA programs for industrial radiography Type B package users are covered by § 34.31(b). It also indicated that this section satisfies § 71.12(b) and therefore will satisfy those sections referenced in this provision (§§ 71.101 through 71.137).	C. **Note: § 71.101(g) indicates that QA programs for industrial radiography Type B package users are covered by § 34.31(b). It also indicated that this section satisfies § 71.17(b) and therefore will satisfy those sections referenced in this provision (§§ 71.101 through 71.137).

COMPATIBILITY TABLE—Continued

Section	Change	Subject	Compatibility	
			Existing	New [1]
71.101(b)	Revised Compatibility Category.	Quality assurance requirements.	D—For those States which have no users of Type B packages—other than industrial radiography**. C—Those States which have users of Type B packages—other than industrial radiography**. **Note: § 71.101(g) indicates that QA programs for industrial radiography Type B package users are covered by § 34.31(b). It also indicated that this section satisfies § 71.12(b) and therefore will satisfy those sections referenced in this provision (§§ 71.101 through 71.137).	C. **Note: § 71.101(g) indicates that QA programs for industrial radiography Type B package users are covered by § 34.31(b). It also indicated that this section satisfies § 71.17(b) and therefore will satisfy those sections referenced in this provision (§§ 71.101 through 71.137).
71.101(c)(1)	Revised Compatibility Category.	Quality assurance requirements.	D—For those States which have no users of Type B packages—other than industrial radiography**. C—Those States which have users of Type B packages—other than industrial radiography**. **Note: § 71.101(g) indicates that QA programs for industrial radiography Type B package users are covered by § 34.31(b). It also indicated that this section satisfies § 71.12(b) and therefore will satisfy those sections referenced in this provision (§§ 71.101 through 71.137).	C. **Note: § 71.101(g) indicates that QA programs for industrial radiography Type B package users are covered by § 34.31(b). It also indicated that this section satisfies § 71.17(b) and therefore will satisfy those sections referenced in this provision (§§ 71.101 through 71.137).
71.101(c)(2)	Revised	Quality assurance requirements.	NRC	NRC.
71.101(g)	Revised Compatibility Category Note.	Quality assurance requirements.	C. **Note: § 71.101(g) indicates that QA programs for industrial radiography Type B package users are covered by § 34.31(b). It also indicated that this section satisfies § 71.12(b) and therefore will satisfy those sections referenced in this provision (§§ 71.101 through 71.137).	C. **Note: § 71.101(g) indicates that QA programs for industrial radiography Type B package users are covered by § 34.31(b). It also indicated that this section satisfies § 71.17(b) and therefore will satisfy those sections referenced in this provision (§§ 71.101 through 71.137).

COMPATIBILITY TABLE—Continued

Section	Change	Subject	Compatibility	
			Existing	New [1]
71.103(a)	Revised	Quality assurance organization.	D—For those States which have no users of Type B packages-other than industrial radiography**. [C]—Those States which have users of Type B packages-other than industrial radiography**. **Note: § 71.101(g) indicates that QA programs for industrial radiography Type B package users are covered by § 34.31(b). It also indicated that this section satisfies § 71.12(b) and therefore will satisfy those sections referenced in this provision (§§ 71.101 through 71.137).	C. **Note: § 71.101(g) indicates that QA programs for industrial radiography Type B package users are covered by § 34.31(b). It also indicated that this section satisfies § 71.17(b) and therefore will satisfy those sections referenced in this provision (§§ 71.101 through 71.137).
71.103(b)	Revised Compatibility Category Note.	Quality assurance organization.	C—Those States which have users of Type B packages-other than industrial radiography**. **Note: § 71.101(g) indicates that QA programs for industrial radiography Type B package users are covered by § 34.31(b). It also indicated that this section satisfies § 71.12(b) and therefore will satisfy those sections referenced in this provision (§§ 71.101 through 71.137)..	C **Note: § 71.101(g) indicates that QA programs for industrial radiography Type B package users are covered by § 34.31(b). It also indicated that this section satisfies § 71.17(b) and therefore will satisfy those sections referenced in this provision (§§ 71.101 through 71.137).
71.106	New	Changes to quality assurance program.	—	C
71.135	Revised	Quality assurance records.	D—For those States which have no users of Type B packages—other than industrial radiography**. C—For those States which have users of Type B packages—other than industrial radiography**. **Note: 10 CFR 71.101(g) indicates that QA programs for industrial radiography Type B package users are covered by § 34.31(b). It also indicated that this section satisfies § 71.12(b) and therefore will satisfy those sections referenced in this provision (§§ 71.101 through 71.137).	C. **Note: 10 CFR 71.101(g) indicates that QA programs for industrial radiography Type B package users are covered by § 34.31(b). It also indicated that this section satisfies § 71.17(b) and therefore will satisfy those sections referenced in this provision (§§ 71.101 through 71.137).

COMPATIBILITY TABLE—Continued

Section	Change	Subject	Compatibility	
			Existing	New [1]
Appendix A	Revise paragraphs IV.a.–IV.f.; redesignate paragraphs IV.c.–IV.f. as paragraphs IV.d.–IV.g.; add paragraph IV.c.; redesignate the text of paragraph V. as paragraph V.a.; and add paragraph V.b.	Determination of A_1 and A_2.	[B]	[B]
Appendix A, Table A–1	Revise entries for Cf-252, Ir-192, Kr-81, and Mo-99; revise footnote a; delete footnote h; and redesignate footnote i as footnote h..	A_1 and A_2 Values for Radionuclides.	[B]	[B].
	Add entry for Kr-79			
Appendix A, Table A–2	Add entry for Kr-79; revise entries for Kr-81 and Te-121m; and revise footnote b.	Exempt Material Activity Concentrations and Exempt Consignment Activity Limits for Radionuclides.	[B]	[B].
Appendix A, Table A–3	Revise entries for column 1, ''Contents,'' and add footnote a.	General Values for A_1 and A_2.	[B]	[B].

[1] Where there is a change in the assigned compatibility category, a compatibility category is assigned. Where the content of the section has been significantly changed, a summary of the analysis is presented below. Changes in the assigned compatibility category have been made in §§ 71.4 (added for the definition of contamination), 71.70, 71.85, 71.91, 71.101, 71.103, 71.106, and 71.135.

In § 71.4, the definition of contamination will be designated Compatibility Category B, because it applies to activities that have direct and significant effects in multiple jurisdictions and it is also defined in the corresponding DOT regulations.

In §§ 71.17, 71.21, and 71.103 the compatibility category is unchanged, but the brackets were not retained because there are no corresponding DOT regulations.

The new § 71.70, ''Incorporations by reference,'' will be designated Compatibility Category NRC, because the documents incorporated by reference are incorporated for use in § 71.75, which addresses activities under Federal jurisdiction.

Section 71.85, ''Preliminary determinations,'' will be changed to make the requirements in § 71.85(a) through (c) apply to holders of a CoC. Paragraphs 71.85(a) through (c) are designated as Compatibility Category NRC, because they apply exclusively to certificate holders and the granting of the package approval is reserved to the NRC. Paragraph 71.85(d) will be added and applies to licensees and it is designated as Compatibility Category B, because it applies to activities that have direct and significant effects in multiple jurisdictions and there is no corresponding DOT requirement.

The compatibility category for § 71.91, ''Records,'' will be changed from Compatibility Category D to Compatibility Category C. In reaching an agreement with the NRC, the States have a general provision relating to records and for incident reporting. The recordkeeping requirements in § 71.91 include requirements associated with transportation, which may involve multiple jurisdictions. With the exception of § 71.91(b), the NRC is designating the compatibility of the requirements in § 71.91 as Compatibility Category C to require that the essential objectives of the requirements be adopted to avoid conflict, duplication, gaps, or other conditions that would jeopardize the orderly pattern in the regulation of agreement material on a nationwide basis, including creating an undue burden on interstate commerce through additional recordkeeping requirements; § 71.91(b) only applies to CoC holders and applicants and are designated as compatibility category NRC. The States are not required to adopt them in an essentially identical manner, as might be necessary if the requirements had a more direct and significant impact on multiple jurisdictions.

In § 71.101, the compatibility category will be simplified with the removal of the separate compatibility category for States that do not have a user of a Type B package. If a State does not have a user of a Type B package, the State is able to seek an exemption from the requirement to make their requirement compatible. The State requirements only need to be essentially compatible with respect to the requirements as they apply to licensees, because the application of the requirements to CoC holders and applicants would be performed by the NRC. The note that references the quality assurance programs for industrial radiographers is updated by changing § 71.12(b) to § 71.17(b).

In § 71.103, the compatibility category for some users of packages was not designated. The compatibility category will be simplified by removing the separate compatibility category for States that do not have a user of a Type B package and by removing the bracket around the compatibility category for § 71.103(a). If a State does not have a user of a Type B package, the State can seek an exemption from the requirement to make their requirement compatible. The State requirements only need to be essentially compatible with respect to the requirements as they apply to licensees, because the application of the requirements to CoC holders and

applicants will be performed by the NRC. The note that references the quality assurance programs for industrial radiographers will be updated by changing § 71.12(b) to § 71.17(b).

The new § 71.106, ''Changes to quality assurance program,'' will apply to licensees and holders of, or applicants for, a CoC. The assigned compatibility category is consistent with the other quality assurance requirements that apply to licensees. The State requirements only need to be essentially compatible with respect to the requirements as they apply to licensees, because the application of the requirements to CoC holders and applicants will be performed by the NRC.

In § 71.135, the compatibility category will be simplified by removing the separate compatibility category for States that do not have a user of a Type B package. If a State does not have a user of a Type B package, the State can seek an exemption from the requirement to make their requirement compatible. The State requirements only need to be essentially compatible with respect to the requirements as they apply to licensees, because the application of the requirements to CoC holders and applicants will be performed by the NRC. The note that references the quality assurance programs for industrial radiographers is updated by changing § 71.12(b) to § 71.17(b).

XV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC uses the consensus standards identified as follows and will incorporate them by reference. The NRC is adopting ISO 2919:1999(E), ''Radiation protection—Sealed radioactive sources—General requirements and classification,'' Second Edition (February 15, 1999), for the Class 4 and Class 5 impact tests and the Class 6 temperature test; and ISO 9978:1992(E), ''Radiation protection—Sealed radioactive sources—Leakage test methods,'' First Edition (February 15, 1992), for the leaktightness tests.

In other portions of this final rule, the NRC is revising requirements that do not constitute the establishment of a standard that establishes generally applicable requirements. These revisions to the NRC's requirements include changes to: (1) The scope of material falling under an existing exemption for natural materials and ores containing naturally occurring radionuclides at an activity concentration below a specified value, (2) conditions on general licenses, (3) the oversight of quality assurance programs, and (4) the removal of transitional arrangements for previously approved packages.

XVI. Availability of Guidance

In the Rules and Regulations section of this issue of the **Federal Register**, the NRC is issuing revised implementation guidance for this rule, RG 7.10, Revision 3, ''Establishing Quality Assurance Programs for Packaging Used in Transport of Radioactive Material'' (Docket ID NRC–2013–0082). The guidance is also available in ADAMS under Accession No. ML14064A505. Revised RG 7.10 is intended to describe a proposed method that the NRC staff considers acceptable for use in complying with the NRC's proposed amendments to its regulations on quality assurance programs related to transport of radioactive materials. Because the regulatory analysis for the final rule provides sufficient explanation for the rule and its implementing guidance, a separate regulatory analysis was not prepared for RG 7.10.

XVII. Incorporation by Reference Under 1 CFR Part 51—Reasonable Availability to Interested Parties

The NRC is required by law to obtain approval for incorporation by reference from the Office of the Federal Register (OFR). The OFR's requirements for incorporation by reference are set forth in 1 CFR part 51. On November 7, 2014, the OFR adopted changes to its regulations governing incorporation by reference (79 FR 66267). The OFR regulations require an agency to discuss, in the preamble of the final rule, the ways that the materials it incorporates by reference are reasonably available to interested parties and how interested parties can obtain the materials. The discussion in this section complies with the requirement for proposed rules as set forth in 1 CFR 51.5(b)(2).

The NRC considers ''interested parties'' to include all potential NRC stakeholders, not just the individuals and entities regulated or otherwise subject to the NRC's regulatory oversight. These NRC stakeholders are not a homogenous group but vary with respect to the considerations for determining reasonable availability. Therefore, the NRC distinguishes between different classes of interested parties for purposes of determining whether the material is ''reasonably available.'' The NRC considers the following to be classes of interested parties in NRC rulemakings generally:

- Individuals and small entities regulated or otherwise subject to the NRC's regulatory oversight (this class also includes applicants and potential applicants for licenses and other NRC regulatory approvals).
- Large entities otherwise subject to the NRC's regulatory oversight (this class also includes applicants and potential applicants for licenses and other NRC regulatory approvals). In this context, ''large entities'' are those which do not qualify as a ''small entity'' under 10 CFR 2.810.
- Non-governmental organizations with institutional interests in the matters regulated by the NRC.
- Other Federal agencies, states, local governmental bodies (within the meaning of 10 CFR 2.315(c)).
- Federally-recognized and State-recognized Indian tribes.
- Members of the general public (*i.e.,* individual, unaffiliated members of the public who are not regulated or otherwise subject to the NRC's regulatory oversight).

International Organization for Standardization's (ISO) 9978:1992(E), ''Radiation protection—Sealed radioactive sources—Leakage test methods,'' First Edition (February 15, 1992), is incorporated by reference for § 71.75(a). Interested parties, including the general public, can purchase the February 1992 version of ISO 9978 from the American National Standards Institute, 25 West 43rd Street, 4th floor, New York, NY 10036, 212–642–4900, *http://www.ansi.org,* or *info@ansi.org.* The cost is $88.

ISO 2919:1999(E), ''Radiation protection—Sealed radioactive sources—General requirements and classification,'' Second Edition (February 15, 1999), is incorporated by reference for § 71.75(d). Interested parties, including the general public, can purchase the 1992 edition of ISO 2919 on *http://www.amazon.com* for approximately $125.00.

The two ISO standards incorporated by reference into 10 CFR 71.75 may be examined at the NRC's Public Document Room, O1–F21, 11555 Rockville Pike, Rockville, Maryland 20852 or at the NRC Library located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852; telephone: 301–415–5610; email: *Library.Resource@nrc.gov.* The two ISO standards are also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 1–202–741–

6030 or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

The NRC believes that the two ISO standards are reasonably available to large entities subject to the NRC's regulatory oversight pursuant to 10 CFR 71.75, non-governmental organizations with institutional interests in the matters regulated by the NRC, other Federal agencies, states, local governmental bodies (within the meaning of 10 CFR 2.315(c)), and Federally-recognized and State-recognized Indian tribes. With respect to individuals and small entities regulated or otherwise subject to the NRC's regulatory oversight pursuant to 10 CFR 71.75, the NRC believes that the approximately $213 cost of obtaining the two ISO standards is reasonable for such individuals and small entities, and therefore that the two standards are reasonably available to these individuals and small entities. With respect to the general public, the NRC has identified above the ways in which the two ISO standards may be obtained. Because individuals and small entities are not required to comply with these two ISO standards, the NRC believes that the two standards are reasonably available to general public in accordance with the ways described above for obtaining access.

List of Subjects in 10 CFR Part 71

Criminal penalties, Hazardous materials transportation, Incorporation by reference, Nuclear materials, Packaging and containers, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 71.

PART 71—PACKAGING AND TRANSPORTATION OF RADIOACTIVE MATERIAL

■ 1. The authority citation for part 71 continues to read as follows:

Authority: Atomic Energy Act secs. 53, 57, 62, 63, 81, 161, 182, 183, 223, 234, 1701 (42 U.S.C. 2073, 2077, 2092, 2093, 2111, 2201, 2232, 2233, 2273, 2282, 2297f); Energy Reorganization Act secs. 201, 202, 206, 211 (42 U.S.C. 5841, 5842, 5846, 5851); Nuclear Waste Policy Act sec. 180 (42 U.S.C. 10175); Government Paperwork Elimination Act sec. 1704 (44 U.S.C. 3504 note); Energy Policy Act of 2005, Pub. L. 109–58, 119 Stat. 594 (2005).

Section 71.97 also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789–790.

§ 71.0 [Amended]

■ 2. In § 71.0, paragraph (d)(1), remove the reference ''§§ 71.20 through 71.23'' and add, in its place, the reference ''§§ 71.21 through 71.23''.

■ 3. In § 71.4, add in alphabetical order the definition of ''contamination,'' and revise the definitions of ''Criticality Safety Index (CSI),'' ''Low Specific Activity (LSA) material,'' ''Special form radioactive material,'' and ''Uranium—natural, depleted, enriched'' to read as follows:

§ 71.4 Definitions.

* * * * *

Contamination means the presence of a radioactive substance on a surface in quantities in excess of 0.4 Bq/cm2 (1×10^{-5} μCi/cm^2) for beta and gamma emitters and low toxicity alpha emitters, or 0.04 Bq/cm2 (1×10^{-6} μCi/cm^2) for all other alpha emitters.

(1) *Fixed contamination* means contamination that cannot be removed from a surface during normal conditions of transport.

(2) *Non-fixed contamination* means contamination that can be removed from a surface during normal conditions of transport.

* * * * *

Criticality Safety Index (CSI) means the dimensionless number (rounded up to the next tenth) assigned to and placed on the label of a fissile material package, to designate the degree of control of accumulation of packages, overpacks or freight containers containing fissile material during transportation. Determination of the criticality safety index is described in §§ 71.22, 71.23, and 71.59. The criticality safety index for an overpack, freight container, consignment or conveyance containing fissile material packages is the arithmetic sum of the criticality safety indices of all the fissile material packages contained within the overpack, freight container, consignment or conveyance.

* * * * *

Low Specific Activity (LSA) material means radioactive material with limited specific activity which is nonfissile or is excepted under § 71.15, and which satisfies the descriptions and limits set forth in the following section. Shielding materials surrounding the LSA material may not be considered in determining the estimated average specific activity of the package contents. The LSA material must be in one of three groups:

(1) LSA–I.

(i) Uranium and thorium ores, concentrates of uranium and thorium ores, and other ores containing naturally occurring radionuclides that are intended to be processed for the use of these radionuclides;

(ii) Natural uranium, depleted uranium, natural thorium or their compounds or mixtures, provided they are unirradiated and in solid or liquid form;

(iii) Radioactive material other than fissile material, for which the A_2 value is unlimited; or

(iv) Other radioactive material in which the activity is distributed throughout and the estimated average specific activity does not exceed 30 times the value for exempt material activity concentration determined in accordance with appendix A.

(2) LSA–II.

(i) Water with tritium concentration up to 0.8 TBq/liter (20.0 Ci/liter); or

(ii) Other radioactive material in which the activity is distributed throughout and the estimated average specific activity does not exceed 10^{-4} A_2/g for solids and gases, and 10^{-5} A_2/g for liquids.

(3) LSA–III. Solids (*e.g.,* consolidated wastes, activated materials), excluding powders, that satisfy the requirements of § 71.77, in which:

(i) The radioactive material is distributed throughout a solid or a collection of solid objects, or is essentially uniformly distributed in a solid compact binding agent (such as concrete, bitumen, ceramic, etc.);

(ii) The radioactive material is relatively insoluble, or it is intrinsically contained in a relatively insoluble material, so that even under loss of packaging, the loss of radioactive material per package by leaching when placed in water for 7 days will not exceed 0.1 A_2; and

(iii) The estimated average specific activity of the solid, excluding any shielding material, does not exceed 2×10^{-3} A_2/g.

* * * * *

Special form radioactive material means radioactive material that satisfies the following conditions:

(1) It is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(2) The piece or capsule has at least one dimension not less than 5 mm (0.2 in); and

(3) It satisfies the requirements of § 71.75. A special form encapsulation designed in accordance with the requirements of § 71.4 in effect on June 30, 1983 (see 10 CFR part 71, revised as of January 1, 1983), and constructed before July 1, 1985; a special form encapsulation designed in accordance with the requirements of § 71.4 in effect

on March 31, 1996 (see 10 CFR part 71, revised as of January 1, 1996), and constructed before April 1, 1998; and special form material that was successfully tested before September 10, 2015 in accordance with the requirements of § 71.75(d) of this section in effect before September 10, 2015 may continue to be used. Any other special form encapsulation must meet the specifications of this definition.

* * * * *

Uranium—natural, depleted, enriched. (1) Natural uranium means uranium (which may be chemically separated) with the naturally occurring distribution of uranium isotopes (approximately 0.711 weight percent uranium-235, and the remainder by weight essentially uranium-238).

(2) Depleted uranium means uranium containing less uranium-235 than the naturally occurring distribution of uranium isotopes.

(3) Enriched uranium means uranium containing more uranium-235 than the naturally occurring distribution of uranium isotopes.

■ 4. In § 71.6, revise paragraph (b) to read as follows:

§ 71.6 Information collection requirements: OMB approval.

* * * * *

(b) The approved information collection requirements contained in this part appear in §§ 71.5, 71.7, 71.9, 71.12, 71.17, 71.19, 71.22, 71.23, 71.31, 71.33, 71.35, 71.37, 71.38, 71.39, 71.41, 71.47, 71.85, 71.87, 71.89, 71.91, 71.93, 71.95, 71.97, 71.101, 71.103, 71.105, 71.106, 71.107, 71.109, 71.111, 71.113, 71.115, 71.117, 71.119, 71.121, 71.123, 71.125, 71.127, 71.129, 71.131, 71.133, 71.135, 71.137, and appendix A, paragraph II.

■ 5. In § 71.14, revise paragraphs (a)(1) and (2), and add paragraph (a)(3) to read as follows:

§ 71.14 Exemption for low-level materials.

(a) * * *

(1) Natural material and ores containing naturally occurring radionuclides that are either in their natural state, or have only been processed for purposes other than for the extraction of the radionuclides, and which are not intended to be processed for the use of these radionuclides, provided the activity concentration of the material does not exceed 10 times the applicable radionuclide activity concentration values specified in appendix A, Table A–2, or Table A–3 of this part.

(2) Materials for which the activity concentration is not greater than the activity concentration values specified in appendix A, Table A–2, or Table A–3 of this part, or for which the consignment activity is not greater than the limit for an exempt consignment found in appendix A, Table A–2, or Table A–3 of this part.

(3) Non-radioactive solid objects with radioactive substances present on any surfaces in quantities not in excess of the levels cited in the definition of contamination in § 71.4.

* * * * *

■ 6. In § 71.15, revise paragraph (d) to read as follows:

§ 71.15 Exemption from classification as fissile material.

* * * * *

(d) Uranium enriched in uranium-235 to a maximum of 1 percent by weight, and with total plutonium and uranium-233 content of up to 1 percent of the mass of uranium-235, provided that the mass of any beryllium, graphite, and hydrogenous material enriched in deuterium constitutes less than 5 percent of the uranium mass, and that the fissile material is distributed homogeneously and does not form a lattice arrangement within the package.

* * * * *

■ 7. In § 71.17, revise paragraph (c) to read as follows:

§ 71.17 General license: NRC-approved package.

* * * * *

(c) Each licensee issued a general license under paragraph (a) of this section shall—

(1) Maintain a copy of the Certificate of Compliance, or other approval of the package, and the drawings and other documents referenced in the approval relating to the use and maintenance of the packaging and to the actions to be taken before shipment;

(2) Comply with the terms and conditions of the license, certificate, or other approval, as applicable, and the applicable requirements of subparts A, G, and H of this part; and

(3) Submit in writing before the first use of the package to: ATTN: Document Control Desk, Director, Division of Spent Fuel Storage and Transportation, Office of Nuclear Material Safety and Safeguards, using an appropriate method listed in § 71.1(a), the licensee's name and license number and the package identification number specified in the package approval.

* * * * *

■ 8. In § 71.19, redesignate paragraphs (b) through (e) as paragraphs (a) through (d), and revise newly redesignated paragraph (b)(2) to read as follows:

§ 71.19 Previously approved package.

* * * * *

(b) * * *

(2) A package used for a shipment to a location outside the United States is subject to multilateral approval as defined in the DOT's regulations at 49 CFR 173.403.

* * * * *

■ 9. In § 71.21, revise paragraphs (a) and (d) to read as follows:

§ 71.21 General license: Use of foreign approved package.

(a) A general license is issued to any licensee of the Commission to transport, or to deliver to a carrier for transport, licensed material in a package, the design of which has been approved in a foreign national competent authority certificate, that has been revalidated by the DOT as meeting the applicable requirements of 49 CFR 171.23.

* * * * *

(d) Each licensee issued a general license under paragraph (a) of this section shall—

(1) Maintain a copy of the applicable certificate, the revalidation, and the drawings and other documents referenced in the certificate, relating to the use and maintenance of the packaging and to the actions to be taken before shipment; and

(2) Comply with the terms and conditions of the certificate and revalidation, and with the applicable requirements of subparts A, G, and H of this part.

§ 71.31 [Amended]

■ 10. In § 71.31, paragraph (b), remove the reference ''§ 71.13'' and add, in its place, the reference ''§ 71.19''.

■ 11. Revise § 71.38 to read as follows:

§ 71.38 Renewal of a certificate of compliance.

(a) Except as provided in paragraph (b) of this section, each Certificate of Compliance expires at the end of the day, in the month and year stated in the approval.

(b) In any case in which a person, not less than 30 days before the expiration of an existing Certificate of Compliance issued pursuant to the part, has filed an application in proper form for renewal, the existing Certificate of Compliance for which the renewal application was filed shall not be deemed to have expired until final action on the application for renewal has been taken by the Commission.

(c) In applying for renewal of an existing Certificate of Compliance, an applicant may be required to submit a consolidated application that is

comprised of as few documents as possible. The consolidated application should incorporate all changes to its certificate, including changes that are incorporated by reference in the existing certificate.

■ 12. Add § 71.70 to subpart F to read as follows:

§ 71.70 Incorporations by reference.

(a) The materials listed in this section are incorporated by reference in the corresponding sections noted and made a part of the regulations in part 71. These incorporations by reference were approved by the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of the approval. A notice of any changes made to the material incorporated by reference will be published in the **Federal Register**, and the material must be available to the public. The materials can be examined at the NRC's Public Document Room, O1–F21, 11555 Rockville Pike, Rockville, Maryland 20852 or at the NRC Library located at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852; telephone: 301–415–5610; email: *Library.Resource@nrc.gov*, and is available from the sources listed below. All approved material is available for inspection at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 1–202–741–6030 or go to *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

(b) International Organization for Standardization, ISO Central Secretariat, Chemin de Blandonnet 8 CP 401, 1214 Vernier, Geneva, Switzerland; email: *central@iso.org;* phone: +41 22 749 01 11; Web site: *http://www.iso.org.*

(1) ISO 9978:1992(E), ''Radiation protection—Sealed radioactive sources—Leakage test methods,'' First Edition (February 15, 1992), incorporation by reference approved for § 71.75(a), is available for purchase from the American National Standards Institute, 25 West 43rd Street, 4th Floor, New York, NY 10036, 212–642–4900, *http://www.ansi.org,* or *info@ansi.org.*

(2) ISO 2919:1999(E), ''Radiation protection—Sealed radioactive sources—General requirements and classification,'' Second Edition (February 15, 1999), incorporation by reference approved for § 71.75(d), is available on *http://www.amazon.com.*

■ 13. In § 71.75, revise paragraphs (a)(5), (b)(2)(ii) and (iii), and (d)(1) and (2) to read as follows:

§ 71.75 Qualification of special form radioactive material.

(a) * * *

(5) A specimen that comprises or simulates radioactive material contained in a sealed capsule need not be subjected to the leaktightness procedure specified in this section, provided it is alternatively subjected to any of the tests prescribed in ISO 9978:1992(E), ''Radiation protection—Sealed radioactive sources—Leakage test methods'' (incorporated by reference, see § 71.70).

(b) * * *

(2) * * *

(ii) The flat face of the billet must be 25 millimeters (mm) (1 inch) in diameter with the edge rounded off to a radius of 3 mm ± 0.3 mm (0.12 in ± 0.012 in);

(iii) The lead must be hardness number 3.5 to 4.5 on the Vickers scale and not more than 25 mm (1 inch) thick, and must cover an area greater than that covered by the specimen;

* * * * *

(d) * * *

(1) The impact test and the percussion test of this section, provided that the specimen is:

(i) Less than 200 grams and alternatively subjected to the Class 4 impact test prescribed in ISO 2919:1999(E), ''Radiation protection—Sealed radioactive sources—General requirements and classification'' (incorporated by reference, see § 71.70); or

(ii) Less than 500 grams and alternatively subjected to the Class 5 impact test prescribed in ISO 2919:1999(E), ''Radioactive protection—Sealed radioactive sources—General requirements and classification'' (incorporated by reference, see § 71.70); and

(2) The heat test of this section, provided the specimen is alternatively subjected to the Class 6 temperature test specified in ISO 2919:1999(E), ''Radioactive protection—Sealed radioactive sources—General requirements and classification'' (incorporated by reference, see § 71.70).

■ 14. In § 71.85, revise paragraphs (a), (b), and (c) and add paragraph (d) to read as follows:

§ 71.85 Preliminary determinations.

* * * * *

(a) The certificate holder shall ascertain that there are no cracks, pinholes, uncontrolled voids, or other defects that could significantly reduce the effectiveness of the packaging;

(b) Where the maximum normal operating pressure will exceed 35 kPa (5 lbf/in^2) gauge, the certificate holder shall test the containment system at an internal pressure at least 50 percent higher than the maximum normal operating pressure, to verify the capability of that system to maintain its structural integrity at that pressure;

(c) The certificate holder shall conspicuously and durably mark the packaging with its model number, serial number, gross weight, and a package identification number assigned by the NRC. Before applying the model number, the certificate holder shall determine that the packaging has been fabricated in accordance with the design approved by the Commission; and

(d) The licensee shall ascertain that the determinations in paragraphs (a) through (c) of this section have been made.

§ 71.91 [Amended]

■ 15. In § 71.91, in paragraph (a) introductory text, remove the reference ''§ 71.10'' and add, in its place, the reference ''§ 71.14''.

■ 16. In § 71.101, revise paragraphs (a) and (c)(2) to read as follows:

§ 71.101 Quality assurance requirements.

(a) *Purpose.* This subpart describes quality assurance requirements applying to design, purchase, fabrication, handling, shipping, storing, cleaning, assembly, inspection, testing, operation, maintenance, repair, and modification of components of packaging that are important to safety. As used in this subpart, ''quality assurance'' comprises all those planned and systematic actions necessary to provide adequate confidence that a system or component will perform satisfactorily in service. Quality assurance includes quality control, which comprises those quality assurance actions related to control of the physical characteristics and quality of the material or component to predetermined requirements. Each certificate holder and applicant for a package approval is responsible for satisfying the quality assurance requirements that apply to design, fabrication, testing, and modification of packaging subject to this subpart. Each licensee is responsible for satisfying the quality assurance requirements that apply to its use of a packaging for the shipment of licensed material subject to this subpart.

* * * * *

(c) * * *

(2) Before the fabrication, testing, or modification of any package for the shipment of licensed material subject to this subpart, each certificate holder, or applicant for a Certificate of Compliance

shall obtain Commission approval of its quality assurance program. Each certificate holder or applicant for a CoC shall, in accordance with § 71.1, file a description of its quality assurance program, including a discussion of which requirements of this subpart are applicable and how they will be satisfied.

* * * * *

■ 17. In § 71.103, revise paragraph (a) to read as follows:

§ 71.103 Quality assurance organization.

(a) The licensee, certificate holder, and applicant for a Certificate of Compliance shall be responsible for the establishment and execution of the quality assurance program. The licensee, certificate holder, and applicant for a Certificate of Compliance may delegate to others, such as contractors, agents, or consultants, the work of establishing and executing the quality assurance program, or any part of the quality assurance program, but shall retain responsibility for the program. These activities include performing the functions associated with attaining quality objectives and the quality assurance functions.

* * * * *

■ 18. Add § 71.106 to subpart H to read as follows:

§ 71.106 Changes to quality assurance program.

(a) Each quality assurance program approval holder shall submit, in accordance with § 71.1(a), a description of a proposed change to its NRC-approved quality assurance program that will reduce commitments in the program description as approved by the NRC. The quality assurance program approval holder shall not implement the change before receiving NRC approval.

(1) The description of a proposed change to the NRC-approved quality assurance program must identify the change, the reason for the change, and the basis for concluding that the revised program incorporating the change continues to satisfy the applicable requirements of subpart H of this part.

(2) [Reserved]

(b) Each quality assurance program approval holder may change a previously approved quality assurance program without prior NRC approval, if the change does not reduce the commitments in the quality assurance program previously approved by the NRC. Changes to the quality assurance program that do not reduce the commitments shall be submitted to the NRC every 24 months, in accordance with § 71.1(a). In addition to quality assurance program changes involving administrative improvements and clarifications, spelling corrections, and non-substantive changes to punctuation or editorial items, the following changes are not considered reductions in commitment:

(1) The use of a quality assurance standard approved by the NRC that is more recent than the quality assurance standard in the certificate holder's or applicant's current quality assurance program at the time of the change;

(2) The use of generic organizational position titles that clearly denote the position function, supplemented as necessary by descriptive text, rather than specific titles, provided that there is no substantive change to either the functions of the position or reporting responsibilities;

(3) The use of generic organizational charts to indicate functional relationships, authorities, and responsibilities, or alternatively, the use of descriptive text, provided that there is no substantive change to the functional relationships, authorities, or responsibilities;

(4) The elimination of quality assurance program information that duplicates language in quality assurance regulatory guides and quality assurance standards to which the quality assurance program approval holder has committed to on record; and

(5) Organizational revisions that ensure that persons and organizations performing quality assurance functions continue to have the requisite authority and organizational freedom, including sufficient independence from cost and schedule when opposed to safety considerations.

(c) Each quality assurance program approval holder shall maintain records of quality assurance program changes.

■ 19. Revise § 71.135 to read as follows:

§ 71.135 Quality assurance records.

The licensee, certificate holder, and applicant for a Certificate of Compliance shall maintain sufficient written records to describe the activities affecting quality. These records must include changes to the quality assurance program as required by § 71.106, the instructions, procedures, and drawings required by § 71.111 to prescribe quality assurance activities, and closely related specifications such as required qualifications of personnel, procedures, and equipment. The records must include the instructions or procedures that establish a records retention program that is consistent with applicable regulations and designates factors such as duration, location, and assigned responsibility. The licensee, certificate holder, and applicant for a Certificate of Compliance shall retain these records for 3 years beyond the date when the licensee, certificate holder, and applicant for a Certificate of Compliance last engage in the activity for which the quality assurance program was developed. If any portion of the quality assurance program, written procedures or instructions is superseded, the licensee, certificate holder, and applicant for a Certificate of Compliance shall retain the superseded material for 3 years after it is superseded.

■ 20. In appendix A to part 71:

■ a. Revise paragraphs IV.a. and IV.b., redesignate paragraphs IV.c. through IV.f. as paragraphs IV.d. through IV.g., add new paragraph IV.c., revise newly redesignated paragraphs IV.d. through IV.g., redesignate paragraph V. as paragraph V.a., and add new paragraph V.b.;

■ b. In Table A–1, add an entry for Kr-79 in alphanumeric order; revise the entries for Cf-252, Ir-192, Kr-81, and Mo-99; revise footnotes a and c; remove footnote h; and redesignate footnote i as footnote h;

■ c. In Table A–2, add the entry for Kr-79 in alphanumeric order, revise the entries for Kr-81 and Te-121m, and revise footnote b; and

■ d. In Table A–3, revise the second and third entries and add a new footnote a.

The additions and revisions read as follows:

Appendix A to Part 71—Determination of A_1 and A_2

* * * * *

IV. * * *

a. For special form radioactive material, the maximum quantity transported in a Type A package is as follows:

$$\sum_i \frac{B(i)}{A_1(i)} \leq 1$$

where B(i) is the activity of radionuclide i in special form, and $A_1(i)$ is the A_1 value for radionuclide i.

b. For normal form radioactive material, the maximum quantity transported in a Type A package is as follows:

$$\sum_i \frac{B(i)}{A_2(i)} \leq 1$$

where B(i) is the activity of radionuclide i in normal form, and $A_2(i)$ is the A_2 value for radionuclide i.

c. If the package contains both special and normal form radioactive material, the activity that may be transported in a Type A package is as follows:

$$\sum_i \frac{B(i)}{A_1(i)} + \sum_j \frac{C(j)}{A_2(j)} \leq 1$$

where B(i) is the activity of radionuclide i as special form radioactive material, $A_1(i)$ is the A_1 value for radionuclide i, C(j) is the activity of radionuclide j as normal form radioactive material, and $A_2(j)$ is the A_2 value for radionuclide j.

d. Alternatively, the A_1 value for mixtures of special form material may be determined as follows:

$$A_1 \text{ for mixture} = \frac{1}{\sum_i \frac{f(i)}{A_1(i)}}$$

where f(i) is the fraction of activity for radionuclide i in the mixture and $A_1(i)$ is the appropriate A_1 value for radionuclide i.

e. Alternatively, the A_2 value for mixtures of normal form material may be determined as follows:

$$A_2 \text{ for mixture} = \frac{1}{\sum_i \frac{f(i)}{A_2(i)}}$$

where f(i) is the fraction of activity for radionuclide i in the mixture and $A_2(i)$ is the appropriate A_2 value for radionuclide i.

f. The exempt activity concentration for mixtures of nuclides may be determined as follows:

$$\text{Exempt activity concentration for mixture} = \frac{1}{\sum_i \frac{f(i)}{[A](i)}}$$

where f(i) is the fraction of activity concentration of radionuclide i in the mixture and [A](i) is the activity concentration for exempt material containing radionuclide i.

g. The activity limit for an exempt consignment for mixtures of radionuclides may be determined as follows:

$$\text{Exempt consignment activity limit for mixture} = \frac{1}{\sum_i \frac{f(i)}{A(i)}}$$

where f(i) is the fraction of activity of radionuclide i in the mixture and A(i) is the activity limit for exempt consignments for radionuclide i.

V. * * *

b. When the identity of each radionuclide is known but the individual activities of some of the radionuclides are not known, the radionuclides may be grouped and the lowest [A] (activity concentration for exempt material) or A (activity limit for exempt consignment) value, as appropriate, for the radionuclides in each group may be used in applying the formulas in paragraph IV of this appendix. Groups may be based on the total alpha activity and the total beta/gamma activity when these are known, using the lowest [A] or A values for the alpha emitters and beta/gamma emitters, respectively.

* * * * *

TABLE A–1—A_1 AND A_2 VALUES FOR RADIONUCLIDES

Symbol of radionuclide	Element and atomic No.	A_1 (TBq)	A_1 (Ci) [b]	A_2 (TBq)	A_2 (Ci) [b]	Specific activity	
						(TBq/g)	(Ci/g)
*	*	*	*	*		*	*
Cf-252		1.0×10^{-1}	2.7	3.0×10^{-3}	8.1×10^{-2}	2.0×10^{1}	5.4×10^{2}
*	*	*	*	*		*	*
Ir-192		[c] 1.0	[c] 2.7×10^{1}	6.0×10^{-1}	1.6×10^{1}	3.4×10^{2}	9.2×10^{3}
*	*	*	*	*		*	*
Kr-79	Krypton (36)	4.0	1.1×10^{2}	2.0	5.4×10^{1}	4.2×10^{4}	1.1×10^{6}
Kr-81		4.0×10^{1}	1.1×10^{3}	4.0×10^{1}	1.1×10^{3}	7.8×10^{-4}	2.1×10^{-2}
*	*	*	*	*		*	*
Mo-99 [a h]		1.0	2.7×10^{1}	6.0×10^{-1}	1.6×10^{1}	1.8×10^{4}	4.8×10^{5}
*	*	*	*	*		*	*

[a] A_1 and/or A_2 values include contributions from daughter nuclides with half-lives less than 10 days, as listed in the following:

Mg-28	Al-28
Ca-47	Sc-47
Ti-44	Sc-44
Fe-52	Mn-52m
Fe-60	Co-60m
Zn-69m	Zn-69
Ge-68	Ga-68
Rb-83	Kr-83m
Sr-82	Rb-82
Sr-90	Y-90
Sr-91	Y-91m
Sr-92	Y-92
Y-87	Sr-87m

Zr-95	Nb-95m
Zr-97	Nb-97m, Nb-97
Mo-99	Tc-99m
Tc-95m	Tc-95
Tc-96m	Tc-96
Ru-103	Rh-103m
Ru-106	Rh-106
Pd-103	Rh-103m
Ag-108m	Ag-108
Ag-110m	Ag-110
Cd-115	In-115m
In-114m	In-114
Sn-113	In-113m
Sn-121m	Sn-121
Sn-126	Sb-126m
Te-127m	Te-127
Te-129m	Te-129
Te-131m	Te-131
Te-132	I-132
I–135	Xe-135m
Xe-122	I-122
Cs-137	Ba-137m
Ba-131	Cs-131
Ba-140	La-140
Ce-144	Pr-144m, Pr-144
Pm-148m	Pm-148
Gd-146	Eu-146
Dy-166	Ho-166
Hf-172	Lu-172
W-178	Ta-178
W-188	Re-188
Re-189	Os-189m
Os-194	Ir-194
Ir-189	Os-189m
Pt-188	Ir-188
Hg-194	Au-194
Hg-195m	Hg-195
Pb-210	Bi-210
Pb-212	Bi-212, Tl-208, Po-212
Bi-210m	Tl-206
Bi-212	Tl-208, Po-212
At-211	Po-211
Rn-222	Po-218, Pb-214, At-218, Bi-214, Po-214
Ra-223	Rn-219, Po-215, Pb-211, Bi-211, Po-211, Tl-207
Ra-224	Rn-220, Po-216, Pb-212, Bi-212, Tl-208, Po-212
Ra-225	Ac-225, Fr-221, At-217, Bi-213, Tl-209, Po-213, Pb-209
Ra-226	Rn-222, Po-218, Pb-214, At-218, Bi-214, Po-214
Ra-228	Ac-228
Ac-225	Fr-221, At-217, Bi-213, Tl-209, Po-213, Pb-209
Ac-227	Fr-223
Th-228	Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208, Po-212
Th-234	Pa-234m, Pa-234
Pa-230	Ac-226, Th-226, Fr-222, Ra-222, Rn-218, Po-214
U-230	Th-226, Ra-222, Rn-218, Po-214
U-235	Th-231
Pu-241	U-237
Pu-244	U-240, Np-240m
Am-242m	Am-242, Np-238
Am-243	Np-239
Cm-247	Pu-243
Bk-249	Am-245
Cf-253	Cm-249

* * * * * * *

[c] The activity of Ir-192 in special form may be determined from a measurement of the rate of decay or a measurement of the radiation level at a prescribed distance from the source.

* * * * * * *

[h] A_2 = 0.74 TBq (20 Ci) for Mo-99 for domestic use.

* * * * * * *

TABLE A–2—EXEMPT MATERIAL ACTIVITY CONCENTRATIONS AND EXEMPT CONSIGNMENT ACTIVITY LIMITS FOR RADIONUCLIDES

Symbol of radionuclide	Element and atomic No.	Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limit for exempt consignment (Bq)	Activity limit for exempt consignment (Ci)
*	*	*	*	*	*
Kr-79	Krypton (36)	1.0×10^{3}	2.7×10^{-8}	1.0×10^{5}	2.7×10^{-6}
Kr-81		1.0×10^{4}	2.7×10^{-7}	1.0×10^{7}	2.7×10^{-4}
*	*	*	*	*	*
Te-121m		1.0×10^{2}	2.7×10^{-9}	1.0×10^{6}	2.7×10^{-5}
*	*	*	*	*	*

* * * * * * *

[b] Parent nuclides and their progeny included in secular equilibrium are listed as follows:

Sr-90	Y-90
Zr-93	Nb-93m
Zr-97	Nb-97
Ru-106	Rh-106
Ag-108m	Ag-108
Cs-137	Ba-137m
Ce-144	Pr-144
Ba-140	La-140
Bi-212	Tl-208 (0.36), Po-212 (0.64)
Pb-210	Bi-210, Po-210
Pb-212	Bi-212, Tl-208 (0.36), Po-212 (0.64)
Rn-222	Po-218, Pb-214, Bi-214, Po-214
Ra-223	Rn-219, Po-215, Pb-211, Bi-211, Tl-207
Ra-224	Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Ra-226	Rn-222, Po-218, Pb-214, Bi-214, Po-214, Pb-210, Bi-210, Po-210
Ra-228	Ac-228
Th-228	Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212(0.64)
Th-229	Ra-225, Ac-225, Fr-221, At-217, Bi-213, Po-213, Pb-209
Th-nat	Ra-228, Ac-228, Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
Th-234	Pa-234m
U-230	Th-226, Ra-222, Rn-218, Po-214
U-232	Th-228, Ra-224, Rn-220, Po-216, Pb-212, Bi-212, Tl-208 (0.36), Po-212 (0.64)
U-235	Th-231
U-238	Th-234, Pa-234m
U-nat	Th-234, Pa-234m, U-234, Th-230, Ra-226, Rn-222, Po-218, Pb-214, Bi-214, Po-214, Pb-210, Bi-210, Po-210
Np-237	Pa-233
Am-242m	Am-242
Am-243	Np-239

* * * * * * *

TABLE A–3—GENERAL VALUES FOR A_1 AND A_2

Contents	A_1		A_2		Activity concentration for exempt material (Bq/g)	Activity concentration for exempt material (Ci/g)	Activity limits for exempt consignments (Ba)	Activity limits for exempt consignments (Ci)
	(TBq)	(Ci)	(TBq)	(Ci)				
*	*	*	*	*	*	*	*	
Alpha emitting nuclides, but no neutron emitters, are known to be present (a)	2×10^{-1}	5.4×10^{0}	9×10^{-5}	2.4×10^{-3}	1×10^{-1}	2.7×10^{-12}	1×10^{3}	2.7×10^{-8}
Neutron emitting nuclides are known to be present or no relevant data are available ..	1×10^{-3}	2.7×10^{-2}	9×10^{-5}	2.4×10^{-3}	1×10^{-1}	2.7×10^{-12}	1×10^{3}	2.7×10^{-8}

[a] If beta or gamma emitting nuclides are known to be present, the A_1 value of 0.1 TBq (2.7 Ci) should be used.

* * * * * * *

Dated at Rockville, Maryland, this 4th day of June, 2015.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 2015–14212 Filed 6–11–15; 8:45 am]

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FEDERAL REGISTER

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Part VI

The President

Notice of June 10, 2015—Continuation of the National Emergency With Respect to the Actions and Policies of Certain Members of the Government of Belarus and Other Persons to Undermine Belarus's Democratic Processes or Institutions

Federal Register
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Presidential Documents

Title 3—

The President

Notice of June 10, 2015

Continuation of the National Emergency With Respect to the Actions and Policies of Certain Members of the Government of Belarus and Other Persons to Undermine Belarus's Democratic Processes or Institutions

On June 16, 2006, by Executive Order 13405, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701–1706) to deal with the unusual and extraordinary threat to the national security and foreign policy of the United States constituted by the actions and policies of certain members of the Government of Belarus and other persons to undermine Belarus's democratic processes or institutions, manifested in the fundamentally undemocratic March 2006 elections, to commit human rights abuses related to political repression, including detentions and disappearances, and to engage in public corruption, including by diverting or misusing Belarusian public assets or by misusing public authority.

The actions and policies of certain members of the Government of Belarus and other persons continue to pose an unusual and extraordinary threat to the national security and foreign policy of the United States. For this reason, the national emergency declared on June 16, 2006, and the measures adopted on that date to deal with that emergency, must continue in effect beyond June 16, 2015. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency declared in Executive Order 13405.

This notice shall be published in the *Federal Register* and transmitted to the Congress.

THE WHITE HOUSE,
June 10, 2015.

[FR Doc. 2015–14688
Filed 6–11–15; 11:15 am]
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