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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3560

RIN 0575–AC99

Reserve Account

AGENCY: Rural Housing Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS or ''Agency'') is amending its regulation to change the requirements of the reserve account for direct Multifamily Housing (MFH) loans. The intended effect of this action is to address the reserve account requirement of the Agency to countersign with the borrower when a Section 538 guaranteed loan is involved, and to also clarify that reserve account funds cannot be used to pay for fees associated with the Section 538 guaranteed loan program.

DATES: The effective date for this final rule is August 17, 2015.

FOR FURTHER INFORMATION CONTACT: Tammy S. Daniels, Financial and Loan Analyst, Multi-Family Housing Guaranteed Loan Division, Rural Housing Service, U.S. Department of Agriculture, STOP 0781, 1400 Independence Avenue SW., Washington, DC 20250–0781, Telephone: (202) 720–0021 (this is not a toll-free number); email: *tammy.daniels@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Executive Order 12866—Classification

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

Executive Order 12988—Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this rule is adopted: (1) Unless otherwise specifically provided, all State and local laws that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule except as specifically prescribed in the rule; and (3) administrative proceedings of the National Appeals Division of the U.S. Department of Agriculture (7 CFR part 11) must be exhausted before bringing suit.

Executive Order 13132—Federalism

The policies contained in this rule do not have any substantial direct effect on 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. Nor does this rule impose substantial direct compliance costs on State and local governments. Therefore, consultation with States is not required.

Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

This executive order imposes requirements on Rural Development (RD) in the development of regulatory policies that have tribal implications or preempt tribal laws. RD has determined that the final rule does not have a substantial direct effect on one or more Indian tribe(s) or on either the relationship or the distribution of powers and responsibilities between the Federal Government and Indian tribes. Thus, this final rule is not subject to the requirements of Executive Order 13175. If a tribe determines that this rule has implications of which RD is not aware and would like to engage with RD on this rule, please contact RD's Native American Coordinator at: *AIAN@wdc.usda.gov.*

Regulatory Flexibility Act

The rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature on this document that this rule will not have a significant economic impact on a substantial number of small entities. This rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been approved by OMB and have been assigned OMB control number 0575–0189. There are no new reporting and recordkeeping requirements associated with this regulatory action.

E-Government Act Compliance

RHS is committed to complying with the E-Government Act by promoting the use of the Internet and other information technologies in order to provide increased opportunities for citizen access to Government information, services, and other purposes.

Unfunded Mandate Reform Act (UMRA)

This rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local and tribal Governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, ''Environmental Program.'' RHS determined that the action does not constitute a major Federal action significantly affecting the quality of the environment. Therefore, in accordance with the National Environmental Policy Act of 1969, Pub. L. 91–190, an Environmental Impact Statement is not required.

Programs Affected

The programs affected by this regulation are listed in the Catalog of Federal Domestic Assistance under numbers 10.405—Farm Labor Housing Loans and Grants; 10.415—RRH Loans; and 10.427—Rural Rental Assistance Payments.

Executive Order 12372—Intergovernmental Consultation

These loans are subject to the provisions of Executive Order 12372, which require intergovernmental

consultation with State and local officials. RHS conducts intergovernmental consultations for each loan in accordance with 2 CFR part 415, subpart C.

I. Background Information

Reserve accounts are established by the recipient of direct MFH loans (the ''borrower'') to meet the major capital expenses of a housing project. The amount of the payments to the reserve account is established in the loan documents, beginning with the first loan payment or the date specified in the loan documents. The current requirement at 7 CFR 3560.306(e)(2) states that reserve accounts require the Agency to countersign with the borrower on all withdrawals. The Section 538 Guaranteed Rural Rental Housing (GRRH) program often provides funding to an existing direct MFH loan property. Loan funds provided by the lender and guaranteed by the GRRH program are critical to the rehabilitation and preservation of older existing direct MFH loan properties. The GRRH program regulation at 7 CFR 3565.402(a) requires that all property reserve accounts be held by the lender, which eliminates the unauthorized use of these funds by the borrower since the borrower does not have access to the funds. When an approved Section 538 lender lends funds to an existing direct MFH loan-financed property, this brings 7 CFR 3560.306 and 3565.402 into conflict, pitting the requirement for the Agency to countersign for funds pursuant to 7 CFR 3560.306, against the requirement that lenders have unfettered control of funds consistent with 7 CFR 3565.402. The GRRH program loan guarantees are sold on the secondary market as long as the loan is closed and is not in default. In most cases, the Section 538 loans on direct MFH loan-financed properties are transferred to Ginnie Mae. Ginnie Mae requires that property reserve accounts be pledged as collateral for the loan and that it has unfettered access to those accounts. In order to meet this secondary market requirement, the reserve accounts must be titled exclusively in the lender's name. In order to meet Ginnie Mae's requirements, the reserve accounts cannot be countersigned with any other party. Requiring the Agency's signature on all withdrawals ensures that the borrower does not have uncontrolled use of the funds and this requirement will remain unchanged for properties that only have direct MFH loans. However, this amendment would relieve the Agency of its countersignature responsibility for properties with Section 538 funding, and thereby comply with Ginnie Mae's requirements, described above. The Agency's interest in the reserve accounts would still be protected by the change being made in the regulation, since the lender is required to get prior Agency approval before funds disbursement. Therefore, funds from the lender-controlled reserve account cannot be used for items not agreed to by the Agency.

Additionally, RHS is amending 7 CFR 3560.306(g) to clarify that reserve account funds cannot be used to pay fees associated with the loan guarantee. Lenders are currently using the replacement reserve account to pay fees associated with the loan guarantee, *i.e.,* the annual renewal fee. These fees are considered a project expense and must be paid from the operating account, not the replacement reserve account.

II. Discussion of the Comments Received

The Agency received three responses to the proposed rule published in the **Federal Register** on August 13, 2014, (79 FR 47383). The comments came from RD employees who work with the RD Multi-Family Housing programs. The topics of discussion included: Putting in language regarding the Section 514/516 Farm Labor Housing program; including all lenders in the amendment, not just Section 538 lenders; and, providing additional guidance on how to implement the new requirements involving direct MFH/538 transactions.

The comments were as follows:

1. *One commenter wanted the Agency to address how the release of the reserves will be internally implemented.* The Agency will address this in our internal guidance, HB–1–3565, on how to implement reserve requirements on direct MFH loan transactions.

2. *One commenter requested that the proposed rule change include language to reflect that the Section 514/516 Farm Labor Housing loan and grant program transactions be included in the final rule.* The rule has been changed to reflect that it pertains to all direct Multi-family housing loans; therefore, references to Section 515 loans have been replaced with ''direct MFH loans.''

3. *One commenter requested that the amendment address all lenders, not just Section 538 lenders, when loan funds are leveraged for the construction and/or rehabilitation of project involving direct MFH loans.* The agency will not make a change to address all lenders through this regulation change because the change is only intended to resolve the conflict between 7 CFR parts 3560 and 3565. In other words, the Agency will only address transactions involving an approved Section 538 lender. In a direct MFH loan transaction involving lenders other than a Section 538 lender, the rules in 7 CFR 3560.306 will prevail so that the direct MFH loan borrower will maintain control of the reserve account through supervised bank accounts.

List of Subjects in 7 CFR Part 3560

Accounting, Administrative practice and procedure, Aged, Farm labor housing, Foreclosure, Grant programs—Housing and community development, Government property management, Handicapped, Insurance, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing, Migrant labor, Mortgages, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Rural housing.

Therefore, chapter XXXV, title 7 of the Code of Federal Regulations, is amended as follows:

PART 3560—DIRECT MULTI-FAMILY HOUSING LOANS AND GRANTS

■ 1. The authority citation for part 3560 continues to read as follows:

Authority: 42 U.S.C. 1480.

Subpart G—Financial Management

■ 2. Amend § 3560.306 by revising paragraph (e)(2) and adding paragraph (g)(5) to read as follows:

§ 3560.306 Reserve account.

* * * * *

(e) * * *

(2) Reserve accounts must be supervised accounts that require the Agency to countersign on all withdrawals; except, this requirement is not applicable when loan funds guaranteed by the Section 538 GRRH program are used for the construction and/or rehabilitation of a direct MFH loan project. Direct MFH loan borrowers, who are exempted from the supervised account and countersigned requirement, as described above, must follow Section 538 GRRH program regulatory requirements pertaining to reserve accounts. In all cases, Section 538 lenders must get prior written approval from the Agency before reserve account funds involving a direct MFH loan project can be disbursed to the borrower.

* * * * *

(g) * * *

(5) Funds from the replacement reserve account cannot be used to pay any fees associated with the Section 538 GRRH loan guarantee, as determined by the Agency.

* * * * *

Dated: May 18, 2015.

Tony Hernandez,

Administrator, Rural Housing Service.

[FR Doc. 2015–14783 Filed 6–16–15; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2014–1079; Special Conditions No. 25–585–SC]

Special Conditions: Gulfstream Model GVII Series Airplanes; Limit Pilot Forces for Side-Stick Controller

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Gulfstream Model GVII–G500 (GVII series) airplanes. These airplanes will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes.

This design feature is associated with side-stick controllers that require limited pilot force because they are operated by one hand only. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Effective July 17, 2015.

FOR FURTHER INFORMATION CONTACT: Todd Martin, FAA, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98057–3356; telephone 425–227–1178; facsimile 425–227–1320.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 2012, Gulfstream Aerospace applied for a type certificate for their new Model GVII–G500 airplane.

The Model GVII series airplanes are large-cabin business jets capable of accommodating up to 19 passengers. The GVII series will certify a base configuration GVII–G500, which incorporates a low, swept-wing design with winglets and a T-tail. The airplanes have two aft-fuselage-mounted Pratt & Whitney turbofan engines. Avionics include four primary display units and multiple touchscreen controllers. The flight-control system is a three-axis, fly-by-wire system using active control/coupled side sticks.

The GVII–G500 has a wingspan of 87 ft. and a length of 91 ft. Maximum takeoff weight is 76,850 lbs. Maximum takeoff thrust is 15,135 lbs., maximum range is 5,000 nautical miles (nm), and maximum operating altitude is 51,000 ft.

The Model GVII series airplanes are equipped with two side-stick controllers instead of the conventional control columns and wheels. This side-stick controller is designed for one-hand operation. The requirement of Title 14, Code of Federal Regulations (14 CFR) 25.397(c), which defines limit pilot forces and torques for conventional wheel or stick controls, is not adequate for a side-stick controller. Special conditions are necessary to specify the appropriate loading conditions for this controller design.

Type-Certification Basis

Under the provisions of Title 14, Code of Federal Regulations (14 CFR) 21.17, Gulfstream must show that the Model GVII–G500 airplane meets the applicable provisions of 14 CFR part 25, as amended by Amendments 25–1 through 25–137.

The certification basis of the GVII–G500 airplane is 14 CFR part 25, effective February 1, 1965, including Amendments 25–1 through 25–137; 14 CFR part 34, as amended by Amendments 34–1 through the most current amendment at the time of design approval; and 14 CFR part 36, Amendment 36–29. In addition, the certification basis includes special conditions and equivalent-safety findings related to the flight-control system.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model GVII series airplanes because of a novel or unusual design feature, special conditions are prescribed under § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same or similar novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Model GVII series airplanes must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36. The FAA must issue a finding of regulatory adequacy under § 611 of Public Law 92–574, the ''Noise Control Act of 1972.''

The FAA issues special conditions, as defined in 14 CFR 11.19, under § 11.38, and they become part of the type-certification basis under § 21.17(a)(2) for new type certificates, and § 21.101 for amended type certificates.

Novel or Unusual Design Features

The Gulfstream Model GVII series airplanes will incorporate the following novel or unusual design feature:

A side-stick controller for one-hand operation requiring wrist motion only, not arms.

Discussion

Current regulations reference pilot-effort loads for the flight deck pitch-and-roll controls that are based on two-handed effort. Special conditions are required for the Gulfstream Model GVII series airplanes based on similar airplane programs that include side-stick controllers. These special conditions are also appropriate for the Model GVII series airplane's side-stick controller.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Discussion of Comments

Notice of proposed special conditions no. 25–15–01–SC for the Gulfstream Model GVII series airplanes was published in the **Federal Register** on February 26, 2015 (80 FR 10422). No substantive comments were received, and the special conditions are adopted as proposed.

Applicability

As discussed above, these special conditions apply to Gulfstream Model GVII series airplanes. Should Gulfstream apply later for a change to the type certificate to include another model incorporating the same or similar novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only certain novel or unusual design features on the Gulfstream Model GVII series airplanes. It is not a rule of general applicability.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued, in lieu of § 25.397(c), as part of the type-certification basis.

For Gulfstream Model GVII series airplanes equipped with side-stick controls designed for forces to be applied by one wrist and not arms, the limit pilot forces are as follows.

1. For all components between and including the side-stick control-assembly handle and its control stops:

Pitch	Roll
Nose up, 200 lbf	Nose left, 100 lbf.
Nose down, 200 lbf ...	Nose right, 100 lbf.

2. For all other components of the side-stick control assembly, but excluding the internal components of the electrical sensor assemblies, to avoid damage to the control system as the result of an in-flight jam:

Pitch	Roll
Nose up, 125 lbf	Nose left, 50 lbf.
Nose down, 125 lbf ...	Nose right, 50 lbf.

Issued in Renton, Washington, on June 2, 2015.

Jeffrey E. Duven,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–14904 Filed 6–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–23706; Directorate Identifier 2006–NE–03–AD; Amendment 39–18177; AD 2014–12–04]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. Turboprop Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding airworthiness directive (AD) 2006–15–08 for all Honeywell International Inc. TPE331–1, –2, –2UA, –3U, –3UW, –5, –5A, –5AB, –5B, –6, –6A, –10, –10AV, –10GP, –10GT, –10P, –10R, –10T, –10U, –10UA, –10UF, –10UG, –10UGR, –10UR, –11U, –12JR, –12UA, –12UAR, and –12UHR turboprop engines with certain Honeywell part numbers (P/Ns) of Woodward fuel control unit (FCU) assemblies, installed. AD 2006–15–08 required initial and repetitive dimensional inspections of the fuel control drives for wear, and replacement of the FCU and fuel pump. This new AD requires initial and repetitive dimensional inspections of the affected fuel control drives and insertion of certain airplane operating procedures into the applicable flight manuals. This AD was prompted by reports of loss of the fuel control drive, leading to engine overspeed, overtorque, overtemperature, uncontained rotor failure, and asymmetric thrust in multi-engine airplanes. We are issuing this AD to prevent failure of the fuel control drive that could result in damage to the engine and airplane.

DATES: This AD is effective July 22, 2015.

ADDRESSES: For service information identified in this AD, contact Honeywell International Inc., 111 S 34th Street, Phoenix, AZ 85034–2802; phone: 800–601–3099; Internet: *https://myaerospace.honeywell.com/wps/portal/!ut/.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2006–23706; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the regulatory evaluation, any comments received, and other information. The address for the Docket Office (phone: 800–647–5527) is Document Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; phone: 562–627–5246; fax: 562–627–5210; email: *joseph.costa@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2006–15–08, Amendment 39–14688 (71 FR 41121, July 20, 2006), (''AD 2006–15–08''). AD 2006–15–08 applied to all Honeywell International Inc. TPE331–1, –2, –2UA, –3U, –3UW, –5, –5A, –5AB, –5B, –6, –6A, –10, –10AV, –10GP, –10GT, –10P, –10R, –10T, –10U, –10UA, –10UF, –10UG, –10UGR, –10UR, –11U, –12JR, –12UA, –12UAR, and –12UHR turboprop engines with certain Honeywell part numbers (P/Ns) of Woodward FCU assemblies, installed. The NPRM published in the **Federal Register** on March 19, 2014 (79 FR 15261). The NPRM was prompted by reports of loss of the fuel control drive, leading to engine overspeed, overtorque, overtemperature, uncontained rotor failure, and asymmetric thrust in multi-engine airplanes. The NPRM proposed to continue to require initial and repetitive dimensional inspections of the affected fuel control drives but would no longer require the installation of a modified FCU. The NPRM also proposed to require insertion of certain airplane operating procedures into the applicable flight manuals. We are issuing this AD to prevent failure of the fuel control drive that could result in damage to the engine and airplane.

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 15261, March 19, 2014) and the FAA's response to each comment.

Disagreement With the Elimination of Requirement To Install a Modified FCU

Honeywell International Inc. (Honeywell) and an individual commenter indicated that the NPRM should mandate the installation of the FCU because of the benefits it provides. In addition, both commenters disagreed with the FAA that the modified FCU contributed to the rate of in-flight shutdowns (IFSDs) and that the inherent risk of repetitive inspections does not support the elimination of the overspeed governor (OSG) modification requirement of AD 2006–15–08.

We disagree. We eliminated the mandatory installation of recently certified, modified FCUs due to the numerous reports of unscheduled removals and the IFSDs caused by the recent design changes incorporated in the modified FCU. We did not change this AD.

Request Change to Costs of Compliance

Honeywell indicated that the cost for repetitive inspections is not accurate. Honeywell estimates that, without a change in design, a limitless number of inspections would be needed over the life of the engine.

We agree. Numerous fuel control drive inspections could be needed over the life of the engine. The Costs of Compliance paragraph was changed to reflect an annual cost of compliance which was based on the fleet costs as reflected in the NPRM.

Request To Change the Applicability

Honeywell requested that engines in Group #4 reflect the engines associated with FCU assembly P/Ns being added to the Applicability paragraph for added clarity.

We agree. We changed Table 1 to paragraph (c) of this AD to clarify the Group #4 engine models as follows: ''Group #4 TPE331–3U, –3UW, –5, –5B, –6, –6A, and –10T''.

Request To Change the Applicability

Honeywell requested that clarification be provided for FCU P/Ns of Woodward fuel control units. The Applicability paragraph refers to P/Ns as Woodward P/Ns when the listed P/Ns are Honeywell P/Ns for Woodward FCUs.

We agree. We changed paragraph (c) of this AD to read, ''. . . turboprop engines with Honeywell part numbers (P/Ns) for Woodward fuel control unit (FCU) assemblies listed in Table 1 to paragraph (c) of this AD, installed.''

Request Redundant Term Be Removed From the Compliance

Honeywell requested that ''spline'' be removed from the fuel control drive inspection as stated in the Compliance paragraph. This change is consistent with the Compliance and the Definitions paragraphs in AD 2006–15–08.

We agree. We changed paragraphs (e)(1)(i) and (e)(2)(ii) to read: ''Inspect the fuel control drive for wear.''

Request To Change Related Information

Honeywell requested that the publications listed in Related Information, paragraph (i)(2), be referred to as airplane publications and not as obtainable from Honeywell International. The reason for this request is that the Airplane Flight Manual (AFM), the Pilot Operating Handbook (POH), and the Manufacturer's Operating Manual (MOM) are airplane publications and cannot be obtained from Honeywell.

We agree that the AFM, POH, and the MOM are airplane manuals. As a result of reviewing this comment, we decided that mentioning all applicable owners of airplane manuals is unnecessary in the related information section of this AD.

Request To Change Airplane Operating Procedures

Honeywell requested that reference to the ''Loss of Fuel Control Drive'' be changed to ''Loss of the drive between the engine driven fuel pump and the fuel control governor.'' This change would eliminate confusion between the loss of the accessory drive gearing to the fuel pump with the loss of the fuel control drive.

We agree that the term ''fuel control drive'' is not a term used in airplane operating procedures. We removed the term ''fuel control drive'' from the Airplane Operating Procedures in this AD and made other changes to simplify and clarify Figure 1 to paragraph (e) of this AD.

Request To Change Airplane Operating Procedures

One commenter requested a revision of the Operating Procedure ''Warnings'' in the NPRM to clearly address overspeed during start and immediately after start before the propeller has been removed from the start locks. This change would provide clarification and enhance safety.

We disagree. The Loss of Fuel Control Drive causing rapid, uncommanded acceleration during engine start is as unsafe as the Loss of Fuel Control Drive immediately after start when the engine is stable before the propeller is removed from the start locks. However, since the observed effects for these two conditions are the same, we combined both instances as ''Rapid, Uncommanded Acceleration During Engine Start''.

Request To Change Airplane Operating Procedures

The commenter requested changing the operating procedures for when the propeller is off the start locks to address the rapid uncommanded, uncontrolled increase in revolutions-per-minute (RPM). The commenter believes that if the fuel control drive fails when the propeller is off the start locks the engine's propeller governor will control and stabilize the engine RPM.

We disagree with the commenter's justification because test data has shown that the engine propeller governor will not control and stabilize the engine RPM if the fuel control drive fails when the propeller is off the start locks. A rapid, uncommanded, uncontrolled increase in RPM is most evident during partial or full reverse. We simplified the operating procedure by removing the statement ''Power—Move power lever to or toward flight idle as required to maintain engine limits'' with the propeller off the start locks as proposed in the NPRM. We changed Figure 1 to paragraph (e) of this AD by adding the following: ''Engine shut down—Move condition lever to EMERGENCY STOP''.

Conclusion

We reviewed the relevant data, considered the comments received, and determined that air safety and the public interest require adopting this AD with the changes described previously and minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM.

We also determined that these changes will not increase the economic burden on any operator or increase the scope of this AD.

Costs of Compliance

We estimate that this AD will affect 2,250 engines installed on airplanes of U.S. registry. We estimate that it will take 8 hours per engine to perform an FCU inspection. The average labor rate is $85 per hour. Due to the more frequent inspections proposed by this AD, we estimate 10% of affected engines will require FCU assembly stub shaft replacement, and fuel pump or fuel control repair. We also estimate that repairs will not exceed $10,000 per engine. Based on these figures, we estimate the cost of this AD on U.S. operators to be $525,587 per year.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701, ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

For the reasons discussed above, I certify that this AD:

(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),

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

Adoption of the Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by removing airworthiness directive (AD) 2006–15–08, Amendment 39–14688 (71 FR 41121, July 20, 2006), and adding the following new AD:

2015–12–04 Honeywell International Inc.: Amendment 39–18177454851; Docket No. FAA–2006–23706; Directorate Identifier 2006–NE–03–AD.

(a) Effective Date

This AD is effective July 22, 2015.

(b) Affected ADs

This AD replaces AD 2006–15–08, Amendment 39–14688 (71 FR 41121, July 20, 2006).

(c) Applicability

This AD applies to all Honeywell International Inc. TPE331–1, –2, –2UA, –3U, –3UW, –5, –5A, –5AB, –5B, –6, –6A, –10, –10AV, –10GP, –10GT, –10P, –10R, –10T, –10U, –10UA, –10UF, –10UG, –10UGR, –10UR, –11U, –12JR, –12UA, –12UAR, and –12UHR turboprop engines with Honeywell part numbers (P/Ns) for Woodward fuel control unit (FCU) assemblies listed in Table 1 to paragraph (c) of this AD, installed.

TABLE 1 TO PARAGRAPH (c)—AFFECTED FCU ASSEMBLY P/NS

Group No.	Engine	FCU assembly P/Ns
1	TPE331–1, –2, and –2UA	P/N 869199–13, –20, –21, –22, –23, –24, –25, –26, –27, –28, –29, –31, –32, –33, –34, and –35.
2*	TPE331–1, –2, and –2UA	P/N 869199–9, –10, –11, –12, –14, –16, –17, and –18.
3	TPE331–3U, –3UW, –5, –5A, –5AB, –5B, –6, –6A, –I0AV, –10GP, –10GT, –I0P, and –I0T.	P/N 893561–7, –8, –9, –10, –11, –14, –15, –16, –20, –26, –27, and –29; or P/N 897770–1, –3, –7, –9, –10, –11, –12, –14, –15, –16, –25, –26, and –28.
4*	TPE331–3U, –3UW, –5, –5B, –6, –6A, and –10T.	P/N 893561–4, –5, –12, and –13 or P/N 897770–5, –8, and –13.
5	TPE331–10, –10R, –10U, –10UA, –10UF, –10UG, –10UGR, –10UR, –11U, –12JR, –12UA, –12UAR, and –12UHR.	P/N 897375–2, –3, –4, –5, –8, –9, –10, –11, –12, –13, –14, –15, –16, –17, –19, –21, –24, –25, –26, and –27; or P/N 897780–1, –2, –3, –4, –5, –6, –7, –8, –9, –10, –11, –14, –15, –16, –17, –18, –19, –20, –21, –22, –23, –24, –25, –26, –27, –30, –32, –34, –36, –37, and –38; or P/N 893561–17, –18, and –19.

* New/added FCU assembly P/Ns

(d) Unsafe Condition

We are issuing this AD to prevent failure of the fuel control drive that could result in damage to the engine and airplane.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) Inspection of Engines With FCU Assembly P/Ns in Groups 2 and 4

For FCU assembly P/Ns in Groups 2 and 4 listed in Table 1 to paragraph (c) of this AD:

(i) At the next scheduled inspection of the fuel control drive, or within 500 hours-in-service (HIS) after the effective date of this AD, whichever occurs first, inspect the fuel control drive for wear.

(ii) Thereafter, re-inspect the fuel control drive within every 1,000 HIS since-last-inspection (SLI).

(2) Inspection of Engines With FCU Assembly P/Ns in Groups 1, 3, and 5

For FCU assembly P/Ns in Groups 1, 3, or 5 listed in Table 1 to paragraph (c) of this AD:

(i) If on the effective date of this AD the FCU assembly has 950 or more HIS SLI, inspect the fuel control drive for wear within 50 HIS from the effective date of this AD.

(ii) If on the effective date of this AD the FCU assembly has fewer than 950 HIS SLI, inspect the fuel control drive for wear before reaching 1,000 HIS.

(iii) Thereafter, re-inspect the fuel control drive for wear within every 1,000 HIS SLI.

(3) Airplane Operating Procedures

Within 60 days after the effective date of this AD, insert the information in Figure 1 to paragraph (e) of this AD, into the Emergency Procedures Section of the Airplane Flight Manual (AFM), Pilot Operating Handbook (POH), and the Manufacturer's Operating Manual (MOM).

Figure 1 to Paragraph (e) – Airplane Operating Procedures

NOTE

Procedures in dotted line boxes are immediate action items to be performed by the pilot / flight crew.

RAPID, UNCOMMANDED ACCELERATION DURING ENGINE START (Propeller ON Start Locks)

- Engine Start – Abort Immediately – Move condition lever to EMERGENCY STOP.

WARNING

Do not attempt to re-start engine. Report to maintenance.

ON GROUND or IN FLIGHT:

RAPID, UNCOMMANDED INCREASE IN RPM, TORQUE, FUEL FLOW AND/OR TURBINE TEMPERATURE (Propeller OFF Start Locks)

- Identify Malfunctioning Engine (multi-engine airplane) – Cross check for high torque, RPM, fuel flow, and turbine temperatures.
- Engine shut down - Move condition lever to EMERGENCY STOP.

WARNING

Never retard the power levers aft of flight idle in flight or on the ground.

WARNING

Do not attempt an engine re-start. Report to maintenance.

(f) Optional Terminating Action

Replacing the affected FCU assembly with an FAA-approved FCU assembly P/N not listed in this AD is terminating action for the initial and repetitive inspections required by this AD, and for inserting the information in Figure 1 to paragraph (e) of this AD into the AFM, POH, and MOM.

(g) Definitions

For the purposes of this AD:

(1) The ''fuel control drive'' is a series of mating splines located between the fuel pump and fuel control governor.

(2) The fuel control drive consists of four drive splines: The fuel pump internal spline, the fuel control external ''quill shaft'' spline, and the stub shaft internal and external splines.

(h) Alternative Methods of Compliance (AMOCs)

The Manager, Los Angeles Aircraft Certification Office, FAA, may approve AMOCs for this AD. Use the procedures found in 14 CFR 39.19 to make your request.

(i) Related Information

(1) For more information about this AD, contact Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; phone: 562–627–5246; fax: 562–627–5210; email: *joseph.costa@faa.gov.*

(2) Information pertaining to operating recommendations for affected engines after a fuel control drive failure is contained in Honeywell International Inc., Operating Information Letter (OIL) OI331–12R6, dated May 26, 2009, for multi-engine airplanes; and in OIL OI331–18R4, dated May 26, 2009, for single-engine airplanes. Information on fuel control drive inspection can be found in Section 72–00–00 of the applicable TPE331 maintenance manuals. These Honeywell International Inc., OILs and the TPE331 maintenance manuals, which are not incorporated by reference in this AD, can be obtained from Honeywell International Inc., using the contact information in paragraph (i)(3) of this AD.

(3) For service information identified in this AD, contact Honeywell International Inc., 111 S. 34th Street, Phoenix, AZ 85034–2802; Internet: *https://myaerospace.honeywell.com/wps/portal/!ut*; phone: 800–601–3099.

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

(j) Material Incorporated by Reference

None.

Issued in Burlington, Massachusetts, on June 5, 2015.

Ann C. Mollica,

Acting Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2015–14694 Filed 6–16–15; 8:45 am]

BILLING CODE 4910–13–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1611

Privacy Act Regulations

CFR Correction

■ In Title 29 of the Code of Federal Regulations, Parts 900 to 1899, revised as of July 1, 2014, on page 257, in § 1611.3, in paragraph (b)(3), the address ''1801 L Street NW.'' is corrected to read ''131 M Street NE.''.

[FR Doc. 2015–14654 Filed 6–16–15; 8:45 am]

BILLING CODE 1505–01–D

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 (§§ 52.1019 to 52.2019), revised as of July 1, 2014, on page 649, in § 52.1881, paragraph (b) is removed and reserved.

[FR Doc. 2015–14652 Filed 6–16–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120815345–3525–02]

RIN 0648–XD988

Snapper-Grouper Fishery of the South Atlantic; 2015 Commercial Accountability Measure and Closure for the South Atlantic Lesser Amberjack, Almaco Jack, and Banded Rudderfish Complex

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS implements accountability measures (AMs) for the commercial sector for the lesser amberjack, almaco jack, and banded rudderfish complex in the South Atlantic for the 2015 fishing year through this temporary rule. Commercial landings for the lesser amberjack, almaco jack, and banded rudderfish complex, as estimated by the Science and Research Director, are projected to reach their combined commercial annual catch limit (ACL) on June 23, 2015. Therefore, NMFS closes the commercial sector for this complex on June 23, 2015, through the remainder of the fishing year in the exclusive economic zone (EEZ) of the South Atlantic. This closure is necessary to protect the lesser amberjack, almaco jack, and banded rudderfish resources.

DATES: This rule is effective 12:01 a.m., local time, June 23, 2015, until 12:01 a.m., local time, January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Catherine Hayslip, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *catherine.hayslip@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic, which includes the lesser amberjack, almaco jack, and banded rudderfish complex, is managed under the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region (FMP). The FMP was prepared by the South Atlantic Fishery Management Council and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The combined commercial ACL for the lesser amberjack, almaco jack, and banded rudderfish complex is 189,422 lb (85,920 kg), round weight. Under 50 CFR 622.193(l)(1)(i), NMFS is required to close the commercial sector for the lesser amberjack, almaco jack, and banded rudderfish complex when the commercial ACL has been reached, or is projected to be reached, by filing a notification to that effect with the Office of the Federal Register. NMFS has determined that the commercial sector for this complex is projected to reach the ACL on June 23, 2015. Therefore, this temporary rule implements an AM to close the commercial sector for the lesser amberjack, almaco jack, and banded rudderfish complex in the South Atlantic, effective 12:01 a.m., local time June 23, 2015.

The operator of a vessel with a valid commercial vessel permit for South Atlantic snapper-grouper having lesser amberjack, almaco jack, or banded rudderfish on board must have landed and bartered, traded, or sold such species prior to 12:01 a.m., local time, June 23, 2015. During the closure, the bag limit specified in 50 CFR 622.187(b)(8) and the possession limits specified in 50 CFR 622.187(c) apply to all harvest or possession of lesser amberjack, almaco jack, or banded rudderfish in or from the South Atlantic EEZ. These bag and possession limits apply in the South Atlantic on board a vessel for which a valid Federal commercial or charter vessel/headboat permit for South Atlantic snapper-grouper has been issued, without regard to where such species were harvested, *i.e.,* in state or Federal waters. During the closure, the sale or purchase of lesser amberjack, almaco jack, or banded rudderfish taken from the EEZ is prohibited. The prohibition on sale or purchase does not apply to the sale or purchase of lesser amberjack, almaco jack, or banded rudderfish that were harvested, landed ashore, and sold prior to 12:01 a.m., local time, June 23, 2015, and were held in cold storage by a dealer or processor.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of the lesser amberjack, almaco jack, and banded rudderfish complex, a component of the South Atlantic snapper-grouper fishery, and is consistent with the Magnuson-Stevens Act and other applicable laws.

This action is taken under 50 CFR 622.193(l)(1)(i) and is exempt from review under Executive Order 12866.

These measures are exempt from the procedures of the Regulatory Flexibility Act because the temporary rule is issued without opportunity for prior notice and comment.

This action responds to the best scientific information available. The Assistant Administrator for Fisheries, NOAA (AA), finds that the need to immediately implement this action to close the commercial sector for the lesser amberjack, almaco jack, and banded rudderfish complex constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment pursuant to the authority set forth in 5 U.S.C. 553(b)(B), as such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the rule itself has been subject to notice and comment, and all that remains is to notify the public of the closure. Such procedures are contrary to the public

interest because of the need to immediately implement this action to protect the lesser amberjack, almaco jack, and banded rudderfish complex since the capacity of the fishing fleet allows for rapid harvest of the commercial ACL. Prior notice and opportunity for public comment would require time and would potentially result in a harvest well in excess of the established commercial ACL.

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

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

Dated: June 12, 2015.

Emily H. Menashes,

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

[FR Doc. 2015–14917 Filed 6–16–15; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 80, No. 116
Wednesday, June 17, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR PARTS 410, 550, 551, and 870

RIN 3206–AN19

Overtime Pay for Border Patrol Agents

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing proposed regulations to implement section 2 of the Border Patrol Agent Pay Reform Act of 2014, as amended, which established a new method of compensating Border Patrol agents for overtime work. Payments under this new provision will become payable beginning with the first pay period beginning in January 2016. These regulations affect only Border Patrol agents in the U.S. Customs and Border Protection component of the Department of Homeland Security.

DATES: Comments must be received on or before July 17, 2015.

ADDRESSES: You may submit comments, identified by RIN number ''3206–AN19'' using any of the following methods:

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

Email: pay-leave-policy@opm.gov.

Mail: Brenda Roberts, Deputy Associate Director, Pay and Leave, Employee Services, U.S. Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200.

FOR FURTHER INFORMATION CONTACT: Bryce Baker by telephone at (202) 606–2858 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) is issuing proposed regulations to implement section 2 of the Border Patrol Agent Pay Reform Act of 2014 (Pub. L. 113–277, December 18, 2014, as amended by Pub. L. 114–13, May 19, 2015), hereafter referred to as ''BPAPRA.'' BPAPRA established a new method of compensating Border Patrol agents for overtime work. These regulations affect only Border Patrol agents employed by the U.S. Customs and Border Protection (CBP) component of the Department of Homeland Security (DHS). Most BPAPRA provisions are effective on the first day of the first pay period beginning on or after January 1, 2016.

Background

Currently, Border Patrol agents generally receive a special form of overtime compensation called ''Administratively Uncontrollable Overtime'' (AUO) under 5 U.S.C. 5545(c)(2) and 5 CFR 550.151–550.163. AUO may be used for employees who perform substantial amounts of irregular overtime (OT) work that cannot be controlled administratively. AUO provides complete compensation under title 5 for all irregular overtime hours—*i.e.,* overtime that is not regularly scheduled in advance of the workweek. AUO is paid as a percentage of basic pay, generally ranging from 10 to 25 percent, with the exact percentage depending on the average number of irregular overtime hours per week—subject to the title 5 premium pay cap. An employee who is nonexempt under the Fair Labor Standards Act (FLSA) also receives an extra half rate for irregular overtime hours as FLSA overtime pay. AUO recipients receive regular title 5 or FLSA overtime pay for regularly scheduled overtime hours. AUO is basic pay for retirement purposes for recipients who are covered under the special retirement program provisions pertaining to law enforcement officers. Border Patrol agents qualify as such law enforcement officers.

Recently, the use of AUO at DHS has been under scrutiny from the Congress, the Office of Special Counsel, and the Government Accountability Office. Various reviews indicated that AUO was being used improperly for some DHS employees, and DHS has taken actions to address the matter. As documented in the August 26, 2014, report on S. 1691 (*i.e.,* the bill later enacted as BPAPRA) by the Senate Committee on Homeland Security and Governmental Affairs (Senate Report 113–248), the nature of the work performed by Border Patrol agents has changed significantly since the AUO law was first enacted in 1954. In particular, CBP prefers deploying agents for scheduled 10-hour shifts, which is incompatible with AUO, which covers irregular overtime. Congress determined that Border Patrol agents needed a reformed overtime program that is consistent with the current nature of the work and the desired work schedules, and therefore enacted BPAPRA.

Summary of BPAPRA

Under BPAPRA, in place of AUO, a new form of overtime compensation would apply to Border Patrol agents. The key features of BPAPRA are summarized below:

- Most Border Patrol agents will have the opportunity each year to elect to be assigned to one of three types of ''regular tour of duty'' which provide different rates of compensation: (1) A Level 1 regular tour of duty, which provides an overtime supplement equal to 25 percent of basic pay for a regular schedule of 10 hours each regular workday, including 2 overtime hours; (2) a Level 2 regular tour of duty, which provides an overtime supplement equal to 12.5 percent of basic pay for a regular schedule with 9 hours each regular workday, including 1 overtime hour; and (3) a Basic regular tour of duty with a regular 8-hour workday, which provides no overtime supplement.
- CBP may assign regular tours of duty in certain circumstances without regard to agent elections. For example, agents assigned to care for canines must be assigned a Level 1 regular tour of duty. Agents in certain positions—headquarters, administrative, or training or fitness instructor—must be assigned a Basic regular tour of duty unless a different tour is justified based on a staffing analysis. In addition, generally no more than 10 percent of agents at a location may have a Level 2 or Basic regular tour of duty. In other words, generally at least 90 percent of agents at a location must have a Level 1 regular tour of duty. CBP may revise the percentage requirement for a location if justified based on a staffing analysis.
- The requirement for 1 or 2 hours of scheduled overtime within a Level 2 or Level 1 regular tour of duty, respectively, applies only if the agent performs work during regular time on that same day. For example, if an agent takes leave for a full 8-hour basic workday, no obligation to perform those

scheduled overtime hours accrues on that day, and there is no loss of pay.

- The overtime supplement for regularly scheduled overtime hours within the assigned Level 1 or Level 2 regular tour of duty is a percentage of the agent's hourly rate of basic pay and is multiplied by number of paid hours of basic pay (*i.e.,* hours of regular time, whether work or paid absence) in the biweekly pay period. Thus, the supplement is payable during leave or other paid time off taken from the 40-hour basic workweek.
- The overtime supplement is subject to the title 5 premium pay cap.
- An agent may not receive other premium pay for regularly scheduled overtime hours *within* his or her regular tour of duty (*i.e.,* hours covered by the overtime supplement).
- The overtime supplement is treated as part of basic pay for retirement and certain other purposes, such as life insurance and severance pay.
- CBP must develop a plan to ensure that the assignment of an overtime supplement to an agent during the period beginning 3 years before the agent reaches retirement age and service requirements is consistent with the agent's career average overtime supplement.
- Overtime work in excess of the biweekly regular tour of duty (generally 100, 90, or 80 hours, as applicable) would be separately compensable. If the additional overtime work is regularly scheduled in advance of the workweek, the work is compensated under the regular title 5 overtime provisions (5 U.S.C. 5542). If the additional overtime work is irregular, the work is compensated by crediting the agent with compensatory time off. However, no more than 10 hours of compensatory time off may be earned in a biweekly pay period (unless a written waiver of this provision is approved in advance) and no more than 240 hours may be earned during a leave year.
- If the agent is absent during required scheduled overtime within the regular tour of duty (*i.e.,* obligated overtime hours), payment of the overtime supplement is not affected but the agent accrues an obligation (debt) to perform other overtime work to make up for work not performed. Any accrued compensatory time off will be applied against that overtime hours debt. Any additional overtime work outside the regular tour of duty in future pay periods will also be applied against that debt.
- All Border Patrol agents are FLSA-exempt. This exemption applies to both the minimum wage and the maximum hours and overtime provisions of the FLSA.

Effective Date

BPAPRA was enacted on December 18, 2014 as Public Law 113–277. On May 19, 2015, BPAPRA was amended by Public Law 114–13 to clarify the effective date of certain provisions. Section 1(a) of Public Law 114–13 added a new subsection (i) in section 2 of BPAPRA. That section 2(i) provided that subsections (b), (c), (d), and (g) of section 2 of BPAPRA are effective on the first day of the first pay period beginning on or after January 1, 2016, except that (1) any provision of 5 U.S.C. 5550(b) (as added by section 2(b) of BPAPRA) relating to administering elections and making advance assignments to a regular tour of duty is applicable before the January 2016 effective date to the extent determined necessary by the OPM Director and (2) the OPM Director's authority to issue regulations (in particular, the authority in 5 U.S.C. 5550(b)(1)(B) related to election procedures) is effective as necessary before the January 2016 effective date.

As required by these proposed regulations, CBP must provide election information notices to Border Patrol agents no later than November 1 and agents must make elections for the upcoming annual period no later than December 1. Thus, BPAPRA provisions related to administering annual elections and advance assignments for the annual period beginning in January 2016 must be applied before January 2016.

As provided by Public Law 114–13, regular tours of duty and any associated overtime supplements established under 5 U.S.C. 5550 (as added by section 2(b) of BPAPRA) will first take effect on the first day the first pay period beginning or or after January 1, 2016. That pay period begins on January 10, 2016. Other BPAPRA provisions that are effective on January 10, 2016 include (1) the amendments to 5 U.S.C. 5542 (dealing with overtime pay and compensatory time off) made by section 2(c) of BPAPRA, (2) the amendments to 5 U.S.C. 8331 (dealing with retirement-creditable basic pay) made by section 2(d) of BPAPRA, and (3) the amendments to 5 U.S.C. 5547 (dealing with the premium pay cap) made by section 2(g)(1) of BPAPRA, and (4) the amendments to section 13(a) of the FLSA (dealing with FLSA exemptions) made by section 2(g)(2) of BPAPRA.

New Subpart P in 5 CFR Part 550

In order to implement BPAPRA, OPM is proposing to add a new subpart P, Overtime Pay for Border Patrol Agents, in part 550 (Pay Administration—General) of title 5, Code of Federal Regulations. A section-by-section explanation of the proposed regulations follows. (Note: The descriptions of the proposed regulations are stated in the present tense for readability.)

§ 550.1601—Purpose and Authority

Section 550.1601 includes the purpose of the proposed regulations—*i.e.,* to implement BPAPRA. It also notes that OPM is relying on its regulatory authority in 5 U.S.C. 5548 as well as section 2(h) of BPAPRA.

§ 550.1602—Coverage

Section 550.1602 provides that subpart P applies to GS–1896 Border Patrol agents holding a position in the U.S. Customs and Border Protection (CBP) component of the Department of Homeland Security (DHS). Coverage is not affected if a Border Patrol agent is temporarily detailed to a non-CBP position, since the agent would continue to officially hold a CBP Border Patrol agent position.

§ 550.1603—Definitions

Section 550.1603 provides definitions of terms for purposes of subpart P. Certain definitions warrant explanation here. Other definitions are addressed later in the supplementary information in the context of the regulatory provisions in which they are used.

OPM defines the term *annual period* to mean the 1-year period that begins on the first day of the first pay period beginning on or after January 1 of a given year and ends on the day before the first day of the first pay period beginning on or after January 1 of the next year. The term *year* in 5 U.S.C. 5550(b)(1)(A) and (C) and the term *leave year* in 5 U.S.C. 5542(g)(5)(A) are interpreted to be an annual period as defined in § 550.1603. Under BPAPRA, agents make an election for a year, which we are interpreting to be an annual period consisting of full biweekly pay periods. This prevents starting a new regular tour of duty and associated overtime supplement in the middle of a pay period.

The definitions of *irregular overtime work* and *regularly scheduled work* parallel the definitions of similar terms in the regular premium pay regulations at 5 CFR 550.103. We are clarifying that irregular overtime work must be ''officially ordered or approved,'' consistent with the normal standards governing title 5 overtime in 5 U.S.C. 5542(a) and 5 CFR 550.111(a)(1). This means that, consistent with agency policies, authorized management

officials must ''order'' the overtime work in advance or ''approve'' the overtime work after the fact (when emergency circumstances prevented advance approval). We include a term, *regular time,* that is used in BPAPRA to refer to the regular basic hours within an agent's 8-hour basic workday within the 40-hour basic workweek.

While BPAPRA used the terms *level 1 border patrol rate of pay, level 2 border patrol rate of pay,* and *basic border patrol rate of pay* to identify agents with different overtime supplements and regular tours of duty, the subpart P regulations place the focus on an agent's regular tour of duty and use the terms *Level 1 regular tour of duty, Level 2 regular tour of duty,* and *Basic regular tour of duty* to identify the three categories of agents. We also found it clearer to focus on the overtime supplement as a separate payment rather than being rolled into an aggregate rate of pay.

We define a term *obligated overtime hours* to describe the overtime hours within an agent's regular tour of duty that an agent is obligated to work because he or she had performed work (of any amount) during regular time on the same day. For example, an agent with a Level 1 tour of duty would normally be obligated to work 2 hours of scheduled overtime work within the regular tour, which could add up to 20 overtime hours (10 days × 2 hours per day) in a biweekly pay period. However, if the agent was on leave during all regular time for 2 basic workdays (8 hours each day), the agent would not be obligated to perform the 2 hours of scheduled overtime work within the regular tour on each of those days. Thus, the total number of obligated overtime hours during that pay period would be 16 hours (20 hours minus 4 unobligated hours). Because an agent may have such unobligated overtime hours, the definition of *regular tour of duty* uses the word ''generally'' in describing the hours within a normal tour of duty.

The term *overtime hours debt* is defined as the unsatisfied balance of obligated overtime hours not worked, which represents a debt of hours for which an agent is accountable. As provided in § 550.1626(b), outside-tour overtime hours in the same pay period may be substituted for absences during obligated overtime hours for pay computation purposes. Any remaining obligated overtime hours not worked become part of the agent's overtime hours debt—a debt that the agent can satisfy by applying compensatory time off, as described in § 550.1626(c)(1) or by applying outside-tour overtime hours in future pay periods, as described in § 550.1626(c)(2).

§ 550.1604—CBP Authority

This section reflects various provisions in BPAPRA that give CBP authority to assign work based on its assessment of mission requirements and operational needs. (See BPAPRA section 2(a) and (f)(1) and 5 U.S.C. 5550(g).) The BPAPRA provisions show that Congress intended to ensure that CBP retains full authority to assign work as needed, regardless of the assigned regular tours of duty.

§ 550.1605—Interpretation Instruction

Section 550.1605 restates the instruction found in section 2(f) of BPAPRA, which provides that nothing in the Act shall be ''construed to require compensation'' of an agent other than for hours during which the agent is actually performing work or using approved paid time off. This reflects Congressional concern regarding alleged abuses of AUO pay that included some employees not performing work during claimed AUO hours.

§ 550.1611—Assignments for an Annual Period

Section 550.1611 governs the assignment of regular tours of duty for an upcoming annual period to individuals who are employed as agents as of November 1 of the preceding year. The law generally envisions assignments being made for an annual period after giving agents an opportunity to state their preferred tour via an annual election. The law provides that agents must (1) be given information about election options and procedures no later than 60 days before the annual period and (2) make an annual election no later than 30 days before the annual period. Since the beginning of the annual period may vary (since it corresponds to the beginning of the first full pay period in January), we have regulated that the deadline for providing election information is November 1 and the deadline for submitting elections is December 1. These dates meet the statutory time requirements, and provide a consistent set of deadlines that apply each year.

Consistent with the law, section 550.1611(d) provides that an agent who fails to make a timely election must be assigned a Level 1 regular tour of duty. Section 550.1611(e) provides that CBP must inform an agent of an assignment to a tour not elected by the agent. Section 550.1611(f) lists the circumstances (as provided in BPAPRA) under which management is required or allowed to unilaterally assign a regular tour of duty for an annual period that may not match an agent's annual election. For example, an agent assigned to care for a canine must be assigned a Level 1 regular tour of duty. Also, an agent assigned to a headquarters, administrative, training instructor, or fitness instructor position must be assigned a Basic regular tour of duty (with no overtime supplement), except as otherwise justified based on a CBP staffing analysis.

Section 550.1611 does not apply to newly hired agents who—though currently employed as agents on November 1—will be in initial training status as of the first day of the annual period. Instead, special provisions in § 550.1612(a) and (b) apply to such agents. Initial training is defined in § 550.1603 as meaning initial orientation sessions, basic training, and other preparatory activities provided prior to an agent's first regular work assignment in which the agent has authority to make arrests and carry a firearm.

§ 550.1612—Assignments at Other Times

Section 550.1612 addresses other situations in which an agent may be assigned a regular tour of duty that were not addressed in BPAPRA. An individual who is newly hired as an agent during an annual period will generally undergo initial training before commencing a regular work assignment. During any period of initial training, the agent must be assigned a Basic regular tour of duty. (This is consistent with the fact that agents currently do not receive AUO pay during initial training.) Initial training is not ''advanced'' training during which Level 1 or Level 2 overtime supplements continue for 60 days under the BPAPRA law and regulations (5 U.S.C. 5550(b)(2)(G) or (b)(3)(G) and § 550.1622(b)). As provided in § 550.1612(a), when a newly hired agent begins a regular work assignment (after completing initial training), the agent will have a Level 1 regular tour of duty as the default schedule for the remainder of the annual period. Under applicable circumstances described in § 550.1611(f), CBP may assign instead a Level 2 or Basic tour. In addition, under § 550.1612(b), a newly hired agent will be given an opportunity to submit an election of a preferred type of regular tour of duty that would take effect prospectively. Such election must be submitted no later than 30 days after the agent begins a regular work assignment and, if approved by CBP, would be effective on the first day of the first pay period beginning on or after the later of:

(1) The date the election was submitted; or (2) the date the agent completed initial training.

Under § 550.1612(c), an individual who is newly hired as an agent between November 2 and the beginning of the annual period would be allowed to make an election for the upcoming annual period, if the agent will not be in initial training status on the first day of the annual period. Instead of the December 1 election deadline, the election may be submitted within 30 days after the agent received election information, but no later than the day before the first day of the annual period.

Section 550.1612(d) provides that CBP may change an agent's assignment during an annual period under appropriate circumstances described in § 550.1611(f) or § 550.1622(b). For example, CBP may change an assignment to comply with the pay assignment continuity requirement described in §§ 550.1611(f)(5) and 550.1615.

§ 550.1613—Selection of Agents for Assignment

Section 550.1613 requires CBP to develop a written plan to guide the selection of agents for assignment to a particular regular tour of duty contrary to the agents' preferences, when only some agents' preferences can be accommodated. For example, CBP may need to implement the requirement that only 10 percent of agents in a location may have a Level 2 or Basic regular tour of duty when more than 10 percent of agents in that location want such a tour. For example, if 12 percent of agents in a particular location want a Level 2 or Basic regular tour of duty, 2 percent of agents will be required to have a Level 1 regular tour of duty contrary to their personal preference. CBP must have a plan for deciding which agents do not get assigned their desired tour (or, stated differently, which agents are assigned their desired tour).

§ 550.1614—Percentage Limit on Agents With Level 2 or Basic Tour

Section 550.1614 regulates the statutory requirement that, except when justified based on a CBP staffing analysis, no more than 10 percent of agents stationed at a location may be assigned a Level 2 or Basic regular tour of duty (*i.e.,* at least 90 percent of agents at a location must be assigned a Level 1 regular tour of duty). Section 550.1614(d) provides that the pay assignment continuity requirement in § 550.1615 trumps that requirement in § 550.1614.

§ 550.1615—Pay Assignment Continuity

Under 5 U.S.C. 5550(b)(1)(G) (titled ''Pay Assignment Continuity''), as added by BPAPRA, not later than December 18, 2015 (1 year after the date of enactment), CBP must ''develop and implement a plan to ensure, to the greatest extent practicable, that the assignment of a border patrol agent under this section during the 3 years of service before the border patrol agent becomes eligible for immediate retirement are consistent with the average border patrol rate of pay level to which the border patrol agent has been assigned during the course of the career of the border patrol agent.'' As indicated in 5 U.S.C. 5550(b)(1)(G)(iv), the purpose of this plan is to ensure that ''border patrol agents are not able to artificially enhance their retirement annuities.'' By law, CBP must develop and implement this plan in consultation with OPM. In addition, this plan and its implementation are subject to any OPM regulations promulgated under its authority to carry out BPAPRA and to administer section 5550.

OPM interprets section 5550(b)(1)(G) as establishing a period of time during which CBP must control the assignment of regular tours of duty to each agent (and thus the overtime supplement percentage) to ensure consistency with the agent's career average overtime supplement percentage. This ''control period'' is intended to cover the period of time during which an agent could possibly have a high-3 ''average pay'' period as described in the retirement laws at 5 U.S.C. 8331(4) and 8401(3). The high-3 ''average pay period'' is a period of 3 consecutive years of creditable service during which an employee has his or her highest rates of retirement-creditable basic pay. The high-3 average pay is used in computing an employee's retirement annuity.

Since the overtime supplement of 25 or 12.5 percent for a Level 1 or Level 2 regular tour of duty, respectively, is retirement-creditable basic pay and may vary over time (and can be the outcome of an agent's voluntary election), this introduces the possibility of an agent electing overtime supplements during a potential high-3 period that would maximize the agent's retirement benefit, without regard to the average overtime supplement elected during the employee's career before the control period. If the overtime supplement used in computing an agent's high-3 average pay is significantly higher than the career average overtime supplement, this means that the retirement fund has not received sufficient employee and agency contributions to fund the agent's annuity benefit. Not only does this pose problems for the retirement fund on a macro level, but it also would result in inequitable treatment of individual agents relative to one another.

Retirement eligibility is based on meeting applicable minimum age and service requirements and an employee's separation. For a Border Patrol agent under the Federal Employees' Retirement System, the minimum age and service requirements for a regular law enforcement officer retirement annuity are: (1) Any age with 25 years of service; or (2) age 50 with 20 years of service. The date of an employee's separation is uncertain until it takes effect. Thus, to achieve the stated goal of this pay assignment continuity provision, it is necessary to control overtime supplement assignments during any and all periods of 3 consecutive years after an agent is within 3 years of meeting age and service requirements. (We recognize that, in rare circumstances, an agent's high-3 period may not be the agent's last 3 years before separation and could contain a period before the control period. For ease of administration, the drafters of BPAPRA assumed that the high-3 period would be the last 3 years before separation and thus always be in the control period.)

Section 5550(b)(1)(G)(i) states that the control period applies ''during the 3 years of service before the border patrol agent becomes eligible for immediate retirement.'' In one sense, an agent has conditional retirement eligibility once he or she meets age and service requirements, with separation being the condition. In another sense, an agent is not truly retirement eligible until he or she separates. Given the intent of this provision, and the context surrounding this statutory language, we interpret the law as requiring a plan that controls overtime supplement assignments during any possible 3-year period that might precede an agent's separation, which would trigger retirement eligibility. The statutory language cannot logically be interpreted as establishing a control period only during the 3 years preceding the date an agent meets age and service requirements, since the actual high-3 period could be totally outside such a control period, which would defeat the entire purpose of the provision. We note that, in the section-by-section analysis in the Senate committee report on the bill (S. 1691) later enacted as BPAPRA (Senate Report 113–248, pages 13–14), the description of section 5550(b)(1)(G) states that the pay assignment continuity plan is designed to ''ensure an agent is unable to artificially enhance

his or her retirement pay by electing Level 1 pay *during his or her last three years of service* when he or she had previously consistently worked at a lower level of pay.'' [Italics added for emphasis.] Thus, Congress was focused on the 3 years before separation (based on the generally true assumption that an employee's high-3 period is during those last 3 years). Since an agent's actual separation date is not known in advance, it is necessary to provide pay assignment continuity for all consecutive 3-year periods for any possible separation date. The first possible separation date is when the agent meets retirement age and service requirements; thus, the date 3 years before the first possible separation date begins the control period.

Section 550.1615 regulates the pay assignment continuity requirement found in law at 5 U.S.C. 5550(b)(1)(G). Section 550.1615(a)(1) provides that, in consultation with OPM, CBP must implement a plan to ensure, to the greatest extent practicable, that an agent's overtime supplement during *all consecutive 3-year periods within the control period* is ''consistent'' with the agent's career average percentage during his or her career *prior to the beginning of the control period.* As provided in § 550.1615(a)(2), the overtime supplement percentage used in computing the career average percentage is the assigned percentage (25, 12.5, or 0) without regard to whether a premium pay cap prevents full payment based on that percentage.

Section 550.1615(a)(3) provides additional rules governing the computation of an agent's career average overtime supplement percentage. Based on the statutory language—''the average border patrol rate of pay level to which the border patrol agent has been assigned during the course of the career of the border patrol agent''—we are proposing that an agent's career be considered to encompass only those periods during which the agent was covered by section 5550 and subpart P. In other words, only overtime supplements established under 5 U.S.C. 5550 would be considered in computing the career average. We recognize that many agents have received an AUO supplement, which if considered, could increase or decrease the agent's career average. We also recognize that some agents will be in the control period when the provisions of subpart P first become applicable in January 2016 and that a career average will be immediately needed to apply the pay assignment continuity provisions. Based on the law, we have proposed in § 550.1615(a)(3) that, if an agent is in a control period when the provisions of subpart P first become applicable to the agent, the agent's initially assigned overtime supplement percentage must be considered the agent's career average. We are aware that, under the proposed rule, certain employees in headquarters or other positions for which no overtime supplement is payable would be considered to have a 0 percent career average overtime supplement. We are specifically inviting comments on proposed section 550.1615(a)(3) and will carefully consider those comments in preparing the final regulations.

As provided in § 550.1615(b), the ''control period'' is the period beginning on the date 3 years before an agent first meets retirement age and service requirements and remains in effect during all subsequent service in a Border Patrol agent position.

As regulated in § 550.1615(c)(1), the two averages are considered to be ''consistent'' if they are within 2.5 percentage points of one another. CBP must manage agents' assignments (*i.e.,* make unilateral assignments) during the control period as necessary to achieve consistency, notwithstanding any other provision of law or regulation in subpart P. Section 550.1615(c)(2) allows for two exceptions. One exception applies if an agent's overtime supplement is limited by the premium pay cap under §§ 550.105 and 550.107 and the agent voluntarily elects (and CBP approves) a regular tour that results in an average overtime supplement percentage that is less than the agent's career average. For example, an agent's rate of basic pay could be at the premium pay cap (generally level IV of the Executive Schedule) leaving no room for receipt of an overtime supplement. Such an agent could choose to elect a Basic regular tour of duty that would provide no overtime supplement and require no regular overtime work. (The agent could still be ordered to work overtime as needed.) Since the premium pay cap prevents manipulation of the high-3 average pay, this exception poses little or no risk to the retirement fund. As stated in 5 U.S.C. 5550(b)(1)(G)(iv), the goal of the pay assignment continuity provision is to ensure that agents are not able to artificially enhance their retirement annuities. The ability for an agent to enhance his or her annuity is limited or eliminated when the agent is subject to the premium pay cap.

We cannot allow an agent whose overtime supplement is not affected by the premium pay cap to voluntarily elect a lesser percentage during the control period, since the agent could later elect again to have a higher percentage that is consistent with his/her career average. While the overtime supplement used in the agent's high-3 average pay would not exceed a percentage that is consistent with the agent's career average, the agent (and CBP) will have made inadequate retirement contributions during the portion of the control period when the lesser percentage was in effect.

Section 550.1615(c)(2)(ii) provides a necessary exception in cases where CBP determines an agent is unable to perform overtime work on a daily basis due to a physical or medical condition affecting the agent and assigns the agent a Basic regular tour of duty, as described in § 550.1611(f)(2) (which may be applied to make changes in an agent's tour during an annual period, as provided by § 550.1612(d)). This exception relieves CBP of applying the consistency requirement to the affected agent, but only to the extent such assignment makes it impossible to satisfy the consistency requirement during any given consecutive 3-year period. Thus, if the period during which the agent is unable to perform overtime work is short in duration, it would be possible to fully comply with the consistency requirement.

Section 550.1615(d) addresses CBP's authority in connection with the pay assignment continuity requirement. Consistent with 5 U.S.C. 5550(b)(1)(G)(ii), § 550.1615(d)(1) provides that CBP may take such action as is necessary, including unilateral assignment of an agent's regular tour of duty, to implement the pay assignment continuity plan, notwithstanding any provision of BPAPRA or the subpart P regulations. Section 550.1615(d)(2) reflects the provision in 5 U.S.C. 5550(b)(1)(G)(vi), which states that nothing in section 5550(b)(1)(G) may be construed to limit the ability of CBP to assign regular tours as necessary to meet operational requirements. At the same time, as reflected in § 550.1604, various provisions in BPAPRA (section 2(a) and 2(f)(1) of BPAPRA and 5 U.S.C. 5550(g)) make clear that CBP has authority to assign unscheduled work as needed to meet mission needs and operational requirements, notwithstanding the regular tour assigned to agents. Thus, as a general matter, OPM does not consider the need to meet operational requirements as preventing CBP from also controlling agents' regular tour as necessary to comply with the pay assignment continuity requirement.

Section 550.1615(e) sets forth reporting requirements with which CBP must comply so that OPM can monitor and evaluate the effectiveness of CBP's pay assignment continuity plan and

assess the actuarial impact on the retirement fund.

Section 550.1615(f) addresses corrective actions that CBP must take if it determines that the consistency requirement is not being met for a particular agent. Under this regulation, CBP is not required to retroactively change an agent's assigned overtime supplement based on violation of the consistency requirement unless there is evidence of fraud, misrepresentation, fault, or lack of good faith on the part of the affected agent in connection with an overtime supplement received by that agent.

§ 550.1616—Corrective Actions

Section 550.1616 addresses corrective actions related to assignments made under the §§ 550.1611 through 550.1614. If it is determined that CBP did not comply with applicable statutory or regulatory requirements in assigning an agent to a regular tour of duty under those sections, CBP must take corrective action as soon as practicable. The corrective action would apply prospectively. CBP is not required to retroactively change an agent's assigned tour or overtime supplement, except when CBP determines there exists, in connection with the agent's tour assignment, evidence of fraud, misrepresentation, fault, or lack of good faith on the part of that agent. Since the overtime supplement is retirement-creditable basic pay, retroactive changes in the supplement would be disruptive and could adversely affect an employee's anticipated retirement benefits.

§ 550.1621—Rules for Each Type of Regular Tour

Section 550.1621 lays out the sets of rules that apply to each type of regular tour and provides cross references to those provisions that are addressed in more detail in other places in subpart P. Paragraphs (a)(3) and (b)(3) reflect the statutory rules in 5 U.S.C. 5550(b)(2)(A)(ii) and (b)(3)(A)(ii) that an agent with a Level 1 or Level 2 regular tour of duty has an obligation to perform scheduled overtime work within that tour only on a day the agent ''performs work'' during the regular time (8-hour basic workday). Thus, for example, if an agent with a Level 1 regular tour of duty takes 8 hours of annual leave on a particular day, the agent does not have an obligation to work 2 hours of scheduled overtime within the tour on that day. Paragraph (e) makes clear that, in applying paragraphs (a)(3) and (b)(3), the term ''work'' refers to paid hours of work, consistent with § 550.112, except that paid leave and other paid time off are not considered to be work hours. Paragraph (e) also makes clear that official time under 5 U.S.C. 7131 (related to employees representing a labor organization) is ''work'' in applying paragraphs (a)(3) and (b)(3).

Paragraphs (a)(4) and (b)(4) provide regulations governing the computation of the overtime supplement (25 percent or 12.5 percent, respectively). The overtime supplement is computed on an hourly basis and is equal to 25 percent or 12.5 percent, respectively of an agent's hourly rate of basic pay. The resulting hourly dollar amount is multiplied by the number of *paid* hours of regular time in the biweekly pay period to determine the biweekly dollar amount of the overtime supplement before application of the premium pay cap. Also, as provided in § 550.1626(a)(5), any hours of regular time that are paid only because of substitution of overtime hours for a period of absence without approval (AWOL) or suspension are excluded from the hours multiplied by the hourly overtime supplement.

Paragraph (d) states the overarching rule that the premium pay cap in 5 U.S.C. 5547 applies to limit, as appropriate, the payment of the overtime supplement or regularly scheduled overtime outside the regular tour and the crediting of compensatory time off for irregular overtime hours. (See 5 U.S.C. 5542(g)(5)(F) and 5547(a) and (e), as amended by BPAPRA. See also section 2(f)(3) of BPAPRA.) Consistent with the longstanding interpretation of 5 U.S.C. 5547, an agent affected by the premium pay cap is still required to perform work as assigned. In effect, an employee who reaches the premium pay cap is considered a salaried employee and the combination of basic pay and any premium pay is considered complete compensation for all hours of work. (In 2015, the premium pay cap for most employees is based on the Executive Schedule (EX) level IV annual rate of $158,700. An employee may receive premium pay in a biweekly pay period only to the extent that the premium pay does not cause the combination of basic pay and premium pay to exceed the cap.)

§ 550.1622—Circumstances Requiring Special Treatment

Section 550.1622(b) regulates a statutory provision providing special treatment of employees during the first 60 days of advanced training in a calendar year. During those 60 days, an agent continues to be assigned to the regular tour otherwise in effect, regardless of the actual number of hours of work on a training day, and will continue to receive the overtime supplement associated with that tour. As a general rule, an agent will be deemed to have worked during any nonwork period within obligated overtime hours on such a training day for the purpose of determining the agent's total hours of work against the applicable biweekly overtime threshold (*i.e.,* 100 hours for a Level 1 tour and 90 hours for a Level 2 tour). (See also § 550.1623(a)(2)(iv).) For example, if an agent with a Level 1 regular tour of duty (requiring 2 obligated overtime hours each basic workday) performs actual work for 0.5 hours during obligated overtime hours on a day of advanced training, the agent would be deemed to work during the remaining 1.5 hours and receive credit for those 1.5 hours in applying the applicable overtime threshold. However, if an agent performs creditable regularly scheduled overtime work *outside* the regular tour (*e.g.,* night work that is creditable under 5 CFR 410.402(b)(2) as an exception to the normal bar on premium pay during training) on the same day on which credit would otherwise be given for nonwork overtime *within* the tour, those outside-tour overtime hours will be substituted for any within-tour nonwork overtime hours and reduce the crediting of nonwork hours accordingly.

Section 550.1622(b)(3) implements the statutory requirement that, after an agent has 60 days of advanced training in a calendar year, CBP must assign the agent to a Basic regular tour of duty for any additional day of advanced training. When such an agent is no longer engaged in advanced training, the agent reverts to his or her previously applicable tour.

In applying § 550.1622(b), we rely on the definition of *advanced training* found in § 550.1603. Advanced training is defined to exclude initial training (*i.e.,* initial orientation sessions, basic training, and other preparatory activities) provided prior to an agent's first regular work assignment in which the agent has authority to make arrests and carry a firearm. The rules on advanced training apply solely to whole-workday training that covers the entire 8-hour block of regular time on a regular workday, since the statutory provisions at § 5550(b)(2)(G) and (b)(3)(G) apply to ''days'' of advanced training. Training that takes part of a day does not trigger application of the advanced training provision; instead, an agent with such training remains under the normal rules with the normal overtime obligations. (See also proposed § 550.1622(b)(4).)

Section 550.1622(c) regulates a statutory provision providing special

treatment of agents assigned to care for a canine as part of their agent duties. During any period an agent is assigned canine care duties, the agent must be assigned a Level 1 regular tour with a 25 percent overtime supplement (unless that requirement is trumped by the pay assignment continuity requirement in § 550.1615). As provided by 5 U.S.C. 5550(b)(1)(F), an agent assigned canine care duties must be credited with 1 hour of regularly scheduled overtime work within the regular tour of duty on each regular workday, regardless of the actual duration of any such care or when the care was actually provided. The canine care may actually be provided anytime, including on a non-workday. Regardless of the time or day the canine care is actually provided or how much time is actually spent providing canine care, an agent with canine care duties is automatically credited with 1 hour of work for canine care on each regular workday. That leaves the agent with an obligation to perform 1 additional overtime hour as part of the agent's regular tour of duty to meet the 2-hour requirement for a Level 1 tour (on any regular workday on which the agent performs any work during regular time). This means that an agent assigned canine care duties actually has a 9-hour daily tour of duty for regular work instead of the 10-hour daily tour that applies to other employees on a Level 1 regular tour of duty.

If an agent is generally assigned to provide care for a canine, but is temporarily relieved of that duty for any reason (*e.g.,* no dog available), the agent may not receive the 1-hour automatic credit for canine care on an affected regular workday.

§ 550.1623—Overtime Work Outside the Regular Tour

Section 550.1623 provides rules governing the application of biweekly overtime thresholds that are used to determine: (1) Overtime pay for regularly scheduled overtime hours outside the regular tour under § 550.1624; and (2) crediting of compensatory time off for irregular overtime hours under § 550.1625. As a general rule, the biweekly overtime threshold is 100 hours for a Level 1 tour, 90 hours for a Level 2 tour, and 80 hours for a Basic tour, as provided in § 550.1623(b), unless there is a hybrid pay period, as described in § 550.1623(c),

Paragraph (a)(2) identifies the hours that are included in an agent's total hours of work that are compared to the applicable biweekly overtime threshold. In addition to time that qualifies as actual hours of work under the normal title 5 rules and all types of paid time off hours, we count: (1) Obligated overtime hours during which no work is performed (creating a debt of hours as provided in § 550.1621(a)(8) and (b)(8)) and for which no substitution is made under § 550.1626(b); (2) nonwork hours credited during obligated overtime hours on a day of advanced training (as provided in § 550.1622(b)); and (3) overtime hours within the regular tour that an agent is not obligated to work because he or she performs no work during regular time on that day (as described in § 550.1621(a)(3) and (b)(3)). Crediting these three categories of hours is necessary to align with the 100-hour and 90-hour biweekly overtime thresholds fixed by law for a Level 1 tour and Level 2 tour, respectively. (See 5 U.S.C. 5542(g)(1)(A) and (2)(A).) Without this crediting, there could be hours of work that are outside an agent's regular tour but below the applicable overtime threshold, and there would be no authority to compensate for those hours in any way—a result clearly not intended by Congress. This crediting complies with section 2(f)(2) of BPAPRA, which states that nothing in BPAPRA may be construed to require compensation other than for hours during which an agent is actually performing work or using approved paid time off. The crediting of the three categories of hours is only for purposes of applying the overtime threshold and does not generate any additional compensation for those hours, since they are hours that only could have been potentially compensated by the overtime supplement, the amount of which is not affected by the number of regularly scheduled overtime hours within the regular tour.

Paragraph (c) addresses the possibility of ''hybrid pay periods.'' One type of hybrid pay period occurs when an agent has one type of regular tour for part of the biweekly pay period and another type for another part of that period—for example, a Level 1 tour for the first week and a Basic tour for the second week. It is possible that an agent's tour could change during a biweekly pay period due to the expiration of the 60-day advanced training period or because CBP takes action under the circumstances described in § 550.1611(f), as allowed under § 550.1612(d). A second type of hybrid pay period occurs when an individual is employed as a Border Patrol agent for only part of the pay period. Since the drafters of BPAPRA did not consider these possibilities, it is necessary to fill in the policy gap via regulation.

§ 550.1624—Regularly Scheduled Overtime Outside the Regular Tour

Section 550.1624 provides rules governing the payment for regularly scheduled overtime hours beyond the applicable overtime threshold (outside the regular tour). Such hours are paid under the regular title 5 overtime rules in 5 U.S.C. 5542(a) and 5 CFR 550.113. Paragraph (c)(1) reflects a statutory directive that CBP should, to the maximum extent practicable, avoid the use of regularly scheduled overtime work outside the regular tour of duty. However, paragraph (c)(2) makes clear that the general restriction in paragraph (c)(1) does not prevent CBP from assigning outside-tour regularly scheduled overtime work if an agent volunteers to perform such work. For example, an agent may want to work such overtime hours to eliminate an overtime hours debt.

§ 550.1625—Irregular Overtime and Compensatory Time Off

Section 550.1625 provides rules governing the crediting of compensatory time off for irregular overtime hours beyond the applicable overtime threshold. (By definition, any irregular overtime hour is beyond that threshold and outside the regular tour of duty.) The rules in § 550.1625 largely reflect statutory requirements and limitations. In addition, paragraph (c) shows that the call-back overtime provision in 5 U.S.C. 5542(b)(1) remains applicable to agents. In addition, since BPAPRA required that a value be assigned to compensatory time for the purpose of applying the premium pay cap (5 U.S.C. 5542(g)(5)(F)), but did not specify what the value should be, we are regulating that the value is equal to the amount of overtime pay the agent would have received for the period during which the compensatory time off was earned if the overtime had been regularly scheduled overtime hours outside the agent's regular tour. This is consistent with how OPM values compensatory time off under 5 U.S.C. 5543 and 5 CFR 550.114. (See 5 CFR 550.114(g).)

§ 550.1626—Leave Without Pay During Regular Time and Absences During Obligated Overtime Hours

Section 550.1626 provides rules governing the handling of circumstances where an agent has leave without pay during the basic workweek or absences during obligated overtime hours, consistent with 5 U.S.C. 5550(f). Additional hours worked in a biweekly pay period that are ''substituted'' for leave without pay or absences during obligated overtime hours are, for pay

computations purposes, treated as if they are, respectively, regular time hours or obligated overtime hours. Thus, substituted hours are not overtime hours for any purpose, and they may not be considered to be obligated overtime hours under § 550.1621(a)(4) and (b)(4) (when within-tour overtime is substituted for LWOP), regularly scheduled overtime hours under § 550.1624, or irregular overtime hours under § 550.1625, despite their original character prior to substitution.

As provided in § 550.1603, the term *leave without pay* includes all types of nonpay status, including normal approved leave without pay (regular LWOP), absence without approval (AWOL), suspension, or furlough. Consistent with the treatment of leave without pay under the regular title 5 overtime rules (5 CFR 550.112(d)), these regulations provide for substituting hours outside the basic workweek for leave without pay within the basic workweek—for purposes of computing overtime pay. This treatment is necessary so overtime thresholds are properly applied. As specified in § 550.1626(a)(4), the substitution is done solely for pay computation purposes and does not change the fact that an agent was in a particular nonpay status during the designated hours. For other purposes, the hours that are substituted are considered to have been performed when they were worked, not during the leave without pay hours.

Consistent with 5 U.S.C. 5550(f)(1)(A), § 550.1626(a)(1) provides that an equal period of time outside regular time (which could include work during obligated overtime hours or outside the regular tour) must be substituted for leave without pay during regular time. Consistent with 5 U.S.C. 5550(f)(1)(C), § 550.1626(a)(2) provides that substitutions for leave without pay during regular time must be made before substitutions for absences during obligated overtime hours. Section 550.1626(a)(3) further provides, by authority of regulation, that overtime hours must be substituted in the following priority: first, irregular overtime hours; second, regularly scheduled overtime hours outside the regular tour of duty; and third, regularly scheduled overtime hours within the regular tour of duty. Priority is given to substituting irregular overtime hours, since those hours do not generate a cash payment.

Section 550.1626(a)(5) mandates that overtime hours that are substituted for absence without approval (AWOL) or suspension may not be used in computing an agent's overtime supplement. BPAPRA did not address how substituted hours would affect the computation of the overtime supplement. By regulation, we are allowing hours that are substituted for regular LWOP or furlough to be treated as regular time hours that are multiplied by the hourly overtime supplement. We determined that it would be inappropriate to allow AWOL or suspension hours to generate an increased amount of overtime supplement even if other hours of work are substituted for those hours.

We are not including a regulation to implement 5 U.S.C. 5550(f)(1)(B), which stated that work performed on the same day as a period of leave without pay should be substituted first. We determined that, since overtime pay is computed on a biweekly basis, it makes no difference in an agent's pay entitlements if this same-day priority were followed or not followed.

Section 550.1626(b) addresses substitution of other work outside the regular tour of duty for absence during obligated overtime hours, consistent with 5 U.S.C. 5550(f)(2). Consistent with 5 U.S.C. 5550(f)(2)(B), § 550.1626(b)(2) provides that work performed on the same day as a period of absence during obligated overtime hours must be substituted first, but only in the circumstance where same-day substitution rules make a difference—namely, the application of the advanced training provision in § 550.1622(b)(2) that is applied on a daily basis. Section 550.1626(b)(3) further provides, by authority of regulation, that overtime hours outside the regular tour of duty (remaining after applying paragraphs (a) and (b)(2)) must be substituted for obligated overtime hours not worked in the following priority: first, irregular overtime hours; and second, regularly scheduled overtime hours outside the regular tour of duty. Priority is given to substituting irregular overtime hours, since those hours do not generate a cash payment. Section 550.1626(b)(4) makes clear that substitution of overtime hours is for pay computation purposes and does not change when those hours were actually worked for other purposes.

Section 550.1626(c) addresses situations where an agent does not have sufficient additional work in a biweekly pay period to substitute for all periods of absence during obligated overtime hours, consistent with 5 U.S.C. 5550(f)(3) and (4). It mandates that any unused balance of compensatory time off accrued by an agent under § 550.1625 must be applied towards any overtime hours debt newly accrued in the current pay period. It further mandates that, if an overtime hours debt remains after substitution and after application of unused compensatory time off, any additional work outside an agent's regular tour in future pay periods (that would otherwise be considered overtime work under § 550.1624 or § 550.1625) must be applied towards the overtime hours debt until that debt is satisfied.

Section 550.1626(d) addresses how to handle a situation where an agent has an unsatisfied overtime hours debt at the time of transfer or separation, which is not addressed in BPAPRA but is necessarily addressed in our regulations. At the time of transfer or separation, the overtime hours debt must be converted to a monetary debt equal to the result of multiplying the agent's hourly rate of basic pay by the number of hours owed by the agent. CBP would follow standard debt collection procedures to recover any debt.

§ 550.1631—Relationship to Other Types of Premium Pay

Section 550.1631 provides rules regarding the circumstances under which an agent may receive other premium pay (not addressed elsewhere in subpart P), consistent with 5 U.S.C. 5550(c). It further provides that an agent's regular rate of basic pay (without any overtime supplement) must be used in computing any premium pay, consistent with 5 U.S.C. 5550(c)(1) and (d)(2).

§ 550.1632—Relationship to Hazardous Duty Pay

Section 550.1632 provides that an agent may receive hazardous duty pay under 5 U.S.C. 5545(d), if otherwise eligible, consistent with 5 U.S.C. 5550(c)(3). It further provides that any hazard pay is computed using an agent's regular rate of basic pay (without any overtime supplement), consistent with 5 U.S.C. 5550(d).

§ 550.1633—Relationship to Other Provisions Using Basic Pay

Section 550.1633 identifies the limited purposes for which an overtime supplement is treated as part of an agent's rate of basic pay, consistent with 5 U.S.C. 5550(d). In addition to the purposes prescribed in law (*i.e.,* retirement, severance pay, workers' compensation, and life insurance), OPM is regulating that the overtime supplement is part of basic pay for purposes of advances in pay under 5 U.S.C. 5524a and 5 CFR part 550, subpart B.

§ 550.1634—Relationship to Leave and Other Paid Time Off

Section 550.1634 makes clear that agents remain covered by title 5 provisions related to leave (5 U.S.C. chapter 63) and to other paid time off (*e.g.,* holidays under 5 U.S.C. chapter 61, compensatory time off for religious purposes under 5 U.S.C. 5550a) and that the tour of duty for accrual of leave and for usage of leave or other paid time off is the 40-hour basic workweek.

§ 550.1635—Relationship to Alternative Work Schedules

Section 550.1635 provides that agents may not have a flexible or compressed work schedule under 5 U.S.C. chapter 61, subchapter II. OPM interprets BPAPRA as establishing a special work schedule for all agents under 5 U.S.C. 5550, which supersedes any other authority to establish special schedules. CBP is still permitted to have flexible starting and stopping times for an agent's basic work day if it determines that such flexibility is appropriate for the position in question (*e.g.,* a position with a Basic regular tour of duty that does not require fixed shifts).

§ 550.1636—Relationship to FLSA

Section 550.1636 reflects the Fair Labor Standards Act (FLSA) amendments made by BPAPRA, which provided that the minimum wage and overtime provisions of the FLSA are not applicable to Border Patrol agents (*i.e.,* they are automatically exempt from FLSA by virtue of being a Border Patrol agent). A conforming FLSA exemption is being added to OPM's FLSA regulations at 5 CFR 551.217.

§ 550.1637—Relationship to Travel Time

Section 550.1637(a) provides that an agent's regular travel to and from home and a work location within the agent's official duty station (as defined in § 550.112(j)) may not be considered hours of work, which is consistent with 5 U.S.C. 5550(e) as added by BPAPRA. This is also generally consistent with regular title 5 rules related to travel at 5 CFR 550.112(j)(2).

Section 550.1637(b) addresses travel away from an agent's official duty station (as defined in § 550.112(j)). Such travel is subject to the normally applicable hours-of-work rules in 5 U.S.C. 5542(b)(2) and 5 CFR 550.112(g). When an agent travels directly between home and a temporary duty location outside the limits of the agent's official duty station, the time the agent would have spent in normal home to work travel must be deducted from any creditable hours of work while traveling.

§ 550.1638—Relationship to Official Time

Section 550.1638 addresses how official time under 5 U.S.C. 7131 relates to BPAPRA pay provisions. Under 5 U.S.C. 7131—

- ''Any employee representing an exclusive representative in the negotiation of a collective bargaining agreement under this chapter shall be authorized official time for such purposes, including attendance at impasse proceeding, during the time the employee otherwise would be in a duty status. The number of employees for whom official time is authorized shall not exceed the number of individuals designated as representing the agency for such purposes.'' (See 5 U.S.C. 7131(a).)
- ''The Authority shall determine whether any employee participating for, or on behalf of, a labor organization in any phase of proceedings before the Authority shall be authorized official time for such purpose during the time the employee otherwise would be in a duty status.'' (See 5 U.S.C. 7131(c).)
- Except as provided in the previous subsections, any employee representing an exclusive representative or in connection with any other matter covered by this chapter ''shall be granted official time in any amount the agency and the exclusive representative involved agree to be reasonable, necessary, and in the public interest.'' (See 5 U.S.C. 7131(d).)

An employee using official time is paid a base salary even though not in a regular duty status. Official time is also considered to be ''hours of work'' when the employee would otherwise be in a duty status. Generally, official time is used during an employee's basic (nonovertime) hours. Official time may also be used during management-assigned overtime hours if an unplanned event occurs incident to representational functions that must be dealt with during the overtime hours.

In drafting proposed regulations to carry out BPAPRA, we determined that certain issues related to official time needed to be addressed. First, the rules in 5 U.S.C. 5550(b)(2)(A)(ii) and (b)(3)(A)(ii) provide that the obligation to perform overtime hours of work as part of an agent's regular tour of duty is triggered only when the agent performs ''work'' during the 8-hour basic workday on that same day. Thus, we provide in § 550.1621(e) and § 550.1638 that official time is included as ''work'' in applying those section 5550 provisions. This is consistent with how OPM treats official time during basic (nonovertime) hours as hours of work in applying title 5 and FLSA overtime provisions, based on 5 U.S.C. 7131.

In addition, we clarify in § 550.1638 that Border Patrol agents who use official time to perform union representational duties may elect to have a Level 1 or Level 2 regular tour of duty, but generally must perform regular agency work (as opposed to union representational duties) during obligated overtime hours. However, use of official time during obligated overtime hours or any other overtime hours is permitted if an unplanned event arises incident to representational functions that must be dealt with during the overtime hours.

Conforming Changes to Other Regulations

OPM is proposing conforming changes in a variety of regulations in part 410, part 550, part 551, and part 870. (Note: The descriptions of the proposed regulations below are stated in the present tense for readability.)

Section 410.402 is amended to show the receipt of the Border Patrol agent overtime supplement as a permitted exception to the general bar on premium pay during periods of training.

Section 550.103 is amended to revise the definition of *premium pay* and add a new definition of *regular tour of duty* so that these definitions can be used in applying 5 CFR part 550, subpart A (Premium Pay). The revised definition of *premium pay* makes clear the term includes a Border Patrol agent overtime supplement and the dollar value of compensatory time off earned by a Border Patrol agent, consistent with 5 U.S.C. 5542(g)(5)(F) and 5547(a)(1) and (e) and section 2(f) of BPAPRA.

Section 550.107 is amended to provide that the Border Patrol agent overtime supplement is subject solely to the biweekly premium pay cap (not the annual cap), consistent with the treatment of other premium payments that are retirement-creditable basic pay. In prescribing this treatment, OPM is relying on its broad authority to regulate the premium pay subchapter in 5 U.S.C. 5548 plus its additional broad authority in section 2(h) of BPAPRA to issue regulations to carry out BPAPRA.

Section 550.111 is amended by adding a new paragraph (j), which provides that special overtime thresholds apply to Border Patrol agents for the purpose of paying overtime under the regular title 5 overtime authority (for overtime not compensated by an overtime supplement or by the earning of compensatory time off). (See 5 U.S.C. 5542(g) and § 550.1623.)

Sections 550.122, 550.132, and 550.172 are amended by adding new paragraphs, which provide that night pay differential, holiday premium pay, and Sunday pay are not payable for regularly scheduled overtime within a Border Patrol agent's regular tour duty (*i.e.,* overtime hours compensated via the overtime supplement), consistent with 5 U.S.C. 5550(b)(2)(C), (b)(3)(C), and (c)(1)(A). These new paragraphs also make clear that a Border Patrol agent overtime supplement is not included in the rate of basic pay used to compute the amount of these premium payments for other hours that qualify for such payments, consistent with 5 U.S.C. 5550(c)(1) and (d)(2).

In § 550.202, we are amending the definition of *rate of basic pay* used in applying the advances in pay regulations so that it includes a Border Patrol agent overtime supplement. This amendment relies on OPM's authority in 5 U.S.C. 5550(d)(1)(B) to regulate the purposes for which the overtime supplement is treated as basic pay.

In § 550.703, we are amending the definition of *rate of basic pay* used in applying the severance pay regulations so that it includes a Border Patrol agent overtime supplement, consistent with 5 U.S.C. 5550(d)(1)(A).

In § 550.1204, we are amending paragraph (a) to provide that Border Patrol agent compensatory time off does not extend the period of leave used for calculating a lump-sum annual leave payment. This is consistent with the treatment of regular title 5 compensatory time off and with 5 U.S.C. 5542(g)(5)(D), which provides that an agent may not receive any cash value for unused compensatory time off.

In § 550.1205, we are adding a new paragraph (b)(5)(iv), which provides a Border Patrol agent overtime supplement is used in computing any annual leave lump-sum payment. This is an exercise of OPM's regulatory authority in 5 U.S.C. 5553 and is consistent with the treatment of AUO pay that Border Patrol agents have been receiving.

In OPM's FLSA regulations, we are amending § 551.216 and adding a new § 551.217. In § 551.216(c)(2), we are deleting references to Border Patrol agents, since they are no longer covered by the FLSA. In the new § 551.217, we provide that Border Patrol agents are FLSA exempt (for purposes of minimum wage and overtime provisions), as required by the amendments to section 13(a) of the FLSA (29 U.S.C. 213(a)) made by section (g)(2) of BPAPRA.

In OPM's life insurance regulations, we are amending § 870.204 to provide that a Border Patrol agent overtime supplement is treated as part of an agent's ''annual pay'' used in computing life insurance benefits, as required by 5 U.S.C. 5550(d)(1)(A). (Congress relied on section 5550(d)(1)(A) rather than amend 5 U.S.C. 8704(c) to specifically reference the Border Patrol agent overtime supplement. Under section 8704(c), OPM may prescribe regulations governing the types of pay included in annual pay.)

Executive Order 12866 and Executive Order 13563

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

Regulatory Flexibility Act

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

List of Subjects

5 CFR Part 410

Education, Government employees.

5 CFR Part 550

Administrative practice and procedure, Claims, Government employees, Wages.

5 CFR Part 551

Government employees, Wages.

5 CFR Part 870

Administrative practice and procedure, Government employees, Hostages, Iraq, Kuwait, Lebanon, Life insurance, Retirement.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

For the reasons stated in the preamble, OPM is proposing to amend parts 410, 550, 551, and 870 of title 5 of the Code of Federal Regulations as follows:

PART 410—TRAINING

■ 1. The authority citation for part 410 continues to read as follows:

Authority: 5 U.S.C. 1103(c), 2301, 2302, 4101, *et seq.;* E.O. 11348, 3 CFR, 1967 Comp., p. 275, E.O. 11478, 3 CFR 1966–1970 Comp., page 803, unless otherwise noted, E.O. 13087; and E.O. 13152.

Subpart D—Paying for Training Expenses

■ 2. In § 410.402, add paragraph (b)(8) to read as follows:

§ 410.402 Paying premium pay.

* * * * *

(b) * * *

(8) *Border Patrol agent overtime supplement.* A Border Patrol agent may receive an overtime supplement under 5 U.S.C. 5550 and 5 CFR part 550, subpart P, during training, subject to the limitation in 5 U.S.C. 5550(b)(2)(G) and (b)(3)(G) and 5 CFR 550.1622(b).

* * * * *

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart A—Premium Pay

■ 3. The authority citation for subpart A of part 550 is revised to read as follows:

Authority: 5 U.S.C. 5304 note, 5305 note, 5504(d), 5541(2)(iv), 5545a(h)(2)(B) and (i), 5547(b) and (c), 5548, and 6101(c); sections 407 and 2316, Pub. L. 105–277, 112 Stat. 2681–101 and 2681–828 (5 U.S.C. 5545a); section 2(h), Pub. L. 113–277, 128 Stat. 3005; E.O. 12748, 3 CFR, 1992 Comp., p. 316.

■ 4. Amend § 550.103 by adding a sentence at the end of the definition of *premium pay* and adding in alphabetical order a definition of *regular tour of duty* to read as follows:

§ 550.103 Definitions.

* * * * *

Premium pay * * * This includes an overtime supplement received by a Border Patrol agent under 5 U.S.C. 5550 and subpart P of this part for regularly scheduled overtime hours within the agent's regular tour of duty and the dollar value of hours of compensatory time off earned by such an agent.

* * * * *

Regular tour of duty, with respect to a Border Patrol agent covered by 5 U.S.C. 5550 and subpart P of this part, means the basic 40-hour workweek plus any regularly scheduled overtime work hours that the agent is assigned to work as part of an officially established 5-day weekly work schedule generally consisting of—

(1) 10-hour workdays (each including 2 overtime hours each day) in exchange for a 25-percent overtime supplement (Level 1); or

(2) 9-hour workdays (each including 1 overtime hour each day) in exchange for a 12.5-percent overtime supplement (Level 2).

* * * * *

■ 5. In § 550.107, amend paragraph (a)(3) by removing the word ''and'' at the end of paragraph, removing the period from the end of paragraph (a)(4) and adding in its place ''; and'', and adding paragraph (a)(5) to read as follows:

§ 550.107 Premium payments capped on a biweekly basis when an annual limitation otherwise applies.

(a) * * *

(5) An overtime supplement for regularly scheduled overtime hours within a Border Patrol agent's regular tour of duty under 5 U.S.C. 5550.

* * * * *

■ 6. In § 550.111, add paragraph (j) to read as follows:

§ 550.111 Authorization of overtime pay.

* * * * *

(j) For Border Patrol agents covered by 5 U.S.C. 5550 and subpart P of this part, overtime work means hours of work in excess of applicable thresholds, as specified in § 550.1623, excluding hours that are—

(1) Compensated by payment of an overtime supplement for regularly scheduled overtime within the agent's regular tour of duty under § 550.1621;

(2) Compensated by the earning of compensatory time off under § 550.1625; or

(3) Used in substitution or application under § 550.1626.

■ 7. In § 550.122, add paragraph (e) to read as follows:

§ 550.122 Computation of night pay differential.

* * * * *

(e) *Border Patrol agents.* For a Border Patrol agent covered by 5 U.S.C. 5550 and subpart P of this part, no night pay differential is payable for regularly scheduled overtime hours within the agent's regular tour of duty, as required by 5 U.S.C. 5550(b)(2)(C), (b)(3)(C), and (c)(1)(A). The overtime supplement payable for such scheduled overtime hours is not part of the agent's rate of basic pay used in computing the night pay differential for other hours that qualify for such a differential.

■ 8. In § 550.132, add paragraph (d) to read as follows:

§ 550.132 Relation to overtime, night, and Sunday pay.

* * * * *

(d) For a Border Patrol agent covered by 5 U.S.C. 5550 and subpart P of this part, no holiday premium pay is payable for regularly scheduled overtime hours within the agent's regular tour of duty, as required by 5 U.S.C. 5550(b)(2)(C), (b)(3)(C), and (c)(1)(A). The overtime supplement payable for such scheduled overtime hours is not part of the agent's rate of basic pay used in computing the holiday premium pay for other hours that qualify for such premium pay.

■ 9. In § 550.172, designate the current text as paragraph (a) and add paragraph (b) to read as follows:

§ 550.172 Relation to overtime, night, and holiday pay.

* * * * *

(b) For a Border Patrol agent covered by 5 U.S.C. 5550 and subpart P of this part, no Sunday premium pay is payable for regularly scheduled overtime hours within the agent's regular tour of duty, as required by 5 U.S.C. 5550(b)(2)(C), (b)(3)(C), and (c)(1)(A). The overtime supplement payable for such scheduled overtime hours is not part of the agent's rate of basic pay used in computing the Sunday premium pay for other hours that qualify for such premium pay.

Subpart B—Advances in Pay

■ 10. The authority citation for subpart B of part 550 is revised to read as follows:

Authority: 5 U.S.C. 5524a, 5527, 5545a(h)(2)(B), 5550(d)(1)(B); E.O. 12748, 3 CFR, 1992 comp., p. 316.

■ 11. In § 550.202, amend the definition of *rate of basic pay* by removing ''and'' at the end of paragraph (3), removing the period at the end of paragraph (4) and adding in its place ''; and'', and adding paragraph (5) to read as follows:

§ 550.202 Definitions.

* * * * *

Rate of basic pay * * *

(5) An overtime supplement for regularly scheduled overtime within a Border Patrol agent's regular tour of duty under 5 U.S.C. 5550 (as allowed under 5 U.S.C. 5550(d)(1)(B)).

Subpart G—Severance Pay

■ 12. The authority citation for subpart G of part 550 continues to read as follows:

Authority: 5 U.S.C. 5595; E.O. 11257, 3 CFR, 1964–1965 Comp., p. 357.

■ 13. In § 550.703, amend the definition of *rate of basic pay* by removing ''and'' at the end of paragraph (3), removing the period at the end of paragraph (4) and adding in its place ''; and'', and adding paragraph (5) to read as follows:

§ 550.703 Definitions.

* * * * *

Rate of basic pay * * *

(5) An overtime supplement for regularly scheduled overtime within a Border Patrol agent's regular tour of duty under 5 U.S.C. 5550 (as required by 5 U.S.C. 5550(d)(1)(a)).

* * * * *

Subpart L—Lump-Sum Payment for Accumulated and Accrued Annual Leave

■ 14. The authority citation for subpart L continues to read as follows:

Authority: 5 U.S.C. 5553, 6306, and 6311.

§ 550.1204 [Amended]

■ 15. In § 550.1204, amend paragraph (a) by removing the phrase ''compensatory time off earned under 5 U.S.C. 5543 and § 550.114(d) or § 551.531(d) of this chapter'' from the third sentence and inserting in its place the phrase ''unused compensatory time off earned under 5 U.S.C. 5543 and § 550.114(d) or § 551.531(d) of this chapter or under 5 U.S.C. 5542(g) and § 550.1625''.

■ 16. In § 550.1205, amend paragraph (b)(5) by adding paragraph (iv) to read as follows:

§ 550.1205 Calculating a lump-sum payment.

* * * * *

(b) * * *

(5) * * *

(iv) An overtime supplement for regularly scheduled overtime within a Border Patrol agent's regular tour of duty under 5 U.S.C. 5550, as in effect immediately prior to the date the agent became eligible for a lump-sum payment under § 550.1203. The agency must base the lump-sum payment on the agent's assigned overtime supplement percentage. The assigned percentage will be considered fixed for the duration of the lump-sum annual leave projection period described in § 550.1204, even if an annual period for elections under 5 U.S.C. 5550 begins during that projection period. In cases where the amount of the overtime supplement actually payable in a pay period was limited by a statutory cap, the agency must base the lump-sum payment on a reduced percentage rate that reflects the actual amount of the overtime supplement the agent could receive in a pay period.

* * * * *

■ 17. Add subpart P to part 550 to read as follows:

Subpart P—Overtime Pay for Border Patrol Agents

General Provisions

Sec.
550.1601 Purpose and authority.
550.1602 Coverage.
550.1603 Definitions.
550.1604 Authority of U.S. Customs and Border Protection.
550.1605 Interpretation instruction.

Assignment of Regular Tour of Duty and Overtime Supplement

550.1611 Assignments for an annual period.
550.1612 Assignments made at other times.
550.1613 Selection of agents for assignment.
550.1614 Limit on percentage of agents who do not have a Level 1 regular tour of duty.

550.1615 Pay assignment continuity.
550.1616 Corrective actions.

Treatment of Overtime Work

550.1621 Rules for types of regular tour of duty.
550.1622 Circumstances requiring special treatment.
550.1623 Overtime work outside the regular tour of duty.
550.1624 Regularly scheduled overtime outside the regular tour of duty.
550.1625 Irregular overtime and compensatory time off.
550.1626 Leave without pay during regular time and absences during obligated overtime hours.

Relationship to Other Provisions

550.1631 Other types of premium pay.
550.1632 Hazardous duty pay.
550.1633 Treatment of overtime supplement as basic pay.
550.1634 Leave and other paid time off.
550.1635 Alternative work schedule.
550.1636 Exemption from Fair Labor Standards Act.
550.1637 Travel time.
550.1638 Official time.

Subpart P—Overtime Pay for Border Patrol Agents

Authority: 5 U.S.C. 5548 and 5550(b)(1)(B) and (d)(1)(B); section 2(h), Pub. L. 113–277, 128 Stat. 3005.

General Provisions

§ 550.1601 Purpose and authority.

This subpart contains OPM regulations to implement section 2 of the Border Patrol Agent Pay Reform Act of 2014 (Pub. L. 113–277), which added section 5550 in title 5, United States Code, and made related statutory amendments. The Act created a special overtime pay program for Border Patrol agents in the U.S. Customs and Border Protection component within the Department of Homeland Security. OPM has authority under 5 U.S.C. 5548(a) to regulate subchapter V (Premium Pay) of chapter 55 of title 5, United States Code, including section 5550 and the Act's amendments to sections 5542 and 5547. OPM was also granted broad authority to promulgate necessary regulations to carry out the Act and the amendments made by the Act under section 2(h) of the Act.

§ 550.1602 Coverage.

This subpart applies to an employee of the U.S. Customs and Border Protection component of the Department of Homeland Security (or any successor organization) who holds a position assigned to the Border Patrol Enforcement classification series 1896 or any successor series, consistent with classification standards established by OPM. Such an employee is referred to as a ''Border Patrol agent'' or ''agent'' in this subpart.

§ 550.1603 Definitions.

For the purpose of this subpart—

Advanced training means all training, other than initial training, provided on a whole-workday basis. Advanced training excludes training that covers only part of an 8-hour basic workday.

Agent means a Border Patrol agent.

Annual period means a 1-year period that begins on the first day of the first pay period beginning on or after January 1 of a given year and ends on the day before the first day of the first pay period beginning on or after January 1 of the next year. The term ''year'' in 5 U.S.C. 5550(b)(1)(A) and (C) and the term ''leave year'' in 5 U.S.C. 5542(g)(5)(A) are interpreted to be an annual period as defined here.

Basic regular tour of duty means an officially established weekly regular tour of duty consisting of five 8-hour workdays (including no overtime hours) for which no overtime supplement is payable.

Basic workday means the 8 hours of nonovertime work on a day within an agent's basic workweek.

Basic workweek, for full-time employees, means the 40-hour workweek established in accordance with 5 CFR 610.111.

Border Patrol agent means an employee to whom this subpart applies, as provided in § 550.1602.

CBP means the component of the Department of Homeland Security known as U.S. Customs and Border Protection (or any successor organization). When this term is used in the context of CBP making determinations or taking actions, it means management officials of CBP who are authorized to make the given determination or take the given action.

Hybrid pay period means a biweekly pay period within which—

(1) An agent has one type of established regular tour of duty for one part of the pay period and another type of regular tour of duty for a different part of the pay period; or

(2) An individual is employed as an agent for only a portion of the pay period.

Initial training means training for newly hired agents—including initial orientation sessions, basic training, and other preparatory activities—provided prior to the agent's first regular work assignment in which he or she will be authorized to make arrests and carry a firearm.

Irregular overtime work means officially ordered or approved overtime work that is not regularly scheduled overtime work—*i.e.,* overtime work that is not part of the agent's regularly scheduled administrative workweek.

Leave without pay means a period of time within an agent's basic workweek during which the agent is in nonpay status, including periods of unpaid voluntary absence with approval, absence without approval (AWOL), suspension, or furlough.

Level 1 regular tour of duty means an officially established weekly regular tour of duty generally consisting of five 10-hour workdays (including 2 overtime hours each workday) that provides entitlement to a 25 percent overtime supplement.

Level 2 regular tour of duty means an officially established weekly regular tour of duty generally consisting of five 9-hour workdays (including 1 overtime hour each workday) that provides entitlement to a 12.5 percent overtime supplement.

Obligated overtime hours means regularly scheduled overtime hours that an agent with a Level 1 or Level 2 regular tour of duty is obligated to work as part of the agent's regular tour of duty, if the agent performs any amount of work during regular time on same day, and that are converted into an overtime hours debt when the agent fails to work the hours.

Overtime hours debt means the balance of obligated overtime hours not worked for which the agent has not satisfied the hours obligation by applying compensatory time off hours or other overtime hours of work outside the agent's regular tour of duty.

Overtime supplement means a payment received in addition to the regular amount of basic pay for nonovertime work in exchange for regularly scheduled overtime work within an agent's Level 1 or Level 2 regular tour of duty. For an agent who is assigned a 10-hour workday as part of the agent's Level 1 regular tour of duty, the overtime supplement is 25 percent. For an agent who is assigned a 9-hour workday as part of the agent's Level 2 regular tour of duty, the overtime supplement is 12.5 percent. The overtime supplement is computed as provided in § 550.1621(a)(4) and (b)(4).

Pay period means a 14-day biweekly pay period.

Rate of basic pay means the regular nonovertime rate of pay payable to an agent, excluding any overtime supplement, but including any applicable locality payment under 5 CFR part 531, subpart F; special rate supplement under 5 CFR part 530, subpart C; or similar payment or supplement under other legal authority, before any deductions and exclusive of

additional pay of any other kind. An overtime supplement is included as part of an agent's rate of basic pay for purposes outside this subpart, as provided in § 550.1633.

Regularly scheduled administrative workweek, for a full-time employee, means the period within an administrative workweek, established in accordance with 5 CFR 610.111, within which the employee is regularly scheduled to work.

Regularly scheduled work means work (including overtime work) that is scheduled in advance of an administrative workweek under an agency's procedures for establishing workweeks in accordance with 5 CFR 610.111.

Regular time means the regular basic (nonovertime) hours within an agent's 8-hour basic workday within the 40-hour basic workweek.

Regular tour of duty means the basic 40-hour workweek plus any regularly scheduled overtime work hours that the agent is assigned to work as part of an officially established 5-day weekly work schedule generally consisting of—

(1) 10-hour workdays (including 2 overtime hours each workday) in exchange for a 25 percent overtime supplement (Level 1); or

(2) 9-hour workdays (including 1 overtime hour each workday) in exchange for a 12.5 percent overtime supplement (Level 2).

§ 550.1604 Authority of U.S. Customs and Border Protection.

Authorized management officials of U.S. Customs and Border Protection are responsible for determining the mission requirements and operational needs of the organization and have the right to assign scheduled and unscheduled work as necessary to meet those requirements and needs, regardless of an agent's officially established regular tour of duty. (See subsections (a) and (f)(1) of section 2 of Pub. L. 113–277 and 5 U.S.C. 5550(g).)

§ 550.1605 Interpretation instruction.

As required by section 2(f) of the Border Patrol Agent Pay Reform Act of 2014 (Pub. L. 113–277), nothing in section 2 of the Act or this subpart may be construed to require compensation of an agent other than for hours during which the agent is actually performing work or using approved paid leave or other paid time off. This section does not prevent CBP from granting paid excused absence from an agent's basic workweek under other authority.

Assignment of Regular Tour of Duty and Overtime Supplement

§ 550.1611 Assignments for an annual period.

(a) *Annual period.* The assignment of a regular tour of duty and overtime supplement to an agent is in effect for a full annual period (or the portion of such period during which the individual is employed as an agent), except as otherwise provided in this subpart. The annual period is a 1-year period that begins on the first day of the first pay period beginning on or after January 1 of a given year and ends on the day before the first day of the first pay period beginning on or after January 1 of the next year.

(b) *Information regarding annual election opportunity.* No later than November 1 of each year, CBP must provide each currently employed agent with information regarding the opportunity to elect a regular tour of duty and corresponding overtime supplement for the next annual period. The information must include an explanation of election options and procedures. For an agent who will be in initial training status on the first day of the annual period, this paragraph is not applicable, and § 550.1612(a) and (b) will apply instead.

(c) *Annual election opportunity.* No later than December 1 of each year, an agent to whom paragraph (b) of this section is applicable may make an election among three options for the regular tour of duty and corresponding overtime supplement (as described in § 550.1621) that the agent wishes to be applicable to him or her during the next annual period.

(d) *Failure to make an election.* If an agent fails to make a timely election under paragraph (c) of this section, CBP must assign the agent a Level 1 regular tour of duty with a 25 percent overtime supplement, except as otherwise provided in paragraph (f) of this section.

(e) *Effect of agent election.* CBP must assign an agent the regular tour of duty elected by the agent under paragraph (c) of this section unless CBP informs the agent of an alternative assignment, as provided under paragraph (f) of this section. CBP may change the assignment during the annual period, as provided under § 550.1612(d).

(f) *Management assignment to tour.* CBP may assign a different regular tour of duty than that elected by the agent for an upcoming annual period under the following circumstances:

(1) An agent who is assigned canine care duties must be assigned a Level 1 regular tour of duty, subject to § 550.1622(c);

(2) An agent who is unable to perform overtime on a daily basis, as determined by CBP, must be assigned a Basic regular tour of duty with no overtime supplement until such time as CBP determines the agent is able to perform the required overtime on a daily basis;

(3) An agent who holds a position at CBP headquarters, as a training instructor at a CBP training facility, or as a fitness instructor—or who holds another type of administrative position— must be assigned a Basic regular tour of duty unless CBP determines a Level 1 or Level 2 regular tour of duty may be assigned to the agent based on a comprehensive staffing analysis conducted for the agent's duty station as required by section 2(e) of the Border Patrol Agent Pay Reform Act of 2014 (Pub. L. 113–277);

(4) CBP determines that an agent must be assigned to a Level 1 regular tour of duty to ensure that not more than 10 percent (or higher percentage established under § 550.1614(b)) of agents stationed at a location are assigned to a Level 2 regular tour of duty or a Basic regular tour of duty, as required by 5 U.S.C. 5550(b)(1)(E) and § 550.1614; or

(5) CBP determines that assignment of a different regular tour of duty is necessary to comply with the pay assignment continuity provisions in 5 U.S.C. 5550(b)(1)(G) and § 550.1615, notwithstanding any other provision of law or this subpart (including paragraphs (f)(1) through (4) of this section).

§ 550.1612 Assignments made at other times.

(a) An individual who is newly hired as an agent must be assigned a Basic regular tour of duty during any period of initial training. After completing any period of initial training, an agent must be assigned a Level 1 regular tour of duty for any portion of the annual period remaining at that point, except under applicable circumstances described in paragraph (f) of § 550.1611 or paragraph (b) of this section.

(b) An agent who would otherwise be assigned a regular tour of duty under paragraph (a) of this section may submit an election of a different regular tour of duty to be effective on a prospective basis for the remaining portion of the annual period. CBP must provide the agent with election information no later than the date the agent begins a regular work assignment (*i.e.,* after completing any period of initial training). CBP must assign an agent the regular tour of duty elected by the agent under this section unless CBP informs the agent of an alternative assignment based on the

circumstances described in paragraph (f) of § 550.1611. Such election must be submitted to CBP no later than 30 days after the agent begins a regular work assignment and, if approved by CBP, is effective on the first day of the first pay period beginning on or after the later of—

(1) The date the election was submitted; or

(2) The date the agent completed initial training.

(c) An individual who is newly hired as an agent during the period beginning on November 2 and ending on the day before the first day of the next annual period may make an election to take effect at the beginning of the next annual period notwithstanding the normally applicable December 1 election deadline, if the agent will not be in initial training status on the first day of the annual period. Such election must be submitted no later than 30 days after receiving election information, but before the first day of the annual period. Such an election is subject to the same requirements and conditions that apply to an election for an annual period under paragraphs (e) and (f) of § 550.1611. If such election is not made, CBP must assign the agent a Level 1 regular tour of duty with a 25 percent overtime supplement for the next annual period, except under applicable circumstances described in paragraph (f) of § 550.1611.

(d) CBP may change an agent's assigned regular tour of duty during an annual period under the circumstances described in paragraph (f) of § 550.1611 or paragraph (b) of § 550.1622. For example, an agent's regular tour of duty may be changed one or more times during an annual period as necessary to comply with the pay assignment continuity provision described in § 550.1611(f)(5).

§ 550.1613 Selection of agents for assignment.

If application of paragraphs (f)(3) and (4) of § 550.1611 (or application of those paragraphs through § 550.1612) requires CBP to select agents for assignment to a particular regular tour of duty out of a pool of agents who prefer a different assignment, CBP must make any such selection consistent with an established written plan that includes the criteria that will be considered and the priority of those criteria. Such plan must be consistent with the requirements of this subpart.

§ 550.1614 Limit on percentage of agents who do not have a Level 1 regular tour of duty.

(a) CBP must take such action as is necessary, including unilateral assignment of agents to a Level 1 regular tour of duty, to ensure that not more than 10 percent of agents stationed at a location are assigned to a Level 2 regular tour of duty or a Basic regular tour of duty, as required by 5 U.S.C. 5550(b)(1)(E), notwithstanding any other provision of law or this subpart, except as provided by paragraphs (b), (c), and (d) of this section. For the purpose of this paragraph, the term ''location'' means a Border Patrol sector, which includes all subordinate organizational structures and related geographic areas within the sector (*e.g.,* stations).

(b) CBP may waive the 10 percent limit in paragraph (a) of this section and apply a higher percentage limit if CBP determines it is able to adequately fulfill its operational requirements under that higher limit based on a comprehensive staffing analysis conducted for the agent's duty station under section 2(e) of the Border Patrol Agent Pay Reform Act of 2014 (Pub. L. 113–277).

(c) The 10 percent limit in paragraph (a) does not apply to agents working at CBP headquarters or at a CBP training location.

(d) Regardless of the percentage limits set under this section, assignments of regular tours of duty to individual agents must be made consistent with the requirement to ensure pay assignment continuity under § 550.1615.

§ 550.1615 Pay assignment continuity.

(a) *Plan.* (1) In consultation with OPM, CBP must develop and implement a plan to ensure, to the greatest extent practicable, that the assignment of a regular tour of duty to an agent during all consecutive 3-year periods within the control period specified in paragraph (b) of this section produces an average overtime supplement percentage (during each 3-year period) that is consistent with the agent's average overtime supplement percentage during the course of the agent's career prior to the beginning of that control period, subject to paragraph (c) of this section. The goal of this plan is to ensure that agents are not able to artificially enhance their retirement annuities during the period when the high-3 average pay may be determined (in accordance with 5 U.S.C. 8331(4) or 5 U.S.C. 8401(3)).

(2) In applying paragraph (a)(1) of this section, an agent's assigned overtime supplement percentage (25 percent, 12.5 percent, or 0 percent) must be used in computing the career average supplement regardless of whether or not the payable amount of the overtime supplement is limited by a premium pay cap established under 5 U.S.C. 5547 and §§ 550.105 and 550.107.

(3) For purpose of computing the career average overtime supplement percentage, an agent's career is considered to encompass only those periods during which the agent was covered by this subpart. If an agent is in a control period specified in paragraph (b) of this section when the provisions of this subpart first become applicable to the agent, the agent's initially assigned overtime supplement percentage must be considered the agent's career average.

(b) *Control period.* The period of time during which CBP must control an agent's assignment to a regular tour of duty begins on the date 3 years before the agent meets age and service requirements for an immediate retirement and remains in effect during all subsequent service in a Border Patrol agent position.

(c) *Consistency requirement.* (1) The consistency requirement in paragraph (a) of this section is considered to be met when the agent's average overtime supplement percentage during all consecutive 3-year periods within the control period specified in paragraph (b) of this section is within 2.5 percentage points of the agent's average overtime supplement percentage during the course of the agent's career prior to the beginning of that control period, except as provided in paragraph (c)(2) of this section.

(2) Notwithstanding the consistency requirement in paragraph (a) of this section, the CBP plan may allow an agent to be assigned a regular tour of duty that provides an overtime supplement percentage that is less than that necessary to produce an average percentage (during all consecutive 3-year periods within the control period specified in paragraph (b)) that is consistent with the agent's career average percentage if—

(i) The agent's overtime supplement is limited by the premium pay cap under §§ 550.105 and 550.107 and the agent voluntarily elects a regular tour of duty providing such a lesser overtime supplement percentage that is approved by CBP; or

(ii) CBP determines an agent is unable to perform overtime on a daily basis due to a physical or medical condition affecting the agent and assigns the agent a Basic regular tour of duty, as described in § 550.1611(f)(2), (but only to the extent such assignment makes it impossible to satisfy the consistency requirement during any given consecutive 3-year period).

(d) *CBP authority.* (1) CBP may take such action as is necessary, including the unilateral assignment of a regular tour of duty to implement the plan

described in paragraph (a) of this section, except as provided in paragraph (d)(2) of this section.

(2) Notwithstanding the requirements of 5 U.S.C. 5550(b)(1)(G) and this section, CBP is authorized to assign agents to regular tours of duty as necessary to meet operational requirements.

(e) *Reporting requirements*—(1) *Annual data reporting for agents subject to pay assignment continuity.* For each agent within the control period specified in paragraph (b) of this section, CBP must provide to OPM no later than March 30th of each year the following information (in a format specified by OPM) based on data compiled through the end of the most recent annual period:

(i) The date the agent became subject to controls on the assignment to a regular tour of duty;

(ii) The date the agent will become subject to mandatory separation under 5 U.S.C. 8335(b) or 5 U.S.C. 8425(b);

(iii) The service computation date based on eligibility under 5 U.S.C. 8336(c) or 5 U.S.C. 8412(d);

(iv) The average overtime supplement percentage during the course of the agent's career prior to the beginning of the control period specified in paragraph (b);

(v) The average overtime supplement percentage for the time period beginning with the date the agent became subject to controls on the assignment to a regular tour of duty and ending on the last day of the most recent annual period;

(vi) The average overtime supplement percentage for the last three annual periods (excluding any time that was not within a control period specified in paragraph (b) of this section);

(vii) The average overtime supplement percentage for the most recent annual period (excluding any time that was not within a control period specified in paragraph (b) of this section), and;

(viii) Any other information requested by OPM.

(2) *Annual data reporting for all agents.* No later than March 30th of each year, CBP must provide to OPM the following information (in a format specified by OPM) for each agent compiled for the preceding calendar year based on salary payments made during that year:

(i) The amount of earnings subject to retirement deductions, including overtime supplement payments, received during the most recent calendar year;

(ii) The amount of earnings subject to retirement deductions during the most recent calendar year minus the total amount of the overtime supplement payments during that year;

(iii) The service computation date computed as though law enforcement officer service is regular employee service (*i.e.,* the ''regular'' SCD);

(iv) The service computation date computed with credit for law enforcement officer service, and any other service creditable for eligibility under 5 U.S.C. 8336(c) or 5 U.S.C. 8412(d) (*i.e.,* the ''LEO'' SCD);

(v) Date of birth;

(vi) Gender;

(vii) Retirement system (*e.g.,* CSRS, FERS, FERS–RAE, FERS–FRAE); and

(viii) Any other information requested by OPM.

(3) *Additional data.* CBP must provide additional data as requested by OPM at any time, including data on the percentage rate of administratively uncontrollable overtime under § 550.154 during the period before the annual period that begins in January 2016.

(f) *Corrective actions.* If it is determined that the consistency requirement described in paragraphs (a) and (c) of this section is not being met for a particular agent, CBP must document why the differential occurred and establish any necessary actions, including the modification of the plan described in paragraph (a) of this section, to ensure that the goal of pay assignment continuity is achieved going forward. CBP is not required to retroactively correct an agent's assigned tour or overtime supplement based on violation of the consistency requirement, except when CBP determines there exists, in connection with an agent's assigned overtime supplement, evidence of fraud, misrepresentation, fault, or lack of good faith on the part of that agent.

§ 550.1616 Corrective actions.

If it is determined that CBP did not comply with applicable statutory or regulatory requirements in assigning an agent to a regular tour of duty under §§ 550.1611 through 550.1614, CBP must take corrective action as soon as practicable. Such corrective action must be applied on a prospective basis. CBP is not required to retroactively change an agent's assigned tour or overtime supplement, except when CBP determines there exists, in connection with the agent's tour assignment, evidence of fraud, misrepresentation, fault, or lack of good faith on the part of that agent.

Treatment of Overtime Work

§ 550.1621 Rules for types of regular tour of duty.

(a) *Level 1 regular tour of duty.* For an agent with a Level 1 regular tour of duty and a 25 percent overtime supplement, the following rules apply:

(1) The agent has an officially established weekly regular tour of duty generally consisting of five 10-hour workdays (an 8-hour basic workday and 2 regularly scheduled overtime hours);

(2) The agent's 8-hour basic workday (regular time) may be interrupted by an unpaid off-duty meal break;

(3) The obligation to perform 2 hours of overtime work on a day including part of the agent's regular tour of duty does not apply if the agent performs no work during regular time on that day, subject to paragraph (e) of this section;

(4) As compensation for regularly scheduled overtime hours within the regular tour of duty, the agent is entitled to an overtime supplement equal to 25 percent of the agent's hourly rate of basic pay times the number of paid hours of regular time for the agent in the pay period (subject to the premium cap in §§ 550.105 and 550.107 and the restriction in § 550.1626(a)(5)), and no additional compensation or compensatory time off may be provided for such overtime hours;

(5) For any additional regularly scheduled overtime hours outside the regular tour of duty, the agent is entitled to overtime pay as provided in § 550.1624, except as otherwise provided by § 550.1626;

(6) For any irregular overtime hours, the agent is entitled to be credited with compensatory time off as provided in § 550.1625, except as otherwise provided by § 550.1626;

(7) The agent must be charged corresponding amounts of paid leave, compensatory time off, other paid time off, or time in nonpay status for each hour (or part thereof) the agent is absent from duty during regular time, as provided in § 550.1634, except as otherwise provided in § 550.1626(a); and

(8) If the agent is absent during regularly scheduled overtime hours within the agent's regular tour of duty that the agent is obligated to work, the agent accrues an obligation to perform other overtime work for each hour (or part thereof) the agent is absent, and such obligation must be satisfied as provided in § 550.1626.

(b) *Level 2 regular tour of duty.* For an agent with a Level 2 regular tour of duty and a 12.5 percent overtime supplement, the following rules apply:

(1) The agent has an officially established weekly regular tour of duty generally consisting of five 9-hour workdays (an 8-hour basic workday and 1 regularly scheduled overtime hour);

(2) The agent's 8-hour basic workday (regular time) may be interrupted by an unpaid off-duty meal break;

(3) The obligation to perform 1 hour of overtime work on a day including part of the agent's regular tour of duty does not apply if the agent performs no work during regular time on that day, subject to paragraph (e) of this section;

(4) As compensation for regularly scheduled overtime hours within the regular tour of duty, the agent receives an overtime supplement equal to 12.5 percent of the agent's hourly rate of basic pay times the number of paid hours of regular time for the agent in the pay period (subject to the premium cap in §§ 550.105 and 550.107 and the restriction in § 550.1626(a)(5)), and no additional compensation or compensatory time off may be provided for such overtime hours;

(5) For any additional regularly scheduled overtime hours outside the regular tour of duty, the agent is entitled to overtime pay as provided in § 550.1624, except as otherwise provided by § 550.1626;

(6) For any irregular overtime hours, the agent is entitled to be credited with compensatory time off as provided in § 550.1625, except as otherwise provided by § 550.1626;

(7) The agent must be charged corresponding amounts of paid leave, compensatory time off, other paid time off, or time in nonpay status for each hour (or part thereof) the agent is absent from duty during regular time, as provided in § 550.1634, except as otherwise provided in § 550.1626(a); and

(8) If the agent is absent during regularly scheduled overtime hours within the agent's regular tour of duty that the agent is obligated to work, the agent accrues an obligation to perform other overtime work for each hour (or part thereof) the agent is absent, and such obligation must be satisfied as provided in § 550.1626.

(c) *Basic regular tour of duty.* For an agent with a Basic regular tour of duty that includes no scheduled overtime hours and provides no overtime supplement, the following rules apply:

(1) The agent has an officially established weekly regular tour of duty generally consisting of five 8-hour basic workdays;

(2) The agent's 8-hour basic workday (regular time) may be interrupted by an unpaid off-duty meal break;

(3) For any regularly scheduled overtime hours, the agent is entitled to overtime pay as provided in § 550.1624, except as otherwise provided by § 550.1626;

(4) For any irregular overtime hours, the agent is entitled to be credited with compensatory time off as provided in § 550.1625, except as otherwise provided by § 550.1626; and

(5) The agent must be charged corresponding amounts of paid leave, compensatory time off, other paid time off, or time in nonpay status for each hour (or part thereof) the agent is absent from duty during regular time, as provided in § 550.1634, except as otherwise provided in § 550.1626(a).

(d) *Effect of premium pay cap.* If a premium pay cap established under 5 U.S.C. 5547 and §§ 550.105 and 550.107 limits payment of an overtime supplement or regularly scheduled overtime pay, or limits crediting of compensatory time off, the affected agent is still required to perform assigned overtime work.

(e) *Meaning of ''work''.* In applying paragraphs (a)(3) and (b)(3) of this section, the term ''work'' refers to paid hours of work, consistent with § 550.112, except that paid leave and other paid time off when an agent is excused from duty are not considered to be work hours. Official time under 5 U.S.C. 7131 during regular time is considered to be paid hours of ''work'' during the time an employee otherwise would be in a duty status.

§ 550.1622 Circumstances requiring special treatment.

(a) *General.* The rules in paragraphs (b) and (c) of this section provide for special treatment based on specified circumstances and apply notwithstanding any other provision of this subpart.

(b) *Advanced training.* (1) During the first 60 days of advanced training in a calendar year, an agent's assigned regular tour of duty must be considered to continue and the agent must be deemed to have worked during any nonwork period within obligated overtime hours for the purpose of determining the agent's total hours to be compared to the applicable overtime threshold (as provided in § 550.1623(a)(2)(iv)), except as provided under paragraph (b)(2) of this section.

(2) If an agent, during the period covered by paragraph (b)(1) of this section, performs creditable overtime work outside the agent's regular tour of duty on a day when the agent performed less than the required amount of obligated overtime work, the overtime work outside the regular tour of duty must be applied towards the obligated overtime hours, as provided in § 550.1626(b). After any such substitution, CBP must credit the agent with hours of work for any remaining nonwork time during obligated overtime hours on the same day for the purpose of determining the agent's total hours to be compared to the applicable overtime threshold. For example, if an agent performs 2 creditable hours of regularly scheduled overtime work outside the agent's Level 1 regular tour of duty on a training day when the agent performed half an hour of work during the 2 hours of obligated overtime, CBP would substitute 1.5 hours of regularly scheduled overtime outside the regular tour of duty for 1.5 hours of obligated overtime when no work was performed. CBP would not provide the agent with any credit for nonwork hours under paragraph (b)(1) of this section, since the 0.5 hours of actual work plus the 1.5 substituted hours account for the entire 2-hour period. The agent would be paid for the unsubstituted half hour of creditable regularly scheduled overtime work under § 550.1624.

(3) For days of advanced training in excess of 60 days in a calendar year, an agent must be assigned a Basic regular tour of duty and be treated accordingly. If this results in a hybrid pay period in which an agent has two types of regular tours of duty within the same biweekly pay period, CBP must determine the number of overtime hours outside the regular tour of duty as provided in § 550.1623(c). For an agent who is assigned a Basic regular tour of duty during advanced training under this paragraph, CBP must change the agent's regular tour of duty to the type in effect before the Basic tour was assigned when the agent is no longer participating in advanced training.

(4) Paragraphs (b)(1) through (3) of this section apply solely to advanced training that is provided in whole-workday increments (*i.e.,* covering an entire 8-hour basic workday).

(c) *Canine care.* For an agent assigned to provide care for a canine and assigned to the Level 1 regular tour of duty border patrol rate of pay, the combined sum of basic pay plus the 25 percent overtime supplement is considered to provide compensation for all canine care. Such an agent must be credited with 1 hour of regularly scheduled overtime work as part of the regular tour of duty on each day containing a part of that tour, without regard to the actual duration of such care or the time and day when such care was actually provided. That leaves the agent with an additional obligation to perform 1 other hour of regularly

scheduled overtime work as part of the agent's regular tour of duty on any day containing a part of the employee's tour, if the agent performs work during regular time on that day and thus has obligated overtime hours. An agent may receive no other compensation or compensatory time off for hours of canine care beyond what is specifically provided under this paragraph. If an agent is generally assigned to provide care for a canine, but is temporarily relieved of that duty for any reason (*e.g.,* no dog available), the agent may not receive the 1-hour credit for canine care on a day when the agent is relieved from providing canine care.

§ 550.1623 Overtime work outside the regular tour of duty.

(a) *General.* (1) For the purpose of determining hours of overtime work outside an agent's regular tour of duty in order to apply §§ 550.1624, 550.1625, and 550.1626, CBP must apply the applicable biweekly overtime threshold prescribed in paragraphs (b) and (c) of this section. An agent's total hours of work (as determined under paragraph (a)(2) of this section) must be compared to the applicable threshold, and hours in excess of that threshold are overtime hours in applying §§ 550.1624, 550.1625, and 550.1626. The 8-hour daily and 40-hour weekly overtime thresholds under 5 U.S.C. 5542(a) and § 550.111 are not applicable to agents.

(2) An agent's total hours of work in a pay period for the purpose of applying applicable overtime thresholds is equal to the sum of:

(i) Time determined to be hours of work in duty status (regular time or overtime), subject to this subpart, 5 U.S.C. 4109 and 5 CFR 410.402 (related to training periods), and 5 U.S.C. 5542(b) and § 550.112 (establishing general rules), except that paragraphs (d) and (e) of § 550.112 are superseded by § 550.1626;

(ii) Paid leave or other paid time off during a period of nonduty status within an agent's regular time;

(iii) Obligated overtime hours during which no work is performed (creating a debt of hours) and for which no substitution is made under § 550.1626(b);

(iv) Nonwork hours deemed to be hours of work during obligated overtime hours on a day of advanced training under § 550.1622(b); and

(v) Overtime hours normally scheduled within an agent's regular tour of duty that an agent is not obligated to work because the agent performs no work during regular time on that day (as provided in paragraphs (a)(3) and (b)(3) of § 550.1621).

(b) *Overtime thresholds for standard tours.* (1) The applicable biweekly overtime threshold prescribed in paragraph (b)(2) of this section applies during a pay period to an agent whose regular tour of duty is fixed at one of the three standard tours for the entire pay period.

(2) For an agent covered by paragraph (b)(1) of this section, the threshold used to determine whether an agent has performed overtime work outside the regular tour of duty in a given pay period is—

(1) 100 hours for a Level 1 regular tour of duty;

(2) 90 hours for a Level 2 regular tour of duty; or

(3) 80 hours for a Basic regular tour of duty.

(c) *Overtime threshold for hybrid pay period.* (1) For a hybrid pay period in which an agent has one type of regular tour of duty in effect for one part of the period and another type for another part of the period, the threshold used to determine whether an agent has performed overtime work outside the regular tour of duty in a given pay period is equal to the sum of the regular time hours (paid or unpaid) and the number of normally scheduled overtime hours within a regular tour of duty (whether obligated or not and whether worked or not) in the pay period. For example, if an agent has a Level 1 regular tour of duty in the first week of a pay period and a Level 2 regular tour of duty in the second week, the agent's regular time hours would be 40 in the first week and 40 in the second week and the normally scheduled overtime hours within a regular tour of duty would be 10 (5 days times 2 hours each day) in the first week and 5 (5 days times 1 hour each day) in second week, resulting in an biweekly overtime threshold of 95 hours.

(2) For a hybrid pay period in which an individual is employed as a Border Patrol agent for only part of the pay period, the threshold used to determine whether an agent has performed overtime work outside the regular tour of duty in a given pay period is equal to the sum of the paid regular time hours (paid or unpaid) and the number of normally scheduled overtime hours within a regular tour of duty (whether obligated or not and whether worked or not) during the portion of the pay period the individual was employed as an agent. For example, if an individual is employed as an agent only during the second week of a pay period and has a Level 1 regular tour of duty, the overtime threshold would be 50 hours in determining whether the agent has overtime hours in that week that are compensable under §§ 550.1624 through 550.1626.

§ 550.1624 Regularly scheduled overtime outside the regular tour of duty.

(a) *Coverage.* Any regularly scheduled overtime hours outside an agent's regular tour of duty, as specified in § 550.1623, are covered by this section, except that such hours are excluded from coverage under this section when required by the superseding provisions in § 550.1626.

(b) *Rates.* Agents receive overtime pay at the rates specified under 5 U.S.C. 5542(a) and § 550.113 for regularly scheduled overtime hours covered by paragraph (a) of this section, subject to the premium pay limitation established under 5 U.S.C. 5547 and §§ 550.105 and 550.107. An agent's rate of basic pay (without any overtime supplement) is used in computing overtime pay for such hours.

(c) *Avoiding additional regularly scheduled overtime.* (1) As required by section 2(c)(2) of the Border Patrol Agent Pay Reform Act of 2014 (Pub. L. 113–277), CBP must, to the maximum extent practicable, avoid the use of regularly scheduled overtime work by agents outside of the regular tour of duty.

(2) Notwithstanding paragraph (c)(1) of this section, CBP may allow use of regularly scheduled overtime work outside an agent's regular tour of duty if an agent volunteers to perform such overtime (*e.g.,* to reduce an overtime hours debt).

§ 550.1625 Irregular overtime and compensatory time off.

(a) *Coverage.* An agent is entitled to compensatory time off as provided in this section for irregular overtime hours outside an agent's regular tour of duty, as specified in § 550.1623, except that such hours are excluded from coverage under this section (except paragraph (c) of this section) when required by the superseding provisions in § 550.1626. The compensatory time off provisions in 5 U.S.C. 5543 and 5 CFR 550.114 are not applicable to an agent.

(b) *Earning on an hour-for-hour basis for irregular overtime.* Subject to the limitations specified in this section and the superseding provisions in § 550.1626, an agent must receive compensatory time off for an equal amount of time spent performing irregular overtime work.

(c) *Call-back overtime work.* Notwithstanding paragraph (b) of this section, consistent with 5 U.S.C. 5542(b)(1) and § 550.112(h), an agent must be deemed to have performed 2 hours of irregular overtime work for a

lesser amount of irregular overtime work if—

(1) An agent is required perform such work on a day when the agent was not scheduled to work; or

(2) An agent is required to return to the agent's place of employment to perform such work.

(d) *Earning limited by premium pay cap.* An agent may not be credited with earning compensatory time off if the value of such time off would cause the sum of the agent's basic pay and premium pay in the given pay period to exceed the limitation established under 5 U.S.C. 5547 and §§ 550.105 and 550.107 in the period in which it was earned. The dollar value of compensatory time for the purpose of this paragraph is the amount of overtime pay the agent would have received for the period during which compensatory time off was earned if the overtime had been regularly scheduled outside the agent's regular tour of duty.

(e) *Pay period limit.* (1) An agent may not earn more than 10 hours of compensatory time off during any pay period unless—

(i) CBP, as it determines appropriate, approves in writing a waiver of the 10-hour limit; and

(ii) Such waiver approval is executed in advance of the performance of any work for which compensatory time off is earned.

(2) If a waiver of the 10-hour limit described in paragraph (e)(1) of this section is not granted, the agent involved may not be ordered to perform the associated overtime work.

(f) *Annual period limit.* An agent may not earn more than 240 hours of compensatory time off during an annual period.

(g) *Usage.* (1) An agent may use compensatory time off by being excused from duty during regular time (in an amount equal to the compensatory time being used) during the agent's basic workweek.

(2) An agent's balance of unused compensatory time off is used to satisfy an overtime hours debt, as provided in § 550.1626(c)(1).

(h) *Time limit for usage and forfeiture.* An agent must use any hours of compensatory time off not later than the end of the 26th pay period after the pay period during which the compensatory time off was earned. Any compensatory time off not used within that time limit, or prior to separation from an agent position, is forfeited and not available for any purpose, regardless of the circumstances. An agent may not receive any cash value for unused compensatory time off. An agent may not receive credit towards the computation of the agent's retirement annuity for unused compensatory time off.

§ 550.1626 Leave without pay during regular time and absences during obligated overtime hours.

(a) *Substitution for leave without pay during regular time.* (1) For any period of leave without pay during an agent's regular time (basic workweek), an equal period of work outside the agent's regular time in the same pay period must be substituted to the extent such work was performed. Any time substituted for leave without pay must be treated for all pay computation purposes as if it were regular time (except as provided in paragraph (a)(5) of this section) and may not be considered an overtime hour of work for any purpose, including §§ 550.1621(a)(4) and (b)(4), 550.1624, and 550.1625.

(2) Hours of work must be substituted for regular time work under paragraph (a)(1) of this section before being substituted for regularly scheduled overtime within the agent's regular tour of duty under paragraph (b) of this section.

(3) Hours used for substitution under paragraph (a)(1) of this section must be substituted in the following priority order: First, irregular overtime hours; second, regularly scheduled overtime hours outside the regular tour of duty; and third, regularly scheduled overtime hours within the regular tour of duty.

(4) The substitution of overtime hours for leave without pay is solely for pay computation purposes. The substitution does not change the hours of an agent's basic workweek or the fact that the agent was in a particular type of nonpay status during those hours. The hours that are substituted are considered to have been performed when they were worked, not during the leave without pay hours for which they are substituted. For example, if an agent performs 4 hours of overtime work outside the agent's regular tour of duty during the first week of a pay period and then is placed in leave without pay during the second week due to a shutdown furlough caused by a lapse in appropriations, the 4 hours may be substituted for furlough hours for the purpose of computing pay owed the agent for the week before the furlough began.

(5) If overtime hours are substituted for an absence without approval (AWOL) or a suspension, the basic pay for such substituted hours may not be used in computing an agent's overtime supplement.

(b) *Substitution for absences during obligated overtime hours within the regular tour of duty.* (1) For a period of absence during obligated overtime hours within an agent's regular tour of duty, an equal period of work outside the agent's regular tour of duty in the same pay period must be substituted to the extent such work was performed. Any time so substituted must be treated for all pay computation purposes as if it were obligated overtime work and may not be considered an overtime hour of work for any other purpose, including §§ 550.1624 and 550.1625.

(2) In substituting hours of work under paragraph (b)(1) of this section, work performed on the same day as the period of absence must be substituted first in circumstances described in § 550.1622(b)(2). Hours substituted under this paragraph must be substituted in the following priority order: First, irregular overtime hours; and second, regularly scheduled overtime hours outside the regular tour of duty.

(3) After substituting hours under paragraph (b)(2) of this section, any remaining hours used for substitution under paragraph (b)(1) of this section must be substituted in the following priority order: First, irregular overtime hours; and second, regularly scheduled overtime hours outside the regular tour of duty.

(4) The substitution of overtime hours outside the regular tour of duty for obligated overtime hours not worked is solely for pay computation purposes. The substitution does not change the hours of an agent's regular tour of duty. The hours that are substituted are considered to have been performed when they were worked, not during the obligated overtime hours for which they are substituted.

(c) *Application of compensatory time off or future overtime work to offset overtime hours debt.* (1) If a Border Patrol agent does not have sufficient additional work in a pay period to substitute for all periods of absence during obligated overtime hours within the agent's regular tour of duty for that pay period, any unused balance of compensatory time off hours previously earned under § 550.1625 must be applied towards the newly accrued overtime hours debt.

(2) If an agent has a remaining overtime hours debt after applying paragraphs (b) and (c)(1) of this section, any additional overtime work outside the agent's regular tour of duty in subsequent pay periods that would otherwise be credited under §§ 550.1624 or section 550.1625 must be applied towards the overtime hours debt until

that debt is satisfied. The application of such hours must be done in the following priority order: First, irregular overtime hours; and second, regularly scheduled overtime hours outside the regular tour of duty. Any overtime hour applied under this paragraph (c)(2) may not be considered an overtime hour of work for any other purpose.

(d) *Unsatisfied overtime hours debt at transfer or separation.* Any unsatisfied overtime hours debt that exists at the time of transfer to a non-agent position or separation from Federal service must be converted to a monetary debt equal to the result of multiplying the agent's hourly rate of basic pay at the time of separation or transfer by the number of hours in the overtime hours debt. CBP must follow standard debt collection procedures to recover any debt.

Relationship to Other Provisions

§ 550.1631 Other types of premium pay.

(a) An agent may not receive premium pay for night, Sunday, or holiday work for hours of regularly scheduled overtime work within the agent's regular tour of duty.

(b) An agent may receive premium pay for night, Sunday, or holiday work, as applicable, for hours not covered by paragraph (a) of this section, in accordance with 5 U.S.C. 5545(a) and (b) and section 5546 and corresponding regulations, except that section 5546(d) does not apply. (Contrary to section 5546(d), for an agent, pay for overtime work on a Sunday or holiday is determined under 5 U.S.C. 5542(g), not under section 5546(d).) The agent's rate of basic pay (without any overtime supplement) must be used in computing such premium payments.

(c) An agent may not be paid standby duty premium pay under 5 U.S.C. 5545(c)(1) or administratively uncontrollable overtime pay under 5 U.S.C. 5545(c)(2).

§ 550.1632 Hazardous duty pay.

An agent is eligible for hazardous duty pay, subject to the requirements in 5 U.S.C. 5545(d) and subpart I of this part. The agent's rate of basic pay (without any overtime supplement) must be used in computing any hazardous duty pay.

§ 550.1633 Treatment of overtime supplement as basic pay.

Regularly scheduled overtime pay with an agent's regular tour of duty is treated as part of basic pay or basic salary only for the following purposes:

(a) 5 U.S.C. 5524a and 5 CFR part 550, subpart B, pertaining to advances in pay;

(b) 5 U.S.C. 5595(c) and 5 CFR part 550, subpart G, pertaining to severance pay;

(c) 5 U.S.C. 8114(e), pertaining to workers' compensation;

(d) 5 U.S.C. 8331(3) and 5 U.S.C. 8401(4) and related provisions that rely on the definition in those paragraphs, pertaining to retirement benefits;

(e) Subchapter III of chapter 84 of title 5, United States Code, pertaining to the Thrift Savings Plan;

(f) 5 U.S.C. 8704(c), pertaining to life insurance; and

(g) For any other purposes explicitly provided for by law or as the Office of Personnel Management may prescribe by other regulation.

§ 550.1634 Leave and other paid time off.

(a) An agent is subject to the rules governing leave accrual and usage under 5 U.S.C. chapter 63 on the same basis as other employees. The tour of duty for leave accrual and usage purposes is the basic workweek, which excludes regularly scheduled overtime hours within the regular tour of duty established under this subpart. The agent must be charged corresponding amounts of leave for each hour (or part thereof) the agent is absent from duty during regular time (except that full days off for military leave must be charged when required).

(b) An agent is subject to the normally applicable rules governing other types of paid time off (such as holiday time off under 5 U.S.C. chapter 61, compensatory time off for religious observances under subpart J of this part, or compensatory time off for travel under subpart N of this part) on the same basis as other covered employees. The tour of duty used in applying those rules is the basic workweek, which excludes regularly scheduled overtime hours within the regular tour of duty established under this subpart. The agent must be charged corresponding amounts of paid time off for each hour (or part thereof) the agent is absent from duty during regular time.

(c) In computing a lump-sum annual leave payment under 5 U.S.C. 5551–5552, an overtime supplement for an agent's regularly scheduled overtime hours within the agent's regular tour of duty is included, as provided in § 550.1205(b)(5)(iv).

§ 550.1635 Alternative work schedule.

An agent may not have a flexible or compressed work schedule under 5 U.S.C. chapter 61, subchapter II. The regular tour of duty established under this subpart is a special work schedule established under 5 U.S.C. 5550. CBP may allow flexible starting and stopping times for an agent's basic workday if it determines such flexibility is appropriate for the position in question.

§ 550.1636 Exemption from Fair Labor Standards Act.

The minimum wage and the hours of work and overtime pay provisions of the Fair Labor Standards Act do not apply to Border Patrol agents. (See also 5 CFR 551.217.)

§ 550.1637 Travel time.

(a) A Border Patrol agent's travel time to and from home and the agent's regular duty station (or to an alternative work location within the limits of the agent's official duty station, as defined in § 550.112(j)) may not be considered hours of work under any provision of law.

(b) Official travel time away from an agent's official duty station may be creditable hours of work as provided in § 550.112(g). When an agent travels directly between home and a temporary duty location outside the limits of the agent's official duty station (as defined in § 550.112(j)), the time the agent would have spent in normal home to work travel must be deducted from any creditable hours of work while traveling.

§ 550.1638 Official Time.

An agent who uses official time under 5 U.S.C. 7131 may be assigned to a Level 1 or Level 2 regular tour of duty, but is required to perform agency work during obligated overtime hours or to accrue an overtime hours debt. Official time may be used during overtime hours only when an event arises incident to representational functions that must be dealt with during the overtime hours. If CBP determines that an agent's official time duties during the basic workday make it impracticable to perform agency work during the scheduled obligated overtime hours, CBP must provide the agent with an opportunity to eliminate any overtime hours debt by working at another time. As provided in § 550.1621(e), official time during regular time is considered to be ''work'' when an agent otherwise would be in an duty status in applying paragraphs (a)(3) and (b)(3) of § 550.1621.

PART 551—PAY ADMINISTRATION UNDER THE FAIR LABOR STANDARDS ACT

■ 18. The authority citation for part 551 continues to read as follows:

Authority: 5 U.S.C. 5542(c); Sec. 4(f) of the Fair Labor Standards Act of 1938, as amended by Pub. L. 93–259, 88 Stat. 55 (29 U.S.C. 204f).

■ 19. In § 551.216, revise paragraph (c)(2) to read as follows:

Subpart B—Exemptions and Exclusions

* * * * *

§ 551.216 Law enforcement activities and 7(k) coverage for FLSA pay and exemption determinations.

* * * * *

(c) * * *

(2) Employees whose primary duties involve patrol and control functions performed for the purpose of detecting and apprehending persons suspected of violating criminal laws;

* * * * *

■ 20. Add § 551.217 to subpart B to read as follows:

§ 551.217 Exemption of Border Patrol agents.

A Border Patrol agent (as defined in 5 U.S.C. 5550(a)(2) and 5 CFR 550.1603) is exempt from the minimum wage and overtime provisions of the Act.

PART 870—FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM

■ 21. The authority citation for part 870 is revised to read as follows:

Authority: 5 U.S.C. 8704(c), 8716; Subpart J also issued under section 599C of Pub. L. 101–513, 104 Stat. 2064, as amended; Sec. 870.302(a)(3)(ii) also issued under section 153 of Pub. L. 104–134, 110 Stat. 1321; Sec. 870.302(a)(3) also issued under sections 11202(f), 11232(e), and 11246(b) and (c) of Pub. L. 105–33, 111 Stat. 251, and section 7(e) of Pub. L. 105–274, 112 Stat. 2419; Sec. 870.302(a)(3) also issued under section 145 of Pub. L. 106–522, 114 Stat. 2472; Secs. 870.302(b)(8), 870.601(a), and 870.602(b) also issued under Pub. L. 110–279, 122 Stat. 2604; Subpart E also issued under 5 U.S.C. 8702(c); Sec. 870.601(d)(3) also issued under 5 U.S.C. 8706(d); Sec. 870.703(e)(1) also issued under section 502 of Pub. L. 110–177, 121 Stat. 2542; Sec. 870.705 also issued under 5 U.S.C. 8714b(c) and 8714c(c); Pub. L. 104–106, 110 Stat. 521.

Subpart B—Types and Amount of Insurance

■ 22. In § 870.204, amend paragraph (a)(2) by removing the word ''and'' from the end of paragraph (x), removing the period at the end of paragraph (xi) and adding in its place ''; and'', and adding a new paragraph (xii) to read as follows:

§ 870.204 Annual rates of pay.

* * * * *

(a) * * *

(2) * * *

(xii) An overtime supplement for regularly scheduled overtime within a Border Patrol agent's regular tour of duty under 5 U.S.C. 5550 (as required by 5 U.S.C. 5550(d)).

* * * * *

[FR Doc. 2015–14809 Filed 6–16–15; 8:45 am]

BILLING CODE 6325–39–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[NRC–2014–0161]

RIN 3150–AJ43

Financial Qualifications for Reactor Licensing

AGENCY: Nuclear Regulatory Commission.

ACTION: Draft regulatory basis; public meeting and request for comment.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is soliciting public comment on a draft regulatory basis for a proposed rulemaking to amend the current financial qualification requirements of ''reasonable assurance'' to the review standard of ''appears to be financially qualified.'' The NRC plans to hold a public meeting to promote full understanding of this regulatory basis and facilitate public comment.

DATES: Submit comments by August 3, 2015. Comments received after this date will be considered if it is practical to do so, but the NRC is only able to ensure consideration of comments received on or before this date.

In addition to providing this opportunity to submit written (and electronic) comments, the NRC plans to hold a public meeting to discuss the draft regulatory basis for the proposed rulemaking on July 8, 2015. See Section V, ''Public Meeting,'' of this document for additional information regarding the public meeting.

ADDRESSES: You may submit comments by any of the following methods (unless this document describes a different method for submitting comments on a specific subject):

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0161. 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.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. (Eastern Time) Federal workdays; telephone: 301–415–1677.

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: Yanely Malave, telephone: 301–415–1519, email: *Yanely.Malave@nrc.gov; or* Carolyn Lauron, telephone: 301–415–2736, email: *Carolyn.Lauron@nrc.gov;* both of the Office of New Reactors, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2014–0161 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- *Federal rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2014–0161.
- *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 draft regulatory basis is available in ADAMS under Accession No. ML14324A706.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

B. Submitting Comments

Please include Docket ID NRC–2014–0161 in the subject line of your comment submission.

The NRC cautions you not to include identifying or contact information that

you do not want to be publicly disclosed in your comment submission. The NRC will post all comment submissions at *http://www.regulations.gov* as well as enter the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or entering the comment into ADAMS.

II. Discussion

The NRC is requesting comments on a draft regulatory basis to support a proposed rulemaking on financial qualifications for reactor licensing. The regulatory basis explains, in part, why the existing regulations should be updated. It also discusses cost and other impacts of the potential changes.

The specific objective of this proposed rulemaking would be to amend the current financial qualification requirements of ''reasonable assurance'' under 10 CFR part 50 to conform to the 10 CFR part 70 review standard of ''appears to be financially qualified.'' Specifically, the proposed rulemaking will remove the detailed requirements found in Appendix C of 10 CFR Part 50 and amend 10 CFR 50.33(f) to remove the requirement for a power reactor applicant to demonstrate that it possesses or can provide reasonable assurance of obtaining the funds necessary for construction and operation. In this proposed rulemaking, the applicant would be required to submit a plan describing how it will proceed to finance the construction and operation of the facility. The plan would ensure that the applicant has both a well-articulated understanding of the size of the project it is undertaking and the financial capacity to obtain the necessary financing before beginning reactor construction.

The proposed rulemaking would permit the NRC to issue licenses with conditions to applicants that may have insufficient (or no) funding at the outset of the license application review. The license conditions would be sufficient and specific to permit a simple, ministerial kind of review to ensure that the applicant's plan is executed before beginning reactor construction.

III. Specific Requests for Comments

The NRC requests that stakeholders consider the questions in Enclosure 2 of the draft regulatory basis. The questions, identified during development of the draft regulatory basis, cover the scope, objectives, implementation, and cost of a proposed rulemaking based on this regulatory basis.

IV. Cumulative Effects of Regulation

The Cumulative Effects of Regulation (CER) describes the challenges that licensees, or other impacted entities (such as State agency partners) may face while implementing new regulatory positions, programs, and requirements (*e.g.,* rules, generic letters, backfits, inspections). The CER is an organizational effectiveness challenge that results from a licensee or impacted entity implementing a number of complex positions, programs or requirements within a limited implementation period and with available resources (which may include limited available expertise to address a specific issue). The NRC has implemented CER enhancements to the rulemaking process to facilitate public involvement throughout the rulemaking process. Therefore, the NRC is specifically requesting comment on the cumulative effects that may result from this proposed rulemaking. In developing comments on the draft regulatory basis, consider the following questions:

(1) In light of any current or projected CER challenges, what should be a reasonable effective date, compliance date, or submittal date(s) from the time the final rule is published to the actual implementation of any new proposed requirements including changes to programs, procedures, or the facility?

(2) If current or projected CER challenges exist, what should be done to address this situation (*e.g.,* if more time is required to implement the new requirements, what period of time would be sufficient, and why such a time frame is necessary)?

(3) Do other regulatory actions (*e.g.,* orders, generic communications, license amendment requests, and inspection findings of a generic nature) by NRC or other agencies influence the implementation of the potential proposed requirements?

(4) Are there unintended consequences? Does the potential proposed action create conditions that would be contrary to the potential proposed action's purpose and objectives? If so, what are the consequences and how should they be addressed?

(5) Please provide information on the costs and benefits of the potential proposed action. This information will be used to support any regulatory analysis by the NRC.

V. Public Meeting

A public meeting will be held on July 8, 2015, from 1:00 p.m.–4:00 p.m. at the NRC Headquarters, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, Room O–4B6.

The purpose of the public meeting is to promote full understanding of this regulatory basis for the proposed rulemaking and to facilitate public comment. The NRC will not be accepting verbal or written comments at the public meeting. All comments must be submitted as indicated in the **ADDRESSES** section of this document.

Stakeholders should monitor the NRC's public meeting Web site for information about the public meeting at *http://www.nrc.gov/public-involve/public-meetings/index.cfm.*

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. The NRC has written this document to be consistent with the Plain Writing Act as well as the Presidential Memorandum, ''Plain Language in Government Writing,'' published June 10, 1998 (63 FR 31883). The NRC requests comment on this document with respect to the clarity and effectiveness of the language used.

Dated at Rockville, Maryland, this 9th day of June, 2015.

For the Nuclear Regulatory Commission.

Mark Tonacci,

Acting Director, Division of Advanced Reactors and Rulemaking, Office of New Reactors.

[FR Doc. 2015–14907 Filed 6–16–15; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–1658; Directorate Identifier 2015–NE–18–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all General Electric Company (GE) GEnx–1B turbofan engine models. This proposed AD was prompted by reports of GEnx–1B engine oil loss. This proposed AD would require removal and replacement of the non-conforming ball valve in the oil filler cap. We are proposing this AD to prevent loss of engine oil, which could lead to failure of one or more engines, loss of thrust control, and damage to the airplane.

DATES: We must receive comments on this proposed AD by August 17, 2015.

ADDRESSES: You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

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

For service information identified in this proposed AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *geae.aoc@ge.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–1658; or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Christopher McGuire, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7120; fax: 781–238–7199; email: *chris.mcguire@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2015–1658; Directorate Identifier 2015–NE–18–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We propose to adopt a new AD for all GE GEnx–1B turbofan engine models. This proposed AD was prompted by multiple reports of engine oil loss and resultant flight plan diversions. The root cause of the engine oil loss is a non-conforming ball valve in the secondary seal of the oil filler cap. The non-conforming ball valve may prevent correct sealing and lead to oil leakage. This proposed AD would require removal and replacement of the non-conforming ball valve in the oil filler cap. This condition, if not corrected, could result in loss of engine oil, which could lead to failure of one or more engines, loss of thrust control, and damage to the airplane.

Related Service Information

We reviewed GE GEnx–1B Service Bulletin (SB) No. 79–0022, Revision 1, dated May 13, 2015. The SB describes procedures for removing and replacing the ball valve in the oil filler cap.

FAA's Determination

We are proposing this AD because we evaluated all the relevant information and determined the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Proposed AD Requirements

This proposed AD would require removal and replacement of the non-conforming ball valve in the oil filler cap.

Costs of Compliance

We estimate that this proposed AD will affect 86 engines installed on airplanes of U.S. registry. We also estimate that it will take about 1 hour per engine to comply with this proposed AD. The average labor rate is $85 per hour. We estimate that replacement parts would cost $11 per engine. Based on these figures, we estimate the total cost of the proposed AD to U.S. operators to be $8,256.

Authority for This Rulemaking

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

We are issuing this rulemaking under the authority described in Subtitle VII, Part A, Subpart III, Section 44701: ''General requirements.'' Under that section, Congress charges the FAA with promoting safe flight of civil aircraft in air commerce by prescribing regulations for practices, methods, and procedures the Administrator finds necessary for safety in air commerce. This regulation is within the scope of that authority because it addresses an unsafe condition that is likely to exist or develop on products identified in this rulemaking action.

Regulatory Findings

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

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

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

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

(3) Will not affect intrastate aviation in Alaska to the extent that it justifies making a regulatory distinction, and

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD):

General Electric Company: Docket No. FAA–2015–1658; Directorate Identifier 2015–NE–18–AD.

(a) Comments Due Date

We must receive comments by August 17, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all General Electric Company (GE) GEnx–1B model turbofan engines with oil filler cap, part number (P/N) 2349M62G01, installed, that does not contain any of the following markings after the P/N on the oil filler cap: ''P/M BALL PP'', or ''RW'', or ''79–0022''.

(d) Unsafe Condition

This AD was prompted by reports of GEnx–1B engine oil loss. We are issuing this AD to prevent loss of engine oil, which could lead to failure of one or more engines, loss of thrust control, and damage to the airplane.

(e) Compliance

Comply with this AD within the compliance times specified, unless already done.

(1) Within 360 cycles in service after the effective date of this AD, remove the ball valve, P/N 2349M68P01, from affected oil filler cap and replace with a part eligible for installation.

(2) Reserved.

(f) Alternative Methods of Compliance (AMOCs)

The Manager, Engine Certification Office, FAA, may approve AMOCs to this AD. Use the procedures found in 14 CFR 39.19 to make your request. You may email your request to: *ANE-AD-AMOC@faa.gov.*

(g) Related Information

(1) For more information about this AD, contact Christopher McGuire, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7120; fax: 781–238–7199; email: *chris.mcguire@faa.gov.*

(2) GE GEnx–1B SB No. 79–0022, Revision 1, dated May 13, 2015 can be obtained from GE using the contact information in paragraph (g)(3) of this proposed AD.

(3) For service information identified in this proposed AD, contact General Electric Company, GE Aviation, Room 285, 1 Neumann Way, Cincinnati, OH 45215; phone: 513–552–3272; email: *geae.aoc@ge.com.*

(4) You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on June 4, 2015.

Robert J. Ganley,

Acting Directorate Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 2015–14695 Filed 6–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 774

[Docket No. 120105019–5328–01]

RIN 0694–AF52

Commerce Control List: Addition of Items Determined to No Longer Warrant Control Under United States Munitions List Category XIV (Toxicological Agents) or Category XVIII (Directed Energy Weapons)

AGENCY: Bureau of Industry and Security, Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule describes how articles the President determines no longer warrant control under Category XIV (Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment) or Category XVIII (Directed Energy Weapons) of the United States Munitions List (USML) would be controlled under the Commerce Control List (CCL). The affected Category XIV articles consist primarily of dissemination, detection and protection ''equipment'' and related articles and would be controlled under new Export Control Classification Numbers (ECCNs) 1A607, 1B607, 1C607, 1D607, and 1E607, as proposed by this rule. The affected Category XVIII articles consist primarily of tooling, production ''equipment,'' test and evaluation ''equipment,'' test models and related articles and would be controlled under new ECCNs 6B619, 6D619 and 6E619, as proposed by this rule.

This rule is one in a series of proposed rules describing how various types of articles that the President determines no longer warrant control on the USML, as part of the Administration's Export Control Reform Initiative, would be controlled on the CCL in accordance with the requirements of the Export Administration Regulations (EAR).

This proposed rule is being published by the Bureau of Industry and Security (BIS) in conjunction with a proposed rule from the Department of State, Directorate of Defense Trade Controls, which would amend the list of articles controlled by USML Categories XIV and XVIII. The citations in this BIS proposed rule to USML Categories XIV and XVIII reflect the proposed amendments contained in the Department of State's rule. The revisions proposed by BIS in this rule are part of Commerce's retrospective regulatory review plan under Executive Order 13563 completed in August 2011.

DATES: Comments must be received by August 17, 2015.

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

- *Federal eRulemaking Portal: http://www.regulations.gov.* The identification number for this rulemaking is BIS–2015–0023.
- By email directly to *publiccomments@bis.doc.gov.* Include RIN 0694–AF52 in the subject line.
- By mail or delivery to Regulatory Policy Division, Bureau of Industry and Security, U.S. Department of Commerce, Room 2099B, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Refer to RIN 0694–AF52.

FOR FURTHER INFORMATION CONTACT: For questions regarding dissemination, detection and protection ''equipment'' and related articles that would be controlled under new ECCNs 1A607, 1B607, 1C607, 1D607, and 1E607, contact Richard P. Duncan, Ph.D., Director, Chemical and Biological Controls Division, Office of Nonproliferation and Treaty Compliance, Bureau of Industry and Security, telephone: (202) 482–3343, email: *Richard.Duncan@bis.doc.gov.*

For questions regarding tooling, production ''equipment,'' test and evaluation ''equipment'' and test models that would be controlled under new ECCNs 6B619, 6D619 and 6E619, contact Mark Jaso, Sensors and Aviation Division, Office of National Security & Technology Transfer Controls, Bureau of Industry and Security, telephone: (202)

482–0987, email: *Mark.Jaso@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

This proposed rule is published by the Bureau of Industry and Security (BIS) as part of the Administration's Export Control Reform (ECR) Initiative, the object of which is to protect and enhance U.S. national security interests. The implementation of the ECR includes amendment of the International Traffic in Arms Regulations (ITAR) and its U.S. Munitions List (USML), so that they control only those items that provide the United States with a critical military or intelligence advantage or otherwise warrant such controls, and amendment of the Export Administration Regulations (EAR) to control military items that do not warrant USML controls. This series of amendments to the ITAR and the EAR will reform the U.S. export control system to enhance our national security by: (i) improving the interoperability of U.S. military forces with allied countries; (ii) strengthening the U.S. industrial base by, among other things, reducing incentives for foreign manufacturers to design out and avoid U.S.-origin content and services; and (iii) allowing export control officials to focus government resources on transactions that pose greater national security, foreign policy, or proliferation concerns than those involving our NATO allies and other multi-regime partners.

Following the structure set forth in the final rule titled ''Revisions to the Export Administration Regulations: Initial Implementation of Export Control Reform'' (78 FR 22660, April 16, 2013) (hereinafter the ''April 16 (initial implementation) rule''), this proposed rule describes BIS's proposal for controlling under the EAR's CCL certain dissemination, detection and protection ''equipment'' and related articles currently controlled under USML Category XIV in the ITAR and certain tooling, production ''equipment,'' test and evaluation ''equipment,'' test models and related articles currently controlled under USML Category XVIII of the ITAR.

In the April 16 (initial implementation) rule, BIS created a series of new ECCNs to control items that would be removed from the USML and similar items from the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual Use Goods and Technologies Munitions List (Wassenaar Arrangement Munitions List or WAML) that were already controlled elsewhere on the CCL. That final rule referred to this series of new ECCNs as the ''600 series,'' because the third character in each of these new ECCNs is the number ''6.'' The first two characters of the ''600 series'' ECCNs serve the same function as any other ECCN as described in § 738.2 of the EAR. The first character is a number, within the range of 0 through 9, that identifies the Category on the CCL in which the ECCN is located. The second character is a letter, within the range of A through E, that identifies the product group in a CCL Category. As indicated above, the third character in the ''600 series'' ECCNs is the number ''6,'' which distinguishes the items controlled under this series of ECCNs from items identified under other ECCNs on the CCL. With few exceptions, the final two characters identify the WAML category that covers items that are the same or similar to items in a particular ''600 series'' ECCN.

Pursuant to section 38(f) of the Arms Export Control Act (AECA), the President is obligated to review the USML ''to determine what items, if any, no longer warrant export controls under'' the AECA. The President must report the results of the review to Congress and wait 30 days before removing any such items from the USML. The report must ''describe the nature of any controls to be imposed on that item under any other provision of law.'' 22 U.S. C. 2778(f)(1).

The changes proposed in this rule and the State Department's companion rule to Categories XIV and XVIII of the USML are based on a review of these USML Categories by the Defense Department, which worked with the Departments of State and Commerce in preparing the proposed amendments. The review focused on identifying the types of articles that are now controlled by USML Category XIV or Category XVIII that are either: (i) inherently military and otherwise warrant control on the USML; or (ii) of a type common to civil applications, possessing parameters or characteristics that provide a critical military or intelligence advantage to the United States, and are almost exclusively available from the United States. If an article was found to satisfy either or both of these criteria, the article remains on the USML. If an article was found not to satisfy either criterion, but is nonetheless a type of article that is ''specially designed'' for military applications, then, generally, it is identified in one of the new ''600 series'' ECCNs proposed by this rule.

All references to the USML in this rule are to the list of defense articles that are controlled for purposes of export, temporary import, or brokering pursuant to the ITAR, and not to the list of defense articles on the United States Munitions Import List (USMIL) that are controlled by the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) for purposes of permanent import under its regulations at 27 CFR part 447. Pursuant to section 38(a)(1) of the AECA, all defense articles controlled for export or import, or that are subject to brokering controls, are part of the ''USML'' under the AECA. For the sake of clarity, references to the USMIL are to the list of defense articles controlled by ATF for purposes of permanent import. All defense articles described in the USMIL or the USML are subject to the brokering controls administered by the U.S. Department of State in part 129 of the ITAR. The transfer of defense articles from the ITAR's USML to the EAR's CCL, for purposes of export controls, does not affect the list of defense articles that are controlled on the USMIL under the AECA for purposes of permanent import or brokering controls.

On January 18, 2011, the President issued Executive Order 13563, affirming general principles of regulation and directing government agencies to conduct retrospective reviews of existing regulations. The revisions proposed in this rule are part of Commerce's retrospective regulatory review plan under Executive Order 13563. Commerce's full plan, completed in August 2011, can be accessed at: *http://open.commerce.gov/news/2011/08/23/commerce-plan-retrospective-analysis-existing-rules.*

Changes Proposed by This Rule to Controls on Certain Dissemination, Detection and Protection ''Equipment'' and Related Items Currently Controlled Under USML Category XIV

This proposed rule would create five new ''600 series'' ECCNs in CCL Category 1 (ECCNs 1A607, 1B607, 1C607, 1D607, and 1E607) that would clarify the EAR controls that apply to certain dissemination, detection and protection ''equipment'' and related items the President determines no longer warrant control under USML Category XIV. Terms such as ''part,'' ''component'' ''accessories,'' ''attachments,'' and ''specially designed'' are applied in the same manner in this rule as those terms are defined in Section 772.1 of the EAR. In addition, to assist exporters in determining the control status of their items, a ''Specially Designed'' Decision Tool and a CCL Order of Review Decision Tool are available on the BIS

Web site at: *http://www.bis.doc.gov/index.php/decision-tree-tools.*

New ECCN 1A607: Military dissemination ''equipment'' for riot control agents, military detection and protection ''equipment'' for toxicological agents (including chemical, biological, and riot control agents), and related commodities.

In proposed ECCN 1A607, paragraphs .a through .d, paragraph .i, and paragraphs .l through .w would be reserved. Paragraph .e of ECCN 1A607 would control ''equipment'' ''specially designed'' for military use and for the dissemination of any of the riot control agents controlled in ECCN 1C607.a. Paragraph .f of ECCN 1A607 would control protection ''equipment'' ''specially designed'' for military use and for defense against either materials controlled by USML Category XIV(a) or (b) or any of the riot control agents in new ECCN 1C607.a. Paragraph .g of ECCN 1A607 would control decontamination ''equipment'' not controlled by USML Category XIV(f) that is ''specially designed'' for military use and for the decontamination of objects contaminated with materials controlled by USML Category XIV(a) or (b). Paragraph .h would control ''equipment'' not controlled by USML Category XIV(f) that is ''specially designed'' for military use and for the detection or identification of either materials specified by USML Category XIV(a) or (b) or riot control agents controlled by proposed new ECCN 1C607.a. Paragraph .j would control ''equipment'' ''specially designed'' to: (i) Interface with a detector, shelter, vehicle, vessel, or aircraft controlled by the USML or a ''600 series'' ECCN; and (ii) collect and process samples of articles controlled in USML Category XIV(a) or (b). Paragraph .k would control medical countermeasures that are ''specially designed'' for military use (including pre- and post- treatments, antidotes, and medical diagnostics) and ''specially designed'' to counter chemical agents controlled by USML Category XIV(a). Paragraph .x would control ''parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity controlled under ECCN 1A607.e, .f, .g, .or .j or a defense article controlled in USML Category XIV(f) and that are not enumerated or otherwise described elsewhere in the USML.

New ECCN 1B607: Military test, inspection, and production ''equipment'' and related commodities ''specially designed'' for the ''development,'' ''production,'' repair, overhaul, or refurbishing of commodities identified in ECCN 1A607 or 1C607, or defense articles enumerated or otherwise described in USML Category XIV.

In proposed ECCN 1B607, paragraph .a would control ''equipment,'' not including incinerators, that is ''specially designed'' for the destruction of chemical agents controlled by USML Category XIV(a). Paragraph .b of ECCN 1B607 would control test facilities and ''equipment'' that are ''specially designed'' for military certification, qualification, or testing of commodities controlled by new ECCN 1A607.e, .f, .g, or .j or by USML Category XIV(f), except for XIV(f)(1). Paragraph .c would control tooling and ''equipment'' ''specially designed'' for the ''development,'' ''production,'' repair, overhaul, or refurbishing of commodities controlled under new ECCN 1A607.e, .f, .g, or .j or USML Category XIV(f). Paragraphs .d through .w would be reserved. Paragraph .x would control ''parts,'' ''components,'' ''accessories,'' and ''attachments,'' not enumerated or otherwise described elsewhere in the USML, that are ''specially designed'' for a commodity controlled by ECCN 1B607.b or .c or for a defense article controlled by USML Category XIV(f).

New ECCN 1C607: Tear gases, riot control agents and materials for the detection and decontamination of chemical warfare agents.

Proposed ECCN 1C607.a would control specified tear gases and riot control agents. Paragraph .b of ECCN 1C607 would control ''biopolymers'' not controlled by USML Category XIV(g) that are ''specially designed'' or processed for the detection or identification of chemical warfare (CW) agents specified by USML Category XIV(a) and the cultures of specific cells used to produce them. Paragraph .c would control specified ''biocatalysts'' and biological systems that are not controlled by USML Category XIV(g) and are ''specially designed'' for the decontamination or degradation of CW agents specified by USML Category XIV(a). Paragraph .d would control chemical mixtures not controlled by USML Category XIV(f) that are ''specially designed'' for military use for the decontamination of objects contaminated with materials specified by USML Category XIV(a) or (b).

New ECCN 1D607: ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of items controlled by 1A607, 1B607 or 1C607.

Proposed ECCN 1D607.a would control ''software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of items controlled by ECCN 1A607, 1B607 or 1C607. Paragraph .b of ECCN 1D607 would be reserved.

New ECCN 1E607: ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by ECCN 1A607, 1B607, 1C607, or 1D607.

Proposed ECCN 1E607.a would control ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by ECCN 1A607, 1B607, 1C607, or 1D607. Paragraph .b of ECCN 1E607 would be reserved.

Changes Proposed by This Rule to Controls on Certain Tooling, Production ''Equipment,'' Test and Evaluation ''Equipment'' and Test Models Currently Controlled Under USML Category XVIII

This rule proposes to create three new ''600 series'' ECCNs in CCL Category 6 (ECCNs 6B619, 6D619 and 6E619) that would clarify the EAR controls that apply to certain tooling, production ''equipment,'' test and evaluation ''equipment,'' test models and related articles for Directed Energy Weapons (DEWs) that the President determines no longer warrant control under USML Category XVIII. Terms such as ''part,'' ''component'' ''accessories,'' ''attachments,'' and ''specially designed'' are applied in the same manner in this rule as those terms are defined in Section 772.1 of the EAR. In addition, to assist exporters in determining the control status of their items, a ''Specially Designed'' Decision Tool and a CCL Order of Review Decision Tool are available on the BIS Web site at: *http://www.bis.doc.gov/index.php/decision-tree-tools.*

New ECCN 6B619: Test, inspection and production ''equipment,'' and related commodities, ''specially designed'' for the ''development,'' ''production,'' repair, overhaul, or refurbishing of commodities enumerated or otherwise described in USML Category XVIII.

Proposed ECCN 6B619.a would control tooling, templates, jigs, mandrels, molds, dies, fixtures, alignment mechanisms, and test ''equipment'' not enumerated or otherwise described in USML Category XVIII and not elsewhere specified on the USML that are ''specially designed'' for the ''development,'' ''production,'' repair, overhaul, or refurbishing of commodities controlled by USML Category XVIII. The commodities that would be controlled under proposed ECCN 6B619.a are used to produce directed energy weapons (including

non-lethal directed energy weapons, such as active denial systems) and are similar to commodities that are in operation in a number of other countries, some of which are not allies of the United States or members of multinational export control regimes. Research and development is currently underway to determine the possible uses of such commodities (*e.g.,* to protect the Earth from asteroids, or for perimeter security and crowd control). Possession of such commodities does not confer a significant military advantage on the United States and, therefore, the inclusion of such commodities on the CCL would be appropriate.

Paragraphs .b through .w of ECCN 6B619 would be reserved. Paragraph .x would control ''parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for a commodity subject to control under paragraph .a of this ECCN and not enumerated or otherwise described in USML Category XVIII and not elsewhere specified on the USML.

New ECCN 6D619: ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation or maintenance of commodities controlled by 6B619.

Proposed ECCN 6D619 would control ''software'' ''specially designed'' for the ''development,'' ''production,'' operation or maintenance of commodities controlled by ECCN 6B619. Inclusion of this ''software'' on the CCL would be appropriate, because it would be limited to ''software'' ''specially designed'' for ECCN 6B619 commodities and would not include any ''software'' for items specifically enumerated or otherwise described on the USML.

New ECCN 6E619: ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by 6B619 or ''software'' controlled by 6D619.

Proposed ECCN 6E619 would control ''technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by ECCN 6B619, or ''software'' controlled by 6D619. Inclusion of this ''technology'' on the CCL would be appropriate, because it would be limited to ''technology'' ''required'' for ECCN 6B619 commodities and would not include any ''technology'' for items specifically enumerated or otherwise described on the USML.

Applicable Controls for the New ''600 Series'' ECCNs Proposed by This Rule.

Pursuant to the framework established in the April 16 (initial implementation) rule, detection and protection ''equipment'' and related commodities classified under ECCN 1A607; related test, inspection and production ''equipment'' classified under ECCN 1B607; tear gases, riot control agents and related commodities classified under ECCN 1C607 (except for items listed in ECCN 1C607.a.10, .a.11, .a.12, or a.14, all of which are specifically excluded from WAML Category 7 by Note 1 thereto); related ''software'' classified under ECCN 1D607 (except ''software'' for items listed in ECCN 1C607.a.10, .a.11, .a.12, or a.14); and related ''technology'' classified under ECCN 1E607 (except ''technology'' for items listed in ECCN 1C607.a.10, .a.11, .a.12, or a.14 and 1D607 ''software'' therefor) would be subject to the licensing policies that apply to items controlled for national security (NS) reasons, as described in § 742.4(b)(1)—specifically, NS Column 1 controls. The same level of NS controls and licensing policies also would apply to the items that would be controlled under the three new ECCNs (*i.e.,* test, inspection, and production ''equipment'' classified under ECCN 6B619; related ''software'' classified under ECCN 6D619; and related ''technology'' classified under ECCN 6E619) that this rule proposes to add to Category 6 of the CCL. In addition, all of the items that would be controlled under the new ECCNs proposed by this rule would be subject to the regional stability (RS) licensing policies set forth in § 742.6(a)(1), *i.e.,* RS Column 1, as well as antiterrorism (AT Column 1) and United Nations (UN) controls.

Also, in accordance with §§ 742.4(b)(1) and 742.6(b)(1) of the EAR, exports and reexports of ''600 series'' items controlled for NS or RS reasons will be reviewed consistent with United States arms embargo policies in § 126.1 of the ITAR, if destined to a country listed in Country Group D:5 of Supplement No. 1 to part 740 of the EAR. All items controlled for NS or RS reasons, as set forth in this proposed rule, would be subject to this licensing policy.

Effects of This Proposed Rule

BIS believes that the principal effect of this rule, when considered in the context of similar proposed rules being published as part of the ECR, will be to provide greater flexibility for exports and reexports to NATO member countries and other multiple-regime-member countries of items the President determines no longer warrant control on the USML. This greater flexibility would be in the form of: application of the EAR's *de minimis* threshold principle for items constituting less than a *de minimis* amount of controlled U.S.-origin content in foreign made items; availability of license exceptions, particularly License Exceptions ''Servicing and Replacement of Parts and Equipment'' (RPL) and ''Strategic Trade Authorization'' (STA); elimination of the requirements for manufacturing license agreements and technical assistance agreements in connection with exports of technology; and a reduction in, or elimination of, exporter and manufacturer registration requirements and associated registration fees. Some of these specific effects are discussed in more detail below.

De minimis

The April 16 (initial implementation) rule imposed certain unique *de minimis* requirements on items controlled under the new ''600 series'' ECCNs. Section 734.3 of the EAR provides, *inter alia,* that, under certain conditions, items made outside the United States that incorporate items subject to the EAR are not subject to the EAR if they do not exceed a ''*de minimis''* percentage of controlled U.S. origin content. Under Section 734.4 of the EAR, as amended by the April 16 (initial implementation) rule, there is no eligibility for *de minimis* treatment for a foreign-made item that incorporates U.S.-origin ''600 series'' items when the foreign-made item is destined for a country that is subject to a U.S. arms embargo, *i.e.,* a country listed in Country Group D:5 of Supplement No. 1 to part 740 of the EAR. Items controlled under the new ''600 series'' ECCNs proposed in this rule would be eligible for *de minimis* treatment under the EAR, provided that the foreign-made items into which they are incorporated are not destined for a country listed in Country Group D:5. In contrast, the AECA does not permit the ITAR to have a *de minimis* treatment for USML-listed items, regardless of the significance or insignificance of the U.S.-origin content or the percentage of U.S.-origin content in the foreign-made item (*i.e.,* USML-listed items remain subject to the ITAR when they are incorporated abroad into a foreign-made item, regardless of either of these factors).

Use of License Exceptions

The April 16 (initial implementation) rule imposed certain restrictions on the use of license exceptions for items controlled under ''600 series'' ECCNs on

the CCL. The general restrictions that apply to the use of license exceptions for such items are described in § 740.2(a)(13) of the EAR. The EAR provisions that describe the requirements specific to individual license exceptions contain additional restrictions on the use of license exceptions for such items.

For example, this rule proposes limited License Exception STA availability for the new ''600 series'' ECCNs contained herein. None of the items that would be controlled under these proposed ECCNs would be eligible for the STA ''controls of lesser sensitivity'' described in § 740.20(c)(2) of the EAR. Instead, STA eligibility for all such items would be limited to the destinations listed in § 740.20(c)(1) of the EAR (*i.e.,* Country Group A:5 destinations indicated in Supplement No. 1 to part 740 of the EAR). In addition, such items must be for: (1) ultimate end-use by a person of a type specified in § 740.20(b)(3)(ii) of the EAR (*i.e.,* the armed forces, police, paramilitary, law enforcement, customs, correctional, fire, or a search and rescue agency of a government of one of the countries listed in Country Group A:5 or the United States Government); or (2) the ''development,'' ''production,'' operation installation, maintenance, repair, overhaul, or refurbishing of an item, in one of the countries listed in Country Group A:5 or the United States, that will ultimately be used by any such government agencies, the United States Government, or by a person in the United States. The use of License Exception STA also may be authorized, under certain circumstances described in § 740.20(b)(3)(ii)(C), where the U.S. Government has otherwise authorized the ultimate end-use under a license.

None of the items that would be controlled under the new ''600 series'' ECCNs proposed by this rule would be treated as ''end items'' for purposes of License Exception STA and, therefore, such items would not be subject to the License Exception STA eligibility request requirements in § 740.20(g) of the EAR.

Items controlled under proposed new ECCN 1B607 or 6B619 also would be eligible for License Exception LVS (limited value shipments) up to a value of $1,500, TMP (temporary exports), and RPL (servicing and replacement parts). License Exceptions TMP and RPL also would be available for items controlled under new ECCN 1A607.

BIS believes that the restrictions that would apply to the use of license exceptions for the items in the proposed new ''600 series'' ECCNs would represent an overall reduction from the level of restrictions that currently apply to such items on the USML. This would be particularly true with respect to exports of such items to NATO members and multiple-regime member countries.

Alignment With the Wassenaar Arrangement Munitions List

Since the beginning of ECR, the Administration has stated that the reforms will be consistent with the United States' obligations to the multilateral export control regimes. Accordingly, the Administration will, in this proposed rule, exercise its national discretion to implement, clarify, and, to the extent feasible, align its controls with those of the regimes. In this rule, proposed ECCNs 1A607 and 1C607 would implement, to the extent possible, the controls in WAML Category 7; proposed ECCNs 1B607 and 6B619 would implement, to the extent possible, the controls in WAML Category 18 for production ''equipment;'' proposed ECCNs 1D607 and 6D619 would implement, to the extent possible, the controls in WAML Category 21 for ''software;'' and proposed ECCNs 1E607 and 6E619 would implement, to the extent possible, the controls in WAML Category 22 for ''technology.''

Request for Comments

BIS seeks comments on this proposed rule. BIS will consider all comments received on or before August 17, 2015. All comments (including any personally identifying information or information for which a claim of confidentially is asserted either in those comments or their transmittal emails) will be made available for public inspection and copying. Parties who wish to comment anonymously may do so by submitting their comments via Regulations.gov, leaving the fields that would identify the commenter blank and including no identifying information in the comment itself.

Although the Export Administration Act expired on August 20, 2001, the President, through Executive Order 13222 of August 17, 2001, 3 CFR, 2001 Comp., p. 783 (2002), as amended by Executive Order 13637 of March 8, 2013, 78 FR 16129 (March 13, 2013), and as extended by the Notice of August 7, 2014, 79 FR 46959 (August 11, 2014), has continued the Export Administration Regulations in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Export Administration Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222, as amended by Executive Order 13637.

Rulemaking Requirements

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

2. Notwithstanding any other provision of law, no person is required to respond to, nor is subject to a penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA), unless that collection of information displays a currently valid OMB control number. This proposed rule would affect the following approved collections: Simplified Network Application Processing System (control number 0694–0088), which includes, among other things, license applications; License Exceptions and Exclusions (0694–0137); recordkeeping (0694–0096); export clearance (0694–0122); and the Automated Export System (0607–0152).

As stated in the proposed rule published on July 15, 2011 (76 FR 41958) (the ''July 15 proposed rule''), BIS initially estimated that the combined effect of all rules to be published, adding items to the EAR that would be removed from the ITAR as part of the Administration's Export Control Reform Initiative, would increase the number of license applications to be submitted to BIS by approximately 16,000 annually, resulting in an increase in burden hours of 5,067 (16,000 transactions at 17 minutes each) under control number 0694–0088. As the review of the USML has progressed, the interagency group has gained more specific information about the number of items that would come under BIS jurisdiction and whether those items would be eligible for export under license exception. As of June 21, 2012, BIS revised its estimate to reflect an increase in license applications of 30,000 annually, resulting in an increase in burden hours of 8,500 (30,000 transactions at 17

minutes each) under control number 0694–0088. BIS continues to believe that its revised estimate is accurate. Notwithstanding this increase in license applications under the EAR, the net burden that U.S. export controls impose on U.S. exporters is expected to go down, as described below, as a result of the transfer of less sensitive military items to the jurisdiction of the Department of Commerce, under the EAR, and the application of the license exceptions and other provisions in the EAR that are described in this proposed rule.

As proposed by this rule, certain dissemination, detection and protection ''equipment'' and related articles currently controlled under USML Category XIV in the ITAR and certain tooling, production ''equipment,'' test and evaluation ''equipment,'' test models and related articles currently controlled under USML Category XVIII of the ITAR would become subject to the licensing jurisdiction of the Department of Commerce under the EAR and its CCL, and also would be eligible for certain license exceptions, including License Exception STA. For example, items controlled under proposed ECCN 1A607, 1B607, 1C607, 1D607, 1E607, 6B619, 6D619, or 6E619 would become eligible under certain provisions of License Exception STA and would not need a determination of eligibility as described in § 740.20(g) of the EAR. BIS believes that the increased use of License Exception STA resulting from the combined effect of all rules to be published, adding items to the EAR that would be removed from the ITAR as part of the Administration's Export Control Reform Initiative, would increase the burden associated with control number 0694–0137 by about 23,858 hours (20,450 transactions at 1 hour and 10 minutes each).

BIS expects that this increase in burden hours under the EAR would be more than offset by a reduction in the burden hours associated with currently approved collections related to the ITAR. With few exceptions, most exports of the dissemination, detection and protection ''equipment'' and related articles and the tooling, production ''equipment,'' test and evaluation ''equipment,'' test models and related articles that this rule proposes to add to the CCL currently require State Department authorization, even when destined to NATO member states and other close allies. In addition, the exports of ''technology'' necessary to produce such items in the inventories of the United States and its NATO and other close allies currently require State Department authorization. Under the EAR, as proposed by this rule, such ''technology'' would become eligible for export to NATO member states and other close allies under License Exception STA, unless otherwise specifically excluded.

The anticipated reduction in burden hours would particularly impact exporters of ''parts'' and ''components'' that would no longer be subject to the ITAR, because, with few exceptions, the ITAR currently exempt from license requirements only exports to Canada. Most exports of such ''parts'' and ''components,'' even when destined to NATO and other close allies, currently require State Department authorization. Under the EAR, as proposed by this rule, a small number of low-level ''parts'' and ''components'' would not require a license to most destinations, while most other ''parts'' and ''components'' identified under the proposed new ''600 series'' ECCNs would be eligible for export to NATO and other close allies under License Exception STA.

Use of License Exception STA imposes a paperwork and compliance burden because, for example, exporters must furnish information about the item that is being exported to the consignee and obtain from the consignee an acknowledgement and commitment to comply with the requirements of the EAR. However, the Administration believes that complying with the requirements of STA is likely to be less burdensome than applying for licenses. For example, under License Exception STA, a single consignee statement can apply to an unlimited number of products, need not have an expiration date and need not be submitted to the government in advance for approval. Suppliers with regular customers can tailor a single statement and assurance to match their business relationship, rather than applying repeatedly for licenses with every purchase order, to supply allied and, in some cases, U.S. forces with routine replacement parts and components.

Even in situations in which a license would be required under the EAR, the burden likely will be reduced, compared to the current license requirement under the ITAR. In particular, license applications for exports of ''technology'' controlled by ECCN 1E607 or 6E619 are likely to be less complex and burdensome than the authorizations required to export ITAR-controlled ''technology,'' *i.e.,* Manufacturing License Agreements and Technical Assistance Agreements.

3. This rule does not contain policies with Federalism implications as that term is defined under E.O. 13132.

4. The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.,* generally requires an agency to prepare an initial regulatory flexibility analysis (IRFA) for any rule subject to the notice and comment rulemaking requirements under the Administrative Procedure Act (5 U.S.C. 553) or any other statute, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Under section 605(b) of the RFA, however, if the head of an agency certifies that a rule will not have a significant impact on a substantial number of small entities, the RFA does not require the agency to prepare a regulatory flexibility analysis. Accordingly, pursuant to section 605(b), the Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule, if promulgated, will not have a significant impact on a substantial number of small entities. The rationale for this certification is as follows.

Number of Small Entities

Although BIS does not collect data on the size of entities that apply for, and are issued, export licenses and is, therefore, unable to estimate the exact number of small entities—as defined by the Small Business Administration's regulations implementing the RFA—BIS acknowledges that some small entities may be affected by this proposed rule.

Economic Impact

The amendments set forth in this rule are proposed as part of the Administration's ECR initiative, which seeks to revise the USML to be a positive control list—one that does not use generic, catch-all control text to describe items subject to the ITAR—and to move some items that the President has determined no longer warrant control under the ITAR to control under the EAR and its CCL. Such items, along with certain military items currently identified on the CCL (most of which are identified on the WAML), will be controlled under new ''600 series'' ECCNs on the CCL. In addition, certain other items currently on the CCL will move from existing ECCNs to the new ''600 series'' ECCNs.

This rule addresses certain dissemination, detection and protection ''equipment'' and related articles currently enumerated or otherwise described in USML Category XIV (Toxicological Agents, Including

Chemical Agents, Biological Agents, and Associated Equipment) and certain tooling, production ''equipment,'' test and evaluation ''equipment,'' test models and related articles currently enumerated or otherwise described in USML Category XVIII (Directed Energy Weapons). Most toxicological agents (*i.e.,* chemical and biological agents) and associated equipment and all Directed Energy Weapons (DEWs) systems ''specially designed'' or modified for military applications, ''equipment'' ''specially designed'' or modified to detect, identify or defend against such systems, and ''specially designed'' ''parts,'' ''components,'' ''accessories'' and ''attachments'' for such systems or ''equipment'' would remain on the USML. However, many other ''parts'' and ''components'' would become subject to the EAR (as items described in ECCN 1A607.x, 1B607.x, or 6B619.x), unless specifically enumerated or otherwise described on the USML. Many of these ''parts'' and ''components'' are more likely, than the USML articles described above, to be produced by small businesses. In addition, officials of the Department of State have informed BIS that license applications for such ''parts'' and ''components'' represent a high percentage of the license applications for USML articles reviewed by that department. Changing the jurisdictional status of certain Category XIV and Category XVIII items would reduce the burden on small entities (and other entities as well) through: (i) elimination of some license requirements; (ii) greater availability of license exceptions; (iii) simpler license application procedures; and (iv) reduced or eliminated registration fees.

Moreover, ''parts'' and ''components'' that are controlled under the ITAR remain under ITAR control when incorporated into foreign-made items, regardless of the significance or insignificance of the item. This discourages foreign buyers from incorporating such U.S. content. The availability of *de minimis* treatment under the EAR, for those items that would no longer be controlled under the ITAR, may reduce the disincentive for foreign manufacturers to purchase U.S.-origin ''parts'' and ''components,'' a development that potentially would mean greater sales for U.S. suppliers, including small entities.

Many exports and reexports of the Category XIV or Category XVIII articles that would be added to the CCL by this rule (particularly, the ''parts'' and ''components'' that would be controlled under new ECCN 1A607.x, 1B607.x, or 6B619.x) would become eligible for license exceptions that apply to exports to U.S. Government agencies, exports of ''parts'' and ''components'' for use as replacement parts, temporary exports and limited value exports (for ECCN 1B607 and 6B619 items, only), as well as License Exception STA, thereby reducing the number of licenses that exporters of these items would need. License exceptions under the EAR would allow suppliers to send routine replacement parts and low level parts to NATO and other close allies and export control regime partners for use by those governments and for use by contractors building equipment for those governments or for the U.S. Government without having to obtain export licenses. Under License Exception STA, the exporter would need to furnish information about the item being exported to the consignee and obtain a statement from the consignee that, among other things, would commit the consignee to comply with the EAR and other applicable U.S. laws. Because such statements and obligations can apply to an unlimited number of transactions and have no expiration date, they would create a net reduction in burden on transactions that the government routinely approves through the license application process that the License Exception STA statements would replace.

Even for exports and reexports for which a license would be required, the process for obtaining a license would be simpler and less costly under the EAR. When a USML Category XIV or Category XVIII article is moved to the CCL, the number of destinations for which a license is required would remain unchanged. However, the burden on the license applicant would decrease because the licensing procedure for CCL items is simpler and more flexible than the licensing procedure for USML articles.

Under the USML licensing procedure, an applicant must include a purchase order or contract with its application. There is no such requirement under the CCL licensing procedure. This difference gives the CCL applicant at least two advantages. First, the applicant has a way to determine whether the U.S. Government will authorize the transaction before it enters into potentially lengthy, complex and expensive sales presentations or contract negotiations. Under the USML procedure, the applicant must caveat all sales presentations with a reference to the need for government approval, and is more likely to engage in substantial effort and expense only to find that the government will reject the application. Second, a CCL license applicant need not limit its application to the quantity or value of one purchase order or contract. It may apply for a license to cover all of its expected exports or reexports to a specified consignee over the life of a license (normally four years, but may be longer if circumstances warrant a longer period), thus reducing the total number of licenses for which the applicant must apply.

In addition, many applicants exporting or reexporting items that this rule proposes to transfer from the USML to the CCL would realize cost savings through the elimination of some or all registration fees currently assessed under the USML's licensing procedure. Currently, USML applicants must pay to use the USML licensing procedure even if they never actually are authorized to export. Registration fees for manufacturers and exporters of articles on the USML start at $2,250 per year, increase to $2,750 for organizations applying for one to ten licenses per year and further increase to $2,750 plus $250 per license application (subject to a maximum of three percent of total application value) for those who need to apply for more than ten licenses per year. Conversely, there are no registration or application processing fees for applications to export items listed on the CCL. Once the Category XIV or Category XVIII items that are the subject to this rulemaking are removed from the USML and added to the CCL, entities currently applying for licenses from the Department of State would find their registration fees reduced if the number of USML licenses those entities need declines. If an entity's entire product line is moved to the CCL, its ITAR registration and registration fee requirement would be eliminated.

Conclusion

BIS expects that the changes to the EAR proposed in this rule will have a positive effect on all affected entities, including small entities. While BIS acknowledges that this rule may have some cost impacts on small (and other) entities, those costs are more than offset by the benefits to the entities from the licensing procedures under the EAR, which are much less costly and less time consuming than the procedures under the ITAR. As noted above, any new burdens proposed by this rule would be offset by a reduction in the number of items that would require a license, increased opportunities for use of license exceptions for exports to certain countries, simpler export license applications, reduced or eliminated registration fees and application of a *de minimis* threshold for foreign-made items incorporating U.S.-origin parts

and components, all of which would reduce the incentive for foreign buyers to design out or avoid U.S.-origin content. Accordingly, the Chief Counsel for Regulation, Department of Commerce, has certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule, if implemented, would not have a significant economic impact on a substantial number of small entities. Accordingly, an initial regulatory flexibility analysis is not required, and none has been prepared.

List of Subjects in 15 CFR Part 774

Exports, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, part 774 of the Export Administration Regulations (15 CFR parts 730–774) is proposed to be amended as follows:

PART 774—[AMENDED]

■ 1. The authority citation for 15 CFR part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.;* 50 U.S.C. 1701 *et seq.;* 10 U.S.C. 7420; 10 U.S.C. 7430(e); 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.;* 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 15 U.S.C. 1824a; 50 U.S.C. app. 5; 22 U.S.C. 7201 *et seq.;* 22 U.S.C. 7210; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 7, 2014, 79 FR 46959 (August 11, 2014).

■ 2. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins,'' add a new ECCN 1A607 between ECCNs 1A290 and 1A613 to read as follows:

Supplement No. 1 to Part 774—the Commerce Control List

* * * * *

1A607 Military dissemination ''equipment'' for riot control agents, military detection and protection ''equipment'' for toxicological agents (including chemical, biological, and riot control agents), and related commodities (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
NS applies to entire entry.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	See § 746.1(b) for UN controls.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1A607.

List of Items Controlled

Related Controls: (1) Vaccines identified in ECCN 1C991 are not controlled by this ECCN. (2) See 22 CFR 121.1 (USML), Category XIV(h), for vaccines that are subject to the ITAR. (3) Protection and detection ''equipment'' and related items identified in ECCN 1A004, 1A995, or 2B351 are not controlled by this ECCN. (4) See 22 CFR 121.1 (USML), Category XIV(f), for dissemination, detection and protection ''equipment'' that is subject to the ITAR. (5) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of US-origin ''600 series'' controlled content.
Related Definitions: N/A
Items:

a. through d. [Reserved]

e. ''Equipment'' ''specially designed'' for military use and for the dissemination of any of the riot control agents controlled in ECCN 1C607.a.

f. Protection ''equipment'' (including air conditioning units and protective clothing):

f.1. Not controlled by USML Category XIV(f); *and*

f.2. ''Specially designed'' for military use and for defense against:

f.2.1. Materials specified by USML Category XIV (a) or (b); *or*

f.2.2. Riot control agents controlled in 1C607.a.

g. Decontamination ''equipment'':

g.1. Not controlled by USML Category XIV(f); *and*

g.2. ''Specially designed'' for military use and for decontamination of objects contaminated with materials controlled by USML Category XIV(a) or (b).

h. ''Equipment'':

h.1. Not controlled by USML Category XIV(f); *and*

h.2. ''Specially designed'' for military use and for the detection or identification of:

h.2.1. Materials specified by USML Category XIV(a) or (b); *or*

h.2.2. Riot control agents controlled by ECCN 1C607.a.

i. [Reserved]

j. ''Equipment'' ''specially designed'' to:

j.1. Interface with a detector, shelter, vehicle, vessel, or aircraft controlled by the USML or a ''600 series'' ECCN; *and*

j.2. Collect and process samples of articles controlled in USML Category XIV(a) or (b).

k. Medical countermeasures that are ''specially designed'' for military use (including pre- and post-treatments, antidotes, and medical diagnostics) and ''specially designed'' to counter chemical agents controlled by the USML Category XIV(a).

Note: Examples of ''equipment'' controlled by this entry are barrier and non-barrier creams and filled autoinjectors (*e.g.,* combopens where one injector contains 2–PAM and the other atropine) if ''specially designed'' to counter such agents.

l. through w. [Reserved]

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity controlled by ECCN 1A607.e, .f, .g, or .j or for a defense article controlled by USML Category XIV(f) and that are not enumerated or otherwise described elsewhere in the USML.

3. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins,'' add a new ECCN 1B607 between ECCNs 1B234 and 1B608 to read as follows:

1B607 Military test, inspection, and production ''equipment'' and related commodities ''specially designed'' for the ''development,'' ''production,'' repair, overhaul, or refurbishing of commodities identified in ECCN 1A607 or 1C607, or defense articles enumerated or otherwise described in USML Category XIV (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
NS applies to entire entry.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	See § 746.1(b) for UN controls.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: $1500
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1B607.

List of Items Controlled

Related Controls: (1) See ECCN 2B350 for controls on certain incinerators. (2) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of US-origin ''600 series'' controlled content.
Related Definitions: N/A
Items:

a. ''Equipment'' ''specially designed'' for the destruction of the chemical agents controlled by USML Category XIV(a).

Note to 1B607.a: ECCN 1B607.a includes controls over facilities ''specially designed'' for destruction operations. This paragraph .a does not control incinerators and ''specially designed'' handling facilities or ''specially designed'' waste supply systems therefor.

b. Test facilities and ''equipment'' ''specially designed'' for military certification, qualification, or testing of commodities controlled by ECCN 1A607.e, .f, .g, or .j or by USML Category XIV(f), except for XIV(f)(1).

c. Tooling and ''equipment'' ''specially designed'' for the ''development,'' ''production,'' repair, overhaul, or refurbishing of commodities controlled by ECCN 1A607.e, .f .g, or .j or USML Category XIV(f).

d. through w. [RESERVED]

x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' that are ''specially designed'' for a commodity controlled by ECCN 1B607.b or .c, or for a defense article controlled by USML Category XIV(f), and that are not enumerated or otherwise described elsewhere in the USML.

■ 4. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins,'' add a new ECCN 1C607 between ECCNs 1C395 and 1C608 to read as follows:

1C607 Tear Gases, Riot Control Agents and materials for the detection and decontamination of chemical warfare agents (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
NS applies to entire entry, except 1C607.a.10, .a.11, .a.12, and .a.14.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	See § 746.1(b) for UN controls.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

LVS: N/A
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1C607.

List of Items Controlled

Related Controls: (1) See ECCN 1A984 for controls on other riot control agents. (2) See 22 CFR 121.1 (USML), Category XIV(b), for modified biological agents and biologically derived substances that are subject to the ITAR. (3) See 22 CFR 121.1 (USML), Category XIV(g), for ITAR controls on antibodies, recombinant protective antigens, polynucleotides, biopolymers or biocatalysts (including the expression vectors, viruses, plasmids, or cultures of specific cells used to produce them) that are ''specially designed'' for use with articles controlled under USML Category XIV(f). (4) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of US-origin ''600 series'' controlled content.
Related Definitions: N/A
Items:

a. Tear gases and riot control agents including:

a.1. CA (Bromobenzyl cyanide) (CAS 5798–79–8);

a.2. CS (o–Chlorobenzylidenemalononitrile or o–Chlorobenzalmalononitrile) (CAS 2698–41–1);

a.3. CN (Phenylacyl chloride or w–Chloroacetophenone) (CAS 532–27–4);

a.4. CR (Dibenz–(b,f)–1,4–oxazephine) (CAS 257–07–8);

a.5. Adamsite (Diphenylamine chloroarsine or DM) (CAS 578–94–9);

a.6. N-Nonanoylmorpholine, (MPA) (CAS 5299–64–9);

a.7. Dibromodimethyl ether (CAS 4497–29–4);

a.8. Dichlorodimethyl ether (ClCi) (CAS 542–88–1);

a.9. Ethyldibromoarsine (CAS 683–43–2);

a.10. Bromo acetone (CAS 598–31–2);

a.11. Bromo methylethylketone (CAS 816–40–0);

a.12. Iodo acetone (CAS 3019–04–3);

a.13. Phenylcarbylamine chloride (CAS 622–44–6);

a.14. Ethyl iodoacetate (CAS 623–48–3);

Note to 1C607.a: *ECCN 1C607.a. does not control formulations containing 1% or less CN or CS or individually packaged tear gases or riot control agents for personal self-defense purposes that are controlled by ECCN 1A984, or to active constituent chemicals, and combinations thereof, identified and packaged for food production or medical purposes.*

b. ''Biopolymers,'' not controlled by USML Category XIV(g) ''specially designed'' or processed for the detection or identification of chemical warfare agents specified by USML Category XIV(a), and the cultures of specific cells used to produce them.

c. ''Biocatalysts,'' and biological systems therefor, not controlled by USML Category XIV(g) ''specially designed'' for the decontamination or degradation of chemical warfare agents controlled in USML Category XIV (a), as follows:

c.1. ''Biocatalysts'' ''specially designed'' for the decontamination or degradation of chemical warfare agents controlled in USML Category XIV(a) resulting from directed laboratory selection or genetic manipulation of biological systems;

c.2. Biological systems containing the genetic information specific to the production of ''biocatalysts'' specified by 1C607.c.1, as follows:

c.2.a. ''Expression vectors;''

c.2.b. Viruses; *or*

c.2.c. Cultures of cells.

Note to 1C607.b and .c: *The cultures of cells and biological systems are exclusive and these sub-items do not apply to cells or biological systems for civil purposes, such as agricultural, pharmaceutical, medical, veterinary, environmental, waste management, or in the food industry.*

d. Chemical mixtures not controlled by USML Category XIV(f) ''specially designed'' for military use for the decontamination of objects contaminated with materials specified by USML Category XIV(a) or (b).

■ 5. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins,'' add a new ECCN 1D607 between ECCNs 1D390 and 1D608 to read as follows:

1D607 ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of items controlled by 1A607, 1B607 or 1C607 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
NS applies to entire entry, except ''software'' for 1C607.a.10, .a.11, .a.12, and .a.14.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	See § 746.1(b) for UN controls.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1D607.

List of Items Controlled

Related Controls: (1) ''Software'' directly related to articles enumerated or otherwise described in USML Category XIV is subject to the ITAR (see 22 CFR 121.1, Category XIV(m)). ''Software'' controlled by USML Category XIV(m) includes ''software'' directly related to any equipment containing reagents, algorithms, coefficients, software, libraries, spectral databases, or alarm set point levels developed under U.S. Department of Defense contract or funding for the detection, identification, warning or monitoring of items controlled in paragraphs (a) or (b) of USML Category XIV, or for chemical or biological agents specified by U.S. Department of Defense funding or contract. (2) See ECCN 0A919 for foreign-made ''military commodities'' that incorporate more than a *de minimis* amount of US-origin ''600 series'' controlled content.
Related Definitions: N/A
Items:
a. ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation, or maintenance of commodities controlled by ECCN 1A607, 1B607, or 1C607.
b. [RESERVED]

■ 6. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Special Materials and Related Equipment, Chemicals, ''Microorganisms,'' and ''Toxins,'' add a new ECCN 1E607 between ECCNs 1E355 and 1E608 to read as follows:

1E607 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by ECCN 1A607, 1B607, 1C607, or 1D607 (see List of Items Controlled).

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
NS applies to entire entry, except ''technology'' for 1C607.a.10, .a.11, .a.12, and .a.14 and for 1D607 ''software'' therefor.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	See § 746.1(b) for UN controls.

List Based License Exceptions (See Part 740 for a Description of All License Exceptions)

CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 1E607.

List of Items Controlled

Related Controls: Technical data directly related to defense articles enumerated or otherwise described in USML Category XIV are subject to the ITAR (see 22 CFR 121.1, Category XIV(m)). Technical data controlled by USML Category XIV(m) include technical data directly related to any equipment containing reagents, algorithms, coefficients, software, libraries, spectral databases, or alarm set point levels developed under U.S. Department of Defense contract or funding for the detection, identification, warning or monitoring of items controlled in paragraphs (a) or (b) of USML Category XIV, or for chemical or biological agents specified by U.S. Department of Defense funding or contract.
Related Definitions: N/A
Items:
a. ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul, or refurbishing of items controlled by ECCN 1A607, 1B607, 1C607 or 1D607.

Note to 1E607.a: *ECCN 1E607.a includes ''technology'' ''required'' exclusively for the incorporation of ''biocatalysts'' controlled by ECCN 1C607.c.1 into military carrier substances or military material.*

b. [RESERVED]

■ 7. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6—Sensors and Lasers,'' add a new ECCN 6B619 between ECCNs 6B108 and 6B995 to read as follows:

6B619 Test, inspection, and production ''equipment'' and related commodities ''specially designed'' for the ''development,'' ''production,'' repair, overhaul, or refurbishing of commodities enumerated or otherwise described in USML Category XVIII (see List of Items Controlled)

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
NS applies to entire entry.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	See § 746.1(b) for UN controls.

License Exceptions

LVS: $1,500
GBS: N/A
CIV: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 6B619.

List of Items Controlled

Related Controls: ''Parts, ''components,'' ''accessories,'' ''attachments,'' and associated systems or ''equipment'' ''specially designed'' for defense articles enumerated or otherwise described in paragraphs (a) or (b) of USML Category XVIII are subject to the ITAR (see 22 CFR 121.1, Category XVIII(e)).
Related Definitions: N/A
Items:
a. Tooling, templates, jigs, mandrels, molds, dies, fixtures, alignment mechanisms, and test ''equipment'' not enumerated or otherwise described in USML Category XVIII and not elsewhere specified on the USML that are ''specially designed'' for the ''development,'' ''production,'' repair, overhaul, or refurbishing of commodities controlled by USML Category XVIII.
b. through w. [Reserved]
x. ''Parts,'' ''components,'' ''accessories,'' and ''attachments'' ''specially designed'' for a commodity subject to control under paragraph .a of this ECCN and not enumerated or otherwise described in USML Category XVIII and not elsewhere specified on the USML.

■ 8. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6—Sensors and Lasers,'' add a new ECCN 6D619 between ECCNs 6D201 and 6D991 to read as follows:

6D619 ''Software'' ''specially designed'' for the ''development,'' ''production,'' operation or maintenance of commodities controlled by 6B619.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
NS applies to entire entry.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	See § 746.1(b) for UN controls.

License Exceptions

CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 6D619.

List of Items Controlled

Related Controls: ''Software'' directly related to articles enumerated or otherwise described in USML Category XVIII is subject to the ITAR (See 22 CFR 121.1, Category XVIII(f)).

Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

■ 9. In Supplement No. 1 to Part 774 (the Commerce Control List), Category 6—Sensors and Lasers,'' add a new ECCN 6E619 between ECCNs 6E202 and 6E990 to read as follows:

6E619 ''Technology'' ''required'' for the ''development,'' ''production,'' operation, installation, maintenance, repair, overhaul or refurbishing of commodities controlled by 6B619 or ''software'' controlled by 6D619.

License Requirements

Reason for Control: NS, RS, AT, UN

Control(s)	*Country chart (see Supp. No. 1 to Part 738)*
NS applies to entire entry.	NS Column 1.
RS applies to entire entry.	RS Column 1.
AT applies to entire entry.	AT Column 1.
UN applies to entire entry.	See § 746.1(b) for UN controls.

License Exceptions

CIV: N/A
TSR: N/A

Special Conditions for STA

STA: Paragraph (c)(2) of License Exception STA (§ 740.20(c)(2) of the EAR) may not be used for any item in 6E619.

List of Items Controlled

Related Controls: Technical data directly related to articles enumerated or otherwise described in USML Category XVIII are subject to the ITAR (See 22 CFR 121.1, Category XVIII(f)).
Related Definitions: N/A
Items:

The list of items controlled is contained in the ECCN heading.

Dated: June 9, 2015.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2015–14474 Filed 6–16–15; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF STATE

22 CFR Part 121

RIN 1400–AD03

[Public Notice: 9166]

Amendment to the International Traffic in Arms Regulations: Revision of U.S. Munitions List Categories XIV and XVIII

AGENCY: Department of State.

ACTION: Proposed rule.

SUMMARY: As part of the President's Export Control Reform effort, the Department of State proposes to amend the International Traffic in Arms Regulations (ITAR) to revise Categories XIV (toxicological agents, including chemical agents, biological agents, and associated equipment) and XVIII (directed energy weapons) of the U.S. Munitions List (USML) to describe more precisely the articles warranting control on the USML. The revisions contained in this rule are part of the Department of State's retrospective plan under E.O. 13563 completed on August 17, 2011. The Department of State's full plan can be accessed at *http://www.state.gov/documents/organization/181028.pdf.*

DATES: The Department of State will accept comments on this proposed rule until August 17, 2015.

ADDRESSES: Interested parties may submit comments within 60 days of the date of publication by one of the following methods:

- *Email: DDTCPublicComments@state.gov* with the subject line, ''ITAR Amendment—Categories XIV and XVIII.''
- *Internet:* At *www.regulations.gov,* search for this proposed rule by using this rule's RIN (1400–AD03).

Comments received after that date will be considered if feasible, but consideration cannot be assured. Those submitting comments should not include any personally identifying information they do not wish to be made public or information for which a claim of confidentiality is asserted because those comments and/or transmittal emails will be made available for public inspection and copying after the close of the comment period via the Directorate of Defense Trade Controls Web site at *www.pmddtc.state.gov.* Parties who wish to comment anonymously may do so by submitting their comments via *www.regulations.gov,* leaving the fields that would identify the commenter blank and including no identifying information in the comment itself. Comments submitted via *www.regulations.gov* are immediately available for public inspection.

FOR FURTHER INFORMATION CONTACT: Mr. C. Edward Peartree, Director, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2792; email *DDTCPublicComments@state.gov.* ATTN: ITAR Amendment—USML Categories XIV and XVIII.

SUPPLEMENTARY INFORMATION: The Directorate of Defense Trade Controls (DDTC), U.S. Department of State, administers the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130). The items subject to the jurisdiction of the ITAR, *i.e.,* ''defense articles,'' are identified on the ITAR's U.S. Munitions List (USML) (22 CFR 121.1). With few exceptions, items not subject to the export control jurisdiction of the ITAR are subject to the jurisdiction of the Export Administration Regulations (''EAR,'' 15 CFR parts 730–774, which includes the Commerce Control List (CCL) in Supplement No. 1 to Part 774), administered by the Bureau of Industry and Security (BIS), U.S. Department of Commerce. Both the ITAR and the EAR impose license requirements on exports and reexports. Items not subject to the ITAR or to the exclusive licensing jurisdiction of any other set of regulations are subject to the EAR.

Revision of Category XIV

This proposed rule revises USML Category XIV, covering toxicological agents, including chemical agents, biological agents, and associated equipment. The revisions are proposed in order to advance the national security objectives of greater interoperability with U.S. allies, enhancing the defense industrial base, and permitting the U.S. government to focus its resources on transactions of greater concern. Additionally, the revisions are intended to more accurately describe the articles within the subject categories, in order to establish a ''bright line'' between the USML and the CCL for the control of these articles.

This proposed rule implements changes consistent with the requirements of Executive Order 13546 on Optimizing the Security of Biological Select Agents and Toxins in the United States, which includes direction to address variations in, and limited coordination of, individual executive departments' and agencies' oversight that add to the cost and complexity of compliance. It also directs a risk-based tiering of the biological select agent list. As a result, the proposed control language in paragraph (b) adopts the ''Tier 1'' pathogens and toxins established in the Department of Health and Human Services and the United States Department of Agriculture select agent regulations (42 CFR part 73 and 9 CFR 121) for those pathogens and toxins that meet specific capabilities listed in paragraph (b). The Tier 1 pathogens and toxins that do not meet these capabilities remain controlled in Export Control Classification Number (ECCN) 1C351 or 1C352 on the CCL.

Additionally, this rule, in concert with the analogous proposed rule published by the Department of

Commerce, proposes the movement of riot control agents to the export jurisdiction of the Department of Commerce, as well as the articles covered currently in paragraphs (j), (k), and (l), which include test facilities, equipment for the destruction of chemical and biological agents, and tooling for production of articles in paragraph (f), respectively.

Other changes include the addition of paragraph (a)(5) to control chemical warfare agents ''adapted for use in war'' and not elsewhere enumerated, as well as the removal of paragraphs (f)(3) and (f)(6) and movement to the CCL of equipment for the sample collection and decontamination or remediation of chemical agents and biological agents. Paragraph (f)(5) for collective protection was removed and partially combined in (f)(4) or the CCL. Proposed paragraph (g) enumerates antibodies, recombinant protective antigens, polynucleotides, biopolymers, or biocatalysts exclusively funded by a Department of Defense contract for detection of the biological agents listed in paragraph (b)(1)(ii).

The Department notes that the controls in paragraph (f)(2) that include the phrase ''developed under a Department of Defense contract or other funding authorization'' do not apply when the Department of Defense acts solely as a servicing agency for a contract on behalf of another agency of the U.S. government.

The Department notes that the controls in paragraphs (g)(1) and (h) that include the phrase ''exclusively funded by a Department of Defense contract'' do not apply when the Department of Defense acts solely as a servicing agency for a contract on behalf of another agency of the U.S. government, or, for example, in cases where the Department of Defense provides initial funding for the development of an item but another agency of the U.S. government provides funding to further develop or adapt the item.

Proposed paragraph (h) enumerates certain vaccines funded exclusively by the Department of Defense, as well as certain vaccines controlled in (h)(2) that are specially designed for the sole purpose of protecting against biological agents and biologically derived substances identified in (b). Thus, the scope of vaccines controlled in (h)(2) is circumscribed by the nature of funding, the satisfaction of the term ''specially designed'' as that term is defined in ITAR § 120.41, and the limitations in (b) that control only those biological agents and biologically derived substances meeting specific criteria. In evaluating the scope of this control, please note that the Department offers a decision tool to aid exporters in determining whether a defense article meets the definition of ''specially designed.'' This tool is available at *http://www.pmddtc.state.gov/licensing/dt_SpeciallyDesigned.htm.*

Proposed revised paragraph (i) is updated to provide better clarity on the scope of the control by including examples of Department of Defense tools that are used to determine or estimate potential effects of chemical or biological weapons strikes and incidents in order to plan to mitigate their impacts.

A new paragraph (x) has been added to USML Category XIV, allowing ITAR licensing on behalf of the Department of Commerce for commodities, software, and technology subject to the EAR provided those commodities, software, and technology are to be used in or with defense articles controlled in USML Category XIV and are described in the purchase documentation submitted with the application. The intent of paragraph (x) is not to impose ITAR jurisdiction on commodities, software, and technology subject to EAR controls.

Finally, the rule proposes to only control on the USML chemical or biological agent detectors when they contain Department of Defense reagents, spectra, algorithms, databases, etc.

Revision of Category XVIII

This proposed rule revises USML Category XVIII, covering directed energy weapons. As with USML Category XIV, the revisions are proposed in order to advance the national security objectives set forth above and to more accurately describe the articles within the subject categories, in order to establish a ''bright line'' between the USML and the CCL for the control of these articles. A change proposed in this rule would revise paragraph (a) to control only those items that satisfy the paragraph's definition of ''directed energy weapon,'' which focuses on the sole or primary purpose of the article in order to exclude those items that might achieve the same effect in an incidental, accidental, or collateral manner.

The articles controlled currently in paragraphs (c) and (d) would move to the export control jurisdiction of the Department of Commerce.

The remaining paragraphs in this category would undergo conforming changes to bring their structures into alignment with the analogous provisions found in other revised USML categories.

Request for Comments

The proposed revisions to the USML will control items in normal commercial use and on the Wassenaar Arrangement's Dual Use List. The Department welcomes the assistance of users of the lists and requests input on the following:

(1) A key goal of this rulemaking is to ensure the USML and the CCL together control all the items that meet Wassenaar Arrangement commitments embodied in Munitions List Categories 7 (WA–ML7) and 19 (WA–ML19). The public is therefore asked to identify any potential lack of coverage brought about by the proposed rules for Categories XIV and XVIII contained in this proposed rule and the new Category 1 and Category 6 ECCNs published separately by the Department of Commerce when reviewed together.

(2) Another key goal of this rulemaking is to identify items proposed for control on the USML or the CCL that are not controlled on the Wassenaar Arrangement's Munitions or Dual Use List. The public is therefore asked to identify any potential expansion of coverage brought about by the proposed rules for Categories XIV and XVIII contained in this proposed rule and the new Category 1 and Category 6 ECCNs published separately by the Department of Commerce when reviewed together.

(3) A third key goal of this rulemaking is to establish a ''bright line'' between the USML and the CCL for the control of these materials. The public is asked to provide specific examples of toxicological agents, including chemical agents, biological agents, and associated equipment, as well as directed energy weapons, whose jurisdiction would be in doubt based on this revision. The public is also asked to comment on whether there is a sufficiently clear line drawn between the biological items proposed for control by USML Category XIV(b) and those proposed for control under the CCL.

(4) Although the proposed revisions to the USML do not preclude the possibility that items in normal commercial use would or should be ITAR-controlled because, *e.g.,* they provide the United States with a critical military or intelligence advantage, the U.S. government does not want to inadvertently control items on the ITAR that are in normal commercial use. Items that would be controlled on the USML in this proposed rule have been identified as possessing parameters or characteristics that provide a critical military or intelligence advantage. The public is thus asked to provide specific examples of items, or associated technical data, if any, that would be controlled in the revised USML Categories XIV or XVIII that are now in normal commercial use, or that are

commonly used or produced in civilian scientific laboratories. The examples should demonstrate actual commercial or civilian scientific use, not just potential or theoretical use, with supporting documents, as well as foreign availability of such items. Additionally, for any criteria the public believes control items in normal commercial or civilian scientific use, the public is asked to identify parameters or characteristics that cover items exclusively or primarily in military use. Finally, for any criteria the public believes control items in normal commercial use, the public is asked to identify the multilateral controls (such as the Wassenaar Arrangement's Dual Use List), if any, for such items, and the consequences of such items being controlled on the USML.

(5) The public is asked to provide comment on the proposed definition of ''non-naturally occurring'' in Note 2 to Category XIV(b), if the proposed definition does not appear to be comprehensive. The public is also asked to comment on ''non-naturally occurring'' in the context of genetic modification and consider whether the definition is sufficient to distinguish military or intelligence purposes from commercial or civilian purposes.

(6) The public is asked to provide specific examples of reagents that may be inadvertently controlled by Category XIV(b), XIV(f), XIV(g), or XIV(m), that are commonly used for scientific research and development, or medical countermeasures that may similarly be inadvertently controlled and the dissemination of which would be in the interest of public health or medical preparedness.

(7) The public is asked to specifically evaluate and comment on the decision process outlined in the proposed rule that would be used to determine whether vaccines that are intended to be developed and used to protect public and veterinary health against any event resulting from exposure to naturally occurring or non-naturally occurring pathogens or toxins is sufficiently clear to allow research and commercial entities to determine whether a vaccine would unintentionally be captured under this rule. Please provide specific examples that demonstrate how the proposed rule would prevent or hinder the ability to develop or utilize vaccines for public health or veterinary benefit under this proposed language and decision process.

(8) In the interest of ensuring the security of and control over certain types of chemical and biological detection equipment, Category XIV(f)(2) could incidentally impose ITAR controls on certain civilian and public health equipment containing the items listed in paragraph (f)(2). Accordingly, as proposed, paragraph (f)(2) may control detection equipment that may not warrant ITAR control, but contains items that are fully or partially Defense-funded. The Department requests comment from the public, including specific examples of equipment that the public believes may be unintentionally controlled by this text by virtue of Defense funding.

In addition, the Department acknowledges that some members of the public may not be able comment meaningfully on this matter because they lack full awareness of items that have previously been fully or partially developed under Defense funding. To the extent that commenters require specific additional information about the scope of Defense funding in certain contexts, the Department requests that commenters identify any relevant gaps in knowledge.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States Government and that rules implementing this function are exempt from sections 553 (Rulemaking) and 554 (Adjudications) of the Administrative Procedure Act. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department is publishing this rule with a 60-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function. As noted above, and also without prejudice to the Department position that this rulemaking is not subject to the APA, the Department previously published a related Advance Notice of Proposed Rulemaking (RIN 1400–AC78) on December 10, 2010 (75 FR 76935), and accepted comments for 60 days.

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the rulemaking provisions of 5 U.S.C. 553, it does not require analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

This proposed amendment does not involve a mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed amendment has been found not to be a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

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

Executive Order 12866 and 13563

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

Executive Order 12988

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

Executive Order 13175

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

Paperwork Reduction Act

Following is a listing of approved collections that will be affected by revision of the U.S. Munitions List (USML) and the Commerce Control List pursuant to the President's Export Control Reform (ECR) initiative. This rule continues the implementation of ECR. The list of collections and the description of the manner in which they will be affected pertains to revision of the USML in its entirety, not only to the categories published in this rule. In accordance with the Paperwork Reduction Act, the Department of State will request comment on these collections from all interested persons. In particular, the Department will seek comment on changes to licensing burden based on implementation of regulatory changes pursuant to ECR, and on projected changes based on continued implementation of regulatory changes pursuant to ECR. The affected information collections are as follows:

(1) Statement of Registration, DS–2032, OMB No. 1405–0002. The Department estimates that between 3,000 and 5,000 of currently-registered persons will not need to maintain registration following full revision of the USML. This would result in a burden reduction of between 6,000 and 10,000 hours annually, based on a revised time burden of two hours to complete a Statement of Registration.

(2) Application/License for Permanent Export of Unclassified Defense Articles and Related Unclassified Technical Data, DSP–5, OMB No. 1405–0003. The Department estimates that there will be 35,000 fewer DSP–5 submissions annually following full revision of the USML. This would result in a burden reduction of 35,000 hours annually.

(3) Application/License for Temporary Import of Unclassified Defense Articles, DSP–61, OMB No. 1405–0013. The Department estimates that there will be 200 fewer DSP–61 submissions annually following full revision of the USML. This would result in a burden reduction of 100 hours annually.

(4) Application/License for Temporary Export of Unclassified Defense Articles, DSP–73, OMB No. 1405–0023. The Department estimates that there will be 800 fewer DSP–73 submissions annually following full revision of the USML. This would result in a burden reduction of 800 hours annually.

(5) Application for Amendment to License for Export or Import of Classified or Unclassified Defense Articles and Related Technical Data, DSP–6, –62, –74, –119, OMB No. 1405–0092. The Department estimates that there will be 2,000 fewer amendment submissions annually following full revision of the USML. This would result in a burden reduction of 1,000 hours annually.

(6) Request for Approval of Manufacturing License Agreements, Technical Assistance Agreements, and Other Agreements, DSP–5, OMB No. 1405–0093. The Department estimates that there will be 1,000 fewer agreement submissions annually following full revision of the USML. This would result in a burden reduction of 2,000 hours annually.

(7) Maintenance of Records by Registrants, OMB No. 1405–0111. The requirement to actively maintain records pursuant to provisions of the International Traffic in Arms Regulations (ITAR) will decline commensurate with the drop in the number of persons who will be required to register with the Department pursuant to the ITAR. As stated above, the Department estimates that up to 5,000 of the currently-registered persons will not need to maintain registration following full revision of the USML. This would result in a burden reduction of 100,000 hours annually. However, the ITAR does provide for the maintenance of records for a period of five years. Therefore, persons newly relieved of the requirement to register with the Department may still be required to maintain records.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, part 121 is proposed to be amended as follows:

PART 121—THE UNITED STATES MUNITIONS LIST

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

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

■ 2. Section 121.1 is amended by revising U.S. Munitions List Categories XIV and XVIII to read as follows:

§ 121.1 The United States Munitions List.

* * * * *

Category XIV—Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment

*(a) Chemical agents, to include:

(1) Nerve agents, as follows:

(i) O-Alkyl (equal to or less than C_{10}, including cycloalkyl) alkyl (Methyl, Ethyl, n-Propyl or Isopropyl) phosphonofluoridates, such as: Sarin (GB): O-Isopropyl methylphosphonofluoridate (CAS 107–44–8) (CWC Schedule 1A); and Soman (GD): O-Pinacolyl methylphosphonofluoridate (CAS 96–64–0) (CWC Schedule 1A);

(ii) O-Alkyl (equal to or less than C_{10}, including cycloalkyl) N,N-dialkyl (Methyl, Ethyl, n-Propyl or Isopropyl) phosphoramidocyanidates, such as: Tabun (GA): O-Ethyl N, N-dimethylphosphoramidocyanidate (CAS 77–81–6) (CWC Schedule 1A); or

(iii) O-Alkyl (H or equal to or less than C_{10}, including cycloalkyl) S–2-dialkyl (Methyl, Ethyl, n-Propyl or Isopropyl) aminoethyl alkyl (Methyl, Ethyl, n-Propyl or Isopropyl) phosphonothiolates and corresponding alkylated and protonated salts, such as VX: O-Ethyl S–2-diisopropylaminoethyl methyl phosphonothiolate (CAS 50782–69–9) (CWC Schedule 1A);

(2) Amiton: O,O-Diethyl S-[2(diethylamino)ethyl] phosphorothiolate and corresponding alkylated or protonated salts (CAS 78–53–5) (CWC Schedule 2A);

(3) Vesicant agents, as follows:

(i) Sulfur mustards, such as: 2-Chloroethylchloromethylsulfide (CAS 2625–76–5) (CWC Schedule 1A); Bis(2-chloroethyl)sulfide (HD) (CAS 505–60–2) (CWC Schedule 1A); Bis(2-chloroethylthio)methane (CAS 63839–13–6) (CWC Schedule 1A); 1,2-bis (2-chloroethylthio)ethane (CAS 3563–36–8) (CWC Schedule 1A); 1,3-bis (2-chloroethylthio)-n-propane (CAS 63905–10–2) (CWC Schedule 1A); 1,4-bis (2-chloroethylthio)-n-butane (CWC Schedule 1A); 1,5-bis (2-chloroethylthio)-n-pentane (CWC Schedule 1A); Bis (2-chloroethylthiomethyl)ether (CWC Schedule 1A); Bis (2-chloroethylthioethyl)ether (CAS 63918–89–8) (CWC Schedule 1A);

(ii) Lewisites, such as: 2-chlorovinyldichloroarsine (CAS 541–25–3) (CWC Schedule 1A); Tris (2-chlorovinyl) arsine (CAS 40334–70–1) (CWC Schedule 1A); Bis (2-chlorovinyl) chloroarsine (CAS 40334–69–8) (CWC Schedule 1A);

(iii) Nitrogen mustards, or their protonated salts, as follows:

(A) HN1: bis (2-chloroethyl) ethylamine (CAS 538–07–8) (CWC Schedule 1A);

(B) HN2: bis (2-chloroethyl) methylamine (CAS 51–75–2) (CWC Schedule 1A);

(C) HN3: tris (2-chloroethyl) amine (CAS 555–77–1) (CWC Schedule 1A); or

(D) Other nitrogen mustards, or their salts, having a propyl, isopropyl, butyl, isobutyl, or tertiary butyl group on the bis(2-chloroethyl) amine base;

Note 1 to paragraph (a)(3)(iii): Pharmaceutical formulations containing nitrogen mustards or certain reference standards for these formulations are not considered to be chemical agents and are subject to the EAR when: 1) the pharmaceutical is in the form of a final medical product, or 2) the reference standard contains salts of HN2 [bis(2-chloroethyl) methylamine], the quantity to be shipped is 150 milligrams or less, and individual shipments do not exceed twelve per calendar year per end user.

Note 2 to paragraph (a)(3)(iii): A ''final medical product,'' as used in this paragraph, is a pharmaceutical formulation that is (1) designed for testing and administration in the treatment of human medical conditions, (2) prepackaged for distribution as a clinical or medical product, and (3) approved by the Food and Drug Administration to be marketed as a clinical or medical product or for use as an ''Investigational New Drug'' (IND) (see 21 CFR part 312)

(iv) Ethyldichloroarsine (ED) (CAS 598–14–1); or

(v) Methyldichloroarsine (MD) (CAS 593–89–5);

(4) Incapacitating agents, such as:

(i) 3-Quinuclindinyl benzilate (BZ) (CAS 6581–06–2) (CWC Schedule 2A);

(ii) Diphenylchloroarsine (DA) (CAS 712–48–1); or

(iii) Diphenylcyanoarsine (DC) (CAS 23525–22–6);

(5) Chemical warfare agents not enumerated above adapted for use in war to produce casualties in humans or animals, degrade equipment, or damage crops or the environment. (*See* the CCL at ECCNs 1C350, 1C355, and 1C395 for control of certain chemicals not adapted for use in war.)

Note to paragraph (a)(5): ''Adapted for use in war'' means any modification or selection (such as altering purity, shelf life, dissemination characteristics, or resistance to ultraviolet radiation) designed to increase the effectiveness in producing casualties in humans or animals, degrading equipment, or damaging crops or the environment.

Note 1 to paragraph (a): Paragraph (a) of this category does not include the following: Cyanogen chloride, Hydrocyanic acid, Chlorine, Carbonyl chloride (Phosgene), Ethyl bromoacetate, Xylyl bromide, Benzyl bromide, Benzyl iodide, Chloro acetone, Chloropicrin (trichloronitromethane), Fluorine, and Liquid pepper.

Note 2 to paragraph (a): Regarding U.S. obligations under the Chemical Weapons Convention (CWC), refer to Chemical Weapons Convention Regulations (CWCR) (15 CFR parts 710 through 722). As appropriate, the CWC schedule is provided to assist the exporter.

*(b) Biological agents and biologically derived substances and genetic elements thereof as follows:

(1) Genetically modified biological agents:

(i) Having non-naturally occurring genetic modifications which result in an increase in any of the following:

(A) Persistence in a field environment (*e.g.,* resistance to oxygen, UV damage, temperature extremes, or arid conditions); or

(B) The ability to defeat or overcome standard detection methods, personnel protection, natural or acquired host immunity, host immune response, or response to standard medical countermeasures; and

(ii) Being any micro-organisms/toxins or their non-naturally occurring genetic elements as listed below:

(A) Bacillus anthracis;

(B) Botulinum neurotoxin producing species of Clostridium;

(C) Burkholderia mallei;

(D) Burkholderia pseudomallei;

(E) Ebola virus;

(F) Foot-and-mouth disease virus;

(G) Francisella tularensis;

(H) Marburg virus;

(I) Variola major virus (Smallpox virus);

(J) Variola minor virus (Alastrim);

(K) Yersinia pestis; or

(L) Rinderpest virus.

(2) Biological agent or biologically derived substances controlled in ECCNs 1C351, 1C352, 1C353, or 1C354:

(i) Physically modified, formulated, or produced as any of the following:

(A) 1—10 micron particle size;

(B) Particle-absorbed or combined with nano-particles;

(C) Having coatings/surfactants, or

(D) By microencapsulation; and

(ii) Meeting the criteria of paragraph (b)(2)(i) of this category in a manner that results in an increase in any of the following:

(A) Persistence in a field environment (*e.g.,* resistant to oxygen, UV damage, temperature extremes, or arid conditions);

(B) Dispersal characteristics (*e.g.,* reduce the susceptibility to shear forces, optimize electrostatic charges); or

(C) The ability to defeat or overcome: standard detection methods, personnel protection, natural or acquired host immunity, or response to standard medical countermeasures.

Note 1 to paragraph (b): Non-naturally occurring means that the modification has not already been observed in nature, was not discovered from samples obtained from nature, and was developed with human intervention.

Note 2 to paragraph (b): This paragraph does not control biological agents or biologically derived substances, when these agents or substances have been demonstrated to be attenuated relative to natural pathogenic isolates, and are incapable of causing disease or intoxication of ordinarily affected and relevant species (*e.g.,* humans, livestock, crop plants) due to the attenuation of virulence or pathogenic factors. This paragraph also does not control genetic elements, nucleic acids, or nucleic acid sequences (whether recombinant or synthetic) that are unable to produce or direct the biosynthesis of infectious or functional forms of the biological agents or biologically derived substances that are capable of causing disease or intoxication of ordinarily affected and relevant species.

Note 3 to paragraph (b): Biological agents or biologically derived substances that meet both paragraphs (b)(1) and (b)(2) of this category are controlled in paragraph (b)(1).

*(c) Chemical agent binary precursors and key precursors, as follows:

(1) Alkyl (Methyl, Ethyl, n-Propyl or Isopropyl) phosphonyl difluorides, such as: DF: Methyl Phosphonyldifluoride (CAS 676–99–3) (CWC Schedule 1B); Methylphosphinyldifluoride (CAS 753–59–3) (CWC Schedule 2B);

(2) O-Alkyl (H or equal to or less than C_{10}, including cycloalkyl) O–2-dialkyl (methyl, ethyl, n-Propyl or isopropyl) aminoethyl alkyl (methyl, ethyl, N-propyl or isopropyl) phosphonite and corresponding alkylated and protonated salts, such as QL: O-Ethyl-2-di-isopropylaminoethyl methylphosphonite (CAS 57856–11–8) (CWC Schedule 1B);

(3) Chlorosarin: O-Isopropyl methylphosphonochloridate (CAS 1445–76–7) (CWC Schedule 1B);

(4) Chlorosoman: O-Pinakolyl methylphosphonochloridate (CAS 7040–57–5) (CWC Schedule 1B); or

(5) Methlyphosphonyl dichloride (CAS 676–97–1) (CWC Schedule 2B); Methylphosphinyldichloride (CAS 676–83–5) (CWC Schedule 2B).

(d) [Reserved]

(e) Defoliants, as follows:

(1) 2,4,5-trichlorophenoxyacetic acid (CAS 93–76–5) mixed with 2,4-dichlorophenoxyacetic acid (CAS 94–75–7) (Agent Orange (CAS 39277–47–9));or

(2) Butyl 2-chloro-4-fluorophenoxyacetate (LNF).

*(f) Equipment or items, as follows:

(1) Any equipment for the dissemination, dispersion, or testing of items controlled in paragraphs (a), (b), (c), or (e) of this category, as follows:

(i) Any equipment ''specially designed'' for the dissemination and dispersion of items controlled in paragraphs (a), (b), (c), or (e) of this category; or

(ii) Any equipment ''specially designed'' for testing the items controlled in paragraphs (a), (b), (c), (e), or (f)(4) of this category developed under a Department of Defense contract or other funding authorization.

(2) Any equipment containing reagents, algorithms, coefficients, software, libraries, spectral databases, or alarm set point levels developed under a Department of Defense contract or other funding authorization for the detection, identification, warning, or monitoring of:

(i) Items controlled in paragraphs (a) or (b) of this category; or

(ii) Chemical or biological agents specified by a Department of Defense contract or other funding authorization.

Note 1 to paragraph (f)(2): This paragraph does not control items that are (a) determined to be subject to the EAR via a commodity jurisdiction determination (see § 120.4 of this subchapter), or (b) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (f)(2): Note 1 does not apply to defense articles enumerated on the USML.

Note 3 to paragraph (f)(2): This paragraph is applicable only to those contracts and funding authorizations that are dated [DATE ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE], or later.

(3) [Reserved]

(4) For individual protection or collective protection against the items controlled in paragraphs (a) and (b) of this category, as follows:

(i) M53 Chemical Biological Protective Mask or M50 Joint Service General Purpose Mask (JSGPM);

(ii) Filter cartridges containing sorbents controlled in paragraph (f)(4)(iii) of this category;

(iii) ASZM–TEDA carbon; or

(iv) Ensembles, garments, suits, jackets, pants, boots, or socks for individual protection, and liners for collective protection that allow no more than 1% breakthrough of GD or no more than 2% of HD;

Note to paragraph (f)(4)(iv): Evaluation is made by applying 10 mg of GD or HD to a 1-inch swatch. Ambient air is directed through the swatch for 24 hours and sampled/tested from the opposite side of the swatch using a gas chromatograph with flame photometric detector (FPD) or pulsed FPD (PFPD) and using sorption/desorption tools to increase sensitivity.

(5) [Reserved]

(6) [Reserved]

(7) Chemical Agent Resistant Coatings that have been qualified to military specifications (MIL–DTL–64159, MIL–C–46168, or MIL–C–53039); or

(8) Any equipment, material, tooling, hardware or test equipment that:

(i) Is classified;

(ii) Is manufactured using classified production data; or

(iii) Is being developed using classified information.

Note to paragraph (f)(8): ''Classified'' means classified pursuant to Executive Order 13526, or predecessor order, and a security classification guide developed pursuant thereto or equivalent, or to the corresponding classification rules of another government.

(g) Antibodies, recombinant protective antigens, polynucleotides, biopolymers, or biocatalysts (including their expression vectors, viruses, plasmids, or cultures of specific cells modified to produce them) as follows:

(1) When exclusively funded by a Department of Defense contract for detection of the biological agents at paragraph (b)(1)(ii) of this category even if naturally occurring;

(2) Joint Biological Agent Identification and Diagnostic System (JBAIDS) Freeze Dried reagents listed by JRPD–ASY-No and Description respectively as follows:

(i) JRPD–ASY–0016 Q-Fever IVD Kit;

(ii) JRPD–ASY–0100 Vaccinia (Orthopox);

(iii) JRPD–ASY–0106 Brucella melitensis (Brucellosis);

(iv) JRPD–ASY–0108 Rickettsia prowazekii (Rickettsia);

(v) JRPD–ASY–0109 Burkholderia ssp. (Burkholderia);

(vi) JRPD–ASY–0112 Eastern equine encephalitis (EEE);

(vii) JRPD–ASY–0113 Western equine encephalitis (WEE);

(viii) JRPD–ASY–0114 Venezuelan equine encephalitis (VEE);

(ix) JRPD–ASY–0122 Coxiella burnetii (Coxiella);

(x) JRPD–ASY–0136 Influenza A/H5 IVD Detection Kit;

(xi) JRPD–ASY–0137 Influenza A/B IVD Detection Kit; or

(xii) JRPD–ASY–0138 Influenza A Subtype IVD Detection Kit;

(3) Critical Reagent Polymerase (CRP) Chain Reactions (PCR) assay kits with Catalog-ID and Catalog-ID Product respectively as follows:

(i) PCR–BRU–1FB–B–K Brucella Target 1 FastBlock Master Mix Biotinylated;

(ii) PCR–BRU–1FB–K Brucella Target 1 FastBlock Master Mix;

(iii) PCR–BRU–1R–K Brucella Target 1 LightCycler/RAPID Master Mix;

(iv) PCR–BURK–2FB–B–K Burkholderia Target 2 FastBlock Master Mix Biotinylated;

(v) PCR–BURK–2FB–K Burkholderia Target 2 FastBlock Master Mix;

(vi) PCR–BURK–2R–K Burkholderia Target 2 LightCycler/RAPID Master Mix;

(vii) PCR–BURK–3FB–B–K Burkholderia Target 3 FastBlock Master Mix Biotinylated;

(viii) PCR–BURK–3FB–K Burkholderia Target 3 FastBlock Master Mix;

(ix) PCR–BURK–3R–K Burkholderia Target 3 LightCycler/RAPID Master Mix;

(x) PCR–COX–1FB–B–K Coxiella burnetii Target 1 FastBlock Master Mix Biotinylated;

(xi) PCR–COX–1R–K Coxiella burnetii Target 1 LightCycler/RAPID Master Mix;

(xii) PCR–COX–2R–K Coxiella burnetii Target 2 LightCycler/RAPID Master Mix;

(xiii) PCR–OP–1FB–B–K Orthopox Target 1 FastBlock Master Mix Biotinylated;

(xiv) PCR–OP–1FB–K Orthopox Target 1 FastBlock Master Mix;

(xv) PCR–OP–1R–K Orthopox Target 1 LightCycler/RAPID Master Mix;

(xvi) PCR–OP–2FB–B–K Orthopox Target 2 FastBlock Master Mix Biotinylated;

(xvii) PCR–OP–3R–K Orthopox Target 3 LightCycler/RAPID Master Mix;

(xviii) PCR–RAZOR–BT–X PCR–RAZOR–BT–X RAZOR CRP BioThreat-X Screening Pouch;

(xix) PCR–RIC–1FB–K Ricin Target 1 FastBlock Master Mix;

(xx) PCR–RIC–1R–K Ricin Target 1 LightCycler/RAPID Master Mix;

(xxi) PCR–RIC–2R–K Ricin Target 2 LightCycler/RAPID Master Mix; or

(xxii) PCR–VEE–1R–K Venezuelan equine encephalitis Target 1 LightCycler/RAPID Master Mix; or

(4) Critical Reagent Program Antibodies with Catalog ID and Product respectively as follows:

(i) AB–AG–RIC Aff. Goat anti-Ricin;

(ii) AB–ALVG–MAB Anti-Alphavirus Generic Mab;

(iii) AB–AR–SEB Aff. Rabbit anti-SEB;

(iv) AB–BRU–M–MAB1 Anti-Brucella melitensis Mab 1;

(v) AB–BRU–M–MAB2 Anti-Brucella melitensis Mab 2;

(vi) AB–BRU–M–MAB3 Anti-Brucella melitensis Mab 3;

(vii) AB–BRU–M–MAB4 Anti-Brucella melitensis Mab 4;

(viii) AB–CHOL–0139–MAB Anti-V.cholerae 0139 Mab;

(ix) AB–CHOL–01–MAB Anti-V. cholerae 01 Mab;

(x) AB–COX–MAB Anti-Coxiella Mab;
(xi) AB–EEE–MAB Anti-EEE Mab;
(xii) AB–G–BRU–A Goat anti-Brucella abortus;
(xiii) AB–G–BRU–M Goat anti-Brucella melitensis;
(xiv) AB–G–BRU–S Goat anti-Brucella suis;
(xv) AB–G–CHOL–01 Goat anti-V.cholerae 0:1;
(xvi) AB–G–COL–139 Goat anti-V.cholerae 0:139;
(xvii) AB–G–DENG Goat anti-Dengue;
(xviii) AB–G–RIC Goat anti-Ricin;
(xix) AB–G–SAL–T Goat anti-S. typhi;
(xx) AB–G–SEA Goat anti-SEA;
(xxi) AB–G–SEB Goat anti-SEB;
(xxii) AB–G–SEC Goat anti-SEC;
(xxiii) AB–G–SED Goat anti-SED;
(xxiv) AB–G–SEE Goat anti-SEE;
(xxv) AB–G–SHIG–D Goat anti-Shigella dysenteriae;
(xxvi) AB–R–BA–PA Rabbit anti-Protective Antigen;
(xxvii) AB–R–COX Rabbit anti-C. burnetii;
(xxviii) AB–RIC–MAB1 Anti-Ricin Mab 1;
(xxix) AB–RIC–MAB2 Anti-Ricin Mab 2;
(xxx) AB–RIC–MAB3 Anti-Ricin Mab3;
(xxxi) AB–R–SEB Rabbit anti-SEB;
(xxxii) AB–R–VACC Rabbit anti-Vaccinia;
(xxxiii) AB–SEB–MAB Anti-SEB Mab;
(xxxiv) AB–SLT2–MAB Anti-Shigella-like t x2 Mab;
(xxxv) AB–T2T–MAB1 Anti-T2 Mab 1;
(xxxvi) AB–T2T–MAB2 Anti-T2 Toxin 2;
(xxxvii) AB–VACC–MAB1 Anti-Vaccinia Mab 1;
(xxxviii) AB–VACC–MAB2 Anti-Vaccinia Mab 2;
(xxxix) AB–VACC–MAB3 Anti-Vaccinia Mab 3;
(xl) AB–VACC–MAB4 Anti-Vaccinia Mab 4;
(xli) AB–VACC–MAB5 Anti-Vaccinia Mab 5;
(xlii) AB–VACC–MAB6 Anti-Vaccinia Mab 6;
(xliii) AB–VEE–MAB1 Anti-VEE Mab 1;
(xliv) AB–VEE–MAB2 Anti-VEE Mab 2;
(xlv) AB–VEE–MAB3 Anti-VEE Mab 3;
(xlvi) AB–VEE–MAB4 Anti-VEE Mab 4;
(xlvii) AB–VEE–MAB5 Anti-VEE Mab 5
(xlviii) AB–VEE–MAB6 Anti-VEE Mab 6; or
(xlix) AB–WEE–MAB Anti-WEE Complex Mab.

(h) Vaccines exclusively funded by a Department of Defense contract, as follows:

(1) Recombinant Botulinum Toxin A/B Vaccine;
(2) Recombinant Plague Vaccine;
(3) Trivalent Filovirus Vaccine; or
(4) Vaccines specially designed for the sole purpose of protecting against biological agents and biologically derived substances identified in paragraph (b) of this category.

Note to paragraph (h): See ECCN 1A607.k for military medical countermeasures such as autoinjectors, combopens, and creams.

(i) Modeling or simulation tools, including software controlled in paragraph (m) of this category, for chemical or biological weapons design, development, or employment developed or produced under a Department of Defense contract or other funding authorization (*e.g.,* the Department of Defense's HPAC, SCIPUFF, and the Joint Effects Model (JEM)).

(j)—(l) [Reserved]

(m) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (l) and (n) of this category; (*See* § 125.4 of this subchapter for exemptions.)

(n) Developmental countermeasures or sorbents funded by the Department of Defense via contract or other funding authorization;

Note 1 to paragraph (n): This paragraph does not control countermeasures or sorbents that are (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination (see § 120.4 of this subchapter), or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (n): Note 1 does not apply to defense articles enumerated on the USML, whether in production or development.

Note 3 to paragraph (n): This paragraph is applicable only to those contracts and funding authorizations that are dated [DATE ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE], or later.

(o)–(w) [Reserved]

(x) Commodities, software, and technology subject to the EAR (see § 120.42 of this subchapter) used in or with defense articles controlled in this category.

Note to paragraph (x): Use of this paragraph is limited to license applications for defense articles controlled in this category where the purchase documentation includes commodities, software, or technology subject to the EAR (see § 123.1(b) of this subchapter).

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Category XVIII—Directed Energy Weapons

*(a) Directed energy weapons (DEW): systems or equipment that, as their sole or primary purpose (*i.e.,* not as a result of incidental, accidental or collateral effect), degrade, destroy or cause mission-abort of a target; disturb, disable, or damage electronic circuitry, sensors or explosive devices remotely; deny area access; cause lethal effects; or cause permanent or flash blindness using any non-acoustic technique such as lasers (including continuous wave or pulsed lasers), particle beams, particle accelerators that project a charged or neutral particle beam, high power radio-frequency (RF), or high pulsed power or high average power radio frequency beam transmitters.

*(b) Systems or equipment specially designed to detect, identify or provide defense against articles specified in paragraph (a) of this category.

(c)–(d) [Reserved]

(e) Components, parts, accessories, attachments, and associated systems or equipment specially designed for any of the articles in paragraphs (a) and (b) of this category.

(f) Developmental directed energy weapons funded by the Department of Defense via contract or other funding authorization;

Note 1 to paragraph (f): This paragraph does not control directed energy weapons (a) in production, (b) determined to be subject to the EAR via a commodity jurisdiction determination (see § 120.4 of this subchapter), or (c) identified in the relevant Department of Defense contract or other funding authorization as being developed for both civil and military applications.

Note 2 to paragraph (f): Note 1 does not apply to defense articles enumerated on the USML, whether in production or development.

Note 3 to paragraph (f): This paragraph is applicable only to those contracts and funding authorizations that are dated [DATE ONE YEAR AFTER DATE OF PUBLICATION OF THE FINAL RULE], or later.

(g) Technical data (as defined in § 120.10 of this subchapter) and defense services (as defined in § 120.9 of this subchapter) directly related to the defense articles enumerated in paragraphs (a) through (e) of this category;

(h)–(w) [Reserved]

(x) Commodities, software, and technology subject to the EAR (see § 120.42 of this subchapter) used in or with defense articles controlled in this category.

Note to paragraph (x): Use of this paragraph is limited to license applications

for defense articles controlled in this category where the purchase documentation includes commodities, software, or technology subject to the EAR (see § 123.1(b) of this subchapter).

Dated: June 3, 2015.

Rose E. Gottemoeller,

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

[FR Doc. 2015–14472 Filed 6–16–15; 8:45 am]

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DEPARTMENT OF EDUCATION

34 CFR Chapter III

[Docket ID ED–2015–OSERS–0069]

Proposed Priority—Rehabilitation Training: Vocational Rehabilitation Workforce Innovation Technical Assistance Center

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Proposed priority.

[CFDA Number: 84.264G.]

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority to establish the Workforce Innovation Technical Assistance Center. The Assistant Secretary may use this priority for competitions in fiscal year (FY) 2015 and later years. We take this action to provide training and technical assistance (TA) to State vocational rehabilitation (VR) agencies to improve services under the State Vocational Rehabilitation Services program (VR program) and State Supported Employment Services program for individuals with disabilities, including those with the most significant disabilities, and to implement changes to the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act (WIOA), signed into law on July 22, 2014.

DATES: We must receive your comments on or before July 17, 2015.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments submitted by fax or by email or those submitted after the comment period. To ensure that we do not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

- *Federal eRulemaking Portal:* Go to *www.regulations.gov* to submit your comments electronically. Information on using Regulations.gov, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''Are you new to the site?''
- *Postal Mail, Commercial Delivery, or Hand Delivery:* If you mail or deliver your comments about the proposed priority, address them to Jerry Elliott, U.S. Department of Education, 400 Maryland Avenue SW., Room 5042, Potomac Center Plaza (PCP), Washington, DC 20202–2800.

Privacy Note: The Department's policy is to make all comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Jerry Elliott. Telephone: (202) 245–7335 or by email: *jerry.elliott@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.

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding this notice. To ensure that your comments have maximum effect in developing the notice of final priority, we urge you to identify clearly the specific section of the proposed priority that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866 and 13563 and their overall requirement of reducing regulatory burden that might result from this proposed priority. Please let us know of any further ways we could reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this notice by accessing Regulations.gov. You may also inspect the comments in person in Room 5021, 550 12th Street SW., PCP, Washington, DC, 20202–2800, between the hours of 8:30 a.m. and 4:00 p.m., Washington, DC time, Monday through Friday of each week except Federal holidays. Please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this notice. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Purpose of Program: Under the Rehabilitation Act of 1973 (Rehabilitation Act), as amended by WIOA, the Rehabilitation Services Administration (RSA) makes grants to States and public or nonprofit agencies and organizations (including institutions of higher education) to support projects that provide training, traineeships, and TA designed to increase the numbers of, and improve the skills of, qualified personnel (especially rehabilitation counselors) who are trained to provide vocational, medical, social, and psychological rehabilitation services to individuals with disabilities; assist individuals with communication and related disorders; and provide other services authorized under the Rehabilitation Act.

Program Authority: 29 U.S.C. 772(a)(1).

Proposed Priority:

This notice contains one proposed priority.

Workforce Innovation Technical Assistance Center. Background:

WIOA supersedes the Workforce Investment Act of 1998 and amends the Rehabilitation Act, making major changes that affect the management and performance of the VR program and Supported Employment program. Among the changes are: (a) A requirement that States reserve at least 15 percent of their Federal VR allotment for providing or arranging for the provision of pre-employment transition services to students with disabilities; (b) a requirement that States reserve at least 50 percent of their Federal Supported Employment allotment for the provision of supported employment services, including extended services, to youth with the most significant disabilities; (c) a requirement that States provide a 10 percent non-Federal share to match the 50 percent of Supported Employment allotment reserved for the provision of supported employment services to youth with the most significant disabilities; (d) a requirement that VR agencies provide documentation of the completion of certain specified activities to individuals with disabilities, including youth with disabilities, seeking or wanting to maintain employment at a subminimum wage; (e) a heightened emphasis on the achievement of competitive integrated employment by individuals with disabilities; (f) enhanced coordination

and integration of the VR program with other core programs of the workforce development system; and (g) new common performance accountability requirements for all core programs of the workforce development system, including the State VR program.

While some of these changes affect documentation or reporting requirements, others represent significant changes in the management and operation of the State VR program and the Supported Employment program. As such, RSA believes that it is appropriate to provide training and TA on the new statutory requirements imposed by WIOA.

RSA believes that a dedicated TA center would help collect and disseminate information about relevant existing, emerging, and evidence-based practices; assist in developing and disseminating new approaches and practices; and coordinate and share activities and approaches related to implementation of WIOA in the topic areas for this priority so that States have the benefit of learning from each other as WIOA implementation proceeds.

Proposed Priority:

The Assistant Secretary for Special Education and Rehabilitative Services proposes a priority to establish a cooperative agreement to create a Workforce Innovation Technical Assistance Center (WITAC) to assist VR agencies in implementing changes affecting the State Vocational Rehabilitation Services and State Supported Employment Services programs under WIOA, and to achieve, at a minimum, the following outcomes:

(a) Implementation of effective and efficient ''pre-employment transition services'' for students with disabilities, as set forth in section 113 of the Rehabilitation Act;

(b) Implementation by State VR agencies, in coordination with local and State educational agencies and with the Department of Labor, of the requirements in section 511 of the Rehabilitation Act that are under the purview of the Department of Education;

(c) Increased access to supported employment and customized employment services for individuals with the most significant disabilities, including youth with the most significant disabilities, receiving services under the State VR and Supported Employment programs;

(d) An increased percentage of individuals with disabilities who receive services through the State VR agency and who achieve employment outcomes in competitive integrated employment;

(e) Improved collaboration between State VR agencies and other core programs of the workforce development system; and

(f) Implementation of the new common performance accountability system under section 116 of WIOA.

Topic Areas.

The WITAC will develop and provide training and technical assistance (TA) to State VR agency staff and related rehabilitation professionals and service providers in five topic areas related to changes made by WIOA:

(a) Provision of pre-employment transition services to students with disabilities and supported employment services to youth with disabilities;

(b) Implementation of the requirements in section 511 of the Rehabilitation Act that are under the purview of the Department of Education;

(c) Provision of resources and strategies to help individuals with disabilities achieve competitive integrated employment, including customized employment and supported employment;

(d) Integration of the State VR program into the workforce development system; and

(e) Transition to the new common performance accountability system under section 116 of WIOA, including the collection and reporting of common data elements.

Project Activities.

To meet the requirements of this priority, the WITAC must, at a minimum, conduct the following activities:

Knowledge Development Activities.

(a) In the first year, collect information from the literature and from existing State and Federal programs about evidence-based and promising practices relevant to the work of the WITAC and make this information publicly available in a searchable, accessible, and useful format. The WITAC must review, at a minimum:

(1) Literature on evidence-based and promising practices relevant to the work of the WITAC;

(2) The results of State VR agency monitoring conducted by RSA;

(3) State VR agency program and performance data;

(4) Department of Education and Department of Labor policies and guidance on program changes made by WIOA and implementation of those changes; and

(5) Any existing State VR agency memoranda of understanding (MOUs) or agreement (MOAs) related to the work of the WITAC.

(b) In the first year, conduct a survey of relevant stakeholders and VR service providers to identify workforce development TA needs and a process by which TA solutions can be offered to State VR agencies and their partners. The WITAC must survey, at a minimum:

(1) State VR agency staff;

(2) Relevant RSA staff; and

(3) Other stakeholders, including stakeholders from the transition and special education community, the workforce development community, and the rehabilitation community.

(c) Develop and refine one or more curriculum guides for VR staff training for each of the topic areas listed in the Topic Areas section of this priority.

Technical Assistance and Dissemination Activities.

(a) Provide intensive, sustained TA [1] to a minimum of 23 State VR agencies and their associated rehabilitation professionals and service providers in the topic areas set out in this priority. The WITAC must provide intensive, sustained TA to a minimum of two agencies in the first year of the project and to a minimum of seven additional agencies per year in the second, third, and fourth years of the project. These are minimum requirements, and the expectation is that intensive, sustained TA will be provided, to the extent funds are available, to all of the State VR agencies that request intensive, sustained TA. This TA must include:

(1) For topic area (a), how to—

(i) Develop, manage, and implement effective pre-employment transition services to improve the transition of students with disabilities from secondary to postsecondary education and employment;

(ii) Coordinate pre-employment transition services with transition services provided under IDEA; and

(iii) Develop and implement supported employment services for youth with the most significant disabilities;

(2) For topic area (b):

(i) How to provide career-related counseling, information, and referral services to individuals entering and continuing employment at subminimum wages; and

(ii) How to implement documentation requirements for youth with disabilities seeking employment at subminimum wage, in accordance with section 511 of the Rehabilitation Act;

[1] For the purposes of this priority, ''intensive, sustained technical assistance'' means TA services often provided on-site and requiring a stable, ongoing relationship between the TA center staff and the TA recipient. ''Technical assistance services'' are defined as negotiated series of activities designed to reach a valued outcome. This category of TA should result in changes to policy, program, practice, or operations that support increased recipient capacity or improved outcomes at one or more systems levels.

(3) For topic area (c), how to design and implement new services and new roles and responsibilities among partner agencies to increase the percentage of individuals achieving competitive integrated employment and to meet the supported employment and customized employment requirements of the Rehabilitation Act;

(4) For topic area (d), how to develop model relationships between State VR agencies and other core programs of the workforce development system for purposes of implementing the requirements of title I of WIOA, especially those requirements related to integration of core programs into the workforce development system; and

(5) For topic area (e), how to effectively transition to the new common performance accountability system required in section 116 of WIOA and use performance results to implement programmatic changes to improve agency performance.

(b) Provide a range of targeted, specialized TA [2] and universal, general TA [3] products and services on the topic areas in this priority. This TA must include, at a minimum, the following activities:

(1) Establishing and maintaining a state-of-the-art information technology (IT) platform sufficient to support Webinars, teleconferences, video conferences, and other virtual methods of dissemination of information and TA.

Note: All products produced by WITAC must meet government- and industry-recognized standards for accessibility, including section 508 of the Rehabilitation Act.

(2) Developing and maintaining a state-of-the-art archiving and dissemination system that—

(i) Provides a central location for later use of TA products, including course curricula, audiovisual materials, Webinars, examples of emerging and best practices for the topic areas in this priority, and any other TA products; and

(ii) Is open and available to the public.

Note: In meeting the requirements for (b)(1) and (2) above, the WITAC may either develop new platforms or systems or may modify existing platforms or systems, so long as the requirements of this priority are met.

(3) Providing a minimum of two Webinars or video conferences over the course of the project on each of the topic areas in this priority to describe and disseminate information about emerging and best practices in each area.

Coordination Activities.

(a) Establish one or more communities of practice that focus on the topic areas in this priority and that act as vehicles for communication and exchange of information among State VR agencies and partners, including the results of TA projects that are in progress or have been completed;

(b) Communicate, collaborate, and coordinate, on an ongoing basis, with other relevant Department-funded projects and those supported by the Social Security Administration (SSA) and the Departments of Labor, Health and Human Services, and Commerce; and

(c) Maintain ongoing communication with the RSA project officer and other RSA staff as required.

Application Requirements.

To be funded under this priority, applicants must meet the application and administrative requirements in this priority. RSA encourages innovative approaches to meet these requirements, which are:

(a) Demonstrate, in the narrative section of the application under ''Significance of the Project,'' how the proposed project will address State VR agencies' capacity to implement the requirements of WIOA. To meet this requirement, the applicant must:

(1) Demonstrate knowledge of current RSA guidance and State and Federal initiatives designed to improve engagement with the workforce development system and workforce development system partners;

(2) Demonstrate knowledge of current State VR agency and other efforts to improve engagement with secondary schools, youth programs, and other programs that provide services to youth with disabilities for the purpose of assisting such youth to enter postsecondary education or competitive integrated employment; and

(3) Demonstrate knowledge of current State VR agency efforts to engage with State Medicaid, developmental disability, and mental health agencies to develop agreements and provide services leading to competitive integrated employment, including supported employment and customized employment.

(b) Demonstrate, in the narrative section of the application under ''Quality of Project Services,'' how the proposed project will—

(1) Achieve its goals, objectives, and intended outcomes. To meet this requirement, the applicant must provide—

(i) Measurable intended project outcomes;

(ii) A plan for how the proposed project will achieve its intended outcomes; and

(iii) A plan for communicating, collaborating, and coordinating with key staff in State VR agencies; State and local partner programs; RSA partners, such as the Council of State Administrators of Vocational Rehabilitation, the National Association of State Directors of Special Education, the National Council of State Agencies for the Blind, and other TA centers; and relevant programs within SSA and the Departments of Education, Labor, Health and Human Services, and Commerce.

(2) Use a conceptual framework to develop project plans and activities, describing any underlying concepts, assumptions, expectations, beliefs, or theories, as well as the presumed relationships or linkages among these variables, and any empirical support for this framework.

(3) Be based on current research and make use of evidence-based practices. To meet this requirement, the applicant must describe—

(i) How the current research about adult learning principles and implementation science will inform the proposed TA; and

(ii) How the proposed project will incorporate current research and evidence-based practices in the development and delivery of its products and services.

(4) Develop products and provide services that are of high quality and sufficient intensity and duration to achieve the intended outcomes of the proposed project. To address this requirement, the applicant must describe—

(i) Its proposed activities to identify or develop the knowledge base on emerging and promising practices in the five topic areas listed in the Topic Areas section of this priority;

[2] For the purposes of this priority, ''targeted, specialized technical assistance'' means TA services based on needs common to multiple recipients and not extensively individualized. A relationship is established between the TA recipient and one or more TA center staff. This category of TA includes one-time, labor-intensive events, such as facilitating strategic planning or hosting regional or national conferences. It can also include episodic, less labor-intensive events that extend over a period of time, such as facilitating a series of conference calls on single or multiple topics that are designed around the needs of the recipients. Facilitating communities of practice can also be considered targeted, specialized TA.

[3] For the purposes of this priority, ''universal, general technical assistance'' means TA and information provided to independent users through their own initiative, resulting in minimal interaction with TA center staff and including one-time, invited or offered conference presentations by TA center staff. This category of TA also includes information or products, such as newsletters, guidebooks, or research syntheses, downloaded from the TA center's Web site by independent users. Brief communications by TA center staff with recipients, either by telephone or email, are also considered universal, general TA.

(ii) Its proposed approach to universal, general TA;

(iii) Its proposed approach to targeted, specialized TA, which must identify—

(A) The intended recipients of the products and services under this approach; and

(B) Its proposed approach to measure the capacity and readiness of State VR agencies to work with the proposed project, assessing, at a minimum, their current infrastructure, available resources, and ability to effectively respond to the TA, as appropriate;

(iv) Its proposed approach to intensive, sustained TA, which must identify—

(A) The intended recipients of the products and services under this approach;

(B) Its proposed approach to measure the readiness of the State VR agencies to work with the proposed project, including the State VR agencies' commitment to the initiative, fit of the initiative, current infrastructure, available resources, and ability to effectively respond to the TA, as appropriate;

(C) Its proposed plan for assisting State VR agencies to build training systems that include professional development based on adult learning principles and coaching; and

(D) Its proposed plan for developing agreements with State VR agencies to provide intensive, sustained TA. The plan must describe how the agreements will outline the purposes of the TA, the intended outcomes of the TA, and the measurable objectives of the TA that will be evaluated.

(5) Develop products and implement services to maximize the project's efficiency. To address this requirement, the applicant must describe—

(i) How the proposed project will use technology to achieve the intended project outcomes; and

(ii) With whom the proposed project will collaborate and the intended outcomes of this collaboration.

(c) Demonstrate, in the narrative section of the application under ''Quality of the Evaluation Plan,'' how the proposed project will—

(1) Measure and track the effectiveness of the TA provided. To meet this requirement, the applicant must describe its proposed approach to—

(i) Collecting data on the effectiveness of each TA activity from State VR agencies, partners, or other sources, as appropriate; and

(ii) Analyzing data and determining effectiveness of each TA activity, including any proposed standards or targets for determining effectiveness.

(2) Collect and analyze data on specific and measurable goals, objectives, and intended outcomes of the project, including measuring and tracking the effectiveness of the TA provided. To address this requirement, the applicant must describe—

(i) Its proposed evaluation methodologies, including instruments, data collection methods, and analyses;

(ii) Its proposed standards or targets for determining effectiveness;

(iii) How it will use the evaluation results to examine the effectiveness of its implementation and its progress toward achieving the intended outcomes; and

(iv) How the methods of evaluation will produce quantitative and qualitative data that demonstrate whether the project and individual TA activities achieved their intended outcomes.

(d) Demonstrate, in the narrative section of the application under ''Adequacy of Project Resources,'' how—

(1) The proposed project will encourage applications for employment from persons who are members of groups that have historically been underrepresented based on race, color, national origin, gender, age, or disability, as appropriate;

(2) The proposed key project personnel, consultants, and subcontractors have the qualifications and experience to provide TA to State VR agencies and their partners in each of the topic areas in this priority and to achieve the project's intended outcomes;

(3) The applicant and any key partners have adequate resources to carry out the proposed activities; and

(4) The proposed costs are reasonable in relation to the anticipated results and benefits;

(e) Demonstrate, in the narrative section of the application under ''Quality of the Management Plan,'' how—

(1) The proposed management plan will ensure that the project's intended outcomes will be achieved on time and within budget. To address this requirement, the applicant must describe—

(i) Clearly defined responsibilities for key project personnel, consultants, and subcontractors, as applicable; and

(ii) Timelines and milestones for accomplishing the project tasks.

(2) Key project personnel and any consultants and subcontractors will be allocated to the project and how these allocations are appropriate and adequate to achieve the project's intended outcomes, including an assurance that such personnel will have adequate availability to ensure timely communications with stakeholders and RSA;

(3) The proposed management plan will ensure that the products and services provided are of high quality; and

(4) The proposed project will benefit from a diversity of perspectives, including those of State and local personnel, TA providers, researchers, and policy makers, among others, in its development and operation.

Types of Priorities:

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Final Priority:

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. In any year in which we choose to use this priority, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866 and 13563

Regulatory Impact Analysis

Under Executive Order 12866, the Secretary must determine whether this proposed regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order

and subject to review by the Office of Management and Budget (OMB). Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $100 million or more, or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities in a material way (also referred to as an ''economically significant'' rule);

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

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

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles stated in the Executive order.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only on a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing this proposed priority only on a reasoned determination that its benefits would justify its costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

We also have determined that this regulatory action would not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

In accordance with both Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

We propose to fund through this priority TA to State VR agencies to improve the quality of VR services and of the competitive integrated employment outcomes achieved by individuals with disabilities, and ultimately to increase the percentage of individuals with disabilities who receive services through the State VR agencies who achieve competitive integrated employment outcomes. This proposed priority would promote the efficient and effective use of Federal funds.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Accessible Format: Individuals with disabilities can obtain this document 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**.

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 12, 2015.

Michael K. Yudin,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 2015–14940 Filed 6–16–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 10

RIN 0906–AA89

340B Drug Pricing Program Ceiling Price and Manufacturer Civil Monetary Penalties Regulation

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Health Resources and Services Administration (HRSA) administers section 340B of the Public Health Service Act (PHSA), which is referred to as the ''340B Drug Pricing Program'' or the ''340B Program.'' This proposed rule will apply to all drug manufacturers that are required to make their drugs available to covered entities under the 340B Program. The proposed rule sets forth the calculation of the ceiling price and application of civil monetary penalties.

DATES: Submit comments on or before August 17, 2015.

ADDRESSES: You may submit comments, identified by the Regulatory Information Number (RIN) 0906–AA89, by any of the following methods. Please submit your comments in only one of these ways to

minimize the receipt of duplicate submissions. The first is the preferred method.

- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow instructions for submitting comments. This is the preferred method for the submission of comments.
- Email: *340BCMPNPRM@hrsa.gov.* Include 0906–AA89 in the subject line of the message.
- Mail: Office of Pharmacy Affairs (OPA), Healthcare Systems Bureau (HSB), Health Resources and Services Administration (HRSA), 5600 Fishers Lane, Mail Stop 08W05A, Rockville, MD 20857.

All submitted comments will be available to the public in their entirety.

FOR FURTHER INFORMATION CONTACT: CDR Krista Pedley, Director, OPA, HSB, HRSA, 5600 Fishers Lane, Mail Stop 08W05A, Rockville, MD 20857, or by telephone at 301–594–4353.

SUPPLEMENTARY INFORMATION: The President encourages Federal agencies through Executive Order 13563 to develop balanced regulations by encouraging broad public participation in the regulatory process and an open exchange of ideas. The Department of Health and Human Services (HHS) accordingly urges all interested parties to examine this regulatory proposal carefully and to share your views with us, including any data to support your positions. If you have questions before submitting comments, please see the ''For Further Information'' box above for the names and contact information of subject-matter experts involved in this proposal's development. We must consider all written comments received during the comment period before issuing a final rule.

If you are a person with a disability and/or a user of assistive technology who has difficulty accessing this document, please contact HRSA's Regulations Officer at: Room 14–101, 5600 Fishers Lane, Rockville, MD 20857; or by telephone at 301–443–1785, to obtain this information in an accessible format. This is not a toll free telephone number.

Please visit *http://www.HHS.gov/regulations* for more information on HHS rulemaking and opportunities to comment on proposed and existing rules.

I. Background

Section 602 of Public Law 102–585, the ''Veterans Health Care Act of 1992,'' enacted section 340B of the Public Health Service Act (PHSA) ''Limitation on Prices of Drugs Purchased by Covered Entities,'' codified at 42 U.S.C. 256b. The 340B Program permits covered entities ''to stretch scarce Federal resources as far as possible, reaching more eligible patients and providing more comprehensive services.'' H.R. REP. No. 102–384(II), at 12 (1992). Eligible covered entity types are defined in section 340B(a)(4) of the PHSA, as amended. Section 340B of the PHSA instructs HHS to enter into a pharmaceutical pricing agreement (PPA) with certain drug manufacturers. If a drug manufacturer signs a PPA, it agrees that the prices charged for covered outpatient drugs to covered entities will not exceed defined 340B ceiling prices, which are based on quarterly pricing data reported to the Centers for Medicare & Medicaid Services (CMS). Section 7102 of the Patient Protection and Affordable Care Act (Pub. L. 111–148) as amended by section 2302 of the Health Care and Education Reconciliation Act (Pub. L. 111–152) (HCERA) (hereinafter referred to as the ''Affordable Care Act''), added section 340B(d)(1)(B)(vi) of the PHSA, which provides for: The imposition of sanctions in the form of civil monetary penalties, which—

(I) shall be assessed according to standards established in regulations to be promulgated by the Secretary not later than 180 days after the date of enactment of the Patient Protection and Affordable Care Act;

(II) shall not exceed $5,000 for each instance of overcharging a covered entity that may have occurred; and

(III) shall apply to any manufacturer with an agreement under this section that knowingly and intentionally charges a covered entity a price for purchase of a drug that exceeds the maximum applicable price under subsection (a)(1).

The Affordable Care Act also added section 340B(d)(1)(B)(i)(I) of the PHSA, which requires the ''[d]evelopment and publishing through an appropriate policy or regulatory issuance, precisely defined standards and methodology for the calculation of ceiling prices. . . .''

Since 1992, HHS has administratively established the terms and certain elements of the 340B Program through guidelines published in the **Federal Register**, typically after notice and opportunity for comment. In September 2010, HHS published two advanced notices of proposed rulemaking (ANPRM) in the **Federal Register**, 340B Drug Pricing Program Administrative Dispute Resolution Process (75 FR 57233 (September 20, 2010)) and 340B Drug Pricing Program Manufacturer Civil Monetary Penalties (75 FR 57230 (September 20, 2010)). The administrative dispute resolution process remains under development and is not included in this notice of proposed rulemaking. HHS intends to address dispute resolution in future rulemaking.

In the manufacturer civil monetary penalties ANPRM, HHS sought comments relevant to this provision and requested comment on nine identified areas: (1) Existing Models; (2) Threshold Determination; (3) Administrative Process Elements; (4) Hearing; (5) Appeals Process; (6) Definitions; (7) Penalty Computation; (8) Payment of Penalty; and (9) Integration of Civil Monetary Penalties with Other Provisions in the Affordable Care Act. The request for comments on existing models requested comments on the appropriateness on the use and adaptation of the procedures codified at 42 CFR part 1003, which includes procedures for the imposition of civil monetary penalties by the HHS Office of the Inspector General. HRSA received 15 comments on the ANPRM. The comments received have been considered in the development of this notice. HHS is also proposing this rule to provide increased clarity in the marketplace for all 340B Program stakeholders as to the calculation of the 340B ceiling price. HHS encourages all stakeholders to provide comments on this notice of proposed rulemaking.

II. Summary of the Proposed Regulations

The proposed revisions to 42 CFR part 10 of the regulations are described according to the applicable section of the regulations. The United States District Court for the District of Columbia recently vacated the 340B Program Regulations at 42 CFR part 10 relating to Orphan Drugs. *PhRMA* v. *HHS, No. 13–01501 (D.D.C. May 23, 2014).* This NPRM proposes to replace sections 10.1, 10.2, 10.3, and 10.10 with the provisions of this NPRM, add a new section 10.11, and eliminate sections 10.20 and 10.21.

Subpart A—General Provisions

§ 10.1 Purpose

This part implements section 340B of the Public Health Service Act (PHSA) ''Limitation on Prices of Drugs Purchased by Covered Entities.''

§ 10.2 Summary of 340B Drug Pricing Program

Section 340B of the PHSA instructs the Secretary of Health and Human Services to enter into agreements with manufacturers of covered outpatient drugs under which the amount to be paid to manufacturers by certain

statutorily-defined covered entities does not exceed the 340B ceiling price. Manufacturers participating in the 340B Drug Pricing Program (340B Program) are required to provide these discounts on all covered outpatient drugs sold to participating 340B covered entities.

§ 10.3 Definitions

The Department is proposing to revise the following definitions: ''ceiling price,'' ''covered entity,'' ''covered outpatient drug,'' and ''manufacturer.''

The Department is proposing to add the following definitions: ''340B drug,'' ''Average Manufacturer Price (AMP),'' ''CMS,'' ''National Drug Code (NDC),'' ''quarter,'' and ''wholesaler.''

The definitions for ''Pharmaceutical Pricing Agreement (PPA),'' and ''Secretary'' would remain in the section, and the definitions for ''Group purchasing organization (GPO),'' ''orphan drug,'' and ''participating drug manufacturer'' would be removed from the section.

Subpart B—340B Ceiling Price

§ 10.10 Ceiling Price for a Covered Outpatient Drug

A manufacturer must calculate the ceiling price for all of its covered outpatient drugs on a quarterly basis. The calculation of the 340B ceiling price for a 340B drug is established by statute. Under section 340B(a) of the PHSA, the 340B ceiling price for covered outpatient drugs is calculated by subtracting the unit rebate amount (URA) from the average manufacturer price (AMP) for the smallest unit of measure and will be calculated using six decimal places. To ensure the final price is operational in the marketplace, HRSA then multiplies this amount by the drug's package size and case package size. HRSA will publish the 340B ceiling price rounded to two decimal places.

Under the Medicaid Drug Rebate Program, CMS indexes quarterly AMPs to the rate of inflation (Consumer Price Index adjusted for inflation-urban). Section 1927(c)(2)(A) of the Social Security Act provides that with respect to single source and innovator multiple source drugs, if the AMP increases at a rate faster than inflation, the manufacturer must pay an additional rebate amount which is reflected in a higher URA. Historically, because of the basic rebate and the inflation factor, section 1927(c)(2)(A) could increase the rebate amount a manufacturer must pay to States, resulting in negative 340B prices. As of January 1, 2010, a provision in section 1927(c)(2)(D) of the Social Security Act effectively limited the unit rebate amount to 100 percent of the AMP. Thus, an increase in the basic rebate and inflation factor would not result in a negative 340B price, but could result in a zero 340B price.

Exception: Penny Pricing and Distribution

HHS recognizes that when the URA equals the AMP in the calculation of the 340B ceiling price, it is not reasonable for a manufacturer to set a 340B ceiling price to $0.00 per unit of measure. HHS proposes that a manufacturer charge a $0.01 per unit of measure for a drug with a ceiling price below $0.01. For those 340B drugs whose calculated price is less than $0.01, the effective ceiling price will be $0.01 per unit of measure.

Manufacturers may not use the prior quarter's pricing, wholesale acquisition cost (WAC), or any other non-340B contract price in place of the penny pricing, as 340B ceiling prices must be based on the immediately preceding calendar quarter pricing data. Using the prior quarter pricing or some other price would nullify the pricing formula.

New Drug Price Estimation

Calculation of the current quarter ceiling price for each covered outpatient drug is based on pricing data from the immediately preceding calendar quarter. For new drugs, there will be no sales data from which to determine the 340B ceiling price. HHS published final guidelines in 1995 describing ceiling price calculations for new drugs (60 FR 51488 (October 2, 1995)). HHS is proposing to codify the longstanding policy from the 1995 final guidelines in these regulations. HHS proposes that a manufacturer will continue to estimate the 340B ceiling price for the first three quarters a new covered outpatient drug is available for sale. The ceiling price calculation described in paragraph (a) of this section will be required beginning with the fourth quarter the drug is available for sale. A manufacturer must calculate the actual 340B ceiling price for the first three quarters the drug was available for sale and refund or credit covered entities that purchased the covered outpatient drug above the calculated 340B ceiling price no later than the end of the fourth quarter after the drug is available for sale. For example, if a manufacturer with a PPA has a new drug approved for sale in February and that drug meets the definition of covered outpatient drug, the price estimation requirements would apply. The manufacturer would estimate the 340B ceiling price for the first three calendar quarters of availability. Beginning with the fourth quarter (October 1–December 31), the manufacturer will have the necessary pricing data to calculate the ceiling price based on section 340B(a)(1) of the PHSA. The manufacturer would then calculate the actual 340B ceiling price for the first three quarters and refund or credit covered entities which paid above the calculated ceiling price during those quarters. The refunds and credits must be completed by the end of the fourth quarter.

HRSA solicits comments on all aspects of the 340B ceiling price methodology proposed.

§ 10.11 Manufacturer Civil Monetary Penalties

General

Any manufacturer with a pharmaceutical pricing agreement that knowingly and intentionally charges a covered entity more than the ceiling price, as defined in § 10.10, for a covered outpatient drug, may be subject to a civil monetary penalty not to exceed $5,000 for each instance of overcharging a covered entity, as defined in paragraph (b) of this section. Any civil monetary penalty assessed will be in addition to repayment for an instance of overcharging as required by section 340B(d)(1)(B)(ii) of the PHSA. Pursuant to a delegation of authority, the HHS Office of Inspector General (OIG) will have the authority to bring 340B CMP actions utilizing the standards applied to other civil monetary penalties under 42 CFR parts 1003 and 1005.

Instance of Overcharging

An instance of overcharging is any order for a certain covered outpatient drug, by NDC, which results in a covered entity paying more than the ceiling price, as defined in § 10.10, for a covered outpatient drug. Each order for an NDC will constitute a single instance, regardless of the number of units of each NDC in that order. Likewise, if a covered entity orders a single bottle of a covered outpatient drug four times in a month, it would be considered four instances of overcharging. This includes any order placed directly with a manufacturer or through a wholesaler, authorized distributor, or agent. An instance of overcharging is considered at the 11-digit NDC level and may not be offset by other discounts provided on any other NDC or discounts provided on the same NDC on other transactions, orders, or purchases. An instance of overcharging may occur at the time of initial purchase or when subsequent ceiling price recalculations resulting

from pricing data submitted to CMS occur and the manufacturer refuses to refund or issue a credit to a covered entity. A manufacturer's failure to provide the 340B ceiling price is not considered an instance of overcharging when a covered entity did not initially identify the purchase to the manufacturer as 340B-eligible at the time of purchase. Covered entity orders of non-340B priced drugs will not subsequently be considered an instance of overcharging unless the manufacturer's documented refusal to sell or make drugs available at the 340B price resulted in the covered entity purchasing at the non-340B price. When a manufacturer's documented refusal to sell or make drugs available at the 340B price results in the covered entity purchasing at the non-340B price, a manufacturer's sale at the non-340B price could be considered an instance of overcharging.

All requirements for offering the 340B ceiling price to covered entities apply regardless of the distribution system. Specialty distribution, regardless of justification, must ensure 340B covered entities purchase covered outpatient drugs at or below the ceiling price. Manufacturers commonly use wholesalers to distribute drugs on their behalf. This regulation and associated penalties applies solely to manufacturers, even though other parties, such as wholesalers, have a role in ultimately ensuring the covered entity receives a 340B drug at or below the ceiling prices. Manufacturers should consider the wholesaler role in this process and work out issues in good faith and in normal business arrangements regarding the assurance that the covered entity receives the appropriate price as outlined in this regulation. A manufacturer's failure to ensure that covered entities receive the appropriate 340B discount through its distribution arrangements may be grounds for the assessment of civil monetary penalties under this regulation.

III. Regulatory Impact Analysis

HHS has examined the effects of this rule as required by Executive Order 12866 on Regulatory Planning and Review (September 30, 1993), Executive Order 13563 on Improving Regulation and Regulatory Review (January 8, 2011), the Regulatory Flexibility Act (September 19, 1980, Pub. L. 96–354), the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4), and Executive Order 13132 on Federalism (August 4, 1999).

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review as established in Executive Order 12866, emphasizing the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Section 3(f) of Executive Order 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule: (1) Having an annual effect on the economy of $100 million or more in any 1 year, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as ''economically significant''); (2) creating a serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order. A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year), and a ''significant'' regulatory action is subject to review by the Office of Management and Budget (OMB).

This proposed rule is not likely to have economic impacts of $100 million or more in any 1 year, and therefore has not been designated an ''economically significant'' rule under section 3(f)(1) of Executive Order 12866. The 340B Program as a whole creates significant savings for entities purchasing drugs through the program, with total savings estimated to be $3.8 billion in FY 2013.[1] However, this proposed rule would not significantly affect the impact of the program. This proposed rule incorporates current policies regarding calculation of the ceiling price and introduces manufacturer civil monetary penalties. HHS does not anticipate that the imposition of civil monetary penalties would result in significant economic impacts.

The 340B Program uses information which already must be reported under Medicaid to calculate the statutorily defined 340B ceiling price as required by this proposed rule. Because the components of the ceiling price are already calculated by the manufacturers under the Medicaid program and reported to CMS, HHS does not believe this portion of the proposed rule would have an impact on manufacturers. The impact on manufacturers would also be limited with respect to calculation of the ceiling price as defined in this proposed rule due to the fact that manufacturers regularly calculate the 340B ceiling price and have been since the program's inception.

Separate from calculation of the 340B ceiling price, manufacturers are required to ensure they do not overcharge covered entities, and a civil monetary penalty could result from overcharging if it met the standards in this proposed rule. The use of those penalties would probably be rare. Since the program's inception, issues related to overcharges have been resolved between a manufacturer and a covered entity and any issues have generally been due to technical errors in the calculation. For the penalties to be used as defined in the statute and in this rule, a manufacturer would only be subject to those penalties when the overcharge was a result of a knowing and intentional act. Based on anecdoctal information received from covered entities, HHS anticipates that this would occur very rarely if at all.

This rulemaking also proposes that a manufacturer charge a $0.01 per unit of measure for a drug with a ceiling price below $0.01. A small number of manufacturers have informed HRSA over the last several years that they charge more than $0.01 for a drug with a ceiling price below $0.01. However, this is a long-standing HRSA policy and HRSA believes the majority of manufacturers currently follow the practice of charging a $0.01. Therefore, this portion of the regulation will not result in a significant impact. This proposed regulation would allow HRSA to enforce the policy in a manner that would require the manufacturer to charge a $0.01, and it is likely that manufacturers would charge $0.01 in order to avoid the imposition of a civil

[1] In FY 2013, 340B covered entities spent approximately $7.5 billion on the total purchases of 340B drugs under the 340B Program. This data was obtained from the 340B Prime Vendor Program. This amount represents 2 percent of the overall prescription drug market. Assuming covered entities pay 25 to 50 percent less than non-340B prices, HHS calculated the estimated total savings in FY 2013 to be approximately $3.8 billion.

monetary penaly for overcharging a covered entity. Therefore, HRSA believes manufacturers that currently do not comply will come into compliance, which will result in the covered enity paying less for these drugs. This will be a cost transfer from the covered entity to the manufacturer.

HHS recognizes that some administrative costs would be incurred for compliance with this proposed rule. HHS does not collect data related to such administrative costs from manufacturers, and compliance costs are expected to vary significantly. HHS believes it is reasonable to assume that manufacturers would use one-half to one full-time compliance officer to ensure compliance with the requirements in this proposed rule. According to the Bureau of Labor Statistics, the mean annual wage for a pharmaceutical compliance officer (NAICS 325400, occupation code 13–1041) is $74,620 in 2014. Inclusion of benefits and overhead (resulting in a total labor cost of 1.5 times mean annual salary) yields a total annual cost of $111,930 for one compliance officer. Thus the estimated annual cost for labor across all 600 manufacturers is between $33,579,000 and $67,158,000.

The Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) and the Small Business Regulatory Enforcement and Fairness Act of 1996, which amended the RFA, require HHS to analyze options for regulatory relief of small businesses. If a rule has a significant economic effect on a substantial number of small entities, the Secretary must specifically consider the economic effect of the rule on small entities and analyze regulatory options that could lessen the impact of the rule. HHS will use an RFA threshold of at least a three percent impact on at least five percent of small entities.

This proposed rule would affect drug manufacturers (North American Industry Classification System code 325412: Pharmaceutical Preparation Manufacturing). The small business size standard for drug manufacturers is 750 employees. While it is possible to estimate the impact of this proposed rule on the industry as a whole, the data necessary to project changes for specific manufacturers or groups of manufacturers were not available. This proposed rule clarifies statutory requirements for all manufacturers, including small manufacturers, and proposes current ceiling price calculation policies be codified in regulation. HHS is not aware of small manufacturers which currently do not follow the ceiling price policies proposed in this regulatory action. HHS welcomes comments concerning the impact of this proposed rule on small manufacturers.

HHS therefore estimates that the economic impact on small entities will be minimal and less than three percent.

Unfunded Mandates Reform Act

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.'' In 2013, that threshold level is approximately $141 million. HHS does not expect this proposed rule to exceed the threshold.

Executive Order 13132—Federalism

HHS has reviewed this proposed rule in accordance with Executive Order 13132 regarding federalism, and has determined that it does not have ''federalism implications.'' This proposed rule would not ''have substantial direct effects on the States, or on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' The proposals in this notice of proposed rulemaking, if implemented, would not adversely affect the following family elements: Family safety, family stability, marital commitment; parental rights in the education, nurture, and supervision of their children; family functioning, disposable income or poverty; or the behavior and personal responsibility of youth, as determined under Section 654(c) of the Treasury and General Government Appropriations Act of 1999. HHS invites additional comments on the impact of this proposed rule from affected stakeholders.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that OMB approve all collections of information by a Federal agency from the public before they can be implemented. This proposed rule is projected to have no impact on current reporting and recordkeeping burden for manufacturers under the 340B Program. Changes proposed in this rulemaking would result in no new reporting burdens. Comments are welcome on the accuracy of this statement.

Dated: March 6, 2015.

Sylvia M. Burwell,

Secretary.

List of Subjects in 42 CFR Part 10

Biologics, Business and industry, Diseases, Drugs, Health, Health care, Health facilities, Hospitals, 340B Drug Pricing Program.

For the reasons set forth in the preamble, the Department of Health and Human Services proposes to amend 42 CFR part 10 as follows:

■ 1. Revise part 10 to read as follows:

PART 10—340B Drug Pricing Program

Subpart A—General Provisions

Sec.
10.1 Purpose.
10.2 Summary of 340B Drug Pricing Program.
10.3 Definitions.

Subpart B—340B Ceiling Price

10.10 Ceiling price for a covered outpatient drug.
10.11 Manufacturer civil monetary penalties.

Authority: Sec. 340B of the Public Health Service Act (42 U.S.C. 256b), as amended.

Subpart A—General Provisions

§ 10.1 Purpose.

This part implements section 340B of the Public Health Service Act (PHSA) ''Limitation on Prices of Drugs Purchased by Covered Entities.''

§ 10.2 Summary of 340B Drug Pricing Program.

Section 340B of the PHSA instructs the Secretary of Health and Human Services to enter into agreements with manufacturers of covered outpatient drugs under which the amount to be paid to manufacturers by certain statutorily-defined covered entities does not exceed the 340B ceiling price.

§ 10.3 Definitions.

For the purposes of this part, the following definitions apply:

340B drug is a covered outpatient drug, as defined in section 1927(k) of the Social Security Act, purchased by a covered entity at or below the ceiling price required pursuant to a pharmaceutical pricing agreement with the Secretary.

Average Manufacturer Price (AMP) has the meaning set forth in 1927(k)(1) of the Social Security Act.

Ceiling price means the maximum statutory price established under section 340B(a)(1) of the PHSA and these regulations.

CMS is the Centers for Medicare & Medicaid Services.

Covered entity means an entity that is listed within section 340B(a)(4) of the PHSA, meets the requirements under section 340B(a)(5) of the PHSA, and is registered and listed in the 340B database.

Covered outpatient drug has the meaning set forth in section 1927(k) of the Social Security Act.

Manufacturer has the meaning set forth in section 1927(k) of the Social Security Act.

National Drug Code (NDC) has the meaning set forth in 42 CFR 447.502.

Pharmaceutical Pricing Agreement (PPA) means an agreement described in section 340B(a)(1) of the PHSA.

Quarter refers to a calendar quarter unless otherwise specified.

Secretary means the Secretary of the Department of Health and Human Services and any other officer of employee of the Department of Health and Human Services to whom the authority involved has been delegated.

Wholesaler has the meaning set forth in 42 U.S.C. 1396r–8(k)(11).

Subpart B—340B Ceiling Price

§ 10.10 Ceiling price for a covered outpatient drug.

A manufacturer is required to calculate 340B ceiling prices for each covered outpatient drug, by National Drug Code (NDC) on a quarterly basis.

(a) *Calculation of 340B ceiling price.* The 340B ceiling price for a covered outpatient drug is equal to the Average Manufacturer Price (AMP) for the smallest unit of measure minus the Unit Rebate Amount (URA) and will be calculated using six decimal places. To ensure the final price is operational in the marketplace, HRSA then multiplies this amount by the drug's package size and case package size. HRSA will publish the 340B ceiling price rounded to two decimal places.

(b) *Exception.*When the ceiling price calculation in paragraph (a) of this section results in an amount less than $0.01 the ceiling price will be $0.01.

(c) *New drug price estimation.*A manufacturer must estimate the ceiling price for a new covered outpatient drug as of the date the drug is first available for sale and must provide HRSA an estimated ceiling price for each of the first three quarters the drug is available for sale. Beginning with the fourth quarter the drug is available for sale, the manufacturer must calculate the ceiling price as described in paragraph (a) of this section. A manufacturer must calculate the actual ceiling prices for the first three quarters and refund or credit any covered entity which purchased the covered outpatient drug at a price greater than the calculated ceiling price. The refunds or credits for the first three quarters must be provided to covered entities by the end of the fourth quarter.

§ 10.11 Manufacturer civil monetary penalties.

(a) *General.*Any manufacturer with a pharmaceutical pricing agreement that knowingly and intentionally charges a covered entity more than the ceiling price, as defined in § 10.10, for a covered outpatient drug, may be subject to a civil monetary penalty not to exceed $5,000 for each instance of overcharging a covered entity, as defined in paragraph (b) of this section. This penalty will be imposed pursuant to the procedures at 42 CFR part 1003. Any civil monetary penalty assessed will be in addition to repayment for an instance of overcharging as required by section 340B(d)(1)(B)(ii) of the PHSA.

(b) *Instance of overcharging.* An instance of overcharging is any order for a covered outpatient drug, by NDC, which results in a covered entity paying more than the ceiling price, as defined in § 10.10, for that covered outpatient drug.

(1) Each order for an NDC will constitute a single instance, regardless of the number of units of each NDC ordered. This includes any order placed directly with a manufacturer or through a wholesaler, authorized distributor, or agent.

(2) Manufacturers have an obligation to ensure that the 340B discount is provided through distribution arrangements made by the manufacturer.

(3) An instance of overcharging is considered at the NDC level and may not be offset by other discounts provided on any other NDC or discounts provided on the same NDC on other transactions, orders, or purchases.

(4) An instance of overcharging may occur at the time of initial purchase or when subsequent ceiling price recalculations due to pricing data submitted to CMS result in a covered entity paying more than the ceiling price due to failure or refusal to refund or credit a covered entity.

(5) A manufacturer's failure to provide the 340B ceiling price is not considered an instance of overcharging when a covered entity did not initially identify the purchase to the manufacturer as 340B-eligible at the time of purchase. Covered entity orders of non-340B priced drugs will not subsequently be considered an instance of overcharging unless the manufacturer's refusal to sell or make drugs available at the 340B price resulted in the covered entity purchasing at the non-340B price.

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 393

[Docket No. FMCSA–2014–0428]

RIN 2126–AB67

Parts and Accessories Necessary for Safe Operation: Federal Motor Vehicle Safety Standards Certification for Commercial Motor Vehicles Operated by United States-Domiciled Motor Carriers

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM), request for comments.

SUMMARY: FMCSA proposes to amend the Federal Motor Carrier Safety Regulations (FMCSRs) by requiring United States-domiciled (U.S.-domiciled) motor carriers engaged in interstate commerce to use only commercial motor vehicles (CMV) that display a certification label affixed by the vehicle manufacturer or a U.S. Department of Transportation (DOT) Registered Importer, indicating that the vehicle satisfied all applicable Federal Motor Vehicle Safety Standards (FMVSS) in effect at the time of manufacture. If the certification label is missing, the motor carrier must obtain, and a driver upon demand present, a letter issued by the vehicle manufacturer stating that the vehicle met all applicable FMVSS in effect at the time of manufacture.

DATES: You may submit comments by August 3, 2015.

ADDRESSES: Comments to the rulemaking docket should refer to Docket ID Number FMCSA–2014–0428- or RIN 2126–AB67, and be submitted to the Administrator, Federal Motor Carrier Safety Administration using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility (M–30), U.S. Department of Transportation, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

• *Hand Delivery:* Ground Floor, Room W12–140, DOT Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

To avoid duplication, please use only one of these four methods. See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTARY INFORMATION** section below for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Michael Huntley, Chief, Vehicle and Roadside Operations Division, Office of Policy, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, by telephone at (202) 366–9209 or via email at *Michael.Huntley@dot.gov.* FMCSA office hours are from 9 a.m. to 5 p.m., e.t Monday through Friday, except Federal holidays. If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

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I. Public Participation and Request for Comments

FMCSA invites you to participate in this rulemaking by submitting comments and related materials.

Submitting Comments

If you submit a comment, please include the docket number for this rulemaking (FMCSA–2014–0428), indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so that FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *http://www.regulations.gov* and click on the ''Submit a Comment'' box, which will then become highlighted in blue. In the ''Document Type'' drop down menu, select ''Rules,'' insert ''FMCSA–2014–0428'' in the ''Keyword'' box, and click ''Search.'' When the new screen appears, click on ''Submit a Comment'' in the ''Actions'' column. If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period and may change this proposed rule based on your comments.

Viewing Comments and Documents

To view comments, as well as any documents mentioned in this preamble, go to *http://www.regulations.gov* and click on the ''Read Comments'' box in the upper right hand side of the screen. Then, in the ''Keyword'' box insert ''FMCSA–2014–0428'' and click ''Search.'' Next, click the ''Open Docket Folder'' in the ''Actions'' column. Finally, in the ''Title'' column, click on the document you would like to review. If you do not have access to the Internet, you may view the docket online by visiting the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays.

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.*

II. Executive Summary

Purpose and Summary of the Major Provisions

The FMCSRs require that motor carriers operating CMVs in the U.S., including Mexico- and Canada-domiciled carriers, ensure that the vehicles are equipped with the applicable safety equipment and features specified in 49 CFR part 393, Parts and Accessories Necessary for Safe Operations, which includes cross references to safety equipment and features that must be installed at the time of production. The National Highway Traffic Safety Administration (NHTSA) requires vehicle manufacturers to certify that the vehicles they produce for sale and use in the U.S. meet all applicable FMVSS in effect at the time of manufacture. In addition, they must affix an FMVSS certification label to each vehicle in accordance with the requirements of 49 CFR part 567. This NPRM would require U.S.-domiciled motor carriers engaged in interstate commerce to use only CMVs that display an FMVSS certification label affixed by the vehicle manufacturer indicating that the vehicle: (1) satisfied all applicable FMVSS in effect at the time of manufacture; or (2) has been modified to meet those standards and legally imported by a DOT Registered Importer. In the absence of such a label (*e.g.,* because of vehicle damage or deliberate removal), the motor carrier must obtain, and a driver upon demand present, a letter issued by the vehicle manufacturer stating that the vehicle satisfied all applicable FMVSS in effect on the date of manufacture. The manufacturer should be able to determine quickly whether the vehicle was built to comply with the FMVSS by comparing the vehicle identification number (VIN) to its production records.

In the event a vehicle does not display a certification label, motor carriers would be responsible for providing their drivers with a letter from the vehicle manufacturer to present to Federal or State enforcement officials upon request.

This proposed rule would address the National Transportation Safety Board's (NTSB) concerns about the operation of CMVs that do not display certification labels. It would not apply to foreign-domiciled vehicles (*i.e.,* CMVs operated by Mexico- and Canada-domiciled motor carriers) engaged in international traffic, as regulations enforced by U.S. Customs and Border Protection permit such vehicles to be admitted to the U.S. without formal importation, payment of duty, or compliance with the FMVSS.[1]

Benefits and Costs

Generally, motor carriers engaging in interstate commerce with a principal place of business in the U.S. would not experience any regulatory burden as a result of this rulemaking unless the motor carrier: (1) had vehicles with missing certification labels; or (2) had acquired a vehicle that was not originally manufactured for sale or use

[1] The applicable Customs and Border Protection regulations governing instruments of international traffic are found in 19 CFR 10.41, 10.41a, and part 123, subpart B. With certain exceptions, instruments of international traffic may be released without entry or the payment of duty, subject to the provisions set forth in these regulations.

in this country that had somehow been improperly imported. The Agency lacks data on the prevalence of such vehicles in the fleets of U.S.-domiciled motor carriers. FMCSA seeks comment on: (1) the size of the CMV population originally certified as FMVSS-compliant that now lacks certification labels because of vehicle damage, deliberate removal, or other reasons; and (2) the number of CMVs operated by U.S.-domiciled carriers that lack certification labels because they were neither designed nor certified to be FMVSS-compliant. FMCSA believes that most missing labels fall into the first of these two categories.

This rulemaking is not intended to deprive motor carriers of the use of vehicles produced in compliance with the appropriate FMVSS, but rather to prevent vehicles not manufactured or modified to meet those standards from being operated by U.S.-domiciled interstate carriers.

FMCSA believes this rulemaking would have no impact on the vast majority of U.S. carriers. Because motor vehicles manufactured for sale or use in the U.S. must display an FMVSS certification label, and because vehicles that are properly imported by a Registered Importer must likewise display an FMVSS certification label, all vehicles operated by U.S. motor carriers would typically already have such labels. However, there may be circumstances where a CMV lacking an FMVSS certification label is used in interstate commerce by an American carrier. This NPRM would force the carrier to incur one-time costs to determine whether the label had simply been lost or, more seriously, whether the vehicle may have been improperly imported. In order to minimize those costs, FMCSA will accept as proof of compliance with the FMVSS a letter from the vehicle manufacturer stating that the subject vehicle satisfied all applicable FMVSS in effect at the time of manufacture. The Agency is unable to quantify the costs associated with this alternative demonstration of compliance, but expects them to be minimal. FMCSA seeks comment on the cost and effectiveness of this letter-based validation process when an FMVSS certification label is missing or too damaged to read.

With regard to benefits, the rule would make it easier for FMCSA and its State partners to identify CMVs operated by U.S.-domiciled motor carriers that may have been introduced into interstate commerce without the proper FMVSS certification.

In the absence of monetizeable benefits, and due to uncertainty regarding the size of the affected population and the costs to comply with this rulemaking, FMCSA proposes to use a threshold analysis to quantify the benefits necessary to offset the costs of the rule. This threshold analysis will be included in the final rule, drawing upon information provided in comments to the docket and other data to establish lower and upper bounds for costs. The Agency seeks comments on the value of a threshold analysis versus a qualitative assessment of the rule's potential impact.

III. Legal Basis for the Rulemaking

This NPRM is based on the authority of the Motor Carrier Act of 1935 (1935 Act) and the Motor Carrier Safety Act of 1984 (MCSA or 1984 Act), both of which provide broad discretion to the Secretary of Transportation (Secretary) in implementing their provisions.

The 1935 Act provides that the Secretary may prescribe requirements for: (1) qualifications and maximum hours of service of employees of, and safety of operation and equipment of, a motor carrier [49 U.S.C. 31502(b)(1)]; and (2) qualifications and maximum hours of service of employees of, and standards of equipment of, a motor private carrier, when needed to promote safety of operation [49 U.S.C. 31502(b)(2)]. These proposed amendments are based on the Secretary's authority to regulate the safety and standards of equipment of for-hire and private motor carriers.

The 1984 Act gives the Secretary concurrent authority to regulate CMVs and the drivers and motor carriers that operate them, as well as the vehicles themselves [49 U.S.C. 31136(a)]. Section 31136(a) requires the Secretary to publish regulations on CMV safety. Specifically, the Act sets forth minimum safety standards to ensure that: (1) CMVs are maintained, equipped, loaded, and operated safely [49 U.S.C. 31136(a)(1)]; (2) the responsibilities imposed on operators of CMVs do not impair their ability to operate the vehicles safely [49 U.S.C. 31136(a)(2)]; (3) the physical condition of CMV operators is adequate to enable them to operate the vehicles safely [49 U.S.C. 31136(a)(3)]; and (4) the operation of CMVs does not have a deleterious effect on the physical condition of the operators [49 U.S.C. 31136(a)(4)]. Section 32911 of the Moving Ahead for Progress in the 21st Century Act (MAP–21) [Pub. L. 112–141, 126 Stat. 405, 818, July 6, 2012] enacted a fifth requirement, *i.e.,* that the regulations ensure that ''(5) an operator of a commercial motor vehicle is not coerced by a motor carrier, shipper, receiver, or transportation intermediary to operate a commercial motor vehicle in violation of a regulation promulgated under this section, or chapter 51 [Transportation of Hazardous Material] or chapter 313 [Commercial Motor Vehicle Operators] of this title'' [49 U.S.C. 31136(a)(5)].

This proposed rule would prohibit U.S-domiciled motor carriers from operating CMVs that are not appropriately labeled to document that they met all applicable FMVSS in effect at the time of manufacture. Motor carriers could continue to purchase foreign vehicles for importation into the United States, but NHTSA requires these vehicles to have documentation and labels to verify that they have been modified to comply with the applicable FMVSS. Because FMCSA has exercised its statutory authority to include cross-references to the FMVSS in the FMCSRs, this rulemaking is consistent with 49 U.S.C. 31136(a)(1). This proposed rule does not impact the responsibilities or physical condition of drivers as contemplated by 49 U.S.C. 31136(a)(2) and (3), respectively, and deals with 49 U.S.C. 31136(a)(4) only to the extent that a vehicle operated in accordance with the safety regulations is less likely to have a deleterious effect on the physical condition of a driver. Because both: (1) the number of vehicles operated by U.S.-domiciled motor carriers without an FMVSS certification label; and (2) the cost of demonstrating FMVSS compliance through a letter from the vehicle manufacturer, are expected to be small, the Agency believes that the number of drivers who might be coerced to operate CMVs that do not comply with this rule is *de minimis,* and may be zero. FMCSA has considered the costs and benefits of the rule, as required by 49 U.S.C. 31136(c)(2)(A) and 31502(d).

IV. Background

Part 567 of title 49 of the Code of Federal Regulations (49 CFR part 567) requires that manufacturers of motor vehicles built for sale or use in the U.S. must affix a label certifying that the motor vehicle meets all applicable FMVSS in effect on the date of manufacture.[2] Part 567 provides detailed requirements concerning the location of and information to be displayed on the label. These requirements are applicable to manufacturers of CMVs produced for use in the U.S. The label must be affixed prior to the first sale of the CMV.

[2] These standards are codified in 49 CFR part 571. Most, but not all, of the FMVSS are cross-referenced in existing requirements of part 393.

The National Traffic and Motor Vehicle Safety Act (Vehicle Safety Act) (49 U.S.C. 30101, *et seq.*) expressly prohibits vehicles from being imported into the U.S. unless the vehicles—

(a) Comply with all applicable FMVSS in effect on the date of manufacture, and

(b) Bear a label certifying compliance with the FMVSS and applied to the vehicle either by a manufacturer at the time of manufacture or by a DOT Registered Importer after the vehicle has been brought into compliance.[3] This statutory requirement is currently codified at 49 U.S.C. 30112 and implemented in NHTSA's regulations codified at 49 CFR parts 567 and 571.

Under this proposal, all motor carriers operating in interstate commerce, including Mexico- and Canada-domiciled motor carriers, would continue to be responsible for complying with FMCSA's vehicle-related requirements in 49 CFR part 393, including the specific safety features and equipment mandated by the FMVSS and cross-referenced in part 393. Under FMCSA's Motor Carrier Safety Assistance Program, FMCSA and its State and local partners conduct more than 3 million roadside inspections each year on vehicles domiciled in the U.S., Mexico, and Canada operating in interstate commerce. Enforcement of the FMCSRs, and by extension the FMVSS they cross-reference, is the bedrock of these compliance activities, and helps ensure that all CMVs on U.S. highways are in safe and proper operating condition.

National Transportation Safety Board Recommendations

On December 8, 2009, the NTSB issued a series of recommendations to the Office of the Secretary of Transportation, FMCSA, and NHTSA concerning measures to ensure that CMVs operated in the U.S. are manufactured to comply with the applicable FMVSS. The recommendations were included in the NTSB's highway crash report titled ''Motorcoach Rollover on U.S. Highway 59 near Victoria, Texas on January 2, 2008'' (HAR–09/03/SUM, PB2009–916203). A copy of the report is included in the docket referenced at the beginning of this notice.

During its investigation of this crash, NTSB discovered that the motorcoach did not display an FMVSS certification label despite being registered in the U.S. While there is no indication that the absence of the FMVSS certification contributed to the crash, the NTSB noted the safety vulnerability of allowing vehicles without that certification to operate on the Nation's highways. This rulemaking would help to address the problem of U.S.-domiciled motor carriers acquiring and operating CMVs that were neither manufactured for sale nor modified for use in this country.

Effect of the Certification Label Requirements on U.S.-Domiciled Motor Carrier Operations

Generally, U.S.-domiciled motor carriers operating CMVs (as defined in 49 CFR 390.5) in interstate commerce have access to vehicles that were either originally manufactured domestically for use in the U.S. and have the required certification label, or were imported in accordance with the applicable NHTSA importation regulations. Imported vehicles must have the required label certifying the vehicle is in compliance with the applicable FMVSS. Therefore, most vehicles operated by U.S.-domiciled motor carriers should have certification labels that meet the requirements of 49 CFR part 567.[4]

FMCSA's Safety Responsibility

NHTSA and FMCSA have complementary responsibilities to ensure vehicle safety under their respective enabling legislation. NHTSA's responsibility generally covers the design and safety compliance testing of motor vehicles by manufacturers and others responsible for those activities. FMCSA's responsibility concerns the safe operation of CMVs in interstate commerce, and the regulatory compliance of motor carriers and drivers conducting such operations. Generally, enforcement of the FMCSRs by FMCSA and its State partners is accomplished through roadside inspections. Under current roadside inspection enforcement procedures, if violations or deficiencies of the FMCSRs are serious enough to meet the current out-of-service criteria, the vehicle is prohibited from operating until the problems are corrected. The roadside inspection procedures are the same for all CMVs operated in the U.S., regardless of the motor carrier's country of domicile.

If FMCSA adopts the proposed rule, the Agency and its State partners would then be able to enforce the prohibition in 49 U.S.C. 30112 against the use or importation of non-compliant CMVs by citing U.S.-domiciled motor carriers that fail to display the required certification label. Enforcement action would be taken in a manner consistent with FMCSA's existing compliance policies and programs on vehicle-oriented regulations under 49 CFR part 393.[5] As it does with other violations of the FMCSRs, the Agency would compile data regarding uncertified vehicles and determine whether there are patterns of non-compliance by specific U.S.-domiciled interstate motor carriers.

V. Discussion of the Proposed Rule

FMCSA is proposing to amend the FMCSRs to require that U.S.-domiciled motor carriers ensure that their CMVs have a certification label affixed to the vehicle by the vehicle manufacturer or by a DOT Registered Importer that meets the requirements of 49 CFR part 567. If a CMV operated by a U.S.-domiciled motor carrier is missing the certification label because of vehicle damage, deliberate removal, or other reasons, the motor carrier must obtain, and a driver must upon demand present, a letter issued by the vehicle manufacturer stating that the vehicle satisfied all applicable FMVSS in effect at the time of manufacture. As explained above, U.S.-domiciled motor carriers typically would have access only to vehicles that meet the applicable FMVSS and display a certification label that meets the requirements of 49 CFR part 567. Therefore, FMCSA does not expect that motor carriers would have to change the way they operate to comply with the requirements proposed today. However, the proposed rule would require U.S.-domiciled motor carriers to maintain the label affixed by the manufacturer or DOT Registered Importer or other documentation that confirms the CMV was manufactured per the applicable

[3] An individual or business registered with NHTSA as an importer may import non-complying motor vehicles into the United States if NHTSA has determined that the vehicles are capable of being readily altered to comply with all applicable standards in effect at the time the vehicle is imported. The registered importer must provide the Federal Government with a bond at least equal to the dutiable value of the vehicle before it can be imported and must bring the vehicle into full compliance before the vehicle may be sold and the bond released.

[4] The FMVSS and the certification label requirement are not applicable to vehicles or items of equipment manufactured for, and sold directly to, the Armed Forces of the United States in conformance with contract specifications (49 CFR 571.7). Therefore, when a motor carrier purchases surplus equipment from the Armed Forces for subsequent use in interstate commerce, the vehicle may not have a certification label. However, because the FMCSRs cross-reference most of the FMVSS, the motor carrier would be required to ensure that the vehicle was retrofitted to meet the referenced standards, as well as all applicable motor carrier regulations.

[5] In other words, failure to display a certification label could result in a citation and fine during a roadside inspection, or a civil penalty as a result of a compliance review. Under the current out-of-service criteria, it would not constitute grounds to place a vehicle out of service in the absence of vehicle defects meeting those criteria.

FMVSS. The Agency seeks comment on potential costs involved to replace the label in the instance of damage or other loss.

VI. Regulatory Analyses

Executive Order 12866 (Regulatory Planning and Review and DOT Regulatory Policies and Procedures as Supplemented by E.O. 13563)

FMCSA has determined that this proposed rule is not a significant regulatory action within the meaning of Executive Order (E.O.) 12866, as supplemented by E.O. 13563 (76 FR 3821, January 21, 2011), or within the meaning of DOT regulatory policies and procedures (DOT Order 2100.5 dated May 22, 1980; 44 FR 11034, February 2, 1979). The Agency believes the potential economic impact is negligible because vehicles manufactured for sale and use in the United States have FMVSS certification labels or can be confirmed as being FMVSS-compliant by the manufacturer through a comparison of the vehicle's VIN and the manufacturer's production records. While a U.S.-domiciled carrier may occasionally obtain a vehicle that does not have an FMVSS certification, the Agency believes this practice would occur less frequently under the proposed rule. As such, the costs of the rule would not begin to approach the $100 million annual threshold for economic significance. Moreover, the Agency does not expect the rule to generate substantial congressional or public interest. This proposed rule therefore has not been formally reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to consider the effects of the regulatory action on small business and other small entities and to minimize any significant economic impact. The term ''small entities'' comprises small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields and governmental jurisdictions with populations of less than 50,000. Accordingly, DOT policy requires an analysis of the impact of all regulations on small entities and mandates that agencies strive to lessen any adverse effects on these businesses.

Under the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (Title II, Pub. L. 104–121, 110 Stat. 857, March 29, 1996), FMCSA does not expect the proposed rule to have a significant economic impact on a substantial number of small entities. For those entities affected by this proposed rule, in the absence of definitive data on the cost to demonstrate FMVSS compliance at the time of manufacture for an otherwise FMVSS-compliant vehicle, FMCSA assumes the cost is minimal and poses no disproportionate burden to small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996, FMCSA wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking initiative. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult the FMCSA point of contact listed in the **FOR FURTHER INFORMATION CONTACT** section of the proposed rule.

Small businesses may send comments on the actions of Federal employees who enforce or otherwise determine compliance with Federal regulations to the Small Business Administration's Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of FMCSA, call 1–888–REG–FAIR (1–888–734–3247). DOT has a policy ensuring the rights of small entities to regulatory enforcement fairness and an explicit policy against retaliation for exercising these rights.

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded Federal mandate, as defined by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532 *et seq.*), that would result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $151 million (which is the value of $100 million in 2012 after adjusting for inflation) or more in any 1 year.

Executive Order 13132 (Federalism)

A rule has Federalism implications if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on the States. FMCSA has analyzed this proposed rule under Executive Order 13132 and determined that it does not have Federalism implications.

Executive Order 12988 (Civil Justice Reform)

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

Executive Order 13045 (Protection of Children)

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, Apr. 23, 1997), requires agencies issuing ''economically significant'' rules, if the regulation also concerns an environmental health or safety risk that an agency has reason to believe may disproportionately affect children, to include an evaluation of the regulation's environmental health and safety effects on children. The Agency determined this proposed rule is not economically significant. Therefore, no analysis of the impacts on children is required. In any event, the Agency does not anticipate that this regulatory action could in any respect present an environmental or safety risk that could disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

FMCSA reviewed this notice of proposed rulemaking in accordance with Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights, and has determined it will not effect a taking of private property or otherwise have taking implications.

Privacy Impact Assessment

Section 522 of title I of division H of the Consolidated Appropriations Act, 2005, enacted December 8, 2004 (Pub. L. 108–447, 118 Stat. 2809, 3268, 5 U.S.C. 552a note), requires the Agency to conduct a privacy impact assessment of a regulation that will affect the privacy of individuals. This rule does not require the collection of any personally identifiable information.

The Privacy Act (5 U.S.C. 552a) applies only to Federal agencies and any non-Federal agency that receives records contained in a system of records from a Federal agency for use in a matching program. FMCSA has determined this proposed rule will not result in a new or revised Privacy Act System of Records for FMCSA.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies must obtain approval from OMB for each collection of information they conduct, sponsor, or require through regulations. FMCSA determined that no new information collection requirements are associated with this NPRM. The information collection requirements associated with FMVSS certification labels are covered by NHTSA under OMB Control Number 2127–0512, ''Consolidated Labeling Requirements for Motor Vehicles (Except the VIN Numbers).''

National Environmental Policy Act and Clean Air Act

FMCSA analyzed this proposed rule in accordance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) and determined under our environmental procedures Order 5610.1 (69 FR 9680, March 1, 2004) that this action does not have any effect on the quality of the environment. Therefore, this NPRM is categorically excluded (CE) from further analysis and documentation in an environmental assessment or environmental impact statement under FMCSA Order 5610.1, paragraph 6(b) of Appendix 2. The CE under paragraph 6(b) addresses rulemakings that make editorial or other minor amendments to existing FMCSA regulations. A Categorical Exclusion Determination is available for inspection or copying in the *Regulations.gov* Web site listed under **ADDRESSES**.

FMCSA also analyzed this proposed rule under the Clean Air Act, as amended (CAA), section 176(c) (42 U.S.C. 7401 *et seq.*), and implementing regulations promulgated by the Environmental Protection Agency. Approval of this action is exempt from the CAA's general conformity requirement since it does not affect direct or indirect emissions of criteria pollutants.

Executive Order 12898 (Environmental Justice)

Under E.O. 12898, each Federal agency must identify and address, as appropriate, ''disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations'' in the United States, its possessions, and territories. FMCSA evaluated the environmental justice effects of this proposed rule in accordance with the E.O., and has determined that no environmental justice issue is associated with this proposed rule, nor is there any collective environmental impact that would result from its promulgation.

Executive Order 13211 (Energy Supply, Distribution, or Use)

FMCSA has analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. FMCSA has determined that it is not a ''significant energy action'' under that executive order because it is not a ''significant regulatory action'' under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, this proposed rule does not require a Statement of Energy Effects under Executive Order 13211.

Executive Order 13175 (Indian Tribal Governments)

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

National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act (15 U.S.C. 272 note) requires Federal agencies proposing to adopt technical standards to consider whether voluntary consensus standards are available. If the Agency chooses to adopt its own standards in place of existing voluntary consensus standards, it must explain its decision in a separate statement to OMB. Because this NPRM does not involve the adoption of FMCSA technical standards, there is no need to submit a separate statement to OMB on this matter.

E-Government Act of 2002

The E-Government Act of 2002, Public Law 107–347, section 208, 116 Stat. 2899, 2921 (Dec. 17, 2002), requires Federal agencies to conduct a privacy impact assessment for new or substantially changed technology that collects, maintains, or disseminates information in an identifiable form. No new or substantially changed technology would collect, maintain, or disseminate information as a result of this proposed rule. As a result, FMCSA has not conducted a privacy impact assessment.

List of Subjects in 49 CFR Part 393

Highway safety, Motor carriers, Motor vehicle safety.

For the reasons stated above, FMCSA proposes to amend title 49, Code of Federal Regulations, chapter III, subchapter B part 393, as follows:

PART 393—PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION

■ 1. The authority citation for part 393 continues to read as follows:

Authority: 49 U.S.C. 31136, 31151, and 31502; sec. 1041(b) of Pub. L. 102–240, 105 Stat. 1914, 1993 (1991); and 49 CFR 1.87.

■ 2. Add § 393.8 to subpart A to read as follows:

§ 393.8 Federal Motor Vehicle Safety Standard Certification Labels.

(a) Each commercial motor vehicle operated by a U.S.-domiciled motor carrier, as indicated by its principal place of business, must be built or modified to meet all applicable Federal Motor Vehicle Safety Standards (FMVSS) (codified in 49 CFR part 571). The requirements must be satisfied by:

(1) A label affixed by the vehicle manufacturer certifying that the vehicle was built to meet all applicable FMVSS in effect on the date of manufacture; or

(2) A label affixed by a DOT Registered Importer, as defined in 49 CFR part 592, certifying that the vehicle has been modified to conform to all applicable FMVSS in effect on the date of manufacture; or

(3) A letter issued by the vehicle manufacturer stating that the vehicle satisfied all applicable FMVSS in effect at the time of manufacture.

(b) The certification labels required by this section must comply with the requirements of 49 CFR part 567.

Issued under the authority of delegation in 49 CFR 1.87 on: May 27, 2015.

T.F. Scott Darling, III,

Chief Counsel.

[FR Doc. 2015–14934 Filed 6–16–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 224

RIN 0648–XB089

[Docket No. 120425024–5503–03]

Endangered and Threatened Species; Identification and Proposed Listing of Eleven Distinct Population Segments of Green Sea Turtles (Chelonia mydas) as Endangered or Threatened and Revision of Current Listings; Public Hearings; Extension of Comment Period

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce; United States Fish and Wildlife Service (USFWS), Interior.

ACTION: Proposed rule; extension of comment period and public hearing schedule.

SUMMARY: On March 23, 2015, we (NMFS and USFWS, or the Services) published a proposed rule to revise the green sea turtle (*Chelonia mydas;* hereafter referred to as the green turtle) listings under the Endangered Species Act (ESA). We proposed to remove the current range-wide listing and, in its place, list eight distinct population segments (DPSs) as threatened and three as endangered. We opened a public comment period that lasted through June 22, 2015, announced a public hearing in Honolulu, Hawaii, and solicited requests for additional public hearings. With this document, we announce additional public hearings in Guam, the Commonwealth of the Northern Mariana Islands (CNMI), and American Samoa. To allow adequate time for comments after the last public hearing, we extend the public comment period through July 27, 2015.

DATES: Public hearings will be held from 6 to 8 p.m., with informational open houses starting at 5:30 p.m. as follows: in Pago Pago, American Samoa on July 6, 2015; in Saipan, CNMI on July 13, 2015; and in Mangilao, Guam on July 15, 2015. The comment period for the proposed rule published on March 23, 2015 (80 FR 15271), has been extended. Comments and information regarding this proposed rule must be received by close of business on July 27, 2015.

ADDRESSES: You may submit comments on the proposed rule, identified by NOAA–NMFS–2012–0154, by any of the following methods:

• *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2012-0154,*
2. Click the ''Comment Now!'' icon, complete the required fields, and
3. Enter or attach your comments.

OR

• *Mail:* Submit written comments to Green Turtle Proposed Listing Rule, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Room 13535, Silver Spring, MD 20910; or Green Turtle Proposed Listing Rule, U.S. Fish and Wildlife Service, North Florida Ecological Services Office, 7915 Baymeadows Way, Suite 200, Jacksonville, FL 32256.

OR

• *Public hearing:* Interested parties may provide oral or written comments at one of the public hearings detailed below, to be held at: the Lecture Hall of the American Samoa Community College, Pago Pago, American Samoa; the Multi-Purpose Center, Beach Road (Route 30), Susupe, Saipan, CNMI 96950; the Multi-Purpose Room at the School of Business and Public Administration, University of Guam, Mangilao, Guam 96923.

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 the Services. All comments received will be a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. The Services will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). The proposed rule is available electronically at *http://www.nmfs.noaa.gov/pr/species/turtles/green.htm* and *http://www.fws.gov/northflorida/seaturtles/turtle%20factsheets/green-sea-turtle.htm.*

FOR FURTHER INFORMATION CONTACT: Jennifer Schultz, NMFS (ph. 301–427–8443, email *jennifer.schultz@noaa.gov*), or Ann Marie Lauritsen, USFWS (ph. 904–731–3032, email *annmarie_lauritsen@fws.gov*). Persons who use a Telecommunications Device for the Deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, 24 hours a day, and 7 days a week.

SUPPLEMENTARY INFORMATION:

Background

The green turtle is currently listed under the ESA as a threatened species globally, with the exception of the Florida and Mexican Pacific coast breeding populations, which are listed as endangered. On March 23, 2015 (80 FR 15271), the Services published a proposed rule to revise these listings because we find that the green turtle is composed of 11 distinct population segments (DPSs) that qualify as ''species'' for listing under the ESA. We proposed to remove the current range-wide listing and, in its place, list eight DPSs as threatened and three as endangered. We proposed to list the Central West Pacific DPS (including green turtles originating from Guam and CNMI) and the Central South Pacific DPS (including green turtles originating from American Samoa) as endangered. We also proposed to apply existing protective regulations to the DPSs and to continue the existing critical habitat designation (*i.e.,* waters surrounding Culebra Island, Puerto Rico) in effect for the North Atlantic DPS. We solicited comments on these proposed actions; we indicated that comments must be received by June 22, 2015.

We received several requests for additional public hearings. In response to the requests, by this notice we announce that we will host additional public hearings in Guam, CNMI, and American Samoa, and extend the public comment period through July 27, 2015. Previously submitted comments do not need to be resubmitted.

Public Hearings

The Services will hold a public hearing in Pago Pago, American Samoa. Interested parties may provide oral or written comments at this hearing, which will be held on July 6, 2015 from 6 to 8 p.m., with an informational open house starting at 5:30 p.m., at Lecture Hall of the American Samoa Community College.

The Services will hold a public hearing in Saipan, CNMI. Interested parties may provide oral or written comments at this hearing, which will be held on July 13, 2015 from 6 to 8 p.m., with an informational open house starting at 5:30 p.m., at the Multipurpose Center, Beach Road, Call Box 1007, Saipan, CNMI 96950.

The Services will hold a public hearing in Mangilao, Guam. Interested parties may provide oral or written comments at this hearing, which will be held on July 15, 2015 from 6 to 8 p.m., with an informational open house starting at 5:30 p.m., at the Multi-Purpose Room of the School of Business and Public Administration, University of Guam, Mangilao, Guam 96923.

Special Accommodations

These hearings will be physically accessible to people with disabilities. Requests for sign language interpretation or other accommodations should be directed to Jennifer Schultz (see **FOR FURTHER INFORMATION CONTACT**) as soon as possible, but no later than 7 business days prior to the hearing date.

Authority: 16 U.S.C. 1531 *et seq.*

Dated: June 5, 2015.

Samuel D. Rauch III,

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

Dated: June 10, 2015.

Gary Frazer,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2015–14906 Filed 6–16–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2015–0001; 50120–1113–000]

RIN 1018–AY05

Endangered and Threatened Wildlife and Plants; Removing Eastern Puma (=Cougar) From the Federal List of Endangered and Threatened Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The best available scientific and commercial data indicate that the eastern puma (=cougar) (*Puma (=Felis) concolor couguar*) is extinct. Therefore, under the authority of the Endangered Species Act of 1973, as amended, we, the U.S. Fish and Wildlife Service (Service), propose to remove this subspecies from the Federal List of Endangered and Threatened Wildlife. This proposed action is based on a thorough review of all available information, which indicates that there is no evidence of the existence of either an extant population or individuals of the eastern puma and that, for various reasons, it is highly unlikely that an eastern puma population could remain undetected over the time span since the last confirmed sighting was documented in 1938.

DATES: We will accept comments received or postmarked on or before August 17, 2015. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) must be received by 11:59 p.m. Eastern Time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by August 3, 2015. Informational webinars will be scheduled upon request.

ADDRESSES: *Written comments:* You may submit comments by one of the following methods:

Electronically: Go to the Federal eRulemaking Portal: *http://www.regulations.gov*. In the search box, type FWS–R5–ES–2015–001 which is the docket number for this proposed rule. Then, click on the search button. In the Search panel on the left side of the screen, under the Document Type heading, click on the box next to ''Proposed Rule'' to locate this document. When you have located the correct document, you may submit a comment by clicking on ''Comment Now!''

By hard copy: Submit by U.S. mail or hand-delivery to: Public Comments Processing, Attn: FWS–R5–ES–2015–0001, U.S. Fish & Wildlife Service, MS: BPHC, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We will post all comments at: *http://www.regulations.gov*. This generally means that we will post any personal information you provide us (see Information Requested below, for more information).

Copies of documents: This proposed rule and and primary supporting documents are available at: *http://www.regulations.gov*. In addition, the supporting files for this proposed rule will be available for public inspection, by appointment and during normal business hours, at the U.S. Fish and Wildlife Service's Maine Field Office, 17 Godfrey Drive, Suite #2, Orono, ME 04473, and on the Eastern Cougar Web site at: *http://www.fws.gov/northeast/ECougar*.

FOR FURTHER INFORMATION CONTACT: Questions and requests for additional information may be directed to Martin Miller, Northeast Regional Office, telephone 413–253–8615, or to Mark McCollough, Maine Field Office, telephone 207–866–3344, extension 115. Individuals who are hearing- or speech-impaired may call the Federal Relay Service at 1–800–877–8337 for TTY assistance. General information regarding the eastern puma and the delisting process may also be accessed at: *http://www.fws.gov/northeast/ECougar*.

SUPPLEMENTARY INFORMATION:

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and effective as possible. Therefore, we invite tribal and governmental agencies, the scientific community, and other interested parties to submit comments and new data regarding this proposed rule. In particular, we are seeking targeted information and comments concerning the following:

(1) The persistence or extinction of a breeding population of the eastern puma subspecies within its historical range;

(2) Verifiable reports or evidence of wild-origin pumas within the historical range of the eastern puma subspecies;

(3) Our analysis of the status of the eastern puma; and

(4) The taxonomy of North American pumas.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include. Bear in mind that comments simply advocating or opposing the proposed action without providing supporting information will be noted but not considered in making a determination, as section 4(b)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), directs that determinations as to whether any species is an endangered species or threatened species shall be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning the proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only to an address listed in **ADDRESSES**. All comments must be submitted to *http://www.regulations.gov,* hand delivered, or postmarked by the deadline specified in **DATES**. If you submit information via *http://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the Web site. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document

that we withhold this information from public review; however, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *http://www.regulations.gov*.

Comments and materials we receive, as well as supporting documentation used in preparing this proposed rule, will be available for public inspection on *http://www.regulations.gov,* or by appointment during normal business hours at the U.S. Fish and Wildlife Service, Maine Field Office (see **FOR FURTHER INFORMATION CONTACT**).

In making a final decision on this proposal, we will take into consideration the comments and any additional information we receive during the public comment period. Such communications could lead to a final rule that differs from this proposal.

Public Hearing

Section 4(b)(5)(E) of the Act provides for one or more public hearings on this proposal, if requested. We must receive requests for public hearings, in writing, at the address shown in the **FOR FURTHER INFORMATION CONTACT** section within 45 days after the date of this **Federal Register** publication (see **DATES**). We will schedule public hearings on this proposal, if any are requested, and announce the dates, times, and places of those hearings, as well as how to obtain reasonable accommodations, in the **Federal Register** at least 15 days before the first hearing.

Peer Review

In accordance with our policy, ''Notice of Interagency Cooperative Policy for Peer Review in Endangered Species Act Activities,'' which was published on July 1, 1994 (59 FR 34270), we will seek the expert opinion of at least three appropriate independent specialists regarding scientific data and analyses contained in this proposed rule. We will send copies of this proposed rule to peer reviewers immediately following its publication in the **Federal Register**. The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis.

Background

This proposed rule is based on detailed information and indepth analyses contained in the Service's 5-year review for the eastern puma (USFWS 2011, entire), which can be accessed at: *http://www.fws.gov/northeast/ECougar*. That review includes a thorough discussion of the eastern puma's biology, historical records, and analysis of contemporary sightings. We also take into account information that has become available since 2011, noting that this information corroborates the 5-year review's analysis. All references cited in the 2011 review and this proposed rule are maintained on file at the Service's Maine Field Office (see **ADDRESSES**).

Previous Federal Actions

Under the Act, we maintain a List of Endangered and Threatened Wildlife (List) at 50 CFR 17.11 and a List of Endangered and Threatened Plants at 50 CFR 17.12. On June 4, 1973 (38 FR 14678), we listed the eastern puma (=cougar), *Puma (=Felis) concolor couguar,* as an endangered subspecies (using the common name of eastern cougar). At that time, critical habitat was not provided for under the Act; consequently, critical habitat was not designated for the eastern cougar. The principal factors leading to the listing of the eastern puma were widespread persecution (poisoning, trapping, hunting, and bounties), decline of forested habitat, and near-extirpation of white-tailed deer populations during the 1800s, which together resulted in the extirpation of most eastern puma populations by 1900.

A Service status review of the puma in North America, including the eastern puma, was issued in 1976 (Nowak 1976). This review, along with status reviews by some States and Canadian provinces (*e.g.,* van Zyll de Jong and van Ingen 1978, R.L. Downing newsletters from 1979 to 1982), suggested that a large number of unverified public reports may be evidence of a persisting, native breeding population of eastern pumas. Such reports led the Service to retain the eastern puma on the List until such time as either a breeding population or extinction could be verified.

The Eastern Cougar Recovery Plan was approved in 1982 (USFWS 1982). During plan preparation, R.L. Downing conducted field surveys and investigated sighting reports and concluded that ''no breeding cougar populations have been substantiated within the former range of *F.c. couguar* since the 1920s.'' Nonetheless, the recovery plan states that the eastern cougar could be reclassified from endangered to threatened when one population containing at least 50 breeding adults was found or established. It further states that the eastern cougar could be removed from the List when at least three populations were found or established, with each containing more than 50 breeding adults. Since the plan's approval, no breeding populations have been found, nor have any individual pumas known to be *F.c. couguar* (such individuals would form the basis of a founder population). Thus, neither of the recovery criteria was ever met.

Section 4(c)(2) of the Act requires that we conduct a review of listed species at least once every 5 years to determine: (1) Whether a species no longer meets the definition of an endangered species or threatened species and should be removed from the List (*i.e.,* delisted), (2) whether a species listed as endangered more properly meets the definition of threatened and should be reclassified to threatened (*i.e.,* downlisted), or (3) whether a species listed as threatened more properly meets the definition of endangered and should be reclassified to endangered. In accordance with 50 CFR 424.11(d), we will consider a species for delisting only if the best scientific and commercial data substantiate that the species is neither endangered nor threatened for one or more of the following reasons: (1) The species is considered extinct, (2) the species is considered recovered, or (3) the data available when the species was listed, or the interpretation of such data, were in error.

Between 1979 and 1991, the eastern puma was included in three cursory 5-year reviews conducted by the Service: A 1979 review of all domestic and foreign species listed prior to 1975 (44 FR 29566, May 21, 1979), a 1985 review of all species listed before 1976 and from 1979 to 1980 (50 FR 29901, July 22, 1985), and a 1991 review of all species listed before 1991 (56 FR 56882, November 6, 1991). None of these reviews recommended a change from the eastern puma's listing classification as endangered.

On January 29, 2007, we published a **Federal Register** notice announcing a 5-year review specific to the eastern puma and nine other species, and we requested information from the public concerning the eastern puma (72 FR 4018). The assessment of the eastern puma's current status, completed on January 28, 2011 (USFWS 2011), found no evidence of the existence of either an extant population or individual eastern pumas, and concluded, therefore, the subspecies should be considered extinct. The assessment thus concluded that the eastern puma does not meet the definition of either an endangered species or a threatened species under section 3 of the Act.

Assessment of Species Status

Section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing species, reclassifying species, and removing species from listed status.

''Species'' is defined by the Act as including any species or subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature (16 U.S.C. 1532(16)). To determine whether a species should be listed as endangered or threatened, we assess the likelihood of its continued existence based on the five factors described in section 4(a)(1) of the Act (see Consideration of Factors Under Section 4(a)(1) of the Act). A species may be reclassified or removed from the List on the same basis. With regard to delisting a species due to extinction, ''a sufficient period of time must be allowed before delisting to indicate clearly that the species is extinct'' (50 CFR 424.11(d)(1)).

According to these standards, we must determine whether the eastern puma is a valid subspecies and whether the subspecies is still extant in order to determine its appropriate listing status. The following sections thus examine the biological and legal information considered to be most germane to the status of the eastern puma as a valid, extant subspecies before looking at factors that may affect the its continued existence.

Overview

The eastern puma (*Puma (=Felis) concolor couguar*) is treated as a subspecies of the puma. The species is also known by many other common names, including, among others, cougar, catamount, mountain lion, panther, painter, and wildcat. As explained in the 5-year review (USFWS 2011, pp. 4–5), the puma is the most widely distributed land mammal in the New World and is one of the most adaptable mammals in the northern hemisphere. At the time of European contact, the puma occurred throughout most of South, Central, and North America. In North America, breeding populations still occupy about one-third of their historical range but are now absent from central and eastern North America outside Florida. The puma is documented historically from eastern North America to about 45 degrees north latitude (roughly equating to the colonial-era range of its primary ungulate prey, white-tailed deer) in a variety of habitats from swamps and everglades in the Southeast to temperate forests in the Northeast. Aside from presence reports, few historical records exist regarding the natural history of the eastern puma.

Current Legal Status

The eastern puma is one of three subspecies of puma that are federally listed as endangered species under the Act; the others are the Florida panther (*Puma (=Felis) concolor coryi*), listed in 1967 (32 FR 4001, March 11, 1967), and the Costa Rican puma (*Puma (=Felis) concolor costaricensis*), listed in 1976 (41 FR 24062, June 14, 1976). Both the Florida panther and Costa Rican puma remain extant, albeit extremely rare.

In Canada, the first status review of the eastern puma by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) in 1978 assigned endangered status to the taxon *Puma concolor couguar* based on puma reports in Ontario, Quebec, and the Maritimes provinces. In 1998, the Canadian eastern puma listing was changed from the Endangered to the Data Deficient or Indeterminate category for Ontario, Quebec, New Brunswick, and Nova Scotia.

The eastern cougar (=puma) is listed as endangered in the International Union for Conservation of Nature's (IUCN) Mammal Red Data Book (IUCN 1982). The subspecies is also classified as an Appendix I animal under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which provides protection from international trade.

Legal protections at the State and provincial levels are discussed under ''Historical Range, Abundance, and Distribution'' below.

Biological Status

Taxonomy and Genetics: The eastern puma 5-year review (USFWS 2011, pp. 29–35) provides a full discussion of the taxonomic history of this subspecies. As indicated in that review, the current practice is to refer to the species as *Puma concolor* (Linnaeus 1771) and the eastern subspecies as *Puma concolor couguar*.

There is ongoing debate about the taxonomic assignment of puma subspecies, including the question as to whether North American pumas comprise a single subspecies or multiple subspecies. In particular, there has been disagreement about whether the scientific community should accept the use of genetics as the driving factor in puma taxonomy, as was done by Culver et al. (2000, entire). The Service's position is that until a comprehensive evaluation of the subspecies status of North American pumas, including genetic, morphometric, and behavioral analyses, is completed, the best available information continues to support the assignment of the eastern taxon to *Puma concolor couguar* as distinct from other North American subspecies.

In recognizing the eastern puma as a valid subspecies, and thus a valid listed entity, we next evaluate whether the subspecies should be determined extinct. It is important to note that assessing the biological status of the eastern puma as a subspecies does not preclude eventual taxonomic revision.

Biology and Life History: There is little basis for believing that the ecology of eastern pumas was significantly different from puma ecology elsewhere on the continent. Our biological understanding of the eastern puma, therefore, is derived from studies conducted in various regions of North America and, to the extent possible, from eastern puma historical records and museum specimens. This information is detailed in the status review (USFWS 2011) on pages 6 through 8.

Historical Range, Abundance, and Distribution: Details and citations for the following summary are provided in the status review (USFWS 2011, pp. 8–29 and 36–56). Although a lack of reliable sightings and historical records makes it difficult to estimate past abundance and distribution, the available information is discussed below.

In eastern North America at the time of European contact, the puma ranged from Florida to southern Quebec and remained abundant through much of eastern North America during the colonial era. Despite its apparent early abundance, however, only 26 historical specimens of eastern pumas, from seven eastern States and one Canadian province within the subspecies' historical range, reside in museums or other collections.

Based on this admittedly small number of specimens and other scant evidence, Young and Goldman (1946) described the historical range of *Felis concolor couguar* as southeastern Ontario, southern Quebec, and New Brunswick in Canada, and a region bounded from Maine to Michigan, Illinois, Kentucky, and South Carolina in the eastern United States. The Service's recovery plan for the eastern cougar describes a similar range (USFWS 1982, pp. 1–2), although the range is mapped a little farther north into Ontario. The recovery plan also maps *Felis concolor schorgerii,* named as a subspecies after Young and Goldman (1946) was published, to the west and *F.c. coryi* to the south of the eastern puma's range.

The most recently published assessment of the puma in eastern Canada, conducted by the Committee on the Status of Endangered Wildlife in Canada (COSEWIC) (Scott 1998), maps

the puma's range throughout southern Ontario and Manitoba. The eastern subspecies is not stipulated in Scott's (1998) range description; indeed, the review questioned whether the eastern puma was ever a valid subspecies. Other authors have also discussed the past distribution of pumas in Canada without acknowledging them as the eastern subspecies. Rosette (2011) asserts that native, free-roaming pumas of unknown origin may continue to survive in Ontario while conceding that no evidence of their presence has been documented for almost 100 years. In Manitoba, on the other hand, several authors have documented a relatively consistent record of pumas, but there is no evidence that these are eastern pumas or that the subspecies ever occurred that far west.

The historical literature indicates that puma populations were thought to have been largely extirpated in eastern North America (except for Florida and perhaps the Smoky Mountains) by the 1870s, and in the Midwest by 1900. According to many historical accounts, pumas were greatly feared and were also persecuted as competitors for game and occasional predators of livestock. Eastern puma populations also decreased as habitat conditions for the puma's primary prey base, white-tailed deer, changed dramatically during this time. By the mid- to late-1800s, human settlement patterns resulted in the extirpation of deer from much of eastern North America. The last records of pumas in most of the eastern States and provinces, from approximately 1790 to 1890, coincided with loss of deer populations and habitat.

By 1929, eastern pumas were believed to be ''virtually extinct,'' and Young and Goldman (1946) concurred that ''they became extinct many years ago.'' On the other hand, puma records from New Brunswick in 1932 and Maine in 1938 suggest that a population may have persisted in northernmost New England and eastern Canada.

In the Service's 1976 status review (Nowak 1976), R.M. Nowak stated his belief that the large number of unverified sightings of pumas constituted evidence that certain other populations had also survived or had become reestablished in the central and eastern parts of the continent and may have increased in number since the 1940s. Further, as stated in the Eastern Cougar Recovery Plan (USFWS 1982, pp. 4, 7), R.L. Downing believed it possible that a small population may have persisted in the southern Appalachians into the 1920s. Nonetheless, the field surveys he conducted and the reports he investigated prior to writing the recovery plan led him to conclude that ''no breeding cougar populations have been substantiated within the former range of *F. c. couguar* since the 1920s'' (USFWS 1982, p. 6). Scott's (1998) COSEWIC review also concluded that ''there is no objective evidence (actual cougar specimens or other unequivocal confirmation) for the continuous presence of cougars since the last century anywhere in eastern Canada or the eastern United States outside of Florida,'' and that ''there is circumstantial evidence for virtual or complete extirpation'' from central Ontario eastward.

The known status of the eastern puma within its historical range is summarized in table 1, below. A more detailed discussion of the historical status, current confirmed and unconfirmed puma sightings, potential habitat, and legal protection (also see *Current Legal Status* above) of the eastern puma in the states and provinces is provided in the 5-year status review (USFWS 2011, pp. 8–26). To summarize, eastern pumas historically were considered generally common and widespread; however, by the late 1800s, eastern pumas were believed to be extirpated from most of their range. As indicated in table 1, the majority of the most recent confirmed reports date from the mid-1800s to around 1930. Later reports are thought to be indicative of dispersers of western pumas, as in Missouri, or released animals, as in Newfoundland. Although there now appears to be adequate habitat and prey for pumas in various portions of the subspecies' historical range, the many decades of habitat loss and near-extirpation of the puma's primary prey, white-tailed deer, bring into question the continued survival and reproduction of eastern pumas over that time.

TABLE 1—EASTERN PUMA STATUS BY STATE AND PROVINCE

State or province	Historical status	Most recent confirmed or verifiable report	Potential habitat	Current status in wild	Legal protection
Connecticut	Historically common.	1842	56 square miles (mi^2) (145 square kilometers (km^2)); limited.	Considered extirpated.	State species of special concern, with no open season and possession prohibited.
Delaware	Disappeared in late 1700s.		Not described	Considered extirpated.	Possession of carnivores permitted under stringent conditions.
Illinois	Uncertain taxonomy; disappeared before 1870.		Southern Illinois	Considered extirpated; possible dispersal of western pumas into the State; no breeding population.	No State endangered species status, but some level of protection from hunting; permit required for possession of dangerous animals.
Indiana	Historical records are rare.	1851	Not described	Considered extirpated.	No legal protection; private possession permitted.
Kentucky	Widely distributed historically; disappeared before 1900.		Statewide; ample prey base.	Considered extirpated.	State listed as extirpated; private possession of dangerous wildlife banned.
Maine	Historically rare	1938	~17,064 mi^2 (44,196 km^2).	Considered extirpated.	State listed as extirpated; perpetual closed season; permit required for possession of captive animals.

TABLE 1—EASTERN PUMA STATUS BY STATE AND PROVINCE—Continued

State or province	Historical status	Most recent confirmed or verifiable report	Potential habitat	Current status in wild	Legal protection
Maryland	Occurred Statewide.	Late 1800s?	Western Maryland	Considered extirpated.	State listed as endangered-extirpated; protected from take; permit required for possession of captive animals, but no permits have been issued.
Massachusetts	Occurred Statewide.	1858	No large habitat blocks.	Considered extirpated.	Included on State list due to Federal designation; protected with closed season and other regulations.
Michigan	Occurred in much of State.	1906	Upper and Lower Peninsulas; ample prey base.	Current reports considered to be dispersers of western pumas into the state; no breeding population.	State listed as endangered species; pumas cannot be privately held as pets.
Missouri	Historically common; taxonomy uncertain.	1966; taxonomy uncertain.	Southeastern Missouri; ample prey base.	Current confirmed sightings considered to be dispersers of western pumas into the State; no breeding population.	Classified as extirpated but protected under Wildlife Code provisions.
New Hampshire	Historically rare	Late 1800s	Northern New Hampshire; limited.	Considered extirpated.	State-protected species; possession of wild felines illegal except for educational purposes.
New Jersey	Historically common Statewide.	1830 to 1840.	No large habitat blocks.	Considered extirpated.	Not on the State endangered species list; possession of dangerous species permitted for scientific holding, animal exhibitor, zoological holding, or animal dealer.
New York	Occurred Statewide.	1894	Adirondack area; low prey density.	Considered extirpated.	Protected by State Endangered Species Act; State issues permits for possession, sale, and breeding of big cats.
North Carolina	Historically common.	1920	Western and southeastern coastal North Carolina; ample prey base.	No physical evidence to confirm sightings.	State protected as an endangered species; no open season; permit required for captive pumas.
Ohio	Historically uncommon; disappeared by 1850.		No large habitat blocks.	Considered extirpated.	Not on the State endangered species list; no State protective regulations.
Pennsylvania	Common Statewide	1914	Northern Allegheny Plateau and north-central Pennsylvania; ample prey base.	Considered extirpated.	State listed as extirpated; no open season; exotic wildlife permit required for possession.
Rhode Island	Early records are scant.	1848	No large habitat blocks.	Considered extirpated.	Classified as extirpated; permit required for possession of native wildlife or their hybrids.
South Carolina	Present until 1850		Northwest portion of State; ample prey base.	No confirmed evidence of occurrences or a population.	State listed as endangered with protection from take; possession prohibited.
Tennessee	Historically present Statewide; common in western portion of State.	1930	Areas in central and eastern Tennessee.	Considered extirpated.	Permit required for possession of dangerous animals.
Vermont	Historically reported as both rare and common.	1881	Large forested blocks; adequate prey density.	Considered to be no longer present.	State listed as endangered; protected under State Endangered Species Act; permit required for possession of big cats.
Virginia	Historically plentiful in coastal lowlands and western mountains.	1882	Western mountains; ample prey base.	No confirmed records since the 1880s.	State listed as endangered; protected under State Endangered Species Act; import permit required for wild felines.
Washington, DC	Native to area	1913	None available	Considered extirpated.	Private possession of pumas prohibited.

TABLE 1—EASTERN PUMA STATUS BY STATE AND PROVINCE—Continued

State or province	Historical status	Most recent confirmed or verifiable report	Potential habitat	Current status in wild	Legal protection
West Virginia	Historically common.	1901	Extensive and widespread; ample prey base.	Considered extirpated.	State listed; protected under the State ESA; permit required to import, hold, or sell native or exotic felines.
Wisconsin	Historically common; uncertain taxonomy.	1909	Assumed to have adequate habitat and prey base.	Confirmed records since 1994, possibly of another subspecies and illegally released pumas; no known breeding population.	Not currently protected.
Manitoba	Pumas historically occurred throughout province; not considered to be the eastern subspecies.		Abundant habitat and prey, but snow depth may be limiting.	Not considered extirpated; insufficient evidence to determine current status.	Pumas not included on Provincial endangered species list, but considered a Species of Special Concern.
New Brunswick	Historical records unreliable.	1932	Northern New Brunswick; low prey densities.	Small number may be present, of unknown origin and taxonomy; lack of evidence of a viable population.	Listed as endangered under the Provincial Endangered Species Act.
Newfoundland	Not native to province, illegally introduced in 1960.		Not described	Sightings believed to be of released animals or their progeny.	Not currently protected.
Nova Scotia	No verified reports; may have extended into area coincident to deer expansion in early 1900s.		Not described	No verified records	Not listed on the Provincial list of endangered species, but protected by Provincial regulations.
Ontario	Historically reported as both rare and common.	1908	Large forested blocks; ample prey base.	Considered extirpated.	Not protected under Provincial Endangered Species Act.
Prince Edward Island	No known historical records.		Not described	No known occurrences.	Not currently protected.
Quebec	Occurred province-wide; common south of St. Lawrence River.	1920	Habitat and prey available.	Considered extirpated despite recent reports.	Not currently protected.

Current Biological Status of Pumas in Eastern North America: Our conclusions regarding the current biological status of the eastern puma rely upon three lines of evidence: (1) The detectability of wild pumas, (2) contemporary accounts of puma sightings in eastern North America as evidence of the continued existence of eastern pumas, and (3) the time since the last verified eastern puma occurrence. Recognizing that extinction cannot be demonstrated with absolute certainty (*i.e.,* it is a probabilistic determination), the totality of evidence for the eastern puma provides a basis for drawing robust conclusions about the true status of this subspecies, as discussed below. A more detailed discussion and references are provided in the 5-year status review (USFWS 2011, pp. 36–56).

Detectability of pumas: This line of evidence addresses the question of how likely it is that eastern puma individuals or populations could continue to persist without being detected. If entities are difficult to detect, lack of confirmed sightings may not be indicative of absence; however, if detectability is known to be high, it is much more likely that lack of sightings is evidence of absence. For the eastern puma, detectability differs between individuals and populations. Although individual pumas are difficult to detect, determining the presence of a puma population is possible with a reasonable amount of effort.

Detection of single, transient pumas is particularly problematic because they cover such a large range and leave behind little sign of their occupation (*e.g.,* scrapes, kills, and tracks) in any one place. The best prospect for detecting these animals is through tracks left during their extensive daily movement in the snowy regions of North America.

Numerous searches and surveys have been undertaken to detect the presence of individual pumas, either directly or as part of large carnivore studies, and, by extension, puma populations in eastern North America. Searches have been conducted in areas reputed to harbor pumas, and reports of puma sightings have been investigated

extensively. Surveys have utilized a variety of techniques, including trail transects with motion-sensing cameras, hair trap posts and rubbing pads, and snow-covered road surveys to detect the tracks or signs of pumas.

Such studies have yielded few positive results in eastern North America. However, in other parts of North America, pumas have been readily detected through searches and surveys. Additionally, pumas have been detected as a result of road kills; even in areas with small extant populations (such as Florida and South Dakota) and low road densities, pumas killed on roads are reported nearly every month of the year. In contrast, although road mortalities have been documented in the eastern United States and Canada in recent years, the reports are irregular, and in the rare instances where individuals have been verified as wild pumas, they have originated outside the eastern puma's historical range.

Overall, pumas have been readily detectable in areas of North America outside the historical range of the eastern puma. We can thus conclude that pumas and, in particular, puma populations, could be detected with a reasonable amount of effort if present in eastern North America. We further conclude that the searches, surveys, and efforts to verify sightings by the public since the 1950s constitute a reasonable effort, as discussed below and detailed in the 5-year review (USFWS 2011, pp. 26–29). However, despite the detectability of pumas, no evidence has been presented to verify the continued existence of the eastern subspecies or of any breeding population of pumas within its historical range.

Contemporary accounts of pumas in eastern North America as evidence of the continuing existence of the subspecies: As discussed in the 5-year review (USFWS 2011, pp. 36–38), renewed interest in puma conservation over the past 60 years has resulted not only in a profusion of reported sightings by the public but also efforts by scientists to determine the presence of pumas in eastern North America. We summarize these accounts below and discuss whether they constitute a basis for concluding that the eastern puma remains extant.

There were few reports of pumas in eastern North America between the late 1800s and the 1940s and 1950s (see ''Historical Range, Abundance, and Distribution'' above). The number of reports increased in the 1950s, and states, provinces, and puma organizations began maintaining databases of puma sightings. The increased reporting coincided with coverage in the popular press and assertions by biologists and other writers that there was sufficient evidence to believe that the eastern puma still existed. It also coincided with a growing number of pumas in the North American pet trade.

A surge in reported sightings followed in the 1960s and 1970s, again coincident with publications claiming that a relic population of pumas from the northeastern United States and eastern Canada was repopulating eastern North America. Although based mostly on questionable evidence, many—including wildlife biologists—accepted this hypothesis without critical scientific review.

The sheer volume of anecdotal reports was cited as evidence for the continued existence of pumas, although few of these reports were ever substantiated. By the 1970s, puma advocacy groups had been established, and they, along with many independent researchers and advocates, were investigating sightings and promoting puma recovery. This led to the 1973 listing of the eastern cougar, even though there was no physical evidence showing that populations existed at that time.

Since listing, thousands of reports have been collected by wildlife agencies and puma organizations, including hundreds of puma sightings by reliable witnesses where physical evidence was not available. Most recently, during preparation of the eastern puma 5-year review (from 2007 to 2010), 60 reports of pumas were considered to have some likelihood of validity based on verified identification of tracks; photographic evidence; genetic, hair, or scat samples; or discovery of carcasses (USFWS 2011, appendix B). It is important to note that none of these reports was verified as the eastern subspecies.

A number of formal studies have been undertaken to determine the presence of pumas in eastern North America. One study (Michigan Wildlife Conservancy 2003) detected pumas, but the results and methodology were subsequently contested. Elsewhere in the Midwest, pumas have been detected with trail cameras. A puma sighted in Wisconsin was verified in January 2008 and shot in Chicago, Illinois, in April 2008. This animal was determined to be of North American origin with characteristics similar to South Dakota pumas. In 2009, another Wisconsin puma was treed and photographed on several occasions; DNA analysis was not available for this animal. In eastern Canada, a survey of the Maritime provinces from 2001 to 2004 (Gauthier et al. 2005, entire) confirmed six samples as puma. Of these six samples, several were found to be of South American origin, indicating that released or escaped captive pumas are also present in the wild, while others were verified as North American genotypes without being able to determine if they were of captive or wild origin.

Overall, most of the surveys conducted by wildlife biologists in eastern North America—some of which have targeted pumas while others have targeted different species (*e.g.,* wolves, lynx)— have failed to detect any sign or evidence of the presence of pumas. Details of each survey effort are provided in the eastern puma 5-year review (USFWS 2011, pp. 26–29 and appendix B).

Many puma sightings are reported as ''eyewitness'' accounts; this type of report has increased with the availability of Internet search engines and is sometimes spurred by news articles that encourage others to report observations. The reliability of such accounts can depend on time of day, experience level of the observer, duration of the observation, and observer trustworthiness. Insufficient field identification and tracking skills, as well as photographs of single tracks rather than a series of tracks, may further compromise reliability. Based on our assessment of puma eyewitness accounts (USFWS 2011, pp. 36–42), it appears that 90 to 95 percent of puma sightings and vocalizations reported by the public involve instances of misidentification and, at times, deliberate hoaxes.

Although documention of sightings by the public in areas where pumas are uncommon can be useful—particularly where protocols for puma sightings and analysis have been established—compilations of unconfirmed sighting reports can also produce a large volume of cogent but misleading information. The problem with treating anecdotal sightings as empirical evidence is compounded when such observations are supplemented by inconclusive physical evidence such as indistinct photographs. Typically, as a species becomes rarer, the proportion of false positives increases; thus, even the most tangible evidence of a puma must be followed by further inquiry to identify it as a wild specimen and ascertain its origins.

Over the past 50 years, thousands of puma sightings have been investigated, at substantial public and private expense. Only a small percentage of investigations have resulted in collection of evidence that could be interpreted or further analyzed, and only a small percentage of the analyses have provided irrefutable proof of a

wild puma. The most recent case was a male puma killed on a highway in Milford, Connecticut, in 2011. Genetic analysis of the animal determined that its origin was a population in South Dakota, indicating that it was a transient western puma; the same animal had been documented in Minnesota, Wisconsin, and northern New York prior to arriving in Connecticut.

Despite the large number of contemporary eastern puma accounts, few of the surveys and investigations of puma reports have provided verifiable evidence of the presence of pumas, irrespective of origin, in eastern North America, and even fewer have provided irrefutable proof of a wild puma. Nonetheless, verified puma occurrences have occurred with enough frequency in eastern North America (approximately 15 puma carcasses have been documented in eastern North America north of Florida since 1950) to encourage a widespread belief that a cryptic eastern puma population continues to persist.

In considering whether all this constitutes evidence of an extant eastern puma population, three possible hypotheses have been considered: First, that the observed animals are members of a persistent relic population; second, that they are released or escaped captives; or, third, that they are dispersers from source populations outside of the region. These hypotheses are discussed, in turn, below.

1. A relic population of pumas has survived in eastern North America. Although some hypothesize that the eastern puma has survived in eastern North America since colonial times, the continued existence of a puma population in eastern North America is not corroborated by the historical record, the history of white-tailed deer, or our current understanding of puma ecology (USFWS 2011, pp. 43–46).

As noted above, most eastern pumas were thought to have been virtually extirpated by the late 1800s. Had members of the subspecies survived, they should have been detectable. With some exceptions (*e.g.,* later records in Maine and New Brunswick) authors document a near-absence of records from the late 1800s to the 1950s. Further, despite the verified reports of pumas mentioned above, whenever we have been able to determine the origins of these pumas, they have been shown to be either captive pumas (generally South American pumas or their progeny) or dispersers from western populations. None of these animals has been confirmed as the eastern subspecies.

A number of population viability analyses indicate that both a minimum population size and minimum area of high-quality habitat are needed for long-term puma persistence. The probability of population persistence also depends on favorable demographic factors. Studies to date indicate, very approximately, that puma populations consisting of fewer than 15 to 20 animals and occupying less than 386 to 772 mi^2 (1,000 to 2,000 km^2) of high-quality habitat would be unlikely to persist over the long term, particularly in the face of any adverse genetic effects (USFWS 2011, pp. 8 and 46). Effects of postsettlement persecution of eastern pumas, compounded by loss of habitat and the near-extirpation of white-tailed deer, severely reduced the probability of persistence using both of these measures. Pumas likely survived longest in remaining large forest tracts where deer were not extirpated and at the northern periphery of their historical range as deer shifted northward (which would explain the later puma records in Maine and New Brunswick). To survive elsewhere in the East, puma populations would have had to persist for decades with extremely low or absent populations of their primary prey, and such persistence is doubtful. Even in northern regions, deer populations were greatly reduced, and snow depths there would have been limiting for pumas.

This information, along with the total absence of verified contemporary eastern puma records, suggests that a remnant population of eastern pumas is highly unlikely to have survived two centuries of intense human exploitation and persecution, habitat changes, and near-eradication of its primary prey. Further, were a relic puma population to have survived, the rebounding of deer populations along with protections from take under the Act would have likely resulted in a corresponding increase in documentation of eastern puma presence and increased likelihood of deterction. Given the lack of verified contemporary records, we therefore find no evidence to support the hypothesis that an undetected relic population of eastern pumas remains extant.

2. Pumas occurring in eastern North America are released or escaped pets. Since the mid-1900s, there has been speculation that perhaps all pumas observed in eastern North America (outside of Florida) are escaped or released captive animals. The findings regarding this hypothesis, presented in the 5-year review (USFWS 2011) on pp. 47–51 and in Appendix B, are summarized below.

Genetic techniques are now available to determine if puma specimens are of North American origin and therefore more likely to be wild animals. Captive puma enthusiasts apparently favor Central and South American animals, and it can be assumed that pumas found in eastern North America with South American DNA are escaped or released captives or their progeny. Since the early 1990s, 24 puma genetic samples have been collected within the historic range of the eastern puma and tested using a variety of techniques (USFWS 2011, Appendix B). Of these, about one-third were found to be of Central or South American origin, one-third were of North American origin, and one-third were identified as pumas but of unknown origin.

In addition to genetic evidence, the increasing frequency of reported puma sightings in the eastern United States and Canada correlates with the increased private ownership, trade, and breeding of pumas that began in the 1940s and 1950s. Zoos formerly sold or gave pumas to individuals or dealers, although this is strictly prohibited today and there currently is a ban on breeding pumas in zoos. More recently, Internet sales of exotic cats have flourished, illustrating the continuing ease of acquiring captive pumas. This situation is exacerbated in some States by enforcement challenges, and these States' lack of information about the number and disposition of captive pumas within their borders. Overall, there are likely thousands of privately-held (both legally and illegally) pumas in the eastern United States, dwarfing the number of pumas in zoos.

Released or escaped pumas are documented in numerous accounts, along with frequent reports of such pumas being recaptured (USFWS 2011, pp. 49–50). It has also been found that individual captive pumas may successfully adapt to conducive conditions in the wild. If released or escaped captives initially avoid recapture or death, they most likely become wandering transients. Overall, it may be possible, although unlikely, for individual captive pumas to transition into a wild existence, establish home ranges, and, like other transient pumas, persist with low detectability.

Nonetheless, the likelihood of escaped or released captive pumas establishing breeding populations is minimal, both because transient pumas are unlikely to recolonize new areas unless there is an adjacent resident puma population, and because their survival prospects are generally low. The multiple reports we have received of pumas in a geographic location over a period of months (but not years) could constitute actual observations of

escaped animals. However, if these animals are declawed or defanged, they have little chance of surviving over the long term, particularly at rates needed to establish a population. Further, few of the many reported sightings of puma kittens in eastern North America, which would be indicative of a breeding population, have been substantiated (USFWS 2011, p. 51).

We conclude that the evidence supports the hypothesis that pumas recently found in eastern North America are released or escaped captive animals, with the exception of some animals in Illinois, Wisconsin, and other midwestern States that are dispersing from more westward populations (see discussion below). Genetic and isotope techniques are improving, which will help distinguish whether pumas of North American ancestry are of wild or captive origin.

3. Pumas in eastern North America are dispersers from breeding populations to the west and south. Breeding puma populations in proximity to the eastern puma's historical range occur in Manitoba, North Dakota, South Dakota, possibly Nebraska and Oklahoma, and Florida. The Service's 5-year review discusses the likelihood of immigration of pumas to eastern North America from these populations (USFWS 2011, pp. 51–56).

Regarding dispersal from Florida, there was little evidence until recently that the Florida panther population was expanding northward, but since 1998, four tagged and several unmarked animals have crossed the Caloosahatchee River, previously thought to be a barrier to northward expansion. In addition, an adult male puma killed in Georgia in 2008 originated in Florida. Nonetheless, given the many other substantial barriers to dispersal, it is considered highly unlikely that Florida panthers are dispersing out of Florida with enough frequency to establish populations elsewhere in the Southeast, although adequate prey and habitat are available in Georgia.

As to dispersal from the West, puma populations in most western States are believed to be at historically high levels, and breeding populations have expanded their ranges eastward. Dispersing pumas have been reported since 1990 in the Midwest, primarily west of the Mississippi River and possibly the Great Lakes Region, with over 130 confirmed puma records documented in Wisconsin, Illinois, Nebraska, Kansas, Minnesota, Missouri, and Iowa.

These records confirm that eastward dispersal from breeding populations of western pumas is occurring, especially from North and South Dakota (note the previous mention of a South Dakota puma killed in Connecticut in 2011). Confirmed records of wild-origin pumas exist in many States and provinces bordering the western and northern peripheries of the eastern puma's historical range, and most States in the Midwest now acknowledge the presence of wild pumas. Further, persistent puma presence has been documented in a few areas (Missouri, Iowa, Minnesota, Nebraska), suggesting that individual pumas are successfully surviving in the wild and may have established home ranges.

Suitable, albeit sometimes fragmented, habitat and an adequate prey base are available for pumas in the Midwest and Great Lakes regions, with large populations of white-tailed deer occurring throughout the region. Moreover, numerous dispersal corridors leading to highly suitable habitat areas in the Midwest have been identified within feasible dispersal distances for pumas. Although dispersing pumas frequently travel along deer-rich riparian corridors and generally avoid human-dominated landscapes, pumas are known to disperse across large expanses of inhospitable habitat. Roads and railroad rights-of-way and associated brush belts also provide dispersal corridors. The upper Midwest Region is the most favorable route for cougars repopulating the East from the Dakotas, and Manitoba's puma population may be a potential source for animals observed in Ontario, northern Minnesota, Wisconsin, and Michigan.

Although individual males are known to disperse over long distances, the establishment of puma populations in the Midwest and Great Lakes regions is less likely to occur unless breeding range expansion is facilitated. Female pumas do not move far from their natal areas, and male pumas compete for access to females; that is, in addition to adequate food and cover, dispersing males search for areas occupied by one or more resident females. Thus, range expansion is unlikely unless females disperse—or are released—into new habitats. As would be expected, most of the recent Midwest puma records are of males.

Given evidence of growing puma populations in the West, increased dispersal, and availability of dispersal corridors and prey in the Midwest, we conclude that wild-origin pumas (primarily males) will continue to disperse into the midwestern States and into the historical range of the eastern puma and are the likely source of any wild pumas that currently exist in eastern North America.

Summary: First, it is important to note that the alternative hypotheses for the continuing presence of pumas in eastern North America are not mutually exclusive. Physical evidence indicates that pumas recently found in eastern North America are released or escaped captive animals, with the exception of some wild animals in the Midwest (and one documented in Connecticut) that are dispersing from western populations. The evidence also suggests that these are transient pumas with little potential for naturally establishing breeding populations.

Most significantly, no evidence whatsoever has been found to show that either individual eastern pumas or any relic populations of the eastern puma subspecies remain extant in eastern North America.

Time since last verified eastern puma report: The most recently confirmed records of pumas native to eastern North America are from Tennessee (1930), New Brunswick (1932), and Maine (1938). These records coincide with the extirpation of white-tailed deer in most of its range in the 1800s, with the exception of some remaining large forest tracts, and a shift toward the northern periphery of its historical range during that time. Reports of pumas were made by reputable observers in Missouri as late as 1966, but the taxonomy of these animals has long been in question.

It is notable that areas in eastern North America that still support extant populations of native pumas (*e.g.,* Florida and Manitoba) have had a long and continuous record of confirmed occurrences. In contrast, a long-term record of verified puma occurrences is lacking in regions of eastern North America outside Florida.

Given the puma's life span, generally thought to be 10 to 11 years, it is extremely implausible that non-breeding eastern pumas could have persisted in the wild under conditions of habitat loss and lack of their primary prey base and without being detected for over six decades. It is equally if not more unlikely that breeding populations of the subspecies could have gone undetected for that long. Based on how improbable it is that eastern puma individuals or populations could have weathered such a long period of habitat and prey loss, along with the lack of either a recent report or a long-term record of eastern puma occurrences, we conclude that the time since the last verified eastern puma record is indicative of the long-term absence of this subspecies.

Summary: Overall, we find that pumas (except for single transients) are reasonably detectable, that no contemporary puma sightings in eastern North America have been verified as the eastern puma subspecies since 1938, and that it is extremely unlikely that either individuals or eastern puma populations could have survived the long period during which most of their habitat was lost and their primary prey base was nearly extirpated. We therefore determine the eastern puma subspecies to be extinct.

Consideration of Factors Under Section 4(a)(1) of the Act

As mentioned under Assessment of Species Status above, section 4 of the Act and its implementing regulations (50 CFR part 424) set forth the procedures for listing, reclassifying, or removing species from listed status. When we evaluate whether a species should be listed as an endangered species or threatened species, we must consider the five listing factors described in section 4(a)(1) of the Act: (A) The present or threatened destruction, modification, or curtailment of the species' habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; and (E) other natural or manmade factors affecting the species' continued existence. We must consider these same factors in reclassifying a species or removing it from the List.

The principal factors leading to the listing of the eastern puma were widespread persecution (poisoning, trapping, hunting, and bounties), decline of forested habitat, and near-extirpation of white-tailed deer populations during the 1800s. These impacts led to the extirpation of most eastern puma populations by 1900.

However, because we have determined that all populations of pumas described as the eastern puma, *Puma (=Felis) concolor couguar,* have been extirpated, analysis of the five factors under section 4(a)(1) of the Act, which apply to threats facing extant species, is tragically irrelevant. As stated above, given the period of time that has passed without verification of even a single eastern puma, the Service believes that the last remaining members of this subspecies perished decades ago. Therefore, the eastern puma is no longer extant and logically can no longer be an endangered species or threatened species because of any of the five factors.

Conclusion

Widespread persecution, decline of forested habitat, and near-extirpation of white-tailed deer populations during the 1800s led to the loss of most eastern puma populations by 1900. Although individual pumas were taken as late as 1932 in New Brunswick and 1938 in Maine, neither the Service's 5-year status review (USFWS 2011) nor information that has become available since then has yielded any convincing evidence to support the hypothesis that small, cryptic populations of the subspecies continue to persist anywhere within its historical range, including northern New England and eastern Canada. These findings are supported by the most recent Canadian Wildlife Service status review (Scott 1998) and by analyses in the revised Florida Panther Recovery Plan (USFWS 2008). We therefore conclude that the subspecies *Puma (=Felis) concolor couguar,* or eastern puma (=cougar), was likely extirpated from eastern North America prior to its listing in 1973, noting, however, that extirpation had not been substantiated at that time.

We further conclude that although there have been thousands of puma sightings in eastern North America since the 1950s, most are a case of mistaken identity. We acknowledge that a small number of pumas are occasionally encountered in the wild in eastern North America within the historical range of the listed eastern puma. Based on the best available scientific evidence, however, we conclude that these are escaped or released captive animals, or dispersers from western puma populations, not the eastern puma subspecies. Breeding of escaped or released individuals, if it occurs, appears to be an extremely rare event, and there is no evidence of any population established from escaped or released captive animals.

Although it is improbable that pumas can disperse regularly out of Florida, puma range expansion may be occurring in the Midwest from the West. Several wild-origin pumas have been confirmed in that region and are likely dispersers from western populations that have reached carrying capacity. Dispersal into the Midwest will likely increase in frequency as long as western puma populations continue to grow.

With regard to puma taxonomy, we recognize the ongoing debate among scientists about the taxonomic assignment of puma subspecies and whether genetics should be the driving factor in puma taxonomy. Although Culver et al.'s (2000, entire) genetic analysis injected significant uncertainties into current puma taxonomy, we have concluded that until a comprehensive evaluation (including genetic, morphometric, and behavioral analyses) of North American pumas is completed, the best available information continues to support the assignment of the eastern taxon to *Puma (=Felis) concolor couguar.* We further note that these taxonomic questions do not affect the determinations in this proposed rule regarding the listed entity's biological status.

Taking all these considerations into account, we conclude that the taxon *Puma (=Felis) concolor couguar* is extinct.

Proposed Determination

After a thorough review of all available information, we have determined that the subspecies *Puma (=Felis) concolor couguar* is extinct. Based upon this determination and taking into consideration the definitions of ''endangered species'' and ''threatened species'' contained in the Act and the reasons for delisting as specified in 50 CFR 424.11(d), we propose to remove the eastern puma from the List of Endangered and Threatened Wildlife at 50 CFR 17.11.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. However, since the Service has determined the eastern cougar to be extinct, this proposed rule, if made final, would remove any Federal conservation measures for any individual pumas (except dispersing Florida panthers) that may subsequently be found within the historical range of the eastern puma.

Effects of the Rule

This proposal, if made final, would revise 50 CFR 17.11 to remove the eastern puma from the List of Endangered and Threatened Wildlife due to extinction. The prohibitions and conservation measures provided by the Act would no longer apply to this subspecies. There is no designated critical habitat for the eastern puma.

Post-Delisting Monitoring

Section 4(g)(1) of the Act, added in the 1988 reauthorization, requires us to implement a program, in cooperation with the States, to monitor for not less than 5 years the status of all species that have recovered and been removed from the Lists of Endangered and Threatened

Wildlife and Plants (50 CFR 17.11 and 17.12). Based upon the results of more than 25 years of investigating sporadic reports of sightings and our conclusion that the eastern puma is extinct, post-delisting monitoring is not warranted.

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(a) Be logically organized;

(b) Use the active voice to address readers directly;

(c) Use clear language rather than jargon;

(d) Be divided into short sections and sentences; and

(e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the names of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act

We have determined that an environmental assessment or an environmental impact statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, Government-to-Government Relations with Native American Tribal Governments (59 FR 22951), E.O. 13175, and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. Accordingly, the Service communicated with Tribes during the 5-year review process, and we are notifying Tribes of our activities regarding this proposal to delist the eastern puma based on extinction.

References Cited

A complete list of all references cited in this document and in the 5-year review upon which this proposal is based is available upon request from the Service's Maine Field Office (see **FOR FURTHER INFORMATION CONTACT**). References are also posted on *http://www.fws.gov/northeast/ECougar.*

Authors

The primary authors of this proposed rule are the staff members of the Maine Field Office and the Hadley, Massachusetts, Regional Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; 4201–4245, unless otherwise noted.

§ 17.11 [Amended]

■ 2. Amend § 17.11(h) by removing the entry for ''Puma (=cougar), eastern'' under ''*Mammals''* in the ''List of Endangered and Threatened Wildlife.''

Dated: May 22, 2015.

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2015–14931 Filed 6–16–15; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 80, No. 116

Wednesday, June 17, 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

Agricultural Marketing Service

[Docket No. AMS–ST–15–0021]

Notice of Request for Revision of a Currently Approved Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval from Office of Management and Budget (OMB) for an extension of and revision to the currently approved information collection ''Application for Plant Variety Protection Certification and Objective Description of Variety.''

DATES: Comments on this notice must be received by August 17, 2015. All comments submitted in response to this notice will be included in the record and will be made available to the public. Please be advised that the identity of the individuals or entities submitting the comments will be made public on the Internet via *http://www.regulations.gov.*

Additional Information or Comments: Contact Bernadette Thomas, Information Technology Specialist, Plant Variety Protection Office (PVPO), Science and Technology, AMS, Room 4512–S, 1400 Independence Avenue SW., Washington, DC 20250 Telephone (202) 720–1168 and Fax (202) 260–8976.

SUPPLEMENTARY INFORMATION:

Title: Regulations Governing the Application for Plant Variety Protection Certificate and Reporting Requirements under the Plant Variety Protection Act.

OMB Number: 0581–0055.

Expiration Date of Approval: November 30, 2015.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: The Plant Variety Protection Act (PVPA) (7 U.S.C. 2321 *et seq.*) was established ''To encourage the development of novel varieties of sexually reproduced plants and make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promote progress in agriculture in the public interest.''

The PVPA is a voluntary user funded program which grants intellectual property rights protection to breeders of new, distinct, uniform, and stable seed reproduced and tuber propagated plant varieties. To obtain these rights the applicant must provide information which shows the variety is eligible for protection and that it is indeed new, distinct, uniform, and stable as the law requires. Application forms, descriptive forms, and ownership forms are furnished to applicants to identify the information which is required to be furnished by the applicant in order to legally issue a certificate of protection (ownership). The certificate is based on claims of the breeder and cannot be issued on the basis of reports in publications not submitted by the applicant. Regulations implementing the PVPA appear at 7 CFR part 92.

Currently approved forms ST–470, Application for Plant Variety Protection Certificate, ST–470 A, Origin and Breeding History, ST–470 B, Statement of Distinctness, Form ST–470 series, Objective Description of Variety (Exhibit C), Form ST–470–E, Basis of Applicant's Ownership, are the basis by which the determination, by experts at PVPO, is made as to whether a new, distinct, uniform, and stable seed reproduced or tuber-propagated variety in fact exists and is entitled to protection.

The ST 470 application form combines Exhibits A, B, and E into one form. The information received on applications, with certain exceptions, is required by law to remain confidential until the certificate is issued (7 U.S.C. 2426).

The information collection requirements in this request are essential to carry out the intent of the PVPA, to provide applicants with certificates of protection, to provide the respondents the type of service they request, and to administer the program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.87 hours per response.

Respondents: Businesses or other for-profit, not-for-profit institutions, and Federal Government.

Estimated Number of Respondents: 86.

Estimated Number of Responses per Respondent: 39.81.

Estimated Total Annual Burden on Respondents: 2,974.

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Bernadette Thomas, Plant Variety Protection Office (PVPO), Science and Technology, AMS, Room 4512–S, 1400 Independence Avenue SW., Washington, DC 20250. All comments received will be available for public inspection during regular business hours at the same address.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Dated: June 12, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–14878 Filed 6–16–15; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2015–0014]

Codex Alimentarius Commission: Meeting of the Codex Committee on Fresh Fruits and Vegetables

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, United States Department of Agriculture (USDA), and the Agricultural Marketing Service (AMS), are holding a public meeting on August 6, 2015. The purpose of the meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 19th Session of the Codex Committee on Fresh Fruits and Vegetables (CCFFV) of the Codex Alimentarius Commission (Codex). The Session will be held in Mexico [the specific location in Mexico will be determined], October 5–9, 2015. The Deputy Under Secretary for Food Safety and the Agricultural Marketing Service recognize the importance of providing interested parties the opportunity to obtain background information on the 19th Session of CCFFV and to address items on the agenda.

DATES: The public meeting is scheduled for August 6, 2015, from 2:00–5:00 p.m.

ADDRESSES: The public meeting will be held at the United States Department of Agriculture (USDA), Jamie L. Whitten Building, 1400 Independence Avenue SW., Room 107–A, Washington, DC 20250. Documents related to the 19th Session of CCFFV will be accessible via the Internet at the following address: *http://www.codexalimentarius.org/meetings-reports/en/*.

The U.S. Delegate of the 19th Session of the CCFFV invites U.S. interested parties to submit their comments electronically to the following email address: *dorian.lafond@usda.gov.*

Call In Number

If you wish to participate in the public meeting for the 19th Session of the CCFFV, by conference call, please use the call in number and participant code listed below:

Call in Number: 1–888–844–9904.

The participant code will be posted on the Web page below: *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/us-codex-alimentarius/public-meetings*.

Registration

Attendees may register to attend the public meeting by emailing *kenneth.lowery@fsis.usda.gov* by August 4, 2015. Early registration is encouraged because it will expedite entry into the building. The meeting will be held in a Federal building. Attendees should also bring photo identification and plan for adequate time to pass through security screening systems. Attendees who are not able to attend the meeting in person, but who wish to participate, may do so by phone.

FOR FURTHER INFORMATION CONTACT:

About the 19th Session of CCFFV: Dorian LaFond, Agricultural Marketing Service, Fruits and Vegetables Division, Stop 0235-Room 2086, United States Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250. Phone: (202) 690–4944, Fax: (202) 720–0016, email: *dorian.lafond@usda.gov.*

About the Public Meeting: Kenneth Lowery, U.S. Codex Office, 1400 Independence Avenue, Room 4861, Washington, DC 20250. Phone: (202) 690–4042, Fax: (202) 720–3157, email: *Kenneth.Lowery@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The CCFFV is responsible for elaborating worldwide standards and codes of practice as may be appropriate for fresh fruits and vegetables and for consulting with other international organizations in the standards development process to avoid duplication.

The Committee is hosted by Mexico.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 19th Session of CCFFV will be discussed during the public meeting:

- Matters referred by the Codex and other Codex Committees
- Matters referred by other international organizations on the standardization of fresh fruits and vegetables
- Proposed Draft Standard for Okra
- Proposed Draft Standard for Ware Potatoes
- Proposed Draft Standard for Garlic
- Proposed Draft Standard for Aubergines
- Proposed Draft Standard for Kiwifruit
- Minimum maturity requirements for table grapes
- Proposals for new work for Codex standards for fresh fruits and vegetables
- Proposed layout for Codex standards for fresh fruits and vegetables

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat prior to the Meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the August 6, 2015, public meeting, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegate for the 19th Session of CCFFV, Dorian LaFond (see **ADDRESSES**). Written comments should state that they relate to activities of the 19th Session of CCFFV.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register*.

FSIS also will make copies of this publication available through the FSIS Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe*. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf*, or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email:

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC on June 11, 2015.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2015–14840 Filed 6–16–15; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. FSIS–2015–0013]

Codex Alimentarius Commission: Meeting of the Codex Committee on Spices and Culinary Herbs

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA) and the Agricultural Marketing Service (AMS), are holding a public meeting on August 19, 2015. The purpose of the meeting is to provide information and receive public comments on agenda items and draft United States (U.S.) positions that will be discussed at the 2nd Session of the Codex Committee on Spices and Culinary Herbs (CCSCH) of the Codex Alimentarius Commission (Codex). The Session will be held in Goa, India, September 14–18, 2015. The Deputy Under Secretary for Food Safety recognizes the importance of providing interested parties the opportunity to obtain background information on the 2nd Session of CCSCH and to address items on the agenda.

DATES: The public meeting is scheduled for Wednesday, August 19, 2015 from 1:00–4:00 p.m.

ADDRESSES: The public meeting will take place at the United States Department of Agriculture (USDA), Jamie L. Whitten Building, Room 107–A, 1400 Independence Avenue SW., Washington, DC 20250. Documents related to the 2nd Session of CCSCH will be accessible via the Internet at the following address: *http://www.codexalimentarius.org/meetings-reports/en/.*

The U.S. Delegate of the 2nd Session of the CCSCH invites U.S. interested parties to send their comments electronically to the following email address: *Dorian.Lafond@ams.usda.gov.*

Call-In Number

If you wish to participate in the public meeting for the 2nd Session of the CCSCH by conference call, please use the call-in number and participant code listed below:

Call-in Number: 1–888–844–9904.

The participant code will be posted on the Web page below: *http://www.fsis.usda.gov/wps/portal/fsis/topics/international-affairs/us-codex-alimentarius/public-meetings.*

Registration

Attendees may register to attend the public meeting by emailing *kenneth.lowery@fsis.usda.gov* by August 17, 2015. Early registration is encouraged because it will expedite entry into the building. The meeting will be held in a Federal building. Attendees should also bring photo identification and plan for adequate time to pass through security screening systems. Attendees who are not able to attend the meeting in person, but who wish to participate, may do so by phone.

For Further Information About the 2nd Session of CCSCH Contact: Dorian LaFond, Agricultural Marketing Service, Fruits and Vegetables Division, Stop 0235–Room 2086, United States Department of Agriculture, 1400 Independence Avenue SW., Washington, DC 20250. Phone: (202) 690–4944, Fax: (202) 720–0016, email: *dorian.lafond@usda.gov.*

For Further Information about the Public Meeting Contact: Kenneth Lowery, U.S. Codex Office, 1400 Independence Avenue SW., Room 4861, Washington, DC 20250. Phone: (202) 690–4042, Fax: (202) 720–3157, email: *Kenneth.Lowery@fsis.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1963 by two United Nations organizations, the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure that fair practices are used in trade.

The CCSCH is responsible for elaborating worldwide standards for spices and culinary herbs in their dried and dehydrated state in whole, ground, and cracked or crushed form. The CCSCH consults as necessary with other international organizations in the standards development process to avoid duplication.

The CCSCH is hosted by India.

Issues To Be Discussed at the Public Meeting

The following items on the Agenda for the 2nd Session of CCSCH will be discussed during the public meeting:

- Matters Referred by the Codex and other Codex Committees and Task Forces.
- Activities of International Organizations relevant to the work of CCSCH.
- Proposed Draft Standard for Black, White, and Green Pepper.
- Proposed Draft Standard for Cumin.
- Proposed Draft Standard for Oregano.
- Proposed Draft Standard for Thyme.
- Discussion paper on grouping of spices and culinary herbs.
- Proposal for new work.
- Other Business and Future Work.

Each issue listed will be fully described in documents distributed, or to be distributed, by the Secretariat before the Meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Public Meeting

At the August 19, 2015, public meeting, draft U.S. positions on the agenda items will be described and discussed. Attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to the U.S. Delegates for the 2nd Session of CCSCH,(see **ADDRESSES**). Written comments should state that they relate to activities of the 2nd Session of CCSCH.

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register** publication on-line through the FSIS Web page located at: *http://www.fsis.usda.gov/federal-register.*

Additional Public Notification

FSIS also will make copies of this publication available through the FSIS

Constituent Update, which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The Update is available on the FSIS Web page. Through the Web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *http://www.fsis.usda.gov/subscribe*. Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves, and have the option to password protect their accounts.

USDA Non-Discrimination Statement

No agency, officer, or employee of the USDA shall, on the grounds of race, color, national origin, religion, sex, gender identity, sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, or political beliefs, exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States under any program or activity conducted by the USDA.

How To File a Complaint of Discrimination

To file a complaint of discrimination, complete the USDA Program Discrimination Complaint Form, which may be accessed online at *http://www.ocio.usda.gov/sites/default/files/docs/2012/Complain_combined_6_8_12.pdf,* or write a letter signed by you or your authorized representative.

Send your completed complaint form or letter to USDA by mail, fax, or email.

Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW., Washington, DC 20250–9410.

Fax: (202) 690–7442.

Email: program.intake@usda.gov.

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.), should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on June 11, 2012.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2015–14841 Filed 6–16–15; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southern Montana Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southern Montana Resource Advisory Committee (RAC) will meet in Columbus, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *www.fs.usda.gov/custergallatin.*

DATES: The meeting will be held on July 29, 2015, at 9:00 a.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at Columbus Fire Rescue, Community Room, 944 East Pike Avenue, Columbus, Montana. No additional call in number, VTC, or field trips are planned.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Custer Gallatin Forest Supervisors Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Mariah Leuschen-Lonergan, RAC Coordinator, by phone at 406–587–6735 or via email at *mdleuschen@fs.fed.us.*

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

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review and recommend project submissions for the 2015 field season; and

2. Recommendations will be passed onto the Designated Federal Officer for approval and signature.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by July 15 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Mariah Leuschen-Lonergan, RAC Coordinator, Custer Gallatin Forest Supervisors Office, 10 East Babcock, P.O. Box 130, Bozeman, Montaan 59771; by email to *mdleuschen@fs.fed.us,* or via facsimile to 406–587–6758.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: June 11, 2015.

Mary C. Erickson,

Custer Gallatin Forest Supervisor.

[FR Doc. 2015–14956 Filed 6–16–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Lyon-Mineral Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Lyon-Mineral Resource Advisory Committee (RAC) will meet in Yerington, Nevada. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://*

www.fs.usda.gov/main/pts/specialprojects/racweb.

DATES: The meeting will be held 1:00 p.m. on July 29, 2015.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at Lyon County Administration Complex, Commissioners Meeting Room, 27 South Main Street, Yerington, Nevada.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Bridgeport Ranger Station. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jeff Ulrich, RAC Designated Federal Officer, by phone at 760–932–7070 or via email at *jlulrich@fs.fed.us.*

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

SUPPLEMENTARY INFORMATION: The purpose of the meeting is:

1. To discuss new project proposals; and
2. Receive an update on current and completed projects.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by July 8, 2015, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Jeff Ulrich, RAC Designated Federal Officer, Bridgeport Ranger District, HC 62, Box 1000, Bridgeport, California 93517, by email to *jlulrich@fs.fed.us,* or via facsimile to 760–932–5899.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT.** All reasonable accommodation requests are managed on a case by case basis.

Dated: June 9, 2015.

William A. Dunkelburger,

Forest Supervisor, Humboldt-Toiyabe National Forest.

[FR Doc. 2015–14960 Filed 6–16–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

RIN 0596–AD16

Proposed Directive for National Saw Program Policy

AGENCY: Forest Service, USDA.

ACTION: Notice of proposed directive; request for public comment.

SUMMARY: The Forest Service proposes to revise Forest Service Manual (FSM) 2350 to establish guidance for the National Saw Program and associated monitoring protocols and require their use on National Forest System (NFS) lands. The proposed revisions establish national training, evaluation, and certification requirements for the use of chain saws and crosscut saws by employees, volunteers, training consultants, and cooperators on NFS lands. The National Saw Program, which includes these directives, training, and other associated materials, would provide a consistent framework for conducting saw activities on NFS lands. Public comment is invited and will be considered in the development of the final directive. The proposed directive can be viewed in its entirety at *www.fs.fed.us/sites/default/files/2358-Saw-Policy-TAI-6-11-15_0.pdf.*

DATES: Comments must be received, in writing, on or before August 17, 2015.

ADDRESSES: Submit comments electronically by following the instructions at the Federal eRulemaking portal at *http://www.regulations.gov* or submit comments via facsimile to 703–605–5131. Please identify facsimiled comments by including ''Saw Program Directive'' on the cover sheet or first page. Comments may also be submitted via mail to National Saw Policy Program Comments, USDA Forest Service, Attn: Jonathan Stephens, Recreation, Heritage and Volunteer Resources, 201 14th Street SW., Washington, DC 20250. If comments are submitted electronically, duplicate comments should not be sent by mail. Please confine comments to issues pertinent to the proposed directive, explain the reasons for any recommended changes, and, where possible, reference the specific section and wording being addressed.

All comments, including names and addresses when provided, will be placed in the record and will be made available for public inspection and copying. The public may inspect the comments received on the proposed directive at the USDA Forest Service Headquarters, located in the Yates Federal Building at 201 14th Street SW., Washington, DC, on regular business days between 8:30 a.m. and 4:30 p.m. Visitors are encouraged to call ahead at 202–205–1701 to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Jonathan Stephens, National Trails Program Manager, 202–205–1701 or *jstephens02@fs.fed.us.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service at 800–877–8339 between 8:00 a.m. and 8:00 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: The development of a national saw policy will allow the Forest Service to facilitate the safe use of chain saws and crosscut saws while optimizing the critical skills and cooperative opportunities for trail maintenance and other projects on NFS lands. The proposed FSM 2358 provides direction on sawyer qualifications, training, evaluation, and certification requirements for Forest Service employees, volunteers, training consultants, and cooperators using either chain saws or crosscut saws on NFS lands. This proposed directive would supersede all existing Forest Service regional supplements to Forest Service Handbook (FSH) 6709.11, section 22.48. Sawyers who are certified when the proposed directive becomes effective would not be subject to the certification requirements in the proposed directive until their certification expires.

Overview of the Proposed Directive

The following provides an overview of the proposed directive for the Forest Service's National Saw Program.

Training and Certification. Under the proposed directive, the Forest Service would allow the use of saws on NFS lands only if the sawyer has successfully completed sawyer training and field evaluation, possesses a valid National Sawyer Certification Card, and meets any other specified qualifications to perform assigned saw work safely, including current training on first aid and cardiopulmonary resuscitation (CPR). Sawyers would receive certification upon sucessful completion of required sawyer training and a field

proficiency evaluation. The issuance of a National Sawyer Certification Card documents the sawyer's certification and qualifies the sawyer to work on NFS lands within the restrictions noted on the card. A Crosscut Sawyer Trainee may occasionally use a crosscut saw, but for bucking only (bucking is sawing logs and limbs into shorter lengths) and only under the immediate supervision of a certified sawyer.

Forest Service Cooperators. Forest Service agreements with cooperators (other than those working under interagency fire management cooperative agreements) would provide that cooperators are responsible for sawyer training and certification of their employees and volunteers in accordance with this proposed directive. Cooperators could take Nationally Recognized Sawyer Training Courses (NRSTCs) offered by the Forest Service or could train and certify their volunteers and employees through NRSTCs offered by Forest Service-recommended cooperator Sawyer Evaluators and Sawyer Instructors.

Scope of Certification. Sawyers would be precluded from performing saw activities outside the limits of their certification or qualifications, except during formal evaluation proceedings or under the immediate supervision of a higher Qualified Sawyer.

No Guarantee of Certification. Completion of classroom, field proficiency, and evaluation requirements could result in certification, certification with restrictions, or no certification.

Minimum Eligible Sawyer Age. Under the proposed directive, chain saw sawyers would have to be at least 18 years of age (29 CFR part 570, subpart E). Crosscut sawyers should be at least 16 years of age.

National Database. The Forest Service is developing a web-based database to track Forest Service sawyer certifications nationwide. The name of the sawyer, contact information, and certification level will be entered into the database and will be accessible by authorized Forest Service and cooperator employees. The system will allow the Forest Service and cooperators to verify that employees, volunteers, training consultants, and cooperators intending to operate saws on NFS lands have met the requirements of this proposed directive to achieve their specific sawyer certification level. The database will establish consistency and avoid redundancy in training and certification requirements for sawyers working on NFS lands.

Information Collection Requirements. The Forest Service has developed two forms for evaluating sawyers: one for chain saws and one for crosscut saws. In accordance with 5 CFR 1320.3(h)(1), these forms do not entail an information collection to the extent they require sawyers who are being evaluated to affirm that they have completed and will maintain first aid and cardiopulmonary resuscitation (CPR) training, and to indicate whether they give the Forest Service permission to share their sawyer qualifications and add their email address to a mailing list shared with other Federal agencies and non-Federal organizations so that they can be contacted about saw project opportunities in their area. Furthermore, in accordance with 5 CFR 1320.3(h)(7), the evaluation forms do not entail an information collection to the extent they document examinations designed to test the aptitude, abilities, or knowledge of the persons tested and involve the collection of information for identification or classification in connection with those examinations. The National Sawyer Certification Card does not entail any information collections, as it is completed by the Forest Service without any additional information from the public beyond what is collected on the sawyer evaluation forms.

Regulatory Certifications

Environmental Impact

This proposed directive would revise the administrative policies and procedures for using crosscut saws and chain saws on NFS lands. Agency regulations at 36 CFR 220.6(d)(2) (73 FR 43093) exclude from documentation in an environmental assessment or impact statement ''rules, regulations, or policies to establish Service-wide administrative procedures, program processes, or instructions.'' The Agency has concluded that these directives fall within this category of actions and that no extraordinary circumstances exist which would require preparation of an environmental assessment or environmental impact statement.

Regulatory Impact

This proposed directive has been reviewed under USDA procedures and Executive Order (E.O.) 12866 on regulatory planning and review. It has been determined that this is not an economically significant action. This proposed directive, which would clarify national Agency saw policy, would not have an annual effect of $100 million or more on the economy, nor would it adversely affect productivity, competition, jobs, the environment, public health and safety, or State or local governments. This proposed directive would not interfere with an action taken or planned by another agency, nor would it raise new legal or policy issues. The proposed directive also would not alter the budgetary impact of entitlement, grant, user fee, or loan programs or the rights and obligations of beneficiaries of those programs.

This proposed directive has been considered in light of E.O. 13272 regarding proper consideration of small entities and the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), which amended the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). A small entities flexibility assessment has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by SBREFA. This proposed directive focuses on NFS saw program activities and would impose no requirements on small or large entities.

Federalism and Consultation and Coordination With Indian Tribal Governments

The Agency has considered this directive under the requirements of E.O. 13132 on federalism and has determined that the proposed directive conforms with the federalism principles set out in this E.O.; would not impose any compliance costs on the States; and would not have substantial direct effects on the States, the relationship between the Federal Government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the Agency has determined that no further assessment of federalism implications is necessary.

In conjunction with E.O. 13175, entitled ''Consultation and Coordination with Indian Tribal Governments,'' USDA Departmental Regulation on Tribal Consultation, Coordination and Collaboration, and Forest Service Handbook 1509.13, Chapter 10—Consultation with Tribes, the Agency invites Tribes to consult on the proposed directive during this public comment period. Tribal consultation will continue for 90 additional days after the close of the public comment period, giving Tribes 150 total days to discuss the proposed directive. Other opportunities to engage Tribes will be explored including information sharing via Web sites and notices to major tribal associations and groups with interest in use of chainsaws and crosscut saws. Forest Service regional offices have information on the proposed directive to guide consultation with Tribes in the

regions. Tribes interested in requesting a consultation may contact their regional foresters' office.

No Taking Implications

The Agency has analyzed the proposed directive in accordance with the principles and criteria contained in E.O. 12630. The Agency has determined that the proposed directive would not pose the risk of a taking of private property.

Civil Justice Reform

The proposed directive has been reviewed under E.O. 12988, titled ''Civil Justice Reform.'' Upon adoption of the proposed directive, (1) all State and local laws and regulations that conflict with the proposed directive or that impede its full implementation would be preempted; (2) no retroactive effect would be given to the proposed directive; and (3) administrative proceedings would not be required before parties could file suit in court to challenge its provisions.

Unfunded Mandates

Pursuant to Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538), the Agency has assessed the effects of this proposed directive on State, local, and Tribal governments and the private sector. The proposed directive would not compel the expenditure of $100 million or more by any State, local, or Tribal government or anyone in the private sector. Therefore, a statement under section 202 of the act is not required.

Energy Effects

The Agency has reviewed the directive under E.O. 13211, titled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.'' The Agency has determined that the proposed directive would not constitute a significant energy action as defined in the Executive Order.

Controlling Paperwork Burdens on the Public

This proposed directive does not contain any additional recordkeeping or reporting requirements or other information collection requirements as defined in 5 CFR part 1320 that are not already required by law or not already approved for use and therefore imposes no additional paperwork burden on the public. Accordingly, the review provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR part 1320 do not apply.

Dated: June 9, 2015.

Mary Wagner,

Associate Chief, U.S. Forest Service.

[FR Doc. 2015–14817 Filed 6–16–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Missoula Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Missoula Resource Advisory Committee (RAC) will meet in Missoula, Montana. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://www.fs.usda.gov/main/pts/specialprojects/racweb.*

DATES: The meeting will be held Tuesday, June 24, 2015 from 5:00 to 7:00 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at Missoula County Courthouse, Room Admin B14, 199 West Pine Street, Missoula, Montana.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Missoula Ranger District. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Katrina Kreyenhagen, RAC Coordinator, by phone at (406) 329–3844 or via email at kmkreyenhagen@*fs.fed.us.*

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

SUPPLEMENTARY INFORMATION: The purpose of the meeting is:

1. To review and vote on submitted proposals, and receive public comment on the meeting subjects and proceedings.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by June 10, 2015 to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Katrina Kreyenhagen, RAC Coordinator, 24 Fort Missoula Road, Missoula, Montana 59804; or by email to *kmkreyenhagen@fs.fed.us,* or via facsimile to (406) 329–1049.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: May 27, 2015.

Jennifer Hensiek,

District Ranger, Missoula Ranger District.

[FR Doc. 2015–14908 Filed 6–17–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Eleven Point Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Eleven Point Resource Advisory Committee (RAC) will meet in Winona, Missouri. The committee is authorized under the Secure Rural Schools and Community Self-Determination Act (the Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the committee is to improve collaborative relationships and to provide advice and recommendations to the Forest Service concerning projects and funding consistent with Title II of the Act. Additional RAC information, including the meeting agenda and the meeting summary/minutes can be found

at the following Web site: *http://cloudapps-usda-gov.force.com/FSSRS/RAC_page?id=001t0000002JcvzAAC.*

DATES: The meeting will be held July 21, 2015, at 6:30 p.m.

All RAC meetings are subject to cancellation. For status of meeting prior to attendance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

ADDRESSES: The meeting will be held at the Twin Pines Conservation Education Center, U.S. Highway 60, Route 1, Box 1998, Winona, Missouri.

Written comments may be submitted as described under **SUPPLEMENTARY INFORMATION**. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received at Mark Twain National Forest (NF) Supervisor's Office. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Richard Hall, RAC Coordinator, by phone at 573–341–7404 or via email at *rrhall@fs.fed.us.*

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

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to:

1. Review proposed forest management projects; and
2. Make project recommendations to the Forest Service to be funded through Title II of the Act.

The meeting is open to the public. The agenda will include time for people to make oral statements of three minutes or less. Individuals wishing to make an oral statement should request in writing by July 15, 2015, to be scheduled on the agenda. Anyone who would like to bring related matters to the attention of the committee may file written statements with the committee staff before or after the meeting. Written comments and requests for time for oral comments must be sent to Richard Hall, Mark Twain NF Supervisor's Office, 401 Fairgrounds Road, Rolla, Missouri 65401; by email to *rrhall@fs.fed.us,* or via facsimile to 573–364–6844.

Meeting Accommodations: If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpreting, assistive listening devices or other reasonable accommodation for access to the facility or proceedings by contacting the person listed in the section titled **FOR FURTHER INFORMATION CONTACT**. All reasonable accommodation requests are managed on a case by case basis.

Dated: June 11, 2015.

William B. Nightingale,

Forest Supervisor.

[FR Doc. 2015–14962 Filed 6–16–15; 8:45 am]

BILLING CODE 3411–15–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Missouri Advisory Committee for a Meeting To Discuss the Agenda and Logistics for Its August 20 Meeting on Police Use of Force

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act that the Missouri Advisory Committee (Committee) will hold a meeting on Wednesday, July 1, 2015, at 12:00 p.m. CST for the purpose of discussing the agenda of speakers and other logistics for the upcoming meeting on police use of force in Missouri. The Committee previous held a meeting and heard testimony on the topic in St. Louis on February 23 and held a planning meeting on June 10, 2015. This upcoming meeting to be held in Kansas City will conclude all the testimony the Committee is scheduled to hear before issuing its final report.

Members of the public can listen to the discussion. This meeting is available to the public through the following toll-free call-in number: 888–428–9480, conference ID: 1533857. Any interested member of the public may call this number and listen to the meeting. An open comment period will be provided to allow members of the public to make a statement at the end of the meeting. The conference call operator will ask callers to identify themselves, the organization they are affiliated with (if any), and an email address prior to placing callers into the conference room. Callers can expect to incur charges for calls they initiate over wireless lines, and the Commission will not refund any incurred charges. Callers will incur no charge for calls they initiate over land-line connections to the toll-free telephone number. Persons with hearing impairments may also follow the proceedings by first calling the Federal Relay Service at 1–800–977–8339 and providing the Service with the conference call number and conference ID number.

Member of the public are also entitled to submit written comments; the comments must be received in the regional office by August 1, 2015. Written comments may be mailed to the Regional Programs Unit, U.S. Commission on Civil Rights, 55 W. Monroe St., Suite 410, Chicago, IL 60615. They may also be faxed to the Commission at (312) 353–8324, or emailed to Administrative Assistant, Carolyn Allen at *callen@usccr.gov.* Persons who desire additional information may contact the Regional Programs Unit at (312) 353–8311.

Records and documents discussed during the meeting will be available for public viewing prior to and after the meeting at *http://facadatabase.gov/committee/meetings.aspx?cid=258* and clicking on the ''Meeting Details'' and ''Documents'' links. Records generated from this meeting may also be inspected and reproduced at the Regional Programs Unit, as they become available, both before and after the meeting. Persons interested in the work of this Committee are directed to the Commission's Web site, *http://www.usccr.gov,* or may contact the Regional Programs Unit at the above email or street address.

Agenda

Welcome and Introductions
S. David Mitchell, Chair
Discussion of potential agenda of speakers and other logistics of meeting—Missouri Advisory Committee Members
Open Comment
Adjournment

DATES: The meeting will be held on Wednesday, July 1, 2015, at 12:00 p.m. CST, Public Call Information: Dial: 888–428–9480 Conference ID: 1533857

FOR FURTHER INFORMATION CONTACT: David Mussatt, DFO, at 312–353–8311 or *dmussatt@usccr.gov.*

Dated: June 11, 2015.

David Mussatt,

Chief, Regional Programs Unit.

[FR Doc. 2015–14788 Filed 6–16–15; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of

information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: American Community Survey.

OMB Control Number: 0607–0810.

Form Number(s): ACS–1, ACS–1(SP), ACS–1(PR), ACS–1(PR)SP, ACS–1(GQ), ACS–1(PR)(GQ), GQFQ, ACS CATI (HU), ACS CAPI (HU), ACS RI (HU), and AGQ QI, AGQ RI.

Type of Request: Regular Submission.

Number of Respondents: 3,760,000.

Average Hours per Response: 40 minutes for the average household questionnaire.

Burden Hours: The estimate is an annual average of 2,455,868 burden hours.

Needs and Uses: The U.S. Census Bureau requests authorization from the Office of Management and Budget (OMB) for revisions to the American Community Survey (ACS). This notice updates **Federal Register** notice 80 FR 23501, which proposed only changes to the content of the proposed 2016 ACS questionnaire and data collection instruments for both Housing Unit and Group Quarters operations that were proposed as a result of the 2014 ACS Content Review. This notice proposes additional changes to the content of the proposed 2016 ACS questionnaire and data collection instruments for both Housing Unit and Group Quarters operations that were proposed as a result of (a) recently completed cognitive testing on the computer usage and Internet questions; (b) research suggesting that the flush toilet component of the plumbing facilities question can be removed; and (c) recent field testing of changes to the ACS mailing strategy to further reduce respondent concerns. Note: This notice supplements FR Doc. 2015–09741 with new information, and extends the comment period to June 28, 2015.

The American Community Survey (ACS) is one of the Department of Commerce's most valuable data products, used extensively by businesses, non-governmental organizations (NGOs), local governments, and many federal agencies. In conducting this survey, the Census Bureau's top priority is respecting the time and privacy of the people providing information while preserving its value to the public. The 2016 survey content changes are the initial step in a multi-faceted approach to reducing respondent burden. The Census Bureau is currently carrying out this program of research, which includes several components as discussed briefly below.

One of the areas with strong potential to reduce respondent burden is to reuse information already supplied to the federal government in lieu of directly collecting it again through particular questions on the ACS. The Census Bureau is conducting groundbreaking work aimed at understanding the extent to which existing government data can reduce redundancy and improve efficiency. The tests we are conducting in the next two years will tell us whether existing government records can provide substitute data for households that have not responded to the ACS.

In addition, we continue to look into the possibility of asking some questions less often beginning with initial efforts on the marital history series of questions. For example, asking a question every other year, every third year, or asking a question of a subset of the respondents each year. We also want to examine ways we can better phrase our questions to reduce respondent concern, especially for those who may be sensitive to providing information.

The outcome of these future steps will be a more efficient survey that minimizes respondent burden while continuing to provide quality data products for the nation. We expect to make great progress during fiscal 2015 on this front, and will be reporting our progress to the Secretary of Commerce at the end of the fiscal year.

Since the founding of the nation, the U.S. Census has mediated between the demands of a growing country for information about its economy and people, and the people's privacy and respondent burden. Beginning with the 1810 Census, Congress added questions to support a range of public concerns and uses, and over the course of a century questions were added about agriculture, industry, and commerce, as well as occupation, ancestry, marital status, disabilities, and other topics. In 1940, the U.S. Census Bureau introduced the long form and since then only the more detailed questions were asked of a sample of the public.

The ACS, launched in 2005, is the current embodiment of the long form of the census, and is asked each year of a sample of the U.S. population in order to provide current data needed more often than once every ten years. In December of 2010, five years after its launch, the ACS program accomplished its primary objective with the release of its first set of estimates for every area of the United States. The Census Bureau concluded it was an appropriate time to conduct a comprehensive assessment of the ACS program. This program assessment focused on strengthening programmatic, technical, and methodological aspects of the survey to assure that the Census Bureau conducts the ACS efficiently and effectively.

In August 2012, the OMB and the Census Bureau chartered the Interagency Council on Statistical Policy (ICSP) Subcommittee on the ACS to ''provide advice to the Director of the Census Bureau and the Chief Statistician at OMB on how the ACS can best fulfill its role in the portfolio of Federal household surveys and provide the most useful information with the least amount of burden.'' The Subcommittee charter also states that the Subcommittee would be expected to ''conduct regular, periodic reviews of the ACS content . . . designed to ensure that there is clear and specific authority and justification for each question to be on the ACS, the ACS is the appropriate vehicle for collecting the information, respondent burden is being minimized, and the quality of the data from ACS is appropriate for its intended use.''

Changes in 2016 ACS Content Resulting From the Content Review

The formation of the ICSP Subcommittee on the ACS and the aforementioned assessment of the ACS program also provided an opportunity to examine and confirm the value of each question on the ACS, which resulted in the 2014 ACS Content Review. This review, which was an initial step in a multi-faceted approach of a much larger content review process, included examination of all 72 questions contained on the 2014 ACS questionnaire, including 24 housing-related questions and 48 person-related questions.

The Census Bureau proposed the two analysis factors—benefit as defined by the level of usefulness and cost as defined by the level of respondent burden or difficulty in obtaining the data, which were accepted by the ICSP Subcommittee. Based on a methodology pre-defined by the Census Bureau with the input and concurrence of the ICSP Subcommittee on the ACS, each question received a total number of points between 0 and 100 based on its benefits, and 0 and 100 points based on its costs. These points were then used as the basis for creating four categories: High Benefit and Low Cost; High Benefit and High Cost; Low Benefit and Low Cost; or Low Benefit and High Cost. For this analysis, any question that was designated as either Low Benefit and Low Cost or Low Benefit and High Cost and was NOT designated as Mandatory (*i.e.,* statutory) by the Department of Commerce Office of General Counsel (OGC) or NOT Required (*i.e.,* regulatory)

with a sub-state use, was identified as a potential candidate for removal. The Department of Commerce OGC worked with its counterparts across the federal government to determine mandatory, required, or programmatic status, as defined below:

- *Mandatory*—a federal law explicitly calls for use of decennial census or ACS data on that question
- *Required*—a federal law (or implementing regulation) explicitly requires the use of data and the decennial census or the ACS is the historical source; or the data are needed for case law requirements imposed by the U.S. federal court system
- *Programmatic*—the data are needed for program planning, implementation, or evaluation and there is no explicit mandate or requirement.

Based on the analysis, the following questions were initially proposed for removal:

- *Housing Question No. 6—Business/Medical Office on Property*
- *Person Question No. 12—Undergraduate Field of Degree*
- *Person Question No. 21—(In the Past 12 mos, did this person) Get Married, Widowed, Divorced*
- Person Question No. 22—Times Married
- Person Question No. 23—Year Last Married

For reports that provide a full description of the overall 2014 ACS Content Review methods and results, see ''Final Report—American Community Survey FY14 Content Review Results'' and additional reports about the 2014 ACS Content Review available at *http://www.census.gov/acs/www/about_the_survey/methods_and_results_report/.*

Regarding the business/medical office on property question, the Census Bureau received 41 comments from researchers, and individuals. Most of these comments came from researchers who felt that the Census Bureau should keep all of the proposed questions in order to keep the survey content consistent over time or felt those modifications to the question could potentially make it more useful. Housing Question No. 6—Business/Medical Office on Property is currently not published by the Census Bureau in any data tables. The only known use of the question is to produce a variable for the Public Use Microdata Sample (PUMS), a recode for the Specified Owner (SVAL) variable that allows users to compare other datasets. The Content Review did not reveal any uses by federal agencies, and the comments to the **Federal Register** notice did not reveal any non-federal uses. Additionally, there were no uses uncovered in meetings with stakeholders, data user feedback forms, or other methods employed to understand the uses of ACS data. Lastly, independent research conducted on behalf of the Census Bureau did not uncover any further uses. Though the question has a low cost, it has no benefit to federal agencies, the federal statistical system, or the nation. The Census Bureau plans to remove this question, beginning with the 2016 ACS content.

Regarding the field of degree question, the Census Bureau received 625 comments from researchers, professors and administrators at many universities, professional associations that represent science, technology, engineering and mathematics (STEM) careers and industries, members of Congress, the National Science Foundation, and many individuals interested in retaining this question. A number of commenters (92) cited the importance of these estimates for research that analyzes the effect of field of degree choice on economic outcomes, including earnings, education, occupation, industry, and employment. University administrators (37) commented that this information allows for analysis of postsecondary outcomes, and allows them to benchmark their graduates' relative success in different fields as well as to plan degree offerings. While some commenters used the estimates to understand fields such as humanities or philosophy (56), the majority of these comments (125) addressed the value of knowing about the outcomes of people who pursued degrees in science, technology, engineering and mathematics. These commenters felt that knowing more about the people currently earning STEM degrees and the people currently working in STEM fields would enable universities, advocacy groups, and policy makers to encourage more people to pursue STEM careers, and to encourage diversity within STEM careers.

The initial analysis of Person Question No. 12—Undergraduate Field of Degree did not uncover any evidence that the question was Mandatory or Required. However, comments to the **Federal Register** notice uncovered the existence of a relationship between the Census Bureau and the National Science Foundation, dating back to 1960. Over the course of this established relationship, long-form decennial census data was used as a sampling frame for surveys that provided important information about scientists and engineers. These comments demonstrated that the Field of Degree question on the ACS continues this historical use of decennial long-form and ACS data for this purpose, and makes this process more efficient. Many commenters (58) also cited the necessity of the National Survey of College Graduates (NSCG), and recommended retaining the question because it is needed as a sampling frame for the NSCG. Though commenters theorized that the NSCG might still be able to produce STEM estimates without the ACS, a number of commenters (16) thought that doing so would be very expensive, costing as much as $17 million more (1).

Additionally, many comments also indicated uses of this question to understand the economic outcomes of college graduates at local geographic levels, especially those with STEM degrees. These commenters included professional, academic, congressional, and policy-making stakeholders who expressed concerns that the absence of statistical information about STEM degrees would harm the ability to understand characteristics of small populations attaining STEM degrees. Given the importance of this small population group to the economy, the federal statistical system and the nation, bolstered by the new knowledge of historical precedent brought to light by commenters to the **Federal Register** notice, the Census Bureau therefore plans to retain this question on the 2016 ACS.

Regarding the marital history questions, the Census Bureau received 1,361 comments from researchers and professors, professional associations that represent marriage and family therapists, the Social Security Administration (SSA), and many individuals interested in retaining these questions. SSA commented that it uses the marital history questions to estimate future populations by marital status as part of the Board of Trustees annual report on the actuarial status (including future income and disbursements) of the Old-Age and Survivors Insurance (OASI) and Disability Insurance (DI) Trust Funds. The Department of Health and Human Services (HHS) also uses these questions to distinguish households in which a grandparent has primary responsibility for a grandchild or grandchildren, as well as to provide family formation and stability measures for the Temporary Assistance for Needy Families (TANF) program.

The focus of the proposed elimination is on the marital history questions only with no change to collection of marital status. Over 400 additional comments to the **Federal Register** notice cited concerns that the proposed elimination of the marital history questions was an

indication of whether the government views information about marriage as somehow less valuable than other ACS question topics that were not proposed for removal. While the Census Bureau had always planned to continue collecting information about the ''marital status'' for each person in a household (Person Question No. 20) and their relationships to each other (Person Question No. 2), the Census Bureau remains sensitive to these criticisms.

More than 100 supporters of retaining the marital history questions mentioned their utility for research into marital status changes over time and they correctly noted that there is currently no other national source of the marital history information. As a result, many commenters felt they would not be able to compare marriage characteristics and patterns with other nations in the same depth that is possible today. Similarly, without these questions, the commenters felt that the analysis of changes in marriage events (especially those due to changing societal values and pressures or policy changes) would be less robust. In particular, comments focused on 6 research areas that would be more difficult to analyze without the marital history questions:

- Family formation and stability (23)
- Patterns/trends of marriage and divorce (168)
- Marital effects on earnings, education and employment (45)
- Marital effects on child wellbeing (6)
- Same-sex marriages, civil unions and partnerships (70)
- New government policy effects on marriage (9)

Because the initial analysis of Person Question Nos. 21–23 on marital history did not uncover any evidence that data from these questions were ''Required'' for federal use at sub-state geographies, those questions received a lower benefit score than many other ACS questions. However, in deference to the very large number (1,367) of comments received on the Census Bureau proposal to eliminate those questions, the Census Bureau plans to retain those questions on the 2016 ACS.

The Census Bureau takes very seriously respondent concerns and recognizes that the Content Review and the resulting, proposed question changes discussed above are only initial steps to addressing them. The Census Bureau has implemented an extensive action plan on addressing respondent burden and concerns. The work completed, and the comments received, on the 2014 Content Review provides a foundation for ongoing and future efforts to reduce burden and concerns. In addition to the immediate content changes (proposed above), the Census Bureau is also currently testing the language on the survey materials that may cause concern such as reminding people that their responses are required by law. In order to be responsive to these concerns about the prominence of the mandatory message on the envelopes, we are conducting research with a subset of ACS respondents in May 2015. Over the summer, we will work with external methodological experts to test other revisions of the ACS mail materials to check respondent perceptions of the softened references to the mandatory nature of participation in the ACS. The preliminary results of those tests will be available in the fall, and the Census Bureau will make changes to the 2016 ACS mail materials based on those results.

Concurrently we also are identifying additional questions that we may only need to ask intermittently, rather than each month or year. The current ACS sample design asks all of the survey questions from all selected households in order to produce estimates each year for small geographies and small populations. However, during the Content Review we learned of more than 300 data needs that federal agencies require to implement their missions. We see several potential opportunities to either include some questions periodically, or ask a smaller subset of ACS respondents in cases where those agencies do not need certain data annually. The Census Bureau plans to engage the federal agencies and external experts on this topic during 2015. In addition, we need to assess the operational and statistical issues associated with alternate designs. The alternate designs will result in a reduction in the number of questions asked of individual households.

We are also conducting research on substituting the direct collection of information with the use of information already provided to the government. It is possible that the Census Bureau could use administrative records from federal and commercial sources in lieu of asking particular questions on the ACS.

Lastly, we are examining our approaches to field collection to reduce the number of in-person contact attempts while preserving data quality. For example, based on research conducted in 2012, we implemented changes in 2013 which led to an estimated reduction of approximately 1.2 million call attempts per year, while sustaining the 97percent response rate for the survey overall. For the person visit operation, we are researching a reduction in the number of contact attempts. We plan to field test this change in August 2015. If successful we would implement nationwide in spring 2016.

We will continue to look for other opportunities to reduce respondent burden while maintaining survey quality. Taken together, these measures will make a significant impact on reducing respondent burden in the ACS. In fact, as we have been accelerating our research program in parallel with the content review, we are proposing several additional immediate changes to the 2016 ACS.

Changes in 2016 ACS Content Resulting From Cognitive Testing on Computer Usage and Internet Questions

In early 2013 the Census Bureau began to reach out to Federal agency stakeholders through the forum provided by the OMB Interagency Committee for the ACS to identify possible question changes to be considered for the 2016 ACS Content Test. The ICSP Subcommittee on the ACS conducted an initial review of the proposals received from these Federal agencies, and identified a set of topics that would be approved for the formation of topical subcommittees. These topical subcommittees worked with the Census Bureau to develop proposed wording that was evaluated through multiple rounds of cognitive testing in 2014 and 2015 to refine the proposed question wording changes.

During the course of the preparations for the 2016 ACS Content Test, attention was given to the computer usage and Internet series of questions (questions 9 through 11 on the ACS–1(HU) questionnaire). When this series of questions was added to the production ACS questionnaire in 2013, it was clear that the quickly evolving nature of the types of computing devices available and the ways individuals access the Internet would cause this series of questions to quickly become out-of-date. Cognitive testing of these questions in 2014 brought to light difficulties respondents face when answering the current versions of these questions that were corroborated by the metrics collected during the ACS Content Review. Specifically, technical terms and types of devices and Internet services referenced in the current questions are not easily reconciled with the devices and Internet services used by households today. Additionally, there is evidence in the production data being collected that respondents are misreporting their usage of tablets, since there is not a clear category that references tablet computers. Proposed changes to these questions to bring the

wording more in sync with current devices and Internet services were shown to be effectively understood during the cognitive testing process. Therefore, in order to improve the quality of the ACS data, and to reduce the difficulty respondents experience when answering these questions, the Census Bureau is proposing revising these questions. Given the timing of the receipt of the results of cognitive testing, the proposal to revise these questions in the 2016 ACS was not included in the October 31st notice in the **Federal Register**.

In order to ensure that question changes are effective at collecting high quality data, the current policy requires that proposed revisions to questions must first be cognitively tested, and then, if successful, the results of the cognitive testing will be used as input to a field test that utilizes multiple ACS modes of collection. However, the current concerns with the computer use and Internet questions suggest the need in some instances for the ACS program to be more nimble in making changes than our current process for cognitive and field testing will allow. Therefore, we are evaluating on a pilot basis incorporating the following criteria into the pretesting requirements of the ICSP Subcommittee on the ACS to determine when to implement changes without field testing:

- The external environment related to the topic being measured has changed in a way that there is evidence of significant measurement error in the absence of a question change.
- Cognitive testing has been conducted on versions of the question accounting for multiple modes of administration (such as self-response and interviewer-administered) and the results have led to clear recommendations on the specific changes to make.
- There is evidence that implementing changes to the production versions of the question should be done on a timeline that makes field testing unfeasible, OR the Census Bureau has not received sufficient funding to conduct field testing.

If each of these criteria is met, then a change to ACS question wording could be considered without field testing. Regular reviews and analysis would continue to evaluate any questions changed under this policy, allowing the Census Bureau to preserve the quality of the ACS data and be more responsive in making question wording changes that reflect the changing environment.

Changes in 2016 ACS Content Concerning the Flush Toilet Section of the Plumbing Facilities Question

Traditionally the means of determining substandard housing has involved identifying housing that lacks complete plumbing facilities or complete kitchen facilities. Until 2008, the Census Bureau asked one question to determine complete plumbing facilities, ''Does the house, apartment or mobile home have COMPLETE plumbing facilities; that is, (1) hot and cold running water, (2) flush toilet, and (3) bathtub or shower?'' Similarly, the Census Bureau used one question to determine complete kitchen facilities (sink with a faucet, stove or range, and a refrigerator). In 2008, in conjunction with our stakeholders, we broke the plumbing and kitchen facilities questions into six sub-parts in order ask about each component separately. Having data available for each sub-part has enabled us to better understand the impact of asking each one, including the flush toilet component. As we have accelerated our research into this topic, we have learned that there are very few instances where flush toilets alone determine the existence of substandard housing. After consultation with some of our key stakeholders, the Census Bureau believes that the flush toilet question places unnecessary burden on the American public relative to the value of the information gained from it, and recommends that it be removed in the 2016 ACS, though we will continue to work with stakeholders to explore how this information can be collected apart from the ACS.

Changes in 2016 ACS Mailing Procedures

Based on the results of testing conducted in 2015, the Census Bureau is proposing to modify the mail out strategy for the ACS as described in the steps below. The testing has shown that the change increases response to the online questionnaire, and reduces the total number of mailings sent to households by eliminating one entire mailing and replacing a postcard with a letter.

For households eligible to receive survey materials by mail, the first contact includes a letter and instruction card explaining how to complete the survey online. Also included are a Frequently Asked Questions (FAQ) brochure and a brochure that provides basic information about the survey in English, Spanish, Russian, Chinese, Vietnamese, and Korean, and provides a phone number to call for assistance in each language. The instruction card provides the information on how to respond in English and Spanish. The letter explains that if the respondent is unable to complete the survey online, a paper questionnaire will be sent later. The Internet version of the questionnaire is available in English and Spanish and includes questions about the housing unit and the people living in the housing unit. The Internet questionnaire has space to collect detailed information for twenty people in the household.

The second mailing is a letter that reminds respondents to complete the survey online, thanks them if they have already done so, and informs them that a paper form will be sent later if we do not receive their response. This letter includes clear instructions to log in, including an explicit reference to the user identification number.

In a third mailing, the ACS housing unit questionnaire package is sent only to those sample addresses that have not completed the online questionnaire within two weeks. The content includes a follow up letter, a paper copy of the questionnaire, an instruction guide for completing the paper form, an instruction card for completing the survey online, a FAQ brochure, and a return envelope. The cover letter with this questionnaire package reminds the household of the importance of the ACS, and asks them to respond soon either by completing the survey online or by returning a completed paper questionnaire.

The fourth mailing is a postcard that reminds respondents that ''now is the time to complete the survey,'' informs them that an interviewer may contact them if they do not complete the survey, and reminds them of the importance of the ACS.

A fifth mailing is sent to respondents who have not completed the survey within five weeks and are not eligible for telephone follow-up because we do not have a telephone number for the household. This postcard reminds these respondents to return their questionnaires and thanks them if they have already done so.

Affected Public: Individuals or households.

Frequency: Response to the ACS is on a one-time basis.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Sections 141, 193, and 221.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Copies of the above information collection proposal can be obtained by calling or writing Jennifer Jessup, Departmental Paperwork Clearance Officer, (202) 482–0336, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

Sheleen Dumas,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–14780 Filed 6–16–15; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: U.S. Department of Commerce—Economic Development Administration.

Title: FY15 IMCP Federal Interagency Competition Electronic Application Tool.

OMB Control Number: 0610–0107.

Form Number(s): None.

Type of Request: Regular submission.

Number of Respondents: 80.

Average Hours per Response: 10.

Burden Hours: 800.

Needs and Uses: The Economic Development Administration (EDA) has been asked by the White House to lead an initiative in partnership with the National Economic Council entitled Investing in Manufacturing Communities Partnership (IMCP). IMCP is a government-wide initiative aiming to assist communities in cultivating an environment for businesses to create well-paying manufacturing jobs in regions across the country and thereby accelerate the resurgence of manufacturing. EDA must collect data from applicants who are applying for designation status. Designation as an IMCP manufacturing community will be given to communities with the best strategies for designing and making such investments in public goods.

Affected Public: Business or other for-profit (primary) organizations, Individuals or households, not-for-profit institutions, farms, federal government and state, local or tribal government.

Frequency: Reporting annually and other as prescribed by the FRN.

Respondent's Obligation: Voluntary.

This information collection request may be viewed at *reginfo.gov*. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: June 11, 2015.

Sheleen Dumas,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–14849 Filed 6–16–15; 8:45 am]

BILLING CODE 3510–34–P

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration, Department of Commerce.

ACTION: Notice and opportunity for public comment.

Pursuant to Section 251 of the Trade Act 1974, as amended (19 U.S.C. 2341 *et seq.*), the Economic Development Administration (EDA) has received petitions for certification of eligibility to apply for Trade Adjustment Assistance from the firms listed below. Accordingly, EDA has initiated investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each of these firms contributed importantly to the total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

LIST OF PETITIONS RECEIVED BY EDA FOR CERTIFICATION ELIGIBILITY TO APPLY FOR TRADE ADJUSTMENT ASSISTANCE 5/27/2015 THROUGH 6/11/2015

Firm name	Firm address	Date accepted for investigation	Product(s)
National Sales Associates (NSA).	51 Glenn Street, Lawrence, MA 01843.	6/10/2015	The firm manufactures and remanufactures computer print toner cartridges.
Quadrocopter, LLC	3949 MT Highway 40, Suite D, Columbia Falls, MT 59912.	6/10/2015	The firm manufactures unmanned aerial vehicles.
Vaillancourt Folk Art	9 Main Street Suite 1 H, Sutton, MA 01590.	6/10/2015	The firm manufacturers collectible Christmas Santa's and glass ornaments.
Rivanna Natural Designs, Inc	1736 Allied Street, Charlottesville, VA 22903.	6/11/2015	The firm manufactures and designs planet-friendly awards, plaques, and corporate gifts.
Pascal Company, Inc	2929 Northrup Way Bellevue, WA 98004.	6/11/2015	The firm manufactures dental fittings and accessories.
Mount Sopris Instrument Company, Inc.	4975 East 41st Street, Denver, CO 80216.	6/11/2015	The firm manufactures geophysical instruments.

Any party having a substantial interest in these proceedings may request a public hearing on the matter. A written request for a hearing must be submitted to the Trade Adjustment Assistance for Firms Division, Room 71030, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than ten (10) calendar days following publication of this notice.

Please follow the requirements set forth in EDA's regulations at 13 CFR 315.9 for procedures to request a public hearing. The Catalog of Federal Domestic Assistance official number and title for the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance for Firms.

Dated: June 11, 2015.

Michael S. DeVillo,

Eligibility Examiner.

[FR Doc. 2015–14937 Filed 6–16–15; 8:45 am]

BILLING CODE 3510–WH–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–89–2015]

Foreign-Trade Zone 61—San Juan, Puerto Rico; Application for Subzone; Autogermana, Inc., San Juan, Puerto Rico

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Puerto Rico Trade & Export Company, grantee of FTZ 61, requesting subzone status for the facility of Autogermana, Inc., located in San Juan, Puerto Rico. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally docketed on June 11, 2015.

The proposed subzone (2.63 acres) is located at 1086 Muñoz Rivera Avenue in San Juan. The proposed subzone would be subject to the existing activation limit of FTZ 61. No authorization for production activity has been requested at this time. Autogermana is currently operating within Site 22 of FTZ 61. The applicant is also requesting removal of Site 22 of FTZ 61 following a transition period to allow merchandise to be transferred to the new subzone.

In accordance with the Board's regulations, Camille Evans of the FTZ Staff is designated examiner to review the application and make recommendations to the Executive Secretary.

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 27, 2015. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to August 11, 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 Board's Web site, which is accessible via *www.trade.gov/ftz.* For further information, contact Camille Evans at *Camille.Evans@trade.gov* or (202) 482–2350.

Dated: June 11, 2015.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2015–14966 Filed 6–16–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission, In Part, of Administrative Review and Final Results of New Shipper Review; 2013

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

SUMMARY: On February 11, 2015, the Department of Commerce (the ''Department'') published the preliminary results of a new shipper review (''NSR'') and the ninth administrative review (''AR'') of the antidumping duty order on wooden bedroom furniture (''WBF'') from the People's Republic of China (''PRC''), in accordance with sections 751(a)(1)(B) and 751(a)(2)(B) of the Tariff Act of 1930, as amended (''the Act'').[1] The period of review (''POR'') is January 1, 2013, through December 31, 2013. The AR covers 28 PRC exporters of subject merchandise, of which the Department selected one company for individual examination, Jiedong Lehouse Furniture Co., Ltd. (''Jiedong Lehouse''). The NSR covers one exporter-producer of subject merchandise: Wuxi Yushea Furniture Co., Ltd. (''Wuxi Yushea''). The Department invited interested parties to comment on the *Preliminary Results.* We received comments from the American Furniture Manufactures Committee for Legal Trade and Vaughan-Bassett Furniture Company, Inc. (''Petitioners'') which agreed with our *Preliminary Results* in the administrative review. No other party commented. Accordingly, our final results remain unchanged from the *Preliminary Results.*

DATES: *Effective Date:* June 17, 2015.

FOR FURTHER INFORMATION CONTACT: Patrick O'Connor, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0989.

SUPPLEMENTARY INFORMATION:

Background

As noted above, on February 11, 2015, the Department published the *Preliminary Results* of the NSR and AR of the antidumping duty order on WBF from the PRC covering the period January 1, 2013, through December 31, 2013. On March 13, 2015, Petitioners filed briefs in the AR. No other parties submitted comments on the *Preliminary Results* in the AR or the NSR.

Scope of the Order

The product covered by the order is wooden bedroom furniture, subject to certain exceptions.[2] Imports of subject merchandise are classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') subheadings: 9403.50.9042, 9403.50.9045, 9403.50.9080, 9403.50.9042, 9403.50.9045, 9403.60.8081, 7009.92.1000 or 7009.92.5000. Although the HTSUS subheadings are provided for convenience and customs purposes, the written product description in the *Order* remains dispositive.[3]

Analysis of the Comments Received

The issues raised in Petitioners' case brief are addressed in the Issues and Decision Memorandum which is dated concurrently with, and hereby adopted by, this notice. A list of the issues addressed in the Issues and Decision Memorandum is appended to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Services 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 of the main Department building, Room 7046. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://*

[1] *See Wooden Bedroom Furniture From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Reviews; 2013,* 80 FR 7576 (February 11, 2015) (''*Preliminary Results*'').

[2] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture From the People's Republic of China,* 70 FR 329 (January 4, 2005) (''*Order*'').

[3] For a complete description of the scope of the order, *see* the memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, ''Wooden Bedroom Furniture from the People's Republic of China: Issues and Decision Memorandum for the Final Results of the 2013 Administrative Review and New Shipper Review'' (''Issues and Decision Memorandum'').

enforcement.trade.gov/frn/index.html. The signed Issues and Decision Memorandum and electronic version of the Issues and Decision Memorandum are identical in content.

Final Rescission, In Part

In the *Preliminary Results,* the Department determined that 16 companies under review in the AR, including Jiedong Lehouse, the company that the Department selected as a mandatory respondent, did not establish their eligibility for separate rate status and will be treated as part of the PRC-wide entity.[4] Because no party requested a review of the PRC-wide entity, we will rescind the AR with respect to these 16 companies, including Jiedong Lehouse, as part of the PRC-wide entity.[5] Further, we will instruct U.S. Customs and Border Protection (''CBP'') to liquidate entries for these companies at the PRC-wide entity rate, which is 216.01 percent.

Final Determination of No Shipments

In the *Preliminary Results,* we determined that 12 companies subject to this AR did not have any reviewable transactions during the POR.[6] We did not receive any comments concerning our finding of no shipments by these 12 companies. In these final results, we continue to determine that these 12 companies had no reviewable transactions of subject merchandise during the POR.

Final Results of the 2013 New Shipper Review

The Department has determined that the following dumping margin exists for the exporter-producer combination listed below for the period January 1, 2013, through December 31, 2013:

Exporter	Producer	Weighted-average dumping margin (percent)
Wuxi Yushea Furniture Co., Ltd	Wuxi Yushea Furniture Co., Ltd	0.00

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b), the Department has determined, and CBP shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of these reviews. The Department intends to issue assessment instructions to CBP 15 days after the publication date of these final results of reviews. For Wuxi Yushea, whose weighted average dumping margin is zero, the Department will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[7] We intend to instruct CBP to liquidate entries of subject merchandise exported by the PRC-wide entity at the PRC-wide rate.

If the Department determines that an exporter under review had no shipments of subject merchandise, any suspended entries that entered under that exporter's case number will be liquidated at the PRC-wide rate.[8]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of these reviews for shipments of the subject merchandise from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date in the **Federal Register** of the final results of review, as provided by section 751(a)(2)(C) of the Act: (1) With respect to Wuxi Yushea, the new shipper respondent, the Department established a combination cash deposit rate for this company, consistent with its practice, as follows: (1) For subject merchandise produced and exported by Wuxi Yushea, a zero cash deposit will be required. For subject merchandise exported by Wuxi Yushea, but not produced by Wuxi Yushea, the cash deposit rate will be the rate for the PRC-wide entity. For subject merchandise produced by Wuxi Yushea, but not exported by Wuxi Yushea, the cash deposit rate will be the rate applicable to the exporter; (2) For previously investigated or reviewed PRC and non-PRC exporters named above that did not have any reviewable transactions during the POR that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) For all PRC exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the PRC-wide entity, which is 216.01 percent; (4) For all non-PRC exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the PRC exporter that supplied that non-PRC exporter.

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

Notification to Importers

This notice also serves as a 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 review period. Failure to comply with

[4] *See Preliminary Results* at 80 FR 7576. The 16 companies that did not establish their eligibility for a separate rate are: (1) Art Heritage International, Ltd., Super Art Furniture Co., Ltd., Artwork Metal & Plastic Co., Ltd., Jibson Industries Ltd., Always Loyal International; (2) Cheng Meng Furniture (Pte) Ltd., Cheng Meng Decoration & Furniture (Suzhou) Co., Ltd.; (3) Coe., Ltd.; (4) Dalian Huafeng Furniture Co., Ltd.; (5) Dalian Huafeng Furniture Group Co., Ltd.; (6) Dongguan Hung Sheng Artware Products Co., Ltd., Coronal Enterprise Co., Ltd.; (7) Dongguan Yujia Furniture Co., Ltd./Dongguan Yujia Furniture Co., Ltd.; (8) Liang Huang (Jiaxing) Enterprise Co., Ltd.; (9) Marvin Furniture (Shanghai) Co. Ltd.; (10) Prime Best Factory; (11) Prime Best International Co., Ltd.; (12) Prime Wood International Co., Ltd; (13) Sen Yeong International Co., Ltd., Sheh Hau International Trading Ltd.; (14) Strongson Furniture (Shenzhen) Co., Ltd., Strongson Furniture Co., Ltd., Strongson (Hk) Co.; (15) Zhang Zhou Sanlong Wood Product Co., Ltd.; and (16) Jiedong Lehouse Furniture Co., Ltd. *See also* Comment 1 of the Issues and Decision Memorandum.

[5] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65969–70 (November 4, 2013).

[6] *See Preliminary Results* and accompanying Decision Memorandum at 6–7. Those 12 companies with no shipments during the POR are: (1) Baigou Crafts Factory Of Fengkai; (2) Clearwise Company Limited; (3) Dongguan Chengcheng Furniture Co., Ltd./Dongguan Chengcheng Furniture Co., Ltd.; (4) Dongguan Singways Furniture Co., Ltd.; (5) Eurosa (Kunshan) Co., Ltd., Eurosa Furniture Co., (Pte) Ltd.; (6) Golden Well International (HK) Ltd./Zhangzhou XYM Furniture Product Co., Ltd.; (7) Hangzhou Cadman Trading Co., Ltd./Haining Changbei Furniture Co., Ltd.; (8) Hualing Furniture (China) Co., Ltd., Tony House Manufacture (China) Co., Ltd., Buysell Investments Ltd., Tony House Industries Co., Ltd.; (9) Rizhao Sanmu Woodworking Co., Ltd.; (10) Shenyang Shining Dongxing Furniture Co., Ltd.; (11) Yeh Brothers World Trade, Inc.; and (12) Zhejiang Tianyi Scientific & Educational Equipment Co., Ltd./Zhejiang Tianyi Scientific & Educational Equipment Co., Ltd.

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

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

this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the return or destruction of proprietary information disclosed under the APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

These final results of reviews are issued and published in accordance with sections 751(a)(1), 751(a)(2)(B), and 777(i) of the Act and 19 CFR 351.213, 351.214.

Dated: June 10, 2015.

Paul Piquado,

Assistant Secretary, for Enforcement and Compliance.

Appendix

Summary
Background
Scope of the Order
Discussion of the Issues
Comment 1: Whether Jiedong Lehouse has Demonstrated Eligibility for Separate Rate Status
Recommendation

[FR Doc. 2015–14967 Filed 6–16–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–274–806]

Melamine From Trinidad and Tobago: Affirmative Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination

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

SUMMARY: The Department of Commerce (''Department'') preliminarily determines that melamine from Trinidad and Tobago is being, or is likely to be, sold in the United States at less than fair value (''LTFV''), as provided in section 733(b) of the Tariff Act of 1930, as amended (the ''Act''). The period of investigation is October 1, 2013 through September 30, 2014. The estimated weighted-average dumping margins are shown in the ''Preliminary Determination'' section of this notice. Interested parties are invited to comment on this preliminary determination.

DATES: *Effective Date:* June 17, 2015.

FOR FURTHER INFORMATION CONTACT: Laurel LaCivita, 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) 482–4243.

SUPPLEMENTARY INFORMATION:

Background

The Department published the notice of initiation of this investigation on December 9, 2014.[1] Pursuant to section 773(c)(1)(A) of the Act, the Department postponed this preliminary LTFV determination by a period of 50 days.[2]

Scope of the Investigation

The merchandise subject to this investigation is melamine (Chemical Abstracts Service (''CAS'') registry number 108–78–01, molecular formula $C_3H_6N_6$).[3] Melamine is a crystalline powder or granule typically (but not exclusively) used to manufacture melamine formaldehyde resins. All melamine is covered by the scope of this investigation irrespective of purity, particle size, or physical form. Melamine that has been blended with other products is included within this scope when such blends include constituent parts that have been intermingled, but that have not been chemically reacted with each other to produce a different product. For such blends, only the melamine component of the mixture is covered by the scope of this investigation. Melamine that is otherwise subject to this investigation is not excluded when commingled with melamine from sources not subject to this investigation. Only the subject component of such commingled products is covered by the scope of this investigation.

The subject merchandise is provided for in subheading 2933.61.0000 of the Harmonized Tariff Schedule of the United States (''HTSUS''). Although the HTSUS subheading and CAS registry number are provided for convenience and customs purposes, the written description of the scope is dispositive.

Scope Comments

The Department's *Initiation Notice* provided interested parties an opportunity to raise issues regarding product coverage (scope).[4] None of the parties to the proceeding provided scope comments with respect to this product.

Methodology

The Department has conducted this investigation in accordance with section 731 of the Act. We calculated constructed export price (''CEP'') in accordance with section 772 of the Act, and normal value (''NV'') in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum. The Preliminary Decision Memorandum is a public document and is made available to the public *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (''ACCESS''). ACCESS is available to registered users at *https://access.trade.gov,* and is available to all parties in the Department's Central Records Unit, located at room 7046 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum[5] can be found at *http://enforcement.trade.gov/frn/.* The signed and the electronic versions of the Preliminary Decision Memorandum are identical in content.

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated ''all others'' rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely under section 776 of the Act. We based our calculation of the ''all others'' rate on the margin calculated for Methanol Holdings (Trinidad) Limited (''MHTL''),

[1] *See Melamine from the People's Republic of China and Trinidad and Tobago: Initiation of Less-Than-Fair-Value Investigations,* 79 FR 73037 (December 9, 2014) (''*Initiation Notice*'').

[2] *See Melamine from the People's Republic of China and Trinidad and Tobago: Postponement of Preliminary Determinations of Antidumping Duty Investigations,* 80 FR 12979 (March 12, 2015).

[3] Melamine is also known as 2,4,6-triamino-s-triazine; 1,3,5-Triazine-2,4,6-triamine; Cyanurotriamide; Cyanurotriamine; Cyanuramide; and by various brand names.

[4] *See Initiation Notice,* 79 FR at 73037.

[5] *See* Memorandum to Paul Piquado, ''Decision Memorandum for the Preliminary Determination in the Antidumping Duty Investigation of Melamine from Trinidad and Tobago,'' dated concurrently with this notice. A list of the topics discussed in the Preliminary Decision Memorandum appears in Appendix II, below.

the only mandatory respondent in this investigation.

Preliminary Determination

The Department preliminarily determines that the following weighted-average dumping margins exist:

Producer and/or exporter	Weighted-average dumping margin (percent)
MHTL	174.22
All Others	174.22

Disclosure and Public Comment

We intend to disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which the final verification report is issued in this proceeding. Rebuttal briefs, limited to issues raised in case briefs, may be submitted no later than five days after the deadline date for case briefs.[6] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce. All documents must be filed electronically using ACCESS. An electronically filed request must be received successfully in its entirety by ACCESS, by 5:00 p.m. Eastern Time (''ET''), within 30 days after the date of publication of this notice.[7] Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

[6] *See* 19 CFR 351.309.

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

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to a request from MHTL, we are postponing the final determination. Accordingly, we will make our final determination no later than 135 days after the date of publication of this preliminary determination, pursuant to section 735(a)(2) of the Act.[8] Further, MHTL requested to extend the application of the provisional measures prescribed under section 733(d) of the Act and 19 CFR 351.210(e)(2), from a four-month period to a six-month period. The suspension of liquidation described above will be extended accordingly.[9]

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing U.S. Customs and Border Protection (''CBP'') to suspend liquidation of all entries of melamine from Trinidad and Tobago as described in the scope of the investigation section entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

Pursuant to 19 CFR 351.205(d), we will instruct CBP to require a cash deposit equal to the weighted-average amount by which the NV exceeds CEP, as indicated in the chart above.[10] These suspension of liquidation instructions will remain in effect until further notice.

International Trade Commission (''ITC'') Notification

In accordance with section 733(f) of the Act, we notified the ITC of our preliminary affirmative determination of sales at LTFV. Because the preliminary determination in this proceeding is affirmative, section 735(b)(2) of the Act requires that the ITC make its final determination whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports of melamine from Trinidad and Tobago before the later of 120 days after the date of this preliminary determination or 45 days after our final determination. Because we are postponing the deadline for our final determination to 135 days from the date of publication of this preliminary determination, as discussed above, the ITC will make its final determination no later than 45 days after our final determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act and 19 CFR 351.205(c).

Dated: June 10, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

[8] *See* 19 CFR 351.210(b)(2) and (e); *See also* Letter from MHTL, ''Southern Chemical and MHTL's Request to Postpone Final Determination and Extension for Provisional Measures,'' dated June 8, 2015 (''Postponement Letter'').

[9] *Id.*

[10] *See Modification of Regulations Regarding the Practice of Accepting Bonds During the Provisional Measures Period in Antidumping and Countervailing Duty Investigations,* 76 FR 61042 (October 3, 2011).

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Period of Investigation
IV. Postponement of Preliminary Determination
V. Postponement of Final Determination and Extension of Provisional Measures
VI. Scope of the Investigation
VII. Discussion of Methodology
A. Fair Value Comparisons
(1) Determination of Comparison Method
(2) Results of the Differential Pricing Analysis
VIII. Product Comparisons
IX. Date of Sale
X. Affiliation
XI. Constructed Export Price
XII. Normal Value
A. Comparison-Market Viability
B. Level of Trade
C. Cost of Production
(1) Calculation of Cost of Production
(2) Test of Home Market Sale Prices
(3) Results of the Sales-Below-Cost Test
D. Calculation of Normal Value Based on CV
XIII. Currency Conversion
XIV. U.S. International Trade Commission Notification
XV. Disclosure and Public Comment
XVI. Verification
XVII. Conclusion

[FR Doc. 2015–14975 Filed 6–16–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Island Pelagic Longline Fisheries; Seabird-Fisheries Interaction Recovery Reporting.

OMB Control Number: 0648–0456.

Form Number(s): None.

Type of Request: Regular (revision and extension of a currently approved information collection).

Number of Respondents: 1.

Average Hours per Response: 3.

Burden Hours: 3.

Needs and Uses: This request is for revision and extension of a currently approved information collection.

The National Marine Fisheries Service (NMFS) requires pelagic longline vessel operators to notify NMFS in the event an endangered short-tailed albatross is hooked or entangled during fishing operations. Following the retrieval of the seabird from the ocean, as required by Federal regulations, the vessel captain must record the condition of the injured short-tailed albatross on a recovery data form. A veterinarian will use the information in providing advice to the captain caring for the short-tailed albatross. If the albatross is dead, the captain must attach an identification tag to the carcass to assist the U.S. Fish and Wildlife Service (USFWS) biologists in follow-up studies on the specimen. This collection is one of the terms and conditions contained in the biological opinion issued by USFWS, and is intended to maximize the probability of the long-term survival of short-tailed albatross accidentally taken by longline gear.

The form has been modified based on public comment.

Affected Public: Business and other for-profit organizations; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at *reginfo.gov.* Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: June 12, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–14861 Filed 6–16–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Submission for OMB Review; Comment Request

The Department of Commerce will submit to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Pacific Islands Logbook Family of Forms.

OMB Control Number: 0648–0214.

Form Number(s): None.

Type of Request: Regular (revision and extension of a currently approved information collection).

Number of Respondents: 512.

Average Hours per Response: Logbooks and sales reports, 5–35 minutes based on fishery, entry/exit and landing notices and Protected Species Zone entry/exit notices, 5 minutes; landing/offloading notices, 3 minutes.

Burden Hours: 3,511.

Needs and Uses: This request is for revision of a currently approved information collection.

Fishermen in Federally-managed fisheries in the western Pacific region are required to provide certain information about their fishing activities, catch, and interactions with protected species by submitting reports to National Marine Fisheries Service (NMFS), per 50 CFR part 665. These data are needed to determine the condition of the stocks and whether the current management measures are having the intended effects, to evaluate the benefits and costs of changes in management measures, and to monitor and respond to accidental takes of endangered and threatened species, including seabirds, sea turtles, and marine mammals.

We are removing one form that has been added to another information collection, and moving two from other information collections to this one.

Affected Public: Business and other for-profit organizations; individuals or households.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

This information collection request may be viewed at reginfo.gov. Follow the instructions to view Department of Commerce collections currently under review by OMB.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_Submission@omb.eop.gov* or fax to (202) 395–5806.

Dated: June 12, 2015.

Sarah Brabson,

NOAA PRA Clearance Officer.

[FR Doc. 2015–14860 Filed 6–16–15; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting Notice

TIME AND DATE: Wednesday, June 24, 2015, 10 a.m.–3 p.m.

PLACE: Hearing Room 420, Bethesda Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Commission meeting—open to the public.

MATTERS TO BE CONSIDERED:

Hearing: 1. Agenda and Priorities for Fiscal Years 2016 and 2017 (10 a.m.–12 p.m.); and

2. Data Sources and Consumer Product-Related Incident Information (1 p.m.–3 p.m.).

A live webcast of the Meeting can be viewed at *www.cpsc.gov/live.*

For a recorded message containing the latest agenda information, call (301) 504–7948.

CONTACT PERSON FOR MORE INFORMATION: Todd A. Stevenson, Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, (301) 504–7923.

Dated: June 12, 2015.

Todd A. Stevenson,

Secretariat.

[FR Doc. 2015–14958 Filed 6–15–15; 11:15 am]

BILLING CODE 6355–01–P

DEPARTMENT OF EDUCATION

[Docket No. ED–2015–ICCD–0077]

Agency Information Collection Activities; Comment Request; Middle Grades Longitudinal Study of 2016–2017 (MGLS:2017) Item Validation and Operational Field Tests

AGENCY: Institute of Education Sciences/National Center for Education Statistics (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a revision of an existing information collection.

DATES: Interested persons are invited to submit comments on or before August 17, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2015–ICCD–0077 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Kashka Kubzdela, (202) 502–7411.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Middle Grades Longitudinal Study of 2016–2017 (MGLS:2017) Item Validation and Operational Field Tests.

OMB Control Number: 1850–0911.

Type of Review: A revision of an existing information collection.

Respondents/Affected Public: Individuals.

Total Estimated Number of Annual Responses: 25,951.

Total Estimated Number of Annual Burden Hours: 8,729.

Abstract: The Middle Grades Longitudinal Study of 2016–2017 (MGLS:2017) is the first study sponsored by the National Center for Education Statistics (NCES), within the Institute of Education Sciences (IES) of the U.S. Department of Education (ED), to follow a nationally-representative sample of students as they enter and move through the middle grades (grades 6–8). The data collected through repeated measures of key constructs will provide a rich descriptive picture of the academic experiences and development of students during these critical years and will allow researchers to examine associations between contextual factors and student outcomes. The study will focus on student achievement in mathematics and literacy along with measures of student socioemotional wellbeing and other outcomes. The study will also include a special sample of students with different types of disabilities that will provide descriptive information on their outcomes, educational experiences, and special education services. Baseline data for the MGLS:2017 will be collected from a nationally-representative sample of 6th grade students in winter of 2017 with annual follow-ups in winter 2018 and winter 2019 when most of the students in the sample will be in grades 7 and 8, respectively. This request is to concurrently conduct the Item Validation and the Operational Field Tests for the MGLS: 2017, beginning in January 2016. The primary purpose of the Item Validation Field Test is to determine the psychometric properties of items and the predictive potential of assessment and survey items so that valid, reliable, and useful assessment and survey instruments can be composed for the main study. The primary purposes of the Operational Field Test are to obtain information on recruiting, particularly for the targeted disability groups; on obtaining a tracking sample that can be used to study mobility patterns in subsequent years; and on administrative procedures.

Dated: June 11, 2015.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–14838 Filed 6–16–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2015–ICCD–0044]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Understanding the Impact of Providing Information to Parents About the Role of Algebra II: An Opportunistic Study

AGENCY: Institute of Education Sciences (IES), Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before July 17, 2015.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2015–ICCD–0044 or via postal mail, commercial delivery, or hand delivery. If the regulations.gov site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted; ED will ONLY accept comments during the comment period in this mailbox when the regulations.gov site is not available.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Mailstop L–OM–2–2E319, Room 2E105, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Christopher Boccanfuso, 202–219–1674.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed,

revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Understanding the Impact of Providing Information to Parents about the Role of Algebra II: An Opportunistic Study.

OMB Control Number: 1850—NEW.

Type of Review: A new information collection.

Respondents/Affected Public: State, Local and Tribal Governments.

Total Estimated Number of Annual Responses: 1,468.

Total Estimated Number of Annual Burden Hours: 133.

Abstract: In June 2013, Texas Governor Rick Perry signed House Bill (HB) 5 into law, which changed high school graduation requirements for public school students in Texas. Prior to this, most students were required to complete algebra II in order to graduate from high school. After the enactment of HB 5, completing algebra II is optional-students may elect to complete algebra II as part of two of the graduation plans offered under HB 5. REL Southwest is working with the Texas Education Agency (TEA) to carry out an opportunistic experiment to determine if directly providing parents/guardians, prior to students' selection of their courses, with information on the importance of completing algebra II for college access and success has an impact on the percentage of students who enroll in and complete algebra II by the end of their junior year. REL Southwest will investigate the impact of providing parents/guardians with information about the role of algebra II in college access and success in a randomized controlled trial in which the treatment schools provide parents/guardians of students with information about the role of algebra II in college access and success, while control schools continue business-as-usual.

Dated: June 12, 2015.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Office of the Chief Privacy Officer, Office of Management.

[FR Doc. 2015–14864 Filed 6–16–15; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Fusion Energy Sciences Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Fusion Energy Sciences Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Friday, July 17, 2015—3:00 p.m. to 5:00 p.m. EDT.

ADDRESSES: Teleconference. Instructions for access can be found on the FESAC's Web site at *(http://science.energy.gov/fes/fesac/meetings/).*

FOR FURTHER INFORMATION CONTACT: Edmund J. Synakowski, Designated Federal Officer, Office of Fusion Energy Sciences (FES); U.S. Department of Energy; 1000 Independence Avenue SW., Washington, DC 20585–1290, Telephone: (301) 903–4941.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complexes scientific and technical issues that arises in the development and implementation of the fusion energy sciences program.

Tentative Agenda Items:

- Presentation on and Discussion of the Report of the SNFA
- Vote on the Report of the SNFA
- Public Comment
- Adjourn

Note: Remote attendance of the FESAC meeting will be possible via ReadyTalk. Instructions can be found on the FESAC Web site *(http://science.energy.gov/fes/fesac/meetings/)* or by contacting Dr. Samuel J. Barish by email at: *sam.barish@science.doe.gov* or by phone at: (301) 903–2917.

Public Participation: The meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make an oral statement regarding any of the items on the agenda, you should contact Dr. Samuel J. Barish at (301) 903–8584 (fax) or *sam.barish@science.doe.gov* (email). Reasonable provision will be made to include the scheduled oral statements during the Public Comments time on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days on the Fusion Energy Sciences Advisory Committee's Web site at *http://science.energy.gov/fes/fesac/.*

Issued at Washington, DC, on June 11, 2015.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2015–14897 Filed 6–16–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Portsmouth

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Portsmouth. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Thursday, July 9, 2015—6:00 p.m.

ADDRESSES: Ohio State University, Endeavor Center, 1862 Shyville Road, Piketon, Ohio 45661.

FOR FURTHER INFORMATION CONTACT: Greg Simonton, Alternate Deputy Designated Federal Officer, Department of Energy Portsmouth/Paducah Project Office, Post Office Box 700, Piketon, Ohio 45661, (740) 897–3737, *Greg.Simonton@lex.doe.gov.*

SUPPLEMENTARY INFORMATION: Purpose of the Board: The purpose of the Board is to make recommendations to DOE–EM and site management in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

- Call to Order, Introductions, Review of Agenda

- Approval of May Minutes
- Deputy Designated Federal Officer's Comments
- Federal Coordinator's Comments
- Liaison's Comments
- Presentation
- Administrative Issues
- Subcommittee Updates
- Public Comments
- Final Comments from the Board
- Adjourn

Public Participation: The meeting is open to the public. The EM SSAB, Portsmouth, welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Greg Simonton at least seven days in advance of the meeting at the phone number listed above. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Greg Simonton at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Individuals wishing to make public comments will be provided a maximum of five minutes to present their comments.

Minutes: Minutes will be available by writing or calling Greg Simonton at the address and phone number listed above. Minutes will also be available at the following Web site: *http://www.ports-ssab.energy.gov/.*

Issued at Washington, DC on June 11, 2015.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2015–14901 Filed 6–16–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Advanced Scientific Computing Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of Open meeting.

SUMMARY: This notice announces a meeting of the Advanced Scientific Computing Advisory Committee (ASCAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, July 27, 2015, 8:00 a.m.–5:30 p.m.

ADDRESSES: Marriott Gateway Crystal City, 1700 Jefferson Davis Highway, Arlington, Virginia 22202, (703) 920–3230.

FOR FURTHER INFORMATION CONTACT: Sally McPherson, Office of Advanced Scientific Computing Research; SC–21/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–1290; Telephone (301) 903–9958.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: This committee is to provide advice and guidance on a continuing basis to the Office of Scientific Computing Research and to the Department of Energy on scientific priorities within the field of advanced scientific computing research.

Purpose of the Meeting: This meeting is the semi-annual meeting of the Committee.

Tentative Agenda Topics

- View from Washington (an update on the budget and planned activities of the Office of Science and the Department)
- View from Germantown (an update on the budget, accomplishments and planned activities of the Advanced Scientific Computing Research program)
- Update from the Subcommittee reviewing the Department's Exascale Plan
- Update from Subcommittee on the Office of Scientific and Technical Information (OSTI)
- Update from the Committee of Visitors (COV) for Networking Research
- Briefing on the CORAL project at the Argonne Leadership Computing Facility
- Briefing from the ASCR project ''Center for Applied Mathematics for Energy Research Applications (CAMERA)''
- Public Comment (10-minute rule)

The meeting will conclude at 5:30 p.m. Agenda updates and presentations will be posted on the ASCAC Web site prior to the meeting: *http://science.energy.gov/ascr/ascac/.*

Public Participation: The meeting is open to the public. To access the Ready Talk call:

1. Dial Toll-Free Number: (866) 740–1260 (U.S. & Canada)
2. International participants dial: *http://www.readytalk.com/intl*
3. Enter access code 9039560, followed by ''#''

Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 30 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed 5 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 11:30 a.m. on July 13.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Christine Chalk, U.S. Department of Energy, 1000 Independence Avenue SW., Washington DC 20585, or email to: *Christine.Chalk@science.doe.gov.*

Minutes: The minutes of this meeting will be available on the U.S. Department of Energy's Office of Advanced Scientific Computing Web site at *http://science.energy.gov/ascr/ascac/.*

Issued at Washington, DC, on June 11, 2015.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2015–14900 Filed 6–16–15; 08:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[OE Docket No. TPF–01]

Extension of Public Comment Period for Application for Proposed Project for Clean Line Plains & Eastern Transmission Line

AGENCY: Office of Electricity Delivery and Energy Reliability, DOE.

ACTION: Extension of public comment period.

SUMMARY: The Department of Energy (DOE) published a Notice of Application for Proposed Project for Clean Line Plains & Eastern Transmission Line (80 FR 23520) requesting public comment on an application submitted by Clean Line Energy Partners, LLC under Section 1222 of the Energy Policy Act of 2005. DOE is extending the end of the public comment period on the application for the Clean Line Plains & Eastern Transmission Line from June 12 to July 13, 2015.

DATES: DOE extends the public comment period to July 13, 2015. Comments submitted to DOE concerning Clean Line's application prior to this announcement do not need to be resubmitted as a result of this extension of the comment period.

ADDRESSES: Written comments should be addressed as follows: 1222 Program, Office of Electricity Delivery and Energy Reliability (OE–20), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585. Electronic comments can be emailed to *plainsandeastern@hq.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Angela Colamaria at 202–287–5387 or via electronic mail at *Angela.Colamaria@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: On April 28, 2015, DOE published a Notice of Application for Proposed Project for Clean Line Plains & Eastern Transmission Line (80 FR 23520) requesting public comment on an application submitted by Clean Line Energy Partners, LLC under Section 1222 of the Energy Policy Act of 2005. That notice announced that comments on Clean Line's application should be submitted within a 45-day period beginning on April 28, 2015 and ending on June 12, 2015. DOE is extending the time allowed for submittal of comments to July 13, 2015. In addition to this **Federal Register** Notice, DOE posted a notice of the extension on its Web site and sent an email to interested parties on June 11, 2015.

Issued in Washington, DC, on June 11, 2015.

Terri Lee,

Assistant Secretary, Acting, Office of Electricity Delivery and Energy Reliability.

[FR Doc. 2015–14918 Filed 6–16–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Biological and Environmental Research Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of Open Teleconference.

SUMMARY: This notice announces a teleconference of the Biological and Environmental Research Advisory Committee (BERAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of this meeting be announced in the **Federal Register**.

DATES: Friday, July 17, 2015, 2:00 p.m.–5:00 p.m. (EDT).

ADDRESSES: Participants may contact Ms. Joanne Corcoran by July 13, 2015, at email: *joanne.corcoran@science.doe.gov* or by phone at (301) 903–6488, to receive a call-in number. Public participation is welcomed; however, the number of teleconference lines is limited and available on a first-come, first-served basis.

FOR FURTHER INFORMATION CONTACT: Dr. Sharlene Weatherwax, Designated Federal Officer, BERAC, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–23/Germantown Building, 1000 Independence Avenue SW., Washington, DC 20585–1290; telephone (301) 903–3251; fax (301) 903–5051 or email: *sharlene.weatherwax@science.doe.gov.* The most current information concerning this meeting can be found on the Web site: *http://science.energy.gov/ber/berac/meetings/.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complexes scientific and technical issues that arises in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda Topics

- Discussion of the draft Integrated Field Laboratory (IFL) BERAC report based on the charge letter dated, September 23, 2014, (*http://science.energy.gov/~/media/ber/berac/pdf/Reports/Environmental_Observatories_Charge_Letter.pdf.*) BERAC will discuss the draft, suggest changes and potentially approve the report.

Public Participation: The teleconference meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding the item on the agenda, you should contact Sharlene Weatherwax at the address or telephone number listed above. You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will follow the 10-minute rule.

Minutes: The minutes of this meeting will be available for public review and copying within 45 days at the BERAC Web site: *http://science.energy.gov/ber/berac/meetings/berac-minutes/.*

Issued in Washington, DC, on June 11, 2015.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2015–14898 Filed 6–16–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Advanced Scientific Computing Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Advanced Scientific Computing Advisory Committee (ASCAC). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, July 27, 2015—8:00 a.m.–5:30 p.m.

ADDRESSES: Marriott Gateway Crystal City, 1700 Jefferson Davis Highway, Arlington, Virginia 22202, (703) 920–3230.

FOR FURTHER INFORMATION CONTACT: Sally McPherson, Office of Advanced Scientific Computing Research; SC–21/Germantown Building, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585–1290; Telephone (301) 903–9958

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: This committee is to provide advice and guidance on a continuing basis to the Office of Scientific Computing Research and to the Department of Energy on scientific priorities within the field of advanced scientific computing research.

Purpose of the Meeting: This meeting is the semi-annual meeting of the Committee.

Tentative Agenda Topics:

- View from Washington (an update on the budget and planned activities of the Office of Science and the Department)
- View from Germantown (an update on the budget, accomplishments and planned activities of the Advanced Scientific Computing Research program)
- Update from the Subcommittee reviewing the Department's Exascale Plan
- Update from Subcommittee on the Office of Scientific and Technical Information (OSTI)
- Update from the Committee of Visitors (COV) for Networking Research
- Briefing on the CORAL project at the Argonne Leadership Computing Facility
- Briefing from the ASCR project ''Center for Applied Mathematics for Energy Research Applications (CAMERA)''
- Public Comment (10-minute rule)

The meeting will conclude at 5:30 p.m. Agenda updates and presentations will be posted on the ASCAC Web site prior to the meeting: *http://science.energy.gov/ascr/ascac/.*

Public Participation: The meeting is open to the public. To access the Ready Talk call:

1. Dial Toll-Free Number: (866) 740–1260 (U.S. & Canada)
2. International participants dial: *http://www.readytalk.com/intl*
3. Enter access code 9039560, followed by ''#''

Individuals and representatives of organizations who would like to offer comments and suggestions may do so during the meeting. Approximately 30 minutes will be reserved for public comments. Time allotted per speaker will depend on the number who wish to speak but will not exceed 5 minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Those wishing to speak should register to do so beginning at 11:30 a.m. on July 13.

Those not able to attend the meeting or who have insufficient time to address the committee are invited to send a written statement to Christine Chalk, U.S. Department of Energy, 1000 Independence Avenue SW., Washington DC 20585, or email to: *Christine.Chalk@science.doe.gov.*

Minutes: The minutes of this meeting will be available on the U.S. Department of Energy's Office of Advanced Scientific Computing Web site at *http://science.energy.gov/ascr/ascac/.*

Issued at Washington, DC, on June 11, 2015.

LaTanya R. Butler,

Deputy Committee Management Officer.

[FR Doc. 2015–14899 Filed 6–16–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-the-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e) (1) (v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket No.	File date	Presenter or requester
Prohibited:		
1. P–14341	6/2/15	Yavapai-Apache Nation.
2. CP13–552–000, CP13–553–000	6/3/15	Cheniere Energy, Inc.
Exempt:		
1. RP15–65–000	5/28/15	US Senator Bill Cassidy, M.D.
2. CP15–115–000	5/28/15	US Senators.[1]
3. P–1267–000	5/28/15	US Representative Jeff Duncan.
4. CP15–115–000	6/2/15	Anthony J. Nemi.[2]
5. CP13–492–000	6/2/15	US Senators.[3]
6. CP13–552–000	6/2/15	US Senator Martin Heinrich.

[1] Charles E. Schumer and Kirsten Gillibrand.
[2] Niagara County Legislator.
[3] Jeffrey A. Merkley and Ron Wyden.

Dated: June 11, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–14875 Filed 6–16–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. P–13272–004]

Old Harbor Hydroelectric Project; Notice of Meetings

The Commission has scheduled a teleconference with representatives of the Alutiiq Tribe and Old Harbor Native Cooperation involving the Old Harbor Hydroelectric Project (Project No. 13272). The meeting will be held on June 26, 2015 at 2:00 p.m. (EDT; 10:00 a.m. AKDT).

Members of the public and intervenors in the referenced proceedings may participate in the meeting; however, participation will be limited to tribal representatives and the Commission representatives. If the Tribes decide to disclose information about a specific location which could create a risk or harm to an archeological site or Native American cultural resource, the public will be excused for that portion of the meeting when such information is disclosed.[1]

If you plan to attend the meeting, please contact Dr. Frank Winchell at the Federal Energy Regulatory Commission for call-in information. He can be reached at 202–502–6104 or *frank.winchell@ferc.gov.*

Dated: June 11, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–14874 Filed 6–16–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER15–1896–000]

Eden Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Eden Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 1, 2015.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with Internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically should submit an original and 5 copies of the intervention or protest to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

The filings in the above-referenced proceeding are accessible in the Commission's eLibrary system by clicking on the appropriate link in the above list. They are also available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an eSubscription link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: June 11, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–14869 Filed 6–16–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of the Midcontinent Independent System Operator, Inc. (MISO):

MISO Planning Advisory Committee

June 24, 2015, 9 a.m.–4:00 p.m. (EST)

The above-referenced meeting will be held at: MISO Headquarters, 720 City Center Drive, Carmel, IN 46032.

Further information may be found at *www.misoenergy.org.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER13–1944, *PJM Interconnection, LLC*
Docket No. ER13–1943, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–1924, *PJM Interconnection, LLC*
Docket No. ER13–1945, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–1955, *Entergy Services, Inc.*
Docket No. ER13–1956, *Cleco Power LLC*
Docket No. ER14–1174, *Southwest Power Pool, Inc.*
Docket No. ER14–1736, *Midcontinent Independent System Operator, Inc.*
Docket No. ER14–2445, *Midcontinent Independent System Operator, Inc.*
Docket No. ER13–1864, *Southwest Power Pool, Inc.*
Docket No. EL14–21, *Southwest Power Pool, Inc. v. Midcontinent Independent System Operator, Inc.*
Docket No. EL14–30, *Midcontinent Independent System Operator, Inc. v. Southwest Power Pool, Inc.*
Docket No. EL11–34, *Midwest Independent Transmission System Operator, Inc.*
Docket No. ER11–1844, *Midwest Independent Transmission System Operator, Inc.*
Docket No. EL13–88, *Northern Indiana Public Service Company v. Midcontinent Independent System Operator, Inc. and PJM Interconnection, L.L.C.*

For more information, contact Chris Miller, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (317) 249–5936 or *christopher.miller@ferc.gov;* or Jason

[1] Protection from public disclosure involving this kind of specific information is based upon 18 CFR 4.32(b)(3)(ii) of the Commission's regulations.

Strong, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6124 or *jason.strong@ferc.gov.*

Dated: June 11, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–14877 Filed 6–16–15; 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: ER13–1079–002; ER12–348–000.
Applicants: Mercuria Commodities Canada Corporation, Mercuria Energy America, Inc.
Description: Supplement to February 25, 2015 Updated Market Power Analysis for the Southeast Region of Mercuria Commodities Canada Corporation, *et. al.*
Filed Date: 6/10/15.
Accession Number: 20150610–5344.
Comments Due: 5 p.m. ET 7/1/15.

Docket Numbers: ER14–2046–003.
Applicants: Plum Point Energy Associates, LLC.
Description: Compliance filing per 35: Settlement Tariff Compliance Filing to be effective 2/1/2015.
Filed Date: 6/11/15.
Accession Number: 20150611–5156.
Comments Due: 5 p.m. ET 7/2/15.

Docket Numbers: ER15–482–001.
Applicants: South Carolina Electric & Gas Company.
Description: Compliance filing per 35: Order 676 H 2nd Compliance filing to be effective 5/15/2015.
Filed Date: 6/10/15.
Accession Number: 20150610–5069.
Comments Due: 5 p.m. ET 7/1/15.

Docket Numbers: ER15–1815–001.
Applicants: Public Service Company of New Hampshire.
Description: Tariff Amendment per 35.17(b): Amendment to Joint Market Based Tariff to be effective 5/30/2015.
Filed Date: 6/10/15.
Accession Number: 20150610–5281.
Comments Due: 5 p.m. ET 7/1/15.

Docket Numbers: ER15–1816–001.
Applicants: Western Massachusetts Electric Company.
Description: Tariff Amendment per 35.17(b): Amendment to Joint Market Based Tariff to be effective 5/30/2015.
Filed Date: 6/10/15.
Accession Number: 20150610–5283.
Comments Due: 5 p.m. ET 7/1/15.

Docket Numbers: ER15–1882–001.
Applicants: PSEG Energy Resources & Trade LLC.
Description: Tariff Amendment per 35.17(b): Amendement to Revised Reactive Tariff to be effective 6/6/2015.
Filed Date: 6/10/15.
Accession Number: 20150610–5280.
Comments Due: 5 p.m. ET 7/1/15.

Docket Numbers: ER15–1894–000.
Applicants: PPL Electric Utilities Corporation.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revisions to Market Based Rate Filing to be effective 8/10/2015.
Filed Date: 6/10/15.
Accession Number: 20150610–5001.
Comments Due: 5 p.m. ET 7/1/15.

Docket Numbers: ER15–1895–000.
Applicants: New York Independent System Operator, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): NYISO 205 filing of LGIA among NYISO, NYPA and CPV Valley to be effective 5/28/2015.
Filed Date: 6/10/15.
Accession Number: 20150610–5118.
Comments Due: 5 p.m. ET 7/1/15.

Docket Numbers: ER15–1896–000.
Applicants: Eden Solar LLC.
Description: Initial rate filing per 35.12 Eden Solar LLC MBR Tariff to be effective 8/1/2015.
Filed Date: 6/10/15.
Accession Number: 20150610–5270.
Comments Due: 5 p.m. ET 7/1/15.

Docket Numbers: ER15–1897–000.
Applicants: Southern California Edison Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Amended GIA with County Sanitation District No. 2 Los Angeles County to be effective 6/12/2015.
Filed Date: 6/11/15.
Accession Number: 20150611–5002.
Comments Due: 5 p.m. ET 7/2/15.

Docket Numbers: ER15–1898–000.
Applicants: Southern California Edison Company.
Description: Tariff Withdrawal per 35.15: Notices of Cancellation Two Service Agmts with Ecos Energy, LLC to be effective 6/4/2015.
Filed Date: 6/11/15.
Accession Number: 20150611–5003.
Comments Due: 5 p.m. ET 7/2/15.

Docket Numbers: ER15–1899–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2899R1 Pawnee Wind Farm, LLC GIA to be effective 5/26/2015.
Filed Date: 6/11/15.
Accession Number: 20150611–5041.
Comments Due: 5 p.m. ET 7/2/15.

Docket Numbers: ER15–1900–000.
Applicants: PJM Interconnection, L.L.C., PPL Electric Utilities Corporation.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): PPL submits Service Agreement No. 4149 to be effective 5/11/2015.
Filed Date: 6/9/15.
Accession Number: 20150609–5184.
Comments Due: 5 p.m. ET 6/30/15.

Docket Numbers: ER15–1901–000.
Applicants: Louisville Gas and Electric Company.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Revised Att Q ITO Agreement to be effective 9/1/2015.
Filed Date: 6/11/15.
Accession Number: 20150611–5050.
Comments Due: 5 p.m. ET 7/2/15.

Docket Numbers: ER15–1902–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 3043 Prairie Breeze Wind Energy II LLC GIA to be effective 5/26/2015.
Filed Date: 6/11/15.
Accession Number: 20150611–5055.
Comments Due: 5 p.m. ET 7/2/15.

Docket Numbers: ER15–1903–000.
Applicants: Midcontinent Independent System Operator, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): 2015–06–11_SA 2807 Entergy Arkansas-Union Power Partners GIA (J376) to be effective 6/12/2015.
Filed Date: 6/11/15.
Accession Number: 20150611–5057.
Comments Due: 5 p.m. ET 7/2/15.

Docket Numbers: ER15–1904–000.
Applicants: Tucson Electric Power Company.
Description: Tariff Withdrawal per 35.15: Cancellation of Rate Schedule No. 324 to be effective 6/1/2015.
Filed Date: 6/11/15.
Accession Number: 20150611–5089.
Comments Due: 5 p.m. ET 7/2/15.

Docket Numbers: ER15–1905–000.
Applicants: AZ721 LLC.
Description: Initial rate filing per 35.12 Application for Market Base Rate Tariff to be effective 8/11/2015.
Filed Date: 6/11/15.
Accession Number: 20150611–5181.
Comments Due: 5 p.m. ET 7/2/15.

Docket Numbers: ER15–1906–000.
Applicants: Southwest Power Pool, Inc.
Description: § 205(d) rate filing per 35.13(a)(2)(iii): Membership Agreement Amendments for Corn Belt, East River and NIPCO to be effective 5/19/2015.

Filed Date: 6/11/15.
Accession Number: 20150611–5184.
Comments Due: 5 p.m. ET 7/2/15.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES15–33–000.
Applicants: Northern Indiana Public Service Company.
Description: Application for Authorization to Issue Short-Term Debt of Northern Indiana Public Service Company under ES15–33.
Filed Date: 6/10/15.
Accession Number: 20150610–5340.
Comments Due: 5 p.m. ET 7/1/15.

Take notice that the Commission received the following qualifying facility filings:

Docket Numbers: QF15–828–000.
Applicants: HP Hood LLC.
Description: Form 556 of HP Hood LLC.
Filed Date: 6/11/15.
Accession Number: 20150611–5097.
Comments Due: None Applicable.

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 11, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–14866 Filed 6–16–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL15–74–000]

Notice of Complaint

COALITION OF EASTSIDE NEIGHBORHOODS FOR SENSIBLE ENERGY (CENSE), a nonprofit Washington corporation; CITIZENS FOR SANE EASTSIDE ENERGY (CSEE), a nonprofit Washington corporation; LARRY G. JOHNSON and GLENNA F. WHITE, husband and wife; and STEVEN D. O'DONNELL, individually;

v.

PUGET SOUND ENERGY, a for-profit Washington corporation; SEATTLE CITY LIGHT, a public utility and department of the City of Seattle; BONNEVILLE POWER ADMINISTRATION, a federal agency and marketing agent for federally owned Northwest power facilities; and COLUMBIAGRID, a nonprofit Washington corporation,

Take notice that on June 9, 2015, Coalition of Eastside Neighborhoods for Sensible Energy (CENSE), Citizens for Sane Eastside Energy (CSEE), Larry G. Johnson, Glenna F. White, and Steven D. O'Donnell (Complainants) filed a formal complaint against Puget Sound Energy, Seattle City Light, Bonneville Power Administration, and ColumbiaGrid (Respondents) pursuant to Section 206 of the Federal Power Act and the Commission's rules thereunder, alleging that the Respondents have violated the Commission's Orders 890, 1000 and 2000, as well as violations of contractual obligations they have entered into with the Commission that incorporate provisions and policies set out in those Orders, and for violations of the terms of their Open Access Transmission Tariffs (OATTs). Complainants certify that copies of the complaint were served on the contacts for Puget Sound Energy and Bonneville Power Administration, as listed on the Commission's list of Corporate Officials, and on Seattle City Light's and ColumbiaGrid's chief administrative officers.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

This filing is accessible on-line at *http://www.ferc.gov,* using the ''eLibrary'' link and is available for electronic review in the Commission's Public Reference Room in Washington, DC. There is an ''eSubscription'' link on the Web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance with any FERC Online service, please email *FERCOnlineSupport@ferc.gov,* or call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Comment Date: 5:00 p.m. Eastern Time on June 29, 2015.

Dated: June 10, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–14895 Filed 6–16–15; 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: RP14–540–000.
Applicants: Paiute Pipeline Company.
Description: Compliance filing per 154.501: Refund Report.
Filed Date: 5/8/15.
Accession Number: 20150508–5126.
Comments Due: 5 p.m. ET 6/17/15.

Docket Numbers: RP15–1050–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) rate filing per 154.204: TETLP Cleanup Filing June 2015 to be effective 7/9/2015.
Filed Date: 6/8/15.
Accession Number: 20150608–5100.
Comments Due: 5 p.m. ET 6/22/15.

Docket Numbers: RP15–1051–000.
Applicants: Northern Natural Gas Company.
Description: § 4(d) rate filing per 154.204: 20150608 Negotiated Rate to be effective 7/9/2015.
Filed Date: 6/8/15.
Accession Number: 20150608–5134.
Comments Due: 5 p.m. ET 6/22/15.

Docket Numbers: RP15–1052–000.
Applicants: Discovery Gas Transmission LLC.

Description: Compliance filing per 154.203: Order No. 801 Compliance Filing (System Map Migration to Web site) to be effective 7/9/2015.

Filed Date: 6/9/15.

Accession Number: 20150609–5079.

Comments Due: 5 p.m. ET 6/22/15.

Docket Numbers: RP15–1053–000.

Applicants: Black Marlin Pipeline Company.

Description: Compliance filing per 154.203: Order 801 Compliance—System Map Migration to Web site to be effective 7/9/2015.

Filed Date: 6/9/15.

Accession Number: 20150609–5109.

Comments Due: 5 p.m. ET 6/22/15.

Docket Numbers: RP15–1054–000.

Applicants: Texas Eastern Transmission, LP.

Description: § 4(d) rate filing per 154.204: Negotiated Rate—BP Energy 8937271 to be effective 7/1/2015.

Filed Date: 6/10/15.

Accession Number: 20150610–5047.

Comments Due: 5 p.m. ET 6/22/15.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and § 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP15–1044–001.

Applicants: Algonquin Gas Transmission, LLC.

Description: Tariff Amendment per 154.205(b): Amendment to RP15–1044–000 Filing to be effective 7/1/2015.

Filed Date: 6/9/15.

Accession Number: 20150609–5130.

Comments Due: 5 p.m. ET 6/17/15.

Any person desiring to protest in any of the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system by clicking on the links or querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated June 10, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–14893 Filed 6–16–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Commission Staff Attendance

The Federal Energy Regulatory Commission (Commission) hereby gives notice that members of the Commission's staff may attend the following meeting related to the transmission planning activities of ISO New England Inc.

ISO New England Inc. Planning Advisory Committee Meeting.

June 17, 2015, 9:30 a.m.–4:00 p.m. (Eastern Standard Time)

The above-referenced meeting will be held at: Doubletree Hotel, 5400 Computer Drive, Westborough, MA 01581.

The above-referenced meeting is open to stakeholders.

Further information may be found at: *http://www.iso-ne.com/committees/planning/planning-advisory.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. ER13–193, *ISO New England Inc.*

Docket No. ER13–196, *ISO New England Inc.*

Docket No. ER13–1957, *ISO New England Inc. et al.*

Docket No. ER13–1960, *ISO New England Inc. et al.*

For more information, contact Michael Cackoski, Office of Energy Market Regulation, Federal Energy Regulatory Commission at (202) 502–6169 or *Michael.Cackoski@ferc.gov.*

Dated: June 11, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–14870 Filed 6–16–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL15–73–000]

Duke Energy Corporation, Duke Energy Commercial Asset Management, Inc., and Duke Energy Lee II, LLC v. PJM Interconnection, L.L.C., and PJM Settlement, Inc.; PJM Interconnection, L.L.C.; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On June 9, 2015, the Commission issued an order in Docket No. EL15–73–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e (2012), instituting an investigation into the justness and reasonableness of aspects of PJM Interconnection, L.L.C.'s Open Access Transmission Tariff and Amended and Restated Operating Agreement. *Duke Energy Corp.,* 151 FERC ¶ 61,206 (2015).

The refund effective date in Docket No. EL15–73–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Dated: June 10, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–14894 Filed 6–16–15; 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 exempt wholesale generator filings:

Docket Numbers: EG15–90–000.

Applicants: Adelanto Solar, LLC.

Description: Adelanto Solar, LLC Amendment to the Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 6/9/15.

Accession Number: 20150609–5178.

Comments Due: 5 p.m. ET 6/30/15.

Docket Numbers: EG15–91–000.

Applicants: Adelanto Solar II, LLC.

Description: Adelanto Solar II, LLC Amendment to the Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 6/9/15.

Accession Number: 20150609–5179.

Comments Due: 5 p.m. ET 6/30/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–3223–005; ER10–2351–004; ER10–2875–011; ER10–2368–004; ER10–2352–004; ER10–2264–003; ER10–1581–013; ER10–2353–006; ER10–2876–011; ER10–2878–011; ER10–2354–005; ER10–2355–006; ER10–2879–011; ER10–2384–005; ER10–2383–005; ER10–2880–011; ER11–2107–005; ER11–2108–005; ER10–2888–014; ER13–1745–006; ER13–1803–007; ER13–1788–006; ER13–1789–006; ER13–1790–007; ER10–2896–011; ER10–2913–011; ER13–1791–006; ER13–1746–008; ER13–1799–006; ER13–1801–006; ER13–1802–006; ER10–2916–011; ER10–2915–011; ER12–1525–011; ER12–2019–010; ER10–2266–002; ER12–2398–010; ER11–3459–010; ER10–2931–011; ER13–1965–008; ER10–2969–011; ER11–4351–006; ER11–4308–014; ER11–2805–013; ER10–1580–013; ER10–2382–005; ER11–2856–016; ER10–2356–004; ER10–2357–005; ER13–2107–006; ER13–2020–006; ER13–2050–006; ER11–2857–016; ER10–2359–004; ER10–2360–004; ER10–2369–004; ER10–2947–011; ER10–2381–004; ER10–2575–004; ER10–2361–005.

Applicants: Indian River Power LLC, Jeffers Wind 20, LLC, Keystone Power LLC, Laredo Ridge Wind, LLC, Larswind, LLC, Long Beach Generation LLC, Long Beach Peakers LLC, Lookout WindPower LLC, Louisiana Generating LLC, Middletown Power, LLC, Midway-Sunset Cogeneration Company, Midwest Generation LLC, Montville Power LLC, Mountain Wind Power LLC, Mountain Wind Power II LLC, NEO Freehold-Gen LLC, North Community Turbines LLC, North Wind Turbines LLC, Norwalk Power LLC, NRG Bowline LLC, NRG California South LP, NRG Canal LLC, NRG Chalk Point LLC, NRG Delta LLC, NRG Energy Center Dover LLC, NRG Energy Center Paxton LLC, NRG Florida LP, NRG Marsh Landing LLC, NRG Potomac River LLC, NRG Power Midwest LP, NRG REMA LLC, NRG Rockford LLC, NRG Rockford II LLC, NRG Solar Alpine LLC, NRG Solar Avra Valley LLC, NRG Solar Blythe LLC, NRG Solar Borrego I LLC, NRG Solar Roadrunner LLC, NRG Sterlington Power LLC, NRG Wholesale Generation LP, Oswego Harbor Power LLC, Pinnacle Wind, LLC, Reliant Energy Northeast LLC, RRI Energy Services, LLC, Saguaro Power Company, a Ltd. Partnership, San Juan Mesa Wind Project, LLC, Sand Drag LLC, Sierra Wind, LLC, Sleeping Bear, LLC, Solar Partners I, LLC, Solar Partners II, LLC, Solar Partners VIII, LLC, Sun City Project LLC, Sunrise Power Company, LLC, TAIR Windfarm, LLC, Taloga Wind, LLC, Vienna Power LLC, Walnut Creek Energy, LLC, Watson Cogeneration Company, Wildorado Wind, LLC.

Description: Notice of Non-Material Change in Status of NRG MBR Sellers [Part 2].

Filed Date: 6/8/15.

Accession Number: 20150608–5266.

Comments Due: 5 p.m. ET 6/29/15.

Docket Numbers: ER15–1494–001.

Applicants: Convergent Energy and Power Inc.

Description: Tariff Amendment per 35.17(b): Petition for Acceptance of Initial Tariff, Waivers and Blanket Authority to be effective 6/15/2015.

Filed Date: 6/9/15.

Accession Number: 20150609–5135.

Comments Due: 5 p.m. ET 6/30/15.

Docket Numbers: ER15–1892–000.

Applicants: PacifiCorp.

Description: § 205(d) rate filing per 35.13(a)(2)(iii): PacifiCorp Energy Construction Agmt—Paisley to be effective 6/1/2015.

Filed Date: 6/9/15.

Accession Number: 20150609–5103.

Comments Due: 5 p.m. ET 6/30/15.

Docket Numbers: ER15–1893–000.

Applicants: Censtar Energy Corp.

Description: Tariff Withdrawal per 35.15: CenStar Energy Corp. Cancellation of MBR Tariff to be effective 6/10/2015.

Filed Date: 6/9/15.

Accession Number: 20150609–5110.

Comments Due: 5 p.m. ET 6/30/15.

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 10, 2015.

Nathaniel J. Davis, Sr.,

Deputy Secretary.

[FR Doc. 2015–14892 Filed 6–16–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9100–036]

Riverdale Power and Electric Company, Inc.; Notice Soliciting Applications

On May 31, 2012, Riverdale Power and Electric Company, Inc. (Riverdale or licensee) filed a Notice of Intent (NOI) to file an application for an exemption from licensing for its Riverdale Mills Project, No. 9100, pursuant to section 16.19(b) of the Commission's regulations. The existing license for Project No. 9100 expires on May 31, 2017.

The Riverdale Mills Project currently operates with a capacity of 150-kilowatts (kW); however, in its NOI, the licensee indicated that it intends to increase capacity to 420 kW. The project is located on the Blackstone River, in the town of Northbridge, Worcester County, Massachusetts. The project does not occupy any federal lands.

The principal project works consist of: (1) A 10-foot-high, 142-foot-long dam with 6 bays containing stoplogs and flashboards with a crest elevation of 262.35 feet above mean sea level; (2) an 11.8-acre impoundment; (3) three sluiceways; (4) a 150-kilowatt turbine-generator unit located in a mill building; (5) a 231-foot-long tailrace; and (6) appurtenant facilities.

Pursuant to section 16.20(c) of the Commission's regulations, an existing licensee with a minor license not subject to sections 14 and 15 of the Federal Power Act must file an application for a subsequent license at least 24 months prior to the expiration of the current license. As stated above, Riverdale's NOI indicated it would be filing an application for an exemption from licensing; however, it did not file an application for a subsequent license or an application for exemption from licensing for the Riverdale Mills Project by the May 31, 2015, deadline. Therefore, pursuant to section 16.24(b)(2) of the Commission's regulations, Riverdale is prohibited from filing an application either individually or in conjunction with other entities for the Riverdale Mills Project.

Pursuant to section 16.25 of the Commission's regulations, we are soliciting applications from potential applicants other than the existing licensee. Interested parties have 90 days from the date of this notice to file a NOI to file an application for a subsequent license or exemption from licensing. An application for subsequent license or

exemption for the Riverdale Mills Project (No. 9100) must be filed within 18 months of the date of filing the NOI.

Questions concerning this notice should be directed to Dr. Nicholas Palso at (202) 502–8854 or *nicholas.palso@ferc.gov.*

Dated: June 11, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–14873 Filed 6–16–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–506–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Request Under Blanket Authorization

Take notice that on June 1, 2015, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 State Highway 56, Owensboro, Kentucky 42301, filed in Docket No. CP15–506–000, a prior notice request pursuant to sections 157.205, 157.210 and 157.211 of the Commission's regulations under the Natural Gas Act (NGA) as amended, requesting authorization to construct its Ameren Delivery Project to provide an additional 3,650 dekatherms per day of firm transportation service to Union Electric Company d/b/a Ameren Missouri (Ameren) in Boone County, Missouri. Southern Star proposes to: (i) increase Turbine T1402 by 200 horsepower through a combustor replacement at the Columbia Compressor Station located in Boone County, Missouri; (ii) modify Engine # 2 at the Concordia Compressor Station located in Johnson County, Missouri; (iii) modify SCADA and load controls for both compressor stations; and (iv) construct a new delivery interconnect with Ameren. Southern Star estimates the cost of the Ameren Delivery Project to be $1,966,000, all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or TTY, contact (202) 502–8659.

Any questions concerning this application may be directed to David N. Roberts, Regulatory Compliance Analyst Staff, Southern Star Central Gas Pipeline, Inc., 4700 State Highway 76, Owensboro, Kentucky 42301, by telephone at (270) 852–4654, or by email at *David.N.Roberts@sscgp.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenter, will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and seven copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: June 11, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–14867 Filed 6–16–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Public Availability of FY 2014 Service Contract Inventories and Supplemental Data

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of public availability of FY 2014 service contract inventories and supplemental data.

SUMMARY: In accordance with Section 743 of Division C of the Consolidated Appropriations Act of 2010 (*Pub. L. 111–117*), the Federal Energy Regulatory Commission (FERC) is publishing this notice to advise the public on the availability of the FY 2014 Service Contract Inventory, a report that analyzes the Commission's FY 2014 Service Contract Inventory and an inventory supplement that identifies the amount invoiced and direct labor hours for covered service contract actions.

The service contract inventory provides information on service contract actions over $25,000 that FERC completed in FY 2014. The information is organized by function to show how contracted resources are distributed throughout the agency. The inventory has been developed in accordance with guidance issued on November 5, 2010, by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP).

OFPP's guidance is available at *http://www.whitehouse.gov/sites/default/files/omb/procurement/memo/service-contract-inventories-guidance-11052010.pdf.* On December 19, 2011, OFPP issued additional guidance available at *http://www.whitehouse.gov/*

sites/default/files/omb/procurement/memo/service-contract-inventory-guidance.pdf. FERC has posted its FY 2014 inventory and summary at the following link: *http://www.ferc.gov/about/offices/oed/oed-fo/oed-acquisition.asp.*

FOR FURTHER INFORMATION CONTACT: Katharine Lindner, Acquisition Services Division, Office of the Executive Director, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6044, *katharine.lindner@ferc.gov.*

Dated: June 11, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–14871 Filed 6–16–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. Cp15–507–000]

Southern Star Central Gas Pipeline, Inc.; Notice of Request Under Blanket Authorization

Take notice that on June 2, 2015, Southern Star Central Gas Pipeline, Inc. (Southern Star), 4700 State Highway 56, Owensboro, Kentucky 42301, filed a prior notice application pursuant to sections 157.205 and 157.211 of the Federal Energy Regulatory Commission's (Commission) regulations under the Natural Gas Act (NGA), and Southern Star's blanket certificate issued in Docket No. CP82–479–000. Southern Star seeks authorization to construct, own, operate and maintain a new delivery measurement facility for the Coffeyville Resources Refinery in Montgomery County, Kansas. The new gas service will constitute a bypass of Atmos Energy Corporation, a local distribution company, all as more fully set forth in the application, which is open to the public for inspection. The filing may also be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (866) 208–3676 or TTY, (202) 502–8659.

Any questions regarding this application should Phyllis K. Medley, Senior Analyst, Regulatory Compliance, Southern Star Central Gas Pipeline, Inc., 4700 State Highway 56, Owensboro, Kentucky 42301, or phone (270) 852–4653, or by email *phyllis.k.medley@sscgp.com.*

Any person or the Commission's staff may, within 60 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the allowed time for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Pursuant to section 157.9 of the Commission's rules, 18 CFR 157.9, within 90 days of this Notice the Commission staff will either: Complete its environmental assessment (EA) and place it into the Commission's public record (eLibrary) for this proceeding, or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or EA for this proposal. The filing of the EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

Persons who wish to comment only on the environmental review of this project should submit an original and two copies of their comments to the Secretary of the Commission. Environmental commenters will be placed on the Commission's environmental mailing list, will receive copies of the environmental documents, and will be notified of meetings associated with the Commission's environmental review process. Environmental commenters will not be required to serve copies of filed documents on all other parties. However, the non-party commenter will not receive copies of all documents filed by other parties or issued by the Commission (except for the mailing of environmental documents issued by the Commission) and will not have the right to seek court review of the Commission's final order.

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFiling'' link at *http://www.ferc.gov.* Persons unable to file electronically should submit an original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: June 11, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–14868 Filed 6–16–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2413–117]

Georgia Power Company; Notice of Proposed Restricted Service List for a Programmatic Agreement

Rule 2010 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.2010, provides that, to eliminate unnecessary expense or improve administrative efficiency, the Secretary may establish a restricted service list for a particular phase or issue in a proceeding. The restricted service list should contain the names of persons on the service list who, in the judgment of the decisional authority establishing the list, are active participants with respect to the phase or issue in the proceeding for which the list is established.

The Commission staff is consulting with the Georgia Department of Natural Resources—Historic Preservation Division (Georgia SHPO) and the Advisory Council on Historic Preservation (Advisory Council) pursuant to the Advisory Council's regulations, 36 CFR part 800, implementing section 106 of the National Historic Preservation Act, as amended (54 U.S.C. 306108), to prepare a Programmatic Agreement for managing properties included in, or eligible for inclusion in, the National Register of Historic Places at the Wallace Dam Pumped Storage Project.

The Programmatic Agreement, when executed by the Commission, the Georgia SHPO, and the Advisory Council, would satisfy the Commission's section 106 responsibilities for all individual undertakings carried out in accordance with the license until the license expires

or is terminated (36 CFR 800.13(e)). The Commission's responsibilities pursuant to section 106 for the project would be fulfilled through the Programmatic Agreement, which the Commission staff proposes to draft in consultation with certain parties listed below.

Georgia Power Company, as licensee for the Wallace Dam Pumped Storage Project, is invited to participate in consultations to develop the Programmatic Agreement and to sign as a concurring party to the Programmatic Agreement. For purposes of commenting on the Programmatic Agreement, we propose to restrict the service list for Project No. 2413–117 as follows:

Dr. John Eddins, Advisory Council on Historic Preservation, 401 F Street NW., Suite 308, Washington, DC 20001–2637

Christine Quinn, Georgia Department of Natural Resources—Historic Preservation Division, 254 Washington Street SW., Atlanta, GA 30334

Courtenay R. O'Mara, P.E., Southern Company Generation, 241 Ralph McGill Blvd. NE., BIN 10193, Atlanta, GA 30308

Joseph Charles, Georgia Power Company, 241 Ralph McGill Blvd. NE., BIN 10151, Atlanta, GA 30308

Wanda Greene, Georgia Power Company, 241 Ralph McGill Blvd. NE., BIN 10151, Atlanta, GA 30308

Hallie M. Meushaw, Troutman Sanders LLP, Bank of America Plaza, 600 Peachtree Street NE., Suite 5200, Atlanta, GA 30308

Thomas M. Dozier, District Ranger, Chattahoochee-Oconee National Forest, Oconee National Forest, 1199 Madison Road, Eatonton, GA 31024

Lisa C. Baker, Acting THPO, United Keetoowah Band of Cherokee Indians in Oklahoma, P.O. Box 746, Tahlequah, OK 74465

Tyler Howe, THPO, Eastern Band of Cherokee Indians, P.O. Box 455, Cherokee, NC 28719

Principal Chief Bill John Baker, Cherokee Nation, P.O. Box 948, Tahlequah, OK 74465

James Wettstaed, U.S. Forest Service, 1755 Cleveland HWY, Gainesville, GA 30501

Stacy Lundgren, U.S. Forest Service, 1199 Madison Road, Eatonton, GA 31024

Any person on the official service list for the above-captioned proceedings may request inclusion on the restricted service list, or may request that a restricted service list not be established, by filing a motion to that effect within 15 days of this notice date. A copy of any such motion must be filed with the Secretary of the Commission (888 First Street NE., Washington, DC 20426) and must be served on each person whose name appears on the official service list. If no such motions are filed, the restricted service list will be effective at the end of the 15 day period. Otherwise, a further notice will be issued ruling on the motion.

Dated: June 11, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–14872 Filed 6–16–15; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–9929–29–OW]

Notice of a Public Meeting: The National Drinking Water Advisory Council (NDWAC) Lead and Copper Rule Working Group Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a public meeting.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing a public meeting of the National Drinking Water Advisory Council (NDWAC) Lead and Copper Rule Working Group (LCRWG). The meeting is scheduled for June 24 and 25, 2015, in Arlington, VA. During this meeting, the LCRWG and EPA will focus discussions on the Lead and Copper Rule revisions and the final report of the working group's recommendations to the NDWAC.

DATES: The meeting on June 24, 2015, will be held from 9:00 a.m. to 5:00 p.m., eastern time, and on June 25, 2015, from 9:00 a.m. to 3:00 p.m., eastern time.

ADDRESS: The meeting will be held at the Cadmus Group Inc., 1555 Wilson Blvd., Suite 300, Arlington, VA, and will be open to the public. All attendees must sign in with the security desk and show photo identification to enter the building.

FOR FURTHER INFORMATION CONTACT: For more information about this meeting or to request written materials contact Lameka Smith, Standards and Risk Management Division, Office of Ground Water and Drinking Water; by phone at (202) 564–1629 or by email at *LCRWorkingGroup@epa.gov.* For additional information about the Lead and Copper Rule, please visit: *http://water.epa.gov/lawsregs/rulesregs/sdwa/lcr/index.cfm.*

SUPPLEMENTARY INFORMATION:

Details about Participating in the Meeting: Members of the public who would like to register for this meeting should contact Lameka Smith by June 23, 2015, by email at *LCRWorkingGroup@epa.gov* or by phone at 202–564–1629. The LCRWG will allocate 15 minutes for the public's input at the meeting on June 24th and 15 minutes on June 25th. Each oral statement will be limited to five minutes at the meeting. It is preferred that only one person present a statement on behalf of a group or organization. To ensure adequate time for public involvement, individuals or organizations interested in presenting an oral statement should notify Lameka Smith no later than June 22, 2015. Any person who wishes to file a written statement can do so before or after the LCRWG meeting. Written statements intended for the meeting must be received by June 22, 2015, to be distributed to all members of the working group before the meeting. Any statements received on or after the date specified will become part of the permanent file for the meeting and will be forwarded to the LCRWG members for their information.

Special Accommodations: For information on access or to request special accommodations for individuals with disabilities please contact Lameka Smith at (202) 564–1629, or by email at *LCRWorkingGroup@epa.gov,* at least 10 days prior to the meeting to give the EPA as much time as possible to process your request.

Dated: June 11, 2015.

Eric Bissonette,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 2015–14938 Filed 6–16–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPPT–2013–0677; FRL–9928–83]

Receipt of Test Data Under the Toxic Substances Control Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing its receipt of test data submitted pursuant to a test rule issued by EPA under the Toxic Substances Control Act (TSCA). As required by TSCA, this document identifies each chemical substance and/or mixture for which test data have been received; the uses or intended uses of such chemical substance and/or

mixture; and describes the nature of the test data received. Each chemical substance and/or mixture related to this announcement is identified in Unit I. under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: *For technical information contact:* Kathy Calvo, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–8089; email address: *calvo.kathy@epa.gov.*

For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Chemical Substances and/or Mixtures

Information about the following chemical substances and/or mixtures is provided in Unit IV.:

A. D-gluco-heptonic acid, monosodium salt, (2.xi.)- (CAS RN 31138–65–5).

B. 2,4-Hexadienoic acid, (E,E)- (CAS RN 110–44–1).

II. Federal Register Publication Requirement

Section 4(d) of TSCA (15 U.S.C. 2603(d)) requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under TSCA section 4 (15 U.S.C. 2603).

III. Docket Information

A docket, identified by the docket identification (ID) number EPA–HQ–OPPT–2013–0677, has been established for this **Federal Register** document that announces the receipt of data. Upon EPA's completion of its quality assurance review, the test data received will be added to the docket for the TSCA section 4 test rule that required the test data. Use the docket ID number provided in Unit IV. to access the test data in the docket for the related TSCA section 4 test rule.

The docket for this **Federal Register** document and the docket for each related TSCA section 4 test rule is available electronically at *http://www.regulations.gov* or in person at the Office of Pollution Prevention and Toxics Docket (OPPT Docket), Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 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 OPPT Docket is (202) 566–0280. Please review the visitor instructions and additional information about the docket available at *http://www.epa.gov/dockets.*

IV. Test Data Received

This unit contains the information required by TSCA section 4(d) for the test data received by EPA.

A. D-gluco-heptonic acid, monosodium salt, (2.xi.)- (CAS RN 31138–65–5).

1. *Chemical Uses:* Organic salt used as a chelating agent in cosmetics, dairy cleaners, bottle cleaners, food contact paper and paperboard, manufacturing, metal cleaning, kier boiling, caustic boil-off, paint stripping, boiler water additive for food processing, and as an ingredient in aluminum etchant. This chemical is also used as a sequestrant, latex stabilizer, and in intravenous pharmaceuticals.

2. *Applicable Test Rule:* Chemical testing requirements for second group of high production volume chemicals (HPV2), 40 CFR 799.5087.

3. *Test Data Received:* The following listing describes the nature of the test data received. The test data will be added to the docket for the applicable TSCA section 4 test rule and can be found by referencing the docket ID number provided. EPA reviews of test data will be added to the same docket upon completion.

Aquatic Toxicity (Daphnia) (C1). The docket ID number assigned to this data is EPA–HQ–OPPT–2007–0531.

B. 2,4-Hexadienoic acid, (E,E)- (CAS RN 110–44–1).

1. *Chemical Uses:* Sorbic acid is a mold and yeast inhibitor, mainly used in foods, animal feeds, tobacco, cosmetics, and pharmaceuticals, as well as in packing materials for these substances and in other products that come in contact with human or animal skin. As a food preservative, sorbic acid is used to reduce the total number of viable bacteria and double the refrigerated shelf life for fresh poultry. This chemical is also used as an intermediate in plasticizers and lubricants, to impregnate polyethylene wrappers for raw farm products, to improve characteristics of drying oils, in alkyd type coatings to improve gloss, and to improve milling characteristics of cold rubber.

2. *Applicable Test Rule:* Chemical testing requirements for second group of high production volume chemicals (HPV2), 40 CFR 799.5087.

3. *Test Data Received:* The following listing describes the nature of the test data received. The test data will be added to the docket for the applicable TSCA section 4 test rule and can be found by referencing the docket ID number provided. EPA reviews of test data will be added to the same docket upon completion.

Aquatic Toxicity (Algal) (C6). The docket ID number assigned to this data is EPA–HQ–OPPT–2007–0531.

Authority: 15 U.S.C. 2601 *et seq.*

Dated: June 8, 2015.

Maria J. Doa,

Director, Chemical Control Division, Office of Pollution Prevention and Toxics.

[FR Doc. 2015–14748 Filed 6–16–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA 820R15100, EPA 820R15101, EPA 820R15102, EPA 820R15103, EPA 820R15104; EPA–815R15010; FRL–9929–28–OW]

Availability of Health Effects Support Documents and Drinking Water Health Advisories for Cyanobacterial Toxins; and a Support Document Containing Recommendations for Managing Cyanotoxins in Drinking Water

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The Environmental Protection Agency (EPA) announces the release of Ten-Day Health Advisories (HAs) for two cyanobacterial toxins, microcystins and cylindrospermopsin. EPA also announces the release of Health Effect Support Documents (HESDs) for three cyanobacterial toxins: Microcystins, cylindrospermopsin, and anatoxin-a. The HESDs constitute a comprehensive review of the published literature on the chemical and physical properties of these toxins, the toxin synthesis and environmental fate, occurrence and exposure information, and health effects. The HESDs are used to develop HAs. Based on the reported occurrence, toxicology, and epidemiology data, EPA found there are adequate data to develop HAs for microcystins and cylindrospermopsin, but inadequate data to develop an HA for anatoxin-a. EPA's HAs provide states, drinking water utilities and the public with information on health effects of microcystins and cylindrospermopsin, analytical methods to test for cyanotoxins in water samples, and treatment technologies to remove

cyanobacterial toxins in drinking water. Additionally, EPA announces a support document for states and utilities to assist them as they consider whether and how to manage cyanobacterial toxins in drinking water. The recommendations in this document are intended to assist public drinking water systems (PWSs) manage the risks from cyanobacterial toxins in drinking water, including information and a framework that PWSs can consider in their cyanotoxin risk management efforts.

FOR FURTHER INFORMATION CONTACT: For information regarding the HAs or HESDs: Lesley D'Anglada, Office of Water, Health and Ecological Criteria Division (4304T), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 566–1125; email address: *danglada.lesley@epa.gov.* For information regarding recommendations for cyanotoxin management in drinking water: Hannah Holsinger, Office of Water, Office of Ground Water and Drinking Water (4607M), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; telephone number: (202) 564–0403; email address: *holsinger.hannah@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

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

1. *Electronic Access.* You may access this **Federal Register** document electronically from the Government Printing Office under the ''**Federal Register**'' listings at FDSys (*http://www.gpo.gov/fdsys/browse/collection.action?collectionCode=FR).* The Health Effects Support Documents and the Health Advisories for the cyanobacterial toxins are available on EPA's Web site at *http://water.epa.gov/drink/standards/hascience.cfm.* The Recommendations for Public Water Systems to Manage Cyanotoxins in Drinking Water document is available on EPA's Web site at *http://www2.epa.gov/nutrient-policy-data/guidelines-and-recommendations.*

II. What are cyanobacterial toxins and how are they produced?

Algae and cyanobacteria are natural components of fresh water; however, under favorable conditions, they can rapidly multiply causing ''blooms.'' Some cyanobacterial species can produce toxins (cyanotoxins) at levels that may be of concern for human health. These cyanobacterial toxins are of particular concern because of their potential impacts on drinking water and the potential to affect human health.

III. What are EPA's Health Advisories?

Under the Safe Drinking Water Act, EPA may publish Health Advisories (HAs) for contaminants that are not subject to any national primary drinking water regulation. 42 U.S.C. 300 g–1(b)(1)(F). EPA develops HAs to provide information on the chemical and physical properties, occurrence and exposure, health effects, quantification of toxicological effects, other regulatory standards, analytical methods, and treatment technology for drinking water contaminants. HAs describe concentrations of drinking water contaminants at which adverse health effects are not anticipated to occur over specific exposure durations (*e.g.,* one-day, ten-days, several years, and a lifetime). HAs also contain a margin of safety to address database uncertainties. HAs serve as informal technical guidance to assist federal, state and local officials, as well as managers of public or community water systems in protecting public health when emergency spills or contamination situations occur. They are not regulations and should not be construed as legally enforceable federal standards. HAs may change as new information becomes available.

IV. Information on EPA's Ten-Day Health Advisories for the Cyanobacterial Toxins, Cylindrospermopsin and Microcystins

Today, EPA is making available the HA values for the cyanobacterial toxins microcystins and cylindrospermopsin. EPA recommends 0.3 micrograms per liter for microcystins and 0.7 micrograms per liter for cylindrospermopsin as levels not to be exceeded in drinking water for bottle-fed infants and young children of pre-school age. For school-age children through adults, the health advisory values for drinking water are 1.6 micrograms per liter for microcystins and 3 micrograms per liter for cylindrospermopsin. The HA values are based on exposure for ten days.

V. Information on EPA's Support Document To Assist States and Utilities in Managing Cyanobacterial Toxins

EPA also announces the release of a cyanotoxin management document that is a companion to the HAs for microcystins and cylindrospermopsin. The document is intended to assist PWSs that choose to develop system-specific plans for evaluating their source waters for vulnerability to contamination by microcystins and cylindrospermopsin. It provides information and a framework that PWSs and others (as appropriate) can consider to inform their decisions on managing the risks from cyanotoxins to drinking water.

Dated: June 10, 2015.

Kenneth J. Kopocis,

Deputy Assistant Administrator, Office of Water.

[FR Doc. 2015–14936 Filed 6–16–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2015–0276; FRL–9927–37]

Draft Test Guidelines; Series 810—Product Performance Test Guidelines; Notice of Availability and Request for Comments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability for comment of several 810 series, non-binding, draft test guidelines developed by the Office of Chemical Safety and Pollution Prevention (OCSPP). The test guidelines provide guidance on conducting testing by the public and companies that are subject to EPA data submission requirements under OCSPP's major statutory mandates.

DATES: Comments must be received on or before August 17, 2015.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2015–0276, 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:* OPP 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 commenting or visiting the docket, along with more information about dockets generally, is available at *http://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Melissa

Chun, Regulatory Coordination Staff (7101M), Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–1605; email address: *chun.melissa@epa.gov.*

For technical information contact: Stephen Tomasino, Biological and Economic Analysis Division (7503P), Office of Pesticide Programs, Environmental Protection Agency, Environmental Science Center, 701 Mapes Road, Ft. Meade, MD 20755–5350; telephone number: (410) 305–2976; email address: *tomasino.stephen@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. Although this action may be of particular interest to those persons who are or may be required to conduct testing of pesticides and other chemical substances for submission of data to EPA under the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq.,* and/or the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

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

1. *Submitting CBI.* Do not submit this information to EPA through 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 EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed 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 preparing and submitting your comments, see the commenting tips at *http://www.epa.gov/dockets/comments.html.*

3. *Electronic access to the OCSPP Test Guidelines.* You may access the guidelines in regulations.gov at *http://www.regulations.gov,* grouped by series under docket ID numbers: EPA–HQ–OPPT–2009–0150 through EPA–HQ–OPPT–2009–0159, and EPA–HQ–OPPT–2009–0576.

II. Background

The test guidelines serve as a compendium of accepted scientific methodologies and protocols that are intended to provide data to inform regulatory decisions under TSCA, FIFRA, and/or FFDCA. The test guidelines provide guidance for conducting the test, and are also used by EPA, the public, and companies that are subject to data submission requirements under TSCA, FIFRA, and/or FFDCA.

As guidance documents, the test guidelines are not binding on either EPA or any outside parties, and EPA may depart from the test guidelines where circumstances warrant and without prior notice. At places in these guidance documents, the Agency uses the word ''should.'' In these guidance documents, use of ''should'' with regard to an action means that the action is recommended rather than mandatory. The procedures contained in the test guidelines are recommended for generating the data that are the subject of the test guidelines, but EPA recognizes that departures may be appropriate in specific situations. You may propose alternatives to the recommendations described in the test guidelines, and the Agency will assess them for appropriateness on a case-by-case basis.

III. What action is EPA taking?

EPA is making available for comment the following 810 Series draft test guidelines: OCSPP Test Guideline 810.2000—General Considerations for Testing Antimicrobial Agents, OCSPP Test Guideline 810.2100—Sterilants & Sporicides Recommendations for Efficacy Testing, and OCSPP Test Guideline 810.2200—Disinfectants for Use on Hard Surfaces—Efficacy Data Recommendations.

The Agency published the notice announcing the final test guidelines for these product performance testing guidelines for antimicrobial agents in the **Federal Register** of March 16, 2012 (77 FR 15750) (FRL–9332–4). Since then, the Agency has received information from the users that these test guidelines are confusing and in some cases, inaccurate. The test guidelines have been re-formatted to be more user friendly, correct technical information, and include updates from policy documents published after 2012. As noted in section I.B.3 of this notice, the public can access the guidelines in regulations.gov at *http://www.regulations.gov,* grouped by series under docket ID numbers: EPA–HQ–OPPT–2009–0150 through EPA–HQ–OPPT–2009–0159, and EPA–HQ–OPPT–2009–0576.

Authority: 7 U.S.C. 136 *et seq.;* 15 U.S.C. 2601 *et seq.;* 21 U.S.C. 301 *et seq.*

Dated: June 4, 2015.

James Jones,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2015–14955 Filed 6–16–15; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection Renewals; Comment Request

Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on the renewal of existing collections of information, as required by the Paperwork Reduction Act of 1995. On April 10, 2015, (80 FR 19318), the FDIC requested comment for 60 days on a proposal to renew the following collections of information: (1) Recordkeeping and Confirmation Requirements for Securities Transactions (3064–0028); (2) Interagency Notice of Change in Director or Executive Officer (3064–0097); (3) Certification of Compliance with Mandatory Bars to Employment (3064–0121); (4) Customer Assistance (3064–0134); and, (5) Notice Regarding Assessment Credits (3064–0151). No comments were received. The FDIC hereby gives notice of its plan to submit to OMB a request to approve the renewal of these collections, and again invites comment on this renewal.

DATES: Comments must be submitted on or before July 17, 2015.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *http://www.fdic.gov/regulations/laws/federal/.*

• *Email: comments@fdic.gov* Include the name and number of the collection in the subject line of the message.

• *Mail:* Gary A. Kuiper (202–898–3877), Counsel, MB–3074, John W. Popeo (202–898–6923), Counsel, MB–3007, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

• *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Gary A. Kuiper or John Popeo, at the FDIC address above.

SUPPLEMENTARY INFORMATION: *Proposal to renew the following currently-approved collections of information:*

1. *Title:* Recordkeeping and Confirmation Requirements for Securities Transactions.

OMB Number: 3064–0028.

Frequency of Response: On occasion.

Affected Public: Business or Other Financial Institutions.

Estimated Number of Respondents: 4,534.

Estimated Time per Response: 27.91 hours.

Total Annual Burden: 126,544 hours.

General Description of Collection: The collection of information requirements are contained in 12 CFR part 344. The purpose of the regulation is to ensure that purchasers of securities in transactions affected by insured state nonmember banks are provided with adequate records concerning the transactions. The regulation is also designed to ensure that insured state nonmember banks maintain adequate records and controls with respect to the securities transactions they effect.

2. *Title:* Interagency Notice of Change in Director or Executive Officer.

OMB Number: 3064–0097.

Affected Public: Business or Other Financial Institutions.

Estimated Number of Respondents: 840.

Frequency of Response: On occasion.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden: 1,680 hours.

General Description of Collection: Certain insured state nonmember banks must notify the FDIC of the addition of a director or the employment of a senior executive officer.

3. *Title:* Certification of Compliance with Mandatory Bars to Employment.

OMB Number: 3064–0121.

Form Number: FDIC 7300/06.

Frequency of Response: On occasion.

Affected Public: Business or Other Financial Institutions.

Estimated Number of Respondents: 600.

Estimated Time per Response: 10 minutes.

Total Annual Burden: 100 hours.

General Description of Collection: Prior to an offer of employment, FDIC job applicants must sign a certification that they have not been convicted of a felony or been in other circumstances that prohibit person from becoming employed by, or providing services to, the FDIC.

4. *Title:* Customer Assistance.

OMB Number: 3064–0134.

Form Number: FDIC Forms 6422/04; 6422/11.

Affected Public: Individuals, Households, Business or Financial Institutions.

Estimated Number of Respondents: 15,000.

Estimated Time per Response: .5 hours.

Total Annual Burden: 7,500 hours.

General Description of Collection: This collection facilitates the collection of information from customers of financial institutions that have inquiries or complaints about service. Customers or businesses may document their complaints or inquiries to the FDIC using a letter or optional forms (Form 6422/04; 6422/11). The Forms are used to facilitate online completion and submission of the forms and to shorten FDIC response times by making it easier to identify the nature of the complaint and to route the customer or business inquiry to the appropriate FDIC contact.

5. *Title:* Notice Regarding Assessment Credits.

OMB Number: 3064–0151.

Frequency of Response: On occasion.

Affected Public: FDIC-insured institutions.

Estimated Number of Respondents: 4.

Estimated Time per Response: 2 hours.

Estimated Total Annual Burden: 8 hours.

General Description of Collection: FDIC-insured institutions must notify the FDIC if deposit insurance assessment credits are transferred, *e.g.,* through a sale of the credits or through a merger, in order to obtain recognition of the transfer.

Request for Comment

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the collections of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Dated at Washington, DC, this 11th day of June, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–14795 Filed 6–16–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice to All Interested Parties of the Termination of the Receivership of 10414 Polk County Bank, Johnson, IA

NOTICE IS HEREBY GIVEN that the Federal Deposit Insurance Corporation (''FDIC'') as Receiver for Polk County Bank, Johnson, IA (''the Receiver'') intends to terminate its receivership for said institution. The FDIC was appointed receiver of Polk County Bank on November 18, 2011. The liquidation of the receivership assets has been completed. To the extent permitted by available funds and in accordance with law, the Receiver will be making a final dividend payment to proven creditors.

Based upon the foregoing, the Receiver has determined that the continued existence of the receivership will serve no useful purpose. Consequently, notice is given that the receivership shall be terminated, to be effective no sooner than thirty days after the date of this Notice. If any person wishes to comment concerning the termination of the receivership, such comment must be made in writing and sent within thirty days of the date of this Notice to: Federal Deposit Insurance Corporation, Division of Resolutions and Receiverships, Attention: Receivership Oversight Department 32.1, 1601 Bryan Street, Dallas, TX 75201.

No comments concerning the termination of this receivership will be

considered which are not sent within this time frame.

Dated: June 11, 2015.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 2015–14773 Filed 6–16–15; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 13, 2015.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President), 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Heartland Financial USA, Inc.,* Dubuque, Iowa; to acquire 100 percent of the voting shares of First Scottsdale Bank, N.A., Scottsdale, Arizona.

Board of Governors of the Federal Reserve System, June 12, 2015.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2015–14851 Filed 6–16–15; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act (PRA), to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the PRA Submission, supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before August 17, 2015.

ADDRESSES: You may submit comments, identified by *Form 1522/1523, Form1680/1681/1682/1683, or Form H(e),* by any of the following methods:

- Agency Web site: *http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- Federal eRulemaking Portal: *http://www.regulations.gov.* Follow the instructions for submitting comments.
- Email: *regs.comments@federalreserve.gov.* Include OMB number in the subject line of the message.
- FAX: (202) 452–3819 or (202) 452–3102.
- Mail: Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *http://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW.) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer—Shagufta Ahmed—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street NW., Washington, DC 20503 or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB's public docket files, once approved. These documents will also be made available on the Federal Reserve Board's public Web site at: *http://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi– Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452–3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for Comment on Information Collection Proposal

The following information collection, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or start up costs and costs of operation, maintenance,

and purchase of services to provide information.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports

1. Report title: Notice of Mutual Holding Company Reorganization and the Application for Approval of a Minority Stock Issuance by a Savings Association Subsidiary of a Mutual Holding Company.

Agency form number: Form 1522; Form 1523.

OMB control number: 7100–0340.

Frequency: On occasion.

Reporters: Mutual savings associations and savings association subsidiaries or subsidiary holding companies of a mutual holding company.

Estimated annual reporting hours: Form 1522: 400 hours; Form 1523: 1,050 hours.

Estimated average hours per response: Form 1522: 400 hours; Form 1523: 350 hours.

Number of respondents: Form 1522: 1; Form 1523: 3.

General description of report: Forms 1522 and 1523 are mandatory and authorized pursuant to section 10 of the Home Owners' Loan Act (HOLA). Section 10 of HOLA (''Regulations of holding companies'') provides generally that ''[t]he Board is authorized to issue such regulations . . . as the Board deems necessary or appropriate to enable the Board to administer and carry out the purposes of this section, and to require compliance therewith and prevent evasions thereof.'' (12 U.S.C. 1467a(g)(1)). With respect to mutual holding companies, HOLA states that a mutual holding company ''shall be subject to such regulations as the Board may prescribe.'' (12 U.S.C. 1467a(o)(7)). Section 10 of HOLA also requires a savings and loan holding company to file ''such reports as may be required by the Board'' and provides that such reports ''shall contain such information concerning the operations of such savings and loan holding company and its subsidiaries as the Board may require.'' (12 U.S.C. 1467a(b)(2)).

The information on Forms 1522 and 1523 generally not considered confidential. However, the notificant or applicant may request confidential treatment for portions of these forms pursuant to exemption 4 of the Freedom of Information Act, (5 U.S.C. 552(b)(4)) if it believes disclosure of those portions would likely result in substantial competitive harm. All such requests for confidential treatment would need to be reviewed on a case-by-case basis and in response to a specific request for disclosure.

Abstract: Any mutual savings association that wishes to reorganize to form a mutual holding company must submit a notice (Form 1522) to the Federal Reserve. The notice provides details of the reorganization plan, which is to be approved by the majority of the association's board of directors and any acquired association. Details of the reorganization plan should contain a complete description of all significant terms of the proposed reorganization, shall attach and incorporate any Stock Issuance Plan proposed in connection with the reorganization plan and comply with other informational requirements specified in (12 CFR 239.6).

Any savings association subsidiary or subsidiary holding company of a mutual holding company must file an application (Form 1523) for minority stock issuance. Minority stock issuances applications are required to provide the Federal Reserve with information to determine whether mutual holding companies and their subsidiaries are conducting insider abuse or unsafe and unsound practices.

The Federal Reserve intends to update and revise the Notice and Application to conform to Federal Reserve standards in the near future.

2. Report title: Application for Conversion, Proxy Statement, Offering Circular, and Order Form.

Agency form number: Form 1680, Form 1681, Form 1682, Form 1683.

OMB control number: 7100–0335.

Frequency: On occasion.

Reporters: Mutual holding companies.

Estimated annual reporting hours: Form 1680: 2,990 hours; Form 1681: 50 hours; Form 1682: 1,50 hours; Form 1683: 10 hours.

Estimated average hours per response: Form 1680: 299 hours; Form 1681: 500 hours; Form 1682: 150 hours; Form 1683: 1 hour.

Number of respondents: Form 1680: 10; Form 1681: 10; Form 1682: 10; Form 1683: 10.

General description of report: The mutual stock conversion forms are mandatory and authorized by Home Owners' Loan Act (HOLA) section 10, which provides generally that ''the Board is authorized to issue such regulations . . . as the Board deems necessary or appropriate to enable the Board to administer and carry out the purposes of this section, and to require compliance therewith and prevent evasions thereof.'' (12 U.S.C. 1467a(g)(1)). With respect to mutual holding companies, HOLA states that a mutual holding company ''shall be subject to such regulations as the Board may prescribe.'' (12 U.S.C. 1467a(o)(7)). Section 10 of HOLA also requires a savings and loan holding company to file ''such reports as may be required by the Board'' and provides that such reports ''shall contain such information concerning the operations of such savings and loan holding company and its subsidiaries as the Board may require.'' (12 U.S.C. 1467a(b)(2).

Forms 1681, 1682, and 1683 are distributed to the owners of the mutual holding company; no issues of confidentiality should arise in connection with these forms. One of the elements required for the application on Form 1680 is a consolidated business plan showing how the capital acquired in the conversion will be used. Business plans are not considered confidential, although the applicant may request confidential treatment pursuant to sections (b)(4), of the Freedom of Information Act (5 U.S.C. 552(b)(4),) for portions of the business plan if disclosure would likely result in substantial competitive harm. All such requests for confidential treatment would need to be reviewed on a case-by-case basis and in response to a specific request for disclosure.

Abstract: Sections 5(i) (standard conversions) and 5(p) (supervisory conversions) of HOLA authorize mutual to stock conversions. The four individual forms are all one-time submissions that are used by mutual holding companies requesting approval to convert to a stock institution. The Federal Reserve intends to update and revise the mutual stock conversion application forms to conform to Federal Reserve standards in the near future.

3. Report title: Savings and Loan Holding Company Application.

Agency form number: Form H–(e).

OMB control number: 7100–0336.

Frequency: On occasion.

Reporters: Entities seeking prior approval to become a savings and loan holding company (SLHC).

Estimated annual reporting hours: 6,000 hours.

Estimated average hours per response: 500 hours.

Number of respondents: 12.

General description of report: The Savings and Loan Holding Company Application is mandatory and authorized pursuant to section 10 of HOLA, which provides that ''the Board is authorized to issue such regulations . . . as the Board deems necessary or appropriate to enable the Board to administer and carry out the purposes of this sections, and require compliance therewith and prevent evasions

thereof.'' (12 U.S.C. 1467a(g)(1)). Section 10 of HOLA also requires a savings and loan holding company to file ''such reports as may be required by the Board'' and provides that such reports ''shall contain such information concerning the operations of such savings and loan holding company and its subsidiaries as the Board may require (12 U.S.C. 1467a(b)(2).

The information on Form H–(e) is not considered confidential unless the applicant requests confidential treatment pursuant to exemption 4 or 6 of the Freedom of Information Act (5 U.S.C. 552(b)(4),(6)). All such requests for confidential treatment would need to be reviewed on a case-by-case basis and in response to a specific request for disclosure.

Abstract: The Federal Reserve analyzes each holding company application to determine whether the applicant meets the statutory criteria set forth in section 10(e) of the Home Owners' Loan Act (Act), as amended, to become a savings and loan holding company. The applications are reviewed for adequacy of answers to items and completeness in all material respects. The applications are event-generated and provide the Federal Reserve with information necessary to evaluate the proposed transaction. The Federal Reserve intends to update and revise the Application forms to conform to Federal Reserve standards in the near future.

Board of Governors of the Federal Reserve System, June 12, 2015.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2015–14862 Filed 6–16–15; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 80 FR 1417–1419, dated January 9, 2015) is amended to reflect the reorganization of the National Center for Health Statistics, Office of Public Health Scientific Services, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the title and function statements for the *Office of Research and Methodology (CPC13).*

After the title and the mission and function statements for the *Division of Health and Nutrition Examination Surveys (CPCG)* insert the following:

Division of Research and Methodology (CPCH). (1) Participates in the development of policy, long-range plans, and programs for NCHS; (2) plans, coordinates, stimulates and participates in NCHS' basic and applied research program, including but not limited to research in the fields of mathematical statistics, survey design and methodology, mathematics and operations research; (3) formulates statistical standards regarding survey design, data collection, coding, data analysis, data presentation, disclosure limitation, and statistical computing for all NCHS data systems and coordinates activities directed at the implementation and maintenance of these standards; (4) supports all of NCHS through consultation in the fields of mathematical statistics, survey design and methodology, cognition and survey measurement, mathematics and operations research, missing data problems, and data dissemination; (5) consults, collaborates and participates in research projects with HHS, CDC and other Federal organizations, State and local governments, universities, private research organizations, and international agencies and organizations; and (6) provides scientific services and facilities on a reimbursable basis to research and health policy communities, principally through the Center for Questionnaire Design and Evaluation Research and the Research Data Center.

Office of the Division Director (OD) (CPCH1). (1) Participates in the development of policy, long range plans, and programs for NCHS; (2) plans, coordinates, and stimulates the NCHS applied and basic research program which includes the fields of mathematical statistics, survey design and methodology, cognition and survey measurement, and automated statistical and graphical technologies, and conducts research in each of these fields; (3) formulates statistical standards regarding the survey design, data collection, coding, data analysis, data presentation, and statistical computing for all NCHS data systems and coordinates activities directed at the implementation and maintenance of these standards; (4) supports all of the NCHS basic and applied research activities by serving as NCHS' consultants in the fields of mathematical statistics, survey design and methodology, and cognition and survey measurement; (5) consults and collaborates on statistical research projects with PHS agencies and other Federal organizations, State and local governments, universities, private research organizations, and international health agencies; (6) provides administrative, management, and leadership functions for all DRM units.

Collaborating Center for Statistical Research and Survey Design (CPCHB). (1) Conducts basic research in mathematical and statistical theory, analysis, and computation to improve the efficiency, quality, confidentiality, and analytical utility of NCHS' data systems and products; (2) provides statistical consultation and technical assistance to all NCHS data systems on survey methods, quality control, and design of data systems; (3) investigates and develops new and improved statistical methods for analyzing public health data; (4) conducts basic research regarding the impact of sampling and non-sampling errors on statistical estimation and analysis and develops error profiles of sampling and non-sampling error for NCHS' complex data systems; (5) develops and recommends standards for data presentation, analysis, statistical computing, statistical disclosure limitation, survey design and methodology; (6) promotes the publication and dissemination of research on statistical theory, survey design, and methods research; (7) develops sample design and statistical estimation procedures for NCHS surveys; (8) develops statistical models and innovative survey techniques to extend the analytic potential of NCHS complex sample surveys; and (9) plans for future use of Center data through a continuous research program on statistical theory, survey design, statistical and mathematical methods, statistical computing, and data analysis.

Collaborating Center for Questionnaire Design and Evaluation Research (CPCH). (1) Promotes and advances interdisciplinary research on the cognitive aspects of survey methods; (2) conducts basic and applied research on the cognitive aspects of the survey response process in order to improve the efficiency and quality of NCHS' data systems; (3) develops new methods for investigating the cognitive aspects of survey data collection and presentation; (4) promotes the dissemination and implementation of cognitive research methods through publications and presentations; (5) develops and tests

NCHS survey data collection instruments using cognitive laboratory methods and related innovative questionnaire evaluation methods; (6) provides consultation and technical assistance to NCHS' data systems on questionnaire design issues and other related data collection procedures; (7) conducts a program of reimbursable applied and basic research, technical assistance, and consultation on questionnaire design and cognitive aspects of survey methods.

Research Data Center (CPCHD). (1) Facilitates the access of restricted use data to the research community; (2) conducts research in areas related to the development, linkage, analysis, and dissemination of survey data; (3) provides consultation and technical assistance to programs on data collection procedures, confidentiality, disclosure limitation, data linkage, and dissemination; (4) serves as NCHS' primary venue for disseminating restricted use data to the research community; (5) supports scientific research on disclosure limitation of surveys using micro-data files.

James Seligman,

Acting Chief Operating Officer, Centers for Disease Control and Prevention.

[FR Doc. 2015–14808 Filed 6–16–15; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30-Day–15–0222]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The notice for the proposed information collection is published to obtain comments from the public and affected agencies.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address any of the following: (a) 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; (b) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) Enhance the quality, utility, and clarity of the information to be collected; (d) 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; and (e) Assess information collection costs.

To request additional information on the proposed project or to obtain a copy of the information collection plan and instruments, call (404) 639–7570 or send an email to *omb@cdc.gov.* Written comments and/or suggestions regarding the items contained in this notice should be directed to the Attention: CDC Desk Officer, Office of Management and Budget, Washington, DC 20503 or by fax to (202) 395–5806. Written comments should be received within 30 days of this notice.

Proposed Project

Questionnaire Design Research Laboratory (QDRL)—(OMB No. 0920–0222, expires 6/30/2015)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

The Questionnaire Design Research Laboratory (QDRL) is the focal point within NCHS for questionnaire development, pre-testing, and evaluation activities for CDC surveys (such as the NCHS National Health Interview Survey, OMB No. 0920–0214) and other federally sponsored surveys; however, question development and evaluation activities are conducted throughout NCHS. NCHS is requesting 3 years of OMB Clearance for this generic submission. This revision is a request for additional burden hours due to anticipated increase in the number and size of projects being undertaken in the next three years.

The QDRL and other NCHS programs conduct cognitive interviews, focus groups, in-depth or ethnographic interviews, usability tests, field tests/pilot interviews, and experimental research in laboratory and field settings, both for applied questionnaire development and evaluation as well as more basic research on response errors in surveys.

Various techniques to evaluate interviewer administered, self-administered, telephone, Computer Assisted Personal Interviewing (CAPI), Computer Assisted Self-Interviewing (CASI), Audio Computer-Assisted Self-Interviewing (ACASI), and web-based questionnaires are used.

The most common questionnaire evaluation method is the cognitive interview. These evaluations are conducted by the QDRL. The interview structure consists of respondents first answering a draft survey question and then providing textual information to reveal the processes involved in answering the test question. Specifically, cognitive interview respondents are asked to describe how and why they answered the question as they did. Through the interviewing process, various types of question-response problems that would not normally be identified in a traditional survey interview, such as interpretive errors and recall accuracy, are uncovered. By conducting a comparative analysis of cognitive interviews, it is also possible to determine whether particular interpretive patterns occur within particular sub-groups of the population. Interviews are generally conducted in small rounds of 20–30 interviews; ideally, the questionnaire is re-worked between rounds, and revisions are tested iteratively until interviews yield relatively few new insights.

Cognitive interviewing is inexpensive and provides useful data on questionnaire performance while minimizing respondent burden. Cognitive interviewing offers a detailed depiction of meanings and processes used by respondents to answer questions—processes that ultimately produce the survey data. As such, the method offers an insight that can transform understanding of question validity and response error. Documented findings from these studies represent tangible evidence of how the question performs. Such documentation also serves CDC data users, allowing them to be critical users in their approach and application of the data.

In addition to cognitive interviewing, a number of other qualitative and quantitative methods are used to investigate and research survey response errors and the survey response process. These methods include conducting focus groups, usability tests, in-depth or ethnographic interviews, and the administration and analysis of questions in both representative and non-representative field tests. Focus groups are conducted by the NCHS QDRL. They are group interviews whose primary purpose is to elicit the basic sociocultural understandings and terminology that form the basis of questionnaire design. Each group

typically consists of one moderator and 4 to 10 participants, depending on the research question. In-depth or ethnographic interviews are one-on-one interviews designed to elicit the understandings or terminology that are necessary for question design, as well as to gather detailed information that can contribute to the analysis of both qualitative and quantitative data. Usability tests are typically one-on-one interviews that are used to determine how a given survey or information collection tool functions in the field, and how the mode and layout of the instrument itself may contribute to survey response error and the survey response process.

In addition to these qualitative methods, NCHS also uses various tools to obtain quantitative data, which can be analyzed alone or analyzed alongside qualitative data to give a much fuller accounting of the survey response process. For instance, phone, internet, mail, and in-person follow-up interviews of previous NCHS survey respondents may be used to test the validity of survey questions and questionnaires and to obtain more detailed information that cannot be gathered on the original survey. Additionally, field or pilot tests may be conducted on both representative and non-representative samples, including those obtained from commercial survey and web panel vendors. Beyond looking at traditional measures of survey errors (such as missing rates, item non-response, and don't know rates), these pilot tests can be used to run experimental designs in order to capture how different questions function in a field setting.

There are no costs to respondents other than their time. The total estimated annual burden hours are 4,383.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Form name	Number of respondents	Number of responses per respondent	Average burden per response (in hrs.)
Individuals or households	Eligibility Screeners	4,000	1	5/60
Individuals or households	Developmental Questionnaires	3,900	1	1
Individuals or households	Focus group documents	100	1	1.5

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–14786 Filed 6–16–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60-Day–15–0134; Docket No. CDC–2015–0039]

Proposed Data Collection Submitted for Public Comment and Recommendations

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice with comment period.

SUMMARY: The Centers for Disease Control and Prevention (CDC), as part of its continuing efforts to reduce public burden and maximize the utility of government information, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995. This notice invites comment on a revision to several of the information collections pertaining to the importation of dogs as outlined in the currently approved information collection entitled ''Foreign Quarantine Regulations (42 CFR part 71)''.

DATES: Written comments must be received on or before August 17, 2015.

ADDRESSES: You may submit comments, identified by Docket No. CDC–2015–0039 by any of the following methods:

- *Federal eRulemaking Portal:* Regulation.gov. Follow the instructions for submitting comments.
- *Mail:* Leroy A. Richardson, Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329.

Instructions: All submissions received must include the agency name and Docket Number. All relevant comments received will be posted without change to Regulations.gov, including any personal information provided. For access to the docket to read background documents or comments received, go to Regulations.gov.

Please note: All public comment should be submitted through the Federal eRulemaking portal (*Regulations.gov*) or by U.S. mail to the address listed above.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the information collection plan and instruments, contact the Information Collection Review Office, Centers for Disease Control and Prevention, 1600 Clifton Road NE., MS–D74, Atlanta, Georgia 30329; phone: 404–639–7570; Email: *omb@cdc.gov.*

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. In addition, the PRA also requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each new proposed collection, each proposed extension of existing collection of information, and each reinstatement of previously approved information collection before submitting the collection to OMB for approval. To comply with this requirement, we are publishing this notice of a proposed data collection as described below.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal

agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Proposed Project

Foreign Quarantine Regulations (42 CFR part 71)—Revision—(OMB Control No. 0920–0134, Expires September 30, 2017), National Center for Emerging and Zoonotic Infections Diseases (NCEZID), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

This information collection revision request is an effort to provide greater clarity surrounding paperwork requirements and focuses exclusively on certain information collections that pertain to importation of dogs into the United States. Specifically, CDC seeks to make the following changes:

- CDC is asking to correct a transcription error in the burden tables in section 12. Currently, the relevant IC reads: 71.51(b)(2) Dogs/cats: Certification of Confinement, Vaccination (CDC form 75.37). It should have been: 71.51(c)(2) Dogs: Certification of Confinement, Vaccination (CDC form 75.37).
- CDC is also proposing to replace the CDC form 75.37 NOTICE TO OWNERS AND IMPORTERS OF DOGS: Requirement for Dog Confinement with a new Application For Permission To Import A Dog Unimmunized Against Rabies, which, if the importer meets the criteria for importation, will be followed by a CDC-completed Permit to Conditionally Import a Dog Inadequately Immunized against Rabies—Single Entry
- CDC is also requesting approval to change and split the current information collection (IC) ''71.51(c)(2) Dogs/cats: Certification of Confinement, Vaccination (CDC form 75.37)'' into two separate ICs.
- CDC will include one modified IC: ''71.51(c)(2), (d) Application For Permission To Import A Dog Unimmunized Against Rabies''. This will include a reduced estimate of the numbers of these permits, formerly CDC form 75.37 NOTICE TO OWNERS AND IMPORTERS OF DOGS: Requirement for Dog Confinement, issued each year.
- CDC will include a separate IC pertaining to 71.51(c)(1), (d). The title for this IC is Valid Rabies Vaccination Certificate, which will include only the burden associated with rabies vaccination certificates.
- CDC is also including an information collection for 71.51(c)(i), (ii), and (iii) which provides exemption criteria for the importation of a dog without a rabies vaccination certificate.

CDC is not requesting changes to any of the other information collections included under OMB control number 0920–0134.

The total requested burden hours is 307,613. There is no burden to respondents other than the time taken to complete the reports or documentation for CDC.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Form name/CFR reference	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Maritime conveyance operators	71.21(a) Radio Report of death/illness—illness reports from ships (fillable PDF (individual case and cumulative report), phone, transcribed email).	2,000	1	2/60	67
Aircraft commander or operators	71.21(b) Death/Illness reports from aircrafts (verbal, no form).	1,700	1	2/60	57
Maritime conveyance operators	71.21(c) Gastrointestinal Illnesses reports 24 and 4 hours before arrival (MIDRS).	17,000	1	3/60	850
Maritime conveyance operators	71.21(c) Recordkeeping—Medical logs (no form, captains provide logs).	17,000	1	3/60	850
Isolated or Quarantined individuals	71.33(c) Report by persons in isolation or surveillance (verbal, no form).	11	1	3/60	1
Maritime conveyance operators	71.35 Report of death/illness during stay in port (verbal, no form).	5	1	30/60	3
Traveler	Locator Form used in an outbreak of public health significance.	2,700,000	1	5/60	225,000
Traveler	Locator Form used for reporting of an ill passenger(s).	800	1	5/60	67
Importer	71.51(c)(1), (d)—Valid Rabies Vaccination Certificates.	245,310	1	15/60	61,328
Importer	71.51(c)(i), (ii), and (iii) exemption criteria for the importation of a dog without a rabies vaccination certificate.	43,290	1	15/60	10,823
Importer	71.51(c)(2), (d) Application For Permission To Import A Dog Unimmunized Against Rabies.	1,400	1	15/60	350
Importer	71.51(b) (3) Dogs/cats: Record of sickness or deaths (no form, record review).	20	1	15/60	5

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Type of respondent	Form name/CFR reference	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total burden hours
Importer/Filer	CDC PGA Message Set for Importing Cats and Dogs.	30,000	1	15/60	7,500
Importer	71.52(d) Turtle Importation Permits (no form, just written request).	5	1	30/60	3
Importer	71.56(a)(2) African Rodents—Request for exemption (no form, written request only).	20	1	1	20
Importer/Filer	CDC PGA Message Set for Importing African Rodents.	60	1	15/60	15
Importers	71.55 Dead bodies (death certificates submitted).	5	1	1	5
Filer	71.56(a)(iii) Appeal (no form, written request only).	2	1	1	2
Filer/Importer	Statement or documentation of Non-infectiousness (Documented, no form; authority under 71.32(b)).	2,000	1	5/60	167
Importer/Filer	CDC PGA Message Set for Importing African Rodent and All Family Viverridae Products.	2,000	1	15/60	500
Total					307,613

Leroy A. Richardson,

Chief, Information Collection Review Office, Office of Scientific Integrity, Office of the Associate Director for Science, Office of the Director, Centers for Disease Control and Prevention.

[FR Doc. 2015–14787 Filed 6–16–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–10565]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, HHS.

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by *August 17, 2015:*

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, you may make your request using one of following:

1. Access CMS' Web site address at *http://www.cms.hhs.gov/PaperworkReductionActof1995.*

2. Email your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@cms.hhs.gov.*

3. Call the Reports Clearance Office at (410) 786–1326.

FOR FURTHER INFORMATION CONTACT: Reports Clearance Office at (410) 786–1326.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10565 Off-Cycle Submission of Summaries of Model of Care Changes

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register**

concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* New collection (Request for a new OMB control number); *Title of Information Collection:* Off-cycle Submission of Summaries of Model of Care Changes; *Use:* All Medicare Advantage (MA) Special Needs Plans (SNPs) must be approved by the National Committee for Quality Assurance (NCQA). The SNPs must submit Models of Care (MOC) as a component of the Medicare Advantage application process. Approval is based on NCQA's evaluation of SNPs using MOC scoring guidelines. Based on their scores, SNPs receive an approval for a period of 1-, 2-, or 3-years. We are developing an MOC off-cycle revision process so that SNPs can revise the MOC to modify its processes and strategies for providing care during their MOC approval period. We will require that SNPs submit summaries of their MOC revisions to CMS for NCQA evaluation when a SNP makes significant changes to its MOC as described in the annual Announcement of Medicare Capitation Rates and Medicare Advantage and Part D Payment Policies and Final Call letter for CY 2015 and CY2016. The NCQA will review the summary of changes to verify that the revisions are consistent with the acceptable, high quality standards as included in the original approved MOC. *Form Number:* CMS–10565 (OMB control number 0938-New); *Frequency:* Occasionally; *Affected Public:* Private sector (Business or other for-profits and Not-for-profit institutions); *Number of Respondents:* 313; *Total Annual Responses:* 62; *Total Annual Hours:* 252. (For policy questions regarding this collection contact Susan Radke at 410–786–4450).

Dated: June 11, 2015.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2015–14774 Filed 6–16–15; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Office of Refugee Resettlement Cash and Medical Assistance Program Quarterly Report on Expenditures and Obligations.

OMB No.: 0970–0407.

Description: The Office of Refugee Resettlement (ORR) reimburses, to the extent of available appropriations, certain non-federal costs for the provision of cash and medical assistance to refugees and other eligible persons, along with allowable expenses for the administration of the refugee resettlement program at the State level. States, Wilson/Fish projects (alternative projects for the administration of the refugee resettlement program), and State Replacement Designees currently submit the ORR–2 Financial Status Report in accordance with 45 CFR part 92 and 45 CFR part 74. This proposed data collection would collect financial status data (*i.e.,* amounts of expenditures and obligations) broken down by the four program components: refugee cash assistance, refugee medical assistance, health screening, and services for unaccompanied refugee minors as well as by program administration. This breakdown of financial status data on expenditures and obligations allows ORR to track program expenditures in greater detail to anticipate any funding issues and to meet the requirements of ORR regulations at 45 CFR 400.211 to collect these data for use in estimating annual costs of the refugee resettlement program. ORR must implement the methodology at 45 CFR 400.211 each year after receipt of its annual appropriation to ensure that the appropriated funds will be adequate for assistance to entering refugees. The estimating methodology prescribed in the ORR regulations requires the use of actual past costs by program component. In the event that the methodology indicates that appropriated funds are inadequate, ORR must take steps to reduce federal expenses, such as by limiting the number of months of eligibility for Refugee Cash Assistance and Refugee Medical Assistance. This proposed single-page report on expenditures and obligations will allow ORR to collect the necessary data to ensure that funds are adequate for the projected need and thereby meet the requirements of both the Refugee Act and ORR regulations.

Respondents: State Governments, Wilson/Fish Alternative Projects, State Replacement Designees.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Office of Refugee Resettlement Cash and Medical Assistance Program Quarterly Report on Expenditures and Obligations	58	4	1.50	348

Estimated Total Annual Burden Hours: 348.

Additional Information

Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Fax: 202–395–7285, Email: *OIRA_SUBMISSION@OMB.EOP.GOV*. Attn: Desk Officer for

the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–14814 Filed 6–16–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care Development Fund (CCDF)—Reporting Improper Payments—Instructions for States.

OMB No.: 0970–0323.

Description: Section 2 of the Improper Payments Act of 2002 provides for estimates and reports of improper payments by Federal agencies. Subpart K of 45 CFR, Part 98 will require States to prepare and submit a report of errors occurring in the administration of CCDF grant funds once every three years.

The Office of Child Care (OCC) is completing the third 3-year cycle of case record reviews to meet the requirements for reporting under IPIA. The current forms and instructions expire September 30, 2015. OCC is submitting the information collection for renewal clearance with minor changes. Responders will now have additional guidance and clarification in the instructions and errors have been corrected. New language incorporates requirements from the 2014 Child Care and Development Fund Block Grant Act passed in November 2014.

Respondents: State grantees, the District of Columbia, and Puerto Rico.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Sampling Decisions and Fieldwork Preparation Plan	17	1	106	1802
Record Review Worksheet	17	276	6.33	29,700.36
State Improper Authorizations for Payment Report	17	1	639	10,863
Corrective Action Plan	8	1	156	1248
Estimated Total Annual Burden Hours				43,613.36

Additional Information: Copies of the proposed collection may be obtained by writing to the Administration for Children and Families, Office of Planning, Research and Evaluation, 370 L'Enfant Promenade SW., Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection. Email address: *infocollection@acf.hhs.gov*.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, Email: *OIRA_SUBMISSION@OMB.EOP.GOV,* Attn: Desk Officer for the Administration for Children and Families.

Robert Sargis,

Reports Clearance Officer.

[FR Doc. 2015–14813 Filed 6–16–15; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[CFDA Number: 93.092]

Announcement of the Award of Single-Source Expansion Supplement Grants to Seven Personal Responsibility Education Program Innovative Strategies (PREIS) Grantees

AGENCY: Family and Youth Services Bureau, ACYF, ACF, HHS.

ACTION: Notice of the award of single-source expansion supplement grants to seven Personal Responsibility Education Program Innovative Strategies (PREIS) grantees.

SUMMARY: The Administration for Children and Families (ACF), Administration on Children, Youth and Families (ACYF), Family and Youth Services Bureau (FYSB), Division of Adolescent Development and Support (DADS), announces the award of single-source expansion supplement grants to seven PREIS grantees for the purpose of expanding retention and follow-up efforts for program participants. The funds will allow grantees to collect the increased data necessary to determine the program effectiveness and for the manualization of a validated curriculum and supporting documents.

DATES: The period of support under these supplements is September 30, 2014, through September 29, 2015.

FOR FURTHER INFORMATION CONTACT: LeBretia White, Manager, Adolescent Pregnancy Prevention Program, Division of Adolescent Development and Support, Family and Youth Services Bureau, 1250 Maryland Avenue SW., Suite 800, Washington, DC 20024. Telephone: 202–205–9605; Email: *LeBretia.White@acf.hhs.gov.*

SUPPLEMENTARY INFORMATION: In FY 2010, FYSB awarded 13 cooperative agreement grants under Funding Opportunity Announcement (FOA) OPHS/OAH/TPP PREP Tier 2–2010. Under this FOA, a total of $9.7 million was made available on a competitive basis to implement and test innovative strategies.

The supplemental funds will help the grantees increase retention and follow-up strategies for program participants. In turn, this will allow grantees to report significant program outcome data that will be integral to the evaluate the effectiveness of the implemented pregnancy prevention models used in grantee programming with populations that include youth in foster care and pregnant and parenting teens.

Seven PREIS grantees have requested supplemental funding awards. Their applications were assessed by a review panel for completeness and responsiveness in the categories of Objectives and Need for Assistance, Approach, and Budget and Budget Justification. The applications were assessed to have scored within a fundable range.

Single-source program expansion supplement awards are made to the following PREIS grantees:

Grantee organization	City	State	Supplement award amount
Child and Family Resources, Inc.	Tucson	AZ	$32,314
Children's Hospital of Los Angeles	Los Angeles	CA	115,898
Cicatelli Associates Inc.	New York	NY	130,000
Demoiselle2Femme	Chicago	IL	55,959
Education Development Center, Inc.	Newton	MA	55,560
Teen Outreach Pregnancy Services	Tucson	AZ	29,000
The Village for Families & Children, Inc	Hartford	CT	33,235

Statutory Authority: Section 2953 of the Patient Protection and Affordable Care Act of 2010, Pub. L. 111–148, added Section 513 to Title V of the Social Security Act, codified at 42 U.S.C. 713, authorizing the Personal Responsibility Education Program.

Mary M. Wayland,

Senior Grants Policy Specialist, Division of Grants Policy, Office of Administration.

[FR Doc. 2015–14839 Filed 6–16–15; 8:45 am]

BILLING CODE 4184–37–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–N–1317]

Final Determination Regarding Partially Hydrogenated Oils

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; declaratory order.

SUMMARY: Based on the available scientific evidence and the findings of expert scientific panels, the Food and Drug Administration (FDA or we) has made a final determination that there is no longer a consensus among qualified experts that partially hydrogenated oils (PHOs), which are the primary dietary source of industrially-produced *trans* fatty acids (IP–TFA) are generally recognized as safe (GRAS) for any use in human food. This action responds, in part, to citizen petitions we received, and we base our determination on available scientific evidence and the findings of expert scientific panels establishing the health risks associated with the consumption of *trans* fat.

DATES: *Compliance date:* Affected persons must comply no later than June 18, 2018.

FOR FURTHER INFORMATION CONTACT: Mical Honigfort, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 240–402–1278, email: *mical.honigfort@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

In accordance with the process set out in § 170.38(b)(1) (21 CFR 170.38(b)(1)), we issued a notice on November 8, 2013 (the November 2013 notice, 78 FR 67169), announcing our tentative determination that, based on currently available scientific information, PHOs are no longer GRAS under any condition of use in human food and therefore are food additives subject to section 409 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 348).

FDA's evaluation of the GRAS status of PHOs centers on the *trans* fatty acid (TFA, also referred to as ''*trans* fat'') component of these oils. Although we primarily use the word ''oil'' when discussing PHOs in this document, partially hydrogenated fats (such as partially hydrogenated lard), are included within the definition of PHOs (discussed in section II) and therefore within the scope of this order, and references to ''oil'' in this document should be read in most cases to include fats. PHOs are the primary dietary source of industrially-produced *trans* fatty acids (Ref. 1). As explained in the tentative determination (78 FR 67169), all refined edible oils contain some *trans* fat as an unintentional byproduct of their manufacturing process; however, unlike other edible oils, *trans* fats are an integral component of PHOs and are purposely produced in these oils to affect the properties of the oils and the characteristics of the food to which they are added. In addition, the *trans* fat content of PHOs is significantly greater than the amount in other edible oils. Non-hydrogenated refined oils may contain *trans* fatty acids as a result of high-temperature processing, at levels typically below 2 percent (Ref. 2). Low levels (below 2 percent) may also be found in fully hydrogenated oils (FHOs) due to incomplete hydrogenation (Ref. 3). Small amounts (typically around 3 percent) may be found in the fat component of dairy and meat products from ruminant animals (Ref. 4).

FDA's tentative determination identified the significant human health risks associated with the consumption of *trans* fat (78 FR 67169 at 67171). The tentative determination was based on evidence including results from a number of controlled feeding studies on *trans* fatty acid consumption in humans (Refs. 5 and 6), findings from long-term prospective epidemiological studies (Refs. 5 and 6), and the opinions of expert panels (Refs. 7, 8, 9, 10, 11, 12, 13, and 14). The latter included the 2005 recommendation of the Institute of Medicine (IOM) to limit *trans* fat consumption as much as possible while consuming a nutritionally adequate diet, recognizing that *trans* fat occurs naturally in meat and dairy products from ruminant animals and that naturally-occurring *trans* fat is unavoidable in ordinary, non-vegan diets without significant dietary adjustments that may introduce undesirable effects (Ref. 7). In addition, in the tentative determination FDA cited

a peer reviewed, published estimate of deaths and coronary events that would be prevented annually in the United States from elimination of remaining uses of PHOs from the food supply (Ref. 15). Given all this evidence, we tentatively determined that there is no longer a consensus among qualified experts that PHOs, the primary dietary source of IP–TFA, are safe for human consumption, either directly or as ingredients in other food products.

PHOs have a long history of use as food ingredients. The two most common PHOs currently used by the food industry, partially hydrogenated soybean oil and partially hydrogenated cottonseed oil, are not listed as GRAS or as approved food additives in FDA's regulations. However, these and other commonly used PHOs (*e.g.,* partially hydrogenated coconut oil and partially hydrogenated palm oil) have been considered GRAS by the food industry based on a history of use prior to 1958. By contrast, the partially hydrogenated versions of low erucic acid rapeseed oil (LEAR oil; § 184.1555(c)(2) (21 CFR 184.1555(c)(2)) and menhaden oil (§ 184.1472(b) (21 CFR 184.1472(b))) have been affirmed by regulation as GRAS for use in food. Partially hydrogenated LEAR oil was affirmed as GRAS for use in food (50 FR 3745 (January 28, 1985)) through scientific procedures. Partially hydrogenated menhaden oil was affirmed as GRAS for use in food (54 FR 38219 (September 15, 1989)) on the basis that the oil is chemically and biologically comparable to commonly used partially hydrogenated vegetable oils such as corn and soybean oils. FDA believes that partially hydrogenated LEAR and menhaden oils are not currently widely used by the food industry. We plan to amend these regulations in a future rulemaking.

In the November 2013 notice, FDA requested additional data and scientific information related to our tentative determination and, in particular, requested comment on several questions (78 FR 67169 at 67174). Interested persons were originally given until January 7, 2014, to comment on the notice. However, in response to several requests, we extended the comment period to March 8, 2014 (78 FR 79701 (December 31, 2013)).

We received over 6000 comments in response to the November 2013 notice announcing our tentative determination, including over 4500 form letters. In addition to submissions from individuals, we received comments from industry and trade associations, consumer and advocacy groups, health professional groups, and state/local governments. Most comments generally supported the tentative determination or supported aspects of it. FDA also received numerous comments stating that although they agreed with FDA's efforts to further reduce *trans* fat in the food supply, they disagreed with our tentative determination regarding the GRAS status of PHOs. Of the comments that objected to the tentative determination, many disagreed with FDA's scientific analysis and offered alternative approaches to address *trans* fat in the food supply. Some comments addressed issues outside the scope of the tentative determination (such as disruptions to trade, taxation of foods, and requests for bans on other substances) and were not considered. We reviewed all comments that were submitted to the docket before arriving at the decision outlined in this order.

We have arranged comments and our responses by topic throughout the remainder of this document. To make it easier to identify the comments and our responses, the word ''Comment,'' in parentheses, appears before the comment's description and the word ''Response,'' in parentheses, appears before FDA's response. Each comment is numbered to help distinguish between different comments. The number assigned to each comment is purely for organizational purposes and does not signify the comment's value or importance.

The major provisions of this order are:

- PHOs are not GRAS for any use in human food.
- Any interested party may seek food additive approval for one or more specific uses of PHOs with data demonstrating a reasonable certainty of no harm of the proposed use(s).
- For the purposes of this declaratory order, FDA is defining PHOs as those fats and oils that have been hydrogenated, but not to complete or near complete saturation, and with an iodine value (IV) greater than 4.
- FDA is establishing a compliance date of June 18, 2018.

II. Definitions and Scope, and Related Comments With FDA Responses

(Comment 1) Some comments requested that we define PHOs and clearly delineate them from FHOs. The comments suggested various parameters for defining these fats and oils, including setting a specification for *trans* fat content (*e.g.,* a percentage) or using iodine value (IV; also interchangeably called iodine number).

(Response) FDA agrees with the comments that we should define PHOs to differentiate them from FHOs, which are outside the scope of this order. When a fat or oil is hydrogenated, the degree of hydrogenation can be tailored to obtain the desired properties for the application. FHOs are produced by allowing the hydrogenation process to proceed to complete or near complete saturation to obtain a more solid fat. In practice, the reaction does not proceed to 100 percent completion, even when producing FHOs, and some degree of unsaturation unavoidably remains in the final fat or oil. Non-hydrogenated refined fats and oils generally contain *trans* fatty acids as an unavoidable impurity as a result of high-temperature processing, at levels typically below 2 percent (Ref. 2). The IV of a fat or oil is not a direct measure of the TFA content, but is a measure of the degree of unsaturation. Thus, in a fat or oil that has been hydrogenated, a low degree of unsaturation (*i.e.,* a low IV number) will correlate to a low level of TFA. FHOs with an IV of 4 or less generally contain *trans* fat at levels similar to non-hydrogenated refined fats and oils (less than 2 percent). By contrast, when the hydrogenation process is arrested before near complete saturation, *trans* fat content is typically higher, and IV is typically greater than 4.

Based on data for FHOs that are currently available on the market, which are indicative of modern hydrogenation technology (Ref. 16), we define FHOs for the purposes of this order as fats and oils that have been hydrogenated to complete or near complete saturation, and with an IV of 4 or less, as determined by a method that is suitable for this analysis (*e.g.,* ISO 3961 or equivalent). FHOs are outside the scope of this order. For the purposes of this order, we define PHOs as fats and oils that have been hydrogenated, but not to complete or near complete saturation, and with an IV greater than 4 as determined by a method that is suitable for this analysis (*e.g.,* ISO 3961 or equivalent). These definitions will ensure that IP–TFA content in the food supply will be kept to the minimum amount feasible with current technology, except as otherwise authorized.

(Comment 2) We received several comments requesting clarification on the scope of FDA's tentative determination, including whether it applies only to PHOs used in human food; whether it applies to ingredients that contain only naturally occurring *trans* fat, such as those ingredients derived from ruminant sources; and whether it applies to conjugated linoleic acid. We also received a citizen petition (discussed in section V) raising questions related to partially hydrogenated methyl ester of rosin.

(Response) FDA wishes to clarify that this order applies only to PHOs used in human food, not animal feed, and applies to PHOs used as a food ingredient, which includes those uses sometimes considered processing aids or food contact substances (*e.g.,* pan-release agents). By contrast, the use of PHOs as raw materials used to synthesize other ingredients is outside the scope of this order. We do not have specific information on the intake of industrially-produced *trans* fat from this source. There is no requirement that materials used to make food ingredients be GRAS themselves; rather, the resultant food ingredient must be safe for the intended conditions of use. The use of PHOs as raw materials to make other food ingredients may result in the incorporation of industrially-produced *trans* fats into those ingredients. When ingredients are synthesized using PHOs, and the ingredient is being used on the basis of a GRAS self-determination, reevaluation of such a determination may be appropriate in light of the health effects from the intake of *trans* fat that underlie our determination that PHOs do not meet the GRAS standard.

This order does not apply to ingredients that contain only naturally occurring *trans* fat, such as those ingredients derived from ruminant sources.

This order does not apply to the use of conjugated linoleic acid (CLA) as a food ingredient. CLA does not fit the definition of PHO. CLAs are a class of fatty acid isomers derived from linoleic acid and do not contain nonconjugated double bonds in a *trans* configuration nor are CLAs triglyceride molecules. On the other hand, PHOs are primarily mixtures of triglycerides, produced by partial hydrogenation and include at least one nonconjugated double bond(s) in a *trans* configuration (Ref. 16). Considering CLA to be distinct from PHOs is consistent with how FDA has previously defined *trans* fatty acids for nutrition labeling purposes, focusing on the presence of nonconjugated bond(s) in a *trans* configuration (see § 101.9(c)(2)(ii) (21 CFR 101.9(c)(2)(ii))).

This order also does not apply to the use of partially hydrogenated methyl ester of rosin. Partially hydrogenated methyl ester of rosin does not fit the definition of PHO. Partially hydrogenated methyl ester of rosin is composed of resin acids that are chemically and structurally distinct from fatty acids found in PHOs. Resin acids are terpene-derived aromatic compounds that do not have long chain fatty acid components with *cis/trans* double bonds (Ref. 16).

III. Discussion of Legal Issues, and Related Comments With FDA Responses

A. GRAS

Section 409 of the FD&C Act provides that a food additive is unsafe unless it is used in accordance with conditions set forth in that section. ''Food additive'' is defined by section 201(s) of the FD&C Act (21 U.S.C. 321(s)) as any substance the intended use of which results or may reasonably be expected to result in its becoming a component or otherwise affecting the characteristics of any food, if such substance is not GRAS or otherwise excluded from the definition. Certain other substances that may become components of food are also excluded from the statutory definition of food additive, including pesticide chemicals and their residues, new animal drugs, color additives, and dietary ingredients in dietary supplements (section 201(s)(1) through (6) of the FD&C Act).

A substance is GRAS if it is generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use (section 201(s) of the FD&C Act). However, history of use prior to 1958 is not sufficient to support continued GRAS status if new evidence demonstrates that there is no longer a consensus that an ingredient is safe. See § 170.30(l) (21 CFR 170.30(l)) (''New information may at any time require reconsideration of the GRAS status of a food ingredient.'').

FDA has defined safe as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use'' (§ 170.3(i) (21 CFR 170.3(i)), and general recognition of safety must be based only on the views of qualified experts (21 CFR 170.30(a)). To establish general recognition of safety, there must be a consensus of expert opinion regarding the safety of the use of the substance. See, *e.g., United States* v. *Western Serum Co., Inc.,* 666 F.2d 335, 338 (9th Cir. 1982) (citing *Weinberger* v. *Hynson, Westcott & Dunning,* 412 U.S. 609, 629–32 (1973)). General recognition of safety does not require unanimous agreement. See, *e.g., United States* v. *Articles of Drug * * * 5,906 boxes,* 745 F.2d 105, 119 n. 22 (1st Cir. 1984); *United States* v. *Articles of Food and Drug (Coli-Trol 80),* 518 F.2d 743, 746 (5th Cir. 1975) (''What is required is not unanimous recognition but general recognition.''); *United States* v. *Articles of Drug * * * Promise Toothpaste,* 624 F. Supp. 776, at 782–3 (N.D. Ill. 1985) (''There is nothing in the statute to indicate that Congress intended 'generally recognized' in other than its commonly understood meaning. The adverb, 'generally,' is defined, *inter alia,* to mean . . . extensively, though not universally'' (internal quotations omitted)). Conversely, general recognition of safety does not exist if there is a lack of consensus among qualified experts that the use of a substance is safe. See, *e.g., Coli-Trol 80,* 518 F.2d at 746 (no general recognition of safety where there was ''no recognition of the safety . . . of these products at all''); *Premo Pharmaceutical Laboratories* v. *United States,* 629 F.2d 795, 803–4 (2nd Cir. 1980) (''genuine dispute among qualified experts'' precludes finding of general recognition, and no general recognition existed as a matter of law where there was a ''sharp difference'' of expert opinion); *United States* v. *Article of Food * * * Coco Rico,* 752 F.2d 11, 15 n 6 (1st Cir. 1985) (substance was not GRAS as a matter of law based on existence of ''genuine dispute among qualified experts'' regarding safety of use); *Promise Toothpaste,* 624 F. Supp. at 783 (court could not conclude whether a ''genuine dispute'' existed without considering the substance of the experts' opinions, such that a triable issue of fact existed regarding general recognition). See also *United States* v. *Articles of Drug * * * 5,906 Boxes,* 745 F.2d 105, 119 n. 22 (1st Cir. 1984) (noting certain cases in which lack of general recognition was established as a matter of law and others in which there was a triable issue of fact regarding general recognition).

Importantly, the GRAS status of a specific use of a particular substance in food may change as knowledge changes. For example, as new scientific data and information develop about a substance or the understanding of the consequences of consumption of a substance evolves, expert opinion regarding the safety of a substance for a particular use may change such that there is no longer a consensus that the specific use is safe. The fact that the status of the use of a substance under section 201(s) of the FD&C Act may evolve over time is the underlying basis for FDA's regulation at § 170.38, which provides, in part, that we may, on our own initiative, propose to determine that a substance is not GRAS. (See generally 37 FR 6207 (March 25, 1972) (proposal of 21 CFR 121.41, the

predecessor of § 170.38); 37 FR 25705 (December 2, 1972) (issuance of 21 CFR 121.41); 35 FR 18623 (December 8, 1970) (proposal of 21 CFR 121.3, the predecessor of § 170.30); and 36 FR 12093 (June 25, 1971) (issuance of 21 CFR 121.3)). Further, as stated in section I, history of the safe use of a substance in food prior to 1958 is not sufficient to support continued GRAS status if new evidence demonstrates that there is no longer expert consensus that an ingredient is safe (§ 170.30(l)).

As noted in section III.A, under section 201(s) of the FD&C Act, a substance that is GRAS for a particular use in food is not a food additive, and may lawfully be utilized for that use without FDA review or approval. Currently, a GRAS determination may be made when the manufacturer or user of a food substance evaluates the safety of the substance and the views of qualified experts and determines that the use of the substance is GRAS. This approach is commonly referred to as ''GRAS self-determination'' or ''independent GRAS determination.''

Other substances that are GRAS may be identified in FDA regulations in one of two ways. Following the passage of the 1958 Food Additives Amendment, we established in our regulations a list of food substances that, when used as indicated, are considered GRAS. We made clear that this was not a comprehensive list. This list (commonly referred to as the ''GRAS list'') now appears at 21 CFR part 182. Thereafter, in 1972, we established the GRAS affirmation process through which we affirmed, through notice and comment rulemaking, the GRAS status of particular uses of certain substances in food. Regulations affirming the GRAS status of certain substances appear at 21 CFR parts 184 and 186. (As a general matter, we no longer affirm the GRAS status of substances through notice-and-comment rulemaking. In April 1997, we proposed to replace the voluntary GRAS affirmation petition process with a voluntary GRAS notification program, which would not involve rulemaking (62 FR 18938 (April 17, 1997)). At the time of the proposal, we initiated a pilot of the GRAS notification program, which continues to function. A firm may voluntarily submit information on a GRAS self-determination to FDA for review through the GRAS notification program, but is not required to do so.)

FDA received numerous comments on our tentative determination. Many related to the GRAS standard and what is needed to demonstrate that a substance is not GRAS. Many comments agreed with our determination that there is not a consensus among qualified experts that PHOs are safe for use in human food. However, there were also many comments that disagreed with FDA's tentative determination and stated that we did not adequately demonstrate that PHOs are not GRAS.

(Comment 3) Some comments stated that FDA must show a ''severe conflict'' among experts about the safety of a substance in order to determine that PHOs are not GRAS.

(Response) FDA disagrees that ''severe conflict'' is the relevant standard. As discussed in section III.A, general recognition of safety does not exist if there is a lack of consensus among qualified experts that the use of a substance is safe. We have considered all available information and determined that there is no longer a consensus among qualified experts that PHOs are safe for human consumption. To the extent there is disagreement among qualified experts about the safety of PHOs for human consumption, this genuine dispute regarding safety precludes a finding of GRAS.

(Comment 4) Some comments focused on the idea that it may be possible to establish a threshold below which PHOs may be safely used in the food supply. One comment argued that there is no consensus among experts that PHOs are unsafe below some low threshold level of use.

(Response) As discussed later in section IV.B.1, FDA does not agree that such a threshold has been identified based on the available science. Importantly, even if such a threshold could be identified, this alone would not meet the requirement of ''general recognition'' for uses below the threshold without there also being consensus among qualified experts that uses below the threshold are safe. (See *United States* v. *7 Cartons,* 293 F. Supp. 660, 663 (S.D. Ill. 1968) (''an inference that safety might be shown by scientific testing and procedures'' is insufficient as a matter of law to demonstrate general recognition of safety), *affirmed in relevant part,* 424 F.2d 1364 (7th Cir. 1970).) FDA has no basis to conclude that there is any such consensus. FDA has previously revoked GRAS status under similar circumstances (51 FR 25021 at 25023, July 9, 1986; revoking GRAS status of sulfiting agents on fruits and vegetables intended to be served or sold raw to consumers; explaining that it was not possible to set a threshold for safe use based on available information). Moreover, we need not determine that there is a consensus that low level uses are unsafe to find that PHOs are not GRAS at low levels; we need only determine that based on available scientific evidence there is not a consensus among qualified experts that such uses are safe, as we do here. We acknowledge that scientific knowledge advances and evolves over time. We encourage submission of scientific evidence as part of food additive petitions under section 409 of the FD&C Act for one or more specific uses of PHOs for which industry or other interested individuals believe that safe conditions of use may be prescribed. We are establishing a compliance date of June 18, 2018 for this order to allow time for such petitions and their review.

(Comment 5) One comment stated that FDA must demonstrate that each and every PHO, and every use of PHOs, is not safe.

(Response) FDA disagrees. FDA need not demonstrate that PHOs are unsafe to determine that they are not GRAS, only that there is a lack of consensus among qualified experts regarding their safety. In addition, our consideration of PHOs as a class is justified because the available, relevant scientific evidence demonstrates an increased risk of coronary heart disease (CHD) attributable to *trans* fat (see section VI.B); PHOs are the primary dietary source of IP–TFA; and there is a lack of consensus among qualified experts that PHOs are safe for use in food at any level.

(Comment 6) Some comments stated that, by determining that the use of PHOs are not GRAS because they contain a nutrient that increases risk of CHD, FDA would be calling into question the regulatory status of other food sources of *trans* fat.

(Response) FDA disagrees. As noted in section II, this order does not apply to ingredients that contain naturally occurring *trans* fat (such as those ingredients derived from ruminant sources), fully hydrogenated oils, or edible oils that contain IP–TFA as an impurity. FDA has considered the available information and concluded that there is a lack of consensus among qualified experts that PHOs, as the primary dietary source of IP–TFA, are safe for use in human food. We may determine that the use of an artificial substance is not GRAS without necessarily making the same determination about naturally-occurring versions of the substance. (See, *e.g.,* 35 FR 7414 (May 13, 1970) (Rescinding letters that had expressed opinions that certain uses of glycine and its salts are GRAS, and stating that such added substances are no longer GRAS in human food); 37 FR 6938 (April 6, 1972) (Amino Acids in Food for Human Consumption; Proposed Conditions of Safe Use in Food and Deletion From GRAS List) (''[T]he mere natural

presence of an amino acid in unprocessed foods in free or combined (as protein) form does not qualify it as safe for addition in a pure form as a component of a formulated or processed food''), 38 FR 20036 (July 26, 1973) (Amino Acids in Food for Human Consumption; Conditions of Safe Use in Food and Deletion From GRAS List); 47 FR 22545 (May 25, 1982) (Cinnamyl Anthranilate; Proposed Prohibition of Use in Human Food) (acknowledging ''the presence of other cinnamyl and anthranilate derivatives naturally in food and in natural substances used to flavor food'' but proposing to prohibit only cinnamyl anthranilate); 50 FR 42929 (October 23, 1985) (Cinnamyl Anthranilate; Prohibition of Use in Human Food)).

(Comment 7) One comment stated that Congress, through the Nutrition Labeling and Education Act of 1990 (NLEA) (Pub. L. 101–535), prescribed labeling as the sole vehicle for achieving the nutritional policy objective of shifting dietary patterns to reduce the risk of multifactorial chronic diseases such as CHD. The comment argued that FDA's use of its food additive authority with respect to PHOs and their effect on risk of CHD is not within FDA's legal authority. Some comments characterized the tentative determination as a new approach or a change in interpretation, arguing that FDA has not previously addressed health concerns related to nutrient intake through the FD&C Act's food additive provisions. In support of the argument that FDA has changed its interpretation of the applicability of the food additive provisions of the FD&C Act, one comment cited a statement by FDA in rulemaking regarding health claims that ''where the only safety issue is an increased risk of chronic disease from excessive consumption, the safety provisions of the act would not provide regulatory sanctions against such components of food, at least if they have not been added to foods'' (58 FR 2478 at 2490 (January 6, 1993)).

(Response) FDA disagrees with these comments. FDA may properly address such health risks using the food additive authorities in the FD&C Act (sections 201(s), 409, and 402(a)(2)(C) of the FD&C Act). The broad language of the food additive definition in section 201(s) of the FD&C Act covers ''any substance'' added to food, including nutrients. Nothing in the FD&C Act or its legislative history suggests that the food additive definition should be interpreted in a way that limits its applicability as the comment suggests. On the contrary, the legislative history of the Food Additives Amendment of 1958 (Pub. L. 85–929) emphasizes the broad applicability of sections 201(s), 409, and 402(a)(2)(C) of the FD&C Act, which apply to ''any substances the ingestion of which reasonable people would expect to produce not just cancer but any disease or disability'' (S. Rep. No. 2422, at 11 (1958), as reprinted in Vol. 14, Legislative History of the Food, Drug & Cosmetic Act and its Amendments, at 923 (1979)). In fact, we have previously taken action regarding health risks related to nutrients using these authorities (55 FR 50777 (December 10, 1990) (determining certain Vitamin K Active Substances not GRAS); and 38 FR 20036 (July 26, 1973) (establishing conditions of safe use for amino acids for nutritive purposes and deleting them from GRAS list)). We also have previously applied these authorities to substances presenting increased health risks related to chronic multifactorial diseases, such as cancer (50 FR 42929 (October 23, 1985) (prohibiting use of cinnamyl anthranilate in food); and 34 FR 17063 (October 21, 1969) (prohibiting use of cyclamates in food)).

With respect to the comment citing a statement from a final rule on health claims, FDA does not agree that this statement shows any change in FDA's position, as it was explicitly limited to situations that did not meet the food additive definition because the components discussed ''have not been added to foods.'' The statement is consistent with FDA's current understanding of the law.

Moreover, FDA disagrees with the argument that FDA must address health risks related to PHOs through food labeling requirements rather than through the food additive provisions of the FD&C Act. The NLEA amended the FD&C Act to provide, among other things, for certain nutrients and food components to be included in nutrition labeling. Section 403(q)(2)(A) and (q)(2)(B) (21 U.S.C. 343(q)(2)(A) and (q)(2)(B)) of the FD&C Act state that the Secretary of Health and Human Services (the Secretary) (and, by delegation, FDA) can, by regulation, add or delete nutrients included in the food label or labeling if he or she finds such action necessary to assist consumers in maintaining healthy dietary practices. We have used this authority to require labeling of *trans* fat content (68 FR 41434 (July 11, 2003); see also § 101.9(c)(2)(ii) and § 101.36(b)(2)(i)) (21 CFR 101.36(b)(2)(i)). Although we may further address *trans* fat through labeling requirements in the future, labeling is not the only method by which we may address health risks related to *trans* fats, and more specifically health risks related to PHOs, the primary dietary source of IP–TFA. Nothing in the NLEA suggested that its passage limited the preexisting food additive provisions in the FD&C Act, or that the food additive provisions did not apply to nutrients and chronic multifactorial disease under appropriate circumstances. On the contrary, as the comment noted, the NLEA contained a clause stating that ''[t]he amendments made by this Act shall not be construed to alter the authority of the Secretary of Health and Human Services . . . under the [FD&C Act]'' (NLEA section 9).

The FD&C Act's nutrition labeling and food additive provisions are two different kinds of authority, with different standards, and we may choose among available approaches to a public health problem when the FD&C Act provides multiple options. *See, e.g., Chevron U.S.A. Inc.* v. *Natural Resources Defense Council,* 467 U.S. 837, 865–6 (1984) (''While agencies are not directly accountable to the people, the Chief Executive is, and it is entirely appropriate for this political branch of the Government to make such policy choices—resolving the competing interests which Congress itself either inadvertently did not resolve, or intentionally left to be resolved by the agency charged with the administration of the statute in light of everyday realities''); *United States* v. *Mead Corp.,* 533 U.S. 218, 227 (2001) (''agencies charged with applying a statute necessarily make all sorts of interpretive choices''). There is no ''conflict'' between the FD&C Act's nutrition labeling provisions and food additive provisions as the comment suggests. It is also worth noting that we have previously determined that a use of a substance is not GRAS while rejecting a labeling-based approach to the health risks presented by that use (51 FR 25021 (July 9, 1986) (final rule revoking GRAS status of sulfiting agents on fruits and vegetables intended to be served or sold raw to consumers); and 50 FR 32830 (August 14, 1985) (proposal to revoke GRAS status of sulfiting agents on fruits and vegetables intended to be served or sold raw to consumers)).

(Comment 8) Some comments stated that the expert panels we cited in the tentative determination (*i.e.,* the Institute of Medicine/National Academy of Sciences (IOM/NAS), American Heart Association, American Dietetic Association, World Health Organization, Dietary Guidelines Advisory Committee, and the FDA Food Advisory Committee Nutrition Subcommittee) were not experts qualified by scientific training and experience to evaluate the safety of substances in food. The comments also

stated that these expert panels were not convened for the purposes of evaluating the safety of PHOs and did not make determinations regarding the GRAS status of PHOs. Therefore, the comments argued that the conclusions of these panels do not demonstrate a lack of consensus among qualified experts that PHOs are GRAS.

(Response) FDA disagrees with these comments. The expert panels we cited were composed of scientists qualified by relevant training and experience to review literature on *trans* fat consumption, because of their nationally recognized and established expertise in the area of food and nutrition. For example, the Food and Nutrition Board at IOM/NAS is a recognized national resource for recommendations on health issues, and the Dietary Guidelines Advisory Committee members are nationally recognized experts in nutrition and health. These panels' evaluations and conclusions raised significant questions about the safety of *trans* fat, thus showing that there is no consensus among qualified scientific experts that PHOs are safe, because PHOs are the primary dietary source of IP–TFA. The safety information reviewed by the panels is further discussed in section IV.B.2. We consider that the conclusions of the panels demonstrate that there is a ''lack of the proper reputation . . . for safety of the food additive among the appropriate experts.'' *Coli-Trol 80,* 518 F.2d at 746. Further, whether the panels were convened specifically to make a GRAS determination is irrelevant; the purpose of the panels was to review the available data on health risks associated with consumption of *trans* fat. Moreover, the expert panel conclusions are not the only evidence upon which we rely for this determination, and conclusions of an expert panel are not required to establish general recognition of safety or its absence.

(Comment 9) Several comments stated that the expert panels we cited considered nutritional science and not safety.

(Response) FDA disagrees that the panels were not considering safety data; panels were considering data from controlled trials and observational studies on *trans* fat consumption that showed adverse effects on risk factors (*e.g.,* effects on cholesterol) and increased risk of CHD (see section IV.B.2 for further discussion on expert panel reviews). As discussed in more detail in section III.A, FDA regulations define ''safe'' as ''a reasonable certainty in the minds of competent scientists that the substance is not harmful under the intended conditions of use'' (§ 170.3(i)), and data showing a potential relationship between a nutrient (or any other substance added to food) and disease are safety data. Studies reviewed by expert panels showed that *trans* fatty acids cause significant health risks. Such studies are safety data.

(Comment 10) One comment stated that FDA should hold the manufacturer initially introducing the food or ingredient into interstate commerce responsible for compliance with a determination that PHOs are not GRAS, and that distributors should not be responsible for determining whether foods they merely distribute contain PHOs.

(Response) Although we are mindful of the need to focus our enforcement efforts, those needs do not change the underlying law or FDA's legal authority. Food that is adulterated may be subject to seizure and distributors, manufacturers, and other parties responsible for such food may be subject to injunction. We recognize that manufacturers who have previously added PHO to food, rather than other parties such as distributors who merely receive and sell finished foods, are the members of the food industry who will be most directly affected by this order, and we intend to focus our outreach and enforcement resources accordingly. However, we remind distributors and other members of the food industry that they have an obligation to ensure that the food they manufacture, distribute, sell, or otherwise market complies with the FD&C Act.

(Comment 11) Some comments requested that FDA take a position regarding the effect of this order on state and local laws regarding PHOs.

(Response) There is no statutory provision in the FD&C Act providing for express preemption of any state or local law prohibiting or limiting use of PHOs in food, including state or local legislative requirements or common law duties. As with any Federal requirement, if a State or local law requirement makes compliance with both Federal law and State or local law impossible, or would frustrate Federal objectives, the State or local requirement would be preempted. See *Wyeth* v. *Levine,* 555 U.S. 555 (2009); *Geier* v. *American Honda Co.,* 529 U.S. 861 (2000); *English* v. *General Electric Co.,* 496 U.S. 72, 79 (1990), *Florida Lime & Avocado Growers, Inc.,* 373 U.S. 132, 142–143 (1963); *Hines* v. *Davidowitz,* 312 U.S. 52, 67 (1941). We decline to take a position regarding the potential for implied preemptive effect of this order on any specific state or local law; as such matters must be analyzed with respect to the specific relationship between the state or local law and the federal law. FDA believes, however, that state or local laws that prohibit or limit use of PHOs in food are not likely to be in conflict with federal law, or to frustrate federal objectives.

B. Prior Sanctions

We stated in our tentative determination that we were not aware that FDA or U.S. Department of Agriculture (USDA) had granted any explicit approval for any use of PHOs in food prior to the 1958 Food Additives Amendment to the FD&C Act, and requested comments on whether there was knowledge of an applicable prior sanction for the use of PHOs in food (78 FR 67169 at 67174). We received various comments on this topic. We are not making a determination regarding the existence of any prior sanctions for uses of PHO in this order. This order is limited to our determination regarding the GRAS status of PHOs. We intend to address any claims of prior sanction in a future action.

C. Procedural Requirements

Under 5 U.S.C. 554(e) (section 5(d) of the Administrative Procedure Act (APA)), an agency, ''in its sound discretion, may issue a declaratory order to terminate a controversy or remove uncertainty.'' The APA defines ''order'' as ''the whole or a part of a final disposition, whether affirmative, negative, injunctive, or declaratory in form, of an agency in a matter other than rulemaking but including licensing'' (5 U.S.C. 551(6)). The APA defines ''adjudication'' as ''agency process for the formulation of an order'' (5 U.S.C. 551(7)).

FDA's regulations, consistent with the APA, define ''order'' to mean ''the final agency disposition, other than the issuance of a regulation, in a proceeding concerning any matter . . .'' (§ 10.3(a) (21 CFR 10.3(a)). Our regulations also define ''proceeding and administrative proceeding'' to mean ''any undertaking to issue, amend, or revoke a regulation or order, or to take or not to take any other form of administrative action, under the laws administered by the Food and Drug Administration'' (§ 10.3(a)). Moreover, our regulations establish that the Commissioner may initiate an administrative proceeding to issue, amend, or revoke an order (21 CFR 10.25(b)).

FDA's regulations also set forth a process by which we, on our own initiative or on the petition of an interested person, may determine that a substance is not GRAS. Specifically, FDA may initiate this process by issuing

a notice in the **Federal Register** proposing to determine that a substance is not GRAS and is a food additive subject to section 409 of the FD&C Act (§ 170.38(b)). The notice must allow a period of 60 days for comment. If, after review of comments, FDA determines that there is a lack of convincing evidence that a substance is GRAS or is otherwise exempt from the definition of a food additive in section 201(s) of the FD&C Act, FDA will publish a notice thereof in the **Federal Register** (§ 170.38(b)(3)). Such a notice ''shall provide for the use of the additive in food or food contact surfaces as follows: (1) It may promulgate a food additive regulation governing use of the additive[;] (2) It may promulgate an interim food additive regulation governing use of the additive[;] (3) It may require discontinuation of the use of the additive[;] (4) It may adopt any combination of the above three approaches for different uses or levels of use of the additive'' (§ 170.38(c)).

On our own initiative, we began an administrative proceeding to formulate a 5 U.S.C. 554(e) declaratory order to remove uncertainty regarding the GRAS status of PHOs. Accordingly, we published a notice in the **Federal Register**, consistent with § 170.38(b), communicating our tentative determination that PHOs are no longer GRAS for any use in food, and allowed 60 days for comments (78 FR 67169 (November 8, 2013)). We later extended the comment period for an additional 60 days (78 FR 79701 (December 31, 2013)).

In the tentative determination, FDA noted that two PHOs had been affirmed by regulation as GRAS for use in food (78 FR 67169 at 67171; the partially hydrogenated versions of low erucic acid rapeseed oil (LEAR oil; § 184.1555(c)(2)) and menhaden oil (§ 184.1472(b)). We also noted that the nature of some of the products for which there are standards of identity is such that PHOs historically have been used in their manufacture in conformance with those standards (78 FR 67169 at 67171). However, we also noted that no food standard of identity requires the use of PHOs and, therefore, industry's ability to comply with any standard would not be prevented by a change in the regulatory status of PHOs. As discussed in section III.B, two standards of identity explicitly mention PHOs in allowing partially hydrogenated vegetable oil as an optional ingredient; the standards of identity for peanut butter (§ 164.150 (21 CFR 164.150)) and canned tuna (§ 161.190 (21 CFR 161.190)). Because these standards do not require the use of PHOs, industry's ability to comply with them would not be prevented by a change in the regulatory status of PHOs. In addition, our labeling regulations explicitly address ingredient designations for PHOs (§ 101.4(b)(14) (21 CFR 101.4(b)(14))).

This final determination is a 5 U.S.C. 554(e) declaratory order regarding the status of PHOs. Consistent with § 170.38(b)(3), we have reviewed the comments received and determined that there is a lack of convincing evidence that PHOs are GRAS. Thus, consistent with § 170.38(c)(3), we are publishing a notice thereof in the **Federal Register** that requires discontinuation of the use of these additives. Moreover, we are providing advance notice of our intention to undertake rulemaking with respect to the uses of PHOs explicitly permitted for use by regulation and other conforming changes.

(Comment 12) Some comments argued that FDA must determine the GRAS status of PHOs through notice-and-comment rulemaking.

(Response) FDA agrees that we must conduct rulemaking to revise §§ 184.1555(c)(2) and 184.1472(b), which explicitly permit the use of partially hydrogenated LEAR oil and partially hydrogenated menhaden oil, respectively. FDA will also consider taking further action to revise regulations regarding the standards of identity for peanut butter (§ 164.150(c)) and canned tuna (§ 161.190(a)(6)(viii)), the regulation regarding ingredient designations for PHOs (§ 101.4(b)(14)), and nutrition labeling regulations regarding *trans* fats (§§ 101.9(c)(2)(ii) and 101.36(b)(2)(i)). We note that although *trans* fat does occur naturally in some product groups such as dairy foods, it is only likely to be present at levels at or above 0.5 g per serving in products containing PHOs.

We do not agree that we must determine the GRAS status of PHOs generally via rulemaking. FDA may properly make such a determination in an order, as we have chosen to do here. This is not the first time FDA has issued a declaratory order when determining that a substance is not GRAS and is a food additive. See 55 FR 50777, 50778 (Declaratory Order regarding Vitamin K Active Substances in Animal Food, issued under 21 CFR 570.38, the regulation for animal food that parallels § 170.38 for human food).

We have authority to administer the statutory provisions of the FD&C Act that are most relevant to this determination, namely, are sections 201(s), 402(a)(2)(C), and 409 of the FD&C Act. Section 201(s) of the FD&C Act defines a food additive, in part, as a substance that is not GRAS, and section 402(a)(2)(C) of the FD&C Act establishes that food bearing or containing a food additive that is unsafe within the meaning of section 409 of the FD&C Act is adulterated. Section 409 of the FD&C Act establishes that a food additive is unsafe for the purposes of section 402(a)(2)(C) of the FD&C Act (and therefore adulterated) unless certain criteria are met, such as conformance with a regulation prescribing the conditions under which the additive may be safely used. Section 409 of the FD&C Act also sets forth a process by which we administer the review of food additive petitions and may establish regulations prescribing conditions of safe use for such additives. Thus, we have explicit statutory authority to review, approve, and deny food additive petitions.

Because it is necessary to determine whether the use of a substance is GRAS as part of identifying it as a food additive, it is implicit in this statutory structure that we also have the authority to determine whether the use of a substance is, or is not, GRAS. The statute does not explicitly provide the procedure we must use to make such determinations. Thus, we may choose to use either rulemaking or adjudication. ''The choice between rule-making or declaratory order is primarily one for the agency regardless of whether the decision may affect policy and have general prospective application.'' (See *Viacom* v. *FCC*, 672 F.2d 1034, 1042 (2nd Cir. 1982). See also *SEC* v. *Chenery*, 332 U.S. 194, 203 (1947); *NLRB* v. *Wyman-Gordon Co.*, 394 U.S. 759 (1969); *NLRB* v. *Bell Aerospace Co.*, 416 U.S. 267, 294 (1974); *Almy* v. *Sebelius*, 679 F.3d 297, 303 (4th Cir. 2012); *City of Arlington, Texas* v. *FCC*, 133 S. Ct. 1863, 1874 (2013); *Qwest Servs. Corp.* v. *FCC*, 509 F.3d 531, 536–37 (D.C. Cir. 2007) (''Most norms that emerge from a rulemaking are equally capable of emerging (legitimately) from an adjudication, and accordingly agencies have very broad discretion whether to proceed by way of adjudication or rulemaking'' (internal citations and quotations omitted)).

Determining that PHOs are no longer GRAS for use in human food in a declaratory order issued as a product of informal adjudication is well within FDA's discretion under the FD&C Act and the APA. Whether PHOs are GRAS for use in human food is a ''concrete and narrow question[] of law the resolution[] of which would have an immediate and determinable impact on specific factual scenarios'' (*City of Arlington* v. *FCC*, 668 F.3d 229, 243 (5th Cir. 2012)). (See also *Qwest Servs. Corp.*,

509 F.3d at 536–37; *Chisholm* v. *FCC*, 538 F.2d 349, 364–66 (D.C. Cir. 1976); American Bar Association, *A Guide to Federal Agency Adjudication* 8 (Jeffrey B. Litwak, ed., 2012) (Agency order to withdraw certain food from the market, which has particular applicability and future effect, provided as an example of adjudication)). We are issuing this declaratory order to remove uncertainty as to the status of PHOs as food additives. The order is a product of an informal adjudication that included notice to affected parties via publication of the tentative determination in the **Federal Register** and an opportunity for affected parties to be heard by submitting comments to the Agency. Such procedures are appropriate for the formulation of declaratory orders. (See, *e.g., Weinberger* v. *Hynson, Westcott and Dunning Inc.*, 412 U.S. 609, 626 (1973); *American Airlines* v. *Dep't. of Transportation*, 202 F.3d 788, 796–797 (5th Cir. 2000). See also Lubbers, Jeffrey S. and Blake D. Morant, *A Reexamination of Federal Agency Use of Declaratory Orders*, 56 Admin. L. Rev. 1097, 1112–1114 (2004) and cases cited therein). Moreover, ''adjudicatory decisions are not subject to the APA's notice-and-comment requirements'' (*Blanca Telephone Co.* v. *FCC*, 743 F.3d 860 (D.C. Cir. 2014)).

Issuance of a declaratory order is also consistent with our regulations (§ 170.38(c)(3)), which provide that we may publish a notice in the **Federal Register** that requires discontinuation of the use of these additives, and do not specify that we must do so through rulemaking. Notably, other subsections of § 170.38(c) mention promulgation of regulations, but § 170.38(c)(3), providing for prohibition of use, does not. Moreover, when we make a determination under § 170.38 that a substance is not GRAS, we must take one (or a combination) of the actions listed in § 170.38(c). See *Heterochemical Corp.* v. *FDA*, 741 F. Supp. 382, 384 (E. D. N.Y. 1990).

The purpose of a declaratory order is ''to develop predictability in the law by authorizing binding determinations which dispose of legal controversies without the necessity of any party's acting at his peril upon his own view'' (U.S. Department of Justice, *Attorney General's Manual on the Administrative Procedure Act* (1947) at 59, reprinted in *Federal Administrative Procedure Sourcebook* (William F. Funk et al. ed., ABA Section of Administrative Law and Regulatory Practice 3rd ed. 2000)). Members of industry are not, as some comments suggested, faced with a choice between complying with a non-binding statement of policy and facing enforcement action. This is not a statement of policy. This declaratory order has the force and effect of law.

(Comment 13) Some comments assumed that this order was a statement of policy, and, on that basis, argued that this action violates Due Process requirements.

(Response) As explained in our response to comment 10, that assumption is incorrect. Further, FDA's order and the process used in its formulation raise no Due Process concern.

(Comment 14) Some comments argued that FDA did not conduct a full Regulatory Impact Analysis in issuing the tentative determination.

(Response) As discussed previously in this section, this final determination is a declaratory order issued as the result of informal adjudication to remove uncertainty regarding the status of PHOs. We have prepared a memorandum (Ref. 17) updating our previous estimate of economic impact published in the November 2013 notice, using information available to us as well as information we received during the comment period. See discussion in section VII. Further, we have stated our intention to conduct rulemaking regarding uses of PHOs in our existing regulations, and such rulemakings will be subject to the procedural requirements pertaining to rulemaking.

(Comment 15) One comment stated that FDA must provide a more detailed justification for this action than what was provided in the tentative determination because it is a change in FDA's position regarding PHOs and industry has a substantial reliance interest in the GRAS status of PHOs.

(Response) In the tentative determination (78 FR 67169 at 67172) and in this order, FDA has explained the factual findings supporting this action in detail. In section IV.B, we describe how the scientific evidence, and consensus among qualified experts regarding the safety of PHOs, has changed over time. We are not changing our interpretation of the GRAS standard or the relevant regulations. We are determining that PHOs are no longer GRAS by applying the GRAS standard to current scientific evidence and the views of qualified experts about the safety of PHOs. Moreover, reliance interests are implicated whenever FDA makes a determination that removes a substance from the food supply that has been previously used in food. FDA is aware of such concerns; however, the statutory standard for GRAS does not allow FDA to consider the extent to which industry has relied on GRAS uses of a substance. We encourage industry to submit food additive petitions under section 409 of the FD&C Act if industry believes that it is possible to establish, by regulation, safe conditions of use of PHOs. We are establishing a compliance date of June 18, 2018 for this order to allow time for submission of such petitions and their review and approval, if applicable requirements are met.

IV. Discussion of Scientific Issues, and Related Comments With FDA Responses

A. Intake Assessment

In the November 2013 notice, we discussed dietary intake of *trans* fat from PHOs, estimated in 2010 and updated in 2012 (78 FR 67169 at 67171). The intake assessment was done for four reasons: (1) To determine the impact of the 2003 labeling rule and subsequent reformulations; (2) to assist in our review of the citizen petitions, which are discussed in section V; (3) to consider strategies for further *trans* fat reduction, if warranted; and (4) to better understand the current uses of PHOs and identify products that still contain high levels of *trans* fat. Our determination regarding the GRAS status of PHOs relies on an analysis of whether PHOs meet the GRAS standard based on available scientific evidence; the intake assessment was not the basis for this determination.

In 2012, we estimated the mean *trans* fat intake from the use of PHOs to be 1.0 grams per person per day (g/p/d; 0.5 percent of energy based on a 2,000 calorie diet [1]) for the U.S. population aged 2 years or more. We also estimated intake for high-level consumers (represented by intake at the 90th percentile), as well as a ''high-intake'' scenario that assumed consumers consistently chose products with the highest *trans* fat levels. We received a number of comments on our intake assessment, including comments on assumptions, methodology, and recommendations for future studies.

(Comment 16) One comment challenged FDA's statement that intake of *trans* fat did not significantly change between 2010 and 2012. The comment indicated that the intake of *trans* fat from the use of PHOs decreased by roughly 23% in that time period due to significant reformulation efforts by the food industry.

(Response) FDA agrees that a comparison of the assessments from 2010 and 2012 demonstrates that reformulation has occurred and intake has decreased. While the intake estimates did show a 23 percent

[1] (1.0 g/p/d × 9 kcal/g × 100)/2,000 kcal/d = 0.5% of energy.

decrease in *trans* fat intake between 2010 and 2012 (1.3 g/p/d to 1.0 g/p/d), this change is small compared to the 3.3 g/p/d difference between FDA's intake estimate in the 2003 *trans* fat labeling final rule of 4.6 g/p/d and the 2010 estimate of 1.3 g/p/d (about a 72 percent decrease). This was the context for the statement in the tentative determination that, ''We do not consider this to be a significant change in the overall dietary intake of *trans* fat since 2010. However, it suggests a continued downward trend in the dietary intake of *trans* fat.''

(Comment 17) Many comments stated that a substantial number of products have been reformulated since the 2012 intake assessment and that we should revise our intake assessment for *trans* fat before issuing our final determination on the GRAS status of PHOs.

(Response) FDA agrees that reformulation efforts by industry are continuing. However, the 2012 intake assessment was intended to be a snapshot in time and was based on products containing PHOs that were in the market at that time, and was done for the reasons described previously in this section. Given the evidence FDA has reviewed and our determination that PHOs are not GRAS for any use in human food, an updated intake assessment for *trans* fats from PHOs is not needed at this time. Our determination that PHOs are not GRAS for use in human food does not rely on the intake assessment.

(Comment 18) Some comments stated that FDA should not use the ''high intake scenario'' as justification for a determination that PHOs are not GRAS. Related comments stated that the intake for the highest level consumers should be determined directly rather than using worst-case scenario assumptions.

(Response) FDA disagrees that the high intake assessments provide justification for our determination regarding the GRAS status of PHOs; the determination is based on our assessment of whether any use of PHOs in human food meets the GRAS standard, based on available scientific evidence. Our determination did not rely on the intake assessment.

(Comment 19) Several comments stated that FDA's estimate did not calculate intake from animal products that contain *trans* fat, and that FDA should update the intake assessment to include the intake of total *trans* fat from both ruminant sources and IP–TFA. The comments noted this was necessary to understand if dietary recommendations are being met. One comment indicated that a recent publication suggests that the intake of *trans* fat from ruminant sources may be decreasing, thereby indicating a more inclusive review of dietary intake of *trans* fat is warranted. Another comment stated that we did not consider the cumulative effect of *trans* fat because it did not present data on intake from all sources, including ruminant TFA.

(Response) Our study was designed to assess *trans* fat intake from the use of PHOs, because they are the primary source of IP–TFA, and IP–TFA was the focus of the intake assessment. As stated in our tentative determination (78 FR 67169 at 67172), the IOM's recommendation is that *trans* fat consumption should be kept as low as possible while consuming a nutritionally adequate diet, recognizing that *trans* fat occurs naturally in meat and dairy products from ruminant animals and that naturally-occurring *trans* fat is unavoidable in ordinary, non-vegan diets without significant dietary adjustments that may introduce undesirable effects. Therefore, our intake assessment focused only on *trans* fat from the use of PHOs, the primary dietary source of IP–TFA, in which *trans* fat is produced intentionally and is an integral component.

(Comment 20) One comment urged FDA to reevaluate the intake of *trans* fat using the most recent National Health and Nutrition Examination Survey (NHANES) data. The comment suggested that the intake of *trans* fat would be lower if the more recent NHANES data were used because the mandatory labeling rule for *trans* fat became effective on January 1, 2006.

(Response) While the 2003–2006 NHANES food consumption data were used in the 2010 and 2012 intake assessments, the levels of *trans* fat in the food products were determined based on products that were available in the market from 2009 to 2012, therefore capturing *trans* fat reductions due to product reformulation as a result of the regulation in § 101.9(c)(2)(ii) (effective in 2006) requiring declaration of the *trans* fat content of food in the nutrition label. The consumption of products in the food categories in which PHOs are used would not be expected to change significantly over a few years because for the most part, foods tend to be commonly consumed with little or no change in consumption patterns over short periods of time. Further, we compared the typical intake of *trans* fat using the 2003–2006 and 2003–2008 NHANES food consumption data and found that there were no significant differences in the intakes (Ref. 16).

(Comment 21) Several comments suggested that using a value of 0.4 g *trans* fat per serving for foods that declared 0 g *trans* fat on the label, but contained a PHO was an overestimation of intake. One comment stated that this assumption represents 40% of the estimated daily intake of 1.0 g/p/d.

(Response) FDA disagrees with the comments. For most of the food products that declared 0 g *trans* fat on the label, but contained a PHO, a level based on analytical data was used. A value of 0.4 g *trans* fat/serving was used for only 2 percent of all of the food codes included in the intake assessment (Ref. 16). The value of 0.4 g is the amount of *trans* fat estimated to be in in the food(s) that corresponds to a given food code that was used in the intake assessment, and does not represent a percentage of total estimated intake. As a result, we do not expect that using a lower value would significantly affect the overall estimated intake of *trans* fat from the use of PHOs. The use of 0.4 g *trans* fat/serving was reserved for those cases where no other information was available (*i.e.*, analytical data or an appropriate surrogate). Furthermore, while numerically 0.4 g is 40 percent of 1.0 g, it is not appropriate to compare these two parameters. Many factors (*i.e.*, the amount of the particular food consumed, the percent of the population consuming the given food, and the level of *trans* fat in the particular food) were used to derive the overall estimated *trans* fat intake.

(Comment 22) One comment suggested that American Oil Chemists Society (AOCS) methods should be used for the intake assessment instead of the AOAC method 996.06 since the AOAC method is outdated and has not undergone validation.

(Response) FDA disagrees. This AOAC method is widely used by industry and other international organizations as a method for determining the *trans* fat content in food products. Therefore, we considered the AOAC method to be appropriate for analyzing food samples for the purposes of our intake assessment. Our choice of the AOAC method is not intended to imply that industry must use this method to analyze food products.

(Comment 23) Two comments indicated that a new intake assessment should be performed using modeling to explore potential unintended consequences of decreasing the *trans* fat intake given the possible replacements for *trans* fat (*e.g.*, saturated fat, carbohydrate) and their impact on CHD risk.

(Response) The safety of other substances that are possible replacements for PHOs is outside the scope of this order. However, although we have not updated the intake

assessment since 2012, we have used this intake assessment to calculate the expected impact of this order on CHD events, taking into account possible replacements for PHOs (see section IV.B for detailed discussion).

(Comment 24) One comment noted that FDA did not examine the use of each PHO and the probable consumption of each use.

(Response) FDA disagrees that we need to examine the intake of each PHO individually; the intent of the intake estimate was to evaluate the overall intake of *trans* fat from the use of all PHOs for the purposes described previously in this section. Estimating *trans* fat intake from individual PHOs would be an impractical undertaking, and was not necessary for the purposes of the intake assessment.

(Comment 25) Two comments stated that intake should be evaluated based on the presumption that all products with PHOs as an ingredient contain *trans* fat at a specified level (*e.g.*, 0.2 g/serving or per reference amount customarily consumed). These comments suggested that such an assessment could provide support for an alternative approach such as setting an allowable level of *trans* fat in foods.

(Response) Because we have concluded that PHOs are no longer GRAS, evaluating intake for alternative approaches, such as setting an allowable level of *trans* fat in foods, is not planned at this time.

B. Safety

In the **Federal Register** of November 17, 1999 (64 FR 62746), we issued a proposed rule entitled ''Food Labeling: *Trans* Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims.'' The proposed rule would require that *trans* fat content be provided in nutrition labeling, and concluded that dietary *trans* fats have adverse effects on blood cholesterol measures that are predictive of CHD risk, specifically low-density lipoprotein cholesterol (LDL–C) levels (64 FR 62746 at 62754). In the **Federal Register** of July 11, 2003 (68 FR 41434), we issued a final rule (the July 2003 final rule) amending the labeling regulations to require declaration of *trans* fat content of food in the nutrition label of conventional foods and dietary supplements (68 FR 41434). In the July 2003 final rule, we cited authoritative reports that recommended limiting intake of *trans* fat to reduce CHD risk (68 FR 41434 at 41442).

In the November 2013 notice containing our tentative determination that PHOs are no longer GRAS for any use in human food, we summarized findings reported in the literature since 2003, when we had last reviewed the adverse effects of dietary *trans* fat in support of the July 2003 final rule (68 FR 41434 at 41442 through 41449). We noted that since 2003, both controlled feeding trials and prospective observational studies published on *trans* fat consumption have consistently confirmed the adverse health effects of *trans* fat consumption on risk factor biomarkers (*e.g.*, serum lipoproteins including LDL–C) and increased risk of CHD (78 FR 67169 at 67172). We describe these two types of studies (controlled feeding trials and prospective observational studies) in further detail later in this section. We also cited a variety of different kinds of studies and review articles showing that, in addition to an increased risk of CHD, *trans* fat consumption (and, accordingly, consumption of food products containing PHOs) has also been connected to a number of other adverse health effects (id.). These effects included worsening insulin resistance, increasing diabetes risk, and adverse effects on fetuses and breastfeeding infants, such as impaired growth.

Since publication of the November 2013 notice, we re-reviewed key literature and expert panel reports published since the 1990s on the relationship between *trans* fat consumption and CHD risk (Ref. 18). Our review focused on the two main lines of scientific evidence linking *trans* fat intakes and CHD: (1) The effect of *trans* fat intake on blood lipids in controlled feeding trials, a type of randomized clinical trial; and (2) observational (epidemiological) studies of *trans* fat intake and CHD risk in populations. Additionally, we reviewed the conclusions of recent U.S. and international expert panels on the health effects of *trans* fat. As summarized in our review memorandum (Ref. 18), the scientific evidence, including combined analyses of multiple studies (meta-analyses), supports a progressive and linear cause and effect relationship between *trans* fatty acid intake and adverse effects on blood lipids that predict CHD risk, including LDL–C, high-density lipoprotein cholesterol (HDL–C) and ratios such as total cholesterol (total-C)/HDL–C and LDL–C/HDL–C. The observational (epidemiological) studies demonstrating increased CHD risk associated with *trans* fat intake do not prove cause and effect, but the results are consistent with and supportive of the evidence from controlled feeding trials of the adverse effect of *trans* fatty acid intake on blood lipids that predict CHD risk. The consistency of the evidence from two different study methodologies provides strong support for the conclusion that *trans* fatty acid intake has a progressive and linear effect that increases the risk of CHD.

Risk factors are variables that correlate with incidence of a disease or condition. Risk factors include social and environmental factors in addition to biological factors. A biomarker is a characteristic that can be objectively measured and indicates physiological processes. A risk biomarker or risk factor biomarker is a biomarker that indicates a risk factor for a disease. In other words, it is a biomarker that indicates a component of an individual's level of risk for developing a disease or level of risk for developing complications of a disease (Ref. 19). LDL–C, HDL–C, total-C/HDL–C ratio and LDL–C/HDL–C ratio are all currently considered to be risk biomarkers for CHD (Refs. 19, 20, 21, and 22). LDL–C is a risk factor biomarker that is also a surrogate endpoint for CHD; a ''surrogate'' is a validated predictor of CHD and can substitute for actual disease occurrence in a clinical trial (Refs. 19, 20, and 21). HDL–C, total-C/HDL–C and LDL–C/HDL–C are recognized as major risk factor biomarkers that, although they are not validated surrogate endpoints, are predictive of CHD risk (Refs. 19 and 22).

Effect of trans fat intake on blood lipids in controlled feeding trials. In controlled feeding trials, a type of randomized clinical trial, *trans* fatty acid intake increased LDL–C (''bad'' cholesterol), decreased HDL–C (''good'' cholesterol) and increased ratios of total-C/HDL–C and LDL–C/HDL–C compared with the same amount of energy intake (calories) from *cis*-unsaturated fatty acids. Increases in LDL–C, total-C/HDL–C and LDL–C/HDL–C and decreases in HDL–C are adverse changes with respect to CHD risk. These adverse effects of *trans* fat intake on blood lipids are based on controlled feeding trials, a study design that is able to reveal cause and effect relationships between changes in *trans* fat intake and changes in blood lipids. In addition, increases in CHD risk with increases in LDL–C also demonstrate cause and effect. As described in our review memorandum (Ref. 18), combined analyses (meta-analyses) of multiple controlled feeding trials demonstrate a progressive and linear relationship between *trans* fatty acid intake and adverse effects on blood lipids including LDL–C, HDL–C, total-C/HDL–C and LDL–C/HDL–C. The meta-analyses describe consistent quantitative relationships between *trans*

fat intake and blood lipids and show no evidence of a threshold below which *trans* fatty acids do not adversely affect blood lipids.

Observational (epidemiological) studies of trans fat intake and CHD risk in populations. Epidemiology is the study of the distribution and causes of disease in human populations. Analytic epidemiology studies are those designed to test hypotheses regarding whether or not a particular exposure is associated with causing or preventing a specific disease outcome. In prospective observational (cohort) studies, subjects are classified according to presence or absence of a particular factor (such as usual dietary intake of *trans* fat) and followed for a period of time to identify disease outcomes (such as heart attack or death from CHD). Strengths of the prospective observational study design are that the time sequence of exposure and disease is clearly shown; exposures are identified at the outset of the study; and measurement of exposure is not affected by later disease status. Results of four major prospective studies, some with one or more updates during the followup period, consistently show higher *trans* fat intake associated with increased CHD risk. The association is positive and progressive, with no indication of a threshold. A 2009 meta-analysis of the major prospective studies, based on almost 5,000 CHD events in almost 140,000 subjects, found that each additional 2 percent of energy intake from *trans* fat increased CHD risk by 23 percent compared with the same energy intake from carbohydrate.

Conclusions of recent U.S. and international expert panels on the health effects of trans fat. As described in our review memorandum (Ref. 18), international and U.S. expert panels, using additional scientific evidence available since 2002, have continued to recognize the positive linear trend between LDL-C and *trans* fat intake and the consistent association of *trans* fat intake and CHD risk in prospective observational studies. The panels have concluded that *trans* fats are not essential nutrients in the diet, and have recommended that consumption be kept as low as possible. Recommendations to avoid industrial *trans* fat intake have come from panels with both clinical and public health focus. Moreover, international and U.S. panels have expressed concern regarding population mean intakes of industrial *trans* fat intakes of 1 percent of energy and lower, recognizing that subgroups may be consuming relatively high levels.

Since publication of the November 2013 notice, we also conducted a systematic search of the peer-reviewed literature published since 2008 and summarized the findings (Ref. 23). The major human health endpoints evaluated for associations with *trans* fat intake reported in the literature included CHD, all-cause mortality, cardiovascular disease and stroke. Other human health endpoints addressed in our search included various types of cancer, metabolic syndrome and diabetes, and adverse effects on fertility, pregnancy outcome, cognitive function, and mental health. The literature search identified meta-analyses of published data; quantitative estimations to predict effects of replacing TFA in commercial products; cross-sectional, case-control and prospective observational cohort studies; and randomized controlled trials, including controlled feeding trials. Regarding cardiovascular diseases, the results of the literature search (Ref. 23) are consistent with findings discussed in our November 2013 notice (78 FR 67169 at 67172). Findings associated with higher TFA intakes included increased risk of CHD, adverse effects on biomarkers associated with CHD, and increased subclinical atherosclerosis. Some recent prospective observational studies also found associations between increased *trans* fat intake and increased risk of stroke, which was a new finding (Refs. 18 and 23). Further understanding of the apparent association between increased *trans* fat intake and increased risk of stroke requires additional research, such as whether the association may differ by age, sex, aspirin use, geographic region and other risk factors (Refs. 18, 23, and 24). For the association of *trans* fat intake with other human health effects, such as various types of cancer, metabolic syndrome and diabetes, and adverse effects on fertility, pregnancy outcome, cognitive function and mental health, the literature reports remained limited or inconclusive.

Since publication of the November 2013 notice, we also conducted a quantitative estimate of the potential health benefits expected to result from removal of IP–TFA from PHOs from the food supply (Ref. 25). We did this to analyze the expected public health benefit of removing PHOs from the food supply. We used four methods for estimating changes in CHD risk likely to result from replacement of IP–TFA: Method 1, based on effects of TFA on LDL–C, a validated surrogate endpoint biomarker for CHD, as shown through controlled feeding trials; Method 2, based on effects of TFA on LDL–C plus HDL–C, a major CHD risk factor biomarker, as shown through controlled feeding trials; Method 3, based on effects of TFA on total-C/HDL–C plus a combination of emerging CHD risk factor biomarkers (lipoprotein(a), apolipoproteinB/apolipoproteinA1 and C-reactive protein), as shown through controlled feeding trials; and Method 4, based on association of TFA with CHD risk as shown through prospective observational studies. Methods 1 and 2 were also used by FDA in analyzing the 1999 and 2003 labeling regulations (64 FR 62746 at 62768 and 68 FR 41434 at 41479) and Methods 3 and 4 were based on published methods (Ref. 26). We estimated the change in CHD risk using each of these four methods as applied to two different sets of scenarios for replacement of IP–TFA, as follows.

In general, fats and oils in foods have carbon chains of various lengths, with the carbon atoms in these chains connected by single or double bonds. If the carbon chain contains no double bonds, the fatty acid is called saturated. If the carbon chain contains a single double bond, the fatty acid is called monounsaturated, and if the carbon chain contains two or more double bonds, the fatty acid is called polyunsaturated. Most naturally-occurring dietary unsaturated fatty acids have double bonds in a ''*cis*'' configuration, that is, the two hydrogen atoms attached to two carbons are on the same side of the molecule at the double bond. Thus, the major chemical forms of fatty acids in foods are saturated fatty acids (SFAs), *cis*-monounsaturated fatty acids (*cis*-MUFAs) and *cis*-polyunsaturated fatty acids (*cis*-PUFAs). (By comparison, in a ''*trans*'' configuration, the hydrogen atoms attached to the carbon atoms at a double bond are not on the same side of the double bond). (See definitions in 64 FR 62746 at 62748 to 62749 (November 17, 1999).)

One set of scenarios focuses solely on IP–TFA and the estimated change in CHD risk by hypothetically replacing IP–TFA with each of the major chemical forms of macronutrient fatty acids in foods—*i.e.*, SFAs, *cis*-MUFAs or *cis*-PUFAs. The other set of scenarios focuses not only on IP–TFA but also on the other fatty acids contained in PHOs. This hypothetical set of scenarios illustrates the estimated change in CHD risk with replacing PHOs in the marketplace that contain 20 percent, 35 percent, or 45 percent IP–TFA, with other likely replacement fats and oils. Therefore, this scenario accounts for not only the replacement of IP–TFA with macronutrient fatty acids but also the replacement of the overall fatty acid components (or profiles) of the PHOs with the fatty acid components (or

profiles) found in the various replacement fats and oils.

In the first set of scenarios, we assumed that the current mean intake of 0.5 percent of total daily calories (energy) from IP–TFA among U.S. adults was replaced by the same percent of energy from three types of macronutrient fatty acids, *cis*-mono- or polyunsaturated fatty acids and saturated fatty acids) (*cis*-MUFAs, *cis*-PUFAs, and SFAs). As measures of risk reduction, we calculated estimated percent changes in CHD risk and estimated reduction in annual total cases of CHD, including CHD-related deaths. We based changes in CHD cases and deaths on a baseline of 915,000 annual new and recurrent fatal and non-fatal cases of CHD in U.S. adults, with a 41 percent fatality rate (Ref. 27).

Results showed an estimated reduction in CHD with replacement of IP–TFA with each of the fatty acids (*cis*-MUFA, PUFA, or SFA), using each of the four estimation methods. The estimated decrease in CHD ranged from 0.1 percent to 6.0 percent. This corresponded to prevention of 1,180 to 7,510 annual CHD cases, including 490 to 3,120 deaths, in Method 1 (0.1 percent to 0.8 percent decrease in CHD risk based on LDL–C), 9,230 to 15,560 cases, including 3,830 to 6,460 deaths, in Method 2 (1.0 percent to 1.7 percent decrease in CHD risk based on LDL–C and HDL–C), and 18,660 to 54,900 cases, including 7,740 to 22,770 deaths, in Method 3 (2.0 percent to 2.5 percent decrease in CHD risk using a combination of biomarkers) and Method 4 (4.2 percent to 6.0 percent decrease in CHD risk using observed CHD outcomes). Method 4, based on long-term observations of CHD outcomes in prospective studies, produced greater reduction estimates in risk than did Methods 1 and 2, which were based on short-term changes in blood lipid risk factors in controlled feeding trials. This suggests that there may be additional mechanisms, besides changes in blood lipids, through which *trans* fat consumption contributes to CHD risk. Thus, the adverse effects from *trans* fat intake may be greater than predicted solely by changes in blood lipids. The greater estimated reduction in CHD in Method 3, compared with Methods 1 and 2, suggests that the emerging risk factor biomarkers in Method 3 may help to identify additional mechanisms through which *trans* fat contributes to CHD risk.

In the second set of scenarios, we estimated the reduction in risk by replacing the same 0.5 percent of energy from IP–TFA, along with the other component fatty acids in three different formulations of PHOs, with eight alternative fats and oils (soybean oil, canola oil, cottonseed oil, high oleic sunflower oil, high oleic soybean oil, palm oil, lard, and butter). This approach covers a range of composition of replacement fats and oils, from highly saturated (high in SFAs) to highly unsaturated (high in *cis*-MUFAs and/or *cis*-PUFAs), and is based on that reported in 2009 by Mozaffarian and Clarke as part of the World Health Organization (WHO) scientific update on *trans* fatty acids (Refs. 25 and 26). Among the eight fats and oils, soybean oil and cottonseed oil contain the highest amounts of *cis*-PUFAs. Canola oil, high oleic acid sunflower oil, and high oleic acid soybean oil have the highest amounts of *cis*-MUFAs. Butter has the highest amount of SFAs; lard and palm oil are also high in SFAs. We used the same four methods to estimate risk reduction in this analysis. These calculations take into account the fatty acid profiles of the replacement fats and oils and the other fatty acids in the PHOs in addition to IP–TFA.

Overall, the analysis showed that removing 0.5 percent of energy from IP–TFA by replacing an example PHO containing 35 percent IP–TFA with each of eight alternative fats and oils would reduce CHD risk by 0.4 percent to 1.5 percent across the respective replacement fats and oils using Method 2, 2.3 percent to 3.0 percent using Method 3, and 2.7 percent to 6.4 percent using Method 4. This would correspond to prevention of 3,900 to 58,210 CHD cases including 1,620 to 23,350 CHD deaths per year.

In a few instances, the analysis in the second set of scenarios estimated that there would be increased CHD risk when examples of PHOs were replaced entirely with fats or oils high in saturated fat (Ref. 25) using Method 1. This reflects the saturated fatty acids in alternative fats and oils replacing the *cis*-unsaturated fatty acids present in the PHO in addition to IP–TFA. Method 1 alone likely underestimates the overall change in risk that would result from replacing PHOs containing IP–TFA because it analyzes only impacts on LDL–C alone and therefore does not account for the demonstrated adverse effects of IP–TFA on HDL–C, or the adverse effects of IP–TFA on other emerging CHD risk factors. Methods 2, 3, and 4 in the second set of scenarios, which consider other known risk factors as well as LDL–C, provides a more thorough estimate of risk reduction than considering only LDL–C in isolation, and leads us to conclude that there would be an expected benefit to public health from PHO replacement even if PHOs are replaced by oils high in saturated fat. Consistent with published analyses, our results show that estimated changes in CHD risk expected to occur with replacement of PHOs depends on the fatty acid profiles of both the PHOs and the replacement fats and oils (Refs. 25, 26, and 28). We also note that research indicates removal of *trans* fat over the past decade has generally not been accompanied by extensive increases in saturated fat (Ref. 29), suggesting that all IP–TFA currently in the marketplace would not likely be replaced by oils high in saturated fat.

Among the strengths of our quantitative analyses is the use of established cause and effect relationships between IP–TFA intakes and adverse changes in CHD biomarker risk factors, including LDL–C and HDL–C, derived from high quality, controlled feeding trials. Our assessments also relied on a set of emerging risk factors for CHD, including total cholesterol to HDL–C ratios, Apo-lipoprotein B to Apo-lipoprotein A–I ratios, lipoprotein(a) and C-reactive protein changes obtained from these same feeding trials. In addition, we relied on information from direct observations of CHD outcomes associated with frequent usual intake assessments of *trans* fatty acids and other macronutrient fatty acids in meta-analyses of four large cohorts with long-term followups. These estimates build on the agency's previous quantitative assessment based on short-term changes in LDL–C and HDL–C alone (68 FR 41434 at 41466 to 41492).

We acknowledge that there are always some uncertainties in assessing risk. The estimates we used were based on 100 percent replacement of IP–TFA by a group of individual types of fatty acids or by individual alternative fats and oils, when actual replacement mixes of fats and oils might vary and individual diets would reflect a combination of replacement fatty acids and replacement fats and oils. We assumed a no threshold, linear relationship between changes in IP–TFA intakes and changes in biomarker risk factors for CHD because current scientific evidence indicates that the relationship between *trans* fatty acid intake and LDL–C, HDL–C and the total cholesterol to LDL cholesterol ratio is progressive and linear.

Given these uncertainties, our assessments for the change of CHD risk at the current U.S. mean daily intake of 0.5 percent of energy derived from IP–TFA are conservative estimates. The results also suggest that a small shift to lower CHD risk could prevent large numbers of annual cases of CHD and CHD-related deaths. The current U.S.

background rates for CHD are already high, with considerable baseline variability due to abnormal serum lipid profiles in large percent of U.S. adults (33.5 percent have elevated LDL–C) and other risk factors for CHD (Ref. 25). More people may be vulnerable to CHD at the current mean intake of IP–TFA from PHOs than the risk reduction estimates as discussed above.

In sum, our quantitative estimates demonstrate that large numbers of CHD events and deaths may be prevented with the elimination of PHOs. We also note that our estimates are in line with published results regarding potential effects of replacing PHOs (Refs. 26 and 28). In replacing PHOs containing IP–TFA, a more significant reduction in CHD risk is estimated by replacement with vegetable oils containing higher amounts of *cis*-unsaturated fatty acids than with those high in saturated fatty acids, but we expect a risk reduction even if IP–TFA is replaced with fats and oils high in saturated fatty acids, based on our conservative risk estimates using combinations of the four peer-reviewed methods with two different sets of likely scenarios for IP–TFA replacement for each method. Additional details of these results, and results for replacement of example PHOs containing 20 percent IP–TFA and 45 percent IP–TFA, are provided in our review memorandum (Ref. 25).

We have also analyzed the comments we received regarding the scientific basis for our tentative determination in the November 2013 notice. Comments regarding the safety of PHOs that were opposed to our tentative determination were generally related to one of four subject areas: (1) Dose-response relationship of *trans* fat intake and adverse health effects in human studies and whether there is a threshold below which intake of *trans* fats is generally recognized as safe; (2) reliance on expert panel reports and recommendations; (3) health benefits and clinical significance of replacements for PHOs; and (4) alternative approaches. Comments regarding the safety of PHOs that were in support of our determination raised concerns about other adverse health effects besides effects on LDL–C, such as adverse effects on other risk factors for CHD (*e.g.*, HDL–C, total-C/HDL–C ratio, LDL–C/HDL–C ratio, and other lipid and non-lipid biomarkers), inflammatory effects, harm to subpopulations, and increased diabetes risk.

1. Dose-Response and Evidence of a Threshold Level

(Comment 26) A number of comments stated that the studies relied upon by FDA were not designed to address the impact of lowering TFA intake below 1% of energy. The comments asserted that although the expert panel reports state that there is no threshold intake level for IP–TFA that would not increase an individual's risk of CHD or adverse effects on risk factors for CHD, a review of the supporting documentation accompanying the reports does not support this statement; rather, the comments noted that panel reports indicate that due to the paucity of evidence in the 0 to 4% energy range, no evidence-based conclusions could be made.

(Response) FDA disagrees; the published research described in our review memorandum (Ref. 18) includes six regression analyses of controlled feeding trials summarizing the dose-response relationship of IP–TFA on blood cholesterol levels, published from 1995 to 2010. In addition, a 2010 meta-analysis included 23 *trans* fat feeding trials and 28 TFA levels, including a low-dose level of 0.4 percent of energy (or less than the current mean intake) (Ref. 30). Across these regression analyses, the reported effect of TFA on LDL–C, a validated surrogate biomarker that serves as a direct causal link to CHD, was very consistent and the analyses showed a linear dose-response, with an increase in LDL–C of about 0.038 to 0.049 millimoles per liter (mmol/L) for each 1 percent of energy intake from replacement of *cis*-monounsaturated fat with *trans* fat (Table 3 in Ref. 18). The regression analyses also showed a consistent linear dose response for HDL–C, with a decrease of about 0.008 to 0.013 mmol/L for each 1 percent of energy from replacement of *cis*-monounsaturated fat with *trans* fat (Table 3 in Ref. 18). Therefore, we conclude that the available data show that even at low intake levels (*e.g.*, below 3 percent energy) there is no identifiable threshold, rather the available data support a conclusion that IP–TFA causes a linear increase in blood levels of LDL–C, a validated surrogate biomarker of CHD risk and a linear decrease in blood levels of HDL–C, a major risk biomarker for CHD. If interested parties are or become aware of information and data supporting establishment of a threshold, such information and data could be submitted to FDA as part of a food additive petition(s) proposing safe conditions of use for PHOs.

(Comment 27) Many comments disagreed with our conclusion that there is a linear relationship between TFA intake and LDL–C at low TFA intake levels. Some comments stated that we did not establish causality between low doses of TFA (less than 1% of caloric energy) and increased CHD risk. Other comments stated that the review of available data shows that low levels of TFA intake (3% of energy or less) have no effect on serum LDL–C and total-C levels. Some comments criticized FDA's reliance on the Ascherio *et al.* 1999 paper (Ref. 31) and raised issues with this paper and the linear extrapolation used by the researchers. One comment suggested that using a different dose-response model is a more appropriate approach to determine the relationship between PHOs and LDL–C and HDL–C, rather than defaulting to a linear function, due to the quantity and type of data available at low intake levels. One comment stated that, in general, linear regression is an inappropriate tool to determine a safe or unsafe level of a dietary substance and questioned the use of low-dose linear extrapolation in this instance.

(Response) FDA disagrees with these comments. Given that effects of *trans* fat on LDL–C have been demonstrated at doses as low as 0.4 percent and 2.8 percent of caloric energy (Table 2 in Ref. 18), FDA disagrees that there is no evidence of an adverse effect from *trans* fat intake below 3 percent of energy. In addition, results of regression analyses published from 1995 to 2010, including Ascherio *et al.* 1999 (Refs. 26, 30, 31, 32, 33, and 34), are very consistent regarding the effect of TFA on serum lipids, thus indicating that the relationship between TFA intake and CHD risk is progressive and linear with no evidence of a threshold at which effects would not be expected to occur. Furthermore, we are not aware of any published study that supports an abrupt reduction in the adverse effects of TFA across the relatively narrow intake range of 0 percent to 3 percent of energy nor are we aware of any published scientific reports that provide a dose-response model that might reveal a different relationship for TFA intake and CHD risk that is generally accepted by qualified experts. FDA is aware of an unpublished meta-regression analysis, including consideration of the low-intake range (Ref. 35), suggesting that the data on dietary *trans* fat intake and changes in LDL–C may fit a dose-response curve that is non-linear. However, this analysis is neither published (generally available) nor does it demonstrate a consensus of expert opinion that the use of PHOs at low levels in food is safe as required for general recognition of safety.[2]

[2] FDA also reviewed and considered an unpublished report of this analysis and its

Further, we did not rely solely on the Ascherio et al. 1999 paper regarding the effect of IP–TFA intake on serum LDL–C and other lipid biomarkers. Over time, the number of studies covered by the published regression analyses or meta-analyses increased from 5 studies and 6 TFA levels in 1995 (Ref. 32) through 8 studies and 12 TFA levels in 1999 (Ref. 31) to 23 studies and 28 TFA levels in 2010 (Ref. 30). Across these studies, the reported magnitude of the effect of IP–TFA on LDL–C and HDL–C levels is very consistent. Furthermore, FDA notes that the 2009 National Research Council report, Science and Decisions: Advancing Risk Assessment (Ref. 36), describes conceptual models in which low-dose linearity with no threshold can arise. Absent evidence of a threshold intake level for TFA that does not increase an individual's risk of CHD or adverse effects on risk factors for CHD, FDA concludes that a linear low-dose extrapolation is appropriate for assessing the dose-response relationship between TFA intake and risk of CHD (as evidenced by effects on LDL–C, a validated surrogate biomarker for CHD, and HDL–C, a risk biomarker (Ref. 18)).

Our conclusion that there is a linear relationship (also known as a proportional effect, or proportionality) between *trans* fat intake and CHD risk is consistent with the body of evidence from controlled feeding studies on the proportionality of fatty acid intake and blood lipids, beginning with landmark studies in the 1950s and 1960s (Refs. 18, 37, 38, 39, and 40). Meta-analyses in the 1990s and early 2000s showed that the proportionality in the earlier landmark studies extended not only to total cholesterol but to LDL–C, HDL–C, total-C/HDL–C ratio and LDL–C/HDL–C ratio (Refs. 33, 41, and 42). Authors of a 1992 meta-analysis noted, ''a simple linear model in which diets are characterized solely by their contents of saturated, monounsaturated and polyunsaturated fatty acids goes a long way toward predicting group mean changes in serum lipid and lipoprotein levels'' (Ref. 42). Results of an early controlled feeding trial of *trans* fat intake and LDL–C and HDL–C were questioned because of the high *trans* fat intake (Ref. 43). However, when combined with a subsequent study at a lower dose, preliminary data from these two studies suggested that the effect of *trans* fat intake on LDL–C and HDL–C is proportional (Ref. 18). Subsequent meta-analyses discussed previously supported the linear proportionality of the data, and the quantitative relationships of dose-response are very consistent across the analyses (Ref. 18). The proportional relationship of *trans* fat intake and blood lipids has also been repeatedly affirmed by a series of expert panels (Ref. 18). Therefore, we conclude that the totality of the data supports the proportionality of changes in *trans* fat intake and changes in blood lipids (and therefore, CHD risk) and supports the use of a linear regression model to describe this relationship.

(Comment 28) Some comments objected to the approach of ''forcing'' the regression line of the dose-response curve through zero (the origin), as done by Ascherio et al. 1999 (Ref. 31) and believed this was not appropriate.

(Response) FDA disagrees. Whether or not to fix the intercept at zero depends on the meaning of the data, the research question to be answered, and the particular study design. (We further discuss the methodology for the meta-analyses in our review memorandum (Ref. 18)). In feeding studies where the total energy intake remains the same for both control and treatment groups, the zero intercept means that, with zero intake of *trans* fat, there is no effect of *trans* fat on (that is, no change in) the LDL–C, the LDL–C/HDL–C ratio, or other serum lipid biomarker being studied. This is the one data point that is known to be true by virtue of the study design, and many analyses using this approach have been published in peer-reviewed literature (Refs. 30, 31, 32, 44, and 45). In these analyses, the authors calculated the differences in serum lipid levels between the *trans* fat diet and the control diet for each controlled feeding trial, with adjustment for differences in intake of the other fatty acids between the two diets, using published dose-response coefficients (Refs. 33 and 42). The serum lipid and *trans* fat intake differences for each study were included in a linear regression model and expressed with respect to a specific replacement macronutrient (such as *cis*-monounsaturated fatty acids or carbohydrate). Therefore, we conclude that it is logical and appropriate to fit (not ''force'') the regression lines through zero because a zero change in *trans* fat intake results in zero change in blood lipids attributable to *trans* fat intake.

(Comment 29) Some comments criticizing our scientific review stated that prospective observational (epidemiological) studies which we relied on were not designed to demonstrate a cause and effect relationship between a substance and a disease, and are subject to various forms of bias.

(Response) Although observational studies with long-term followup do not prove cause and effect, the results are consistent with and supportive of the conclusions from the controlled feeding trial evidence discussed previously in this section (which does demonstrate cause and effect). The consistency of the evidence from two different study methodologies is strong support for the conclusion that *trans* fatty acid intake has a progressive and linear effect that increases the risk of CHD. Our review memorandum (Ref. 18) provides a summary of the scientific evidence from the observational studies on the association of TFA intake and actual CHD outcomes in large populations and addresses in detail the study designs and adjustments for confounding variables. There are four major prospective observational studies (Refs. 46, 47, 48, 49, 50, 51, and 52), some with one or more updates during the followup period (*e.g.,* the Nurses' Health Study had followups at 8, 14, and 20 years), that are further discussed in detail in one of our review memoranda (Ref. 18). These are prospective (cohort) studies, which is the strongest study design for observational studies, and the results consistently show that higher *trans* fat intake is associated with increased CHD risk. In several studies, not only was the association of the highest versus lowest level (category) of *trans* fat intake with greater CHD risk statistically significant, but also there was a significant test for linear trend, indicating a positive and progressive association of *trans* fat intake with CHD risk (or CHD deaths) across levels (low, intermediate, or high categories) of intake (Refs. 46, 48, 49, 50, and 51). In addition to the analysis of *trans* fat intake grouped in several levels or categories, in certain studies, numerical *trans* fat intake, as a continuous variable, was significantly associated with CHD risk, again indicating a positive and progressive association of increased *trans* fat intake with increased CHD risk across the range of observed intake (Refs. 49 and 51).

There are also a number of meta-analyses of the major prospective studies (Refs. 26, 51, 52, 53, 54, and 55). In a 2009 meta-analysis, based on almost 5,000 CHD events in almost 140,000 subjects, each additional 2 percent of energy intake from *trans* fat increased CHD risk by 23 percent compared with the same energy intake from carbohydrate (Ref. 52). The magnitude of the increase in CHD risk associated with *trans* fat intake among

executive summary, which were submitted to FDA with the request that they be kept confidential. FDA is including these documents in the administrative record for this matter but is not placing them in the public docket because they are confidential.

meta-analyses has remained consistent over time, including the studies with additional updates during the followup periods. Further, the prospective studies measure actual CHD occurrence in large groups of people over long time periods, and describe all CHD risk associated with *trans* fat intake, regardless of the mechanism of action by which *trans* fat intake may be associated with CHD (*i.e.,* these studies do not rely on biomarkers or risk factors but instead measure actual occurrence of disease). The magnitude of the observed CHD risk from TFA intake is greater in the prospective observational studies than from the controlled feeding studies.

We also reviewed related observational studies of TFA intake and cardiovascular disease health outcomes that considered all causes of mortality and cardiovascular disease endpoints other than CHD, as well as studies that used blood and tissue levels as biomarkers of TFA intake instead of dietary questionnaires, and retrospective case control studies (Ref. 18). The results from these studies generally showed *trans* fat intake or biomarkers associated with adverse health outcomes. The consistent findings of adverse health effects of *trans* fat from these studies with different methodologies strengthen our conclusions based on the evidence from the major prospective observational studies and controlled feeding studies summarized previously.

(Comment 30) Several comments cited a 2011 publication by FDA authors (Ref. 56) as evidence of PHO safety and evidence that a threshold can be determined below which there is general recognition of safety. The comments argued that these authors reviewed data from clinical trials to assess the relationship between *trans* fat intake and LDL–C and total-C and that their regression analysis showed no association between *trans* fat consumption and either LDL–C or total-C levels. Also, the comments stated that the authors do not ''force'' the regression line through zero unlike in the Ascherio *et al.* 1999 paper, relied upon by FDA in the tentative determination.

(Response) FDA disagrees. We note that the authors of this paper stated that their regression analysis of TFA intake and LDL–C ''supports the IOM's conclusion that any intake level of *trans* fat above 0 percent of energy increased LDL cholesterol concentration.'' This paper did not identify a threshold level at which LDL–C began to increase. The analysis in the paper was limited to validated surrogate endpoint biomarkers of CHD, total cholesterol and LDL–C, and did not consider other CHD risk factor biomarkers such as HDL–C, or total-C/HDL–C or LDL–C/HDL–C ratios. The paper focused on methodology for attempting to identify a tolerable upper intake level for *trans* fat. The appropriateness of fitting the intercept through zero in a regression analysis depends on the meaning of the data, the research question to be answered, and the particular study design, and is discussed further in our response to Comment 28.

In addition to the feeding trial data discussed in the 2011 publication, the authors of the 2011 paper presented data from prospective observational studies showing that, compared with the lowest *trans* fat intake level, there was a statistically significant increase in CHD risk at some levels of *trans* fat intake, but not at others. Based on this, they stated that, at least theoretically, ''a threshold level could be identified for *trans* and saturated fat,'' but they were not actually able to identify any specific threshold level. We note that other data from prospective studies that were not discussed in this paper support the conclusion that there is a direct and progressive relationship between TFA intake and CHD risk, and no threshold has been identified. Several studies showed a positive trend for higher CHD risk with higher intake categories of TFA that was statistically significant (Refs. 46, 48, 49, 50, and 51) and certain studies also analyzed numerical TFA intake without using categories (that is, as a continuous variable) and found a significant positive linear association of TFA intake with CHD risk across the range of usual TFA intake levels of participants in the studies (Refs. 49 and 51). These results, not discussed in the paper, are inconsistent with the existence of a threshold. Therefore, we conclude that there is no currently identifiable threshold below which there is general recognition that PHOs may be safely used in human food. However, if there are data and information that demonstrates to a reasonable certainty that no harm will result from a specific use of a PHO in food, that information could be submitted as part of a food additive petition to FDA seeking issuance of a regulation to prescribe conditions under which the additive may be safely used in food.

(Comment 31) Some comments stated that FDA made conclusions that any incremental increase in *trans* fat intake increases the risk of CHD based on endpoints that are not considered validated surrogate biomarkers for CHD, such as LDL–C/HDL–C ratio in the Ascherio et al. 1999 paper (Ref. 31).

(Response) We used LDL–C, a validated surrogate endpoint biomarker for CHD (Ref. 21), as the primary endpoint for evaluating the adverse effects of IP–TFA intake from PHOs. As discussed previously in this section, validated surrogate endpoint biomarkers are those that have been shown to be valid predictors of disease risk and may therefore be used in place of clinical measurement of the incidence of disease (Refs. 19 and 20). In addition, we considered the adverse effects of *trans* fat intake on other risk factor biomarkers, including HDL–C and the LDL–C/HDL–C and total-C/HDL–C ratios. In fact, these other risk factor biomarkers indicate additional adverse effects of IP–TFA, beyond the primary adverse effect of raising LDL–C. Although these other risk factor biomarkers are not validated surrogate endpoint biomarkers for CHD, they raise significant questions about the safety of PHOs and are therefore relevant to our determination that PHOs are not GRAS. For example, HDL–C levels have been shown to be a useful predictor of CHD risk (Refs. 22 and 57). Because it has not been shown that drug therapy to raise HDL–C decreases CHD in clinical trials, HDL–C is not considered a validated surrogate endpoint for CHD (Ref. 19). We did not primarily rely on the relationship between *trans* fat intake and adverse effects on HDL–C and CHD risk, we recognize that a relationship is known to exist and therefore considered it in our analysis. We discussed this issue in detail in the July 2003 final rule (68 FR at 41434 at 41448 through 41449).

Recent studies have affirmed HDL–C and total-C/HDL–C ratio as risk factors that predict CHD (Ref. 18). In a large, pooled meta-analysis of prospective observational studies, including 3,020 CHD deaths during 1.5 million person-years of followup, each 1.33 unit decrease in the total-C/HDL–C ratio was associated with a 38 percent decrease in risk of CHD death (Ref. 22). Each 0.33 mmol/L decrease in HDL–C was associated with a 61percent higher risk of CHD death. The authors concluded: ''HDL cholesterol added greatly to the predictive ability of total cholesterol.'' They stated: ''Higher HDL cholesterol and lower non-HDL cholesterol levels were approximately independently associated with lower IHD [CHD] mortality, so the ratio of total/HDL cholesterol was substantially more informative about IHD mortality than either, and was more than twice as informative as total cholesterol'' (Ref. 22).

(Comment 32) One comment stated that safety evaluation of macronutrients,

such as PHOs, is very complex and requires a far more robust assessment of the totality of technical and scientific evidence. The comment criticized FDA for relying on ''an isolated physiological endpoint such as serum lipoproteins'' as predictive of CHD, and states that this methodology is not appropriate for a GRAS assessment.

(Response) FDA disagrees; the results of feeding trials showing changes in LDL–C, a validated surrogate endpoint biomarker for CHD, and other risk factor biomarkers, are supported by the results of observational studies showing actual CHD disease outcomes (heart attacks and deaths) associated with TFA intake in large populations. The consistency of the evidence from two different study methodologies is strong support for the conclusion that *trans* fatty acid intake has a progressive and linear effect that increases the risk of CHD. Such health effects are appropriate for FDA to consider when assessing the safety of food ingredients.

2. Expert Panel Reviews and Recommendations

The November 2013 notice discussed expert panel conclusions and recommendations, including the 2002/2005 IOM reports. The conclusions and recommendations of this report have since been affirmed by a series of U.S. and international expert panels. The recent expert panels have continued to recognize the progressive linear relationship between LDL–C (increase) and HDL–C (decrease) and *trans* fat intake, and have concluded that *trans* fats are not essential nutrients in the diet and consumption should be kept as low as possible. We have compiled a detailed summary of the expert panel reports in a review memorandum (Ref. 18).

(Comment 33) Some comments stated that FDA should convene an expert panel to specifically address whether evidence exists to indicate the effect of TFA on LDL–C is linear at low intakes (below 3% energy). Other comments stated that there is consensus among qualified experts that TFA intake should be less than 1% of energy, and cited expert panel reviews as evidence. Similar comments stated that PHOs are safe at current intake levels, and TFA intake is already below levels recommended by nutrition experts.

(Response) We decline to convene another expert panel in light of the substantial evidence available on the adverse effects of consuming *trans* fat. FDA notes that a 2013 National Institutes of Health, National Heart, Lung, and Blood Institute (NIH/NHLBI) expert panel conducted a systematic evidence review and concluded with moderate confidence that, for every 1 percent of energy from TFA replaced by mono- or polyunsaturated fatty acids (MUFA or PUFA), LDL–C decreases by an estimated 1.5 milligrams per deciliter (mg/dL) and 2.0 mg/dL, respectively (Ref. 58). The panel also concluded that replacement of TFA with saturated fatty acids (SFA), MUFA, or PUFA increases HDL–C by an estimated 0.5, 0.4 and 0.5 mg/dL, respectively. This panel's conclusions were not limited to a specific TFA dose range and did not indicate any threshold TFA intake. The conclusions were based on previously published linear regression analyses (Refs. 26 and 33).

We also disagree that, based on generally available information, there is a consensus among qualified experts that *trans* fats are safe at some level, and we note that recommendations from expert panels either: (1) Do not state a recommended level (Ref. 13); or (2) recommend consideration of further reduction in IP–TFA intake, below current levels (Refs. 59, 60, 61, and 62). Since 2002, many expert panels have considered the adverse effects associated with *trans* fat consumption. Table 1 provides a list of organizations that have published reports on *trans* fat and indicates whether they have conducted an evidence review and/or made formal intake recommendations regarding *trans* fat consumption. The conclusions and recommendations made by these organizations further demonstrate a lack of consensus regarding the safety of PHOs, as the primary dietary source of IP–TFA.

TABLE 1—LIST OF ORGANIZATIONS THAT HAVE PUBLISHED REPORTS ON TRANS FAT

Organization	Report title	Year	Evidence review and conclusions	Formal *trans* fat intake recommendation
IOM	Dietary Reference Intakes for Energy and Macronutrients (Ref. 7).	2002/2005	X	X
European Food Safety Authority, Scientific Panel on Dietetic Products, Nutrition and Allergies.	Opinion on the presence of *trans* fatty acids in foods and the effect on human health of the consumption of *trans* fatty acids (Ref. 63).	2004	X	
FDA Food Advisory Committee, Nutrition Subcommittee.	Subcommittee Meeting, Summary Minutes (Ref. 14).	2004	X	
Dietary Guidelines Advisory Committee (DGAC).	Report of the 2005 DGAC (Ref. 64)	2005	X	
U.S. Dept. of Health and Human Services, U.S. Dept. of Agriculture (DHHS/USDA).	Dietary Guidelines for Americans (Ref. 12)	2005		X
World Health Organization (WHO)	Scientific Update on *Trans* Fatty Acids (Ref. 60).	2009	X	X
Food and Agriculture Organization, World Health Organization (FAO, WHO).	Background Papers for Expert Consultation on Fats and Fatty Acids in Human Nutrition (Ref. 59).	2009	X	
FAO, WHO	Expert Consultation on Fats and Fatty Acids in Human Nutrition (Ref. 61).	2010	X	X
DGAC	Report of the 2010 DGAC (Ref. 65)	2010	X	
DHHS/USDA	Dietary Guidelines for Americans (Ref. 13)	2010		X
NHLBI	Evidence Report on Lifestyles Interventions to Reduce Cardiovascular Risk (Ref. 58).	2013	X	
American College of Cardiology, American Heart Association.	Guideline on Lifestyle Management to Reduce Cardiovascular Risk (Ref. 62).	2013/2014		X

3. Safety of Replacements for IP–TFA in PHOs

(Comment 34) Several comments questioned whether further reductions in TFA intake will be clinically significant and subsequently affect public health.

(Response) Since publication of the November 2013 notice, we have quantitatively analyzed the public health significance of removing PHOs from the food supply (Ref. 25), and the results show that removing PHOs from human food would have an expected positive impact on public health. We note that further reductions in IP–TFA intake below current levels may result in small reductions in LDL–C and small improvements in other biomarkers that may not seem clinically significant for an individual; however, when considered across the U.S. population, small reductions in CHD risk would be expected to prevent large numbers of heart attacks and deaths, as illustrated in FDA estimates (Ref. 25). Moreover, the 2013 Guideline on Lifestyle to Reduce Cardiovascular Risk from the American College of Cardiology and the American Heart Association (Ref. 62) strongly recommends that clinicians advise adults who would benefit from LDL–C reduction to reduce their percentage of calories from *trans* fat (the report notes that the majority of U.S. adults have one or more risk factors involving abnormal lipids, high blood pressure or pre-high blood pressure; 33.5 percent of adults have elevated LDL–C). Therefore, further reduction in IP–TFA intake below current levels is expected to be clinically significant and to prevent a large number of heart attacks and deaths in the United States.

(Comment 35) Some comments stated that the safety implications of replacing TFA with other nutrients (*e.g.,* saturated fat, unsaturated fat, carbohydrates) have yet to be determined.

(Response) We recognize that removing PHOs from the food supply will result in replacing the IP–TFA from PHOs with other macronutrients, most likely other fatty acids, but disagree that the safety implications of these changes have not been considered. The adverse effect of TFA on LDL–C and other blood lipids and non-lipids when replacing other macronutrients (such as carbohydrate, saturated fat and *cis*-unsaturated fat) was extensively demonstrated in controlled feeding trials and summarized in regression analyses (Refs. 18, 26, 30, 31, 32, 33, 44, and 45). In prospective observational studies, reduction in CHD risk was also associated with replacement of TFA with other macronutrients (Refs. 18 and 49). These analyses, as well as FDA estimates discussed previously in section IV, demonstrate that replacement of TFA with other macronutrients is expected to result in decreased CHD risk.

We also recognize that replacement of PHOs will result in fatty acids from other fats and oils replacing not only IP–TFA but also the other fatty acids in the PHOs, but disagree that the safety implications of these changes have not been considered. One recent study estimated the change in CHD risk from changes in blood lipids due to replacing soybean oil PHOs with application specific oils (Ref. 28). Results showed that each of the TFA replacement strategies modeled changed the fatty acid intake profile in a manner predicted to decrease CHD risk, with differences in the projected decreased risk due to different replacement oils. Another recent study estimated the effect of the replacement of three example PHOs with seven replacement fats and oils, based on changes in blood lipids and non-lipids and other risk factor biomarkers from controlled feeding trials and on changes in CHD risk from prospective observational studies (Ref. 26). Results showed that replacement of PHOs with other fats and oils would substantially lower CHD risk (Ref. 26). Both studies estimated a greater reduction in CHD risk with replacement of PHOs with vegetable oils containing higher amounts of *cis*-unsaturated fatty acids than with those high in saturated fat (Refs. 26 and 28). FDA also notes that replacement of PHOs containing IP–TFA with other fats and oils over the past decade has not been accompanied by extensive increases in saturated fat (Ref. 29), which could have diminished the impact of removing *trans* fat.

The safety implications of replacing IP–TFAs in PHOs with other macronutrients and replacing PHOs containing IP–TFAs with other fats and oils have been addressed in published studies (Refs. 18, 26, 28, 30, 31, 32, 33, 44, 45, and 49) and are also addressed in our quantitative estimate of decrease in CHD risk with replacement of IP–TFA, summarized previously in section IV.B (Ref. 25).

4. Alternative Approaches and Evidence for Safety

In the tentative determination, we requested data to support other possible approaches to address the use of PHOs in food, such as setting a specification for *trans* fat levels in food (78 FR 67169 at 67174).

(Comment 36) Several comments proposed that we should limit the percentage of *trans* fat in finished foods or oils, or set a threshold in foods for the maximum grams (g) of *trans* fat per serving. Some comments suggested various specification levels ranging from 0.2 to 0.5 g *trans* fat per serving or as a percentage of total fat in foods or oils. Another comment urged FDA to establish a reasonable level for *trans* fat in food to specifically account for minor uses of PHOs as processing aids.

Some comments urged us to declare that certain uses of PHOs in foods are GRAS, or to issue interim food additive regulations for specific low level uses. Examples of such uses provided by comments included emulsifiers, encapsulates for flavor agents and color additives, pan release agents, anti-caking agents, gum bases, and use in frostings, fillings, and coatings. The use of PHOs in chewing gum was specifically noted in some comments as deserving special consideration due to the claim that there is no meaningful PHO intake from this use. Several comments suggested we issue interim food additive regulations that would allow certain uses of PHOs in food, pending completion of studies evaluating the health effects of low level consumption of *trans* fat that reflect current intake levels. Furthermore, one comment advised that if we decide to treat certain low-level uses of PHOs as food additives, then the GRAS status for these uses should not be revoked until a food additive approval is issued.

In contrast, we also received numerous comments opposed to establishing limits of *trans* fat in foods. Most of these comments noted that scientific evidence has shown that no amount of *trans* fat in food is safe and therefore, supported our tentative determination. One comment noted that *trans* fat threshold limits in food would be too difficult to monitor and enforce, and therefore, should not be established.

(Response) Regarding the proposals for alternate approaches suggesting a threshold for *trans* fat in food or oils or suggesting that FDA declare some uses of PHOs as GRAS, no comments provided evidence that any uses of PHOs meet the GRAS standard, or evidence that would establish a safe threshold exposure level. Further, although the intake from such minor uses may be low, adequate data (*e.g.,* specific conditions of use, use level, *trans* fat content of the PHOs used) were not provided so that intake from these uses could be estimated. Therefore we are not setting a threshold for *trans* fat. If industry or other interested individuals believe that safe conditions of use for PHOs can be demonstrated, it or they may submit a food additive

petition or food contact notification to FDA for review.

Interim food additive regulations are appropriate only when there is a reasonable certainty that a substance is not harmful. See 21 CFR 180.1(a). As discussed throughout this section, the available scientific evidence raises substantial concerns about the safety of PHOs. Based on the currently available data and information, FDA cannot conclude that there is a reasonable certainty that PHOs are not harmful, nor did any comments provide information that would allow FDA to establish conditions of safe use at this time. Therefore, an interim food additive regulation would not be appropriate.

(Comment 37) Several comments suggested various changes to our labeling regulations to encourage industry to reformulate products to contain less *trans* fat and help consumers reduce *trans* fat intake. In addition, one comment stated that a 0 g *trans* fat declaration should not be allowed on a label if a PHO is in the ingredient list. Some comments indicated that a statement recommending that consumers limit their intake of *trans* fat should be added to the Nutrition Facts Panel. A few comments suggested we set a Daily Value for *trans* fat and consider establishing disclosure or disqualifying levels of *trans* fat for nutrient content and health claims. Many comments noted that the risk of developing CHD is dependent on many factors, and therefore, the association between intake of macronutrients, such as PHOs, and adverse health outcomes is best addressed through nutrition labeling and consumer education.

(Response) FDA disagrees that labeling is the best approach to address the use of PHOs because FDA has determined that PHOs are not GRAS for any use in human food and therefore are food additives subject to the requirement of premarket approval under section 409 of the FD&C Act. Although we recognize that the requirement to label *trans* fat content led to significant reduction in *trans* fat levels in products, further changes to labeling are outside the scope of this determination, which relates to ingredient safety.

(Comment 38) Some comments suggested that we should work with industry to encourage voluntary reductions in PHO use and to foster the development of innovative hydrogenation technologies that produce PHOs containing low levels of *trans* fat.

(Response) FDA disagrees that a voluntary program is the best way to remove PHOs from the food supply, given our conclusion on the GRAS status of PHOs. FDA has determined that PHOs are not GRAS for any use in human food. FDA agrees, however, that we should work with the food industry to review new regulatory submissions or data as new technologies and/or ingredients are developed that may serve as alternatives to PHOs, and we will continue to do so.

V. Citizen Petitions

As discussed in the tentative determination (78 FR 67169 at 67173), we received two citizen petitions regarding the safety of PHOs. In 2004, the Center for Science in the Public Interest (CSPI) submitted a citizen petition (''CSPI citizen petition'' which can be found under Docket No. FDA–2004–P–0279) requesting that we revoke the GRAS status of PHOs, and consequently declare that PHOs are food additives. The petition also asked us to revoke the safe conditions of use for partially hydrogenated products that are currently considered food additives,[3] to prohibit the use of partially hydrogenated vegetable oils that are prior sanctioned, and to initiate a program to encourage manufacturers and restaurants to switch to more healthy oils (CSPI citizen petition at pp. 3 through 5, 29 through 30). The CSPI citizen petition excluded *trans* fat that occurs naturally in meat from ruminant animals and dairy fats, and that forms during the production of non-hydrogenated oils (Id. at pp. 2 through 3). It also did not include FHOs, which contain negligible amounts of *trans* fat, and PHOs that may be produced by new technologies that result in negligible amounts of *trans* fat in the final product (Id. at p. 3). The CSPI citizen petition stated that *trans* fat promotes CHD by increasing LDL–C and also by lowering HDL–C, and therefore has greater adverse effects on serum lipids (and possibly CHD) than saturated fats (Id., at pp. 15 through 18). The CSPI citizen petition also stated that, beyond its adverse effects on serum lipids, *trans* fat may promote heart disease in additional ways. Based on these findings, CSPI asserted that PHOs can no longer be considered GRAS.

In 2009, Dr. Fred Kummerow submitted a citizen petition (''Kummerow citizen petition,'' which can be found at Docket No. FDA–2009–P–0382) requesting that we ban partially hydrogenated fat from the American diet. The Kummerow citizen petition cited studies linking intake of IP–TFA to the prevalence of CHD in the United States. The Kummerow citizen petition also asserted that *trans* fat may be passed to infants via breast milk and that the daily intake of *trans* fat related to the health of children has been ignored since children do not exhibit overt heart disease (Id. at p. 6). The Kummerow citizen petition further stated that inflammation in the arteries is believed to be a risk factor in CHD and studies have shown that *trans* fatty acids elicit an inflammatory response (Id.).

This order constitutes a response, in part, to the citizen petitions. As discussed above in section III.C (response to Comment 10), we plan to amend the regulations regarding LEAR and menhaden PHOs in a future action, and we will consider taking future action regarding related regulations. As discussed in section III.B, we intend to address any claims of prior sanction for specific uses of PHO in a future action.

VI. Environmental Impact

We have carefully considered the potential environmental effects of this action. We have determined, under 21 CFR 25.32(m), that this action ''is of a type that does not individually or cumulatively have a significant effect on the human environment'' such that neither an environmental assessment nor an environmental impact statement is required.

FDA received some comments on the tentative determination relating to potential environmental impacts of removing PHOs from the human food supply. We considered these comments in determining whether extraordinary circumstances existed under 21 CFR 25.21. Our discussion is contained in a review memorandum (Ref. 66).

VII. Economic Analysis

This notice is not a rulemaking. It is a declaratory order under 5 U.S.C. 554(e) to terminate a controversy or remove uncertainty. We have prepared a memorandum updating our previous estimate published in the November 2013 notice, using information available to us as well as information we received during the comment period. We estimated the 20-year costs and benefits of removing PHOs from the U.S. human food supply, an outcome that could result from this order (Ref. 17). We estimated the costs of all significant effects of the removal, including

[3] The petition from CSPI provided, as an example, partially hydrogenated methyl ester of rosin, which is approved as a food additive for use as a synthetic flavoring substance (32 FR 7946, June 2, 1967; 21 CFR 172.515) and as a masticatory substance in chewing gum base (29 FR 13894, October 8, 1964; 21 CFR 172.615). Partially hydrogenated methyl ester of rosin is not a PHO as discussed in section II; accordingly, this this substance is outside the scope of this order.

packaged food reformulation and relabeling, increased costs for substitute ingredients, and consumer, restaurant, and bakery recipe changes. We monetized the expected health gains from the removal of PHOs from the food supply using information presented in FDA's safety assessment (Ref. 17) and the peer-reviewed literature, and added this to expected medical expenditure savings to determine the expected benefits of this order.

We estimate the net present value (NPV) (over 20 years; Table 2) of quantified costs of this action to be $6.2 billion, with a 90 percent confidence interval of $2.8 billion to $11 billion. We estimate the net present value of 20 years of benefits to be $140 billion, with a 90 percent confidence interval of $11 billion to $440 billion. Expected NPV of 20 years of net benefits (benefits reduced by quantified costs) are $130 billion, with a 90 percent confidence interval of $5 billion to $430 billion.

TABLE 2—COSTS AND BENEFITS OF PHO REMOVAL, USD BILLIONS

20-Year net present value of	Low Estimate	Mean	High Estimate
Costs *	$2.8	$6.2	$11
Benefits	11	140	440
Net Benefits *	5	130	430

* This does not include some unquantified costs, see the economic estimate memo (Ref. 17) for discussion.

VIII. Compliance Date and Related Comments With FDA Responses

We received numerous comments about the time needed to reformulate products to remove PHOs should FDA make a final determination that PHOs are not GRAS. We also received comments about challenges to reformulation, specific product types that will be difficult to reformulate, and effects on small businesses.

(Comment 39) The comments recommended compliance dates ranging from immediate to over 10 years. Several comments stated that fried foods should have less time (*i.e.,* 6 months) to phase out the use of PHOs. One comment stated that if the use of low levels of PHOs were to remain permissible by virtue of being GRAS or through food additive approval, then the estimated time to reformulate would be 5 years; however, if FDA does not authorize low level uses of PHOs, the timeline would need to be 10 years. In general, the food industry urged FDA to provide sufficient time for all companies to secure a supply of alternatives and transition to new formulations. Some comments stated that FDA should coordinate the compliance date with updates to the Nutrition Facts Panel.

Some comments stated that domestically grown oilseed crops must be planted about 18 months prior to their expected usage in order for the crop to be grown, harvested, stored, crushed, oil extracted, processed, refined, delivered, and used in foods. One comment stated that the oil industry will need a minimum of 3 years to fully commercialize the various oils capable of replacing PHOs in food. A number of comments stated that it could take several additional years to reformulate after the development of the new oils.

Several comments expressed concern about adequate availability of alternative oils, especially palm oil. One comment stated that the food industry would prefer to replace PHOs with domestically produced vegetable oils (*e.g.,* high-oleic soybean oil) rather than palm oil, but time is needed to commercialize these options. Some comments stated that sudden demand for palm oil would pose challenges for obtaining sustainably-sourced palm oil, as the current market would likely not be able to meet the demand.

Other comments indicated that the time needed for removal of PHOs is dependent on the product category. A number of comments indicated that the baking industry will have difficulty replacing the solid shortenings used in bakery products. Other comments indicated difficulties in the categories of cakes and frostings, fillings for candies, chewing gum, snack bars, and as a component of what the comments termed minor use ingredients, such as for use in coatings, anti-caking agents, encapsulates, emulsifiers, release agents, flavors, and colors.

Several comments indicated that other challenges to PHO removal include the need for new transportation infrastructure (*e.g.,* terminals, rail cars, barges, and storage facilities), packaging changes, and disruption of international trade.

A number of comments noted challenges faced by small businesses, such as access to alternative oils, inability to compete for supply, fewer resources to commit to research and development, and effect of ingredient costs on growth of the business. Some comments noted that small businesses represent a relatively small contribution to overall IP–TFA intake. One comment recommended that we allow small businesses an additional 2 years beyond the rest of industry. Another comment stated that small businesses would need at least 5 years due to their limitations in research and development expertise, inability to command supply of scarce ingredients, and economic pressures of labeling changes. A related comment requested that FDA take into consideration the magnitude of private label products impacted. Other comments stated that small businesses should not be given special consideration or longer times for implementation.

(Response) Based on our experience and on the changes we have already seen in the market, we believe that 3 years is sufficient time for submission and review and, if applicable requirements are met, approval of food additive petitions for uses of PHOs for which industry or other interested individuals believe that safe conditions of use may be prescribed. For this reason, we are establishing a compliance date for this order of June 18, 2018. We recognize that the use of PHOs in the food supply is already declining and expect this to continue even prior to the compliance date. Regarding the use of ''low levels'' of PHOs, no comments provided a basis upon which we can currently conclude that any use of PHO is GRAS (discussed in section IV). We recognize the challenges faced by small businesses, however, considering our determination that PHOs are not GRAS for any use in human food, we conclude that providing 3 years for submission and review of food additive petitions and/or food contact notifications is reasonable, and will have the additional benefit of allowing small businesses time to address these challenges. We understand the difficulties faced by small businesses due to limited research and development resources and

potential challenges to gain timely access to suitable alternatives.

The compliance date will have the additional benefit of minimizing market disruptions by providing industry sufficient time to identify suitable replacement ingredients for PHOs, to exhaust existing product inventories, and to reformulate and modify labeling of affected products. Three years also provides time for the growing, harvesting, and processing of new varieties of edible oilseeds to meet the expected demands for alternative oil products and to address the supply chain issues associated with transition to new oils.

(Comment 40) Several comments stated that how FDA defines PHOs and FHOs will affect reformulation efforts and the time needed to reformulate. These comments suggested it was unclear from the tentative determination whether FHOs would be subject to this final determination.

(Response) As discussed in section II, we have defined PHOs, the subjects of this order, as fats and oils that have been hydrogenated, but not to complete or near complete saturation, and with an IV greater than 4 as determined by an appropriate method. We have also defined FHOs as those fats and oils that have been hydrogenated to complete or near complete saturation, and with an IV of 4 or less, as determined by an appropriate method. Thus, FHOs are outside the scope of this order and there is no need to allow additional time for reformulation of products containing FHO.

IX. Conclusion and Order

As discussed in this document, for a substance to be GRAS, there must be consensus among qualified experts based on generally available information that the substance is safe under the intended conditions of use. In accordance with the process set forth in FDA's regulations in § 170.38, FDA has determined that there is no longer a consensus that PHOs, the primary source of industrially-produced *trans* fat, are generally recognized as safe for use in human food, based on current scientific evidence discussed in section IV.B regarding the health risks associated with consumption of *trans* fat. FDA considers this order a partial response to the citizen petitions from CSPI and Dr. Kummerow.

X. References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.* (FDA has verified the Web site addresses in this reference section, but we are not responsible for any subsequent changes to the Web sites after this document publishes in the (**Federal Register**.)

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66. Memorandum from M. Pfeil to M. Honigfort, June 11, 2015.

Dated: June 12, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–14883 Filed 6–16–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0369]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Regulations Under the Federal Import Milk Act

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 17, 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 0910–0212. 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 Road; 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.

Under Federal Import Milk Act (FIMA) (21 U.S.C. 141–149), milk or cream may be imported into the United States only by the holder of a valid import milk permit (21 U.S.C. 141). Before such permit is issued: (1) All cows from which import milk or cream is produced must be physically examined and found healthy; (2) if the milk or cream is imported raw, all such cows must pass a tuberculin test; (3) the dairy farm and each plant in which the milk or cream is processed or handled must be inspected and found to meet certain sanitary requirements; (4) bacterial counts of the milk at the time of importation must not exceed specified limits; and (5) the temperature of the milk or cream at time of importation must not exceed 50 °F (21 U.S.C. 142).

Our regulations in part 1210 (21 CFR part 1210) implement the provisions of FIMA. Sections 1210.11 and 1210.14 require reports on the sanitary conditions of, respectively, dairy farms and plants producing milk and/or cream to be shipped to the United States. Section 1210.12 requires reports on the physical examination of herds, while § 1210.13 requires the reporting of tuberculin testing of the herds. In addition, the regulations in part 1210 require that dairy farmers and plants maintain pasteurization records (§ 1210.15) and that each container of milk or cream imported into the United States bear a tag with the product type, permit number, and shipper's name and address (§ 1210.22). Section 1210.20 requires that an application for a permit to ship or transport milk or cream into the United States be made by the actual shipper. Section 1210.23 allows permits to be granted based on certificates from accredited officials.

In the **Federal Register** of March 25, 2015 (80 FR 15794), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received in response to the notice.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
1210.11	FDA 1996; Sanitary Inspection of Dairy Farms.	2	200	400	1.5	600
1210.12	FDA 1995; Physical Examination of Cows.	1	1	1	0.5 (30 minutes)	0.5
1210.13	FDA 1994; Tuberculin Test	1	1	1	0.5 (30 minutes)	0.5
1210.14	FDA 1997; Sanitary Inspections of Plants.	2	1	2	2	4
1210.20	FDA 1993; Application for Permit.	2	1	2	0.5 (30 minutes)	1
1210.23	FDA 1815; Permits Granted on Certificates.	2	1	2	0.5 (30 minutes)	1
Total						607

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
1210.15	2	1	2	0.05	0.1

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The estimated number of respondents and hours per response are based on our experience with the import milk permit program and the average number of import milk permit holders over the past three years. We estimate that two respondents will submit approximately 200 Form FDA 1996 reports annually, for a total of 600 responses. We estimate the reporting burden to be 1.5 hours per response, for a total burden of 607 hours.

The Secretary of Health and Human Services has the discretion to allow Form FDA 1815, a duly certified statement signed by an accredited official of a foreign government, to be submitted in lieu of Forms FDA 1994 and 1995. To date, Form FDA 1815 has been submitted in lieu of these forms. Because we have not received any Forms FDA 1994 and 1995 in the last 3 years, the Agency estimates no more than one will be submitted annually. We estimate the reporting burden for each to be 0.5 hours per response for a total burden reporting burden of 0.5 hours each.

We estimate that two respondents will submit one Form FDA 1997 report

annually, for a total of two responses. We estimate the reporting burden to be 2 hours per response, for a total burden of 4 hours. We estimate that two respondents will submit one Form FDA 1993 report annually, for a total of two responses. We estimate the reporting burden to be 0.5 hours per response, for a total burden of 1 hour. We estimate that two respondents will submit one Form FDA 1815 report annually, for a total of two responses. We estimate the reporting burden to be 0.5 hours per response, for a total burden of 1 hour.

With regard to records maintenance, we estimate that approximately two recordkeepers will spend 0.05 hours annually maintaining the additional pasteurization records required by § 1210.15, for a total of 0.10 hours annually.

No burden has been estimated for the tagging requirement in § 1210.22 because the information on the tag is either supplied by us (permit number) or is disclosed to third parties as a usual and customary part of the shipper's normal business activities (type of product, shipper's name and address). Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act. Under 5 CFR 1320.3(b)(2)), the time, effort, and financial resources necessary to comply with a collection of information are excluded from the burden estimate if the reporting, recordkeeping, or disclosure activities needed to comply are usual and customary because they would occur in the normal course of business activities.

Dated: June 11, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–14888 Filed 6–16–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–2347]

Agency Information Collection Activities; Announcement of Office of Management and Budget Approval; Food and Cosmetic Export Certificate Applications Process

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled, ''Food and Cosmetic Export Certificate Applications Process'' 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 23, 2015, the Agency submitted a proposed collection of information entitled, ''Food and Cosmetic Export Certificate Applications Process'' 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 0910–0793. 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 11, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–14879 Filed 6–16–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–1794]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Impact of Ad Exposure Frequency on Perception and Mental Processing of Risk and Benefit Information in Direct-to-Consumer Prescription Drug Ads

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 17, 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-New and title ''Impact of Ad Exposure Frequency on Perception and Mental Processing of Risk and Benefit Information in Direct-To-Consumer Prescription Drug Ads.'' 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.

Impact of Ad Exposure Frequency on Perception and Mental Processing of Risk and Benefit Information in Direct-to-Consumer Prescription Drug Ads; OMB Control Number 0910–NEW

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes the FDA to conduct research relating to health information. Section 1003(d)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 393(b)(2)(c)) authorizes FDA to conduct research relating to drugs and other FDA-regulated products in carrying out the provisions of the FD&C Act.

In a typical promotional campaign, consumers may be exposed to a direct-to-consumer (DTC) prescription drug ad any number of times. Perceptual and cognitive effects of increased ad exposure frequency have been studied extensively using non-drug ads. For instance, one study demonstrated that a commercial message repeated twice generates better recall than a message broadcast only once (Ref. 1). Another study demonstrated that increased ad exposures improve product attitudes and recall for product attributes, particularly when the substance of the repeat messages is varied (Ref. 2). Generally, it has been argued that first exposure to an ad results in attention, second exposure affects learning of the advertised message, and third and

subsequent exposures reinforce the learning effects of the second exposure (Ref. 3). To our knowledge, the literature concerning ad exposure frequency has not been extended to include specific attention to prescription drug ads. Prescription drug ads are unique in that they are required to provide both benefit and risk information whereas other ad types tend to include only benefit information. The Office of Prescription Drug Promotion (OPDP) plans to examine the effects of variation in ad exposure frequency on perception and mental processing of risk and benefit information in DTC prescription drug ads through empirical research.

The main study will be preceded by up to two pretests designed to delineate the procedures and measures used in the main study. Across pretests and the main study, participants will be individuals who have been diagnosed with seasonal allergies. All participants will be 18 years of age or older. We will exclude individuals who work in healthcare or marketing settings because their knowledge and experiences may not reflect those of the average consumer. Participants will be recruited in one of two geographic locations (Washington, DC and Raleigh, North Carolina) for in-person administration of protocols.

The experimental design is summarized below. Participants will be randomly assigned to view a prescription drug ad one, two, or four times as part of clutter reels embedded in 42 minutes of TV programming. They will then answer preprogrammed survey questions on laptops. Measures are designed to assess perception, memory, judgments about the ad, intentions to use the medication advertised, and possible moderators of effects, such as need for cognition and demographics. The questionnaire is available upon request.

TABLE 1—STUDY DESIGN

Experimental arm number	Episode #1			Episode #2		
	Clutter Reel 1	Clutter Reel 2	Clutter Reel 3	Clutter Reel 4	Clutter Reel 5	Clutter Reel 6
1 (views ad 1 time)						Mock DTC ad
2 (views ad 2 times)			Mock DTC ad			Mock DTC ad
3 (views ad 4 times)	Mock DTC ad		Mock DTC ad	Mock DTC ad		Mock DTC ad

In the **Federal Register** of November 12, 2014 (79 FR 67172), FDA published a 60-day notice requesting public comment on the proposed collection of information. FDA received five public submissions. In the following section, we outline the observations and suggestions raised in the comments and provide our responses. Comments that are not PRA-relevant (*e.g.,* ''Ban DTC'') or do not relate to the proposed study are not included below or addressed in our responses.

(Comment from Valeant Pharmaceuticals) Develop and publish a strategic plan for how FDA will collate and make use of data from all FDA-sponsored studies concerning consumer and physician perception and comprehension of prescription drug advertising and promotion.

(Response) The OPDP research Web page (Ref. 4) has recently been updated to reflect the current status of completed and ongoing research. As stated on our Web page, OPDP maintains an active research program designed to investigate applied and theoretical issues in the communication of risk and benefit information in DTC and professional promotional prescription drug materials. OPDP's research supports FDA's goal of science-based policy while maintaining its commitment to protect the public health. The research provides FDA management with evidence that can be considered along with other relevant research in future policy decisions.

(Comment from Valeant Pharmaceuticals) Provide data to confirm limiting the study recruitment to Washington, DC and Raleigh Durham, NC area is representative of the entire United States.

(Response) The research questions examined in this study (*e.g.,* risk and benefit recall as a function of the number of target ad exposures) are believed to apply to human judgment and decision making and not to be contingent upon geographic residence. We acknowledge that collecting data across a greater number of geographic locations may provide value, but choose to allocate our limited funding in ways we believe more appropriately ensure the integrity of the research. For example, the requirement that participants view 60 minutes of programming led us to collect data in person, which allows for us to supervise participant engagement with the survey and therefore ensure that stimuli are, in fact, viewed. Although the current research includes limited geographic diversity, note that other forms of diversity (*e.g.,* gender, age, and race) will be sought during recruitment and accounted for in our analyses.

(Comment from Valeant Pharmaceuticals) Six exposures during the same 42-minute television program are not reflective of how advertising is delivered and could inadvertently bias the results.

(Response) The study design has been revised such that the experimental groups will view the ad one, two, or four times over the course of the 60-minute viewing period. Additional details about this change are provided in later responses.

(Comment from Valeant Pharmaceuticals) Consumer comprehension of benefit and risk is not solely based on the viewing of the DTC TV ad in isolation. Consumer comprehension should take into account the role of the healthcare professional and other materials.

(Response) We appreciate that consumer judgment and decision making often results from multiple information sources. In many cases, DTC TV ads serve as the first source of information received, and therefore may influence whether or not additional information is sought, and ultimately whether or not a product is requested from a healthcare professional. Through broad research on DTC advertising, we seek to ensure that consumers are appropriately informed about the risks and benefits of prescription drugs across all information sources, when viewed in isolation or in combination with other sources.

(Comment from Valeant Pharmaceuticals) Because the study is limited to one DTC TV ad and one therapeutic area, the results should not be broadly applied to other forms of advertising or other therapeutic areas.

(Response) We agree that results should not be broadly applied to other forms of advertising. We do not agree that results necessarily need be restricted to the selected therapeutic

area. Our primary research question for the study is whether increasing ad exposure frequency will result in different risk or benefit perceptions than less exposure to the ad. This question pertains to human perception and judgment and is not thought to be unique to any particular therapeutic area. Nonetheless, we agree that replication of this research using other forms of advertising and different therapeutic areas would be valuable.

(Comment from Abbvie) It is not clear how the proposed collection is necessary for the proper performance of FDA's functions. It is difficult to ascertain how the Agency will utilize the results of this study within its statutory authority. For example, should the results of this study demonstrate that the frequency of ad exposure matters, how would the Agency modify the airing frequency of DTC TV ads or the frequency at which consumers are exposed to the advertisements in a real world setting? Rather than conduct this study, we suggest that FDA resources and taxpayer dollars would be better directed to research that enhances the quality of how we communicate benefit and risk information to consumers regardless of the medium and the frequency of the exposure. Guidance is needed on the best practices for communicating benefit and risk information to consumers who are prescribed prescription drugs. This is particularly important as the quality of the communication has the power to result in a better informed consumer.

(Response) This research reflects the need to understand not only the message that consumers receive, but also the delivery of those messages, and how that delivery influences perception, judgment, and decision making. It may be that full comprehension of benefit information is achieved upon a single exposure, whereas full comprehension of risk information requires multiple exposures. Insight on this topic may allow FDA to make more informed judgments regarding consumer information processing of DTC television ads.

(Comment from Abbvie) Should the Agency proceed with this study, FDA could enhance the quality, utility, and clarity of the information to be collected by avoiding introducing bias into the way the survey is conducted. For example, in the draft survey (version 10.22.14), FDA creates an artificial setting in which participants are instructed to watch the commercials that air during a 90-minute TV program during which the same ad airs three to six times. This is very different from the airing and viewing frequency of DTC ads that occur today. Hence, we question the applicability of the results of this study to a real world setting.

(Response) Please note that stimuli play for 60 minutes (not 90), and that the original design involved airing of the ad one, three, or six times (not three to six). We appreciate that six viewings would be unusual and so the study design has been revised such that the experimental groups will view the ad one, two, or four times over the course of the 60-minute viewing period. Additional details about this change are provided in later responses.

(Comment from Eli Lilly) The FDA sample does not currently include a ''General Population'' control group, as all participants will be screened to qualify when identified as suffering from seasonal allergies, a condition that could be relieved by the drug described in advertisement. It may be helpful to the FDA's analysis plan to include a control group.

(Response) Researching each medical condition, or general population sample, requires significant resources. We are committed to conducting this research using our available resources while ensuring the integrity of the research by collecting data on a high prevalence condition for which participants might be thought of as sufficiently representative of the average consumer, thus allowing us to draw conclusions about broad perceptual and cognitive processing outcomes.

(Comment from Eli Lilly) In the proposed study design, respondents will watch a 42-minute television program with an embedded clutter reel of ads. Within this time period, respondents will be exposed to a drug ad 1, 3, or 6 times and then administered a survey instrument. While we acknowledge that a consumer can be exposed to an ad 6 times or *more,* we do not believe 6 exposures in such a compressed time period represents a reasonable real-world experience and is likely to overstate consumer reaction, particularly given that such reactions will be tested immediately after viewing. We believe the current design imposes a risk of creating artificial differences between the study arms by skewing perception, judgment, retention of information, intent, *etc.,* ultimately leading to erroneous conclusions and unactionable expectations.

Specifically, research data on multiple ad exposures and ''effective frequency'' is long established. Based upon multiple studies, experience, and client preference across industries, a leading global media-buying firm with whom we work generally adheres to two (2) ''units'' per hour as its standard (*i.e.* a broadcast advertisement is delivered to the intended audience in a single program no more than twice each hour). While there may be occasions where some advertisers allow for increased frequency (such as holiday weeks or the like), the norm tends to gravitate to no more than two per hour. This implies that in the consumer packaged goods space, 6 exposures in a 42-minute television program exceeds standard practice. In the drug advertising category, that level of exposure would be well beyond reasonable expectations.

We recommend that FDA limit study arms to more realistic scenarios (*e.g.* 1, 2, and 3 exposures) *or,* alternatively, to spread out the higher frequency arm (*e.g.* 6) over a longer study period, preferably with a longitudinal design, to more closely represent how consumers receive and process information in a real-world environment.

(Response) We appreciate this insight. The study design has been revised such that the experimental groups will view the ad one, two, or four times over the course of the 60-minute viewing period. We consider the one and two exposure conditions to be realistic. The four-exposure condition, while limited in its ecological validity, allows for experimental examination of ''excessive'' exposures, which may be associated with outcomes such as consumer wearout; that is, deterioration or diminishment of effects of ad repetition on mental processing after a certain amount of exposure. Also, it is important to note that in studying advertising effects, it is necessary to create enough difference in the manipulations between experimental groups to allow for variation in outcomes to be detected. Given the laboratory setting, it is not possible to extend the viewing period longer than 1 hour without significantly increasing the burden on respondents.

(Comment from Eli Lilly) We were unable to determine if the study arms that will see multiple exposures will be exposed to the same version of the ad or variations of the ad. We recommend utilizing the same version of the ad for consistency between the study arms.

(Response) These participants will view the same ad across all exposures.

(Comment from Eli Lilly) In the pre-stimulus instructions/disclosure section, we recommend removing ''on behalf of a public health agency.'' This language may trigger the respondent, who would see it before being exposed to the clutter reel, to be on the alert for health-related content and create bias that is not accurate in a real-world setting.

(Response) We agree with this concern. This language has been revised to ''on behalf of a government agency.''

(Comment from Eli Lilly) In the post-stimulus/survey instrument instructions section, we recommend removing references to (a) ''a drug ad'' and, (b) specific product name. Introducing this language provides the name of the product they are asked to identify in the first survey instrument question. It may also create unnecessary bias by identifying for the respondent the subject of the survey instrument.

(Response) These references have been removed.

(Comment from Eli Lilly) We recommend combining Questions 6 and 7 (risks and benefits) and randomizing the order. We believe this will more accurately represent recall rather than grouping risks together and benefits together.

(Response) In natural settings, consumers may think about drug benefits and risks simultaneously or separately. We argue that there are empirical advantages to collecting data on these measures separately. There is literature to suggest personally relevant threatening information may be defensively processed (Refs. 5, 6, and 7) and thus processed differently than benefit information. We prefer to compare responses to benefit and risk items to one another, and combining them into one question would hinder this analysis. Moreover, note that in related literature, these constructs are typically measured with independent scales, or at least independent scales within a single scale. This assessment is based on an ongoing literature review concerning item and scale measure development.

Additionally, splitting these measures reduces psychological burden on participants. It is believed to be easier for participants to respond to seven items concerning benefits in one matrix, followed by seven items concerning risks in another matrix, than for participants to respond to 14 items about both benefits and risks in a single matrix. Omitting items would reduce our ability to adequately measure either benefits or risks. Relatedly, collecting data on benefits and risks separately may increase the likelihood that participants take time to process each item and respond accurately.

(Comment from Eli Lilly) We recommend adding a ''Don't Know'' answer choice for Questions 9, 10, and 13 as respondents may be unable to assess the likelihood or seriousness of side effects, or effectiveness of the product. The current range of answers may force inaccurate or speculative responses; a ''Don't Know'' answer would be a legitimate choice and informative for the study. Our standard practice is to provide a ''Don't Know'' option whenever it could be a valid answer.

(Response) We understand the value of providing such responses for items of a factual nature. The drawback to providing such response options to these questions, however, is that we may lose information by allowing respondents to choose an easy response instead of giving the item some thought. Research by Krosnick et al. (Ref. 8) demonstrated that providing ''no opinion'' options likely results in the loss of data without any corresponding increase in the quality of the data. Thus, we prefer not to add these options to the survey.

(Comment from Eli Lilly) We recommend randomizing the answers to Question 15 to avoid order bias. We note that the answer choices are in sequence of probable behavior after being informed by advertising.

(Response) Indeed, ordering of items was chosen to reflect sequence of probable behavior after being informed by advertising. We believe maintaining this continuum most appropriately reflects decision making on the part of the consumer. Moreover, we have conducted surveys both with and without randomizing these items, and no differences in responses were observed.

(Comment from Eli Lilly) For Question 16, we suggest explicitly stating ''after being prescribed by a doctor'' to the end of the question. The question currently does not provide this context, leaving respondents to interpret whether or not they are to consider how they feel about ''taking'' Drug X without guidance from a learned intermediary. We believe this may render the data on this question ambiguous.

(Response) We have incorporated this suggestion into the revised questionnaire.

(Comment from Eli Lilly) For Questions 20 a and b, we suggest spelling out ''FDA.''

(Response) We have incorporated this suggestion into the revised questionnaire.

(Comment from Eli Lilly) For Questions 20 a and c, we recommend eliminating the adverb ''extremely'' as it may create ambiguity. It would be reasonable for some people to answer ''false'' to ''extremely effective'' while also believing simply ''effective'' was true, while other respondents may not see a distinction. This may skew the data artificially toward ''false.''

(Response) Indeed, participants may respond differently depending on whether or not the adverb ''extremely'' is included. The item is designed to assess perceptions of whether only extremely effective products are approved by the FDA (likewise, only ''serious'' risks are assessed in Q20b and Q20d.) We prefer to retain this item because it captures the intended outcome we wish to measure, whereas an item that excludes the adverb ''extremely'' would not. Also note that these items have been previously published elsewhere and we prefer to match the original language (Ref. 9).

(Comment from Eli Lilly) We recommend eliminating Question 20 g, which seems redundant with 20 f. If respondents were to answer False for 20 f but True for 20 g, it would provide no insight but could skew perceptions of the data. If the question is retained, we recommend eliminating the word ''in'' (*i.e.* ''believe in''), which in this context may connote a broader judgment about the drug industry, for which there is ample existing data, than of the regulatory oversight of drug advertisements. The language creates bias by implying that misleading information is embedded in drug ads, skewing the data toward ''false.''

(Response) We have deleted Q20g, and modified Q20f as follows: ''All of the information in prescription drug commercials is approved by the U.S. Food and Drug Administration.'' In addition, we have added the following items: ''All of the benefit information in prescription drug commercials is approved by the U.S. Food and Drug Administration,'' and ''All of the risk information in prescription drug commercials is approved by the U.S. Food and Drug Administration.''

(Comment from Eli Lilly) For Question 20 h, we recommend changing the word ''safest'' to ''safe,'' which may force respondents to make a subjective judgment about what constitutes ''safest'' (*i.e.* is there a set of safest, or simply the single-most safest drug?) even though they may believe that all advertised drugs have been deemed to be safe. This may strongly skew data toward ''false.''

(Response) We appreciate that asking about ''safest'' versus ''safe'' drugs will likely result in different responses. We prefer to retain the current language because it captures the intended outcome we wish to measure. Nonetheless, we will be careful to restrict our interpretation of findings pertaining to this question based on these potential differences in responding.

(Comment from Eli Lilly) Questions 21 a and b seem to be leading questions that may strongly bias respondents to presuppose that the ad is misleading and that the survey instrument is simply trying to understand the extent to which it is misleading. We acknowledge that the answer choices allow respondents to select ''not at all misleading,'' but four-fifths of the answer options represent degrees of ''misleading,'' which may create strong response bias. Although 21 c provides the alternative question, by the time the respondents reach this question they will have been biased by the previous two questions that the ad is misleading, skewing the data toward ''not truthful.'' We recommend this section be revised.

(Response) These three items were included in the survey for the purposes of cognitive testing. Results from cognitive testing suggest that participants have difficulty answering the question about ''truthful'' because they feel they do not know the truth. They generally provide the same answer to both questions that ask about how misleading the ad is. We therefore will omit questions 21a and 21c.

(Comment from Eli Lilly) For Questions 24 and 25, we recommend adding ''or difficult'' to the question to minimize biasing respondents that the product is ''easy'' to use and to make the question and answer choices consistent.

(Response) We have incorporated this suggestion into the revised questionnaire.

(Comment from Eli Lilly) We are concerned that Question 27 has potential to create bias and to confuse respondents. It contains language that may trigger respondents to believe they should be ''concerned'' to some extent. The question language combined with the inference of doctor's involvement is potentially confusing. We suggest revising this question, perhaps to something more simple like: ''If you were considering taking [Drug X], how would you feel about the side effects mentioned in the ad?''

(Response) The suggested revised version of Q27 points out to participants that the ad notes side effects and so also ''biases'' participants but in a slightly different way. The core assumption that there are always side effects to be considered in some form seems sufficiently reflective of contemporary DTC prescription drugs and thus we prefer not to change the language.

(Comment from Eli Lilly) For Question 28, we recommend using ''Neither Agree nor Disagree'' as the midpoint of the scale, consistent with previous scale language in the survey instrument.

(Response) This measure of need for cognition has been published and validated in the literature (Ref. 10). Thus, we prefer not to change the wording.

(Comment from Eli Lilly) Question 28 b is potentially unclear. We recommend revising the question.

(Response) This measure of need for cognition has been published and validated in the literature. Thus, we prefer not to change the wording.

(Comment from Eli Lilly) Question 29 seems to have an omitted word. We recommend revising to: ''How confident are you about filling out medical forms by yourself?''

(Response) This is an item that has been used in the literature, and thus we prefer not to change the wording (Ref. 11).

(Comment from Eli Lilly) We recommend revising Question 31 by deleting or amending the language ''Below are statements other people have made about their medications.'' This language appears unnecessary and may bias respondents by implying that, because the statements are included in the survey instrument, they are truthful and may warrant the respondents to feel that way to some extent.

(Response) This item has been validated in the literature (Ref. 12) and thus we prefer not to change the language.

(Comment from Eli Lilly) Also for Question 31, we recommend using ''Neither Agree nor Disagree'' as the language midpoint of the scale, consistent with previous scale language in the survey instrument.

(Response) This item is from the Beliefs in Medicines Questionnaire. This item has been validated in the literature and thus we prefer not to change the language.

(Comment from Eli Lilly) In Questions 35 and 36, we believe there could be variability in consumers' definition of what constitutes ''serious'' side effect without additional definition. We recommend the survey design consider providing additional context for the consumer in the question wording.

(Response) We agree there is likely to be variability in how consumers define serious side effects. We examined these items in cognitive testing. Based on results from that cognitive testing, respondents generally define ''serious'' side effects as those that require medical attention or that are life threatening. It does not seem that respondents have trouble answering this question.

To examine differences between experimental conditions, we will conduct inferential statistical tests such as analysis of variance. With the sample size described below, we will have sufficient power to detect small-to-medium sized effects in the main study.

FDA estimates the burden of this collection of information as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Pretest 1 screener completes (assumes 10% eligible)	1,050	1	1,050	.08 (5 min.)	84
Pretest 2 screener completes (assumes 10% eligible)	1,050	1	1,050	.08 (5 min.)	84
Number of main study screener completes (assumes 10% eligible)	6000	1	6000	.08 (5 min.)	480
Pretest 1 completes [2]	125	1	125	1.5	188
Pretest 2 completes [2]	125	1	125	1.5	188
Number of completes, main study [2]	620	1	620	1.5	930
Total					1,954

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] **Note:** While target sample sizes for pretests are 105 and for main study is 600, we have accounted for some potential overage in the burden table. As data is being collected in two locations simultaneously, it may be possible that the target will be exceeded if alternates are included in order to try to achieve the target.

References

The following references have been placed on display in the Division of Dockets Management (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday, and are available electronically at *http://www.regulations.gov.* (FDA has verified the Web site address in this reference section, but we are not responsible for any subsequent changes to the Web site after this document publishes in the **Federal Register**.)

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4. *http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDER/ucm090276.htm.*
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10. Cacioppo, J. T. and R. E. Petty, ''The Efficient Assessment of Need for Cognition,'' *Journal of Personality Assessment,* 48, pp. 306–307 (1984).
11. Chew, L. D., J. M. Griffin, M. R. Partin, et al., ''Validation of Screening Questions for Limited Health Literacy in a Large VA Outpatient Population,'' *Journal of General Internal Medicine,* 23, pp. 561–566 (2008).
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Dated: June 11, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–14880 Filed 6–16–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1566]

Naming of Drug Products Containing Salt Drug Substances; 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 entitled ''Naming of Drug Products Containing Salt Drug Substances'' which replaces the draft guidance of the same title that published on December 26, 2013. This guidance describes the United States Pharmacopeia's (USP's) ''Monograph Naming Policy for Salt Drug Substances in Drug Products and Compounded Preparations,'' which became official on May 1, 2013, and how the Center for Drug Evaluation and Research (CDER) is implementing it.

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 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 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: Mamta Gautam-Basak, Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–796–0712.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Naming of Drug Products Containing Salt Drug Substances'' that replaces the draft of the same title that published on December 26, 2013 (78 FR 78366). This guidance is being published to explain how CDER is implementing the USP's policy entitled ''Monograph Naming Policy for Salt Drug Substances in Drug Products and Compounded Preparations.'' It is a naming and labeling policy applicable to drug products that contain an active ingredient that is a salt. The policy stipulates that USP will use the name of the active moiety, instead of the name of the salt, when creating a drug product monograph title and the strength will be expressed in terms of the active moiety. The policy allows for exceptions under specified circumstances. CDER is now applying this policy to new prescription drug products under development under section 505 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 355).

The USP Salt Policy became official on May 1, 2013, and USP is now applying it to all new drug product monographs for products that contain an active ingredient that is a salt. It affects the development of new drug products because a USP monograph title for a new drug product, in most instances, serves as the nonproprietary or ''established'' name of the related drug product (section 502(e)(3) of the FD&C Act) (21 U.S.C. 352(e)). If a drug product's label or labeling contains a name that is inconsistent with the applicable monograph title, it risks being misbranded (section 502(e)(1)(A)(i) of the FD&C Act).

This guidance describes the USP policy and discusses how CDER and industry can implement the policy. Following the policy will help reduce medication errors caused by a mismatch between the established name and strength on the label of drug products that contain a salt. In addition, we anticipate that this policy will help health care practitioners calculate equivalent doses when changing from one dosage form to another, even if the products contain active ingredients that are different salts, because the strengths and names will both be based on the active moiety.

In the **Federal Register** of December 26, 2013 (78 FR 78366), this guidance was published as a draft guidance. We have carefully reviewed and considered the comments that were received on the draft guidance and have made changes for clarification.

This guidance is being issued consistent with FDA's good guidance practices regulation 21 CFR 10.115. This guidance represents CDER's current

thinking on drug product naming nomenclature for new drugs that contain a salt as the active ingredient. 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. Paperwork Reduction Act of 1995

This guidance includes information collection provisions 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 referenced in this guidance that are related to the burden for the submission of investigational new drug applications are covered under 21 CFR 312 and have been approved under OMB control number 0910–0014. The collections of information referenced in this guidance that are related to the burden for the submission of new drug applications that are covered under 21 CFR 314 have been approved under OMB control number 0910–0001. The submission of prescription drug product labeling under 21 CFR 201.56 and 201.57 is approved under OMB control number 0910–0572.

The guidance also references 21 CFR 201.10 ''Drugs; Statement of Ingredients.'' In the **Federal Register** of December 18, 2014 (79 FR 75506), FDA published its proposed rule on the electronic distribution of prescribing information for human prescription drugs, including biological products. In Section VII, ''Paperwork Reduction Act of 1995,'' FDA estimated the burden to design, test, and produce the label for a drug product's immediate container and outer container or package, as set forth in 21 CFR part 201, including §§ 201.10, 201.100(b), and other sections in subpart A and subpart B.

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 10, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–14884 Filed 6–16–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–D–1242]

Content and Format of Abbreviated 510(k)s for Early Growth Response 1 Gene Fluorescence In-Situ Hybridization Test System for Specimen Characterization Devices; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Content and Format for Abbreviated 510(k)s for Early Growth Response 1 (EGR1) Gene Fluorescence In-Situ Hybridization (FISH) Test System for Specimen Characterization Devices.'' This guidance provides industry and Agency staff with recommendations for the suggested format and content of an abbreviated 510(k) submission for EGR1 gene FISH test system for specimen characterization devices.

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: An electronic copy of the guidance document is available for download from the Internet. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance. Submit written requests for a single hard copy of the guidance document entitled ''Content and Format for Abbreviated 510(k)s for Early Growth Response 1 (EGR1) Gene Fluorescence In-Situ Hybridization (FISH) Test System for Specimen Characterization Devices'' to the Office of the Center Director, Guidance and Policy Development, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5431, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your request.

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. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Shyam Kalavar, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5568, Silver Spring, MD 20993–0002, 301–796–6807.

SUPPLEMENTARY INFORMATION:

I. Background

This guidance document was developed to provide industry and Agency staff with recommendations for the suggested format and content of an abbreviated 510(k) submission for EGR1 gene FISH test system for specimen characterization devices and recommendations for addressing certain labeling issues relevant to the review process specific to these devices. An EGR1 gene FISH test system for specimen characterization is a device intended to detect the EGR1 probe target on chromosome 5q in bone marrow specimens from patients with acute myeloid leukemia or myelodysplastic syndrome. The assay results are intended to be interpreted only by a qualified pathologist or cytogeneticist. These devices do not include automated systems that directly report results without review and interpretation by a qualified pathologist or cytogeneticist. These devices also do not include any device intended for use to select patient therapy, predict patient response to therapy, or to screen for disease as well as any device with a claim for a particular diagnosis, prognosis, and monitoring or risk assessment.

In the **Federal Register** of September 26, 2014 (79 FR 57939), the Agency issued the draft guidance entitled ''Content and Format for Abbreviated 510(k)s for Early Growth Response 1 (EGR1) Gene Fluorescence In-Situ Hybridization (FISH) Test System for Specimen Characterization Devices.'' The Agency received no comments on the draft guidance dated September 26, 2014.

II. Significance of Guidance

This 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 ''Content and

Format for Abbreviated 510(k)s for Early Growth Response 1 (EGR1) Gene Fluorescence In-Situ Hybridization (FISH) Test System for Specimen Characterization Devices.'' 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. 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.*

IV. Paperwork Reduction Act of 1995

This guidance refers to currently 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, are currently approved under OMB control number 0910–0120 and the collections of information in 21 CFR 809.10 are currently approved under 0910–0485.

V. 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 12, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–14881 Filed 6–16–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2010–N–0389]

Medical Device User Fee Amendments; Public Meeting; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

The Food and Drug Administration (FDA) is announcing a public meeting on the reauthorization of the Medical Device User Fee Amendments (MDUFA) for fiscal years 2018 through 2022. The current legislative authority for the medical device user fee program expires on October 1, 2017, and new legislation will be required for FDA to continue collecting user fees for the medical device program in future fiscal years. The Federal Food, Drug, and Cosmetic Act (FD&C Act) requires that before FDA begins negotiations with the regulated industry on MDUFA reauthorization, we publish a notice in the **Federal Register** requesting public input on the reauthorization, hold a public meeting at which the public may present its views on the reauthorization, provide a period of 30 days after the public meeting to obtain written comments from the public suggesting changes to MDUFA, and publish the comments on FDA's Web site. FDA invites public comment on the medical device user fee program and suggestions regarding the commitments FDA should propose for the next reauthorized program.

Date and Time: The public meeting will be held on July 13, 2015, from 9 a.m. to 5 p.m.

Location: The public meeting will be held at FDA's White Oak Campus, 10903 New Hampshire Ave., Building 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993. Entrance for public meeting participants (non-FDA employees) is through Building 1 where routine security screening procedures will be performed. For parking and security information, please refer to *http://www.fda.gov/AboutFDA/WorkingatFDA/BuildingsandFacilities/WhiteOakCampusInformation/ucm241740.htm.*

Contact Person: Aaron Josephson, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 5449, Silver Spring, MD 20993, 301–796–5178, email: *Aaron.Josephson@fda.hhs.gov.*

Registration: Registration is required to attend this meeting in person or to view the Webcast. Registration is free and available on a first-come, first-served basis. Persons interested in participating in the meeting must register online by July 2, 2015, at 4 p.m. Early registration is recommended because space is limited and, therefore, FDA may limit the number of participants from each organization. If time and space permit, onsite registration on the day of the meeting will be provided beginning at 8 a.m.

If you have registered and need special accommodations, please contact Susan Monahan, 301–796–5661, email: *Susan.Monahan@fda.hhs.gov,* no later than July 1, 2015.

To register for the public meeting, please visit FDA's Medical Devices News & Events—Workshops & Conferences calendar at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public meeting from the posted events list.) Please provide complete contact information for each attendee, including name, title, affiliation, email, and telephone number. Those without Internet access should contact Susan Monahan to register. All registrants will receive confirmation after they have been successfully registered. Registrants not confirmed to participate, but added to a waiting list, will be notified of that as well.

Streaming Webcast of the Public Meeting: This public meeting will be Webcast. Persons interested in viewing the Webcast must register online (see Web link above) by July 2, 2015, at 4 p.m. Early registration is recommended because Webcast connections are limited. FDA requests that organizations with multiple registrants in the same location register all participants individually but view the Webcast using one connection per location. Webcast participants will be sent technical system requirements upon confirmation and will be sent connection access information after July 6, 2015. If you have not previously attended an event hosted by Connect Pro, it is recommended that you test your connection in advance at *https://collaboration.fda.gov/common/help/en/support/meeting_test.htm.* A short overview of the Connect Pro program is available at *http://www.adobe.com/go/connectpro_overview.*

Requests for Oral Presentations: This public meeting includes public comment and topic-focused sessions. During registration you may indicate if you wish to present during a public comment session or participate in a topic-focused session, and specify the topic(s) you wish to address. FDA has included general topics in this document. FDA will do its best to accommodate all persons who wish to speak. FDA encourages individuals and organizations with common interests to consolidate or coordinate their presentations, and request time for a joint presentation, or submit requests for designated representatives to participate in the topic-focused sessions. After

registration closes, FDA will determine the amount of time allotted to each presenter and the approximate time each oral presentation is to begin, and will notify selected speakers by July 7, 2015. All requests to make oral presentations must be received by the close of registration on July 2, 2015, at 4 p.m. Presenters should submit all presentation materials via email to Aaron Josephson (see *Contact Person*) no later than July 10, 2015. No commercial or promotional material should be presented or distributed at the public meeting.

Comments: FDA is holding this public meeting to hear stakeholder views on the medical device user fee program. In order to obtain a broad range of public comment, FDA is soliciting either electronic or written comments on all aspects of the public meeting topics. The deadline for submitting comments related to this public meeting is August 12, 2015.

Regardless of attendance at the public meeting, interested persons may submit either electronic comments regarding reauthorization of MDUFA to *http://www.regulations.gov* or written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. In addition, when responding to specific questions as outlined in section I, please identify the question you are addressing. Received comments may be viewed in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov.*

Transcripts: As soon as a transcript is available, it will be accessible at *http://www.regulations.gov.* It may also be viewed in person at the Division of Dockets Management (see *Comments*). A link to the transcript will also be available approximately 45 days after the public workshop on the Internet at *http://www.fda.gov/MedicalDevices/NewsEvents/WorkshopsConferences/default.htm.* (Select this public meeting from the posted events list.)

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing its intention to hold a public meeting on the reauthorization of the Medical Device User Fee Amendments of 2012 (MDUFA III), which currently authorizes FDA to collect user fees and use them for the process for the review of device applications until October 1, 2017. Without new legislation, referred to as reauthorization, FDA will not be able to collect user fees after fiscal year (FY) 2017 to fund the medical device review process.

Prior to reauthorization, FDA must consult with the regulated industry and make recommendations to Congress regarding the goals for the process for the review of device applications (see 21 U.S.C. 379j–1(b)(1)(F)). Before beginning negotiations with the regulated industry on user fee reauthorization, section 738A(b)(2) of the FD&C Act (21 U.S.C. 379j–1(b)(2)) requires that FDA do the following: (1) Publish a notice in the **Federal Register** requesting public input on the reauthorization; (2) hold a public meeting at which the public may present its views on the reauthorization, including specific suggestions for changes to the goals set under MDUFA III; (3) provide a period of 30 days after the public meeting to obtain written comments from the public suggesting changes to MDUFA; and (4) publish the comments on FDA's Web site. This notice, the public meeting, the 30-day comment period after the meeting, and the posting of the comments on FDA's Web site will satisfy these requirements.

The purpose of the meeting is to hear stakeholder views on medical device user fee reauthorization as we consider FDA's recommendation to Congress for the next medical device user fee program. FDA is interested in responses to the following two general questions and welcomes any other pertinent information stakeholders would like to share:

1. What is your assessment of the overall performance of the medical device user fee program under MDUFA III?

2. What aspects of the medical device user fee program should be retained, changed, or discontinued to further strengthen and improve the program?

The following information is provided to help potential meeting participants better understand the history and evolution of the medical device user fee program and its current status.

II. What is the Medical Device User Fee Program? What does it do?

In the years preceding enactment of the Medical Device User Fee and Modernization Act of 2002 (MDUFMA) (Pub. L. 107–250), FDA's medical device program suffered a long-term, significant loss of resources that undermined the program's capacity and performance. MDUFMA was enacted ''in order to provide FDA with the resources necessary to better review medical devices, to enact needed regulatory reforms so that medical device manufacturers can bring their safe and effective devices to the American people at an earlier point in time, and to ensure that reprocessed medical devices are as safe and effective as original devices'' (H. Rept. 107–728 at 21 (2002)). MDUFMA had a 5-year life and contained two particularly important features which relate to reauthorization:

- *User fees* for the review of medical device premarket applications, reports, supplements, and premarket notification submissions provided additional resources to make FDA reviews more timely, predictable, and transparent to applicants. MDUFMA fees and appropriations for the medical device program helped FDA expand available expertise, modernized its information management systems, provided new review options, and provided more guidance to prospective submitters. The ultimate goal was for FDA to approve and clear safe and effective medical devices more rapidly, benefiting applicants, the health care community, and most importantly, patients.
- *Negotiated performance goals* for many types of premarket reviews provided FDA with benchmarks for measuring review improvements. These quantifiable goals became more demanding each year and included FDA decision goals and cycle goals (cycle goals refer to FDA actions prior to a final action on a submission). Under MDUFMA, FDA also agreed to several other commitments that did not have specific timeframes or direct measures of performance, such as expanding the use of meetings with industry, maintenance of current performance in review areas where specific performance goals had not been identified, and publication of additional guidance documents.

Medical device user fees and increased appropriations are essential to support high-quality, timely medical device reviews, and other activities critical to the device review program.

MDUFMA provided for fee discounts and waivers for qualifying small businesses. Small businesses make up a large proportion of the medical device industry, and these discounts and waivers helped reduce the financial impact of user fees on this sector of the medical device industry, which plays an important role in fostering innovation.

Since MDUFMA was first passed in 2002, it has been reauthorized twice: The 2007 Medical Device User Fee Amendments (MDUFA II) and the 2012 Medical Device User Fee Amendments (MDUFA III). Under MDUFA III, which

has been in effect since 2012 and will expire in 2017, FDA has met or exceeded nearly all submission performance goals while implementing program enhancements designed to ensure more timely access to safe and effective medical devices.

• Premarket Notifications (510(k)s): Comparison of outcomes for receipt cohorts at the same levels of completion (or ''closure'') show a 16 percent decrease in total review time between FY 2010 and FY 2013 when the cohort is 99.8 percent closed, and 10 percent decrease in total review time between FY 2010 and FY 2014 when the cohort is 75.8 percent closed.

• Premarket Approvals (PMAs): Comparison of outcomes for receipt cohorts at the same closure levels show a 32 percent decrease in total review times between FY 2009 and FY 2012 when the cohort is 98 percent closed, and a 26 percent decrease in total review times between FY 2009 and FY 2014 when the cohort is 41 percent closed.

FDA has met or exceeded all MDUFA III performance goals for FDA time to decisions in FY 2013 and FY 2014. More information about FDA's performance is available in the yearly MDUFA performance reports, which are available online at *http://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/UserFeeReports/PerformanceReports/UCM2007450.htm.*

User fees and related performance goals have played an important role in providing resources and supporting the process for the review of device applications.

III. What information should you know about the meeting?

Through this notice, we are announcing a public meeting to hear stakeholder views on the reauthorization of MDUFA for fiscal years 2018 through 2022, including specific suggestions for any changes to the program that we should consider. We will conduct the meeting on July 13, 2015. In general, the meeting format will include presentations by FDA and a series of panels representing different stakeholder interest groups (such as patient advocates, consumer protection groups, industry, health care professionals, and academic researchers). FDA will also provide an opportunity for individuals to make presentations during the meeting and for organizations and individuals to submit written comments to the docket after the meeting. The presentations should focus on program improvements and funding issues, including specific suggestions for changes to performance goals, and not focus on other general policy issues.

Dated: June 11, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–14885 Filed 6–16–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0473]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Irradiation in the Production, Processing, and Handling of Food

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 17, 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 0910–0186. 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 Road; 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.

Irradiation in the Production, Processing, and Handling of Food—21 CFR Part 179 (OMB Control Number 0910–0186)—Extension

Under sections 201(s) and 409 of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 321(s) and 348), food irradiation is subject to regulation under the food additive premarket approval provisions of the FD&C Act. The regulations providing for uses of irradiation in the production, processing, and handling of food are found in part 179 (21 CFR part 179). To ensure safe use of a radiation source, § 179.21(b)(1) requires that the label of sources bear appropriate and accurate information identifying the source of radiation and the maximum (or minimum and maximum) energy of the emitted radiation. Section 179.21(b)(2) requires that the label or accompanying labeling bear adequate directions for installation and use and a statement supplied by us that indicates maximum dose of radiation allowed. Section 179.26(c) requires that the label or accompanying labeling bear a logo and a radiation disclosure statement. Section 179.25(e) requires that food processors who treat food with radiation make and retain, for 1 year past the expected shelf life of the products up to a maximum of 3 years, specified records relating to the irradiation process (*e.g.,* the food treated, lot identification, scheduled process, etc.). The records required by § 179.25(e) are used by our inspectors to assess compliance with the regulation that establishes limits within which radiation may be safely used to treat food. We cannot ensure safe use without a method to assess compliance with the dose limits, and there are no practicable methods for analyzing most foods to determine whether they have been treated with ionizing radiation and are within the limitations set forth in part 179. Records inspection is the only way to determine whether firms are complying with the regulations for treatment of foods with ionizing radiation.

In the **Federal Register** of March 31, 2015 (80 FR 17055), FDA published a 60-day notice requesting public comment on the proposed collection of information. One comment was received but did not respond to any of the four information collection topics solicited and is therefore not addressed by the Agency.

Description of respondents: Respondents are businesses engaged in the irradiation of food.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
179.25(e), large processors	4	300	1,200	1	1,200
179.25(e), small processors	4	30	120	1	120
Total					1,320

[1] There are no capital costs or operating and maintenance costs associated with this collection.

We base our estimate of burden for the recordkeeping provisions of § 179.25(e) on our experience regulating the safe use of radiation as a direct food additive. The number of firms who process food using irradiation is extremely limited. We estimate that there are four irradiation plants whose business is devoted primarily (*i.e.,* approximately 100 percent) to irradiation of food and other agricultural products. Four other firms also irradiate small quantities of food. We estimate that this irradiation accounts for no more than 10 percent of the business for each of these firms. Therefore, the average estimated burden is based on four facilities devoting 100 percent of their business to food irradiation (4 × 300 hours = 1200 hours for recordkeeping annually), and four facilities devoting 10 percent of their business to food irradiation (4 × 30 hours = 120 hours for recordkeeping annually).

No burden has been estimated for the labeling requirements in §§ 179.21(b)(1), 179.21(b)(2) and 179.26(c) because the information to be disclosed is information that has been supplied by FDA. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not subject to review by the Office of Management and Budget under the Paperwork Reduction Act.

Dated: June 10, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–14886 Filed 6–16–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0115]

Agency Information Collection Activities; Proposed Collection; Submission for Office of Management and Budget Review; Guidance for Industry and Food and Drug Administration Staff—Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Principle

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 17, 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 0910–0594. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry and FDA Staff—Class II Special Controls Guidance Document: Automated Blood Cell Separator Device Operating by Centrifugal or Filtration Separation Principle (OMB Control Number 0910–0594)—Extension

Under the Safe Medical Devices Act of 1990 (Pub. L. 101–629), FDA may establish special controls, including performance standards, postmarket surveillance, patient registries, guidelines, and other appropriate actions it believes necessary to provide reasonable assurance of the safety and effectiveness of the device. The special control guidance serves to support the reclassification from class III to class II of the automated blood cell separator device operating on a centrifugal separation principle intended for the routine collection of blood and blood components as well as the special control for the automated blood cell separator device operating on a filtration separation principle intended for the routine collection of blood and blood components reclassified as class II (§ 864.9245 (21 CFR 864.9245)).

For currently marketed products not approved under the premarket approval process, the manufacturer should file with FDA, for 3 consecutive years, an annual report on the anniversary date of the device reclassification from class III to class II or on the anniversary date of the 510(k) of the Federal Food, Drug, and Cosmetic Act (the FD&C Act) (21 U.S.C. 360) clearance. Any subsequent change to the device requiring the submission of a premarket notification in accordance with section 510(k) of the FD&C Act should be included in the annual report. Also, a manufacturer of a device determined to be substantially equivalent to the centrifugal or filtration-based automated cell separator device intended for the routine collection of blood and blood components should comply with the same general and special controls.

The annual report should include, at a minimum, a summary of anticipated and unanticipated adverse events that have occurred and that are not required to be reported by manufacturers under

Medical Device Reporting (MDR) (part 803 (21 CFR part 803)). The reporting of adverse device events summarized in an annual report will alert FDA to trends or clusters of events that might be a safety issue otherwise unreported under the MDR regulation.

Reclassification of this device from class III to class II for the intended use of routine collection of blood and blood components relieves manufacturers of the burden of complying with the premarket approval requirements of section 515 of the FD&C Act (21 U.S.C. 360e), and may permit small potential competitors to enter the marketplace by reducing the burden. Although the special control guidance recommends that manufacturers of these devices file with FDA an annual report for 3 consecutive years, this would be less burdensome than the current postapproval requirements under part 814, subpart E (21 CFR part 814, subpart E), including the submission of periodic reports under § 814.84.

Collecting or transfusing facilities and manufacturers have certain responsibilities under Federal regulations. For example, collecting or transfusing facilities are required to maintain records of any reports of complaints of adverse reactions (21 CFR 606.170), while the manufacturer is responsible for conducting an investigation of each event that is reasonably known to the manufacturer and evaluating the cause of the event (§ 803.50(b)). In addition, manufacturers of medical devices are required to submit to FDA individual adverse event reports of death, serious injury, and malfunctions (§ 803.50).

In the special control guidance document, FDA recommends that manufacturers include in their three annual reports a summary of adverse reactions maintained by the collecting or transfusing facility, or similar reports of adverse events collected, in addition to those required under the MDR regulation. The MedWatch medical device reporting code instructions (*http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/ucm106737.htm*) contains a comprehensive list of adverse events associated with device use, including most of those events that we recommend summarizing in the annual report.

In the **Federal Register** of January 29, 2015 (80 FR 4927), 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]

Reporting activity	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Annual Report	4	1	4	5	20

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on FDA records, there are approximately four manufacturers of automated blood cell separator devices. The estimated average burden per response is based on the time that the manufacturers will spend preparing and submitting the annual report.

Other burden hours required for § 864.9245 are reported and approved under OMB control number 0910–0120 (premarket notification submission 501(k), 21 CFR part 807, subpart E), and OMB control number 0910–0437 (MDR, part 803).

Dated: June 10, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–14889 Filed 6–16–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

[Document Identifier: HHS–OS–0990–new–30D]

Agency Information Collection Activities; Proposed Collection; Public Comment Request

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Office of the Secretary (OS), Department of Health and Human Services, announces plans to submit a new Information Collection Request (ICR), described below, to the Office of Management and Budget (OMB). Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public on this ICR during the review and approval period.

DATES: Comments on the ICR must be received on or before July 17, 2015.

ADDRESSES: Submit your comments to *Information.CollectionClearance@hhs.gov* or by calling (202) 690–6162.

FOR FURTHER INFORMATION CONTACT: Information Collection Clearance staff, *Information.CollectionClearance@hhs.gov* or (202) 690–6162.

SUPPLEMENTARY INFORMATION: When submitting comments or requesting information, please include the document identifier HHS–OS–0990–new–30D for reference. Information Collection Request Title: Title X Sustainability Assessment Tool for Grantees and Service Sites.

Abstract: The Office of Population Affairs within the Office of the Assistant Secretary for Health seeks to collect data from the Title X centers on efforts related to (1) assisting individuals in obtaining health insurance; (2) partnerships with primary care providers; (3) availability and use of electronic health records; (4) monitoring patient care quality; (5) factors affecting revenue sources; and (6) the way that sites conduct analyses to consider the cost of providing services.

Need and Proposed Use of the Information: The Title X Family Planning Program (''Title X program'' or ''program'') is the only Federal grant program dedicated solely to providing individuals with comprehensive family planning and related preventive health services (*e.g.,* screening for breast and cervical cancer, sexually transmitted diseases (STDs), and human immunodeficiency virus [HIV]). By law, priority is given to persons from low-income families (Section 1006[c] of Title X of the Public Health Service Act, 42 U.S.C. 300). The Office of Population Affairs (OPA) within the Office of the Assistant Secretary for Health administers the Title X program.

The American health care system is experiencing unprecedented levels of change as a result of the Patient Protection and Affordable Care Act (ACA). The exact impact of these health system changes to Title X centers needs to be assessed in order to ensure the

long term sustainability of the Title X network.

Data collected from this effort will be used to inform the work of the training centers so they can better support the Title X grantees. This data will help OPA better understand challenges affecting Title X centers in order to better work with HHS entities and national stakeholders to provide resources to Title X centers. Data will be collected through an online data collection tool directly from grantees and from Title X centers.

Likely Respondents: This annual reporting requirement is service sites that receive funding (either directly from OPA or through a sub recipient or grantee agency) for family planning services authorized and funded by the Title X Family Planning Program [''Population Research and Voluntary Family Planning Programs'' (91)], which was enacted in 1970 as Title X of the Public Health Service Act (Section 1001 of Title X of the Public Health Service Act, 42 United States Code [U.S.C.] 300).

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Type of respondent	Form name	Number of respondents	Number of responses per respondent	Average annualized burden per response (hours)	Annual total burden (hours)
Grantees	Sustainability Assessment—Grantees	92	1	0.66	60.72
Service Sites	Sustainability Assessment—Sites	4,168	1	0.66	2750.88
Total		4,260			2,811.60

Terry S. Clark,

Asst Information Collection Clearance Officer.

[FR Doc. 2015–14850 Filed 6–16–15; 8:45 am]

BILLING CODE 4150–48–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Population Assessment of Tobacco and Health (PATH) Study—3rd Wave (NIDA)

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on February 11, 2015, pages 7619–7620 and allowed 60-days for public comment. One public comment was received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institute on Drug Abuse (NIDA), National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, *OIRA_Submission@omb.eop.gov* or by fax to (202) 395–6974, Attention: NIH Desk Officer.

DATES: *Comment Due Date:* Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments or request more information on the proposed project, contact: Dr. Kevin P. Conway, Deputy Director, Division of Epidemiology, Services, and Prevention Research, NIDA, NIH, 6001 Executive Boulevard, Room 5185, Rockville, MD 20852; or call non-toll-free number (301) 443–8755 or Email your request, including your address to: *PATHprojectofficer@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Population Assessment of Tobacco and Health (PATH) Study—Third Wave of Data Collection—0925–0664—Revision, National Institute on Drug Abuse (NIDA), National Institutes of Health (NIH), in partnership with the Food and Drug Administration (FDA).

Need and Use of Information Collection: This is a revision request (OMB 0925–0664, expires 9/30/2016) for the Population Assessment of Tobacco and Health (PATH) Study to conduct the third wave of data collection. The PATH Study is a national longitudinal cohort study of tobacco use behavior and health among the U.S. household population of adults age 18 and older and youth ages 12 to 17. The Study conducts annual interviews and collects biospecimens from adults to assess within-person changes and between-person differences in tobacco-product use behaviors and related health conditions over time. Its longitudinal, population-based data will help to enhance the evidence base that informs FDA's regulatory actions under the Family Smoking Prevention and Control Act to protect the Nation's public health and reduce its burden of tobacco-related morbidity and mortality.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 54,434.

ESTIMATED ANNUALIZED BURDEN HOURS

Form or activity name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Adult Extended Interview	Adults	25,444	1	1	25,444
Consent for Adult Extended Interview	Adults	2,046	1	4/60	136

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form or activity name	Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Adult Extended Interview (Aged-up)	Adults	1,780	1	68/60	2,017
Consent for Biological Samples	Adults	1,780	1	5/60	148
Biospecimen Collection: Urine	Adults	13,805	1	10/60	2,301
Biospecimen Collection: Blood	Adults	765	1	18/60	230
Tobacco Use Form	Adults	14,570	1	5/60	1,214
Follow-up/Tracking Participant Information Form for Adults	Adults	27,224	2	8/60	7,260
Youth Extended Interview	Youth	9,625	1	35/60	5,615
Assent for Youth Extended Interview	Youth	1,923	1	3/60	96
Youth Extended Interview (Aged-up)	Youth	1,923	1	45/60	1,442
Parent Interview	Parents	9,818	1	16/60	2,618
Parent Permission and Consent for Parent Interview	Parents	2,161	1	5/60	180
Parent Interview (Aged-up)	Parents	1,961	1	19/60	621
Verification Interview	Adults	35,564	1	2/60	1,185
Validation Interview	Adults	3,579	1	4/60	239
Follow-up/Tracking Participant Information Form for Youth	Parents	11,548	2	8/60	3,079
Follow-up/Tracking Participant Information Form for Sample Shadow Youth.	Parents	2,282	2	8/60	609

Dated: June 12, 2015.

Genevieve deAlmeida-Morris,

Project Clearance Liaison, NIDA, NIH.

[FR Doc. 2015–14902 Filed 6–16–15; 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 Member Conflict: Neurobiology of Psychiatric Disorders and Addictions.

Date: June 24, 2015.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Boris P. Sokolov, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217A, MSC 7846, Bethesda, MD 20892, 301–408–9115, *bsokolov@csr.nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel Small Business: Non HIV Microbial Vaccines and Countermeasures.

Date: July 13–14, 2015.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Grand Chicago Riverfront, 71 E. Wacker Drive, Chicago, IL 60601375.

Contact Person: Andrea Keane-Myers, BS, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4218, Bethesda, MD 20892, 3014351221, *andrea.keane-myers@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Oncological Sciences.

Date: July 13–14, 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 (Virtual Meeting).

Contact Person: Ola Mae Zack Howard, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Room 4192, MSC 7806, Bethesda, MD 20892, 301–451–4467, *howardz@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Vascular Regulation and Diseases.

Date: July 16–17, 2015.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ai-Ping Zou, MD, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4118, MSC 7814, Bethesda, MD 20892, 301–408–9497, *zouai@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Fellowships: Oncology.

Date: July 20–21, 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: Juraj Bies, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Dr., Rm. 4158, MSC 7806, Bethesda, MD 20892, 301 435 1256, *biesj@mail.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Auditory Mechanisms.

Date: July 20–21, 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 (Virtual Meeting).

Contact Person: John Bishop, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5182, MSC 7844, Bethesda, MD 20892, (301) 408–9664, *bishopj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Topics in Virology.

Date: July 21, 2015

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Marci Scidmore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3192, MSC 7808, Bethesda, MD 20892, 301–435–1149, *marci.scidmore@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Member Conflict: Studies of Visual Physiology.

Date: July 21, 2015.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Raya Mandler, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5217, MSC 7840, Bethesda, MD 20892, 301–402–8228, *rayam@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 12, 2015.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–14903 Filed 6–16–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0027]

Agency Information Collection Activities: Interagency Record of Request A, G, or NATO Dependent Employment Authorization or Change/Adjustment To/From A, G, or NATO Status, Form I–566; Revision of a Currently Approved Collection

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on March 24, 2015, at 80 FR 15626, allowing for a 60-day public comment period. USCIS did not receive any comments in connection with the 60-day notice.

DATES: The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until July 17, 2015. This process is conducted in accordance with 5 CFR 1320.10.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0027.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377 (comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–1615–0041 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Interagency Record of Request A, G, or NATO Dependent Employment Authorization or Change/Adjustment To/From A, G, or NATO Status.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* I–566; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. This information collection facilitates processing of applications for benefits filed by dependents of diplomats, international organizations, and NATO personnel by U.S. Citizenship and Immigration Services, and the Department of State.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection I–566 is 5,800 and the estimated hour burden per response is 1.42 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 8,236 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $710,500.

Dated: June 10, 2015.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2015–14845 Filed 6–16–15; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–0116]

Agency Information Collection Activities: Request for Fee Waiver, Form I–912; Request for Fee Exemption; Revision of a Currently Approved Collection; Revision

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 30-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection notice was previously published in the **Federal Register** on March 17, 2015, at 80 FR 13880, allowing for a 60-day public comment period. USCIS accepted and considered comments received in connection with the 60-day notice until May 28, 2015. USCIS published an additional notice on May 29, 2015, to allow 30 days for public comments until June 29, 2015, in accordance with *5 CFR 1320.10*. USCIS has decided to extend the comment period for an additional period as provided in this notice.

DATES: The purpose of this notice is to allow 30 days from the date of its publication for public comments. Comments are encouraged and will be accepted until July 17, 2015.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, must be directed to the OMB USCIS Desk Officer via email at *oira_submission@omb.eop.gov.* Comments may also be submitted via fax at (202) 395–5806. All submissions received must include the agency name and the OMB Control Number 1615–0116.

You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make. For additional information please read the Privacy Act notice that is available via the link in the footer of *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: If you need a copy of the information collection instrument with instructions, or additional information, please contact us at: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Laura Dawkins, Chief, 20 Massachusetts Avenue NW., Washington, DC 20529–2140, Telephone number (202) 272–8377. Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS Web site at *http://www.uscis.gov,* or call the USCIS National Customer Service Center at (800) 375–5283; TTY (800) 767–1833.

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions, or additional information by visiting the Federal eRulemaking Portal site at: *http://www.regulations.gov* and enter USCIS–1615–0116 in the search box. Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection Request:* Revision of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Request for Fee Waiver; Request for Fee Exemption.

(3) *Agency form number, if any, and the applicable component of DHS sponsoring the collection:* I–912; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The collection of information on Form I–912 is necessary in order for U.S. Citizenship and Immigration Services to make a determination that the applicant is unable to pay the application fee for certain immigration benefits.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for this information collection is 505,000 respondents at 1.17 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 590,849.92 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $1,893,750.

Dated: June 11, 2015.

Laura Dawkins,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2015–14844 Filed 6–16–15; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5833–N–02]

60-Day Notice of Proposed Information Collection: Section 3 Summary Report for Economic Opportunities for Low and Very Low Income Persons (Form HUD 60002) and Section 3 Complaint Register (Form HUD 958)

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* August 17, 2015.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing

and Urban Development, 451 7th Street SW., Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339.

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877–8339. Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

A. Overview of Information Collection

Title of Information Collection: (1) Section 3 Summary Report for Economic Opportunities for Low- and Very Low-Income Persons and (2) Section 3 Complaint Register.

OMB Approval Number: 2529–0043.

Type of Request: Revision.

Form Number: Form HUD 60002 and Form HUD 958.

Description of the need for the information and proposed use: Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) (Section 3) mandates recipients of covered HUD financial assistance to provide employment, training, and contracting opportunities, to the greatest extend feasible, to low- and very low income persons, particularly those who are recipients of government assistance for housing residing in the community where the funds are spent, and to the businesses that substantially employ these persons. The implementing regulations are found at 24 CFR part 135.

The Section 3 Summary Report (Form HUD 60002) is used by recipients of HUD financial assistance (*i.e.,* public housing agencies, municipalities, and property owners) to report the amount of jobs and contracting opportunities that have been generated from their usage of covered HUD financial assistance, as required at 24 CFR 135.90. Data collected on this form is used to assess the overall effectiveness of Section 3 and to make determinations of compliance with regulatory requirements.

The Section 3 Complaint Register (Form HUD 958) is used by individuals and business owners that meet the definition of a Section 3 resident or businesses concern set forth at 24 CFR 135.5, or their representatives, to file complaints alleging noncompliance with the regulatory requirements of Section 3 against recipients of covered HUD financial assistance or their contractors. Information collected on this form is used to inform the Department about recipients that potentially are not complying with 24 CFR part 135, and to initiate subsequent complaint investigations and compliance reviews.

Respondents:

A. The Section 3 Summary Report—Form HUD 60002: Staff at public housing agencies, municipalities and HUD multi-family property owners.

B. The Complaint Register Form HUD 958: Low-income residents and businesses.

1. How is the information to be used?

A. The Section 3 Summary Report—Form HUD 60002

The information will be used by the Department to monitor program recipients' compliance with requirements of Section 3. HUD headquarters will use the information to assess the results of the Department's efforts to meet the regulatory objectives; make compliance determinations; influence enforcement actions; and formulate policy decisions.

B. The Complaint Register Form HUD 958

The Section 3 Complaint Register (Form HUD 958) is used by individuals and business owners that meet the definition of a Section 3 resident or businesses concern set forth at 24 CFR 135.5, or their representatives, to file complaints alleging noncompliance with the regulatory requirements of Section 3 against recipients of covered HUD financial assistance or their contractors. Information collected on this form is used to inform the Department about recipients that potentially are not complying with 24 CFR part 135, and to initiate subsequent complaint investigations and compliance reviews.

Information collection	Number of respondents	Frequency of response	Responses per annum	Burden hour per response	Annual burden hours	Hourly cost per response	Annual cost
HUD–60002	5,000	2	10,000	8	80,000	$22.71	$1,816,800
HUD–958	20	1	20	1	20	10.00	200
Total	5,020	3	10,020	9	90,180	22.71	1,817,000

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

HUD encourages interested parties to submit comment in response to these questions.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

Dated: June 10, 2015.

Sara Pratt,

Deputy Assistant Secretary for Enforcement Programs.

[FR Doc. 2015–14916 Filed 6–16–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R8–ES–2015–N038; FF08ESMF00–FXES11120800000–156]

Proposed Low-Effect Habitat Conservation Plan for the California Tiger Salamander and California Red-Legged Frog, Sonoma County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability; receipt of permit application, proposed habitat conservation plan; request for comment.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have received an application from Steven Sannella (applicant) for a 5-year incidental take permit under the Endangered Species Act of 1973, as amended (Act). The application addresses the potential for ''take'' of two listed animals, the California tiger salamander and California red-legged frog. The applicant would implement a conservation program to minimize and mitigate the project activities, as described in the applicant's low-effect habitat conservation plan (HCP). We request comments on the applicant's application and HCP, and our preliminary determination that the HCP qualifies as a ''low-effect'' HCP, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (NEPA). We discuss our basis for this determination in our environmental action statement (EAS), also available for public review.

DATES: To ensure consideration, please send your written comments by July 17, 2015. We will make the final permit decision no sooner than July 17, 2015.

ADDRESSES: *Submitting Comments:* Please address written comments to Vincent Griego, Coast Bay Division, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, W–2605, Sacramento, CA 95825. Alternatively, you may send comments by facsimile to (916) 414–6713.

Reviewing Documents: You may obtain copies of the HCP and EAS from the individuals in **FOR FURTHER INFORMATION CONTACT**, or from the Sacramento Fish and Wildlife Office Web site at *http://www.fws.gov/sacramento*. Copies of these documents are also available for public inspection, by appointment, during regular business hours, at the Sacramento Fish and Wildlife Office.

FOR FURTHER INFORMATION CONTACT: Vincent Griego, Coast Bay Division; Mike Thomas, Chief, Conservation Planning Division; or Eric Tattersall, Deputy Assistant Field Supervisor, at the address shown above or at (916) 414–6600 (telephone). If you use a telecommunications device for the deaf, please call the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

Introduction

We have received an application from Steven Sannella (applicant) for a 5-year incidental take permit under the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*; Act). The application addresses the potential for ''take'' of two listed animals, the California tiger salamander and California red-legged frog. Below, we refer to both species, collectively the Covered Species. The applicant would implement a conservation program to minimize and mitigate the project activities, as described in the applicant's low-effect HCP. We request comments on the applicant's application and HCP, and our preliminary determination that the HCP qualifies as a ''low-effect'' habitat conservation plan, eligible for a categorical exclusion under the National Environmental Policy Act of 1969, as amended (43 U.S.C. 4321 *et seq.*; NEPA). We discuss our basis for this determination in our environmental action statement (EAS), also available for public review.

Background Information

Section 9 of the Act (16 U.S.C. 1531–1544 *et seq.*) and Federal regulations (50 CFR 17) prohibit the taking of fish and wildlife species listed as endangered or threatened under section 4 of the Act. Take of federally listed fish or wildlife is defined under the Act as to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed species, or attempt to engage in such conduct. The term ''harass'' is defined in the 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). The term ''harm'' is defined in the regulations as significant habitat modification or degradation that results in death or injury of listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3). However, under specified circumstances, the Service may issue permits that allow the take of federally listed species, provided that the take that occurs 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 Act 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 applicants will, to the maximum extent practicable, minimize and mitigate the impact of such taking;

(3) The applicants will develop a proposed HCP and ensure that adequate funding for the HCP 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 applicants will carry out any other measures that the Service may require as being necessary or appropriate for the purposes of the HCP.

Proposed Project

The draft HCP addresses potential effects to the Covered Species that may result from the proposed activities. The applicant seeks incidental take authorization for covered activities within 13.31 acres located at 215 Valley View Drive, City of Petaluma, Sonoma County, California. The federally endangered California tiger salamander (Sonoma County Distinct Population Segment (*Ambystoma californiense*)) and federally threatened California red-legged frog (*Rana draytonii*) are the Covered Species in the applicant's proposed HCP.

The applicant would seek incidental take authorization for these two Covered Species and would receive assurances under our ''No Surprises'' regulations (50 CFR 17.22(b)(5) and 17.32(b)(5)).

Proposed Covered Activities

The following actions are proposed as the ''Covered Activities'' under the HCP: The 13.31–acre property will be subdivided to create 3 additional lots, comprising the following: Lot 1 will be approximately 3.25 acres; Lot 2, approximately 3 acres; and Lot 3, approximately 3.23 acres, with the remainder lot being 3.83 acres. The existing developed area, the 3.83–acre lot, will not be further developed or renovated, nor will the other three new lots be developed at this time. The proposed general rural residential development, driveways, and sewage disposal system will comprise 1.54 acres of development/disturbance. The proposed building envelopes, which include the building staging areas and

landscape areas, are proposed as follows: Lot 1 would have 5,200 square feet; Lot 2 would have 6,773 square feet; and Lot 3 would have 17,186 square feet. The applicant seeks a 5-year permit to cover the activities associated with this proposed development within the 13.31-acre site (the permit area).

Proposed Mitigation Measures

The applicant proposes to avoid, minimize, and mitigate the effects to the Covered Species associated with the Covered Activities by fully implementing the HCP. The following mitigation and minimization measures will be implemented:

- Mitigate for the loss of 1.54 acres of upland habitat for California tiger salamander by purchasing 1.54 acres of California tiger salamander credits from a Service-approved conservation bank. The applicant will also mitigate for the loss of 1.54 acres of upland habitat for California red-legged frog by purchasing 1.54 acres of California red-legged frog credits from a Service-approved conservation bank;
- Immediately prior to the start of work, a pre-construction survey will be conducted in the construction area for California tiger salamander and California red-legged frog by a Service-approved biologist. If California tiger salamander or California red-legged frog are found, the Service will be notified and the relocation of the individual will be completed with approval by the Service;
- A Service-approved biologist will conduct an Employee Education Program for all construction personnel. At a minimum, the training will include a description of the California tiger salamander and California red-legged frog and their habitat, the importance of the species and their habitats, and the general measures that are being implemented to protect the California tiger salamander and California red-legged frog as they relate to the project. Instruction will include the appropriate protocol to follow in the event California tiger salamander or California red-legged frogs are found on site;
- A Service-approved biological monitor will be on site each day during initial site grading of development sites. Thereafter, an on-site person will be designated to monitor on-site compliance with all minimization measures. The Service-approved biologist will ensure that this individual receives training consistent with that outlined in the HCP;
- Before the start of work each morning, the biological monitor will check for animals under any equipment such as vehicles and stored pipes. The biological monitor will check all excavated steep-walled holes or trenches greater than 1 foot deep for any California tiger salamanders or California red-legged frogs. Any listed animals found will be removed by the biological monitor and translocated under approval by the Service;
- An erosion and sediment control plan will be implemented to prevent impacts to the wetlands and construction on habitat outside the work areas;
- Best Management Practices, including a Storm Water Pollution Prevention Plan, will be implemented during construction to prevent any construction debris or sediment from impacting adjacent habitat;
- The number of access routes, number and size of staging areas, and the total area of activity will be limited to the minimum necessary to achieve the project goal. The staging areas will be located in hardscaped areas or areas to be developed to prevent creating temporary impacts to suitable habitat. Any areas that are temporarily disturbed (within one season) will be restored to pre-disturbance conditions immediately following construction. The Service-approved biological monitor will identify the boundaries of the work and staging areas and ensure that that contractor does not disturb any ground outside the designated construction areas. The contractor will obtain approval from the monitor to go outside designated areas;
- All foods and food-related trash items will be enclosed in sealed trash containers at the end of each day, and removed completely from the site once every three days;
- No pets will be allowed anywhere in the project site during construction;
- A speed limit of 15 mph on dirt roads will be maintained, if applicable;
- All equipment will be maintained such that there will be no leaks of automotive fluids such as gasoline, oils, or solvents;
- Hazardous materials such as fuels, oils, solvents, *etc.,* will be stored in sealable containers in a designated location that is at least 200 feet from aquatic habitats. All fueling and maintenance of vehicles and other equipment and staging areas will occur at least 200 feet from any aquatic habitat;
- Grading and clearing will typically be conducted between April 15 and October 15 of any given year, depending on the level of rainfall and/or site conditions;
- Project areas temporarily disturbed by construction activities will be re-vegetated;
- If California tiger salamander or California red-legged frog are found, the proponent will coordinate with the Service to prevent take of individuals and mitigate for loss of habitat.

Proposed Action and Alternatives

Our proposed action (see below) is approving the applicant's HCP and issuance of an incidental take permit for take resulting from implementation of the Covered Activities. As required by the Act, the applicant's HCP considers alternatives to the take under the proposed action. The HCP considers the environmental consequences of two alternatives to the proposed action: (1) The No-Action Alternative; and (2) the Reduced Development Alternative.

No-Action Alternative

Under the No-Action Alternative, we would not issue an incidental take permit; the applicant would not build the proposed project; the project site would remain undeveloped, the existing upland habitat would not be disturbed, and the applicant would not implement proposed mitigation measures. While this No-Action Alternative would avoid take of the Covered Species, it is considered infeasible because it would result in unnecessary economic burden on the applicant. It also could result in sale of the parcel to a party that would develop the property without maintaining any habitat on site. For this reason, the No-Action Alternative has been rejected.

Reduced Development Alternative

Under the Reduced Development Alternative, the size of the proposed residences would be reduced but not the required access roadway. The Service would issue a permit, and the applicant would implement the proposed mitigation measures. While this Reduced Development Alternative would reduce the loss of California tiger salamander and California red-legged frog habitat, it would still potentially result in take of these species, and it would not reduce the project footprint to a biologically meaningful extent. This alternative would result in unnecessary economic burden to the applicant. For these reasons, the Reduced Take Alternative was rejected.

Proposed Action

Under the Proposed Action Alternative, we would issue an incidental take permit for the applicant's proposed project, which includes the activities described above. The Proposed Action Alternative would result in the permanent loss of 1.54 acres of California tiger salamander and

California red-legged frog upland habitat. The habitat would be converted to rural residential and associated infrastructure and road access. To mitigate for these effects, the applicant proposes to purchase (a) 1.54 acres of California tiger salamander credits from a Service-approved conservation bank located in Sonoma County, and (b) 1.54 acres of California red-legged frog credits from a Service-approved conservation bank located in Alameda County.

National Environmental Policy Act

As described in our EAS, we have made the preliminary determination that approval of the proposed Plan and issuance of the permit would qualify as a categorical exclusion under NEPA (42 U.S.C. 4321–4347 *et seq.*), as provided by NEPA implementing regulations in the Code of Federal Regulations (40 CFR 1500.5(k), 1507.3(b)(2), 1508.4), by Department of the Interior regulations (43 CFR 46.205, 46.210, 46.215), and by the Department of the Interior Manual (516 DM 3 and 516 DM 8). Our EAS found that the proposed HCP qualifies as a ''low-effect'' HCP, as defined by our ''Habitat Conservation Planning and Incidental Take Permitting Process Handbook'' (November 1996).

Determination of whether a habitat conservation plan qualifies as low-effect is based on the following three criteria: (1) Implementation of the proposed HCP would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the proposed plan would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the HCP, considered together with the impacts of other past, present, and reasonably foreseeable projects, would not result, over time, in cumulative effects to environmental values or resources that would be considered significant. Based upon the preliminary determinations in the EAS, we do not intend to prepare further NEPA documentation. We will consider public comments when making the final determination on whether to prepare an additional NEPA document on the proposed action.

Public Comments

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 particularly seek comments on the following:

(1) Biological information concerning the species;

(2) Relevant data concerning the species;

(3) Additional information concerning the range, distribution, population size, and population trends of the species;

(4) Current or planned activities in the subject area and their possible impacts on the species; and

(5) Identification of any other environmental issues that should be considered with regard to the proposed rural residential project and permit action.

You may submit your comments and materials by one of the methods listed above in **ADDRESSES**. Comments and materials we receive, as well as supporting documentation we used in preparing the EAS, will be available for public inspection by appointment, during normal business hours, at our office (see **FOR FURTHER INFORMATION CONTACT**).

Public Availability of Comments

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.

Next Steps

We will evaluate the permit application, including the HCP, and comments we receive to determine whether the application meets the requirements of section 10(a) of the Act. If the requirements are met, we will issue a permit to the applicant for the incidental take of the California tiger salamander and California red-legged frog from the implementation of the covered activities described in the low-effect Habitat Conservation Plan for the California tiger salamander and California red-legged frog, City of Petaluma, Sonoma County, California. We will make the final permit decision no sooner than 30 days after publication of this notice in the **Federal Register**.

Authority

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 (CFR) at 40 CFR 1500–1508, as well as in compliance with section 10(c) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

Dated: June 11, 2015.

Jennifer M. Norris,

Field Supervisor, Sacramento Fish and Wildlife Office, Sacramento, California.

[FR Doc. 2015–14853 Filed 6–16–15; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–SERO–CAHA–18133; PPSESEROC3, PPMPSAS1Y.YP0000]

Environmental Impact Statement for a Special Use Permit to Dare County for Activities Related to the Protection of North Carolina Highway 12 in Cape Hatteras National Seashore, North Carolina

AGENCY: National Park Service, Interior.

ACTION: Notice of termination of environmental impact statement.

SUMMARY: The National Park Service (NPS) is terminating preparation of an environmental impact statement (EIS) for a Special Use Permit to Dare County for Activities Related to the Protection of North Carolina Highway 12 in Cape Hatteras National Seashore, North Carolina. Instead, the NPS will be preparing an environmental assessment (EA) to assist the NPS in determining whether, where, and under what conditions the NPS would issue a Special Use Permit to Dare County for actions related to the protection of Highway 12 in the Buxton Village area.

ADDRESSES: Cape Hatteras National Seashore, 1401 National Park Road, Manteo, North Carolina 27954.

FOR FURTHER INFORMATION CONTACT: Dave Hallac, Park Superintendent at the address shown above, by phone at (252) 475–9000.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare an EIS to consider a Special Use Permit to Dare County for Activities Related to the Protection of North Carolina Highway 12 was published in the **Federal Register** on December 29, 2014 (79 FR 78106, Pages 78106–78107). The NPS then engaged in a scoping process which included public meetings and consultation with federal agencies, and the initial development of a range of management alternatives with preliminary environmental impact assessment. Preliminary analysis of the alternatives shows there is no potential for significant impacts to park resources and values and no concerns or issues were expressed during the public scoping process that would have the potential for highly controversial

impacts. For these reasons, the NPS determined the proposal would not constitute a major federal action requiring an EIS. The EA to consider a Special Use Permit to Dare County for Activities Related to the Protection of North Carolina Highway 12 is expected to be distributed for public comment summer 2015. The public comment period for the EA and the dates, times, and locations of public meetings will be announced through the NPS Planning, Environment, and Public Comment (PEPC) Web site *http://parkplanning.nps.gov/caha* the Cape Hatteras National Seashore Web site, and in local media outlets.

The responsible official is the Regional Director, NPS Southeast Region, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: June 1, 2015.

Barclay C. Trimble,

Acting Regional Director, Southeast Region.

[FR Doc. 2015–14426 Filed 6–16–15; 8:45 am]

BILLING CODE 4310–JD–P

DEPARTMENT OF INTERIOR

National Park Service

[NPS–SERO–BICY–17725; PPSESEROC3, PMP00UP05.YP0000]

Plan of Operations To Conduct 3-Dimensional Seismic Oil and Gas Exploration Within Big Cypress National Preserve

AGENCY: National Park Service, Interior.

ACTION: Notice of Availability.

SUMMARY: The National Park Service (NPS) is seeking public comments on Nobles Grade 3–D Seismic Survey/Plan of Operations (Plan) to explore for oil and gas within Big Cypress National Preserve. The Plan seeks approval to conduct a seismic survey over a 110± square mile area to evaluate the subsurface geologic structure and geophysical conditions pertaining to accumulations of commercial quantities of crude oil and natural gas in the Sunniland Oil Trend. The applicant, Burnett Oil Company, Inc., proposes to conduct the seismic survey by using small, portable seismic receivers (geophones) and recording devices, which measure and record subtle vibrations in the ground. No explosives will be used to create the vibrations or seismic acoustical signals, and there will be no ground disturbances from detonations. Instead, vibrations will be created using mobile plates attached to special off-road vehicles which are placed against the ground, vibrated, and then moved on to the next location. The source and receivers would be placed in a line grid to allow the applicant to map the subsurface geology.

DATES: The comment period will be announced through local media outlets and on the NPS Planning, Environment, and Public Comment (PEPC) Web site at *http://parkplanning.nps.gov/bicy.* The Plan will be available for public review and comment through July 17, 2015.

ADDRESSES: Interested individuals, organizations, and agencies are encouraged to provide written comments. Written comments may be sent to the Office of the Superintendent, Big Cypress National Preserve, 33100 Tamiami Trail East Ochopee, Florida 34141 or entered in the PEPC system Web site at *http://parkplanning.nps.gov/bicy.* Copies of the Plan are available upon request from the contact listed below.

FOR FURTHER INFORMATION CONTACT: Requests for further information should be directed to the Big Cypress National Preserve PEPC system online at: *http://parkplanning.nps.gov/bicy;* Big Cypress National Preserve Environmental Specialist Don Hargrove by phone at 239–695–1150; via email at *Don_Hargrove@nps.gov;* or by mail at Big Cypress National Preserve, 33100 Tamiami Trail East, Ochopee, Florida 34141.

SUPPLEMENTARY INFORMATION: Comments in any format (hard copy or electronic) submitted on behalf of others will not be accepted. Before including your address, phone number, email address, or other personal identifying information in any 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 official responsible for approving or disapproving this Plan is the Regional Director, NPS Southeast Region, 100 Alabama Street SW., 1924 Building, Atlanta, Georgia 30303.

Dated: June 1, 2015.

Barclay C. Trimble,

Acting Regional Director, Southeast Region.

[FR Doc. 2015–14425 Filed 6–16–15; 8:45 am]

BILLING CODE 4310–JD–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NER–FIIS–17935; PPNEFIIS00–PMP00UP05.YP0000]

Draft General Management Plan/Environmental Impact Statement, Fire Island National Seashore, New York

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: The National Park Service (NPS) announces the availability of a Draft General Management Plan/Environmental Impact Statement (Draft GMP/EIS) for Fire Island National Seashore, New York. The Draft GMP/EIS includes a draft Wilderness Stewardship Plan for the Otis Pike High Dunes Fire Island Wilderness.

DATES: The NPS will accept comments on the Draft GMP/EIS for a period of 90 days following publication of the Environmental Protection Agency's Notice of Availability in the **Federal Register**. The National Park Service will hold public meetings during the public review period to solicit comments. Meeting dates, times and locations will be announced in local media in advance of the meeting dates.

ADDRESSES: The Draft GMP/EIS will be available for public review and comment online at *http://parkplanning.nps.gov/fiis,* and in hardcopy at the office of the Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, New York 11772, (631) 687–4750. Copies may also be viewed at area public libraries including the Woodhull School on Fire Island and at Babylon, Bayport/Blue Point, Bay Shore/Brightwaters, Brentwood, Brookhaven, East Islip, Mastic/Moriches/Shirley, Patchogue, Sayville, South Country (Bellport), and West Islip on Long Island. Comments may be submitted electronically at *http://parkplanning.nps.gov/fiis.* You may also mail written comments to: Fire Island National Seashore GMP, 15 State Street, Boston, MA 02109, Attn: Ellen Carlson.

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—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.

SUPPLEMENTARY INFORMATION: The focus of the GMP is to develop and select

management strategies for Fire Island National Seashore for the next 15 to 20 years to support the protection of important natural resources and processes; significant recreation resources; cultural resources of national, state, and local significance; and residential communities.

The park is composed of two distinct units—the barrier island that runs parallel to the south shore of Long Island and the 613-acre William Floyd Estate situated on the south shore of Long Island near the east end of Fire Island. To address the specific needs of these two distinct units, the Draft GMP/EIS includes two sets of alternatives. One addresses park-wide alternatives for Fire Island National Seashore with a primary emphasis on the barrier island and includes a no-action alternative and two action alternatives. The other set of alternatives focuses specifically on the William Floyd Estate and includes a no-action and a single action alternative. The Draft GMP/EIS also incorporates plans for the Otis Pike High Dunes Fire Island Wilderness and includes a draft Wilderness Stewardship Plan for public review concurrent with the Draft GMP/EIS.

FOR FURTHER INFORMATION CONTACT: Ellen Carlson, NPS/Northeast Region, 15 State Street, Boston, MA 02019. Phone: (617) 223–5048. Email: *Fire_Island_GMP@nps.gov.*

Dated: June 1, 2015.

Michael A. Caldwell,

Regional Director, Northeast Region, National Park Service.

[FR Doc. 2015–14927 Filed 6–16–15; 8:45 am]

BILLING CODE 4310–WV–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–456 and 731–TA–1151–1152 (Review)]

Citric Acid and Certain Citrate Salts From Canada and China

Determination

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930, that revocation of the countervailing duty order on citric acid and certain citrate salts from China and the antidumping duty orders on citric acid and certain citrate salts from China and Canada would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), instituted these reviews on April 1, 2014 (79 FR 18311) and determined on July 7, 2014 that it would conduct full reviews (79 FR 42049, July 18, 2014). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on November 14, 2014 (79 FR 68299). The hearing was held in Washington, DC, on March 26, 2015, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission made these determinations pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)). It completed and filed its determinations in these reviews on June 11, 2015. The views of the Commission are contained in USITC Publication 4538 (June 2015), entitled *Citric Acid and Certain Citrate Salts from Canada and China: Investigation Nos. 701–TA–456 and 731–TA–1151–1152 (Review).*

By order of the Commission.

Issued: June 12, 2015.

Lisa R. Barton,

Secretary to the Commission.

[FR Doc. 2015–14863 Filed 6–16–15; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Manufacturer of Controlled Substances Registration: Siemens Healthcare Diagnostics, Inc.

ACTION: Notice of registration.

SUMMARY: Siemens Healthcare Diagnostics, Inc. applied to be registered as a manufacturer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Siemens Healthcare Diagnostics, Inc. registration as a manufacturer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated January 9, 2015, and published in the **Federal Register** on January 26, 2015, 80 FR 3982, Siemens Healthcare Diagnostics, Inc., Attn: RA, 100 GBC Drive, Mailstop 514, Newark, Delaware 19702 applied to be registered as a manufacturer of certain basic classes of controlled substances. No comments or objections were submitted to this notice.

The DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Siemens Healthcare Diagnostics, Inc. to manufacture the basic classes of controlled substances is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 823(a), and in accordance with 21 CFR 1301.33, the above-named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed:

Controlled substance	Schedule
Tetrahydrocannabinols (7370)	I
Ecgonine (9180)	II
Morphine (9300)	II
Thebaine (9333)	II

The company plans to produce the listed controlled substances in bulk to be used in the manufacture of reagents and drug calibrator controls which are DEA exempt products.

In reference to drug code 7370 the company plans to bulk manufacture a synthetic tetrahydrocannabinol. No other activity for this drug code is authorized for this registration.

Dated: June 11, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–14912 Filed 6–16–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–411F]

Adjusted Aggregate Production Quotas for Difenoxin, Diphenoxylate (for Conversion), and Marijuana

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final order.

SUMMARY: This final order establishes the adjusted 2015 aggregate production quotas for difenoxin, diphenoxylate (for conversion), and marijuana.

DATES: This order is effective June 17, 2015.

FOR FURTHER INFORMATION CONTACT: John R. Scherbenske, Office of Diversion Control, Drug Enforcement Administration, 8701 Morrissette Drive, Springfield, Virginia 22152, Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Legal Authority

The DEA implements and enforces titles II and III of the Comprehensive Drug Abuse Prevention and Control Act of 1970, as amended. 21 U.S.C. 801–971. Titles II and III are referred to as the ''Controlled Substances Act'' and the ''Controlled Substances Import and Export Act,'' respectively, and are collectively referred to as the ''Controlled Substances Act'' or the ''CSA'' for the purposes of this action. The DEA publishes the implementing regulations for these statutes in title 21 of the Code of Federal Regulations (CFR), Chapter II. The CSA and its implementing regulations are designed to prevent, detect, and eliminate the diversion of controlled substances and listed chemicals into the illicit market while providing for the legitimate medical, scientific, research, and industrial needs of the United States. Controlled substances have the potential for abuse and dependence and are controlled to protect the public health and safety.

Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for each basic class of controlled substance listed in schedules I and II each year. The Attorney General has delegated this function to the Administrator of the DEA, 28 CFR 0.100.

Background

The DEA established the initial 2015 aggregate production quotas and assessments for annual need on September 8, 2014 (79 FR 53216). That notice stipulated that, as provided for in 21 CFR 1303.13 and 21 CFR 1315.13, all aggregate production quotas and assessments of annual need are subject to adjustment. Based on unanticipated medical, scientific, research, and industrial needs of the United States, the DEA proposed to adjust the established 2015 aggregate production quotas for the schedule I and II controlled substances difenoxin, diphenoxylate (for conversion), and marijuana to be manufactured in the United States in 2015. The notice of proposed adjustment was published in the **Federal Register** on Wednesday, April 8, 2015 (80 FR 18867). All interested persons were invited to comment on or object to the proposed adjusted aggregate production quotas on or before May 8, 2015.

Comments Received

Two companies, one institution of higher education, and five private citizens submitted timely comments in response to the proposed adjustment of these three controlled substances. The comments from the institution of higher education and one of the private citizens were in support of the proposed increases for these three controlled substances. The two companies and one private citizen supported the proposed adjustment and requested further increases to the APQs to support research, additional product development efforts, and increases in manufacturing demands. Further comments received from three private citizens were outside the scope of the proposed APQ notice. The DEA appreciates the support for this adjusted 2015 aggregate production quota for difenoxin, diphenoxylate (for conversion), and marijuana, which is intended to provide for the estimated scientific, research, and industrial needs of the United States.

Determination for Adjusting the Aggregate Production Quotas for Difenoxin, Diphenoxylate (for Conversion), and Marijuana

In accordance with 21 CFR 1303.13, the DEA has taken into consideration the above comments along with the relevant 2014 year-end inventories, initial 2015 manufacturing quotas, 2015 export requirements, actual and projected 2015 sales, research and product development requirements, and information derived from additional applications for manufacturing quota received since the April 8, 2015 publication of the notice of proposed adjustments to the aggregate production quotas for difenoxin, diphenoxylate (for conversion), and marijuana. Upon consideration of the above, the Acting Administrator has determined to increase the 2015 aggregate production quotas for difenoxin and marijuana beyond that which was previously proposed. Regarding the aggregate production quota for diphenoxylate (for conversion), the Acting Administrator has determined that the proposed aggregate production quota adjustment for this substance is sufficient to meet the current 2015 estimated medical, scientific, research, and industrial needs of the United States and to provide for adequate reserve stock.

Pursuant to the above, the Acting Administrator hereby establishes the 2015 aggregate production quotas for difenoxin, diphenoxylate (for conversion), and marijuana, expressed in grams of anhydrous acid or base, as follows:

Basic class—schedule I	Previously established 2015 quota (g)	Adjusted 2015 quota (g)
Difenoxin	50	11,000
Marijuana	125,000	658,000

Basic class—schedule II	Previously established 2015 quota (g)	Adjusted 2015 quota (g)
Diphenoxylate (for conversion)	0	75,000

Dated: June 11, 2015.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2015–14910 Filed 6–16–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–410F]

Controlled Substances: 2015 Established Aggregate Production Quotas for Three Temporarily Controlled Synthetic Cannabinoids

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Final order.

SUMMARY: This final order establishes the initial 2015 aggregate production quotas for three temporarily controlled synthetic cannabinoids: N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (AB-CHMINACA), N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (AB-PINACA), and [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone (THJ-2201).

DATES: Effective June 17, 2015.

FOR FURTHER INFORMATION CONTACT: John R. Scherbenske, Office of Diversion Control, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (202) 598–6812.

SUPPLEMENTARY INFORMATION:

Background

Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires the Attorney General to establish aggregate production quotas for each basic class of controlled substance listed in schedules I and II and for ephedrine, pseudoephedrine, and phenylpropanolamine. The Attorney General has delegated this authority to the Administrator of the DEA. 28 CFR 0.100(b).

On January 30, 2015, the DEA published in the **Federal Register** a final order to temporarily place three synthetic cannabinoids, N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (AB-CHMINACA), N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (AB-PINACA), and [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone (THJ-2201), into schedule I of the CSA (80 FR 5042), making all regulatory controls pertaining to schedule I controlled substances applicable to AB-CHMINACA, AB-PINACA, and THJ-2201, including the requirement to obtain a manufacturing quota pursuant to 21 CFR part 1303.

The 2015 aggregate production quotas for AB-CHMINACA, AB-PINACA, and THJ-2201 represent those quantities that may be manufactured in the United States in 2015 to provide for the estimated scientific, research, and industrial needs of the United States, lawful export requirements, and the establishment and maintenance of reserve stocks.

On March 20, 2015, the DEA published a notice titled, ''Controlled Substances: 2015 Proposed Aggregate Production Quotas for Three Temporarily Controlled Synthetic Cannabinoids'' in the **Federal Register** (80 FR 15034). That notice proposed the 2015 aggregate production quotas for AB-CHMINACA, AB-PINACA, and THJ-2201. Interested persons were invited to comment on or object to the proposed aggregate production quotas for AB-CHMINACA, AB-PINACA, and THJ-2201 on or before April 20, 2015. No comments were received.

Analysis for 2015 Established Aggregate Production Quotas

In determining the 2015 aggregate production quotas for N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (AB-CHMINACA), N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (AB-PINACA), and [1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone (THJ-2201), the DEA has taken into consideration the factors set forth at 21 CFR 1303.11, pursuant to 21 U.S.C. 826(a), and other relevant factors, including 2015 export requirements, industrial use, applications for quotas, as well as information on research and product development requirements.

Pursuant to 21 U.S.C. 826 and in accordance with 21 CFR 1303.11, the Acting Administrator hereby establishes the 2015 aggregate production quotas for AB-CHMINACA, AB-PINACA, and THJ-2201, expressed in grams of anhydrous acid or base, as follows:

Basic class—schedule I	Established 2015 quota (g)
N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide (AB-CHMINACA)	15
N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide (AB-PINACA)	15
[1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone (THJ-2201)	15

In accordance with 21 CFR 1303.13, upon consideration of the relevant factors, the Acting Administrator may adjust the 2015 aggregate production quotas for AB-CHMINACA, AB-PINACA, and THJ-2201 as needed.

Dated: June 11, 2015.

Chuck Rosenberg,

Acting Administrator.

[FR Doc. 2015–14909 Filed 6–16–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–392]

Importer of Controlled Substances Registration: Mylan Technologies, Inc.

ACTION: Notice of registration.

SUMMARY: Mylan Technologies, Inc. applied to be registered as an importer of certain basic classes of controlled substances. The Drug Enforcement Administration (DEA) grants Mylan Technologies, Inc. registration as an importer of those controlled substances.

SUPPLEMENTARY INFORMATION: By notice dated February 11, 2015, and published in the **Federal Register** on February 19, 2015, 80 FR 8902, Mylan Technologies, Inc., 110 Lake Street, Saint Albans, Vermont 05478 applied to be registered as an importer of certain basic classes of controlled substances. No comments or objections were submitted for this notice.

The DEA has considered the factors in 21 U.S.C. 823, 952(a) and 958(a) and determined that the registration of Mylan Technologies, Inc. to import the basic classes of controlled substances is consistent with the public interest and with United States obligations under

international treaties, conventions, or protocols in effect on May 1, 1971. The DEA investigated the company's maintenance of effective controls against diversion by inspecting and testing the company's physical security systems, verifying the company's compliance with state and local laws, and reviewing the company's background and history.

Therefore, pursuant to 21 U.S.C. 952(a) and 958(a), and in accordance with 21 CFR 1301.34, the above-named company is granted registration as an importer of the basic classes of controlled substances:

Controlled substance	Schedule
Methylphenidate (1724)	II
Fentanyl (9801)	II

The company plans to import the listed controlled substances in finished dosage form (FDF) from foreign sources for analytical testing and clinical trials in which the foreign FDF will be compared to the company's own domestically-manufactured FDF. This analysis is required to allow the company to export domestically-manufactured FDF to foreign markets.

Dated: June 11, 2015.

Joseph T. Rannazzisi,

Deputy Assistant Administrator.

[FR Doc. 2015–14911 Filed 6–16–15; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Proposed Extension of Information Collection Requests Submitted for Public Comment

AGENCY: Employee Benefits Security Administration, Department of Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (the Department), in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. The Employee Benefits Security Administration (EBSA) is soliciting comments on the proposed extension of the information collection requests (ICRs) contained in the documents described below. A copy of the ICRs may be obtained by contacting the office listed in the **ADDRESSES** section of this notice. ICRs also are available at reginfo.gov (*http://www.reginfo.gov/public/do/PRAMain*).

DATES: Written comments must be submitted to the office shown in the Addresses section on or before August 17, 2015.

ADDRESSES: G. Christopher Cosby, Department of Labor, Employee Benefits Security Administration, 200 Constitution Avenue NW., Room N–5718, Washington, DC 20210, *cosby.chris@dol.gov,* (202) 693–8410, FAX (202) 693–4745 (these are not toll-free numbers).

SUPPLEMENTARY INFORMATION: This notice requests public comment on the Department's request for extension of the Office of Management and Budget's (OMB) approval of ICRs contained in the rules and prohibited transactions described below. The Department is not proposing any changes to the existing ICRs at this time. An agency may not conduct or sponsor, and a person is not required to respond to, an information collection unless it displays a valid OMB control number. A summary of the ICRs and the current burden estimates follows:

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Settlement Agreements between a Plan and Party in Interest.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0091.

Affected Public: Businesses or other for-profits.

Respondents: 4.

Responses: 1,080.

Estimated Total Burden Hours: 30.

Estimated Total Burden Cost (Operating and Maintenance): $335.

Description: Section 408(a) of ERISA and section 4975(c)(2) of the Internal Revenue Code of 1986 (the Code) give the Secretary of Labor the authority to grant an exemption to a class or order of fiduciaries, disqualified persons, or transactions from all or part of the restrictions imposed by sections 406 and 407(a) of ERISA and from the taxes imposed by sections 4975(a) and (b) of the Code, by reason of section 4975(c)(1) of the Code. This information collection request (ICR) relates to two prohibited transaction class exemptions (PTEs) that the Department of Labor (the Department) has granted, both of which involve settlement agreements. These two exemptions are described below:

PTE 94–71. Granted on September 30, 1994, PTE 94–71 exempts from certain restrictions of ERISA and certain taxes imposed by the Code, a transaction or activity that is authorized, prior to the execution of the transaction or activity, by a settlement agreement resulting from an investigation of an employee benefit plan conducted by the Department.

PTE 2003–39. Granted on December 31, 2005, PTE 03–39 exempts from certain restrictions of ERISA and certain taxes imposed by the Code, transactions arising out of the settlement of litigation that involve the release of claims against parties in interest in exchange for payment by or on behalf of the party in interest, provided that certain conditions are met.

Because both exemptions involve settlement agreements, the Department has combined their information collection provisions into one ICR and has obtained OMB approval for their paperwork burden. The Department believes that the public and the Federal government are both best served by allowing the public to review and comment on similar exemption provisions in combination. The ICR is scheduled to expire on August 31, 2015.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Voluntary Fiduciary Correction Program.

Type of Review: Extension of a currently approved information collection.

OMB Number: 1210–0118.

Affected Public: Businesses or other for-profits.

Respondents: 5,760.

Responses: 119,761.

Estimated Total Burden Hours: 25,920.

Estimated Total Burden Cost (Operating and Maintenance): $1,174,000.

Description: This information collection arises from two related actions: the Voluntary Fiduciary Correction Program (the VFC Program or the Program) and Prohibited Transaction Class Exemption (PTE) 2002–51 (the Exemption). The Department adopted the Program and the Exemption in order to encourage members of the public to voluntarily correct transactions that violate (or are suspected of violating) the fiduciary or prohibited transaction provisions of the ERISA. Both the Program and the Exemption incorporate information collection requirements in order to protect participants and beneficiaries

and enable the Department to oversee the appropriate use of the Program and the Exemption. The ICR is scheduled to expire on August 31, 2015.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Termination of Abandoned Individual Account Plans.

Type of Review: Extension of a currently approved collection of information,

OMB Number: 1210–0127.

Affected Public: Businesses or other for-profits.

Respondents: 39,330.

Responses: 3,102,640.

Estimated Total Burden Hours: 109,800.

Estimated Total Burden Cost (Operating and Maintenance): $1,088,000.

Description: The abandoned plan initiative includes the following actions, which impose the following information collections:

1. Qualified Termination Administrator (QTA) Regulation: The QTA regulation creates an orderly and efficient process by which a financial institution that holds the assets of a plan that is deemed to have been abandoned may undertake to terminate the plan and distribute its assets to participants and beneficiaries holding accounts under the plan, with protections and approval of the Department under the standards of the regulation. The regulation requires the QTA to provide certain notices to the Department, to participants and beneficiaries, and to the plan sponsor (or service providers to the plan, if necessary), and to keep certain records pertaining to the termination.

2. Abandoned Plan Terminal Report Regulation: The terminal report regulation provides an alternative, simplified method for a QTA to satisfy the annual report requirement otherwise applicable to a terminating plan by filing a special simplified terminal report with the Department after terminating an abandoned plan and distributing the remaining assets in the individual account plans to participants and beneficiaries.

3. Terminated Plan Distribution Regulation: The terminated plan distribution regulation establishes a safe harbor method by which fiduciaries who are terminating individual account pension plans (whether abandoned or not) may select an investment vehicle to receive account balances distributed from the terminated plan when the participant has failed to provide investment instructions. The regulation requires the fiduciaries to provide advance notice to participants and beneficiaries of how such distributions will be invested, if no other investment instructions are provided.

4. Abandoned Plan Class Exemption: The exemption permits a QTA that terminates an abandoned plan under the QTA regulation to receive payment for its services from the abandoned plan and to distribute the account balance of a participant who has failed to provide investment direction into an individual retirement account (IRA) maintained by the QTA or an affiliate. Without the exemption, financial institutions would be unable to receive payment for services rendered out of plan assets without violating ERISA's prohibited transaction provisions and would therefore be highly unlikely to undertake the termination of abandoned plans. The exemption includes the condition that the QTA keep records of the distributions for a period of six years and make such records available on request to interested persons (including the Department and participants and beneficiaries). If a QTA wishes to be paid out of plan assets for services provided prior to becoming a QTA, the exemption requires that the QTA enter into a written agreement with a plan fiduciary or the plan sponsor prior to receiving payment and that a copy of the agreement be provided to the Department.

5. PTE 2004–16 (Automatic Rollover Exemption): Also included in this ICR are the notice and recordkeeping requirements contained in PTE 2004–16, which permits a pension plan fiduciary that is a financial institution and is also the employer maintaining an individual account pension plan for its employees to establish, on behalf of its separated employees, an IRA at a financial institution that is either the employer or an affiliate, which IRA would receive mandatory distributions that the fiduciary ''rolls over'' from the plan when an employee terminates employment.

Because all of these regulations and exemptions relate to terminating or abandoned plans and/or to distribution and rollover of distributed benefits for which no participant investment election has been made, the Department has combined the paperwork burden for all of these actions into one ICR. In the Department's view, this combination allows the public to have a better understanding of the aggregate burden imposed on the public for these related regulatory actions. OMB approved the ICR under OMB control number 1210–0127, which is scheduled to expire on September 30, 2015.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: PTE 90–1; Insurance Company Pooled Separate Accounts.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0083.

Affected Public: Businesses or other for-profits.

Respondents: 64.

Responses: 640.

Estimated Total Burden Hours: 107.

Estimated Total Burden Cost (Operating and Maintenance): $0.

Description: PTE 90–1 provides an exemption from certain provisions of the Employee Retirement Income Security Act of 1974 (ERISA) relating to transactions involving insurance company pooled separate accounts in which employee benefit plans participate. Without the exemption, sections 406 and 407(a) of ERISA and section 4975(c)(1) of the Internal Revenue Code might prohibit a party in interest to a plan from furnishing goods or services to an insurance company pooled separate account in which the plan has an interest, or prohibit engaging in other transactions. Under the exemption, persons who are parties in interest to a plan that invests in a pooled separate account, such as a service provider, may engage in otherwise prohibited transactions with the separate account if the plan's participation in the separate account does not exceed specified limits and other conditions are met. These other conditions include a requirement that the party in interest not be the insurance company, or an affiliate thereof, that holds the plan assets in its pooled separate account or other separate account. The terms of the transaction to which the exemption is applied must be at least as favorable to the pooled separate account as those that would be obtained in a separate arms-length transaction with an unrelated party, and the insurance company must maintain records of any transaction to which the exemption applies for a period of six years. This ICR covers this recordkeeping requirement.

The Department previously submitted this information collection to the Office of Management and Budget (OMB) in an ICR that was approved under the OMB Control Number 1210–0083. The current approval is scheduled to expire on October 31, 2015.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Definition of Plan Assets—Participant Contributions.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0100.

Affected Public: Businesses or other for-profits.

Respondents: 1.

Responses: 251.

Estimated Total Burden Hours: 8.

Estimated Total Burden Cost (Operating and Maintenance): $1,088.

Description: The regulation concerning plan assets and participant contributions provides guidance for fiduciaries, participants, and beneficiaries of employee benefit plans regarding how participant contributions to pension plans must be handled when they are either paid to the employer by the participant or directly withheld by the employer from the employee's wages for transmission to the pension plan. In particular, the regulation sets standards for the timely delivery of such participant contributions, including an outside time limit for the employer's holding of participant contributions. In addition, for those employers who may have difficulty meeting the regulation's outside deadlines for transmitting participant contribution, the regulation (29 CFR 2510.3–102(d) provides the opportunity for the employer to obtain an extension of the time limit by providing participants and the Department with a notice that contains specified information. The ICR pertains to this notice requirement. The Department previously requested review of this information collection and obtained approval from the Office of Management and Budget (OMB) under OMB control number 1210–0100. That approval is scheduled to expire on October 31, 2015.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption for Cross-Trades of Securities by Index and Model-Driven Funds (PTCE 2002–12).

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0115.

Affected Public: Businesses or other for-profits.

Respondents: 60.

Responses: 840.

Estimated Total Burden Hours: 855.

Estimated Total Burden Cost (Operating and Maintenance): $528.

Description: PTE 2002–12 exempts certain transactions that would be prohibited under the Employee Retirement Income Security Act of 1974 (the Act or ERISA) and the Federal Employees' Retirement System Act (FERSA), and provides relief from certain sanctions of the Internal Revenue Code of 1986 (the Code). The exemption permits cross-trades of securities among Index and Model-Driven Funds (Funds) managed by managers (Managers), and among such Funds and certain large accounts (Large Accounts) that engage such Managers to carry out a specific portfolio restructuring program or to otherwise act as a ''trading adviser'' for such a program. By removing existing barriers to these types of transactions, the exemption increases the incidences of cross-trading, thereby lowering the transaction costs to plans in a number of ways from what they would be otherwise.

In order for the Department to grant an exemption for a transaction or class of transactions that would otherwise be prohibited under ERISA, the statute requires the Department to make a finding that the exemption is administratively feasible, in the interest of the plan and its participants and beneficiaries, and protective of the rights of the participants and beneficiaries. To ensure that Managers have complied with the requirements of the exemption, the Department has included in the exemption certain recordkeeping and disclosure obligations that are designed to safeguard plan assets by periodically providing information to plan fiduciaries, who generally must be independent from the cross-trading program. Initially, where plans are not invested in Funds, Managers must furnish information to plan fiduciaries about the cross-trading program, provide a statement that the Manager will have a potentially conflicting division of loyalties, and obtain written authorization from a plan fiduciary for a plan to participate in a cross-trading program. For plans that are currently invested in Funds, the Manager must provide annual notices to update the plan fiduciary and provide the plan with an opportunity to withdraw from the program. For Large Accounts, prior to the cross-trade, the Manager must provide information about the cross-trading program and obtain written authorization from the fiduciary of a Large Account to engage in cross-trading in connection with a portfolio restructuring program. Following completion of the Large Account's restructuring, information must be provided by the Manager about all cross-trades executed in connection with a portfolio-restructuring program. Finally, the exemption requires that Managers maintain for a period of 6 years from the date of each cross-trade the records necessary to enable plan fiduciaries and certain other persons specified in the exemption (*e.g.,* Department representatives or contributing employers), to determine whether the conditions of the exemption have been met.

EBSA previously submitted the information collection provisions of PTE 2002–12 to the Office of Management and Budget (OMB) for review in connection with promulgation of the prohibited transaction exemption. OMB approved the information collection request (ICR) under OMB Control No. 1210–0115. The ICR approval is currently scheduled to expire on October 31, 2015.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Acquisition and Sale of Trust Real Estate Investment Trust Shares by Individual Account Plans Sponsored by Trust Real Estate Investment Trusts.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0124.

Affected Public: Businesses or other for-profits.

Respondents: 46.

Responses: 96,600.

Estimated Total Burden Hours: 4,838.

Estimated Total Burden Cost (Operating and Maintenance): $251,160.

Description: PTE 2004–07 exempts from certain prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986 (the Code), the acquisition, holding, sale, and contribution in kind of publicly traded shares of beneficial interest in a real estate investment trust that is structured under State law as a business trust (Trust REIT), on behalf of and to individual account plans sponsored by the REIT or its affiliates, provided that certain conditions are met.

The exemption allows individual account plans (Plans) established by Trust REITS to offer a beneficial interest in the Trust REIT in the form of Qualifying REIT Shares, as defined in the exemption, to participants in Plans sponsored by the REIT or its employer affiliates, to require that employer contributions be used to purchase such shares, and to permit ''contributions in kind'' of such shares to these Plans by employers.

The exemption conditions relief on compliance with a number of information collection requirements. These information collections are to be provided or made available to plan

participants and fiduciaries in order to inform them about investments in Qualifying REIT Shares and the conditions of the exemption permitting share transactions. Records sufficient to allow them to determine whether the exemption conditions are met must also be maintained, and made available to them upon request, for a period of six years. These records must also be made available on request to employers and employee organizations with employees and members covered by a Plan of the Trust REIT or one of its employer affiliates, and to authorized employees and representatives of the Department and the Internal Revenue Service. EBSA submitted an ICR for the information collections in PTE 2004–07 to the Office of Management and Budget (OMB) for review and clearance in connection with proposal of the class exemption, which was published in the **Federal Register** on June 3, 2003 (68 FR 33185). OMB approved the ICR under OMB control number 1210–0124. The ICR approval is currently scheduled to expire on October 31, 2015.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Notice of Research Exception under the Genetic Information Nondiscrimination Act of 2008.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0136.

Affected Public: Businesses or other for-profits.

Respondents: 3.

Responses: 3.

Estimated Total Burden Hours: 1.

Estimated Total Burden Cost (Operating and Maintenance): $11.

Description: The Genetic Information Nondiscrimination Act of 2008 (GINA), *Public Law 110–233*, was enacted on May 21, 2008. Title I of GINA amended the Employee Retirement Income Security Act of 1974 (ERISA), the Public Health Service Act (PHS Act), the Internal Revenue Code of 1986 (Code), and the Social Security Act (SSA) to prohibit discrimination in health coverage based on genetic information. Sections 101 through 103 of Title I of GINA prevent employment-based group health plans and health insurance issuers in the group and individual markets from discriminating based on genetic information, and from collecting such information. The interim final regulations, which are codified at *29 CFR 2590.702*A, only interpret Sections 101 through 103 of Title I of GINA.

While GINA does not mandate any specific benefits for health care services related to genetic tests, diseases, conditions, or genetic services, GINA establishes rules that generally prohibit a group health plan and a health insurance issuer in the group market from:

- Increasing the group premium or contribution amounts based on genetic information;
- Requesting or requiring an individual or family member to undergo a genetic test; and
- Requesting, requiring or purchasing genetic information prior to or in connection with enrollment, or at any time for underwriting purposes.

GINA and the interim final regulations (*29 CFR 2590.702*A(c)(5)) provide a research exception to the limitations on requesting or requiring genetic testing that allow a group health plan or group health insurance issuer to request, but not require, a participant or beneficiary to undergo a genetic test if all of the following conditions of the research exception are satisfied:

- The request must be made pursuant to research that complies with *45 CFR part 46* (or equivalent Federal regulations) and any applicable State or local law or regulations for the protection of human subjects in research. To comply with the informed consent requirements of *45 CFR 46.116*(a)(8), a participant must receive a disclosure that participation in the research is voluntary, refusal to participate cannot involve any penalty or loss of benefits to which the participant is otherwise entitled, and the participant may discontinue participation at any time without penalty or loss of benefits to which the participant is entitled (the Participant Disclosure). The interim final regulations provide that when the Participant Disclosure is received by participants seeking their informed consent, no additional disclosures are required for purposes of the GINA research exception.
- The plan or issuer must make the request in writing and must clearly indicate to each participant or beneficiary (or in the case of a minor child, to the legal guardian of such beneficiary) to whom the request is made that compliance with the request is voluntary and noncompliance will have no effect on eligibility for benefits or premium or contribution amounts.
- None of the genetic information collected or acquired as a result of the research may be used for underwriting purposes.
- The plan or issuer must complete a copy of the ''*Notice of Research Exception under the Genetic Information Nondiscrimination Act*'' (the Notice) and provide it to the address specified in its instructions. The Notice and instructions are available on the Department of Labor's Web site (*http://www.dol.gov/ebsa*).

The Participant Disclosure and the Notice are the information collection requests (ICRs) contained in the interim final rules. The Department previously requested review of this information collection and obtained approval from the Office of Management and Budget (OMB) under OMB control number *1210–0136.* The ICR is scheduled to expire on October 31, 2015.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Bank Collective Investment Funds; Prohibited Transaction Class Exemption 91–38.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0082.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 4,200.

Responses: 4,200.

Estimated Total Burden Hours: 700.

Estimated Total Burden Cost (Operating and Maintenance): $0.

Description: PTE 91–38 provides an exemption from the prohibited transaction provisions of the Employee Retirement Income Security Act of 1974 (ERISA) for certain transactions between a bank collective investment fund and persons who are parties in interest with respect to an employee benefit plan. Without the exemption, sections 406 and 407(a) of ERISA and section 4975(c)(1) of the Internal Revenue Code may prohibit transactions between the collective investment fund (CIF) and a party in interest to one or more of the employee benefit plans participating in the collective investment fund. Under PTE 91–38, a collective investment fund generally may engage in transactions with parties in interest to a plan that invests in the fund as long as the plan's total investment in the fund does not exceed a specified percentage of the total assets of the fund. The PTE also contains more limited or differently defined relief for funds holding more than the specified percentage, for multiemployer plans, and for transactions involving employer securities and employer real property. In order to ensure that the rights of participants and beneficiaries are protected, and that bank collective investment funds can demonstrate compliance with the terms of the exemption, the Department requires a bank to maintain records regarding the exempted transactions and make them available for inspection to specified

interested persons (including the Department and the Internal Revenue Service) on request for a period of six years.

EBSA previously submitted the information collection provisions of PTE 91–38 to the Office of Management and Budget (OMB) for review in an ICR that was approved under the OMB Control No. 1210–0082. The current approval is scheduled to expire on November 30, 2015.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Foreign Currency Transactions; Prohibited Transaction Class Exemption 94–20.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0085.

Affected Public: Businesses or other for-profits, Not-for-profit institutions.

Respondents: 271.

Responses: 1,355.

Estimated Total Burden Hours: 226.

Estimated Total Burden Cost (Operating and Maintenance): $0,

Description: PTE 94–20 permits the purchase and sale of foreign currencies between an employee benefit plan and a bank, broker-dealer, or an affiliate thereof, that is a trustee, custodian, fiduciary, or other party in interest with respect to the plan. The exemption is available provided that the transaction is directed (within the meaning of section IV(e) of the exemption) by a plan fiduciary that is independent of the bank, broker-dealer, or affiliate and all other conditions of the exemption are satisfied. Without this exemption, certain aspects of these transactions might be prohibited by section 406(a) of ERISA. To protect the interests of participants and beneficiaries of the employee benefit plan, the exemption requires that the party wishing to take advantage of the exemption (1) develop written policies and procedures applicable to trading in foreign currencies on behalf of an employee benefit plan; (2) provide a written confirmation with respect to each transaction in foreign currency to the independent plan fiduciary, disclosing specified information; and (3) maintain records pertaining to the transaction for a period of six years. This ICR relates to the foregoing disclosure and recordkeeping requirements.Show citation box

EBSA previously submitted the information collection provisions of PTE 94–20 to the Office of Management and Budget (OMB) for review in connection with promulgation of the prohibited transaction exemption. OMB approved the information collection request (ICR) under OMB Control No. 1210–0085. The ICR approval is currently scheduled to expire on November 30, 2015.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Prohibited Transaction Class Exemption 97–41; Collective Investment Funds Conversion Transactions.

Type of Review: Extension of a currently approved collection of information,

OMB Number: 1210–0104.

Affected Public: Businesses or other for-profits.

Respondents: 50.

Responses: 105.

Estimated Total Burden Hours: 1,760.

Estimated Total Burden Cost (Operating and Maintenance): $356,000.

Description: Prohibited Transaction Exemption (PTE) 97–41 provides an exemption from the prohibited transaction provisions of the Employment Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986. The exemption permits employee benefit plans to purchase shares of one or more open-end investment companies (funds) registered under the Investment Advisers Act of 1940 by transferring in-kind, to the investment company, assets of the plan that are part of a collective investment fund (CIF) maintained by a bank or plan advisor that is both a fiduciary of the plan and an investment advisor to the investment company offering the fund.

The exemption requires that an independent fiduciary receive advance written notice of any covered transaction, as well as specific written information concerning the funds to be purchased. The independent fiduciary must also provide written advance approval of conversion transactions and receive written confirmation of each transaction, as well as additional on-going disclosures as defined in PTE 97–41. These disclosures are the basis for this ICR.

EBSA previously submitted the information collection provisions of PTE 97–41 to the Office of Management and Budget (OMB) for review in connection with promulgation of the prohibited transaction exemption. OMB approved the information collection request (ICR) under OMB Control No. 1210–0104. The ICR approval is currently scheduled to expire on November 30, 2015.

Agency: Employee Benefits Security Administration, Department of Labor.

Title: Employee Retirement Income Security Act Summary Annual Report Requirement.

Type of Review: Extension of a currently approved collection of information.

OMB Number: 1210–0040.

Affected Public: Businesses or other for-profits.

Respondents: 746,000.

Responses: 169,000,000.

Estimated Total Burden Hours: 2,300,000.

Estimated Total Burden Cost (Operating and Maintenance): $58,300,000.

Description: Section 104(b)(3) of ERISA and the regulation published at 29 CFR 2520.104b–10 require, with certain exceptions, that administrators of employee benefit plans furnish annually to each participant and certain beneficiaries a summary annual report (SAR) meeting the requirements of the statute and regulation. The regulation prescribes the content and format of the SAR and the timing of its delivery. The SAR provides current information about the plan and assists those who receive it in understanding the plan's current financial operation and condition. It also explains participants' and beneficiaries' rights to receive further information on these issues.

EBSA previously submitted the information collection provisions in the regulation at 29 CFR 2520.104b–10 to the Office of Management and Budget (OMB) for review in an information collection request (ICR). OMB approved the ICR under OMB Control No. 1210–0040. The ICR approval is scheduled to expire on December 31, 2015.

Focus of Comments

The Department is particularly interested in comments that:

- Evaluate whether the collections of information are 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 collections 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.,* by permitting electronic submissions of responses.

Comments submitted in response to this notice will be summarized and/or

included in the ICRs for OMB approval of the extension of the information collection; they will also become a matter of public record.

Dated: June 11, 2015.

Joseph S. Piacentini,

Director, Office of Policy and Research, Employee Benefits Security Administration.

[FR Doc. 2015–14837 Filed 6–16–15; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Employee Benefits Security Administration

Advisory Council on Employee Welfare and Pension Benefit Plans; Nominations for Vacancies

Section 512 of the Employee Retirement Income Security Act of 1974 (ERISA), 88 Stat. 895, 29 U.S.C. 1142, provides for the establishment of an Advisory Council on Employee Welfare and Pension Benefit Plans (the Council), which is to consist of 15 members to be appointed by the Secretary of Labor (the Secretary) as follows: Three representatives of employee organizations (at least one of whom shall be a representative of an organization whose members are participants in a multiemployer plan); three representatives of employers (at least one of whom shall be a representative of employers maintaining or contributing to multiemployer plans); one representative each from the fields of insurance, corporate trust, actuarial counseling, investment counseling, investment management, and accounting; and three representatives from the general public (one of whom shall be a person representing those receiving benefits from a pension plan). No more than eight members of the Council shall be members of the same political party.

Council members shall be persons qualified to appraise the programs instituted under ERISA. Appointments are for terms of three years. The prescribed duties of the Council are to advise the Secretary with respect to the carrying out of his or her functions under ERISA, and to submit to the Secretary, or his or her designee, recommendations with respect thereto. The Council will meet at least four times each year.

The terms of five members of the Council expire at the end of this year. The groups or fields they represent are as follows: (1) Employee organizations; (2) employers; (3) investment counseling; (4) actuarial counseling; and (5) the general public. The Department of Labor is committed to equal opportunity in the workplace and seeks a broad-based and diverse Council.

Accordingly, notice is hereby given that any person or organization desiring to nominate one or more individuals for appointment to the Advisory Council on Employee Welfare and Pension Benefit Plans to represent any of the groups or fields specified in the preceding paragraph may submit nominations to Larry Good, Council Executive Secretary, Frances Perkins Building, U.S. Department of Labor, 200 Constitution Avenue NW., Suite N–5623, Washington, DC 20210, or as email attachments to *good.larry@dol.gov.* Nominations (including supporting nominations) must be received on or before July 31, 2015. Please allow three weeks for regular mail delivery to the Department of Labor. If sending electronically, please use an attachment in rich text, Word, or pdf format. Nominations may be in the form of a letter, resolution or petition, signed by the person making the nomination or, in the case of a nomination by an organization, by an authorized representative of the organization.

Nominations, including supporting letters, should:

- State the person's qualifications to serve on the Council.
- State that the candidate will accept appointment to the Council if offered.
- Include which of the five positions (representing groups or fields) the candidate is nominated to fill.
- Include the nominee's full name, work affiliation, mailing address, phone number, and email address.
- Include the nominator's full name, mailing address, phone number, and email address.
- Include the nominator's signature, whether sent by email or otherwise.

Please do not include any information that you do not want publicly disclosed.

In selecting Council members, the Secretary of Labor will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals.

Nominees will be contacted to provide information on their political affiliation and their status as registered lobbyists. Anyone currently subject to federal registration requirements as a lobbyist is not eligible for appointment. Nominees should be aware of the time commitment for attending meetings and actively participating in the work of the Council. Historically, this has meant a commitment of 15–20 days per year. The Department of Labor has a process for vetting nominees under consideration for appointment.

Phyllis C. Borzi,

Assistant Secretary, Employee Benefits Security Administration.

[FR Doc. 2015–14781 Filed 6–16–15; 8:45 am]

BILLING CODE 4510–29–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; O*NET Data Collection Program

ACTION: Notice.

SUMMARY: On June 30, 2015, the Department of Labor (DOL) will submit the Employment and Training Administration (ETA) sponsored information collection request (ICR) revision titled, ''O*NET Data Collection Program'' to the Office of Management and Budget (OMB) for review and approval for use in accordance with the Paperwork Reduction Act (PRA) of 1995 (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 30, 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=201504-1205-010* (this link will only become active on July 1, 2015) or by contacting Michel Smyth by telephone at 202–693–4129, TTY 202–693–8064, (these are not toll-free numbers) or sending an email to *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–ETA, 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 sending an email to *DOL_PRA_PUBLIC@dol.gov.*

Authority: 44 U.S.C. 3507(a)(1)(D).

SUPPLEMENTARY INFORMATION: This ICR seeks approval under the PRA for revisions to the Occupational Information Network (O*NET) Data Collection Program. The ONET Data Collection Program yields detailed characteristics of occupations and skills for over 900 occupations by obtaining information from job incumbents and occupational specialists on worker and job characteristics to populate the O*NET database that is used for a wide range of purposes related to career counseling and development, curriculum design, human resources functions, and workforce development efforts. The data collection methodology includes contacting businesses and associations to gain their cooperation and collecting information from employees of cooperating businesses and associations as well as occupational specialists. This information collection has been classified as a revision because of an increase in the number of establishment testing units to be contacted each year. The ETA is also proposing to clarify the text on the level of education, to add questions related to professional certifications and job-related apprenticeships in the Knowledge Questionnaires and Background Questionnaires, and to revise items on disabilities to make them identical to those used in the American Community Survey in the Background Questionnaires. The agency has also made minor editorial changes to year of birth questions in the questionnaires and to cover materials related to privacy and mailing addresses. Wagner-Peyser Act section 15, as amended by Workforce Innovation and Opportunity Act section 308, authorizes this information collection. *See* 29 U.S.C. 49l.1.

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 1205–0421.

The current approval is scheduled to expire on June 30, 2015; however, the DOL notes that existing information collection requirements submitted to the OMB receive a month-to-month extension while they undergo review. New requirements would only take effect upon OMB approval. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on November 26, 2014 (79 FR 70569).

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 1205–0421. 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–ETA.

Title of Collection: O*NET Data Collection Program.

OMB Control Number: 1205–0421.

Affected Public: Private Sector—businesses or other for-profits, farms, and not-for-profit institutions; State, Local, and Tribal Governments; Federal government; and Individuals or Households.

Total Estimated Number of Respondents: 28,866.

Total Estimated Number of Responses: 28,866.

Total Estimated Annual Time Burden: 14,537 hours.

Total Estimated Annual Other Costs Burden: $0.

Dated: June 10, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–14846 Filed 6–16–15; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Employee Retirement Income Security Act Blackout Period Notice

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 Blackout Period Notice,'' 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 17, 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=201504-1210-005* (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 (ERISA) Blackout Period Notice information collection requirements codified in regulations 26 CFR 2520.101–3. The Sarbanes-Oxley Act of 2002 amended ERISA section 101 to require a plan administrator to furnish affected participants and beneficiaries of individual account pension plans with advance written notice of any blackout period during which the right to direct or diversify investments or obtain a loan or distribution may be temporarily suspended. ERISA sections 101(i) and 505 authorize this information collection. *See* 29 U.S.C. 1021(i), 1135.

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 1210–0122.

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, 2015 (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 1210–0122. 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 Blackout Period Notice.

OMB Control Number: 1210–0122.

Affected Public: Private Sector—businesses or other for-profits and not-for-profit institutions.

Total Estimated Number of Respondents: 44,000.

Total Estimated Number of Responses: 6,400,000.

Total Estimated Annual Time Burden: 198,000 hours.

Total Estimated Annual Other Costs Burden: $2,100,000.

Dated: June 10, 2015.

Michel Smyth,

Departmental Clearance Officer.

[FR Doc. 2015–14847 Filed 6–16–15; 8:45 am]

BILLING CODE 4510–29–P

LEGAL SERVICES CORPORATION

Sunshine Act Meeting

TIME AND DATE: The Legal Services Corporation's Finance Committee will meet telephonically on June 29, 2015. The meeting will commence at 2:00 p.m., EDT, and will continue until the conclusion of the Committee's agenda.

PLACE: John N. Erlenborn Conference Room, Legal Services Corporation Headquarters, 3333 K Street NW., Washington DC 20007.

STATUS: Open.

Public Observation: Members of the public who are unable to attend in person but wish to listen to the public proceedings may do so by following the telephone call-in directions provided below.

Call-In Directions for Open Sessions

- Call toll-free number: 1–866–451–4981;
- When prompted, enter the following numeric pass code: 5907707348;
- When connected to the call, please immediately ''MUTE'' your telephone.

Members of the public are asked to keep their telephones muted to eliminate background noises. To avoid disrupting the meeting, please refrain from placing the call on hold if doing so will trigger recorded music or other sound. From time to time, the Chair may solicit comments from the public.

Matters To Be Considered

1. Approval of agenda
2. Management's recommendation for LSC's fiscal year 2017 budget request
   - Jim Sandman, President
   - Carol Bergman, Director, Government Relations and Public Affairs
3. Discussion with Inspector General regarding the OIG's fiscal year 2017 budget request
   - Jeffrey Schanz, Inspector General
   - David Maddox, Assistant Inspector General for Management Evaluation
4. Public comment
5. Consider and act on other business
6. Consider and act on adjournment of meeting.

CONTACT PERSON FOR INFORMATION: Katherine Ward, Executive Assistant to the Vice President & General Counsel, at (202) 295–1500. Questions may be sent by electronic mail to *FR_NOTICE_QUESTIONS@lsc.gov.*

Accessibility: LSC complies with the Americans with Disabilities Act and Section 504 of the 1973 Rehabilitation Act. Upon request, meeting notices and materials will be made available in alternative formats to accommodate individuals with disabilities. Individuals needing other accommodations due to disability in order to attend the meeting in person or telephonically should contact Katherine Ward, at (202) 295–1500 or *FR_NOTICE_QUESTIONS@lsc.gov,* at least 2 business days in advance of the meeting. If a request is made without advance notice, LSC will make every effort to accommodate the request but cannot guarantee that all requests can be fulfilled.

Dated: June 15, 2015.

Katherine Ward,

Executive Assistant to the Vice President for Legal Affairs and General Counsel.

[FR Doc. 2015–14998 Filed 6–15–15; 4:15 pm]

BILLING CODE 7050–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice of Information Collection

AGENCY: National Aeronautics and Space Administration (NASA).

NOTICE: (15–046).

ACTION: Notice of information collection.

SUMMARY: The National Aeronautics and Space Administration, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. 3506(c)(2)(A)).

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: All comments should be addressed to Frances Teel, Mail Code JF000, National Aeronautics and Space Administration, Washington, DC 20546–0001 or *Frances.C.Teel@NASA.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Frances Teel, NASA PRA Clearance Officer, NASA Headquarters, 300 E Street SW., Mail Code JF000, Washington, DC 20546, or *Frances.C.Teel@NASA.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

A federal grant is an award of financial assistance from a federal agency to a recipient to carry out a public purpose of support or stimulation authorized by a law of the United States. The NASA Procurement Office supports NASA research, science, and education communities through the award of research/education/and training grants in the science, technology, engineering, and math (STEM) fields. NASA has a continuing commitment to identify and address inequities associated with its grant review and awards processes. To support that commitment, NASA is implementing a process to collect demographic data from grant applicants for the purpose of analyzing demographic differences associated with its award processes. Information collected will include name, gender, race, ethnicity, disability status, and citizenship status.

Submission of the information is voluntary and is not a precondition of award. However, if the information is not submitted, it will undermine the usefulness of information received from others.

II. Method of Collection

Electronic.

III. Data

Title: Research and Related Personal Data.

OMB Number: 2700–XXXX.

Type of Review: New Information Collection.

Affected Public: Not-for-Profit Institutions.

Estimated Number of Respondents: 1000.

Estimated Time per Response: 5 minutes.

Estimated Total Annual Burden Hours: 83.3.

IV. Request for Comments

Comments are invited on: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of NASA, including whether the information collected has practical utility; (2) the accuracy of NASA's estimate of the burden (including hours and cost) of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or the use of other forms of information technology.

Fran Teel,

NASA PRA Clearance Officer.

[FR Doc. 2015–14848 Filed 6–16–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–2015–047]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize agencies to preserve records of continuing value in the National Archives of the United States and to destroy, after a specified period, records lacking administrative, legal, research, or other value. NARA publishes notice for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: NARA must receive requests for copies in writing by July 17, 2015. Once NARA completes appraisal of the records, we will send you a copy of the schedule you requested. We usually prepare appraisal memoranda that contain additional information concerning the records covered by a proposed schedule. You may also request these. If you do, we will also provide them once we have completed the appraisal. You have 30 days after we send these requested documents in which to submit comments.

ADDRESSES: You may request a copy of any records schedule identified in this notice by contacting Records Management Services (ACNR) using one of the following means:

Mail: NARA (ACNR); 8601 Adelphi Road; College Park, MD 20740–6001.

Email: request.schedule@nara.gov.

FAX: 301–837–3698.

You must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and a mailing address. If you would like an appraisal report, please include that in your request.

FOR FURTHER INFORMATION CONTACT: Margaret Hawkins, Director, by mail at Records Management Services (ACNR); National Archives and Records Administration; 8601 Adelphi Road; College Park, MD 20740–6001, by phone at 301–837–1799, or by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Each year, Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for types of records and submit these schedules for NARA's approval. These schedules allow timely transfer

into the National Archives of historically valuable records and authorize agencies to dispose of all other records after the agencies no longer need them to conduct business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

The schedules listed in this notice are media-neutral unless otherwise specified. An item in a schedule is media-neutral when an agency may apply the disposition instructions to records regardless of the medium in which it has created or maintains the records. Items included in schedules submitted to NARA on or after December 17, 2007, are media-neutral unless the item is limited to a specific medium. (See 36 CFR 1225.12(e).)

No agencies may destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after a thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of people directly affected by the Government's activities, and whether or not the records have historical or other value.

In addition to identifying the Federal agencies and any subdivisions requesting disposition authority, this notice lists the organizational unit(s) accumulating the records or that the schedule has agency-wide applicability (in the case of schedules that cover records that may be accumulated throughout an agency), provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction), and includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. You may request additional information about the disposition process at the addresses above.

Schedules Pending

1. Department of the Army, Agency-wide (DAA–AU–2015–0019, 1 item, 1 temporary item). Master files of an electronic information system used to track professional development training of individuals selected to participate in a mentorship program.

2. Department of the Army, Agency-wide (DAA–AU–2015–0024, 1 item, 1 temporary item). Master files of an electronic information system used to manage equipment maintenance and logistics activity at the depot level.

3. Department of the Army, Agency-wide (DAA–AU–2015–0026, 1 item, 1 temporary item). Master files of an electronic information system used to track maintenance and supply operations for unmanned aircraft systems.

4. Department of Defense, Defense Contract Audit Agency (DAA–0372–2014–0001, 1 item, 1 temporary item). Master files of an electronic information system used to manage contract audit operations.

5. Department of Defense, Defense Threat Reduction Agency (DAA–0374–2014–0038, 1 item, 1 temporary item). Supply procurement and classification records.

6. Department of Defense, National Security Agency (DAA–0457–2015–0001, 1 item, 1 temporary item). Records related to staff access to data repositories.

7. Department of Health and Human Services, Assistant Secretary for Preparedness and Response (DAA–0468–2015–0001, 5 items, 3 temporary items). Public health policy background materials, working files, and stakeholder engagement records. Proposed for permanent retention are official public health policies, plans, final reports, and significant public health committee records.

8. Department of the Interior, Bureau of Ocean Energy Management (N1–589–12–3, 17 items, 15 temporary items). Records include geological and geophysical supporting data, fair market value studies, resource assessments, bid appeals, permits, hydrocarbon reserve projections, well productions monitoring files, and administrative records. Proposed for permanent retention are final maps and interpretive products, reserve estimates, and engineering and economic interpretations and reports for the analysis and evaluation of Outer Continental Shelf minerals and other resources.

9. Consumer Financial Protection Bureau, Office of Fair Lending and Equal Opportunity (DAA–0587–2014–0003, 14 items, 11 temporary items). Records include administrative reports, research materials, training materials, and routine enforcement files. Proposed for permanent retention are historic enforcement files, external reports, and policy documents.

10. Court Services and Offenders Supervision Agency for the District of Columbia, Community Supervision Services (DAA–0562–2013–0022, 2 items, 2 temporary items). Sex offender registry records.

11. National Archives and Records Administration, Government-wide (DAA–GRS–2015–0003, 3 items, 3 temporary items). General Records Schedule for library records, including administrative records, operations records, and inter-library loan records.

12. Office of the Director of National Intelligence, Front Office (N1–576–11–2, 8 items, 4 temporary items). Speech files and records related to routine financial activities. Proposed for permanent retention are significant financial records and files of senior leadership, including trip files, briefing books, and emails.

13. Peace Corps, Office of the Director (DAA–0490–2015–0002, 1 item, 1 temporary item). Records of the Office of Innovation including research notes and copies of publications and press releases.

Dated: June 10, 2015.

Laurence Brewer,

Director, National Records Management Program.

[FR Doc. 2015–14923 Filed 6–16–15; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: The National Endowment for the Humanities will hold thirty meetings of the Humanities Panel, a federal advisory committee, during July, 2015. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and Humanities Act of 1965.

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

ADDRESSES: The meetings will be held at Constitution Center at 400 7th Street SW., Washington, DC 20506. See **SUPPLEMENTARY INFORMATION** for meeting room numbers.

FOR FURTHER INFORMATION CONTACT: Lisette Voyatzis, Committee Management Officer, 400 7th Street SW., Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.* Hearing-impaired

individuals who prefer to contact us by phone may use NEH's TDD terminal at (202) 606–8282.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. *Date:* July 14, 2015
Time: 8:30 a.m. to 5:00 p.m.
Room: 4002.
This meeting will discuss applications for Challenge Grants, submitted to the Office of Challenge Grants.

2. *Date:* July 14, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: P002.
This meeting will discuss applications on the subjects of Literature, Language, Philosophy, and the Arts for the Awards for Faculty grant program, submitted to the Division of Research Programs.

3. *Date:* July 14, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: P003.
This meeting will discuss applications on the subjects of American History and Social Studies for the Awards for Faculty grant program, submitted to the Division of Research Programs.

4. *Date:* July 15, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: 4002.
This meeting will discuss applications for Challenge Grants, submitted to the Office of Challenge Grants.

5. *Date:* July 15, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: P002.
This meeting will discuss applications on the subjects of American Literature, Arts, and Media for the Awards for Faculty grant program, submitted to the Division of Research Programs.

6. *Date:* July 15, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: P003.
This meeting will discuss applications on the subjects of History, Politics, and Area Studies for the Awards for Faculty grant program, submitted to the Division of Research Programs.

7. *Date:* July 16, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: 4002.
This meeting will discuss applications for Challenge Grants, submitted to the Office of Challenge Grants.

8. *Date:* July 16, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: P002.
This meeting will discuss applications on the subject of British Literature for Fellowships for University Teachers, submitted to the Division of Research Programs.

9. *Date:* July 16, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: P003.
This meeting will discuss applications on the subject of British Literature for Fellowships for University Teachers, submitted to the Division of Research Programs.

10. *Date:* July 17, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: P002.
This meeting will discuss applications on the subjects of Ancient and Classical Studies for Fellowships for University Teachers, submitted to the Division of Research Programs.

11. *Date:* July 17, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: P003.
This meeting will discuss applications on the subject of American Studies for Fellowships for University Teachers, submitted to the Division of Research Programs.

12. *Date:* July 20, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: P002.
This meeting will discuss applications for Fellowships for Advanced Research on Japan, submitted to the Division of Research Programs.

13. *Date:* July 21, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: 4002.
This meeting will discuss applications for Challenge Grants, submitted to the Office of Challenge Grants.

14. *Date:* July 21, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: P002.
This meeting will discuss applications on the subject of Philosophy for Fellowships for University Teachers, submitted to the Division of Research Programs.

15. *Date:* July 21, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: P003.
This meeting will discuss applications on the subject of Philosophy for Fellowships for University Teachers, submitted to the Division of Research Programs.

16. *Date:* July 22, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: 4089.
This meeting will discuss applications for Challenge Grants, submitted to the Office of Challenge Grants.

17. *Date:* July 22, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: P002.
This meeting will discuss applications on the subjects of Communications, Media, Rhetoric and Language for Fellowships for University Teachers, submitted to the Division of Research Programs.

18. *Date:* July 22, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: P003.
This meeting will discuss applications on the subjects of Cinema and Theater Studies for Fellowships for University Teachers, submitted to the Division of Research Programs.

19. *Date:* July 23, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: 4002.
This meeting will discuss applications for Challenge Grants, submitted to the Office of Challenge Grants.

20. *Date:* July 23, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: P002.
This meeting will discuss applications on the subjects of Comparative Literature and Literary Theory for Fellowships for University Teachers, submitted to the Division of Research Programs.

21. *Date:* July 23, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: P003.
This meeting will discuss applications on the subjects of German and Slavic History, Literature and Studies for Fellowships for University Teachers, submitted to the Division of Research Programs.

22. *Date:* July 27, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: P002.
This meeting will discuss applications on the subject of American Literature for Fellowships for University Teachers, submitted to the Division of Research Programs.

23. *Date:* July 27, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: P003.
This meeting will discuss applications on the subjects of Music and Dance for Fellowships for University Teachers, submitted to the Division of Research Programs.

24. *Date:* July 28, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: P002.
This meeting will discuss applications on the subjects of Political Science and Jurisprudence for Fellowships for University Teachers, submitted to the Division of Research Programs.

25. *Date:* July 29, 2015.
Time: 8:30 a.m. to 5:00 p.m.
Room: P002.
This meeting will discuss applications on the subject of American

History for Fellowships for University Teachers, submitted to the Division of Research Programs.

26. *Date:* July 29, 2015.

Time: 8:30 a.m. to 5:00 p.m.

Room: P003.

This meeting will discuss applications on the subject of American History for Fellowships for University Teachers, submitted to the Division of Research Programs.

27. *Date:* July 30, 2015.

Time: 8:30 a.m. to 5:00 p.m.

Room: P002.

This meeting will discuss applications on the subject of Religious Studies for Fellowships for University Teachers, submitted to the Division of Research Programs.

28. *Date:* July 30, 2015.

Time: 8:30 a.m. to 5:00 p.m.

Room: P003.

This meeting will discuss applications on the subjects of American History and Studies for Fellowships for University Teachers, submitted to the Division of Research Programs

29. *Date:* July 31, 2015.

Time: 8:30 a.m. to 5:00 p.m.

Room: P002.

This meeting will discuss applications on the subject of Art History for Fellowships for University Teachers, submitted to the Division of Research Programs.

30. *Date:* July 31, 2015.

Time: 8:30 a.m. to 5:00 p.m.

Room: P003.

This meeting will discuss applications on the subject of Art History for Fellowships for University Teachers, submitted to the Division of Research Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee Meetings dated July 19, 1993.

Dated: June 11, 2015.

Lisette Voyatzis,

Committee Management Officer.

[FR Doc. 2015–14963 Filed 6–16–15; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0141]

Information Collection: Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274

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, ''Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274.''

DATES: Submit comments by August 17, 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–2015–0141. 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.
- 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–2015–0141 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–2015–0141.
- *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 supporting statement is available in ADAMS under Accession No. ML15107A168.
- *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 the 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–2015–0141 in the subject line of your comment submission, in order to ensure that the NRC is able to make your comment submission available to the public in this docket.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly disclosed in your comment submission. The NRC posts all comment submissions at *http://www.regulations.gov* as well as entering the comment submissions into ADAMS. The NRC does not routinely edit comment submissions to remove identifying or contact information.

If you are requesting or aggregating comments from other persons for submission to the NRC, then you should inform those persons not to include identifying or contact information that they do not want to be publicly disclosed in their comment submission. Your request should state that the NRC does not routinely edit comment submissions to remove such information before making the comment submissions available to the public or

entering the comment submissions into ADAMS.

II. Background

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:* 10 CFR part 150, ''Exemptions and Continued Regulatory Authority in Agreement States and in Offshore Waters Under Section 274.''
2. *OMB approval number:* 3150–0032.
3. *Type of submission:* Extension.
4. *How often the collection is required or requested:* Sections 150.16(b), 150.17(c), and 150.19(c) of Title 10 of the *Code of Federal Regulations* (10 CFR), require the submission of reports following specified events, such as the theft or unlawful diversion of licensed radioactive material. The source material inventory reports required under 10 CFR 150.17(b) must be submitted annually by certain licensees.
5. *Who will be required or asked to respond:* Agreement State licensees authorized to possess source or special nuclear material at certain types of facilities, or at any one time and location in greater than specified amounts. In addition, persons engaging in activities in non-Agreement States, in areas of exclusive Federal jurisdiction within Agreement States, or in offshore waters.
7. *The estimated number of annual responses: 8.*
8. *The estimated number of annual respondents: 8.*
9. *The estimated number of hours needed annually to comply with the information collection requirement or request:* 190.
10. *Abstract:* Part 150 provides certain exemptions from NRC regulations for persons in Agreement States. Part 150 also defines activities in Agreement States and in offshore waters over which the NRC regulatory authority continues, including certain information collection requirements. The information is needed to permit the NRC to make reports to other governments and the International Atomic Energy Agency in accordance with international agreements. The information is also used to carry out the NRC's safeguards and inspection programs.

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 11th day of June, 2015.

For the Nuclear Regulatory Commission.

Tremaine Donnell,

NRC Clearance Officer, Office of Information Services.

[FR Doc. 2015–14766 Filed 6–16–15; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from March 1, 2015, to March 31, 2015.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No Schedule A Authorities to report during March 2015.

Schedule B

No Schedule B Authorities to report during March 2015.

Schedule C

The following Schedule C appointing authorities were approved during March 2015.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE.	Farm Service Agency	State Executive Director—California.	DA150114	3/20/2015
DEPARTMENT OF COMMERCE	Office of the Chief of Staff	Special Assistant	DC150069	3/2/2015
	Office of Public Affairs	Senior Press Coordinator	DC150085	3/25/2015
DEPARTMENT OF DEFENSE	Office of the Assistant Secretary of Defense (Special Operations/Low Intensity Conflict and Interdependent Capabilities).	Senior Advisor for Atrocity Prevention and Response.	DD150071	3/12/2015
	Office of the Assistant Secretary of Defense (International Security Affairs).	Special Assistant for Middle East Policy.	DD150107	3/25/2015
DEPARTMENT OF EDUCATION	Office of Innovation and Improvement.	Chief of Staff	DB150055	3/6/2015
	Office of Elementary and Secondary Education.	Deputy Assistant Secretary for Policy and Programs.	DB150062	3/24/2015
	Office of Planning, Evaluation and Policy Development.	Special Assistant	DB150065	3/24/2015

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of Innovation and Improvement.	Special Assistant	DB150063	3/25/2015
	Office for Civil Rights	Chief of Staff	DB150067	3/25/2015
DEPARTMENT OF ENERGY	Office of Management	Deputy Director of Scheduling and Advance.	DE150040	3/2/2015
ENVIRONMENTAL PROTECTION AGENCY.	Office of Public Affairs	Deputy Associate Administrator for Public Affairs.	EP150032	3/18/2015
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Assistant Secretary for Health.	Chief of Staff (2)	DH150074	3/12/2015
			DH150102	3/17/2015
	Office of Intergovernmental and External Affairs.	Regional Director, Boston, Massachusetts, Region I.	DH150106	3/24/2015
DEPARTMENT OF HOMELAND SECURITY.	Office of the Executive Secretariat.	Special Assistant	DM150088	3/12/2015
		Deputy White House Liaison	DM150089	3/12/2015
	Office of the Chief of Staff	White House Liaison	DM150115	3/17/2015
	United States Immigration and Customs Enforcement.	Congressional Relations Director	DM150116	3/20/2015
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Secretary	Special Assistant	DU150026	3/2/2015
		Deputy White House Liaison	DU150031	3/4/2015
DEPARTMENT OF THE INTERIOR.	Secretary's Immediate Office	Director of Scheduling and Advance.	DI150057	3/12/2015
DEPARTMENT OF JUSTICE	Office of Justice Programs	Chief of Staff and Senior Counsel	DJ150039	3/2/2015
DEPARTMENT OF LABOR	Women's Bureau	Policy Advisor	DL150032	3/3/2015
	Office of the Solicitor	Senior Counsel	DL150034	3/13/2015
	Office of Congressional and Intergovernmental Affairs.	Chief of Staff and Senior Counselor.	DL150039	3/17/2015
		Legislative Officer	DL150038	3/25/2015
	Occupational Safety and Health Administration.	Special Assistant	DL150040	3/19/2015
OFFICE OF MANAGEMENT AND BUDGET.	Office of the Director	Senior Advisor	BO150016	3/17/2015
	National Security Programs	Confidential Assistant	BO150022	3/17/2015
	Office of E-Government and Information Technology.	Confidential Assistant	BO150020	3/25/2015
	Office of Legislative Affairs	Legislative Analyst	BO150021	3/25/2015
SMALL BUSINESS ADMINISTRATION.	Office of the Administrator	White House Liaison	SB150019	3/12/2015
	Office of the General Counsel	Deputy General Counsel	SB150024	3/26/2015
DEPARTMENT OF STATE	Bureau of Economic and Business Affairs.	Special Assistant	DS150034	3/2/2015
	Bureau of Public Affairs	Staff Assistant	DS150063	3/13/2015
	Bureau of Western Hemisphere Affairs.	Foreign Affairs Officer	DS150043	3/17/2015
	Office of the Under Secretary for Civilian Security, Democracy, and Human Rights.	Staff Assistant	DS150042	3/25/2015
DEPARTMENT OF TRANSPORTATION.	Office of the Assistant Secretary for Governmental Affairs.	Director of State and Local Governmental Affairs.	DT150037	3/4/2015
DEPARTMENT OF THE TREASURY.	Office of the Assistant Secretary (Public Affairs).	Spokesperson	DY150082	3/13/2015

The following Schedule C appointing authorities were revoked during March 2015.

Agency name	Organization name	Position title	Authorization No.	Vacate date
DEPARTMENT OF COMMERCE	Office of Public Affairs	Press Assistant	DC140153	3/6/2015
	Office of the Under Secretary	Senior Advisor	DC120040	3/7/2015
	Immediate Office of the Secretary	Special Assistant	DC140135	3/7/2015
	Office of Legislative and Intergovernmental Affairs.	Director of Legislative Outreach	DC140154	3/20/2015
DEPARTMENT OF EDUCATION	Office of Innovation and Improvement.	Special Assistant	DB140118	3/7/2015
ENVIRONMENTAL PROTECTION AGENCY.	Office of Public Affairs	Press Secretary	EP140018	3/21/2015
GENERAL SERVICES ADMINISTRATION.	Office of Administrative Services	Chief of Staff	GS130021	3/21/2015
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Assistant Secretary for Public Affairs.	Senior Advisor for Strategic Planning.	DH130038	3/5/2015
	Office of Intergovernmental and External Affairs.	Director of Provider Outreach	DH130089	3/6/2015

Agency name	Organization name	Position title	Authorization No.	Vacate date
DEPARTMENT OF HOMELAND SECURITY.	Office of the Under Secretary for Science and Technology.	Special Assistant to the Under Secretary for Science and Technology.	DM130110	3/7/2015
	Office of the Chief of Staff	Deputy White House Liaison	DM140031	3/21/2015
		Special Assistant to the White House Liaison.	DM140085	3/21/2015
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the Secretary	Deputy White House Liaison	DU150006	3/1/2015
DEPARTMENT OF THE INTERIOR.	Secretary's Immediate Office	Deputy Communications Director	DI120048	3/7/2015
DEPARTMENT OF JUSTICE	Office of Justice Programs	Senior Advisor to the Assistant Attorney General.	DJ100107	3/7/2015
		Senior Advisor	DJ140015	3/8/2015
	Office of Legislative Affairs	Attorney Advisor	DJ130075	3/21/2015
		Chief of Staff and Attorney Advisor.	DJ130089	3/21/2015
DEPARTMENT OF LABOR	Office of the Solicitor	Special Counsel	DL130036	3/6/2015
	Office of the Secretary	Special Advisor	DL150012	3/6/2015
		Policy Advisor	DL120035	3/27/2015
	Women's Bureau	Special Assistant	DL100054	3/7/2015
	Office of Congressional and Intergovernmental Affairs.	Senior Legislative Assistant	DL140049	3/20/2015
SMALL BUSINESS ADMINISTRATION.	Office of Field Operations	Special Advisor to the Associate Administrator for Field Operations.	SB130009	3/14/2015
DEPARTMENT OF STATE	Office of the Secretary	Deputy Chief of Staff for Policy	DS130116	3/21/2015
DEPARTMENT OF TRANSPORTATION.	Office of the Secretary	Director of Scheduling and Advance.	DT140041	3/7/2015

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2015–14815 Filed 6–16–15; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: U.S. Office of Personnel Management (OPM).

ACTION: Notice.

SUMMARY: This notice identifies Schedule A, B, and C appointing authorities applicable to a single agency that were established or revoked from April 1, 2015, to April 30, 2015.

FOR FURTHER INFORMATION CONTACT: Senior Executive Resources Services, Senior Executive Services and Performance Management, Employee Services, 202–606–2246.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 213.103, Schedule A, B, and C appointing authorities available for use by all agencies are codified in the Code of Federal Regulations (CFR). Schedule A, B, and C appointing authorities applicable to a single agency are not codified in the CFR, but the Office of Personnel Management (OPM) publishes a notice of agency-specific authorities established or revoked each month in the **Federal Register** at *www.gpo.gov/fdsys/*. OPM also publishes an annual notice of the consolidated listing of all Schedule A, B, and C appointing authorities, current as of June 30, in the **Federal Register**.

Schedule A

No Schedule A Authorities to report during April 2015.

Schedule B

No Schedule B Authorities to report during April 2015.

Schedule C

The following Schedule C appointing authorities were approved during April 2015.

Agency name	Organization name	Position title	Authorization No.	Effective date
DEPARTMENT OF AGRICULTURE.	Office of the Secretary	Special Advisor	DA150118	4/2/2015
		Senior Advisor	DA150120	4/2/2015
	Office of the Under Secretary for Marketing and Regulatory Programs.	Senior Advisor	DA150119	4/2/2015
DEPARTMENT OF COMMERCE	National Oceanic and Atmospheric Administration.	Special Assistant	DC150086	4/8/2015
	International Trade Administration	Director, Office of Strategic Partnerships, Industry and Analysis.	DC150088	4/16/2015
	Office of Legislative and Intergovernmental Affairs.	Director of Legislative Outreach	DC150091	4/22/2015
	Office of the Chief Financial Officer and Assistant Secretary for Administration.	Chief of Staff for Administration	DC150097	4/28/2015
DEPARTMENT OF DEFENSE	Office of Assistant Secretary of Defense (Public Affairs).	Special Assistant for Community and Public Outreach.	DD150116	4/8/2015
	Office of the Secretary	Deputy White House Liaison	DD150118	4/13/2015

Agency name	Organization name	Position title	Authorization No.	Effective date
	Office of the Assistant Secretary of Defense (Asian and Pacific Security Affairs).	Special Assistant for Asian and Pacific Security Affairs.	DD150120	4/30/2015
	Office of the Assistant Secretary of Defense (International Security Affairs).	Special Assistant for International Security Affairs.	DD150121	4/30/2015
DEPARTMENT OF EDUCATION	Office of Communications and Outreach.	Assistant Press Secretary	DB150069	4/2/2015
	Office of the Secretary	Special Assistant	DB150066	4/17/2015
	Office of Communications and Outreach.	Special Assistant	DB150070	4/17/2015
	Office of Planning, Evaluation and Policy Development.	Confidential Assistant	DB150072	4/17/2015
		Deputy Assistant Secretary for Higher Education and Student Financial Aid.	DB150073	4/17/2015
		Senior Policy Advisor	DB150074	4/20/2015
	Office for Civil Rights	Special Assistant	DB150064	4/29/2015
DEPARTMENT OF ENERGY	Advanced Research Projects Agency—Energy.	Special Advisor	DE150065	4/3/2015
	Assistant Secretary for Congressional and Intergovernmental Affairs.	Director of External Affairs	DE150044	4/14/2015
		Senior Advisor and Strategic Projects Manager.	DE150069	4/14/2015
	Assistant Secretary for Electricity Delivery and Energy Reliability.	Special Advisor Office the Assistant Secretary for Electricity Delivery and Energy Reliability.	DE150068	4/14/2015
	Assistant Secretary for International Affairs.	Special Advisor	DE150078	4/15/2015
		Senior Advisor	DE150080	4/15/2015
	Office of Management	Special Assistant and Scheduler	DE150076	4/30/2015
	Office of Public Affairs	Deputy Director, Office of Public Affairs.	DE150077	4/30/2015
ENVIRONMENTAL PROTECTION AGENCY.	Office of Public Engagement and Environmental Education.	Deputy Director for Public Engagement and Faith Based Initiatives.	EP150016	4/2/2015
EXPORT-IMPORT BANK	Office of the Chairman	Special Assistant	EB150002	4/17/2015
GENERAL SERVICES ADMINISTRATION.	Office of Small Business Utilization.	Special Assistant	GS150027	4/1/2015
	Office of Communications and Marketing.	Deputy Associate Administrator for Media Affairs.	GS150031	4/30/2015
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Assistant Secretary for Public Affairs.	Director of Strategic Planning	DH150124	4/16/2015
		Confidential Assistant	DH150127	4/17/2015
		Director of Speechwriting	DH150128	4/17/2015
	Office of the Secretary	Director of Advance	DH150113	4/17/2015
	Office of Intergovernmental and External Affairs.	Special Assistant	DH150125	4/17/2015
	Office of Health Reform	Director of Delivery System Reform.	DH150129	4/23/2015
DEPARTMENT OF HOMELAND SECURITY.	Office of the Under Secretary for National Protection and Programs Directorate.	Advisor	DM150068	4/9/2015
	Office of the Assistant Secretary for Intergovernmental Affairs.	Director, Homeland Security Advisory Council.	DM150129	4/16/2015
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of the General Counsel	Senior Counsel	DU150050	4/30/2015
DEPARTMENT OF THE INTERIOR.	Secretary's Immediate Office	Special Assistant	DI150074	4/1/2015
		Deputy Director of Scheduling and Advance.	DI150048	4/13/2015
	Bureau of Ocean Energy Management.	Advisor	DI150080	4/2/2015
	Bureau of Land Management	Advisor	DI150083	4/3/2015
	Assistant Secretary—Fish and Wildlife and Parks.	Senior Advisor for Fish, Wildlife and Parks.	DI150023	4/9/2015
	Office of Congressional and Legislative Affairs.	Counsel	DI150073	4/9/2015
	Bureau of Reclamation	Chief, Congressional and Legislative Affairs Office.	DI150085	4/14/2015
	Office of the Solicitor	Counselor	DI150084	4/15/2015
DEPARTMENT OF JUSTICE	Office of Legislative Affairs	Chief of Staff and Attorney Advisor.	DJ150072	4/24/2015
DEPARTMENT OF LABOR	Office of the Secretary	Special Assistant	DL150046	4/8/2015
		Director of Scheduling and Advance.	DL150048	4/9/2015
		Special Advisor	DL150045	4/17/2015

Agency name	Organization name	Position title	Authorization No.	Effective date
	Employee Benefits Security Administration.	Special Assistant	DL150050	4/10/2015
	Office of Public Affairs	Chief of Staff	DL150049	4/13/2015
	Office of Workers Compensation Programs.	Senior Policy Advisor	DL150051	4/17/2015
	Office of the Solicitor	Special Counsel	DL150052	4/17/2015
	Office of Congressional and Intergovernmental Affairs.	Associate Director of Intergovernmental Affairs.	DL150055	4/30/2015
	Wage and Hour Division	Senior Advisor	DL150056	4/30/2015
OFFICE OF MANAGEMENT AND BUDGET.	Office of the Director	Confidential Assistant	BO150025	4/8/2015
	Natural Resource Programs	Confidential Assistant	BO150024	4/13/2015
OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE.	Office of Public and Media Affairs	Deputy Press Secretary	TN150010	4/9/2015
	Office of Intergovernmental Affairs and Public Liaison.	Director for Intergovernmental Affairs and Public Engagement.	TN150011	4/27/2015
SECURITIES AND EXCHANGE COMMISSION.	Office of the Chairman	Confidential Assistant	SE150003	4/17/2015
SMALL BUSINESS ADMINISTRATION.	Office of the Administrator	Special Assistant for Scheduling and Advance.	SB150027	4/9/2015
DEPARTMENT OF STATE	Bureau for Education and Cultural Affairs.	Senior Advisor	DS150036	4/8/2015
	Office of the Global Women's Issues.	Staff Assistant	DS150064	4/28/2015
	Office of the Under Secretary for Management.	Staff Assistant	DS150074	4/28/2015
DEPARTMENT OF TRANSPORTATION.	Immediate Office of the Administrator.	Director of Governmental, International and Public Affairs.	DT150041	4/1/2015
		Director of External Affairs	DT150051	4/21/2015
		Senior Advisor	DT150055	4/29/2015
	Office of Public Affairs	Deputy Director for Public Affairs	DT150042	4/1/2015
		Assistant Press Secretary	DT150048	4/9/2015
	Office of the Assistant Secretary for Transportation Policy.	Associate Director for Public Engagement.	DT150045	4/9/2015
	Office of the Secretary	Special Assistant	DT150046	4/9/2015
		Special Assistant for Scheduling and Advance.	DT150047	4/9/2015
		White House Liaison	DT150054	4/29/2015
DEPARTMENT OF THE TREASURY.	Office of the Assistant Secretary (Public Affairs).	Senior Digital Strategy Specialist	DY150088	4/9/2015
	Office of the Secretary of the Treasury.	Associate Director	DY150087	4/10/2015
	Office of the Under Secretary for Domestic Finance.	Senior Advisor of Cybersecurity Strategy and Policy.	DY150091	4/30/2015

The following Schedule C appointing authorities were revoked during April 2015.

Agency name	Organization name	Position title	Authorization No.	Vacate date
DEPARTMENT OF AGRICULTURE.	Office of the Secretary	White House Liaison	DA130077	4/4/2015
DEPARTMENT OF COMMERCE	International Trade Administration	Senior Advisor to the Under Secretary.	DC140147	4/3/2015
	Office of the Chief of Staff	Director, National Export Events	DC110027	4/6/2015
	Office of White House Liaison	Deputy Director	DC140129	4/18/2015
DEPARTMENT OF EDUCATION	Office of Legislation and Congressional Affairs.	Special Assistant	DB140055	4/3/2015
	Office of the General Counsel	Special Counsel	DB120045	4/18/2015
ENVIRONMENTAL PROTECTION AGENCY.	Office of the Administration	Special Assistant for Public Engagement.	EP130038	4/4/2015
EQUAL EMPLOYMENT OPPORTUNITY COMMISSION.	Office of the Chairman	Senior Policy Analyst	EE100006	4/3/2015
DEPARTMENT OF HEALTH AND HUMAN SERVICES.	Office of the Assistant Secretary for Public Affairs.	Digital Communications Coordinator.	DH140058	4/3/2015
		Rollouts Director	DH130061	4/18/2015
		Deputy Director of Speechwriting	DH140032	4/20/2015
	Health Resources and Services Administration, Office of the Administrator.	Special Assistant and Policy Advisor.	DH150021	4/13/2015

Agency name	Organization name	Position title	Authorization No.	Vacate date
	Office of the Secretary	Deputy Director for Scheduling and Advance.	DH130071	4/17/2015
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT.	Office of Policy Development and Research.	Senior Advisor for Housing Finance.	DU130015	4/4/2015
DEPARTMENT OF THE INTERIOR.	Secretary's Immediate Office	Special Assistant to the Secretary	DI130015	4/18/2015
DEPARTMENT OF JUSTICE	Tax Division	Confidential Assistant	DJ130046	4/3/2015
DEPARTMENT OF LABOR	Employment and Training Administration.	Senior Policy Advisor	DL120070	4/2/2015
	Office of Public Affairs	Special Assistant	DL110048	4/18/2015
OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION.	Office of Commissioners	Counsel to a Commissioner	SH100002	4/27/2015
	Occupational Safety and Health Review Commission.	Confidential Assistant to the Chairman.	SH140001	4/27/2015
OFFICE OF MANAGEMENT AND BUDGET.	Office of Legislative Affairs	Confidential Assistant	BO150004	4/4/2015
SECURITIES AND EXCHANGE COMMISSION.	Office of the Chairman	Confidential Assistant	SE110002	4/4/2015
SMALL BUSINESS ADMINISTRATION.	Office of Field Operations	Regional Administrator, Region VIII, Denver, Colorado.	SB130012	4/18/2015
DEPARTMENT OF TRANSPORTATION.	Immediate Office of the Administrator.	Associate Administrator for Governmental, International and Public Affairs.	DT140051	4/4/2015
	Office of the Secretary	Special Assistant for Scheduling and Advance (2).	DT140016 DT140030	4/18/2015 4/18/2015

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., p. 218.

U.S. Office of Personnel Management.

Katherine Archuleta,

Director.

[FR Doc. 2015–14811 Filed 6–16–15; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Nanotechnology-Inspired Grand Challenges for the Next Decade

ACTION: Notice of request for information.

SUMMARY: The purpose of this Request for Information (RFI) is to seek suggestions for *Nanotechnology-Inspired Grand Challenges for the Next Decade:* Ambitious but achievable goals that harness nanoscience, nanotechnology, and innovation to solve important national or global problems and have the potential to capture the public's imagination. This RFI is intended to gather information from external stakeholders about potential grand challenges that will help guide the science and technology priorities of Federal agencies, catalyze new research activities, foster the commercialization of nanotechnologies, and inspire different sectors to invest in achieving the goals. Input is sought from nanotechnology stakeholders including researchers in academia and industry, non-governmental organizations, scientific and professional societies, and all other interested members of the public.

DATES: Responses must be received by July 16, 2015 to be considered.

ADDRESSES: You may submit responses by any of the following methods (email is preferred):

- *Email: NNIChallenges@nnco.nano.gov.* Include [*Nanotechnology-Inspired Grand Challenges*] in the subject line of the message. The response may be in the body of or as an attachment to the email.
- *Mail:* Attn: Tarek Fadel, National Nanotechnology Coordination Office, ATTN: NNI Grand Challenges RFI, 4201 Wilson Blvd., Stafford II, Suite 405, Arlington, VA 22230. If submitting a response by mail, please allow sufficient time for mail processing.

Instructions: Responses must be unclassified and should not contain any information that might be considered proprietary, confidential, or personally identifying (such as home address or social security number).

Disclaimer: Federal agencies may or may not use any responses to this RFI as a basis for a subsequent project, program, or funding opportunity. Responses to this RFI will not be returned. The Office of Science and Technology Policy is under no obligation to acknowledge receipt of the information received, or provide feedback to respondents with respect to any information submitted under this RFI. No requests for a bid package or solicitation will be accepted; no bid package or solicitation exists. In order to protect the integrity of any possible future acquisition, no additional information will be provided and no appointments for presentations will be made in reference to this RFI. This RFI is issued solely for information and planning purposes and does not constitute a solicitation. Responders to this RFI will have no competitive advantage in receiving any awards related to the submitted input on a potential Nanotechnology-Inspired Grand Challenge.

FOR FURTHER INFORMATION CONTACT: Tarek Fadel, (703) 292–7926, *NNIChallenges@nnco.nano.gov,* National Nanotechnology Coordination Office. Any requests for clarification must be received no later than seven (7) business days prior to the close of this RFI in order to receive a timely response.

SUPPLEMENTARY INFORMATION:

Background Information

The National Nanotechnology Initiative (NNI), established in 2001, is a U.S. Government research and development initiative of 20 Federal departments, independent agencies, and independent commissions (hereafter referred to as ''agencies'') working together toward the common challenging vision of a future in which the ability to understand and control matter at the nanoscale leads to a revolution in technology and industry that benefits society (see *www.nano.gov*). The combined, coordinated efforts of the participating agencies have accelerated the discovery, development, and deployment of nanotechnology to address agency mission goals and broader national

needs. Over the next decade, nanotechnology has the potential to build on the great progress already made under the NNI and solve a wide range of important national and global problems.

In its recent review of the NNI, the President's Council of Advisors on Science and Technology (PCAST) recommended that agencies engage research, development, and industrial stakeholders in the identification and selection of grand challenges in order to focus and amplify the impact of Federal nanotechnology activities (see *www.whitehouse.gov/sites/default/files/microsites/ostp/PCAST/pcast_fifth_nni_review_oct2014_final.pdf*). Grand challenges are an element of the President's *Strategy for American Innovation* that help catalyze breakthroughs needed to advance national priorities. A *Nanotechnology-Inspired Grand Challenge* should be an ambitious but achievable goal that harnesses nanoscience, nanotechnology, and innovation to solve important national or global problems and has the potential to capture the public's imagination. The challenge should inspire different sectors to invest resources to achieve the ambitious goal and stimulate a network of activities that will drive scientific ideas towards commercial products while catalyzing new discoveries.

An effective grand challenge has the following characteristics (as defined by PCAST as noted above, as well as the Administration here: *http://www.whitehouse.gov/grand-challenges*):

- A measurable end-point that is highly ambitious but achievable.
- Requires advances in fundamental scientific knowledge, tools, and infrastructure for successful completion.
- Has clear intermediate milestones (measurable and valuable in their own right) that will be achieved en route to the final goals.
- Drives the need for collaboration between multiple disciplines, some of which do not normally interact, causing multiple organizations to come together to collaborate and to share resources and information to solve the challenge.
- Spans efforts from discovery and fundamental science to engineering demonstration and commercialization; *i.e.,* catalyzes the transition of technologies from laboratory to market.
- Is too big to be undertaken by one or even a few organizations.
- Is exciting enough to motivate decision makers to provide funding and resources and multiple organizations to collaborate, share resources, and information to solve the challenge.
- Captures the imagination of the public, thereby facilitating strong support for the resources required to achieve the goals.

Although nanoscale science and technology is a broadly enabling discipline, not every worthwhile grand challenge is likely to be solved using nanotechnology. The objective of this RFI is to identify compelling, ambitious grand challenges where the known benefits of nanoscale science and technology, including the unique properties of engineered nanomaterials, are likely to play an enabling role in the solution to each challenge within the next decade.

Information Requested

The Office of Science and Technology Policy (OSTP) requests suggestions for nanotechnology-inspired grand challenges achievable in the next decade that solve important national or global problems and are relevant to the mission of one or more of the agencies participating in the NNI (see *www.nano.gov/partners*). In order to illustrate how such grand challenges should be framed and to help stimulate the development of additional grand challenges, the NNI agencies, working with the National Nanotechnology Coordination Office (NNCO) and OSTP, have developed a number of potential grand challenges for the next decade, which are listed below. In addition to seeking suggestions from the community for other grand challenges, comments are sought as to the merits of these examples, including how they could be improved, along with additional information supporting these examples as detailed in the questions that follow.

Examples of Potential Nanotechnology-Inspired Grand Challenges for the Next Decade

By 2025, the nanotechnology R&D community is challenged to achieve the following:

1. Increase the five-year survival rates by 50 percent for the most difficult to treat cancers. Although great progress has been made in diagnosing and treating many types of cancer, some types remain very deadly, such as pancreatic, lung, and some types of brain cancers where fewer than 20 percent of patients survive five years. From multiplexed biomarker detection enabled by nanosensor arrays for early diagnosis, to targeted nanoparticle-based therapeutics, nanotechnology has tremendous potential to dramatically improve the outcome and quality of life for these cancer patients compared to their current prognoses. The resulting technological advances will undoubtedly improve the diagnosis and treatment of other types of cancer and diseases as well.

2. Create devices no bigger than a grain of rice that can sense, compute, and communicate without wires or maintenance for 10 years, enabling an ''internet of things'' revolution. Incorporating sensors, electronics, and networking into a vast array of everyday objects to create an Internet of Things will lead to a revolution in how we interact with the world—from traffic jam-free cities and self-driving cars, to clothing that monitors our health and safety. This revolution will require new paradigms for logic, memory, communication, and sensing, along with energy storage, harvesting, and transmission, that dramatically reduce power consumption and extend the life of the devices needed to interconnect this new world.

3. Create computer chips that are 100 times faster yet consume less power. The technology that has enabled ever-faster and more powerful computer chips that are the foundation of the information technology revolution is reaching its limit. In order to continue to benefit from the advances in computing speed and power we have come to rely on, revolutionary breakthroughs are needed to dramatically lower the power needed to operate the basic electronic switch underlying the digital computing era. Achieving this goal will lead to portable devices that anticipate our needs, faster ''exascale'' computers that will accurately model the planet's climate and rapidly design new materials, and energy efficient data centers that will quickly turn the deluge of data that the world is generating into useful information when and where it is needed.

4. Manufacture atomically-precise materials with fifty times the strength of aluminum at half the weight and the same cost. The development of new materials enabled by nanotechnology is hindered by the fact that their properties often fall far short of what would be predicted based upon the properties of nanoscale building blocks. Atomically precise manufacturing will enable ultra-lightweight, durable, high strength materials that could drastically increase the energy efficiency of cars and other transportation systems, and lead to dramatic improvements in a broad range of other applications, ranging from catalysts that convert sunlight to fuel, to electronics that consume much less energy.

5. Reduce the cost of turning sea water into drinkable water by a factor of

four. Water supplies world-wide are vulnerable to threats such as contaminants, changes in land use, shifting and increasing population, climate change, and extreme weather. And one in nine people (750 million worldwide) lack access to clean drinking water. Although sea water is widely available, it currently costs approximately $2,000 to desalinate an acre foot of water (or about $6 per 1000 gallons)—about twice the rate a typical homeowner pays for tap water. Advances in nanotechnology, such as nanoporous materials for separation membranes and nanoparticles that remove contaminants, offer the possibility of much faster, cheaper, and more environmentally-friendly methods for desalination and other treatment applications that could dramatically improve the global supply of drinkable water.

6. Determine the environmental, health, and safety characteristics of a nanomaterial in a month. The need to more quickly and accurately determine whether engineered nanomaterials may pose a risk to the public and the environment continues to be a major challenge to the commercialization of nanotechnology for societal and public benefit. Much more efficient methods, including high-throughput toxicity measurements, sensors to detect nanomaterials in the environment, and accurate, predictive models for risk assessment, are needed to ensure that the safety of each product containing engineered nanomaterials is understood throughout its lifecycle, enabling new products to be quickly and confidently made available to the public.

Questions

Respondents are asked to address the following general questions for each grand challenge proposed, including for any of the grand challenge concepts listed above (or proposed variations):

- What is the audacious yet achievable goal proposed?
- Why is it important for the Federal government and others to invest in solving this challenge?
- What would success look like? How would you know the challenge has been met? For the examples provided, are the proposed end points appropriate and ambitious yet achievable?
- What would be potential nanotechnology solutions to the challenge and what intermediate steps and activities are necessary to develop those solutions?
- What potential metrics and milestones could be used to measure intermediate progress towards solving the challenge?
- Can the challenge be achieved in the next decade? If not, how long will it take?
- Why is this challenge worth pursuing now? What recent advances, trends, or research point to this challenge being solvable in the proposed time frame?
- What opportunities are there for partnerships between the Federal government, State and regional governments, foundations, industry, and academia to support the solution of the challenge?
- Why do you expect this challenge to capture the public's imagination?

Ted Wackler,

Deputy Chief of Staff and Assistant Director.

[FR Doc. 2015–14914 Filed 6–16–15; 8:45 am]

BILLING CODE 3270–F5–P

POSTAL SERVICE

Temporary Emergency Committee of the Board of Governors; Sunshine Act Meeting

DATES AND TIMES: June 10, 2015, at 1:30 p.m.

PLACE: Washington, DC, via Teleconference.

STATUS: *Committee Votes to Close June 10, 2015, Meeting:* By telephone vote on June 10, 2015, members of the Temporary Emergency Committee of the Board of Governors of the United States Postal Service met and voted unanimously to close to public observation its meeting held in Washington, DC, via teleconference. The Committee determined that no earlier public notice was possible.

MATTERS CONSIDERED:

Wednesday, June 10, 2015, at 1:30 p.m.

1. Strategic Issues.
2. Pricing.

GENERAL COUNSEL CERTIFICATION: The General Counsel of the United States Postal Service has certified that the meeting was properly closed under the Government in the Sunshine Act.

CONTACT PERSON FOR MORE INFORMATION: Julie S. Moore, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza SW., Washington, DC 20260–1000, telephone (202) 268–4800.

Julie S. Moore,

Secretary, Board of Governors.

[FR Doc. 2015–14949 Filed 6–16–15; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75149; File No. SR–EDGX–2015–26]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of EDGX Exchange, Inc.

June 11, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 2015, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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.[3] The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend its fees and rebates applicable to Members[6] of the Exchange pursuant to EDGX Rule 15.1(a) and (c) (''Fee Schedule'') to increase the fee for orders yielding fee code K, which routes to NASDAQ OMX PSX (''PSX'') using ROUC or ROUE routing strategy.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that a previous version of the proposal was filed as SR–EDGX–2015–25. The proposal was withdrawn on June 9, 2015.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase the fee for orders yielding fee code K, which routes to PSX using ROUC or ROUE routing strategy. In securities priced at or above $1.00, the Exchange currently assesses a fee of $0.0026 per share for Members' orders that yield fee code K. The Exchange proposes to amend its Fee Schedule to increase this fee to $0.0028 per share. The proposed change would enable the Exchange to pass through the rate that BATS Trading, Inc. (''BATS Trading''), the Exchange's affiliated routing broker-dealer, is charged for routing orders to PSX when it does not qualify for a volume tiered reduced fee. The proposed change is in response to PSX's June 2015 fee change where PSX decreased the fee to remove liquidity via routable order types it charges its customers, from a fee of $0.0029 per share to a fee of $0.0027 per share for Tapes A and B securities and $0.0028 per share for Tape C securities.[7] When BATS Trading routes to PSX, it will now be charged a standard rate of $0.0027 per share for Tapes A and B securities and $0.0028 per share for Tape C securities.[8] BATS Trading will pass through this rate to the Exchange and the Exchange, in turn, will pass through of a rate of $0.0028 per share for Tape A, B, and C securities to its Members.[9] The proposed increase to the fee under fee code K would enable the Exchange to equitably allocate its costs among all Members utilizing fee code K. The Exchange proposes to implement this amendment to its Fee Schedule immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[10] in general, and furthers the objectives of Section 6(b)(4),[11] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that its proposal to increase the fee for Members' orders that yield fee code K from $0.0026 per share to $0.0028 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to PSX through BATS Trading. As of June 1, 2015, PSX amended its fee to remove liquidity via routable order types it charges its customers, from a fee of $0.0029 per share to a fee of $0.0027 per share for Tapes A and B securities and $0.0028 per share for Tape C securities.[12] Therefore, the Exchange believes that its proposal to pass through a fee of $0.0028 per share for orders that yield fee code K is equitable and reasonable because it accounts for the pricing changes on PSX. In addition, the proposal allows the Exchange to now charge its Members a pass-through rate for orders that are routed to PSX. Furthermore, the Exchange notes that routing through BATS Trading is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

These proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGX's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange believes that its proposal to pass through a fee of $0.0028 per share for Members' orders that yield fee code K would increase intermarket competition because it offers customers an alternative means to route to PSX. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and paragraph (f) of Rule 19b–4 thereunder.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–EDGX–2015–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

[7] *See* PSX, Equity Trader Alert 2015–05, Updates to PSX Pricing for June 2015, dated May 28, 2015, *available at http://www.nasdaqtrader.com/MicroNews.aspx?id=ETA2015-78.*

[8] The Exchange notes that to the extent BATS Trading does or does not achieve any volume tiered reduced fee on PSX, its rate for fee code K will not change.

[9] The Exchange notes that, due to billing system limitations that do not allow for separate rates by tape, it will pass through the higher fee of $0.0028 per share for all Tapes A, B & C securities.

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] *See* supra *note 6.*

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f).

All submissions should refer to File Number SR–EDGX–2015–26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2015–26 and should be submitted on or before July 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

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[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75153; File No. SR–NYSE–2015–26]

Self-Regulatory Organizations; New York Stock Exchange, LLC; Notice of Filing of Proposed Rule Change Making Permanent the Rules of the New Market Model Pilot and the Supplemental Liquidity Providers Pilot

June 11, 2015.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 4, 2015, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to make permanent the rules of the New Market Model Pilot and the Supplemental Liquidity Providers Pilot. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to make permanent the rules of New Market Model Pilot (''NMM Pilot'') and the Supplemental Liquidity Providers Pilot (''SLP Pilot,'' collectively ''Pilots''). The Pilots are currently scheduled to expire upon the earlier of July 31, 2015 or Securities and Exchange Commission (''SEC'' or ''Commission'') approval to make the Pilots permanent.[4]

Background

In October 2008, the NYSE implemented significant changes to its market rules, execution technology, and the rights and obligations of its market participants, all of which were designed to improve execution quality on the Exchange. Certain of the enhanced market model changes were implemented through the NMM Pilot.[5] Specifically, and as described in greater detail below, Rules 72, 104 and the provisions of Rule 1000 relating to the Capital Commitment Schedule are the pilot rules associated with the NMM Pilot.

As part of the NMM Pilot, NYSE eliminated the function of specialists on the Exchange and created a new category of market participant, the Designated Market Maker (''DMM'').[6] DMMs, like specialists, have affirmative obligations to make an orderly market, including continuous quoting requirements and obligations to re-enter the market when reaching across to execute against trading interest. Unlike specialists, DMMs have a minimum quoting requirement[7] in their assigned securities and no longer have negative obligations. DMMs are also no longer agents for public customer orders.[8] DMM obligations under the NMM Pilot are set forth in Rule 104.

In addition, the Exchange implemented a system change that allowed a DMM to create a schedule of additional non-displayed liquidity at various price points where the DMM is willing to interact with interest and provide price improvement to orders in the Exchange's system. This schedule is known as the DMM Capital Commitment Schedule (''CCS'') and is set forth in Rule 1000. CCS provides the Exchange systems, formerly referred to as the ''Display Book®''[9] with the amount of shares that the DMM is willing to trade at price points outside,

[4] *See* Securities Exchange Act Nos. 73919 (December 23, 2014), 79 FR 78930 (December 31, 2014) (SR–NYSE–2014–71) (''NMM Pilot extension filing''); 73945 (December 24, 2014), 80 FR 58 (January 2, 2015) (SR–NYSE–2014–72) (''SLP Pilot extension filing'').

[5] *See* Securities Exchange Act No. 58845 (October 24, 2008), 73 FR 64379 (October 29, 2008) (SR–NYSE–2008–46) (''NMM Pilot Approval Order'').

[6] *See* Rule 103.

[7] *See* Rule 104.

[8] *See* Rule 60; *see also* Rules 104 and 1000.

[9] The Exchange's Display Book system is an order management and execution facility. The Display Book system receives and displays orders to the DMMs, contains the order information, and provides a mechanism to execute and report transactions and publish the results to the Consolidated Tape. The Display Book system is connected to a number of other Exchange systems for the purposes of comparison, surveillance, and reporting information to customers and other market data and national market systems. Because the Exchange has retired the actual system referred to as the ''Display Book,'' but not the functionality associated with the Display Book, the Exchange proposes to replace all references to the term ''Display Book'' in Rules 104 and 1000 with references either to the term (i) ''Exchange systems'' when use of the term refers to the Exchange systems that receive and execute orders, or (ii) ''Exchange book'' when use of the term refers to the interest that has been entered and ranked in Exchange systems.

at, and inside the Exchange Best Bid or Best Offer (''BBO''). CCS interest is separate and distinct from other DMM interest in that it is generally interest of last resort.

The NMM Pilot further modified the priority of trading interest, set forth in Rule 72, which rewards displayed orders that establish the BBO by giving such orders priority in execution against incoming orders. During the operation of the NMM Pilot, an order or portion thereof that establishes priority, retains that priority until such order or portion of such order is exhausted. Where no one order has established priority, shares are distributed among all market participants on parity.

In addition, the NMM Pilot modified how orders are allocated among market participants. Before the NMM Pilot, the Exchange operated on a parity allocation model whereby executed orders were allocated on parity among market participants, which included each Floor broker and the orders collectively represented in Exchange systems. Because specialists on the Exchange had both agency obligations to public customer orders and negative obligations, their executions yielded to public customer orders. Under the NMM Pilot, because DMMs do not have either agency obligations or negative obligations, DMMs are an individual market participant eligible for allocation under the Exchange's parity allocation. Accordingly, for purposes of share allocation in an execution, Rule 72(c)(ii) provides that each Floor broker, the DMM, and orders collectively represented in Exchange systems (*i.e.,* ''Book Participant'') [10] constitute individual participants for purposes of parity allocation of executed orders.

In connection with the DMM Pilot, the NYSE established the SLP Pilot, which established SLPs as a new class of market participants to supplement the liquidity provided by DMMs.[11] Rule 107B governs the SLP Pilot.

The Pilots were originally scheduled to end on October 1, 2009, or such earlier time as the Commission determined to make the Pilots' rules permanent. The Exchange filed to extend the operation of the Pilots on several occasions in order to prepare this rule filing.[12]

Description of Pilot Rules That Would Become Permanent

Rule 104

Current Rule 104, as amended since 2008, sets forth DMM obligations. Under Rule 104(a), DMMs registered in one or more securities traded on the Exchange are required to engage in a course of dealings for their own account to assist in the maintenance of a fair and orderly market insofar as reasonably practicable. The responsibilities and duties of a DMM include:

- Assisting the Exchange by providing liquidity as needed to provide a reasonable quotation and by maintaining continuous two-sided quotes with a displayed size of at least one round lot that meets certain metrics as set forth in the rule;
- Facilitating openings and re-openings in assigned securities, which may include supplying liquidity as needed; and
- Facilitating the close of trading for assigned securities, which may include supplying liquidity as needed.[13]

The Rule 104(a)(1) quoting requirements applicable to DMMs are two-fold. First, with respect to maintaining a continuous two-sided quote with reasonable size, DMM units must maintain a bid or an offer at the National Best Bid (''NBB'') and National Best Offer (''NBO'') (collectively, ''inside'') at least 15% of the trading day for securities in which the DMM unit is registered with a consolidated average daily volume (''CADV'') of less than one million shares (''Less Active Securities''), and at least 10% for securities in which the DMM is registered with a CADV equal to or greater than one million shares (''More Active Securities'').[14] These DMM quoting obligations set forth in Rule 104(a)(1)(A) are unique to the Exchange. Second, DMM units are subject to the two-sided quoting obligations set forth in Rule 104(a)(1)(B), which are the pricing obligations applicable to all equity market makers market-wide to maintain a bid and offer a designated percentage away from the NBB and NBO at all times.[15]

Under Rule 104(b), DMM units are permitted to use algorithms for quoting and trading consistent with NYSE and SEC rules. Exchange systems enforce the proper sequencing of incoming orders and algorithmically-generated messages. Except as provided for in the rule, the DMM unit's system employing algorithms has access to information with respect to orders entered on the Exchange, Floor Broker agency interest files or reserve interest, to the extent such information is publicly available. DMM unit algorithms receive the same information with respect to orders entered on the Exchange, Floor Broker agency interest files or reserve interest as is disseminated to the public by the Exchange and receive such information no sooner than it is available to other market participants.[16] A DMM unit's algorithm may submit trading interest via CCS interest in accordance with Rule 1000.

Under Rule 104(c), a DMM unit may maintain reserve interest consistent with Exchange rules governing Reserve Orders. Such reserve interest is eligible for execution in manual transactions.

Under Rule 104(d), a DMM unit may provide algorithmically generated price improvement to all or part of an incoming order that can be executed at or within the BBO through the use of CCS interest. Any orders eligible for execution in the Exchange's book at the price of the DMM unit's interest trade on parity with such interest, as does any displayed interest representing a d-Quote enabling such interest to trade at the same price as the DMM unit's interest.

Under Rule 104(e), DMM units must provide contra-side liquidity as needed for the execution of odd-lot quantities that are eligible to be executed as part of the opening, re-opening, and closing transactions but remain unpaired after

[10] The orders represented in the Book Participant in aggregate constitute a single participant.

[11] *See* Securities Exchange Act No. 58877 (October 29, 2008), 73 FR 65904 (November 5, 2008) (SR–NYSE–2008–108) (Notice of Filing'' [sic]).

[12] *See* NMM pilot extension filing and SLP pilot extension filing, *supra* n. 3 [sic].

[13] In 2015, the Exchange eliminated liquidity replenishment points (''LRP'') and the ''gap'' quote procedures and amended Rule 104(a) to eliminate the former DMM obligations to facilitate trading when an LRP was reached or the gap quote procedure was being used. *See* Securities Exchange Act Release No. 74063 (Jan. 15, 2015), 80 FR 3269 (Jan. 22, 2015) (Notice of Filing).

[14] In 2009, the Exchange amended Rule 104(a)(1) to increase the amount of time that a DMM unit must maintain a bid and offer at the inside from 10% to 15% for Less Active Securities and from 5% to 10% for More Active Securities. *See* Securities Exchange Act Release No. 60595 (August 31, 2009), 74 FR 46261 (September 8, 2009) (SR–NYSE–2009–91) (Notice of Filing) (''DMM quoting requirement filing''). In 2011, the Exchange amended Rule 104(a)(1) to specify that the quoting percentage would be based on the consolidated average daily volume of a security, rather than the average daily volume of the security on the Exchange. *See* Securities Exchange Act Release No. 65865 (December 2, 2011), 76 FR 76799 (December 8, 2011) (SR–NYSE–2011–58) (Notice of Filing).

[15] *See* Securities Exchange Act Release No. 63255 (November 5, 2010), 75 FR 69484 (November 12, 2010) (SR–NYSE–2010–69) (Notice of Filing).

[16] In 2013, the Exchange amended Rules 104 and 123C to specify that closings may be effectuated manually or electronically. *See* Securities Exchange Act Release No. 71086 (December 16, 2013), 78 FR 77186 (December 20, 2013) (SR–NYSE–2013–79) (Notice of Filing). As part of that filing, the Exchange amended Rules 104(a)(3) and 104(b) to provide that the DMM algorithm would have access to aggregate order information relating to Reserve Interest eligible to participate in a manual execution.

the DMM has paired all other eligible round lot sized interest.

Rule 104(f) sets forth the functions of DMMs. First, any member who expects to act as a DMM in any listed stock must be registered as a DMM in accordance with Rule 103. Second, a DMM must maintain, insofar as reasonably practicable, a fair and orderly market on the Exchange in the stocks in which he or she is so acting. Third, the Exchange supplies DMMs with suggested Depth Guidelines for each security in which a DMM is registered, and DMMs are expected to quote and trade with reference to the Depth Guidelines. Finally, DMMs are designated as market makers on the Exchange for all purposes under the Act and the rules and regulations thereunder.

Rule 104(g) governs transactions by DMMs. Transactions on the Exchange by a DMM for the DMM's account must be effected in a reasonable and orderly manner in relation to the condition of the general market and the market in the particular stock. Rule 104(g) describes certain permitted transactions, including neutral transactions and non-conditional transactions, but prohibits certain other transactions. Specifically, except as otherwise permitted by Rule 104, during the last ten minutes prior to the close of trading, a DMM with a long (short) position in a security is prohibited from making a purchase (sale) in such security that results in a new high (low) price on the Exchange for the day at the time of the DMM's transaction.

Rule 104(h) addresses DMM transactions in securities that establish or increase the DMM's position. A ''Conditional Transaction'' is a DMM's transaction in a security that establishes or increases a position and reaches across the market to trade as the contra-side to the Exchange-published bid or offer. Certain Conditional Transactions may be made by a DMM without restriction as to price if they are followed by appropriate re-entry on the opposite side of the market commensurate with the size of the DMM's transaction. The Exchange issues guidelines, called price participation points (''PPP''), that identify the price at or before which a DMM is expected to re-enter the market after effecting a Conditional Transaction. Immediate re-entry is required after certain Conditional Transactions. However, certain other Conditional Transactions may be made without restriction as to price and Rule 104(i) provides that the re-entry obligations following such Conditional Transactions would be the same as the re-entry obligations for non-conditional transactions,'' as set forth in Rule 104(g).

Rule 104(j), which was added in 2013,[17] permits a DMM to perform the following Trading Floor functions:

- Maintain order among Floor brokers manually trading at the DMM's assigned panel;
- Bring Floor brokers together to facilitate trading, which may include the DMM as a buyer or seller;
- Assist a Floor broker with respect to an order by providing information regarding the status of a Floor broker's orders, helping to resolve errors or questioned trades, adjusting errors, and cancelling or inputting Floor broker agency interest on behalf of a Floor broker; and
- Research the status of orders or questioned trades on his or her own initiative or at the request of the Exchange or a Floor broker when a Floor broker's handheld device is not operational, when there is activity indicating that a potentially erroneous order was entered or a potentially erroneous trade was executed, or when there otherwise is an indication that improper activity may be occurring.

The rule also permits the Exchange to make systems available to a DMM at the post that display the following information about securities in which the DMM is registered: (A) Aggregated buying and selling interest; (B) the price and size of any individual order or Floor broker agency interest file and the entering and clearing firm information for such order, except that the display excludes any order or portion thereof that a market participant has elected not to display to a DMM; and (C) post-trade information. A DMM may not use any such information in a manner that would violate Exchange rules or federal securities laws or regulations. The DMM may provide market information that is available to the DMM at the post to (i) respond to an inquiry from a Floor broker in the normal course of business or (ii) visitors to the Trading Floor for the purpose of demonstrating methods of trading. However, a Floor broker may not submit an inquiry pursuant to this provision by electronic means and the DMM may not use electronic means to transmit market information to a Floor broker in response to a Floor broker's inquiry pursuant to this provision.

Rule 104(k) provides that in the event of an emergency, such as the absence of the DMM, or when the volume of business in the particular stock or stocks is so great that it cannot be handled by the DMMs without assistance, a Floor Governor may authorize a member of the Exchange who is not registered as a DMM in such stock to act as temporary DMM for that day only.

Rule 1000

The provisions of current Rule 1000 relating to CCS, as amended since 2008, and which are operating as part of the NMM Pilot, are set forth sections (d)–(g) of Rule 1000.

Rule 1000(d) provides that for each security in which it is registered, a DMM unit may place within Exchange systems a pool of liquidity to be available to fill or partially fill[18] incoming orders in automatic executions, which is CCS. CCS is designed to be a DMM unit's commitment to trade a specified number of shares at specified price points in reaction to incoming contra-side interest. As noted above, CCS interest is used to trade at the BBO, at prices better than the BBO, and at prices outside the BBO. CCS interest supplements displayed and non-displayed interest of the DMM in Exchange systems. CCS interest must be for a minimum of one round lot of a security and entered at price points that are at, inside, or away from the BBO.

Rule 1000(e) governs executions at and outside the BBO, and specifies how CCS interest would interact with such executions. For executions at the BBO, CCS interest would yield to all other interest at that price point. For executions outside the BBO, *i.e.,* sweeps, Rule 1000(e)(iii) specifies how CCS interest could participate to provide price improvement to the residual of an order that sweeps. As provided for in the rule, if an order is not executed at full at the Exchange BBO, Exchange systems will calculate the unfilled volume of the contra-side order and review the additional displayed and non-displayed interest, including CCS interest and protected quotes on away markets, to determine the price at which the remaining volume of the contra-side order can be executed in full (the ''completion price''). Exchange systems will evaluate the price at which the maximum volume of CCS interest exists to trade, and execute the incoming order one

[17] *See* Securities Exchange Act Release No. 71175 (December 23, 2013), 78 FR 79534 (December 30, 2013) (SR–NYSE–2013–21) (Order approving adoption of Rule 104(j)).

[18] The original NMM Pilot permitted CCS to participate only if it would fill an incoming order. In 2009, the Exchange amended Rule 1000 to provide that Exchange systems would access CCS interest to participate in executions when the incoming order would only be partially executed. *See* Securities Exchange Act Release No. 60671 (September 15, 2009), 74 FR 48327 (September 22, 2009) (SR–NYSE–2009–71) (''CCS Partial Fill Approval Order'').

minimum price variation (as the term is defined in Rule 62) better than that price, which is how CCS provides price improvement. If an order cannot be executed in full because of the order's limit price, or because of an immediate-or-cancel time-in-force, CCS interest is available to partially fill the incoming order.

Rule 1000(f) specifies how CCS interest may provide price improvement inside the BBO with interest arriving in the Exchange market that:

- Will be eligible to trade at or through the BBO;
- Will be eligible to trade at the price of interest in Exchange systems representing non-displayable reserve interest of Reserve Orders and Floor broker agency interest files reserve interest (''hidden interest'') or MPL Orders; or
- Will be eligible to route to away market interest for execution if [sic] the total volume of CCS interest, plus d-Quote interest in Floor broker agency interest files, plus any interest represented by hidden interest, would be sufficient to fully complete the arriving interest at a price inside the BBO. In such an instance, the Exchange systems determine the price point inside the BBO at which the maximum volume of CCS interest trades, taking into account the volume, if any, available from d-Quotes and hidden interest. The arriving interest is executed at that price, with all interest (CCS, d-Quote, hidden interest) trading on parity.

Under Rule 1000(g), CCS interest may trade with non-marketable [19] interest where such non-marketable interest betters the BBO (or cancels in the case of an arriving IOC order) if the incoming interest may be executed in full by all interest available in the Exchange's book, including CCS interest and d-quotes. Such trade takes place at the limit price of the arriving non-marketable interest. All interest trading with the incoming interest trades on parity.

Rule 72

The priority of bids and offers and allocation of executions is governed by Rule 72, as amended since 2008. Under Rule 72(a), when a bid or offer, including pegging interest,[20] is established as the only displayable [21] bid or offer made at a particular price and such bid or offer is the only displayable interest when such price is or becomes the BBO (the ''setting interest''), such setting interest is entitled to priority for allocation of executions at that price as described in the rule, subject to the provisions below:

(A) Odd-lot orders, including aggregated odd-lot orders that are displayable, are not eligible to be setting interest.[22]

(B) If at the time displayable interest of a round lot or greater becomes the BBO, there is other displayable interest of a round lot or greater, including aggregated odd-lot orders that are equal to or greater than a round lot, at the price that becomes the BBO, no interest is considered to be a setting interest, and, therefore, there is no priority established.

(C) If at the time displayable interest of a round lot or greater becomes the BBO, there is other displayable interest, the sum of which is less than a round lot, at the price that becomes the BBO, the displayable interest of a round lot or greater is considered the only displayable bid or offer at that price point and is therefore established as the setting interest.

(D) If executions decrement the setting interest to an odd-lot size, a round lot or partial round lot order that joins such remaining odd-lot size order is not eligible to be the setting interest.

(E) If as a result of cancellation, interest is or becomes the single displayable interest of a round lot or greater at the BBO, it becomes the setting interest.

(F) Only the portion of setting interest that is or has been published in the BBO is entitled to priority allocation of an execution. That portion of setting interest that is designated as reserve interest and therefore not displayed at the BBO (or not displayable if it becomes the BBO) is not eligible for priority allocation of an execution irrespective of the price of such reserve interest or the time it is accepted into Exchange systems. However, if, following an execution of part or all of setting interest, such setting interest is replenished from any reserve interest, the replenished volume of such setting interest is entitled to priority if the setting interest is still the only interest at the BBO.

(G) If non-pegging interest becomes the BBO, it is considered the setting interest even if pegging interest is pegging to such non-pegging interest, and it retains its priority even if subsequently joined at that price by a pegging interest.

Under Rule 72(b), once priority is established by the setting interest, such setting interest retains that priority for any execution at that price when that price is at the BBO. If executions decrement the setting interest to an odd-lot size, such remaining portion of the setting interest retains its priority for any execution at that price when that price is the BBO. For any execution of setting interest that occurs when the price of the setting interest is not the BBO, the setting interest does not have priority and is executed on parity.

Priority of setting interest is not retained after the close of trading on the Exchange or following the resumption of trading in a security after a trading halt in such security has been invoked pursuant to Rule 123D or following the resumption of trading after a trading halt invoked pursuant to the provisions of Rule 80B. Priority of the setting interest is not retained on any portion of the priority interest that is routed to an away market and is returned unexecuted unless such priority interest is greater than a round lot and the only other interest at the price point is odd-lot orders, the sum of which is less than a round lot.

Under Rule 72(c), executions are allocated as follows. An automatically executing order trades first with the displayed bid (offer) and, if there is insufficient displayed volume to fill the order, trades next with reserve interest. All reserve interest trades on parity. For the purpose of share allocation in an execution, each single Floor broker, the DMM and orders collectively represented in Exchange systems (referred to as ''Book Participant'') constitute individual participants. The orders represented in the Book Participant in aggregate constitute a single participant and are allocated

[19] ''Non-marketable'' means trading interest (*i.e.,* displayable and non-displayable) that is at a price higher than the current Exchange bid (but below the current Exchange offer) or lower than the current Exchange offer (but above the current Exchange bid), including better bids and offers on other market centers. *See* Rule 1000(g)(1).

[20] In 2012, the Exchange amended Rule 72(a) to specify that pegging interest may be considered setting interest. *See* Securities Exchange Act Release No. 68302 (November 27, 2012), 77 FR 71658 (December 3, 2012) (SR–NYSE–2012–65) (Notice of Filing) (''Pegging filing'').

[21] As used in this rule, the term ''displayable'' means that portion of interest that could be published as, or as part of, the BBO, including pegging interest. Displayable odd-lot orders are published as part of the BBO if, when aggregated with other interest available for execution at that price point, the sum of the odd-lot order and other interest available at that price point would be equal to or greater than a round lot. The term ''displayed interest'' includes that part of an order that is published as, or as part of, the BBO, which may include one or more odd-lot orders.

[22] In 2010, the Exchange amended its rules, including Rule 72, to incorporate the receipt and execution of odd-lot interest in the round-lot market and decommission the former Odd Lot System. *See* Securities Exchange Act Release No. 62578 (July 27, 2010), 75 FR 45185 (August 2, 2010) (SR–NYSE–2010–43 and SR–NYSEAmex–2010–53) (''Odd-lot Approval Order'').

shares among such orders by means of time priority with respect to entry.

In any execution at the BBO, a participant who is the setting interest receives 15% of the volume of such executed amount or a minimum of one round lot, whichever is greater, until such setting interest has received a complete execution of its eligible priority interest. Setting interest that is decremented to an odd-lot size receives 15% of the volume of such incoming interest rounded up to the size of the setting interest, or the size of the incoming interest, whichever is less. Following the allocation of an execution to setting interest as provided above, the remainder of the executed volume is allocated to each participant on parity. The participant with the priority interest (the setting interest) is included in such parity allocation. If there is no setting interest for an execution at the BBO, allocation of the executed volume is on parity by participant except as otherwise set forth in the rule. When an execution occurs at the BBO, interest that is displayed in the BBO is allocated before any interest that is not displayed. In allocating an execution that involves setting interest, whether such execution takes place at the BBO or otherwise, the volume allocated to the setting interest is allocated to the interest in the setting interest that is entitled to priority first.

Shares are allocated in round lots or the size of the order if less than a round lot. If the number of shares to be executed at a price point is insufficient to allocate round lots to all the participants eligible to receive an execution at that price point, or the size of the order if less than a round lot, Exchange systems create an allocation wheel of the eligible participants at that price point and the available round lot shares are distributed to the participants in turn. If an odd-lot sized portion of the incoming order remains after allocating all eligible round lots, the remaining shares are allocated to the next eligible participant in less than a round lot. On each trading day, the allocation wheel for each security is set to begin with the participant whose interest is entered or retained first on a time basis. Thereafter, participants are added to the wheel as their interest joins existing interest at a particular price point. If a participant cancels interest and then rejoins, that participant joins as the last position on the wheel at that time. If an odd-lot allocation completely fills the interest of a participant, the wheel moves to the next participant. The allocation wheel also moves to the next participant where Exchange systems execute remaining displayable odd-lot interest prior to replenishing the displayable quantity of a participant.

When an execution occurs outside the BBO, the interest that is displayable is allocated before any interest that is non-displayable (*i.e.,* reserve interest). All interest that is displayable is on parity among individual participants' displayable interest. All interest that is non-displayable is on parity among individual participants' non-displayable interest. Incoming orders eligible for execution at price points between the BBO trade with all available interest at the price. All NYSE interest available to participate in the execution (*e.g.,* d-quotes, s-quotes, Reserve Orders, and CCS interest) trade on parity.

DMM interest added intra-day to participate in a verbal transaction with a Floor broker or during a slow quote is allocated shares only after all other interest eligible for execution at the price point is executed in full. DMM interest added at the time of the slow quote or when verbally trading with a Floor broker not executed during the transaction is cancelled.[23] However, s-Quotes, if any, representing DMM interest present at the price point prior to the verbal transaction with a Floor broker or during a slow quote receive an allocation on parity as described above. An order that is modified to reduce the size of the order retains the time stamp of original order entry. An order modified in any other way, such as increasing the size or changing the price of the order, receives a new time stamp.[24]

Under Rule 72(d), when a member has an order to buy and an order to sell an equivalent amount of the same security, and both orders are ''block'' orders (*i.e.,* at least 10,000 shares or a quantity of stock having a market value of $200,000 or more, whichever is less) and are not for the account of such member or member organization, an account of an associated person, or an account with respect to which the member, member organization, or associated person thereof exercises investment discretion, then the member may ''cross'' those orders at a price at or within the BBO.[25] The member's bid or offer is entitled to priority at such cross price, irrespective of pre-existing displayed bids or offers on the Exchange at that price. The member must follow the crossing procedures of Rule 76, and another member may trade with either the bid or offer side of the cross transaction only to provide a price which is better than the cross price as to all or part of such bid or offer. A member who is providing a better price to one side of the cross transaction must trade with all other displayed market interest on the Exchange at that price before trading with any part of the cross transaction. Following a transaction at the improved price, the member with the agency cross transaction must follow the crossing procedures of Rule 76 and complete the balance of the cross. No member may break up the proposed cross transaction, in whole or in part, at the cross price. No DMM may effect a proprietary transaction to provide price improvement to one side or the other of a cross transaction effected pursuant Rule 72(d). A transaction effected at the cross price in reliance on this provision is printed as ''stopped stock.'' When a member effects a transaction under this provision, the member must, as soon as practicable after the trade is completed, complete documentation of the trade as the Exchange requires.

Rule 107B

Rule 107B, as amended, governs the SLP Pilot. Under current Rule 107B(a), an SLP is defined as a member organization that electronically enters proprietary orders or quotes from off the Floor of the Exchange into the systems and facilities of the Exchange and is obligated to maintain a bid or an offer at the National Best Bid (''NBB'') or the National Best Offer (''NBO'') in each assigned security in round lots averaging at least 10% of the trading day and for all assigned SLP securities[26] and to add liquidity of an ADV of more than a specified percentage of

[23] When the Exchange adopted the NMM Pilot in 2008, all DMM interest was on parity. In 2009, the Exchange amended Rule 72 to add new subsection (c)(xi) to the rule to remove parity for DMM interest that verbal transactions with a Floor broker or during a slow quote. *See* Securities Exchange Act Release No. 60287 (July 10, 2009), 74 FR 34817 (July 17, 2009) (SR–NYSE–2009–69) (Notice of Filing).

[24] *See* Pegging Filing, *supra* n. 18 [sic] (amending Rule 72(c) to specify how order modifications impact the time stamp of an order).

[25] In 2011, the Exchange amended Rule 72(d) regarding agency cross transactions to (i) change the minimum size of a block order under the rule from 25,000 to 10,000 shares or a quantity of stock having a market value of $200,000 or more, whichever is less, and (ii) conform Rule 72(d) to Rule 90 to permit a Floor broker to represent a Rule 72(d) crossing transaction on behalf of an unaffiliated member or member organization. *See* Securities Exchange Act Release No. 64334 (April 25, 2011), 76 FR 24078 (April 29, 2011) (SR–NYSE–2011–18) (Notice of Filing).

[26] The SLP Pilot originally required an SLP to maintain a bid and/or offer at the NBB or NBO averaging at least 5% of the trading day. Effective September 25, 2010, the Exchange increased this quoting requirement to require SLPs to maintain a bid and/or offer at the NBB or NBO at least 10% of the trading day. *See* Securities Exchange Act Release No. 62791 (August 30, 2010) 75 FR 54411 (September 7, 2010) (SR–NYSE–2010–60) (Notice of Filing) (''SLP 2010 Filing'').

consolidated average daily volume (''CADV'') in all NYSE-listed securities, as set forth in the Exchange's Price List, on a monthly basis.[27] An SLP can be either a proprietary trading unit of a member organization (''SLP-Prop'') or a registered market maker at the Exchange (''SLMM'').[28]

Under Rule 107B(b), when an SLP posts liquidity on the Exchange and such liquidity is executed against an inbound order, the SLP receives a financial rebate for that executed transaction as set forth in the Exchange's Price List, subject to the non-regulatory penalty provision described in Rule 107B(k).[29] The SLP receives credit toward the financial rebate for executions of displayed and non-displayed liquidity (*e.g.,* reserve and dark orders) posted in round lots in its assigned securities only.

Under Rule 107B(c), to qualify as an SLP-Prop, a member organization must have:

(1) Adequate technology to support electronic trading through the systems and facilities of the Exchange;

(2) mnemonics that identify to the Exchange SLP-Prop trading activity in assigned SLP securities;

(3) adequate trading infrastructure and staff to support SLP trading activity;

(4) quoting and volume performance that demonstrates an ability to meet the 10% average quoting requirement in each assigned security and the ADV requirement of more than a specified percentage of CADV in all NYSE-listed securities for all assigned SLP securities on a monthly basis;

(5) a disciplinary history that is consistent with just and equitable business practices; and

(6) the business unit of the member organization acting as an SLP-Prop must have in place adequate information barriers between the SLP-Prop unit and the member organization's customer, research, and investment banking business.

A member organization may register as an SLMM in one or more securities traded on the Exchange in order to assist in the maintenance of a fair and orderly market insofar as reasonably practicable. To qualify as an SLMM, a member organization must meet the all of the requirements for an SLP-Prop set forth above, except item (2) relating to mnemonics. If approved as an SLMM, the member organization must (i) maintain continuous, two-sided trading interest in assigned securities (''Two-Sided Obligation'') and meet certain pricing obligations as set forth in the rule; (ii) maintain minimum net capital in accordance with SEC Rule 15c3–1; and (iii) maintain unique mnemonics specifically dedicated to SLMM activity, which may not be used for trading in securities other than SLP securities assigned to the SLMM.

Rule 107B(e) sets forth the application process for SLPs. If an applicant is disapproved or disqualified, such applicant may request an appeal of such disapproval or disqualification by the SLP Panel as provided in the rule and/or reapply for SLP status three months after the month in which the applicant received the disapproval or disqualification notice. Rule 107B(f) describes how an SLP may voluntarily withdraw from such status.

Rule 107B(g) and (h) set forth the calculations for determining whether an SLP is meeting its 10% quoting requirement and monthly volume requirement. An SLP may post non-displayed liquidity; however, such liquidity is not counted as credit toward the 10% quoting requirement. In addition, tick sensitive orders (*i.e.,* ''Sell Plus'', ''Buy Minus'' and ''Buy Minus Zero Plus'') do not count as credit toward the 10% quoting requirement.

Rule 107B(i) governs the assignment of securities to SLPs. Rule 107B(j) provides that SLPs may only enter orders electronically from off the Floor of the Exchange and may only enter such orders directly into Exchange systems and facilities designated for this purpose. SLMM quotes and orders may be for the account of the SLMM in either a proprietary or principal capacity on behalf of affiliated or unaffiliated persons and SLP-Prop orders must only be for the proprietary account of the SLP-Prop member organization. Rule 107B(k) sets forth non-regulatory penalties that apply if an SLP fails to meet its quoting requirements and sets forth procedures for reapplication. Rule 107B(l) sets forth provisions for appealing non-regulatory penalties.

Rationale for Making Pilots Permanent

The Exchange adopted the NMM Pilot in part to adapt the Exchange's model to the equities market environment in place in 2008. At that time, the more electronic market had fundamentally altered the Exchange's traditional trading environment, in which price discovery had taken place largely, and almost exclusively, on the Floor of the Exchange. As the trading information that was previously only available on the Floor of the Exchange shifted to become widely available via electronic means, together with increased fragmentation in the market, the Exchange believed that the NMM Pilot would provide a more robust trading model on the Floor where market participants could compete on more equal footing relative to their responsibilities to the market.[30] With the NMM Pilot, the Exchange would continue to provide a quality market that maintains both a competitive market maker responsible for providing liquidity to the market and the element of human judgment that is particularly valuable in less liquid securities, re-openings, and closings. The Exchange sought, and believes it has attained, the appropriate balance among market participants that retains a role for liquidity providers responsible for maintaining fair and orderly markets, *i.e.,* DMMs, together with agents on the Floor and off-Floor participants. The Exchange adopted the SLP Pilot to encourage an additional pool of liquidity at the Exchange.

As noted in the NMM Pilot approval order, the Commission had concerns regarding certain aspects of the Exchange's proposal and approved it on a pilot basis. The Commission further stated that before it would decide to make the NMM Pilot permanent, the Exchange must provide data and analysis on the impact of the NMM Pilot. The metrics requested by the Commission include: (i) DMM time at the NBBO by security; (ii) the effective spread by security; (iii) the DMM volume broken out by DMM interest type (*e.g.,* CCS, s-Quote); (iv) the average depth at the NBBO by market participant (DMMs, Floor brokers, and orders represented in the Exchange's book); (v) the ratio of (i) shares not executed in Exchange systems due to

[27] In the SLP 2010 Filing, the Exchange introduced a monthly volume requirement for SLPs of an average daily volume (''ADV'') of more than 10 million shares. *See* SLP 2010 Filing, *supra* n. 26. Effective September 1, 2012, the Exchange amended the monthly volume requirement to require instead that SLPs meet an ADV that is a specified percentage of the NYSE CADV and amended the Exchange's Price List to specify the applicable percentage of NYSE CADV for the monthly volume requirement. *See* Securities Exchange Act Release No. 67759 (August 30, 2012), 77 FR 54939 (September 6, 2012) (SR–NYSE–2012–38) (Notice of Filing).

[28] The SLP Pilot was originally available only for a proprietary trading unit of a member organization. In 2012, the Exchange amended Rule 107B to add a class of SLPs that are registered as market makers on the Exchange and subject to the market-wide equity market maker quoting obligations. *See* Securities Exchange Act Release No. 67154 (June 7, 2012), 77 FR 35455 (June 13, 2012) (SR–NYSE–2012–10) (Approval Order).

[29] In the SLP 2010 Filing, the Exchange modified the non-regulatory penalties to align them to the changes in the quoting and volume requirements for SLPs. *See* SLP 2010 Filing, *supra* no. 26. The Exchange proposes a non-substantive amendment to Rule 107B(b) to correct the cross-reference in the Rule from subparagraph (j) to subparagraph (k).

[30] *See* Securities Exchange Act Release No. 58184 (July 17, 2009 [sic]), 73 FR 42853 (July 23, 2008) (NMM Pilot Filing).

DMM execution due to (ii) the shares executed by the DMM; and (vi) effective spread for (a) orders that involve DMM liquidity provisions and (b) orders that are executed without DMM liquidity (for similar order size categories).[31] In compliance with this requirement, the Exchange has been providing the above-described metrics to the Commission's Division of Trading and Markets and Office of Economic and Risk Analysis on a monthly basis.

Since adopting the NMM Pilot, the Exchange believes that the equities market has continued to undergo significant changes that require a fresh look at the basis for whether the NMM Pilot should be approved on a permanent basis. Rather than looking at the specific metrics identified above, the Exchange believes that looking more holistically at the Exchange's performance relative to the equities market in general demonstrates the continued value of the NMM and SLP Pilots and basis for permanent approval of the pilots. In particular, the continued impact of Regulation NMS, which had been in effect for only one year when the Exchange filed for the NMM Pilot, together with additional technological advancements and competitive forces since 2008 have fundamentally altered the way the market functions and how market participants interact. Some of the major developments include the significant rise in off-exchange trading from 22% in 2009 to 34% in 2014; the proliferation of over 50 trading venues, including four additional registered equities exchanges since October 2008; and the increasing segmentation of client order flow onto private dark markets.[32]

The Exchange believes that the shifts in market share of traded volume among venues demonstrate the robust competition among markets. In particular, the following chart shows a snapshot of how market share of traded volume on registered exchanges has declined since 2009 and shifted to the TRF, which reports transactions that occur off of registered exchanges.[33]

TABLE 1—TAPE A MARKET SHARE DEVELOPMENTS

F	NYSE (%)	NYSE Arca (%)	FINRA TRI * (%)	Nasdaq (%)	Nasdaq BX (%)	Nasdaq PSX (%)	BATS Z (%)	BATS Y (%)	EDGA * (%)	EDGX ** (%)	ISE (%)	NSX (%)	CHX (%)	CBSX (%)
2009	25.0	13.4	22.5	15.5	1.9	0.0	8.5	0.0	0.0	10.4	1.9	0.6	0.3	0.1
2010	24.4	11.9	27.3	13.6	3.6	0.1	7.5	0.2	2.0	7.6	0.8	0.5	0.3	0.1
2011	24.3	10.5	29.8	13.3	2.3	0.7	6.9	2.3	3.6	5.5	0.0	0.5	0.2	0.1
2012	21.4	10.0	32.3	12.8	2.6	0.7	7.5	3.1	2.4	6.3	0.0	0.3	0.3	0.4
2013	22.1	8.4	35.3	11.6	2.3	0.5	7.1	1.9	2.8	6.9	0.0	0.4	0.4	0.4
2014	22.4	8.3	34.7	13.1	2.4	0.4	6.8	3.0	2.5	5.9	0.0	0.1	0.4	0.1

* Includes ADF and adjusted for EDGA/EDGX launch.
* EDGA and EDGX are combined into EDGX for Jan. 2009 through July 2010, as Direct Edge didn't break them out prior to receiving exchange status.

While these statistics demonstrate that all exchanges, including the Exchange, have faced challenges in the last six years, the Exchange believes that the NMM and SLP Pilots have enabled the Exchange to remain competitive during this period. As demonstrated in the chart above, notwithstanding the competing market forces, the Exchange's market share has remained relatively stable.

The Exchange further notes that it adopted the NMM and SLP Pilots during a period of high trading volumes. Since the global financial crisis of 2008–2009, there has been a significant drop in volume and volatility in cash equities markets. A case in point, Tape A CADV fell 41% from 5.64 billion in 2009 to 3.33 billion shares in 2014. Additionally, the VIX volatility index, which is an industry-standard measure of market volatility, fell from a daily average of 31.5% in 2009 to 14.2 in 2014.

TABLE 2—TAPE A VOLUME AND VIX®

	CADV	VIX®
2009	5.68	31.5
2010	4.87	22.6
2011	4.37	24.3
2012	3.66	17.8
2013	3.40	14.2
2014	3.39	14.2

As overall trading volume and volatility falls, the demand for the liquidity continuously provided by market makers' [sic] falls, which leads to thinner profit margins for market makers. This impact can be demonstrated, in part, by the significant changes in the firms operating as DMMs since the Exchange adopted the NMM Pilot. In October 2008, the Exchange had six firms operating as specialists: Bank of America Corp. (''BAC''), Barclays Capital, Inc. (''Barclays''), Bear Wagner Specialists, LLC (''Bear Wagner''), Goldman, Sachs and Co (''Goldman Sachs,'' operating Spear, Leads & Kellogg, LLC), Kellogg Specialist Group (''Kellogg), and LaBranche & Company (''Labranche''). Six years later, only one of those firms still operates as a DMM, Barclays. Below are key changes within the NYSE DMM universe:

- In March 2009, Barclays acquired Bear Wagner's DMM business, with Bear Wagner exiting the business.
- In January 2010, Barclays acquired LaBranche's DMM business, with LaBranche exiting the business.
- In February 2010, Getco Securities, LLC (''Getco'') became an NYSE DMM.
- In December 2010, Knight Capital Group, Inc. (''Knight'') acquired Kellogg's NYSE and NYSE MKT DMM business, with Kellogg exiting the business.
- In November 2011, Getco acquired BAC's DMM business, with BAC exiting the business.
- In December 2011, J. Streicher & Co, an NYSE MKT DMM, became an NYSE DMM.
- In April 2012, Virtu Financial (''Virtu'') became a NYSE DMM (in

[31] *See* NMM Pilot Approval Order, *supra* n. 5 at 64387.

[32] In a speech on October 2, 2013, Chair Mary Jo White noted that ''[a] steadily increasing percentage of trading occurs in 'dark' venues, which now appear to execute more than half of the orders of long-term investors,'' Mary Jo White, Chair, Securities and Exchange Commission, Speech at Securities Traders Association 80th Annual Market Structure Conference (Oct. 2, 2013) (available at *http://www.sec.gov/News/Speech/Detail/Speech/1370539857459#.VNoXc_nF_AQ*). The Commission also noted the fragmentation of the equities markets in its 2010 Concept Release on Equity Market Structure. *See* Securities Exchange Act Release No. 61358, 75 FR 3594 (Jan. 21, 2010). *See also,* Staff of the Division of Trading and Markets, Commission, Equity Market Structure Literature Review, Part I: Market Fragmentation, Oct. 7, 2013, (available at: *http://www.sec.gov/marketstructure/research/fragmentation-lit-review-100713.pdf)* and Tuttle, Laura, Alternative Trading Systems: Description of ATS Trading in National Market System Stocks (available at *http://www.sec.gov/marketstructure/research/alternative-trading-systems-march-2014.pdf.*)

[33] The market share percentages set forth in Table 1 are based on trades reported to the Consolidated Tape Association and via Crossing Session II on the Exchange pursuant to Rule 902(a)(iii).

2011, Virtu entered the DMM business by acquiring Cohen Capital Group, an NYSE MKT DMM).

- In November 2012, Brendan Cryan & Co, an NYSE MKT DMM, became an NYSE DMM.
- In July 2013, Knight and Getco merged to become KCG Americas.
- In August 2014, IMC Financial Markets acquired Goldman's DMM business, with Goldman exiting the business.

In this challenging environment, the Exchange believes that the operation of the NMM Pilot has helped the Exchange better serve the needs of investors by maintaining high market-quality standards. Specifically, the NMM Pilot allowed the Exchange's former specialists to compete in today's fully electronic trading environment, continuing to provide contribute to market quality. Moreover, while there has been turnover in who comprises the DMM community, the Exchange believes that the operation of the NMM Pilot has been instrumental in attracting new entrants to the business as the former specialists have exited.[34]

With respect to how DMMs operate, the Exchange believes that the NMM Pilot strikes the appropriate balance between DMM benefits and obligations. Importantly, while DMMs do not need to yield to orders on the Book, under the NMM Pilot, DMMs continue to be subject to Exchange-specific affirmative obligations to maintain a fair and orderly market that are not imposed on any other cash equity market participant. These obligations include maintaining a quote at the inside a specified percentage of the day,[35] supplying liquidity as needed to facilitate openings and closings,[36] maintaining price continuity with reasonable depth in all of their registered securities,[37] and re-entering the market if taking liquidity to increase a trading position.[38] Similarly, the SLP Pilot has created a separate class of liquidity providers at the Exchange, with differing incentives, to supplement the liquidity provided by the DMMs, which further supports the Exchange's market quality.

The Exchange believes that by operating under its NMM and SLP Pilots, it offers a diverse and unique population of market participants, including DMMs, SLPs, Floor brokers, and other off-Floor market participants, that allow it to more effectively compete for order flow, with superior market quality. The Exchange believes that an important market quality measure is how much liquidity an exchange provides. In today's fragmented equity model, the market quality of displayed venues varies widely. The Exchange believes, however, that it continues to be a leader in liquidity providing among registered exchanges, which is due to the ongoing operation of the NMM and SLP Pilots.

The chart below highlights six key market-quality metrics that measure best price and liquidity in Exchange-listed securities. Best prices are measured by assessing Exchange bid/ask spreads, percentage of time at best prices, and percentage time alone at the best prices. Liquidity is measured by looking at market share, most displayed shares at the best prices, and percentage of time at the best prices with the greatest displayed size. As set forth in the table below, the Exchange ranks first in each of these metrics.

NYSE-LISTED SECURITIES (TAPE A)—DECEMBER 2014

All securities (equal weighted)						
	Market share (volume weighted)	Average quoted spread (time weighted)	Displayed shares at NBBO	% Time at NBBO	% Time best price & largest size	% Time alone at NBBO
NYSE	23.4	48.5	1071.9	74.0	45.8	19.6
Nasdaq	13.6	311.6	451.6	47.3	17.5	4.2
NYSE Arca	8.0	710.4	409.6	42.9	12.0	3.0
BZX	7.7	463.8	294.3	31.2	6.7	1.5
EDGX	5.0	382.1	326.6	29.5	9.4	3.1
BYX	3.6	551.1	107.7	21.2	2.5	0.6
Nasdaq BX	1.8	68.7	59.2	15.7	2.0	0.2
EDGA	2.8	850.6	94.9	19.2	2.0	0.3

The Exchange notes that DMMs and SLPs have been important contributors to the Exchange's performance, particularly at setting the NBBO. For example, during September 2014, DMMs and SLPs (including SLMMs) accounted for over 38% of the liquidity-providing volume on the Exchange. In addition, during 2014, DMMs have averaged quoting at the inside almost 30% of the time and DMMs provided an average of 14.6% of the Exchange's size. In 2014, 8.3% of DMM volume executed was from quotes that improved the NBBO at the time the quote was entered. This represents an improvement since 2009, when only 2.7% of DMM volume improved the NBBO.

The Exchange believes that key changes to the NMM Pilot support the continued operation of the pilot in the ever-changing equities environment. For example, as noted above, in 2009, the Exchange amended Rule 104(a)(1) to increase the amount of time that a DMM unit must maintain a bid and offer at the inside from 10% to 15% for Less Active Securities and from 5% to 10% for More Active Securities.[39] During the same period, the Exchange also amended Rule 1000 to permit CCS to provide a partial fill to an incoming order.[40]

After the DMM's quoting requirement was increased, DMM share of intraday provide activity increased, from 18.82% in July 2009, before the quoting change,

[34] The Exchange notes that in 2008, it also amended its rules governing the operation of DMMs, in particular, Rule 98, to enable specialists, and now DMMs, to better integrate their NYSE market-making operations with market-making activities on other markets. *See* Securities Exchange Act Release No. 58328 (Aug. 7, 2008), 73 FR 48260 (Aug. 18, 2008) (SR–NYSE–2008–45) (Approval Order); *see also* Securities Exchange Act Release No. 72534 (July 3, 2014), 79 FR 39019 (July 9, 2014) (SR–NYSE–2014–12) (Order approving amendments to Rule 98 to adopt a principles-based approach to prohibit the misuse of material non-public information).

[35] *See* NYSE Rule 104(a)(1)(A).

[36] *See* NYSE Rule 104(a)(2)–(3).

[37] *See* NYSE Rule 104(f)(ii).

[38] *See* NYSE Rule 104(h).

[39] *See* DMM quoting requirement filing, *supra* n. 14.

[40] *See* CCS Partial Fill Approval Order, *supra* n. 18.

to 20.03% in September 2009. The Exchange noted a concurrent decline in DMM CCS volume during this same time from 9.32% to 6.94% of DMM activity. The Exchange believes that the decrease in CCS activity was related to a corresponding increase in the DMM displayed quoting activity. During the same period, the Exchange experienced a drop in NYSE shares routed to away markets from 7.8% in July 2009 to 7.1% in September 2009, to 6.6 in October 2009. The Exchange believes that the decline in shares routed away is attributable in part to both to the increased quoting requirement, because DMMs represented the best quote in the market more frequently, and the ability for CCS to partially fill incoming orders, thereby obviating the need to route such orders to away markets. Accordingly, the Exchange believes that these changes to the NMM Pilot contributed to the ongoing market quality at the Exchange.

SLPs likewise represent a substantial share of the Exchange's intraday liquidity-providing volume. Participation in the SLP Pilot has grown steadily since inception. When first launched, only 497 symbols were covered by an SLP. By the end of September 2014, nearly every Exchange symbol, including operating companies, preferred stocks, warrants, rights and all other issue types, had at least one SLP quoting in it. In December 2014, approximately 45% of these symbols had at least one SLP quoting at the inside at least 10% of the time.

Through December 2014, SLPs represented 25.2% of liquidity-providing execution. The Exchange notes that SLPs have been a solid contributor to liquidity in less-active issues, and now account for 13.3% of the liquidity-providing volume in issues outside of the Exchange's 1,000 most active issues.

The following chart shows both the increase in number of symbols assigned to SLPs during the course of the pilot, and the number of SLP symbols in which at least one SLP is at the NBB or NBO at least 10% of the time. The first two columns represent a count of all SLP/symbol pairs where the average time at the NBB or NBO (referred to in the chart as NBBO) was 10%. For example, if symbol XYZ were assigned to three SLPs, of which two met the 10% NBBO quoting requirement, the count for ''Total'' column would be three, and the count for the ''NBBO >10%'' column would be two. The right two columns show the number of distinct symbols that are covered by and reached 10% NBBO by at least one SLP.

SLP Symbols and Quoting

	Total	NBBO>10%	Distinct symbols	Distinct NBBO >10%
Dec–08	501	332	497	335
Dec–09	4,328	2,864	1,242	1,199
Dec–10	6,509	4,079	1,404	1,302
Dec–11	6,599	3,293	1,478	1,019
Dec–12	7,971	3,340	1,909	1,377
Dec–13	10,352	2,845	3,218	1,125
Dec–14	8,572	3,458	3,262	1,481

The Exchange notes that notwithstanding the significant changes the U.S. equities market has undergone since 2008, the statistics the Exchange committed to track in connection with the NMM Pilot demonstrate that the pilot rules have been effective at improving the Exchange's effective spread on marketable orders, the percentage of time that the DMMs quote at the NBBO and the percentage of DMM participation in total trading volume. Specifically,

- Effective spreads on all marketable orders, which ranged from 10 to 18.5 basis points from August to December 2008, have remained below 10 basis points since September 2009 and ranged from 6.7 to 8.2 basis points from November 2013 to November 2014. Effective spreads have declined for all order size categories from 100–9999 shares.
- The percentage of time that DMMs were quoting at the NBBO, which ranged from 9.9% to 19% from August to December 2008, have exceeded 20% since that time and ranged from 31.3% to 39.2% in the period from November 2013 to November 2014.

For these reasons, the Exchange believes that the Pilots' rules, as amended, should be made permanent. The Exchange also proposes to delete Rule 104T, which is the pre-NMM Pilot version of Rule 104. Rule 104T remains in the Exchange's rule book, but is not operational. With permanent approval of current Rule 104, the need to retain Rule 104T is mooted. The Exchange also proposes to delete Supplementary Material to Rule 104, and related reference to that Supplementary Material in Rule 104(a)(2), because that rule text was intended to be in effect only through October 30, 2009.[41] Finally, the Exchange proposes to replace the reference to ''NYSE Regulation's Division of Market Surveillance'' in Rule 104(k) with a reference to the Exchange. Pursuant to Rule 0, references to the Exchange may mean references to NYSE Regulation or FINRA, which performs certain regulatory services to the Exchange pursuant to a Regulatory Services Agreement.

The Exchange notes that the proposed change is not otherwise intended to address any other issues and the Exchange is not aware of any problems that member organizations would have in complying with the proposed rule change.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[42] in general, and furthers the objectives of Section 6(b)(5) of the Act,[43] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system and, in general, to protect investors and the public interest and because it is not designed to permit unfair

[41] *See* Securities Exchange Act Release No. 60573 (Aug. 26, 2009), 74 FR 45500 (Sept. 2, 2009) (SR–NYSE–2009–86) (Notice of Filing).

[42] 15 U.S.C. 78f(b).

[43] 15 U.S.C. 78f(b)(5).

discrimination between customers, issuers, brokers, or dealers.

The Exchange believes the proposed rule change is consistent with these principles because it seeks to make permanent Pilots and associated rule changes that were previously approved by the Commission as pilots, that the Exchange has subsequently provided data and analysis to the Commission, and that this data and analysis, as well as the further analysis in this filing, clearly shows that the Pilots have operated as intended and are consistent with the Act.

The Exchange also believes the proposed rule change is designed to facilitate transactions in securities and to remove impediments to, and perfect the mechanisms of, a free and open market and a national market system because making the Pilots permanent would provide market participants with a trading venue that encourages the addition of liquidity, facilitates the trading of larger orders more efficiently, and operates to reward aggressive liquidity providers. The monthly statistics provided by the Exchange to the Commission staff over more than five years demonstrate that the NMM Pilot has improved market quality by numerous measures. Similarly, the Exchange believes the data show that the SLP program has appropriately rewarded aggressive liquidity providers in the market. The Exchange believes that making both of these Pilots permanent would encourage the additional utilization of, and interaction with, the NYSE and provide customers with the premier venue for price discovery, liquidity, competitive quotes, and price improvement.

In addition, the Exchange believes that making the NMM and SLP Pilots permanent would promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market because the rules strike the appropriate balance between the obligations and benefits of the Exchange's market participants. For example, while DMMs no longer have agency responsibilities to the Book, they retain a number of affirmative obligations that are unique to the Exchange, including meeting Exchange-only quoting requirements, supplying liquidity as needed when facilitating openings and closings, and maintaining depth and continuity in their listed securities. Given these obligations, the Exchange believes it is appropriate to classify DMMs as a separate participant in the parity allocation wheel. The Exchange notes that it has been operating under this model since 2009, and the above-cited market statistics demonstrate that within the highly competitive cash equities market, the Exchange's model, including DMM parity, has enabled the Exchange to maintain execution quality for all investors on the Exchange.

Finally, the Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition. For these reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[44] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that making the Pilots permanent would continue to foster competition among liquidity providers and maintain execution quality on the Exchange. The Exchange believes that the data supplied to the Commission and experience gained over more than six years have demonstrated the efficacy of the Pilots, and as such, they should be made permanent. Finally, the Exchange notes that it operates in a highly competitive market in which market participants can easily direct their orders to competing venues, including off-exchange venues. In such an environment, the Exchange must continually review, and consider adjusting the services it offers and the requirements it imposes to remain competitive with other U.S. equity exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

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 such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2015–26 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSE–2015–26. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSE–2015–26, and should be submitted on or before July 8, 2015.

[44] 15 U.S.C. 78f(b)(8).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[45]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–14827 Filed 6–16–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75160; File No. SR–FINRA–2015–016]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to Exemptions From the Order Audit Trail System Recording and Reporting Requirements

June 11, 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 10, 2015, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by FINRA. FINRA has designated the proposed rule change as constituting a ''non-controversial'' rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend Rule 7470 to extend for four years FINRA's ability to exempt certain members from the recording and reporting requirements of the Order Audit Trail System (''OATS'') Rules (''OATS Rules'') for manual orders received by the member.

Below is the text of the proposed rule change. Proposed new language is in *italics;* proposed deletions are in brackets.

* * * * *

7000. CLEARING, TRANSACTION AND ORDER DATA REQUIREMENTS, AND FACILITY CHARGES

* * * * *

7400. ORDER AUDIT TRAIL SYSTEM

* * * * *

7470. Exemption to the Order Recording and Data Transmission Requirements

(a) through (b) No Change.

(c) This Rule shall be in effect until July 10, *2019*[2015].

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The OATS Rules impose obligations on FINRA members to record in electronic form and report to FINRA on a daily basis certain information with respect to orders originated, received, transmitted, modified, canceled, or executed by members relating to OTC equity securities and NMS stocks. OATS captures this order information and integrates it with quote and transaction information to create a time-sequenced record of orders, quotes, and transactions. This information is then used by FINRA staff to conduct surveillance and investigations of member firms for violations of FINRA rules and federal securities laws and regulations.

On September 28, 2005, the SEC approved amendments to the OATS Rules that, among other things, gave FINRA the authority to grant exemptive relief from the OATS reporting requirements for manual orders.[4] In 2006, FINRA's exemptive authority was expanded to include the authority to exempt manual orders received by members from the OATS recording requirements.[5] Under Rule 7470, at a minimum, members must meet the following criteria to be eligible to request an exemption from the OATS recording and reporting requirements for manual orders: (1) the member and current control affiliates and associated persons of the member have not been subject within the last five years to any final disciplinary action, and within the last ten years to any disciplinary action involving fraud; (2) the member has annual revenues of less than $2 million; (3) the member does not conduct any market making activities in any security subject to the OATS Rules; (4) the member does not execute principal transactions with its customers (with limited exceptions for principal transactions executed pursuant to error corrections); and (5) the member does not conduct clearing or carrying activities for other firms.[6] An exemption granted by FINRA pursuant to Rule 7470 is for a maximum of two years; however, a member that continues to meet the criteria may request subsequent exemptions at or prior to the expiration of a grant of exemptive relief.[7]

Rule 7470 also includes a sunset provision. As initially adopted, the exemptive provision expired as of July 10, 2011, which was five years from the original effective date of the rule.[8] In 2011, FINRA filed a proposed rule change to extend the sunset provision until July 10, 2015, noting that FINRA adopted this exemptive authority so that it would have the ability to grant relief to members that meet certain criteria in situations where, for example, the reporting of order information would be unduly burdensome for the member or where temporary relief from the OATS Rules, in the form of additional time to achieve compliance, would permit the members to avoid unnecessary expense or hardship.[9] FINRA noted that these concerns continued to be present for many firms and concluded it was appropriate to allow firms that have received an exemption from OATS to continue to rely on their current exemption (or request an additional two-year exemption) until the scope and

[45] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

[4] *See* Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005).

[5] *See* Securities Exchange Act Release No. 53580 (March 30, 2006), 71 FR 17529 (April 6, 2006). In 2006, the exemptive provision was also relocated from NASD Rule 6955(d) to NASD Rule 6958. As of December 15, 2008, NASD Rule 6958 was renumbered as FINRA Rule 7470. *See* FINRA *Regulatory Notice* 08–57 (October 2008).

[6] *See* Rule 7470(a).

[7] *See* Rule 7470(b).

[8] *See* Securities Exchange Act Release No. 52521 (September 28, 2005), 70 FR 57909 (October 4, 2005).

[9] *See* Securities Exchange Act Release No. 64717 (June 21, 2011), 76 FR 37384 (June 27, 2011).

application of the SEC's consolidated audit trail was determined.[10]

On July 18, 2012, the SEC adopted Rule 613 under Regulation NMS, which requires FINRA and the national securities exchanges (''SROs'') to jointly file an NMS plan to govern the creation, implementation, and maintenance of a consolidated audit trail and central repository.[11] The SROs initially filed the NMS plan required by Rule 613 on September 30, 2014, and, on February 27, 2015, filed a subsequent NMS plan to amend and restate the original plan filed the previous September (''CAT NMS Plan'').[12] Under Rule 613 and the CAT NMS Plan, all broker-dealers that are members of FINRA or a national securities exchange must report order information to the central repository; small broker-dealers must report the required information no later than three years following the SEC's approval of the CAT NMS Plan, and all other broker-dealers must report the required information no later than two years following the SEC's approval.[13]

FINRA believes that extending the sunset provision in Rule 7470 for an additional four years is appropriate given the current state of the consolidated audit trail. If the CAT NMS Plan is published and approved by the SEC within the next year,[14] all of those FINRA member firms currently reporting to OATS or relying on an exemption from OATS reporting will be reporting to the consolidated audit trail within four years, provided the SEC does not extend the implementation timeline laid out in Rule 613(a) or exempt some firms from reporting to the consolidated audit trail. If the SEC does not approve the CAT NMS Plan within the next year, FINRA still believes it is appropriate to extend the sunset provision in Rule 7470 so that those firms relying on the exemption may continue to do so provided they meet the criteria to qualify. FINRA believes that the proposed rule change will enable FINRA to exempt manual orders received by certain small firms from the OATS Rules and avoid imposing potentially unnecessary expense or hardship on those firms that qualify for the exemption. FINRA is not proposing any substantive changes to the criteria necessary for firms to qualify for an exemption because FINRA believes that the criteria continue to ensure that only those firms with limited revenue, no recent final disciplinary actions, and limited business models will be eligible.

FINRA has filed the proposed rule change for immediate effectiveness. The implementation date will be July 10, 2015.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[15] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. FINRA believes that the proposed rule change will enable FINRA to exempt manual orders received by certain small firms from the OATS Rules and avoid imposing potentially unnecessary expense or hardship on those firms that qualify for the exemption. FINRA believes that the proposed rule change is particularly appropriate given the current state of the development of the consolidated audit trail which, unless amended, will require these small firms to report order information to the central repository created pursuant to Rule 613. If the CAT NMS Plan is approved, these small firms can then devote resources to any applicable reporting obligations under Rule 613 and the CAT NMS Plan rather than reporting manual order information to OATS for a brief period of time in the interim.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. As noted above, FINRA believes that the proposed rule change will enable FINRA to exempt manual orders received by certain small firms from the OATS Rules and avoid imposing potentially unnecessary expense or hardship on those firms that qualify for the exemption. FINRA notes that the compliance burden on these firms would also potentially be imposed for only a short period of time as these firms will also be required to develop a means to report order information to the central repository of the consolidated audit trail if the SEC approves the CAT NMS Plan.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[16] and Rule 19b–4(f)(6) thereunder.[17]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–FINRA–2015–016 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–FINRA–2015–016. This file

[10] The SEC proposed Rule 613 under Regulation NMS regarding the consolidated audit trail on May 26, 2010. *See* Securities Exchange Act Release No. 62174 (May 26, 2010), 75 FR 32556 (June 8, 2010).

[11] *See* 17 CFR 242.613(a); *see also* Securities Exchange Act Release No. 67457 (July 18, 2012), 77 FR 45722 (August 1, 2012).

[12] Although the SEC has not yet published the CAT NMS Plan for public comment, the CAT NMS Plan submitted by the SROs is available on the SROs' Web site at *www.catnmsplan.com.*

[13] *See* 17 CFR 242.613(a)(3)(v), (vi). Small broker-dealers are those that qualify as small broker-dealers as defined in 17 CFR 240.0–10(c).

[14] Once an NMS plan is published for public comment, the SEC has a maximum of 180 days to approve the plan with such changes or subject to such conditions as the SEC may deem necessary or appropriate. *See* 17 CFR 242.608(b)(2).

[15] 15 U.S.C. 78*o*–3(b)(6).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(6).

number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing will also be available for inspection and copying at the principal office of FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2015–016 and should be submitted on or before July 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–14833 Filed 6–16–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75165; File No. S7–11–15]

Request for Comment on Exchange-Traded Products

AGENCY: Securities and Exchange Commission.

ACTION: Request for comment.

SUMMARY: The Securities and Exchange Commission (''Commission'') is seeking public comment on topics related to the listing and trading of exchange-traded products on national securities exchanges and sales of these products by broker-dealers.

DATES: Comments should be received by August 17, 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/other.shtml*);
- Send an email to *rule-comments@sec.gov,* including File Number S7–11–15 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*), following 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 S7–11–15. 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 of submission. The Commission will post all comments on the Commission's Web site (*http://www.sec.gov*). 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 publicly available.

FOR FURTHER INFORMATION CONTACT: Edward Cho, Special Counsel, at (202) 551–5508; Christopher Chow, Special Counsel, at (202) 551–5622; or Sarah Schandler, Special Counsel, at (202) 551–7145, Division of Trading and Markets, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–7010.

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I. Discussion

A. Introduction

Exchange-traded products (''ETPs'') constitute a diverse class of financial products that seek to provide investors with exposure to financial instruments, financial benchmarks, or investment strategies across a wide range of asset classes. ETP trading occurs on national securities exchanges and other secondary markets that are regulated by the Commission under the Securities Exchange Act of 1934 (''Exchange Act''),[1] making ETPs widely available to market participants, from individual investors to institutional investors, including hedge funds and pension funds.

The Commission approved the listing and trading of shares of the first ETP—the SPDR S&P 500 ETF (''SPY'')—in 1992.[2] Since the SPY began trading on January 22, 1993, there has been enormous growth in the number, aggregate market capitalization, and variety of ETPs. The chart below depicts the growth of ETPs, both in number and market capitalization, since 1993.

As reflected in Figure 1 (below), from 2006 to 2013, the total number of ETPs listed and traded as of year end rose by an average of 160 per year, with a net increase of more than 200 in both 2007 and 2011. By comparison, from 1993 to 2005, the total number of ETPs listed and traded as of year end rose by an average of just 17 per year, with a net increase of 60 in 2000. The total market capitalization of ETPs has also grown substantially, nearly doubling since the end of 2009. Much of this growth has been in index-based ETPs.

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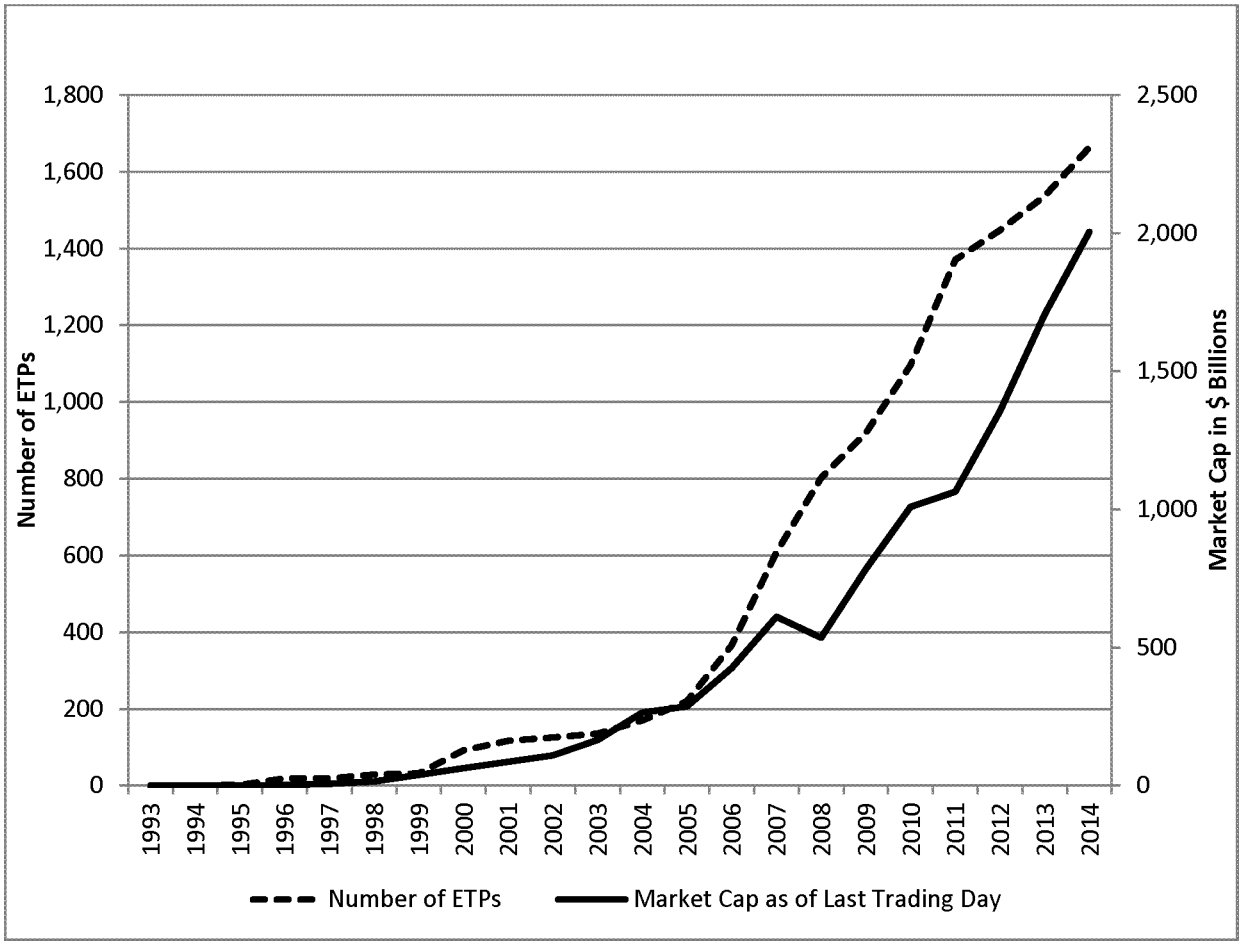
[18] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78a *et seq.* Once listed on a national securities exchange, ETP shares also can be traded on Alternative Trading Systems (as defined in Rule 300 of Regulation ATS, 17 CFR 242.300) or in other over-the-counter transactions.

[2] *See* Securities Exchange Act Release No. 31591 (Dec. 11, 1992), 57 FR 60253 (Dec. 18, 1992) (SR–Amex–92–18) (order approving the adoption of listing standards for Portfolio Depositary Receipts and the listing and trading of shares of SPY pursuant to those listing standards).

Figure 1: Aggregate Market Capitalization and Number of ETPs, 1993–2014[3]



As of December 31, 2014, there were 1,664 U.S.-listed ETPs, and they had an aggregate market capitalization of just over $2 trillion.[4] Trading in these ETPs makes up a significant portion of secondary-market equities trading. For example, during 2014, trading in U.S.-listed ETPs made up about 16.7% of U.S. equity trading by share volume and 25.7% of U.S. equity trading by dollar volume.[5]

There has also been significant growth in the range of investment strategies that ETPs pursue. These strategies have expanded from exchange-traded funds (''ETFs'') that track equity indices (such as the original SPY) to include, among other things: (i) ETPs that track other types of indices (such as those based on fixed-income securities or on derivatives contracts on commodities and currencies); (ii) actively managed ETPs that hold portfolios of equities, fixed-income instruments, foreign securities, commodities, currencies, futures, options, or other over-the-counter or exchange-traded derivatives;[6] (iii) leveraged, inverse, and inverse leveraged ETPs;[7] and (iv)

[3] The figures underlying this chart were produced by an analysis by Commission staff of year-end market data obtained through subscriptions to Morningstar Direct and Bloomberg Professional services.

[4] These figures reflect an analysis by Commission staff of market data obtained through subscriptions to Morningstar Direct and Bloomberg Professional services.

[5] These figures reflect an analysis by Commission staff of market data obtained through the Commission's Market Information Data and Analytics System (''MIDAS''). The staff's analysis of MIDAS data also shows that approximately 32.4% of the trading activity (by share volume) in ETPs during 2014 took place on trading venues other than national securities exchanges, which is roughly comparable to the approximately 35.2% of share volume in all equity trading that took place off an exchange in 2014.

[6] *See, e.g.,* Securities Exchange Act Release Nos. 50603 (Oct. 28, 2004), 69 FR 64614 (Nov. 5, 2004) (SR–NYSE–2004–22) (order approving the adoption of listing standards for Equity Gold Shares and the listing and trading of shares of the streetTRACKS Gold Trust, which was subsequently renamed the SPDR Gold Trust); 60064 (June 8, 2009), 74 FR 28315 (June 15, 2009) (SR–NYSEArca–2009–30) (order granting approval for the listing and trading of shares of the iShares Diversified Alternatives Trust); 68390 (Dec. 10, 2012), 77 FR 74540 (Dec. 14, 2012) (SR–BATS–2012–042) (order granting approval for the listing and trading of shares of the Sovereign Screened Global Bond Fund); 68871 (Feb. 8, 2013), 78 FR 11238 (Feb. 15, 2013) (SR–NYSEArca–2012–138) (order granting approval for the listing and trading of shares of the PIMCO Foreign Currency Strategy Exchange-Traded Fund); 68972 (Feb. 22, 2013), 78 FR 13721 (Feb. 28, 2013) (SR–NASDAQ–2012–147) (order granting approval for the listing and trading of shares of the First Trust High Yield Long/Short ETF); 70209 (Aug. 15, 2013), 78 FR 51769 (Aug. 21, 2013) (SR–NYSEArca–2013–60) (order granting approval to list and trade shares of the Market Vectors Low Volatility Commodity ETF and Market Vectors Long/Short Commodity ETF); and 71378 (Jan. 23, 2014), 79 FR 4786 (Jan. 29, 2014) (SR–NYSEArca–2013–137) (order granting approval to list and trade shares of the Merk Gold Trust).

[7] Leveraged ETPs seek to achieve performance results, over a specified period, that are a multiple or an inverse multiple of the performance of the index or benchmark they track. Inverse ETPs (also called ''short'' funds) seek to deliver the opposite of the performance of the index or benchmark they track. Like traditional ETPs, some leveraged and inverse ETPs track broad indices, some are sector-specific, and others are linked to commodities, currencies, or some other benchmark. *See* U.S. Securities and Exchange Commission, Leveraged and Inverse ETFs: Specialized Products with Extra

ETPs employing market volatility, hedging, or options-based strategies.[8]

The increasing scope and complexity of ETP investment strategies in recent years have led to an increase in the number and complexity of requests by issuers for exemptive relief under the Exchange Act (to allow ETPs to be offered for sale on exchanges) and in the number and complexity of proposed rule changes filed with the Commission by exchanges seeking to establish listing standards for the securities of new ETPs. Accordingly, the Commission believes that this is an opportune time to seek public comment on topics associated with its oversight of the listing and trading of ETPs on national securities exchanges.[9]

B. The Types of ETPs

Although ETPs constitute a diverse class of financial products, for purposes of this Request for Comment they are classified into three broad categories.[10]

Exchange-Traded Funds (ETFs)

The first, and largest, category comprises ETFs, which are open-end fund vehicles or unit investment trusts that are registered as investment companies under the Investment Company Act of 1940 (''1940 Act'').[11] Like an open-end fund, an ETF pools the assets of multiple investors and invests those assets according to its investment objective and principal investment strategies, and each share of an ETF represents an undivided interest in the underlying assets of the ETF. However, unlike open-end funds—shares of which are purchased or redeemed at the fund's current net asset value (''NAV''),[12] which is typically calculated at the end of the trading day—ETF shares may be bought or sold by investors throughout the day through a broker-dealer at a market-determined price.[13]

Non-1940 Act Pooled Investment Vehicles

The second category comprises ETPs that, generally, are trust or partnership vehicles that are not registered under the 1940 Act because they do not invest primarily in securities. Examples of ETPs in this category include those that physically hold a precious metal or that hold a portfolio of futures or other derivatives contracts on certain commodities or currencies. Offerings of securities issued by ETPs in this second category are registered only under the Securities Act of 1933 (''Securities Act'') [14] and are not also registered under the 1940 Act.

Exchange-Traded Notes (ETNs)

The third category comprises exchange-traded notes (''ETNs''). ETNs are senior debt instruments issued by financial institutions, and they pay a return based on the performance of a ''reference asset''—an asset, market benchmark, or other investment strategy, such as the return on the S&P 500 Index, the performance of commodities or commodity indices, or the performance of the common stock of an individual public company. Unlike the other two categories of ETPs described above, ETNs are not pooled vehicles, and they do not hold an underlying portfolio of securities, futures, over-the-counter derivatives, or other assets. Offerings of ETNs are registered under the Securities Act, and the performance of the reference assets generally determines the amount owed by the issuer of the ETN to the holder of the ETN at maturity.

Market Statistics

To provide a general overview of the distribution of market capitalization and trading volume across broad categories of ETPs, the table below shows the number of ETP products (by underlying or reference asset and by type of ETP), their aggregate market capitalization, and the total value traded as of year end 2014.

ETPs by Underlying or Reference Asset Type, as of Year End 2014 [15]

Underlying or reference asset or strategy	Number	Total market cap (millions)	Total value traded in 2014 (millions)
Asset Allocation	36	$7,435	$14,380
ETF	34	7,402	14,344
ETN	2	33	36
Alternative Strategies	330	42,985	1,952,802
ETF	209	31,865	1,296,485
Non-1940 Act Pooled Investment Vehicles	25	4,727	142,465

Risks for Buy-and-Hold Investors, *available at http://www.sec.gov/investor/pubs/leveragedetfs-alert.htm; see also* Securities Exchange Act Release No. 52553 (Oct. 3, 2005), 70 FR 59100 (Oct. 11, 2005) (SR–Amex–2004–62) (order granting approval for the adoption of listing standards to accommodate leveraged ETFs and for the listing and trading of shares of the xtraShares Trust).

[8] For example, recent ETPs have included an ETF that seeks to track the performance of the CBOE S&P 500 VIX Tail Hedge Index, *see* Securities Exchange Act Release No. 67485 (July 23, 2012), 77 FR 44291 (July 27, 2012) (SR–NYSEArca–2012–50); an ETF that writes covered call options on underlying ETPs that it owns, *see* Securities Exchange Act Release No. 67552 (Aug. 1, 2012), 77 FR 47131 (Aug. 7, 2012) (SR–NYSEArca–2012–55); an ETF that holds long and short positions in underlying ETFs and ETNs, *see* Securities Exchange Act Release No. 67559 (Aug. 1, 2012), 77 FR 47482 (Aug. 8, 2012) (SR–NYSEArca–2012–57); an ETF that holds a portfolio including equities, equity futures, and volatility-related instruments, *see* Securities Exchange Act Release No. 68158 (Nov. 5, 2012), 77 FR 67412 (Nov. 9, 2012) (SR–NYSEArca–2012–101); and an ETF that seeks to track the performance of an index of over-the-counter put options on volatile stocks, *see* Securities Exchange Act Release No. 69373 (Apr. 15, 2013), 78 FR 23601 (Apr. 19, 2013) (SR–NYSEArca–2012–108).

[9] The Commission has previously sought comment on topics related to exchange-traded funds, most recently in 2008. *See* Exchange-Traded Funds, Investment Company Act Release No. 28193 (Mar. 11, 2008), 73 FR 14618 (Mar. 18, 2008) (proposed rule), *available at http://www.sec.gov/rules/proposed/2008/33-8901.pdf.* The Commission has not adopted the rule that was proposed in the 2008 release.

[10] Recently, the Commission approved an exchange proposal to adopt rules that provide for the listing and trading of Exchange-Traded Managed Fund Shares (''ETMFs''), which would operate differently from existing ETPs. *See* Securities Exchange Act Release No. 73562 (Nov. 7, 2014), 79 FR 68309 (Nov. 14, 2014) (SR–NASDAQ–2014–020) (Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1 thereto, Relating to the Listing and Trading of Exchange-Traded Managed Fund Shares) (''ETMF Approval Order''). No ETMFs are currently listed or traded on an exchange, and this Request for Comment does not therefore address their listing and trading.

[11] 15 U.S.C. 80a–1 *et seq.*

[12] The NAV of an investment company is the net value of all the assets and liabilities in the investment company's portfolio divided by the number of the shares issued by the investment company.

[13] Closed-end funds are also registered 1940 Act investment companies that issue securities that are traded on an exchange, and they may pursue investment strategies similar to those of ETFs. The trading of closed-end funds differs from that of ETFs, however, in that closed-end funds do not operate with the creation and redemption mechanism that, as described below, helps to keep an ETF's market price closely tied to the value of the assets it holds. *See infra* at Section I.C.

[14] 15 U.S.C. 77a *et seq.*

ETPs BY UNDERLYING OR REFERENCE ASSET TYPE, AS OF YEAR END 2014 [15]—Continued

Underlying or reference asset or strategy	Number	Total market cap (millions)	Total value traded in 2014 (millions)
ETN	96	6,392	513,852
Commodities	118	55,366	406,728
ETF	7	213	810
1940 Act Pooled Investment.			
Vehicles	38	50,880	390,213
ETN	73	4,273	15,705
International Equity	367	380,023	2,497,521
ETF	361	376,941	2,495,865
ETN	6	3,082	1,657
Municipal Bond	32	14,273	20,186
ETF	32	14,273	20,186
Sector Equity	297	304,588	2,782,522
ETF	281	293,673	2,764,385
ETN	16	10,915	18,137
Taxable Bond	217	290,245	1,000,086
ETF	214	290,219	1,000,037
ETN	3	26	49
U.S. Equity	267	909,677	8,581,038
ETF	252	907,557	8,579,330
ETN	15	2,119	1,707
Grand Total	1,664	2,004,591	17,255,263

C. How Existing ETPs Function

1. Purchases, Sales, Creations, and Redemptions

Most investors in an ETP buy and sell the ETP's securities in the secondary market, at a market-determined price, with other market participants, including other investors, broker-dealers, and market makers, on the other side of the transaction. The ETP securities that are listed for trading on an exchange (''ETP Securities'') are either (i) shares issued by the ETP or (ii) in the case of ETNs (which are, as noted above, debt instruments issued by a financial institution), the debt instruments themselves.

Although most investors can buy or sell ETP Securities only in the secondary market through a broker-dealer, certain large market participants, typically broker-dealers, can become authorized participants (''Authorized Participants'') with respect to most ETPs.[16] Each Authorized Participant enters into a contractual relationship with the ETP issuer that allows it to engage in purchases and redemptions of ETP Securities directly with that issuer.

For almost all ETPs,[17] the issuance and redemption of ETP Securities operates in essentially the same manner.[18] ETPs generally issue ETP Securities only in large aggregations or blocks (for example, 50,000 ETP shares) called creation units (''Creation Units''). Most ETPs are structured so that an Authorized Participant will purchase a Creation Unit with a portfolio deposit (''Portfolio Deposit''), which is a basket of assets (and sometimes cash) that generally reflects the composition of the ETP's portfolio.[19] The ETP makes public the contents of the Portfolio Deposit before the beginning of the trading day.[20] Because the purchase price of a Creation Unit and its aggregate NAV must be equal, an amount of cash will be exchanged between the Authorized Participant and the ETP at the time of purchase when necessary to balance the value of the Portfolio Deposit with that of the Creation Unit. After purchasing a Creation Unit, an Authorized Participant may hold the ETP Securities or sell (or lend) some or all of them to investors in the secondary market.

Similarly, for most ETPs, when an Authorized Participant wishes to redeem ETP Securities, it presents a Creation Unit to the ETP for redemption and receives in return a redemption basket (''Redemption Basket''), the contents of which are made public by the ETP before the beginning of the trading day. The Redemption Basket (which is usually, but not always, the same as the Portfolio Deposit) typically consists of securities or commodities and a small amount of cash.[21] As with purchases from the ETP, redemptions to the ETP are priced at NAV,[22] and an amount of cash will be exchanged when necessary to balance the value of the Redemption Basket with that of the Creation Unit.

When creation and redemption transactions occur wholly or partly ''in kind''—in other words, when securities constituting the ETP's portfolio are exchanged for ETP Securities and vice versa—certain benefits can accrue to the ETP and its investors. In-kind exchanges generally result in lower trading expenses (because securities received or

[15] These figures reflect an analysis by Commission staff of market data obtained through subscriptions to Morningstar Direct and Bloomberg Professional services. Figures are as of the last trading day of 2014.

[16] ETNs, as credit instruments issued by a financial institution, do not have Authorized Participants.

[17] ETNs may or may not be redeemable, and they employ different calculations and procedures to issue and redeem ETN units based on the value or performance of the underlying reference asset or benchmark. The issuance and redemption process for ETNs is generally performed by institutional investors, as issuers require issuance or redemption to occur in large blocks of ETNs (*e.g.,* 25,000 to 50,000 ETNs). ETNs are issued and redeemed (where redeemable) solely for cash.

[18] Some ETPs, however, do not permit regular creations after the initial public offering of the ETP, allowing only ETP redemptions. *See, e.g.,* Securities Exchange Act Release No. 66930 (May 7, 2012), 77 FR 27817 (May 11, 2012) (SR–NYSEArca 2012–18) (APMEX Physical—1 oz. Gold Redeemable Trust).

[19] Some issuers may allow or require Creation Units to be created for cash only.

[20] In most cases, ETPs publish the contents of their Portfolio Deposit through the National Securities Clearing Corporation (''NSCC''). The NSCC provides its members with several methods to access this information. *See http://www.dtcc.com/clearing-services/equities-trade-capture/etf.aspx.*

[21] Some issuers may allow or require cash-only Redemption Baskets.

[22] Certain ETPs that hold physical commodities and are not ETFs redeem Creation Units, at the Authorized Participant's option, either for commodities with a value equal to the NAV of the Creation Unit or for cash at less than the NAV of the Creation Unit. *See, e.g.,* Securities Exchange Act Release No. 66930, *supra* note 18.

delivered in kind do not need to be purchased or sold in the market by the ETP, thus avoiding brokerage fees) and lower taxable gains to shareholders (because appreciated securities are not sold but are delivered in kind to redeeming Authorized Participants).

2. Arbitrage Between an ETP's Market Price and Its NAV

Because of the creation and redemption mechanisms, most existing ETPs present market participants, including Authorized Participants, market makers, and institutional investors, with opportunities to engage in arbitrage, which generally helps to prevent the market price of ETP Securities from diverging significantly from the value of the ETP's underlying or reference assets.[23] Although most ETPs calculate and disseminate their official NAV only once per day as of the close of regular trading hours, market participants can use other methods during the trading day to calculate or approximate the value of the assets underlying or referenced by a share of an ETP.[24]

For example, exchange listing standards require every currently traded, actively managed ETP to make daily disclosure of its entire portfolio.[25] Current exchange listing standards do not require similar disclosures for index-based ETPs, but the make-up and value of the underlying indices are widely available, and most index-based ETPs, as a matter of practice, make daily disclosure of their portfolios. With this information, market participants can access pricing data about an ETP's portfolio assets and perform their own calculations of the per-share value of that portfolio.

In addition, exchange listing standards require existing ETPs to publicly disseminate during the trading day an intraday indicative value (''IIV''), which is designed to provide investors with information on the value of the investments held by the ETP (or, in the case of an ETN, the reference assets).[26] The IIV is typically calculated and disseminated at least every 15 seconds during the trading day and is typically disseminated over the Consolidated Tape or via an exchange data feed. The IIV may or may not be based on the entire portfolio held by an ETP, and it may or may not be equal to the per-share value of an ETP's underlying portfolio or reference assets.[27]

A simplified example of ''riskless'' arbitrage will help to clarify how the arbitrage process for existing ETPs is intended to work. If the shares of an ETP that uses an in-kind creation and redemption process begin to trade at a discount to the value of the underlying portfolio at any point during the trading day, arbitrageurs can capture this difference (minus expenses) by: (i) Purchasing ETP Securities in the secondary market in an amount equal to a Creation Unit while simultaneously selling short the securities or commodities in the Redemption Basket; (ii) redeeming the Creation Unit with the ETP at the end-of-day NAV (either as an Authorized Participant or through a relationship with an Authorized Participant), thereby receiving the securities or commodities in the Redemption Basket; and (iii) using the contents of the Redemption Basket to close out the arbitrageur's short position. Purchasing the ETP Securities and selling short the securities or commodities in the Redemption Basket also apply market pressure that tends, all other things being equal, to bring the ETP Security's market price closer to the value of the underlying portfolio assets.

Similarly, if the shares of this same ETP begin to trade at a premium to the value of the underlying portfolio, arbitrageurs may profit by: (i) Selling short the ETP Securities; (ii) purchasing the securities or commodities that make up the Portfolio Deposit; (iii) exchanging the Portfolio Deposit for a Creation Unit through an Authorized Participant; and then (iv) using the ETP Securities in the Creation Unit to close out the short position. Again, the sales of the ETP Securities and the purchases of the contents of the Portfolio Deposit apply market pressure that tends, all other things being equal, to bring the price of the ETP Securities closer to the value of the underlying portfolio assets.

Market participants can also engage in arbitrage activities that do not necessarily require them to engage in creations or redemptions. For example, if a market participant believes that an ETP is overvalued relative to its underlying or reference assets, the market participant may sell ETP Securities; buy the underlying or reference assets; and, if the trading prices move toward parity, close out the positions in both the ETP Securities and the underlying or reference assets. The market participant would thereby realize a profit from the relative movement of those trading prices without engaging in an ETP creation. Similarly, a market participant could buy ETP Securities and sell the underlying or reference assets in an attempt to profit when an ETP Security is trading at a discount to its underlying or reference assets. As discussed above, the trading of an ETP Security and its underlying or reference assets applies market pressure that may bring the prices of the ETP Security and those assets closer together.

D. The Commission's Oversight of Exchange-Traded Products[28]

Before ETP Securities can be listed and traded on a national securities

[23] Arbitrage for ETNs may operate differently from that for other existing ETPs, because the in-kind creation and redemption process for most ETPs differs from the cash-only issuance and redemption process for ETNs. The Commission seeks comment on the operation of arbitrage for ETNs. *See infra* at Section II.A (Question 8).

[24] ETNs do not calculate a NAV because they do not hold an underlying portfolio of assets. *See supra* Section I.B. *See also infra* note 26.

[25] *See, e.g.,* NYSE Arca Equities Rule 8.600(d)(2)(B)(i). An actively managed ETP does not seek to track the return of a particular securities index. Instead, an actively managed ETP's investment adviser selects investments designed to meet a particular investment objective or policy.

[26] *See, e.g.,* NYSE Arca Equities Rule 5.2(j)(3), Commentary .01(c). The IIV is also referred to as an ''Indicative Optimized Portfolio Value,'' ''Intraday Value,'' or ''Portfolio Indicative Value.'' Most ETN issuers also make publicly available on their Web sites or through third-party vendors a value called the closing indicative value, which is determined as of the close of each trading day. The closing indicative value, in contrast to the intraday indicative value, represents the value of the ETN at that point in time and is used to calculate the amounts due to investors at maturity or on redemption.

[27] For example, the IIV for some ETPs is based on the current value of the securities or cash required to be deposited in exchange for a creation unit, which may differ from the composition of portfolio holdings on any given day. *See, e.g.,* Securities Exchange Act Release No. 67320 (June 29, 2012), 77 FR 39763 (July 5, 2012) (SR–NYSEArca-2012–44) (order granting approval for the listing and trading of shares of the iShares Strategic Beta U.S. Large Cap Fund and iShares Strategic Beta U.S. Small Cap Fund). The IIV for certain other ETPs is based on the current value of some, but not all, assets held in the investment portfolio. *See, e.g.,* Securities Exchange Act Release No. 61881 (Apr. 9, 2010), 75 FR 20028 (Apr. 16, 2010) (SR–NYSEArca-2010–14) (order granting approval to list and trade partnership units of the United States Brent Oil Fund, LP, a commodity pool that seeks to track changes in Brent crude oil futures traded on the ICE Futures Exchange and that calculates and disseminates an IIV based solely on these futures contracts, excluding other crude-oil-related investments held in the portfolio).

[28] In addition to the exemptive or no-action relief provided with respect to the Exchange Act rules and regulations described *infra,* in 1998 and 1999 the Commission's staff provided no-action relief under Section 13(d) of the Exchange Act, 15 U.S.C. 78m(d), and Section 16(a) of the Exchange Act, 15 U.S.C. 78p(a), to certain funds registered under the 1940 Act with respect to the required filing of ownership reports by insiders and five percent beneficial owners of the shares of the ETFs. *See* Letter from James J. Moloney, Division of Corporation Finance, and Evan Geldzahler, Division of Investment Management, Securities and Exchange Commission, to Sam Scott Miller, Orrick, Herrington & Sutcliffe LLP, 1998 SEC No.-Act. LEXIS 1050 (Dec. 14, 1998) (providing no-action relief under Section 13(d) of the Exchange Act);

Continued

exchange, those securities and their issuer must comply with, or obtain exemptions from, several provisions of the securities laws. First, as with other securities, the offer and sale of ETP Securities must be registered under the Securities Act.[29] In addition, in the case of ETFs, certain relief from the requirements of the 1940 Act is necessary,[30] because ETFs differ from other open-end investment companies in that they issue and redeem shares only in Creation Units and their shares trade in the secondary market at market prices.

While ETPs are governed by various provisions of the securities laws, including the Securities Act and, in certain cases, the 1940 Act, the focus of this Request for Comment is on the listing of ETP Securities on an exchange and the trading of ETP Securities on exchanges and other venues. Therefore, in issuing this Request for Comment, the Commission seeks public comment relating specifically to the oversight of ETPs under the provisions of the Exchange Act and the rules thereunder, including both (i) the exemptive and no-action relief granted to ETPs under the Exchange Act and (ii) the requirement that a national securities exchange have Commission-approved listing standards applicable to the ETP Securities being traded.

1. Exchange Act Exemptive and No-Action Relief for Existing ETPs

The trading of ETP Securities on an exchange generally will require that the issuer obtain exemptive or no-action relief from various provisions of, or rules promulgated under, the Exchange Act. As explained more fully below, the normal operation of an ETP would usually violate these provisions absent relief.

a. Regulation M

Regulation M proscribes certain activities that may increase a security's offering price (and so increase the offering proceeds); stabilize the market price of an offered security in order to avoid a price decline during the sales period or in the immediate aftermarket; or induce or attempt to induce prospective investors to buy in the aftermarket.[31] Rules 101 and 102 of Regulation M generally prohibit distribution participants, issuers, selling security holders, and their affiliated purchasers from purchasing, bidding for, or attempting to induce others to purchase or bid for covered securities during the restricted period of a distribution of securities.[32] Because most ETPs are in continuous distribution, meaning that they are continually creating and distributing new securities, this restricted period usually extends indefinitely.[33] Absent relief, the purchase of ETP Securities by an Authorized Participant (who would be considered a distribution participant), or by the issuer in the redemption process, would violate Rules 101 and 102 of Regulation M.

When it has granted relief with respect to Regulation M, the Commission has relied upon representations from ETPs that the continuing existence of effective and efficient arbitrage mechanisms help ensure that the secondary market price of ETP Securities does not vary substantially from the ETP's NAV or underlying index value.[34] The relief is based in part on an ETP issuer's representation that the continuing existence of effective and efficient arbitrage mechanisms makes it difficult to manipulate distributions of ETP Securities. Relief for classes of ETPs relies on similar bases.[35] The consideration of effective and efficient arbitrage mechanisms for purposes of Regulation M, and the Commission's overall consideration of ETPs, can take into account not only the end-of-day differences between an ETP Security's closing market price and the ETP's NAV, but also any intra-day premiums or discounts between the secondary market price of an ETP Security and the value of its underlying portfolio or reference assets.

In granting relief, the Commission also has relied on representations by ETP issuers that the characteristics of their proposed ETPs will mitigate against the types of abuses that Regulation M is intended to address.[36] In the case of ETFs, for example, this includes representations that the shares are issued by an open-end investment company or unit investment trust registered with the Commission under the 1940 Act and that the index underlying an index-based ETP has at least 20 different component securities to promote sufficient diversification. It also includes representations that those components have publicly available trade information, to facilitate the

Letter from Anne M. Krauskopf, Division of Corporation Finance, and Evan Geldzahler, Division of Investment Management, Securities and Exchange Commission, to Stuart M. Strauss, Gordon, Altman, Butowsky, Weitzen, Shalov & Wein, 1999 SEC No-Act. LEXIS 500 (May 6, 1999) (''Select Sector SPDR Trust Letter'') (providing no-action relief under Section 16(a) of the Exchange Act). This no-action relief was based, in large part, on the representation that the trading prices of the ETFs did not deviate materially from their NAV. *See id.* Having stated its views on whether insiders and five percent beneficial owners of ETPs must file ownership reports under Sections 16(a) and 13(d) of the Exchange Act, the Division staff stated that it would not respond to further requests for no-action relief in this area unless the request presented a ''novel or unusual issue.'' *See* Select Sector SPDR Trust Letter, 1999 SEC No-Act. LEXIS 500, *9.

[29] For ETPs that are not registered under the 1940 Act, offerings of ETP Securities require the filing of a registration statement on Form S–1 or Form S–3, depending on the issuer. Depending on the form type used to register the offering, the staff of the Division of Corporation Finance may review the disclosures included in the registration statement and may issue comments. ETN offerings in many cases are made through takedowns off of effective shelf registration statements. For ETFs registered under the 1940 Act, offerings require the filing of a registration statement on Form N–1A. The staff of the Division of Investment Management reviews the information disclosed in the Form N–1A and may issue comments requesting that the issuer revise or expand its disclosures before the registration statement becomes effective.

[30] For an ETF to operate, it must first obtain an order under Section 6(c) of the 1940 Act for an exemption from Sections 2(a)(32), 5(a)(1), 22(d), and 22(e) of the 1940 Act and from Rule 22c–1 thereunder, and under Sections 6(c) and 17(b) for an exemption from Sections 17(a)(1) and 17(a)(2) of the 1940 Act.

[31] *See* Amendments to Regulation M: Anti-Manipulation Rules Concerning Securities Offerings, Securities Exchange Act Release No. 50831 (Dec. 9, 2004), 69 FR 75774 (Dec. 17, 2004) (S7–41–04) (proposed rule).

[32] 17 CFR 242.101 and 242.102. *See also* 17 CFR 242.100 (defining ''distribution participants,'' ''selling security holder,'' ''affiliated purchaser,'' and other terms for purposes of Regulation M). In addition to being promulgated under the Exchange Act, Rules 101 and 102 of Regulation M are also promulgated under the Securities Act and under the 1940 Act. *See Anti-Manipulation Rules Concerning Securities Offerings,* Securities Exchange Act Release No. 38067 at n. 10 (Dec. 20, 1996), 62 FR 520, 521 n. 10 (Jan. 3, 1997) (S7–11–96).

[33] *See* 17 CFR 242.100 (definition of ''Restricted Period'').

[34] *See, e.g.,* Letter from W. John McGuire, Morgan, Lewis & Bockius LLP, to Josephine Tao, Division of Trading and Markets, Securities and Exchange Commission, re: AdvisorShares Trust Actively-Managed ETF WCM/BNY Mellon Focused Growth ADR (June 18, 2010) (representing that a close alignment between market price and NAV is expected for the relevant ETP due in part to an effective and efficient arbitrage mechanism), *available at http://www.sec.gov/divisions/marketreg/mr-noaction/2010/advisorshares061810.pdf. See also* Letter from Josephine Tao, Division of Trading and Markets, Securities and Exchange Commission, to W. John McGuire, Morgan, Lewis & Bockius LLP, re: AdvisorShares Trust Actively-Managed ETF WCM/BNY Mellon Focused Growth ADR (June 18, 2010), *available at http://www.sec.gov/divisions/marketreg/mr-noaction/2010/advisorshares061810.pdf.*

[35] *See* Letter from James A. Brigagliano, Division of Trading and Markets, Securities and Exchange Commission, to Stuart M. Strauss, Clifford Chance US LLP, re: Class Relief for Exchange Traded Index Funds (Oct. 24, 2006) (''Equity Index-Based ETF Letter'') (noting that relief is only appropriate when the secondary market price of the ETF's shares does not vary substantially from NAV), *available at http://www.sec.gov/divisions/marketreg/mr-noaction/etifclassrelief102406-msr.pdf.*

[36] *See supra* note 31 and accompanying text.

availability of sufficient information for arbitrage.[37]

b. Exchange Act Section 11(d)(1) and Rule 11d1–2

Section 11(d)(1) of the Exchange Act generally prohibits a broker-dealer from extending or maintaining credit, or arranging for the extension or maintenance of credit, on shares of new-issue securities if the broker-dealer participated in the distribution of the new-issue securities within the preceding 30 days.[38] The Commission's view is that, because ETP Securities are distributed in a continuous manner, broker-dealers that sell these securities are thereby participating in the ''distribution'' of a new issue for purposes of Section 11(d)(1).[39] Further, if an ETF held a portfolio composed solely or largely of newly issued securities, there is a risk that Authorized Participants—rather than lending on, or arranging for lending on, the newly issued securities directly—could use the ETF structure to avoid the new-issue lending restriction.

The Commission has granted ETP issuers exemptions from, and the staff has issued no-action positions regarding, Section 11(d)(1) in circumstances in which these evasion concerns are reduced because: (i) the portfolio is sufficiently diversified that evasion becomes impractical;[40] (ii) the portfolio is composed of securities that are not subject to Section 11(d)(1) (*e.g.,* government securities);[41] or (iii) the portfolio is not composed of securities at all (*e.g.,* the product is an ETP that invests in commodities).[42]

c. Exchange Act Rule 10b–10

Rule 10b–10 under the Exchange Act[43] requires broker-dealers to provide their customers with certain disclosures at or before the completion of a securities transaction, including the identity, price, and number of shares or units (or principal amount) of the security purchased or sold. As described above, ETP Securities are issued and redeemed only in Creation Units of a minimum size, and a Portfolio Deposit or Redemption Basket may comprise dozens or hundreds of securities. Because it would be administratively burdensome for broker-dealers to provide transaction confirmations for each security in a Portfolio Deposit or Redemption Basket, the Commission has issued exemptive relief from Rule 10b–10 to permit broker-dealers to omit this information with respect to ETPs, provided that (i) the Creation Unit is sufficiently large (at least 25,000 shares and $500,000), (ii) it is probable that creation and redemption transactions are entered into only by sophisticated investors, and (iii) the broker-dealer provides the omitted confirmation information to customers upon request.[44]

d. Exchange Act Rule 10b–17

Rule 10b–17 under the Exchange Act generally requires issuers to give notice 10 days in advance of certain specified actions (*e.g.,* a dividend distribution, stock split, or rights offering) relating to their securities, in accordance with the procedures laid out in the rule.[45] Generally this rule is relevant to an ETP when it must distribute cash—for example, income from fixed-income holdings or cash from a realized investment gain—to its shareholders. Because some ETP Securities are continuously being issued or redeemed, issuers have represented that it is impractical to project, and to provide, some of the information required by Rule 10b–17 ten days in advance.[46] According to these issuers, particularly difficult are the requirements for the issuer to disclose (i) in the case of a distribution in cash, the amount of cash to be paid or distributed per share, and (ii) in the case of a distribution in the same security, the amount of the securities outstanding immediately before and immediately after the dividend or distribution and the rate of the dividend or distribution.[47]

When the Commission has granted exemptions to permit these distributions to occur without ETP issuers providing 10-day advance notice of the two items of information noted above, this relief has been conditioned on the issuer providing the two items of information to the national securities exchange on which the ETP Securities are registered (pursuant to Section 12 of the Exchange Act) as soon as practicable before trading begins on the ex-dividend date, but in no event later than the time (on the day before the ex-dividend date) the exchange last accepts information relating to distributions.[48] The Commission has granted these exemptions because, other than receiving a delayed notice of these two items of information, market participants will have timely notice of the existence and timing of a pending distribution, as required by Rule 10b–17.[49] Further, under the terms of the exemption, the timing of the availability of the two items of information should allow market participants time to update their systems to reflect the accurate price of the ETP Securities before trading begins on the ex-dividend date.[50]

e. Exchange Act Rule 14e–5

Rule 14e-5 under the Exchange Act[51] is designed to prevent the manipulation

[37] *See, e.g.,* Equity Index-based ETF Letter, *supra* note 35. Broadly speaking, ETP sponsors seeking relief make the same representations as those made by similar products that have previously been granted relief.

[38] 15 U.S.C. 78k(d)(1).

[39] *See, e.g.,* Letter from Catherine McGuire, Division of Trading and Markets, Securities and Exchange Commission, to Securities Industry Association (Nov. 21, 2005), *available at http://www.sec.gov/divisions/marketreg/mr-noaction/sia112105.htm.*

[40] *See, e.g.,* Letter from Catherine McGuire, Division of Trading and Markets, Securities and Exchange Commission, to Securities Industry Association (Nov. 21, 2005) (conditionally exempting from Section 11(d)(1) an ETF that consists of a basket of twenty or more component securities, with no one component security constituting more than 25% of the total value of the ETF), *available at http://www.sec.gov/divisions/marketreg/mr-noaction/sia112105.htm;* Letter from Joseph Furey, Division of Trading and Markets, Securities and Exchange Commission, to W. John McGuire, Morgan, Lewis & Bockius LLP, re: AdvisorShares Madrona & Meidell ETFs (June 16, 2011) (''Madrona & Meidell Letter'') (providing conditional staff no-action relief to ETFs whose portfolios consist of other diversified ETFs), *available at http://www.sec.gov/divisions/marketreg/mr-noaction/2011/advisorsharesmadrona061611.pdf.*

[41] *See, e.g.,* Letter from James A. Brigagliano, Division of Market Regulation, Securities and Exchange Commission, to Richard F. Kadlick, Esq., Skadden, Arps, Slate, Meagher & Flom LLP, re: MACRO Securities Depositor, LLC (Dec. 22, 2006) (''MACRO Securities Depositor Letter'') (providing conditional staff no-action relief), *available at http://www.sec.gov/divisions/marketreg/mr-noaction/macro122206-11d1.pdf.*

[42] *See, e.g.,* Letter from James A. Brigagliano, Division of Market Regulation, Securities and Exchange Commission, to Michael Schmidtberger, Sidley Austin Brown & Wood LLP, re: DB Commodity Index Tracking Fund (Jan. 19, 2006) (''DB Commodity Index Tracking Fund Letter'') (providing conditional staff no-action relief), *available at http://www.sec.gov/divisions/marketreg/mr-noaction/commodityidxtf011906.htm.*

[43] 17 CFR 240.10b–10.

[44] *See, e.g.,* Letter from Catherine McGuire to Securities Industry Association, *supra* note 40.

[45] 17 CFR 240.10b–17.

[46] *See e.g.,* Letter from Jeremy Senderowicz, Dechert LLP, to Josephine Tao, Division of Trading and Markets, Securities and Exchange Commission, re: ALPS ETF Trust, ALPS/GS Momentum Builder Growth Markets Equities and U.S. Treasuries Index ETF, ALPS/GS Momentum Builder Multi-Asset Index ETF, and ALPS/GS Momentum Builder Asia Ex-Japan Equities and U.S. Treasuries Index ETF (Dec. 18, 2012), *available at http://www.sec.gov/rules/exorders/2012/34-68459-letter.pdf.*

[47] These disclosures are required by 17 CFR 240.10b–17(b)(1)(v)(a) and (b).

[48] *See, e.g.,* Order Granting a Limited Exemption from Exchange Act Rule 10b–17, Securities Exchange Act Release No. 67215 (June 19, 2012), 77 FR 37941 (June 25, 2012) (TP–11–07) (''10b–17 Actively Managed ETP Exemption'').

[49] *See id.*

[50] *See id.*

[51] 17 CFR 240.14e–5.

of tender offers. In particular, Rule 14e–5 prohibits ''covered persons'' [52] from purchasing or arranging to purchase any securities subject to a tender offer except as part of that tender offer.[53] This prohibition is in effect from the announcement of the tender offer until the expiration of the tender offer. An Authorized Participant acting as the dealer-manager of a tender offer for a component security is a covered person for purposes of Rule 14e–5.[54]

The Commission has granted relief to various entities with respect to the application of Rule 14e–5 so that Authorized Participants may redeem Creation Units and purchase ETP Securities even though component securities may be subject to a Rule 14e–5 restricted period.[55] ETP issuers generally seek relief on the basis that: (i) Acquiring individual securities held by an ETP through redemptions of the ETP's securities would be impractical and inefficient; (ii) facilitating a tender offer in a particular security included in a Portfolio Deposit by means of purchasing all of the specific portfolio securities constituting the Portfolio Deposit would be inefficient; and (iii) applying the Rule 14e–5 prohibition would impede the valid and useful market and arbitrage activity that would assist secondary market trading and improve the pricing efficiency of ETP Securities.[56] Moreover, the issuers generally represent that the type of trading described above does not result in the abuses that Rule 14e–5 was designed to prevent.[57] As a condition of the relief that has been issued, the issuer of ETP Securities generally also represents that the purchases or redemptions would not, in fact, be used to facilitate a tender offer.

f. Exchange Act Rules 15c1–5 and 15c1–6

Rule 15c1–5 under the Exchange Act [58] requires a broker-dealer to disclose to its customers if it has a control relationship with an issuer prior to a customer's purchase or sale of the issuer's securities. Rule 15c1–6 under the Exchange Act [59] requires a broker-dealer to disclose to its customer, at or before the completion of a transaction, that the broker-dealer is participating in the primary or secondary distribution of the securities that it is selling or purchasing for the customer's account. Because applying these rules to all the securities in a creation or redemption transaction would be administratively burdensome for broker-dealers, and because creations and redemptions are consummated at prices that are fixed by the ETP, there appears to be little potential for a broker-dealer to manipulate the price of the securities in the creation and redemption transactions.[60] Therefore, the staff has stated that it will not recommend enforcement action to the Commission with respect to Authorized Participants' compliance with Rules 15c1–5 and 15c1–6 in creation and redemption transactions if a broker-dealer executes transactions in shares of ''Qualifying ETFs'' without disclosing any control relationship with an issuer of a security in the Portfolio Deposit or Redemption Basket.[61] The staff has similarly stated that it will not recommend enforcement action if a broker-dealer executes transactions in shares of Qualifying ETFs without disclosing its participation or interest in a primary or secondary distribution of a security included within the Portfolio Deposit or Redemption Basket.[62]

g. Class Relief

In connection with the application of the Exchange Act provisions described above, the Commission has issued a number of ''class'' exemptions to the trading of ETP Securities.[63] Class exemptions for ETPs from the Exchange Act provisions discussed above are generally issued only if the Commission and the staff have had experience with individual exemptions and no-action positions and have determined that class relief is appropriate.[64] In the case of exemptions, the Commission must also determine that a class exemption meets the statutory standard of being necessary or appropriate in the public interest and consistent with the protection of investors.[65] An ETP relying on a class exemption or no-action position must meet all of the conditions of the relevant Commission order or staff letter for the life of the product (or until the relief is no longer necessary), just as if the ETP had obtained its own individual relief. Class exemptions or no-action positions have been issued for equity index-based

[52] For purposes of Exchange Act Rule 14e–5, a ''covered person'' is defined as: (i) The offeror and its affiliates; (ii) the offeror's dealer-manager and its affiliates; (iii) any advisor to any of the persons specified in (i) or (ii) whose compensation is dependent on the completion of the offer; and (iv) any person acting, directly or indirectly, in concert with any of the persons specified in (i), (ii), or (iii) in connection with any purchase or arrangement to purchase the securities or any related securities. *See* 17 CFR 240.14e–5(c)(3).

[53] Rule 14e–5 is designed to protect investors by preventing an offeror from extending greater or different consideration to some security holders outside the offer, while other security holders are limited to the offer's terms, and by ensuring that large security holders do not demand greater consideration. *See* Securities Exchange Act Release No. 8712 (Oct. 8, 1969), 34 FR 15838 (Oct. 15, 1969) (order adopting Rule 10b–13, which was later redesignated as Rule 14e–5 in Securities Exchange Act Release No. 42055 (Oct. 22, 1999), 64 FR 61408 (Nov. 10, 1999)). In addition, Rule 14e–5 prevents purchases outside the offer that, depending on the conditions in the market and the nature of the purchases, may be fraudulent or manipulative in nature, such as purchases that are used to defeat a tender offer by driving the market price above the offer price or by otherwise reducing the number of shares tendered below the stated minimum. *See id.*

[54] *See* 17 CFR 240.14e–5(c)(3)(ii).

[55] *See, e.g.,* Equity Index-Based ETF Letter, *supra* note 35, at 6. The entities to which relief has been granted include open-end investment companies that issue ETP Securities, the listing exchange and any other national securities exchange on or through which the ETP Securities may subsequently trade, and persons or entities engaging in transactions in ETP Securities.

[56] *See, e.g.,* Letter from W. John McGuire, Bingham McCutchen LLP, to Michele M. Anderson and David Orlic, Division of Corporation Finance, Securities and Exchange Commission, re: SSgA Active ETF Trust (July 3, 2013), *available at http://www.sec.gov/divisions/corpfin/cf-noaction/2013/ssga-active-etf-trust-14e5.pdf.*

[57] *See supra* note 53.

[58] 17 CFR 240.15c1–5.

[59] 17 CFR 240.15c1–6.

[60] *See, e.g.,* Letter from Catherine McGuire to Securities Industry Association, *supra* note 40.

[61] A ''Qualifying ETF'' was initially limited to an ETF meeting certain conditions, including that it is issued by an open-end investment company or unit investment trust registered with the Commission under the 1940 Act; that it is listed and traded on a national securities exchange; that it comprises twenty or more diversified component securities, with no one component security constituting more than 25% of the total value of the ETF; and that it is managed to track a particular index, all components of which are publicly available. *Id.* Subsequent staff no-action positions have provided no-action relief to more ETPs with respect to treatment as Qualifying ETFs. *See, e.g.,* DB Commodity Index Tracking Fund Letter, *supra* note 42 (certain commodity-based exchange-traded trusts); MACRO Securities Depositor Letter, *supra* note 41 (an ETP holding government securities); Letter from Brian A. Bussey, Division of Trading and Markets, Securities and Exchange Commission, to W. Thomas Conner and Eric C. Freed, Sutherland Asbill & Brennan LLP, re: Ameristock ETF Trust (June 29, 2007) (certain fixed income ETFs), *available at http://www.sec.gov/divisions/marketreg/mr-noaction/2007/ameristock062907-msr.pdf;* Letter from James A. Brigagliano, Division of Trading and Markets, Securities and Exchange Commission, to Kathleen H. Moriarty, Carter, Ledyard & Milburn, re: Proshares Trust (Jan. 24, 2007) (certain ETFs tracking a multiple, inverse, or multiple inverse of an index), *available at http://www.sec.gov/divisions/marketreg/mr-noaction/2007/proshares012407-msr.pdf;* Letter from Josephine J. Tao, Division of Trading and Markets, Securities and Exchange Commission, to Richard F. Morris, Deputy General Counsel, WisdomTree Asset Management, Inc. (May 9, 2008) (certain actively-managed ETFs not tied to an index), *available at http://www.sec.gov/divisions/marketreg/mr-noaction/2008/wisdomtree050908-msr.pdf;* and Madrona & Meidell Letter, *supra* note 40 (certain ETFs whose portfolios consist of other diversified ETFs).

[62] *Id.*

[63] *See, e.g.,* Equity-Index Based ETF Letter, *supra* note 35.

[64] *See* Letter from Catherine McGuire to Securities Industry Association, *supra* note 40.

[65] *See* 15 U.S.C. 78mm(a)(1).

ETFs,[66] commodity-based investment vehicles that are not registered under the 1940 Act,[67] fixed-income index-based ETFs,[68] ''combination'' index-based ETFs,[69] ETNs,[70] and actively-managed ETFs.[71] These orders and no-action positions cover a number of the Exchange Act rules and regulations described above.[72]

2. Exchange Listing Standards and the Rule 19b–4 Process

Before ETP Securities can trade on a national securities exchange, that exchange must agree to list the ETP Securities for trading on its market, and it must have Commission-approved initial and continued listing standards that permit listing of that type or ''class'' of ETP Security.[73] ETP listing standards can be broadly categorized as either generic or non-generic.

Generic listing standards permit an exchange to list and trade specific ETP Securities of a broader class of ETPs without filing a product-specific proposed rule change with the Commission.[74] When listing ETP Securities in this way, however, exchanges are required to file a notice with the Commission within five business days after trading commences.[75] Examples of ETP classes for which generic listing standards exist include what are commonly called index-based ETFs (which the exchanges' rules call Investment Company Units, Index-Fund Shares, Portfolio Depositary Receipts, or security-based Trust Issued Receipts), and certain ETNs (which the exchanges' rules call Index-Linked Securities or Linked Securities).[76]

Generic ETP listing standards approved by the Commission contain quantitative criteria with respect to components included in the ETP's underlying or reference index or benchmark. With respect to underlying indices, these quantitative criteria provide minimum thresholds regarding trading volume, market capitalization, number of index components, and index concentration limits.[77] To mitigate the potential for manipulation and other trading abuses, and to help maintain a fair and orderly market for the ETP Securities, these quantitative criteria are designed to help ensure a minimum degree of liquidity and diversification for the underlying or reference securities, assets, or instruments.

Non-generic listing standards permit an exchange to list and trade a specific ETP Security (within a class of ETPs) only after the exchange has filed and the Commission has approved a proposed rule change that is specific to the new ETP Security.[78] Because of their security-specific nature, non-generic listing standards typically do not contain generalized quantitative criteria for the components included in an ETP's underlying or reference index or benchmark.

Exchanges seeking to adopt listing standards applicable to a new ETP product class—or to list and trade specific ETP Securities pursuant to existing non-generic listing standards for an ETP product class—are required to file proposed rule changes under Section 19(b)(1) of the Exchange Act[79] and Rule 19b–4 thereunder.[80] Once an

[66] *See* Equity Index-Based ETF Letter, *supra* note 35.

[67] *See* Letter from Racquel L. Russell, Division of Trading and Markets, Securities and Exchange Commission, to George T. Simon, Foley & Lardner LLP, re: CurrencyShares British Pound Sterling Trust *et al.* (June 21, 2006), *available at http://www.sec.gov/divisions/marketreg/mr-noaction/currencyshares062106-10a1.pdf.*

[68] *See* Letter from James A. Brigagliano, Division of Trading and Markets, Securities and Exchange Commission, to Benjamin J. Haskin, Willkie Farr & Gallagher LLP, re: Class Relief for Fixed Income ETFs (Apr. 9, 2007), *available at http://www.sec.gov/divisions/marketreg/mr-noaction/2007/fietfclassrelief040907-msr.pdf.*

[69] *See* Letter from Josephine Tao, Division of Trading and Markets, Securities and Exchange Commission, to Domenick Pugliese, Paul, Hastings, Janofsky and Walker LLP, re: Combination ETFs (June 27, 2007), *available at http://www.sec.gov/Archives/edgar/vprr/07/9999999997-07-047147.*

[70] *See, e.g.,* Letter from Josephine Tao, Division of Trading and Markets, Securities and Exchange Commission, to Arthur S. Long, Davis Polk & Wardwell LLP, re: Deutsche Bank AG ETNs (Oct. 12, 2007) (''ETN No-action Letter''), *available at http://www.sec.gov/divisions/marketreg/mr-noaction/2007/dbab101207.pdf.*

[71] *See* 10b-17 Actively Managed ETP Exemption, *supra* note48, and Division of Trading and Markets: Staff Legal Bulletin No. 9 ''Frequently Asked Questions About Regulation M'' (as revised Sep. 10, 2010) (regarding Regulation M), *available at http://www.sec.gov/interps/legal/mrslb9.htm.*

[72] *See supra* Sections I.D.1.a through I.D.1.f.

[73] *See* 15 U.S.C. 78s(b) and 17 CFR 240.19b–4. The Exchange Act also permits an exchange to trade a security that is listed on another exchange. The non-listing exchange that trades the security is said to extend ''unlisted trading privileges'' (or ''UTP'') to the security. *See* Section 12(f) of the Exchange Act, 15 U.S.C. 78l(f); Exchange Act Rule 12f–5 (17 CFR 240.12f–5) (providing that an exchange shall not extend UTP to a security unless the exchange has in effect a rule or rules providing for transactions in the class or type of security to which the exchange extends UTP).

[74] *See* 17 CFR 240.19b–4(e)(1). In 1998, the Commission issued a final rule setting forth the standards under which exchanges can list and trade ''new derivatives securities products'' (a category that encompasses ETPs) under ''generic listing standards.'' *See* Amendments to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products, Securities Exchange Act Release No. 40761 (Dec. 8, 1998), 63 FR 70952 (Dec. 22, 1998) (S7–13–98).

[75] *See* 17 CFR 240.19b–4(e)(2)(ii). The required notice is filed on Form 19b–4(e). 17 CFR 249.820.

[76] *See, e.g.,* Securities Exchange Act Release Nos. 42787 (May 15, 2000), 65 FR 33598 (May 24, 2000) (SR–Amex–2000–14) (approving generic listing standards for ETFs called Portfolio Depositary Receipts and Index Fund Shares); 45718 (Apr. 9, 2002), 67 FR 18965 (Apr. 17, 2002) (SR–NYSE–2002–07) (approving generic listing standards for Trust Issued Receipts); and 55687 (May 1, 2007), 72 FR 25824 (May 7, 2007) (SR–NYSE–2007–27) (approving generic listing standards for Index-Linked Securities). *See also, e.g.,* BATS Rules 14.11(b) (Portfolio Depositary Receipts), 14.11(c) (Index Fund Shares), 14.11(d) (ETNs), and 14.11(f) (Trust Issued Receipts), *available at http://batstrading.com/resources/regulation/rule_book/BATS_Exchange_Rulebook.pdf;* NASDAQ Rules 5705 (Index Fund Shares and Portfolio Depositary Receipts), 5710 (ETNs), and 5720 (Trust Issued Receipts), *available at http://nasdaq.cchwallstreet.com/NASDAQTools/PlatformViewer.asp?selectednode=chp%5F1%5F1%5F4%5F3&manual=%2Fnasdaq%2Fmain%2Fnasdaq%2Dequityrules%2F;* NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units), 5.2(j)(6) (ETNs), 8.100 (Portfolio Depositary Receipts), and 8.200 (Trust Issued Receipts), *available at http://nysearcarules.nyse.com/PCX/.*

[77] For example, with respect to equity-index-based ETFs, the generic listing standards generally contain the following requirements with respect to the underlying index: (1) That each component have a minimum market value; (2) that each component have a minimum monthly trading volume over the most recent six-month period; (3) that the index observe certain concentration limits (*e.g.,* that no component may exceed 30% of the weight of the index and that the five most heavily weighted components may not exceed 65% of the weight of the index); (4) that there be a minimum number of components in the index; and (5) that each component either be an exchange-listed NMS stock or, if a non-U.S. stock, be listed and traded on an exchange that has last-sale reporting. *See, e.g.,* BATS Rule 14.11(c); NASDAQ Rule 5705; NYSE Arca Equities Rule 5.2(j)(3), Commentary .01. With respect to ETNs, the generic listing standards also include minimum requirements relating to the issuer of the securities (*e.g.,* minimum tangible net worth and minimum amount of assets), which are designed to mitigate issuer credit risk. *See, e.g.,* BATS Rule 14.11(d); NASDAQ Rule 5710; NYSE Arca Equities Rule 5.2(j)(6).

[78] The ETP product classes that have non-generic listing standards include the following: Trust Issued Receipts based on investments in ''investment shares'' or ''financial instruments,'' Commodity-Based Trust Shares, Commodity Index Trust Shares, Commodity Futures Trust Shares, Partnership Units, Paired Trust Shares, Trust Units, Managed Fund Shares, Managed Trust Securities, and Trust Certificates. *See, e.g.,* BATS Rules 14.11(e)(3) (Trust Certificates), 14.11(e)(4) (Commodity-Based Trust Shares), 14.11(e)(6) (Commodity Index Trust Shares), 14.11(e)(7) (Commodity Futures Trust Shares), 14.11(e)(8) (Partnership Units), 14.11(e)(9) (Trust Units), 14.11(e)(10) (Managed Trust Securities), and 14.11(i) (Managed Fund Shares); NASDAQ Rules 5711(c) (Trust Certificates), 5711(d) (Commodity-Based Trust Shares), 5711(f) (Commodity Index Trust Shares), 5711(g) (Commodity Futures Trust Shares), 5711(h) (Partnership Units), 5711(i) (Trust Units), 5711(j) (Managed Trust Securities), and 5735 (Managed Fund Shares); NYSE Arca Equities Rules 8.200 (Commentary .02) (Trust Issued Receipts based on investment shares or financial instruments), 8.201 (Commodity-Based Trust Shares), 8.203 (Commodity Index Trust Shares), 8.204 (Commodity Futures Trust Shares), 8.300 (Partnership Units), 8.400 (Paired Trust Shares), 8.500 (Trust Units), 8.600 (Managed Fund Shares), 8.700 (Managed Trust Securities).

[79] 15 U.S.C. 78s(b).

[80] 17 CFR 240.19b–4.

exchange files a proposed rule change that complies with the Exchange Act, the rules thereunder, and the form governing such filings, statutory deadlines apply to Commission consideration of the filing.

Section 19(b)(2) of the Exchange Act, as amended by the Dodd-Frank Act,[81] effectively requires the Commission to publish notice of a proposed rule change within 15 days of filing.[82] In general, for proposals that must be approved by the Commission before they may take effect (such as a filing concerning a new ETP), the Commission is required to take action within 45 days (which can be extended by the Commission or the exchange for another 45 days) after the date of publication of the proposal in the **Federal Register**.[83] The Commission may, however, institute proceedings to determine whether to disapprove a proposal, in which case the Commission is required to take final action to approve or disapprove a proposed rule change no later than 240 days after the proposal is published in the **Federal Register**.[84] If the Commission fails to meet any of the deadlines for final action on a proposed rule change, that proposed rule change is, pursuant to the Exchange Act, deemed to have been approved by the Commission.[85]

To approve an exchange's proposed rule change, the Commission must find that the proposed rule change is consistent with the applicable requirements of the Exchange Act and the rules and regulations thereunder.[86] The requirements imposed by the Exchange Act include those set forth in Section 6(b)(5), which provides that the rules of an exchange must be designed to do the following: (i) Prevent fraudulent and manipulative acts and practices; (ii) promote just and equitable principles of trade; (iii) foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; (iv) remove impediments to and perfect the mechanism of a free and open market and a national market system; and (v) in general, to protect investors and the public interest.[87] With respect to the listing standards for ETP Securities, most exchange filings in connection with proposed rule changes include a general description of the following: (i) the ETP and its permitted investments or reference assets; (ii) how the ETP will seek to meet its investment objective; (iii) whether and to what extent information is available to investors about the pricing and valuation of the ETP Securities, the ETP's underlying assets, and the relevant index or reference assets;[88] (iv) how the exchange will monitor trading in the ETP Securities; and (v) the information that will be available to investors about the ETP Securities.[89]

3. Broker-Dealer Sales Practices

Broker-dealers, which are registered with and regulated by the Commission under the Exchange Act, are also subject to regulation by the self-regulatory organizations (''SROs'') to which they belong—*e.g.,* FINRA and the exchanges. Both federal and SRO regulations impose duties on broker-dealers when dealing with their customers and, in particular, when recommending the purchase or sale of securities by their customers.[90] These duties include making suitable recommendations, engaging in fair and balanced communications with the public, disclosing conflicts of interest, and receiving fair compensation both in agency and principal transactions.[91]

In addition, a broker-dealer that recommends buying, holding, or selling an ETP, or an investment strategy involving an ETP, may be subject to additional or heightened scrutiny regarding ETPs with respect to brokerage customers, as described in FINRA guidance regarding complex products and non-traditional ETPs.[92]

[81] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, § 916(a), 124 Stat. 1376, 1833–34 (2010).

[82] 15 U.S.C. 78s(b)(2)(E).

[83] Certain proposed rule changes are entitled to become ''immediately effective'' upon filing, without prior Commission approval. *See* 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f) (setting forth certain limited conditions under which a proposed rule change may take effect immediately upon filing with the Commission).

[84] *See* 15 U.S.C. 78s(b)(2)(B)(ii).

[85] 15 U.S.C. 78s(b)(2)(D).

[86] 15 U.S.C. 78s(b)(2)(C).

[87] 15 U.S.C. 78f(b)(5). In addition, the proposed rule change must not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers or to regulate by virtue of any authority conferred by the Exchange Act matters not related to the purposes of the Exchange Act or the administration of the exchange. *Id.*

[88] For index-based ETPs, exchange rules generally require that the underlying or reference index or benchmark be calculated and disseminated throughout the trading day. The frequency of dissemination depends on whether the components are U.S. equities, foreign equities, or fixed-income securities. *See, e.g.,* Commentary .01(b)(2) to NYSE Arca Equities Rule 5.2(j)(3) (requiring that the current index value be widely disseminated every 15 seconds during the exchange's Core Trading Session for investment company units that track a U.S. equity index and every 60 seconds for investment company units that track an international or global equity index); Commentary .02(b)(ii) to NYSE Arca Equities Rule 5.2(j)(3) (requiring that the current index value for investment company units that track a fixed-income index be disseminated at least once per day). For ETNs, exchange rules generally require that the value of the reference assets be calculated and disseminated throughout the trading day. *See, e.g.,* NYSE Arca Equities Rule 5.2(j)(6)(B)(II)(1)(b)(ii) (requiring that the value of the commodity reference asset be calculated and widely disseminated on at least a 15-second basis during the exchange's Core Trading Session for commodity-linked securities). As noted above, most ETN issuers also make publicly available a closing indicative value that is determined as of the close of each trading day. *See supra* note 26.

[89] Exchanges are required by their listing standards to distribute information circulars or bulletins to exchange members relating to the listing of ETP Securities. *See, e.g.,* NYSE Arca Equities Rules 5.1(a)(2), 5.2(j)(3) Commentary .01(g), 8.100(c), and 8.600 Commentary .05. The information to be contained in these circulars is generally specified in a Commission order approving the listing and trading of new ETP Securities and typically includes: (a) The special characteristics and risks associated with trading ETP Securities; (b) the procedures for creations and redemptions of ETP Securities; (c) the exchange requirements relating to the members' obligations to learn the essential facts in connection with every customer prior to trading ETP Securities and other suitability requirements, such as information contained in guidance issued by FINRA with respect to the trading and sales of leveraged and inverse-leveraged ETPs and other complex securities products; (d) how information regarding the IIV is disseminated and the risks involved in trading ETP Securities outside of regular trading hours when an updated IIV is not calculated or available; (e) applicable prospectus delivery requirements; and (f) other information (*e.g.,* fees and expenses of the ETP and the time at which the NAV will be calculated and published daily). *See, e.g.,* Securities Exchange Act Release Nos. 65136 (Aug. 15, 2011), 76 FR 52037, 52040 (Aug. 19, 2011) (SR–NYSEArca–2011–24); 68390 (Dec. 10, 2012), 77 FR 74540, 74543 (Dec. 14, 2012) (SR–BATS–2012–042); and 70829 (Nov. 7, 2013), 78 FR 68482, 68485 (Nov. 14, 2013) (SR–NASDAQ–2013–122).

[90] *See e.g.,* Exchange Act Section 15(c) and FINRA Rule 2111.

[91] *See, e.g., A Joint Report of the SEC and CFTC on Harmonization of Regulation,* at 8 (Oct. 16, 2009), *http://www.sec.gov/news/press/2009/cftcjointreport101609.pdf* (''Under the federal securities laws and SRO rules, broker-dealers are required to deal fairly with their customers. This includes having a reasonable basis for recommendations given the customer's financial situation (suitability), engaging in fair and balanced communications with the public, . . . disclosing conflicts of interest, and receiving fair compensation both in agency and principal transactions. In addition, the SEC's suitability approach requires BDs [*i.e.,* broker-dealers] to determine whether a particular investment recommendation is suitable for a customer, based on customer-specific factors and factors relating to the securities and investment strategy. A BD must investigate and have adequate information regarding the security it is recommending and ensure that its recommendations are suitable based on the customer's financial situation and needs. The suitability approach in the securities industry is premised on the notion that securities have varying degrees of risk and serve different investment objectives, and that a BD is in the best position to determine the suitability of a securities transaction for a customer. Disclosure of risks alone is not sufficient to satisfy a broker-dealer's suitability obligation.'')

[92] *See* FINRA Notice to Members (''FINRA NTM'') 12–03 (Jan. 2012) (Heightened Supervision of Complex Products). *See also* FINRA NTM 10–51 (Oct. 2010) (Sales Practice Obligations for Commodity Futures-Linked Securities); FINRA NTM 09–73 (Dec. 2009) (FINRA Reminds Firms of their Sales Practice Obligations Relating to

II. Request for Comment

The Commission is soliciting public comment to help inform its review of the listing and trading of new, novel, or complex ETPs, including requests by ETPs for exemptive and no-action relief under the Exchange Act and filings by exchanges to adopt listing standards applicable to ETPs. The Commission is also soliciting comment regarding the ways in which broker-dealers, which are regulated under the Exchange Act, market these products, especially to retail investors. Finally, the Commission seeks comment on investor understanding of the nature and uses of ETPs, particularly by retail investors.

The Commission periodically has solicited public comment on issues relating to ETFs since their inception over two decades ago. In 2001, the Commission issued a Concept Release on Actively Managed Exchange-Traded Funds.[93] That release sought comment on a number of issues relating to actively managed ETFs, focusing in particular on the operation of actively managed ETFs as open-end investment companies and on the exemptive relief under the 1940 Act that would be required for such funds.[94] Then, in 2008, the Commission proposed and sought comment on a rule that would exempt ETFs from certain provisions of the 1940 Act and permit certain ETFs to begin operating without the need to obtain an exemptive order under the 1940 Act.[95] Once again, the focus of that release was on the operation of ETFs as open-end investment companies under the 1940 Act and on the exemptive relief provided to such funds under the 1940 Act.[96]

Here, the Commission seeks comment on the treatment of a broader group of products—ETPs, rather than just ETFs—and the Commission seeks public comment specifically with respect to its oversight of ETPs under the Exchange Act. As noted above, ETP trading makes up a significant percentage of equity trading in the United States.[97] And, while the Commission has gained extensive experience and familiarity with the topics discussed in the questions below, the Commission believes that it would be beneficial to engage broader public comment on these important topics.

To inform the Commission's review of new, novel, or complex ETPs under the Exchange Act, commenters are invited to provide their views regarding the listing and trading of ETP Securities, such as the manner in which ETP Securities are initially listed on a national securities exchange, the manner in which ETP Securities trade in the secondary market, and the exemptive or no-action relief that has been granted to ETPs under the Exchange Act. Commenters are further invited to provide their views regarding how broker-dealers (which are regulated under the Exchange Act) recommend and sell ETPs to investors, how broker-dealers fulfill their obligations to investors when they recommend and sell ETPs, and investors' understanding and use of ETPs. Commenters should be as specific as possible in their responses, explain the reasoning supporting those responses, and provide supporting data wherever possible.

A. Arbitrage and Market Pricing

As discussed above, existing ETPs trade at market prices rather than at a price based on NAV. When providing exemptive or no-action relief under the Exchange Act, the Commission and its staff have analyzed and relied upon the representations from ETP issuers regarding the continuing existence of effective and efficient arbitrage to help ensure that the secondary market prices of ETP Securities do not vary substantially from the value of their underlying portfolio or reference assets.

In the Commission's experience, the deviation between the daily closing price of ETP Securities and their NAV, averaged across broad categories of ETP investment strategies and over time periods of several months, has been relatively small. For example, the average absolute value of the daily difference between the NAV and the closing market price during a six-month period ending in December 2014 was just 0.21% for ETPs based on U.S. equities indices and 0.38% for actively managed ETPs based on U.S. equities.[98] The respective figures for index-based and actively managed ETPs based on U.S. fixed-income securities were 0.26% and 0.19%.[99]

Other types of ETPs have had a somewhat higher deviation between NAV and their closing price. For example, ETPs based on international indices had an average absolute value of daily difference of 0.52% between NAV and the closing price, while actively managed ETPs based on international fixed-income securities had an average absolute value of daily difference of 0.44% between NAV and the closing price during the six-month period studied.[100] These numbers, however, represent only broad averages with respect to end-of-day differences, and intraday premiums or discounts between an ETP's market price and the value of its portfolio or reference assets (or, for certain ETNs, the value of the note according to its terms) can be greater under certain circumstances.[101] Moreover, these numbers represent broad averages, and the Commission seeks public comment and data in response to the specific questions below.

The Commission seeks comment with respect to all aspects of the arbitrage mechanism for ETPs, including the nature, extent, and potential causes of premiums and discounts across the wide range of ETP strategies and holdings. Additionally, in connection with its review of the listing and trading of ETPs, the Commission seeks comment on the trading of ETPs investing in less-liquid assets,[102]

Principal-Protected Notes); FINRA NTM 09–31 (June 2009) (FINRA Reminds Firms of Sales Practice Obligations Relating to Leveraged and Inverse Exchange-Traded Funds); FINRA NTM 08–81 (Dec. 2008) (FINRA Reminds Firms of their Sales Practice Obligations with Regard to the Sale of Securities in a High Yield Environment); NASD Notice to Members (''NASD NTM'') 05–59 (Sept. 2005) (NASD Provides Guidance Concerning the Sale of Structured Products); and NASD NTM 03–71 (Nov. 2003) (NASD Reminds Members of Obligations When Selling Non-Conventional Instruments).

[93] Concept Release: Actively Managed Exchange-Traded Funds, Investment Company Act Release No. IC–25258 (Nov. 8, 2001), 66 FR 57614 (Nov. 15, 2001) (S7–20–01), *available at http://www.sec.gov/rules/concept/ic-25258.htm.*

[94] In response, the Commission received 20 comment letters, which are available on the Commission's Web site at *http://www.sec.gov/rules/concept/s72001.shtml.*

[95] *See* Exchange-Traded Funds (proposed rule), *supra* note 9.

[96] In response to these proposals, the Commission received 25 comment letters, which are available on the Commission's Web site at *http://www.sec.gov/comments/s7-07-08/s70708.shtml.*

[97] *See supra* note 5 and accompanying text.

[98] The average of the *absolute value* of these differences is used because the closing market price of an ETP can deviate either above or below its NAV on any given day, and a calculation that allowed positive deviations to offset negative deviations would understate the extent of the deviations.

[99] Figures in this paragraph represent an analysis by Commission staff of market data obtained through a subscription to Bloomberg Professional services.

[100] The figures in this paragraph reflect an analysis by the staff of the Office of Analytics and Research in the Division of Trading and Markets of market data obtained through a subscription to Bloomberg Professional services.

[101] As an extreme example, during the so-called ''Flash Crash'' of May 6, 2010, many ETP Securities temporarily traded at significant discounts to their IIV, even though their prices recovered before the end of the day. *See* Findings Regarding the Market Events of May 6, 2010, *Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues* (Sept. 30, 2010), *available at http://www.sec.gov/news/studies/2010/marketevents-report.pdf.*

[102] As used in this release, ''liquidity'' generally refers to the ability of a market participant to buy or sell an asset immediately without significantly affecting the market price for that asset. Although

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including fixed-income instruments, during periods of market stress.

1. Arbitrage mechanisms are designed to keep intraday trading prices of ETP Securities equal (or nearly equal) to the contemporaneous value of the underlying portfolio or reference assets. Do these mechanisms work better for some types or categories of ETPs? To what extent do arbitrage mechanisms help ensure efficient market pricing for ETPs throughout periods of market volatility, including times of market stress?

2. Do commenters believe that there are other mechanisms besides arbitrage mechanisms that do, or could, help ensure efficient market pricing of ETPs? Do other factors play a role in efficient market pricing of ETPs? If so, what are these mechanisms or factors, and how effective are they? Are these mechanisms or factors more effective for certain types or categories of ETPs? To what extent are these mechanisms or factors effective during periods of market volatility?

3. What characteristics of an ETP facilitate or hinder the alignment of secondary market share prices with the value of the underlying portfolio or reference assets? What characteristics of an ETP's underlying or reference assets facilitate or hinder the alignment of secondary market share prices with the value of the underlying portfolio or reference assets? Does liquidity in the market for an ETP's underlying or reference assets affect arbitrage, and if so, how and to what extent? Does the availability of current and historical pricing information, as well as trading history, for the underlying or reference assets affect arbitrage, and if so, how and to what extent? To what extent does the availability of correlated hedges for the ETP's underlying or reference assets affect arbitrage and pricing efficiency? To what extent does an ETP's use of a sampling methodology (investing in a subset of the components of an index) to track an index affect arbitrage and pricing efficiency? Does the use of over-the-counter instruments by an ETP affect the opportunity for market makers or other participants to engage in arbitrage, and if so, how and to what extent? Do non-synchronous market hours between an ETP and its underlying assets (*e.g.,* international equities) affect the pricing of an ETP and the opportunity for arbitrage, and if so, how? Does the use of cash-only creation or redemption baskets and variable cash fees affect efficient market pricing, and if so, how?

4. How closely do investors or other market participants expect the intraday trading price of ETP Securities to be aligned with the contemporaneous value of their underlying portfolio or reference assets? Do these expectations differ depending on the type of ETP, the nature of the underlying assets, or market conditions? What methods, if any, do investors use to determine whether the intraday trading price of ETP Securities closely tracks the value of their underlying portfolio or reference assets?

5. Do market participants conduct analyses of how well intraday prices of ETP Securities track the value of their underlying portfolio or reference assets? If so, how much weight do market participants place on such analyses?

6. Under what circumstances might the prices of ETP Securities not track (on an intraday, temporary end-of-day, or permanent basis) the value of their underlying portfolio or reference assets? Are there circumstances in which the price of an ETP's Securities, though different from its NAV, might be a more accurate measure of the value of the ETP's underlying assets? What are the implications for investors (both individual and institutional) and other market participants if intraday prices for ETP Securities do not closely track the value of their underlying portfolio or reference assets, either on an intraday, temporary end-of-day or permanent basis?

7. To what extent do arbitrage mechanisms affect trading in an ETP's underlying or reference assets? Does the answer vary depending on whether the underlying or reference assets are equities, fixed-income securities, commodities, derivatives, or another type of asset? If so, how?

8. To what extent do ETNs offer opportunities for arbitrage? How do market participants engage in arbitrage for ETNs? How is arbitrage affected by ETN issuers' ability to suspend and restart issuances of notes at their discretion? How are arbitrage opportunities affected when an issuer suspends the issuance of its ETNs? Are certain ETNs easier or more difficult to arbitrage due to the nature of the ETN's reference asset or index, and, if so, which ones?

9. As noted above, the IIV for an ETP is generally designed to provide investors information during the trading day on the value of the ETP's portfolio (or, in the case of an ETN, on the value of a reference asset or index). The IIV may be subject to various calculation methodologies. How does the calculation of IIV vary, if at all, among ETPs? Does the calculation methodology depend on the class or type of ETP, and if so, how? Does the calculation methodology depend on the nature of the underlying portfolio or reference assets, and if so, how? Are certain IIV calculation methodologies more or less useful for investors, market makers, or other market participants?

10. To what extent do market participants make use of the IIV for an ETP based on less-liquid securities? If underlying assets trade infrequently or are priced only at the end of the trading day for purposes of NAV calculation, does an IIV that is disseminated every 15 seconds (as is currently the case) contain useful pricing information? Would a different dissemination frequency be more appropriate, and if so, what would that be?

11. Do investors or other market participants use intraday or closing indicative values for ETNs? If so, for what purpose? How does the intraday or closing indicative value differ from the market value of an ETN or its redemption amount?

12. How much disclosure about the contents of an ETP's underlying portfolio is necessary for arbitrage to function efficiently to keep the market price of an ETP aligned with the contemporaneous value of its underlying or reference portfolio? Please explain.

13. In the absence of daily portfolio disclosure for an ETP, could other mechanisms enable market makers or other market participants to make efficient markets in that ETP? If so, what are those mechanisms and how would they function? What, if any, information disclosure, characteristics of the ETP, or other circumstances would be necessary for those mechanisms to function?

14. Under what circumstances would an ETP suspend creations? Under what circumstances could an ETP (other than a 1940-Act registered ETF) suspend redemptions? What effect does this or could this have on arbitrage mechanisms or the market value of these products? How might suspension of creations or redemptions affect the ETP's continued compliance with the conditions of its exemptive and no-action relief under the Exchange Act? How would an ETP issuer be likely to respond to the suspension of creation or redemption activity by one or more of its Authorized Participants?

15. How do arbitrage mechanisms work in the case of ETPs with less-liquid underlying or reference assets? Are arbitrage mechanisms for ETPs with less-liquid underlying or reference assets effective and efficient in aligning

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certain fixed-income instruments, such as on-the-run U.S. Treasury securities, trade in markets with substantial liquidity, fixed-income instruments generally trade with less liquidity than equity securities.

share prices with the value of the underlying portfolio or reference assets?

16. To what extent do arbitrage mechanisms help ensure efficient market pricing throughout rising and falling markets, including times of market stress, for ETPs with underlying or reference assets that are less-liquid? Do periods of market stress affect arbitrage mechanisms for such ETPs, and if so, how? Could there be a point at which the amount of ETP Securities outstanding relative to the amount of underlying or reference assets outstanding results in an imbalance that inhibits the redemption process during periods of market stress?

17. To what extent, if any, does trading activity in ETP Securities affect price discovery, price correlation, liquidity, or volatility in the ETP's underlying or reference assets? What role, if any, do ETP Securities that are based on less-liquid underlying securities have in providing additional price discovery for the underlying securities?

18. Should the listing exchange for an ETP have an obligation to monitor the effectiveness of that ETP's arbitrage mechanism? If yes, what should be the nature of that obligation?

B. Exchange Act Exemptions and No-Action Positions

The Commission believes it is useful and timely to examine the application of Rules 101 and 102 of Regulation M in the context of ETPs—particularly those ETPs with an underlying trust or other collection of underlying assets—given the increasing complexity of ETP investment strategies and the expansion of the types of underlying and reference assets and benchmarks. The Commission solicits comment on approaches for preventing manipulation of an ETP Securities distribution by persons who may have an incentive to do so in light of the nature, variety, and complexity of ETP investment strategies and ETP markets.

19. The staff has issued no-action relief from Rules 101 and 102 of Regulation M to ETNs in part on the basis of assumptions that the secondary market price for such products should not vary substantially from the value of the relevant reference index.[103] Given that the secondary market price of an ETN can substantially deviate from its reference assets when the issuer of that ETN suspends issuances, how should Rules 101 and 102 of Regulation M apply to such products? Should relief from these rules be limited to ETNs where there is a clear, independent index, where there is no limitation on issuances or redemptions, or where an ETN's secondary market price does not vary substantially from the relevant reference index? What effect would such a change have? Are there any other relevant factors in this context? Are there any risks in maintaining the current relief for ETNs? What are the benefits of the relief? How should the Commission balance the risks against any benefits resulting from the ability of Authorized Participants to suspend issuances or redemptions? Should relief for ETNs contain different conditions than relief for other ETPs?

20. Because ETPs are in continuous distribution, they generally need, on an ongoing basis, to meet the conditions of the Regulation M relief that has been extended to them and to meet the representations made in seeking relief under Regulation M.[104] What would an ETP do if it could no longer meet one or more of these conditions or representations and could no longer rely on the relief? In such situations, would the ETP halt creations or, for ETPs not registered under the 1940 Act, redemptions? What effect would that have on the market for that ETP's securities? What would be the effect if this resulted in a halt or suspension of trading activity in the ETP Securities, or in the ETP Securities being delisted? How would investors be affected?

21. What purchasing activities do distribution participants (such as Authorized Participants) engage in during the distribution of ETP Securities? Are these activities limited to the purchasing of shares to accumulate a redemption unit, or are there other reasons for distribution participants to engage in purchases of ETP Securities?

The Commission also invites comment on the conditions pertaining to ETPs' exemptions from, and the criteria relied on by the staff in no-action positions regarding, Section 11(d)(1) of the Exchange Act and Exchange Act Rules 10b-10, 11d1–2, 14e-5, 15c1–5, and 15c1–6.

22. How well do the conditions of the ETPs' exemptions and the staff no-action relief from Section 11(d)(1) and Rule 11d1–2 thereunder, as discussed in section I.D.1.b above, achieve Section 11(d)(1)'s purpose of prohibiting broker-dealers from using favorable margin arrangements to aid in the distribution of securities in which they have an interest? Could different conditions be more effective at achieving this purpose?

23. How often do ETP investors request detailed confirmation information, as discussed in Section I.D.1.c above, in creation and redemption transactions as provided for in the Commission's exemptions from Rule 10b-10 and the related staff no-action positions? What is the cost to broker-dealers of providing this information? Has the availability of modern information technology reduced these costs? Who bears those costs? Do ETP investors use and benefit from this information, and if so, how? What would be the effect of eliminating the exemptions and no-action relief from Rule 10b-10, thereby requiring broker-dealers to provide detailed confirmations to ETP purchasers in all transactions? What would be the effect of eliminating the requirement to send this information to ETP investors upon request? Could different conditions achieve the purposes of Rule 10b–10 at less cost or burden to broker-dealers? If so, what trade-offs would there be, if any?

24. Has Rule 14e–5, discussed in Section I.D.1.e above, affected the structure of ETPs and, if so, in what ways?

25. Authorized Participants generally have no-action relief from the requirements in Rules 15c1–5 and 15c1–6, as discussed in Section I.D.1.f above, to disclose the Authorized Participants' control relationships or interest in the distribution of securities that compose Portfolio Deposits and Redemption Baskets. Given the large number of securities included in many ETPs, would investors realize any benefit from receiving this information in creation and redemption transactions? What would be the cost of providing this information in all transactions or, alternatively, upon an ETP investor's request, and who would bear those costs? Has the availability of modern information technology made it easier or less costly to provide such information? Could different conditions for ''Qualifying ETFs''[105] achieve the purposes of those rules at less cost or burden to broker-dealers? If so, what trade-offs would there be, if any?

C. Exchange Listing Standards

26. The exchanges (as SROs) and the Commission both have responsibilities with respect to determining whether the proposed listing and trading of ETP Securities is consistent with the Exchange Act and the rules and

[103] *See, e.g.,* ETN No-action Letter, *supra* note 70.

[104] Conditions and representations concerning relief under Regulation M are discussed in section I.D.1.a, *supra.*

[105] *See* note 62, *supra.*

regulations thereunder.[106] Do commenters believe that these independent obligations, in practice, complement each other? Do commenters believe that these obligations overlap each other? To the extent that these obligations overlap, how do commenters believe they should be allocated between the exchanges and the Commission?

27. Do the business practices of an exchange with respect to attracting, listing, and trading ETP Securities differ from an exchange's business practices with respect to more traditional equity listing services? If so, how do these business practices align with the existing regulatory framework for exchanges as SROs?

28. Are current exchange listing standards (including standards with respect to component eligibility, diversification, and pricing) effective, given the increasing complexity of ETP investment strategies and the expansion of the types of underlying and reference assets and benchmarks? For example, do existing listing standards adequately address the use by ETPs of non-exchange-listed derivatives or of leverage?

29. Given the increasing complexity of ETP investment strategies and the expansion of the types of underlying or reference assets and benchmarks, what types of information do commenters believe would assist the Commission in evaluating whether a proposed rule filing by an exchange to list and trade a specific ETP is consistent with the Exchange Act?

30. Should certain characteristics of an ETP receive particular emphasis in the Commission's evaluation of whether a proposed rule filing related to that ETP is consistent with the Exchange Act? If so, which ones? For example, should the Commission's evaluation focus on the nature, characteristics, or liquidity of the specific investments, holdings, indices, or reference assets of the ETP and on the public availability of information about these underlying or reference assets? Should the Commission's evaluation focus on the effectiveness or efficiency of the creation and redemption process in facilitating arbitrage opportunities with respect to an ETP? What other factors, if any, should the Commission consider in its evaluation of whether a proposed rule filing related to an ETP is consistent with the Exchange Act?

31. Exchange listing standards for ETP Securities often contain both initial listing criteria and continuing listing criteria. The initial listing criteria include requirements that must be met when ETP Securities are initially listed on an exchange. The continuing listing criteria include requirements that must be met on an ongoing basis. Should exchange listing standards always contain both initial and continuing listing criteria? Should initial and continuing listing standards for ETP Securities be substantially identical?

32. What, if any, is the appropriate role of an exchange that lists ETP Securities with respect to monitoring creation and redemption activity? For example, should the exchange be informed of an ETP's decision to suspend creations or redemptions during the trading day? If so, should the exchange be required to alert its members, investors, and other market participants?

33. What, if any, is the appropriate role of an exchange that lists ETP Securities with respect to monitoring or overseeing the calculation of IIV or NAV?

34. Do market participants believe that certain types of ETPs are more susceptible to manipulation than others? If so, please explain. To what extent, if at all, does the nature, characteristics, liquidity, or volatility of an ETP's underlying or reference assets affect the ETP's susceptibility to manipulation?

D. Broker-Dealer Sales Practices and Investor Understanding and Use of ETPs

The Commission seeks comment on the use of ETPs by investors and the ways in which ETPs are recommended or sold to investors, particularly retail investors. In particular, the Commission seeks comment on the extent to which individual investors buy or sell ETPs with complex investment strategies based on the recommendation of a broker-dealer and the extent to which individual investors understand the nature and operation of such ETPs. The Commission also seeks comment on how broker-dealers meet their obligations to customers when recommending ETPs. While the questions below focus on broker-dealer sales practices, the Commission recognizes that investment advisers also play a role in the purchase or sale of ETPs by investors. Consequently, the Commission invites commenters to address the role of investment advisers in their responses, where applicable.

35. Do individual investors tend to buy and hold ETP Securities? Does the answer depend on the type of ETP (*e.g.,* investment objective, structure, or type of underlying asset)? Do investments by individual investors tend to be solicited or unsolicited? Please explain and provide data where available. If solicited, are solicitations limited to certain categories of investors (*e.g.,* retail investors or high-net-worth individuals) and certain types of ETPs? If so, which categories of investors receive solicitations and how are the parameters of the category determined—*e.g.,* net worth, income, investment experience, options trading eligibility? In addition, which types of ETPs are recommended and what are the parameters being used to determine whether those ETPs should be recommended? Are individual investors purchasing ETPs on the basis of recommendations by brokers?

36. How effective are the suitability requirements applicable to brokerage accounts in addressing broker-dealer sales practices for ETPs in light of the breadth of available ETP options and the growing complexity of ETP investment strategies?

37. What methods do, or could, broker-dealers employ to meet their sales-practice and suitability obligations for ETP Securities?

38. Do investors have access to sufficient information to understand ETPs, how ETP Securities trade, the costs associated with trading ETP Securities, and how their prices and valuations are determined, particularly as ETPs encompass increasingly complex benchmarks, asset classes, and investment strategies? What is the source of information (*e.g.,* exchanges, broker-dealers, market intermediaries, prospectuses, SEC releases, or investor alerts) available to investors? Are there ways to better enable investors to access information about the listing and trading of ETP Securities? If yes, what are they?

39. What roles, if any, should the exchanges have in communicating information about ETP Securities to their members, their members' customers, and the general public? Should the answer depend on whether the exchange is the listing exchange or

[106] Exchanges seeking to adopt listing standards applicable to a new ETP product class—or to list and trade specific ETP Securities pursuant to existing non-generic listing standards for an ETP product class—are required to file proposed rule changes on Form 19b-4. *See* 17 CFR 249.819. The instructions to Form 19b-4 state that an exchange filing the form must provide ''a statement of the purpose of the proposed rule change and its basis under the [Exchange] Act and the rules and regulations thereunder applicable to the [exchange]'' and this statement ''should be sufficiently detailed and specific to support a finding that the proposed rule change is consistent with the requirements of the [Exchange] Act and the rules and regulations thereunder. . . .'' To approve an exchange's proposed rule change, the Commission must find that the proposed rule change is consistent with the applicable requirements of the Exchange Act and the rules and regulations thereunder. 15 U.S.C. 78s(b)(2)(C). *See also supra* notes 79–89 and accompanying text.

an exchange that trades the ETP pursuant to unlisted trading privileges?

40. How do broker-dealers communicate information about ETP Securities to their customers? Are investors introduced to ETPs through information provided generally by broker-dealers (*e.g.,* posted on a broker-dealer's Web site for all investors to consider)? Do broker-dealers provide information to investors regarding the type of investor for which a specific product is suitable and what holding periods are appropriate? Are there any other ways that broker-dealers should communicate information relevant to the ETP Securities to their customers? Do broker-dealers restrict or otherwise limit access by certain types of investors to certain types of ETP Securities? If so, please describe these restrictions.

41. Do broker-dealer communications concerning ETPs provide enough information for a retail investor to evaluate the facts concerning ETPs? Do the communications disclose the risks and benefits potentially associated with ETPs? Are those disclosures reasonably understandable for retail investors, and are they presented in a balanced manner? What types of broker-dealer communications about ETPs are most effective?

42. Are there specific aspects of ETP trading that should be communicated to investors to better inform their investment decisions (*e.g.,* the specific risks of investing in certain products or that certain products may not be suitable for certain types of investors)? Are there types of risks in particular ETPs that should be highlighted? If so, in what way, and who should have the responsibility for communicating that information? When should that information be communicated (*e.g.,* prior to making recommendations or prior to accepting a customer order)?

43. Should broker-dealers have additional responsibility to make available or provide information to investors about the risks of investing in ETPs with complex strategies prior to making a recommendation or accepting a customer order for such securities? What costs would broker-dealers incur in providing such information? Who would bear those costs? What costs do broker-dealers currently incur in providing information to customers about ETPs? Who bears those costs?

44. Do broker-dealer communications to investors about ETPs present any performance data? If so, how is that data presented? What types of disclosures accompany the performance data?

45. Are there aspects of ETP arbitrage mechanisms that should be prominently disclosed to investors? If so, how and where? Do investors understand the arbitrage mechanisms of ETPs, and, if so, do they consider the effectiveness and efficiency of these mechanisms when making an investment decision? If so, how?

46. Do broker-dealers use the term ''ETF'' to describe all types of ETPs (as opposed to only those products registered under the 1940 Act)? If so, is this confusing to investors?

47. What use do investors or other market participants make of publicly available information such as the index value, IIV, NAV, or portfolio holdings of an ETP? Does the answer depend on the type of market participant? If so, why do certain market participants use certain information? If market participants do not use certain information, why not? Do the answers depend on the type of underlying asset?

48. Do investors understand what an ETP's IIV represents and what it does not? For example, do they understand that the IIV is not a ''real-time'' update of the NAV and that it is not the price at which they can purchase ETP Securities? Do investors understand how the IIV calculation method can differ from the method used to calculate NAV? Do investors understand that IIV may be a lagging indicator of actual portfolio values during periods of rapid price movements? Please describe the basis for any views expressed regarding the understanding of investors.

49. Do investors' expectations of the nature of the liquidity, the bid-ask spreads, and the market prices of an ETP holding less-liquid underlying securities differ from their expectations of the characteristics of those underlying securities? If so, in what ways do investors expect ETPs based on less-liquid securities to trade differently than the underlying securities themselves?

E. Other

50. The Commission notes that, over the years, there have been ETPs that have closed after being listed and traded for some period of time. What are the consequences to investors of the closure and liquidation or termination of an ETP?

51. How are the types and complexity of the investment strategies and investment objectives of ETPs, and the nature of the market for ETPs, likely to develop in the future? How might these changes affect the listing and trading of ETP Securities? How might these changes affect any underlying securities held by an ETP—for example with respect to liquidity, volatility, and capital formation?

52. As noted above, the total market capitalization of ETPs has grown significantly, nearly doubling since the end of 2009. What do commenters believe are the main reasons for this growth? Do commenters expect significant growth in the number, variety, and market capitalization of ETPs to continue? If such growth continues, how might that affect the exchanges' listing and trading of ETP Securities? How might this growth affect investors, broker-dealers, or other market participants?

53. The Commission provides market structure research, interactive data visualization tools, and advanced market metrics on its Market Structure Data and Analysis Web site, *http://www.sec.gov/marketstructure/index.html.* Users of the Web site and its data can, among other things, compare quoting and trading characteristics of ETPs to those of other equity securities. Have commenters drawn any observations or conclusions from this data about the listing and trading of ETPs? What effects, if any, does market structure have on the quoting and trading of ETPs? What effects, if any, does the quoting and trading of ETPs have on the general characteristics of current equity market structure? Do any specific aspects of current equity market structure facilitate or hinder the fair and efficient quoting and trading of ETPs? What types of additional information or data would commenters like to see regarding the quoting and trading characteristics of ETPs?

The Commission welcomes all comments and encourages commenters to discuss any other questions, issues, concerns, or data regarding the listing and trading of ETP Securities on national securities exchanges.

By the Commission.

Dated: June 12, 2015.

Brent J. Fields,

Secretary.

[FR Doc. 2015–14890 Filed 6–16–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75155; File No. SR–NYSEARCA–2015–29]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Approving Proposed Rule Change To Amend NYSE Arca Rules 3.1 and 3.3 and Section 4.01(a) of the Exchange's Bylaws To Establish a Regulatory Oversight Committee as a Committee of the Board of Directors of the Exchange

June 11, 2015.

I. Introduction

On April 17, 2015, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Arca Rules 3.1 and 3.3, and Section 4.01(a) of the Bylaws of NYSE Arca (''Bylaws''), to establish a Regulatory Oversight Committee (''ROC'') as a committee of the board of directors of the Exchange (''Board''). The proposed rule change was published for comment in the **Federal Register** on May 4, 2015.[3] The Commission did not receive any comment letters regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to establish a ROC as a committee of the Board with the responsibility to independently monitor the Exchange's regulatory operations. The Exchange proposes to amend NYSE Arca Rule 3.3(a) to provide for the ROC and set forth the ROC's composition and functions. In addition, the Exchange proposes that the Board shall appoint the ROC on an annual basis.[4] Under NYSE Arca Rule 3.3(a)(2)(B), the ROC would consist of at least three members, each of whom would be a Public Director[5] of the Exchange or a director of NYSE Regulation, Inc. (''NYSE Regulation''),[6] who satisfies the Exchange's Public Director requirements set forth in Article III, Section 3.02(a) of the Bylaws.[7] The Exchange further proposes that (i) the Board may, on affirmative vote of a majority of directors, at any time remove a member of the ROC for cause and (ii) a failure of a member of the ROC to qualify as a Public Director shall constitute a basis to remove a member of the ROC for cause.[8]

NYSE Arca Rule 3.3(a)(2)(C) would set forth the functions and authority of the ROC. The ROC's responsibilities would be as follows:

- oversee the Exchange's regulatory and self-regulatory organization responsibilities and evaluate the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities;
- assess the Exchange's regulatory performance; and
- advise and make recommendations to the Board or other committees of the Board about the Exchange's regulatory compliance, effectiveness and plans.

In furtherance of the ROC's functions, the Exchange proposes that the ROC shall have the authority and obligation to: (i) Review the regulatory budget of the Exchange and specifically inquire into the adequacy of resources available in the budget for regulatory activities; (ii) meet regularly with the Chief Regulatory Officer (''CRO'') of the Exchange in executive session; (iii) in consultation with the Exchange's Chief Executive Officer, establish the goals, assess the performance, and recommend the CRO's compensation; and (iv) keep the Board informed with respect to the foregoing matters.[9]

The Exchange also proposes to amend NYSE Arca Rule 3.1(a) and Article IV, Section 4.01(a) of the Bylaws. The Exchange proposes to amend NYSE Arca Rule 3.1(a) to allow NYSE Regulation directors to serve on the ROC.[10] In Article IV, Section 4.01(a) of the Bylaws, the Exchange proposes to add references to the ROC, and the Exchange proposes to add the text ''[e]xcept as otherwise provided in the Rules'' to the clause that currently requires each committee of the Board to be comprised of at least 50% Public Directors of the Exchange because, under the proposal, the ROC may include directors of NYSE Regulation.[11] Lastly, the Exchange proposes to add text to Section 4.01(a) to provide that vacancies in the membership of any committee would be filled by the Board.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[13] which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the rules of the exchange. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires that the rules of an exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the Exchange's creation of a ROC as an independent committee to oversee the adequacy and effectiveness of the Exchange's regulatory responsibilities, compliance, and plans is appropriate and should help the Exchange to fulfill its self-regulatory obligations. The Commission notes that, under NYSE

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74824 (April 28, 2015), 80 FR 25347.

[4] *See* Proposed NYSE Arca Rule 3.3(a)(2)(A).

[5] *See infra* note 7 for the definition of ''Public Director'' as set forth in Article III, Section 3.02(a) of the Bylaws.

[6] The Exchange states that NYSE Regulation is a not-for-profit subsidiary of the Exchange's affiliate New York Stock Exchange LLC that performs all of the Exchange's regulatory functions pursuant to an intercompany Regulatory Services Agreement that gives the Exchange the contractual right to review NYSE Regulation's performance.

[7] Article III, Section 3.02(a) of the Bylaws requires that at least 50% of the Exchange's directors be Public Directors, defined as ''persons from the public and [who] will not be, or be affiliated with, a broker-dealer in securities or employed by, or involved in any material business relationship with, the Exchange or its affiliates.''

[8] *See* Proposed NYSE Arca Rule 3.3(a)(2)(B). Under the proposal, if a ROC member's term of office terminates pursuant to NYSE Arca Rule 3.3(a)(2)(B), and the remaining term of office of such committee member at the time of termination is not more than three months, during the period of vacancy, the ROC would not be deemed to be in violation of its compositional requirements by virtue of the vacancy. *See id.*

[9] *See* Proposed NYSE Arca Rule 3.3(a)(2)(C).

[10] Specifically, the Exchange proposes to amend NYSE Arca Rule 3.1(a) to change the current requirement that committees of the Board consist of ''one or more directors of the Exchange.'' The amended rule text would provide that committees of the Board ''may consist partly or entirely of directors of the Exchange.''

[11] The Exchange also proposes to make a corresponding change to the immediately subsequent clause in Article IV, section 4.01(a) so that it reads as follows: ''The purpose and composition of each such committee shall be as set forth in the Rules.''

[12] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78f(b)(1).

[14] 15 U.S.C. 78f(b)(5).

Arca Rule 3.3(a)(2)(C), the responsibilities, enumerated functions, and authority of the ROC are substantially similar to those of other exchanges.[15] In addition, the Commission believes that the proposed requirement that the members of the ROC consist of either Public Directors of the Exchange or directors of NYSE Regulation, who meet the Exchange's Public Director requirements,[16] and the provisions relating to the removal of a member of the ROC either for cause or for failing to qualify under the Exchange's Public Director requirement,[17] should help ensure the continued independence of the members of the ROC. The proposal to establish a ROC should assist the Exchange in meeting its statutory obligations to comply, and to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the rules of the Exchange. Accordingly, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSEARCA–2015–29) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–14829 Filed 6–16–15; 8:45 am]

BILLING CODE 8011–01–P

[15] *See, e.g.,* Bylaws of NASDAQ Stock Market LLC, Article III, Section 5(c); Third Amended and Restated Bylaws of BATS Exchange, Inc., Article V, Section 6(c); Amended and Restated Bylaws of Miami International Securities Exchange, LLC, Article IV, Section 4.5(c).

[16] *See supra* note 7 and accompanying text.

[17] *See supra* note 8 and accompanying text.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75159; File No. SR–BYX–2015–28]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

June 11, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 2015, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') 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.[3] The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend its fees and rebates applicable to Members[6] of the Exchange pursuant to Rule 15.1(a) and (c) (''Fee Schedule'') to: (i) Increase the rebate from $0.0004 per share to $0.0015 per share for orders that yield fee code A, which routes to the Nasdaq Stock Market LLC (''Nasdaq'') and adds liquidity; and (ii) adopt fees for the use of a communication and routing service known as BATS Connect.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that a previous version of the proposal was filed as SR–BYX–2015–27. The proposal was withdrawn on June 9, 2015.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] A Member is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to: (i) Increase the rebate from $0.0004 per share to $0.0015 per share for orders that yield fee code A, which routes to Nasdaq and adds liquidity; and (ii) adopt fees for the use of a communication and routing service known as BATS Connect.

Fee Code A

In securities priced at or above $1.00, the Exchange currently provides a rebate of $0.0004 per share for Members' orders that yield fee code A, applicable to orders routed to Nasdaq that add liquidity. The Exchange proposes to amend its Fee Schedule to increase this rebate to $0.0015 per share for Members' orders that yield fee code A. The proposed change represents a pass through of the rate that BATS Trading, Inc. (''BATS Trading''), the Exchange's affiliated routing broker-dealer, will be rebated for routing orders to Nasdaq when it does not qualify for a volume tiered rebate. The Exchange notes that the proposed change is in response to Nasdaq's June 2015 fee change where Nasdaq will no longer offer a rebate of $0.0004 per share for orders in select symbols (''Nasdaq's Select Symbol Program'') to its customers, such as BATS Trading, and such orders will be subject to the regular Nasdaq Pricing Schedule.[7] Accordingly, when BATS Trading routes to Nasdaq in any symbol, it will be rebated a standard rate of $0.0015 per share. BATS Trading will pass through this rate on Nasdaq to the Exchange and the Exchange, in turn, will pass through this rate to its Members.

BATS Connect

On May 26 [sic], 2015, the Exchange filed a proposed rule change with the Commission to adopt a communication and routing service known as BATS Connect.[8] The Exchange now proposes to adopt fees related to the use of BATS Connect that are equal to the fees charged for an identical service, also called BATS Connect, offered by the Exchange's affiliate, EDGX.[9] BATS

[7] *See* Nasdaq Equity Trader Alert #2015–70, *Nasdaq Ends Access Fee Experiment, available at http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2015-70.*

[8] *See* file no. SR–BYX–2015–26.

[9] *See* the EDGX fee schedule *available at http://batstrading.com/support/fee_schedule/edgx/. See also* Securities Exchange Act Release No. 73780 (December 8, 2014), 79 FR 73942 (December 12,

Continued

Connect is offered by the Exchange on a voluntary basis in a capacity similar to a vendor. In sum, BATS Connect is a communication service that provides subscribers an additional means to receive market data from and route orders to any destination connected to the Exchange's network. BATS Connect does not provide any advantage to subscribers for connecting to the Exchange's affiliates [10] as compared to other method of connectivity available to subscribers. The servers of the subscriber need not be located in the same facilities as the Exchange in order to subscribe to BATS Connect. Subscribers may also seek to utilize BATS Connect in the event of a market disruption where other alternative connection methods become unavailable.

The Exchange will charge a monthly connectivity fee to subscribers utilizing BATS Connect to route orders to other exchanges and broker-dealers that are connected to the Exchange's network. The amount of the connectivity fee varies based solely on the bandwidth selected by the subscriber. Specifically, the Exchange proposes to charge $350 for 1 Mb, $700 for 5 Mb, $950 for 10 Mb, $1,500 for 25 Mb, $2,500 for 50 Mb, and $3,500 for 100 Mb.

BATS Connect would also allow subscribers to receive market data feeds from the exchanges connected to the Exchange's network. In such case, the subscriber would pay the Exchange a connectivity fee, which varies and is based solely on the amount of bandwidth required to transmit the selected data product to the subscriber. The proposed connectivity fees are set forth in the Exhibit 5 attached hereto and range from no charge to $11,500 based on the market data product the subscriber selects.

The Exchange also proposes to adopt a discounted fee of $4,160 per month for subscribers who purchase connectivity to a bundle of select market data products. The following market data products would be included in the bundle: UQDF/UTDF/OMDF, CQS/CTS, Nasdaq TotalView, Nasdaq BX TotalView, Nasdaq PSX TotalView, NYSE ArcaBook, NYSE MKT OpenBook Ultra, and BBS/TTDS. Absent the discount, a subscriber purchasing connectivity through BATS Connect for each of these market data products would pay a total monthly fee of $5,200. As proposed, a subscriber who purchases connectivity to each of the above market data products would be charged a monthly fee of $4,160, which represents a 20% discount. The subscribers would pay any fees charged by the exchange providing the market data feed directly to that exchange.

The Exchange notes that it will not charge a fee to subscribers utilizing BATS Connect to route orders to or receive market data products from the Exchange's affiliates, EDGX, BZX, and EDGA. BATS Connect provides subscribers a means to access exchanges and market centers on the Exchange's network. In all cases, BATS Connect subscribers would be continue to be liable for the necessary fees charged by that exchange or market center, including any required connectivity fees. Market participants who chose a method other than BATS Connect to connect to another exchange or market center would also pay any required connectivity fees directly to that exchange or market center. Likewise, BATS Connect subscribers would be liable for any connectivity fees charged by the Exchange's affiliate.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[11] in general, and furthers the objectives of Section 6(b)(4),[12] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

Fee Code A

The Exchange believes that its proposal to increase the pass through rebate for Members' orders that yield fee code A from $0.0004 to $0.0015 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. Under Nasdaq's Select Symbol Program, Nasdaq provided BATS Trading a rebate of $0.0004 per share for orders executed in select symbols, which BATS Trading passed through to the Exchange and the Exchange passed through to its Members, not only for orders routed in select symbols but in all securities. In June 2015, Nasdaq will terminate its Select Symbol Program, thereby increasing the rebate it provides its customers, such as BATS Trading, in select symbols from a rebate of $0.0004 per share to its standard rebate of $0.0015 per share for orders that are routed to Nasdaq.[13] Therefore, the Exchange believes that the proposed change in fee code A from a rebate of $0.0004 per share to a rebate of $0.0015 per share is equitable and reasonable because it accounts for the pricing changes on Nasdaq. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed to Nasdaq. The Exchange notes that routing through BATS Trading is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

BATS Connect

The Exchange also believes that its proposal is consistent with Section 6(b)(4) of the Act,[14] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities. First, the Exchange will charge a connectivity fee to subscribers utilizing BATS Connect to route orders to other exchanges and market centers that are connected to the Exchange's network, which varies based solely on the amount of bandwidth selected by the subscriber. The amounts of the connectivity fees are also reasonable as compared to similar fees charged by other exchanges. For purposes of order routing, the Exchange proposes to charge $350 for 1 Mb, $700 for 5 Mb, $950 for 10 Mb, $1,500 for 25 Mb, $2,500 for 50 Mb, and $3,500 for 100

2014) (SR–EDGX–2014–28) *and* file no. SR–EDGX–2015–27.

[10] The Exchange's affiliated exchanges are EDGX, EDGA Exchange, Inc. (''EDGA''), and BATS Exchange, Inc. (''BZX''). The Exchange understands that its affiliated exchanges intend to file identical proposed rule changes to adopt the fees for the BATS Connect service with the Commission. The Exchange also notes that its affiliated exchanges have also filed proposed rule changes with the Commission to adopt rules describing the BATS Connect service.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

[13] *See supra* note 6.

[14] 15 U.S.C. 78f(b)(4).

Mb. The New York Stock Exchange, Inc. (''NYSE'') currently charges $300 for 1 Mb, $700 for 5 Mb, $900 for 10 Mb, $1,500 for 25 Mb, $2,000 for 50 Mb, and $2,600 for 100 Mb.[15] The Exchange notes that, overall, the connectivity fee for routing of orders to other market centers proposed by the Exchange is similar to that charged by the NYSE.

Second, with regard to utilizing BATS Connect to receive market data products from other exchanges, the Exchange would only charge subscribers a connectivity fee, the amount of which is based solely on the amount of bandwidth required to transmit that specific data product to the subscribers. The amounts of the connectivity fees are also reasonable as compared to similar fees charged by other exchanges. For example, for market data connectivity, the Nasdaq Stock Market LLC (''Nasdaq'') charges $1,412 per month for CQS/CTS data feed, and the Exchange proposes to charge $1,000 per month connectivity for CQS/CTS data feed.[16] The Exchange notes that, overall, the connectivity fee for receipt of other market centers' data feed proposed by the Exchange is similar to than that charged by Nasdaq.

The Exchange believes it is reasonable to offer such discounted pricing to subscribers who purchase connectivity to a bundle of market data products as it would enable them to reduce their overall connectivity costs for the receipt of market data. As stated above, BATS Connect is offered and purchased on a voluntary basis and subscribers can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Moreover, the Exchange believes the proposed fees are reasonable and equitable because they continue to be based on the Exchange's costs to cover the amount of bandwidth required to provide connectivity to the select bundle of data feeds. The proposed fees will continue to allow the Exchange to recoup this cost, while providing subscribers with an alternative means to connect to the select bundle of data feeds at a discounted rate.

The subscribers would pay any fees: (i) Charged by the exchange providing the market data feed directly to that exchange (ii) charged by a market center to which they routed an order and an execution occurred directly to that market center. The Exchange itself would not charge any additional fees.[17] BATS Connect is offered and purchased on a voluntary basis, in that neither the Exchange nor subscribers are required by any rule or regulation to make this product available. Accordingly, subscribers can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged.

Moreover, the Exchange believes the proposed fees are reasonable and equitable because they are based on the Exchange's costs to cover hardware, installation, testing and connection, as well as expenses involved in maintaining and managing the service. The proposed fees allow the Exchange to recoup these costs, while providing subscribers with an alternative means to connect to other exchange and market centers. The Exchange believes that the proposed fees are reasonable and equitable in that they reflect the costs and the benefit of providing alternative connectivity.

The Exchange also believes it is equitable and reasonable to provide BATS Connect to subscribers for no charge to route orders to or receive market data products from the Exchange's affiliates. BATS Connect provides subscribers a means to access exchanges and market centers on the Exchange's network. In all cases, BATS Connect subscribers would be continue to be liable for the necessary fees charged by the Exchange, its affiliate, or another exchange or market center, including any required connectivity fees. As stated above, BATS Connect is offered and purchased on a voluntary basis, and subscribers and market participants may choose an alternative method to connect to the Exchange, its affiliates, or another exchange or market center connected to the Exchange's network. Such other services may also offer at no charge connectivity to certain exchanges or a group of exchanges.[18] Therefore, the Exchange believes that the [sic] providing BATS Connect to subscribers at no charge to route orders to or receive market data products from the Exchange's affiliates is reasonable and equitable as they will continue to be liable to the Exchange or its affiliate for any required connectivity fees.

Lastly, the Exchange also believes that the proposed amendments to its fee schedule are non-discriminatory because they will apply uniformly to all subscribers. All subscribers that voluntarily select various service options will be charged the same amount for the same services. All subscribers have the option to select any connectivity option, and there is no differentiation among subscribers with regard to the fees charged for the service. Further, the benefits of selecting such services are the same for all subscribers, irrespective of whether their servers are located in the same facility as the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Fee Code A

The Exchange believes that its proposal to pass through a rebate of $0.0015 per share for Members' orders that yield fee code A would increase intermarket competition because it offers customers an alternative means to route to Nasdaq for a similar rate as entering orders in certain symbols on Nasdaq directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

BATS Connect

The Exchange does not believe the proposed fees for BATS Connect will result in any burden on competition. The proposed rule change is designed to provide subscribers with an alternative means to access other market centers on the Exchange's network if they choose or in the event of a market disruption where other alternative connection methods become unavailable. BATS Connect is not the exclusive method to connect to these market centers and subscribers may utilize alternative methods to connect to the product if they believe the Exchange's proposed pricing is unreasonable or otherwise.

[15] *See* NYSE's SFTI Americas Product and Service List *available at http://www.nyxdata.com/docs/connectivity*.

[16] *See* Nasdaq Rule 7034 (setting forth Nasdaq's connectivity fees for receipt of third party market data products).

[17] The Exchange's rules and fees would not address the fees or manner of operation of any destination to which the subscriber asked that an order be routed.

[18] *See* NYSE's SFTI Americas Product and Service List *available at http://www.nyxdata.com/docs/connectivity (offering at no charge connectivity to the NYSE, NYSE MKT LLC, and NYSE Arca, Inc.).*

Therefore, the Exchange does not believe the proposed rule change will have any effect on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and paragraph (f) of Rule 19b–4 thereunder.[20] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2015–28 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2015–28. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BYX–2015–28 and should be submitted on or before July 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–14832 Filed 6–16–15; 8:45 am]

BILLING CODE 8011–01–P

[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75158; File No. SR–BATS–2015–44]

Self-Regulatory Organizations; BATS Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of BATS Exchange, Inc.

June 11, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 2015, BATS Exchange, Inc. (the ''Exchange'' or ''BATS'') 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.[3] The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act [4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend its fees and rebates applicable to Members [6] of the Exchange pursuant to Rule 15.1(a) and (c) (''Fee Schedule'') to: (i) Increase the rebate from $0.0004 per share to $0.0015 per share for orders that yield fee code A, which routes to the Nasdaq Stock Market LLC (''Nasdaq'') and adds liquidity; and (ii) adopt fees for the use of a communication and routing service known as BATS Connect.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to: (i) Increase the rebate from $0.0004 per share to $0.0015 per share for orders that yield fee code A, which routes to Nasdaq and adds liquidity; and (ii) adopt fees for the use of a communication and routing service known as BATS Connect.

Fee Code A

In securities priced at or above $1.00, the Exchange currently provides a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that a previous version of the proposal was filed as SR–BATS–2015–41. The proposal was withdrawn on June 9, 2015.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] A Member is defined as ''any registered broker or dealer that has been admitted to membership in the Exchange.'' *See* Exchange Rule 1.5(n).

rebate of $0.0004 per share for Members' orders that yield fee code A, applicable to orders routed to Nasdaq that add liquidity. The Exchange proposes to amend its Fee Schedule to increase this rebate to $0.0015 per share for Members' orders that yield fee code A. The proposed change represents a pass through of the rate that BATS Trading, Inc. (''BATS Trading''), the Exchange's affiliated routing broker-dealer, will be rebated for routing orders to Nasdaq when it does not qualify for a volume tiered rebate. The Exchange notes that the proposed change is in response to Nasdaq's June 2015 fee change where Nasdaq will no longer offer a rebate of $0.0004 per share for orders in select symbols (''Nasdaq's Select Symbol Program'') to its customers, such as BATS Trading, and such orders will be subject to the regular Nasdaq Pricing Schedule.[7] Accordingly, when BATS Trading routes to Nasdaq in any symbol, it will be rebated a standard rate of $0.0015 per share. BATS Trading will pass through this rate on Nasdaq to the Exchange and the Exchange, in turn, will pass through this rate to its Members.

BATS Connect

On May 26 [sic], 2015, the Exchange filed a proposed rule change with the Commission to adopt a communication and routing service known as BATS Connect.[8] The Exchange now proposes to adopt fees related to the use of BATS Connect that are equal to the fees charged for an identical service, also called BATS Connect, offered by the Exchange's affiliate, EDGX.[9] BATS Connect is offered by the Exchange on a voluntary basis in a capacity similar to a vendor. In sum, BATS Connect is a communication service that provides subscribers an additional means to receive market data from and route orders to any destination connected to the Exchange's network. BATS Connect does not provide any advantage to subscribers for connecting to the Exchange's affiliates [10] as compared to other method of connectivity available to subscribers. The servers of the subscriber need not be located in the same facilities as the Exchange in order to subscribe to BATS Connect. Subscribers may also seek to utilize BATS Connect in the event of a market disruption where other alternative connection methods become unavailable.

The Exchange will charge a monthly connectivity fee to subscribers utilizing BATS Connect to route orders to other exchanges and broker-dealers that are connected to the Exchange's network. The amount of the connectivity fee varies based solely on the bandwidth selected by the subscriber. Specifically, the Exchange proposes to charge $350 for 1 Mb, $700 for 5 Mb, $950 for 10 Mb, $1,500 for 25 Mb, $2,500 for 50 Mb, and $3,500 for 100 Mb.

BATS Connect would also allow subscribers to receive market data feeds from the exchanges connected to the Exchange's network. In such case, the subscriber would pay the Exchange a connectivity fee, which varies and is based solely on the amount of bandwidth required to transmit the selected data product to the subscriber. The proposed connectivity fees are set forth in the Exhibit 5 attached hereto and range from no charge to $11,500 based on the market data product the subscriber selects.

The Exchange also proposes to adopt a discounted fee of $4,160 per month for subscribers who purchase connectivity to a bundle of select market data products. The following market data products would be included in the bundle: UQDF/UTDF/OMDF, CQS/CTS, Nasdaq TotalView, Nasdaq BX TotalView, Nasdaq PSX TotalView, NYSE ArcaBook, NYSE MKT OpenBook Ultra, and BBS/TTDS. Absent the discount, a subscriber purchasing connectivity through BATS Connect for each of these market data products would pay a total monthly fee of $5,200. As proposed, a subscriber who purchases connectivity to each of the above market data products would be charged a monthly fee of $4,160, which represents a 20% discount. The subscribers would pay any fees charged by the exchange providing the market data feed directly to that exchange.

The Exchange notes that it will not charge a fee to subscribers utilizing BATS Connect to route orders to or receive market data products from the Exchange's affiliates, EDGX, EDGA, and BYX. BATS Connect provides subscribers a means to access exchanges and market centers on the Exchange's network. In all cases, BATS Connect subscribers would be continue to be liable for the necessary fees charged by that exchange or market center, including any required connectivity fees. Market participants who chose a method other than BATS Connect to connect to another exchange or market center would also pay any required connectivity fees directly to that exchange or market center. Likewise, BATS Connect subscribers would be liable for any connectivity fees charged by the Exchange's affiliate.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[11] in general, and furthers the objectives of Section 6(b)(4),[12] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

Fee Code A

The Exchange believes that its proposal to increase the pass through rebate for Members' orders that yield fee code A from $0.0004 to $0.0015 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. Under Nasdaq's Select Symbol Program, Nasdaq provided BATS Trading a rebate of $0.0004 per share for orders executed in select symbols, which BATS Trading passed through to the Exchange and the Exchange passed through to its

[7] *See* Nasdaq Equity Trader Alert #2015–70, *Nasdaq Ends Access Fee Experiment, available at http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2015-70.*

[8] *See* file no. SR–BATS–2015–40.

[9] *See* the EDGX fee schedule *available at http://batstrading.com/support/fee_schedule/edgx/. See also* Securities Exchange Act Release No. 73780 (December 8, 2014), 79 FR 73942 (December 12, 2014) (SR–EDGX–2014–28) *and* file no. SR–EDGX–2015–27.

[10] The Exchange's affiliated exchanges are EDGX, EDGA Exchange, Inc. (''EDGA''), and BATS Y-Exchange, Inc. (''BYX''). The Exchange understands that its affiliated exchanges intend to file identical proposed rule changes to adopt the fees for the BATS Connect service with the Commission. The Exchange also notes that its affiliated exchanges have also filed proposed rule changes with the Commission to adopt rules describing the BATS Connect service.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4).

Members, not only for orders routed in select symbols but in all securities. In June 2015, Nasdaq will terminate its Select Symbol Program, thereby increasing the rebate it provides its customers, such as BATS Trading, in select symbols from a rebate of $0.0004 per share to its standard rebate of $0.0015 per share for orders that are routed to Nasdaq.[13] Therefore, the Exchange believes that the proposed change in fee code A from a rebate of $0.0004 per share to a rebate of $0.0015 per share is equitable and reasonable because it accounts for the pricing changes on Nasdaq. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed to Nasdaq. The Exchange notes that routing through BATS Trading is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

BATS Connect

The Exchange also believes that its proposal is consistent with Section 6(b)(4) of the Act,[14] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities. First, the Exchange will charge a connectivity fee to subscribers utilizing BATS Connect to route orders to other exchanges and market centers that are connected to the Exchange's network, which varies based solely on the amount of bandwidth selected by the subscriber. The amounts of the connectivity fees are also reasonable as compared to similar fees charged by other exchanges. For purposes of order routing, the Exchange proposes to charge $350 for 1 Mb, $700 for 5 Mb, $950 for 10 Mb, $1,500 for 25 Mb, $2,500 for 50 Mb, and $3,500 for 100 Mb. The New York Stock Exchange, Inc. (''NYSE'') currently charges $300 for 1 Mb, $700 for 5 Mb, $900 for 10 Mb, $1,500 for 25 Mb, $2,000 for 50 Mb, and $2,600 for 100 Mb.[15] The Exchange notes that, overall, the connectivity fee for routing of orders to other market centers proposed by the Exchange is similar to that charged by the NYSE.

Second, with regard to utilizing BATS Connect to receive market data products from other exchanges, the Exchange would only charge subscribers a connectivity fee, the amount of which is based solely on the amount of bandwidth required to transmit that specific data product to the subscribers. The amounts of the connectivity fees are also reasonable as compared to similar fees charged by other exchanges. For example, for market data connectivity, the Nasdaq Stock Market LLC (''Nasdaq'') charges $1,412 per month for CQS/CTS data feed, and the Exchange proposes to charge $1,000 per month connectivity for CQS/CTS data feed.[16] The Exchange notes that, overall, the connectivity fee for receipt of other market centers' data feed proposed by the Exchange is similar to that charged by Nasdaq.

The Exchange believes it is reasonable to offer such discounted pricing to subscribers who purchase connectivity to a bundle of market data products as it would enable them to reduce their overall connectivity costs for the receipt of market data. As stated above, BATS Connect is offered and purchased on a voluntary basis and subscribers can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Moreover, the Exchange believes the proposed fees are reasonable and equitable because they continue to be based on the Exchange's costs to cover the amount of bandwidth required to provide connectivity to the select bundle of data feeds. The proposed fees will continue to allow the Exchange to recoup this cost, while providing subscribers with an alternative means to connect to the select bundle of data feeds at a discounted rate.

The subscribers would pay any fees: (i) charged by the exchange providing the market data feed directly to that exchange (ii) charged by a market center to which they routed an order and an execution occurred directly to that market center. The Exchange itself would not charge any additional fees.[17] BATS Connect is offered and purchased on a voluntary basis, in that neither the Exchange nor subscribers are required by any rule or regulation to make this product available. Accordingly, subscribers can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged.

Moreover, the Exchange believes the proposed fees are reasonable and equitable because they are based on the Exchange's costs to cover hardware, installation, testing and connection, as well as expenses involved in maintaining and managing the service. The proposed fees allow the Exchange to recoup these costs, while providing subscribers with an alternative means to connect to other exchange and market centers. The Exchange believes that the proposed fees are reasonable and equitable in that they reflect the costs and the benefit of providing alternative connectivity.

The Exchange also believes it is equitable and reasonable to provide BATS Connect to subscribers for no charge to route orders to or receive market data products from the Exchange's affiliates. BATS Connect provides subscribers a means to access exchanges and market centers on the Exchange's network. In all cases, BATS Connect subscribers would be continue to be liable for the necessary fees charged by the Exchange, its affiliate, or another exchange or market center, including any required connectivity fees. As stated above, BATS Connect is offered and purchased on a voluntary basis, and subscribers and market participants may choose an alternative method to connect to the Exchange, its affiliates, or another exchange or market center connected to the Exchange's network. Such other services may also offer at no charge connectivity to certain exchanges or a group of exchanges.[18] Therefore, the Exchange believes that the [sic] providing BATS Connect to subscribers at no charge to route orders to or receive market data products from the Exchange's affiliates is reasonable and equitable as they will continue to be liable to the Exchange or its affiliate for any required connectivity fees.

Lastly, the Exchange also believes that the proposed amendments to its fee schedule are non-discriminatory because they will apply uniformly to all subscribers. All subscribers that voluntarily select various service options will be charged the same amount for the same services. All subscribers have the option to select any connectivity option, and there is no differentiation among subscribers with regard to the fees charged for the service. Further, the benefits of selecting such services are the same for all subscribers, irrespective of whether their servers are located in the same facility as the Exchange.

[13] *See supra* note 6.

[14] 15 U.S.C. 78f(b)(4).

[15] *See* NYSE's SFTI Americas Product and Service List *available at http://www.nyxdata.com/docs/connectivity*.

[16] *See* Nasdaq Rule 7034 (setting forth Nasdaq's connectivity fees for receipt of third party market data products).

[17] The Exchange's rules and fees would not address the fees or manner of operation of any destination to which the subscriber asked that an order be routed.

[18] *See* NYSE's SFTI Americas Product and Service List *available at http://www.nyxdata.com/docs/connectivity* (offering at no charge connectivity to the NYSE, NYSE MKT LLC, and NYSE Arca, Inc.).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Fee Code A

The Exchange believes that its proposal to pass through a rebate of $0.0015 per share for Members' orders that yield fee code A would increase intermarket competition because it offers customers an alternative means to route to Nasdaq for a similar rate as entering orders in certain symbols on Nasdaq directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

BATS Connect

The Exchange does not believe the proposed fees for BATS Connect will result in any burden on competition. The proposed rule change is designed to provide subscribers with an alternative means to access other market centers on the Exchange's network if they choose or in the event of a market disruption where other alternative connection methods become unavailable. BATS Connect is not the exclusive method to connect to these market centers and subscribers may utilize alternative methods to connect to the product if they believe the Exchange's proposed pricing is unreasonable or otherwise. Therefore, the Exchange does not believe the proposed rule change will have any effect on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [19] and paragraph (f) of Rule 19b–4 thereunder.[20] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–BATS–2015–44 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BATS–2015–44. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BATS–2015–44 and should be submitted on or before July 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–14831 Filed 6–16–15; 8:45 am]

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[19] 15 U.S.C. 78s(b)(3)(A).

[20] 17 CFR 240.19b–4(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75148; File No. SR–NYSEMKT–2015–27]

Self-Regulatory Organizations; NYSE MKT LLC; Order Approving Proposed Rule Change To Amend the Sixth Amended and Restated Operating Agreement of the Exchange

June 11, 2015.

I. Introduction

On April 17, 2015, NYSE MKT LLC (''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to amend the Sixth Amended and Restated Operating Agreement (''Operating Agreement'') of the Exchange. The proposed rule change was published for comment in the **Federal Register** on May 4, 2015.[4] The Commission received no comment letters on the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

NYSE MKT proposes to amend the Exchange's Operating Agreement to (1) establish a Regulatory Oversight Committee (''ROC''), and (2) remove the requirement that the independent directors who make up the majority of the board of directors of the Exchange (''Board'') also be directors of

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 74825 (April 28, 2015), 80 FR 25341 (''Notice'').

Intercontinental Exchange, Inc. (''ICE''), the Exchange's parent company.

A. Creation of a ROC

The Exchange proposes to add subsection (ii) to Section 2.03(h) of the Operating Agreement to establish a ROC and to delineate its composition and functions. The ROC would have the responsibility to independently monitor the Exchange's regulatory operations.[5] In particular, pursuant to Section 2.03(h)(ii), the ROC would:

- Oversee the Exchange's regulatory and self-regulatory organization responsibilities and evaluate the adequacy and effectiveness of the Exchange's regulatory and self-regulatory organization responsibilities;
- assess the Exchange's regulatory performance; and
- advise and make recommendations to the Board or other committees of the Board about the Exchange's regulatory compliance, effectiveness and plans.

In furtherance of these functions, the Exchange proposes that the ROC shall have the authority and obligation to: (i) Review the regulatory budget of the Exchange and specifically inquire into the adequacy of resources available in the budget for regulatory activities; (ii) meet regularly with the Chief Regulatory Officer (''CRO'') in executive session; (iii) in consultation with the Exchange's Chief Executive Officer, establish the goals, assess the performance, and recommend the CRO's compensation; and (iv) keep the Board informed with respect to the foregoing matters.

With respect to the ROC's composition, Section 2.03(h)(ii) would provide that the ROC shall consist of at least three members, each of whom shall be a director of either the Exchange or of NYSE Regulation, Inc. (''NYSE Regulation''), and who satisfy the independence requirements of the Exchange.[6] The Exchange represents that it believes that a ROC comprised of at least three independent members has been recognized as one of several measures that can help ensure the independence of the regulatory function from the market operations and commercial interests of a national securities exchange.[7]

In addition, Section 2.03(h)(ii) of the Operating Agreement would provide that the Board, on affirmative vote of a majority of directors, at any time may remove a member of the ROC for cause, and also would provide that a failure of the ROC member to qualify as independent under the Company Director Independence Policy would constitute a basis to remove a member of the ROC for cause. If the term of office of a ROC member terminates, and the remaining term of office of such member at the time of termination is not more than three months, Section 2.03(h)(ii) would provide that during the period of vacancy, the ROC would not be deemed to be in violation of its compositional requirements by virtue of the vacancy. To clarify the process for filling vacancies on any committee of the Exchange, including the ROC, the Exchange also proposes to amend Section 2.03(h) of the Operating Agreement to provide that vacancies in the membership of any committee shall be filled by the Board. The Exchange represents that it believes that the proposed adoption of a ROC would ensure the continued independence of the regulatory process.[8]

B. Exchange Independent Directors

Currently, Section 2.03(a)(i) of the Operating Agreement, which governs the Board's composition, provides that a majority of the Exchange's directors shall be U.S. persons who are members of the board of directors of ICE and who satisfy the Exchange's Company Director Independence Policy. Each such director is defined as an ''ICE Independent Director'' in Section 2.03(a)(i) of the Operating Agreement. The Exchange proposes to amend Section 2.03(a)(i) to remove the requirement that the independent directors, who must comprise the majority of the Board also be directors of ICE, by amending the definition of ''ICE Independent Director'' to remove the reference to ICE, and to make conforming changes in both subsections (i) and (ii) of Section 2.03(a).

The Exchange represents that, under this modification to its Operating Agreement, a majority of the directors of the Board would continue to satisfy the Company Director Independence Policy.[9] The Exchange also notes that it believes that eliminating the requirement that the independent directors of the Exchange also be directors of ICE would allow the Exchange to broaden the pool of potential Board members, resulting in a more diversified Board membership while still ensuring the directors' independence.[10] The Exchange states that eliminating the requirement that the independent directors of the Exchange also be directors of ICE would result in the Exchange's Board composition requirements being commensurate with the board requirements of its affiliate, NYSE Arca, Inc., which does not require any of its directors to be directors of ICE.[11]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange.[12] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(1) of the Act,[13] which requires an exchange to be so organized and have the capacity to carry out the purposes of the Act and to comply, and to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the rules of the exchange. The Commission also finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[14] which requires that the rules of the exchange be designed, among other things, to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the Exchange's creation of a ROC as an independent committee to oversee the adequacy and effectiveness of the Exchange's regulatory responsibilities, compliance and plans, is appropriate and should help the Exchange to fulfill its self-regulatory obligations. The Commission notes that, under proposed Section 2.03(h)(ii) of the Operating Agreement, the responsibilities, enumerated functions, and authority of the ROC are substantially similar to those of other exchanges.[15] In addition, the Commission believes that the

[5] *See* Notice, 80 FR at 25342.

[6] The Exchange's independence requirements are set forth in the Company Director Independence Policy of the Exchange. *See* Securities Exchange Act Release No. 67564 (August 1, 2012), 77 FR 47151 (August 7, 2012) (SR–NYSE–2012–17) (approving, among other things, the Exchange's Company Director Independence Policy).

[7] *See* Notice, 80 FR at 25342.

[8] *See* Notice, 80 FR at 25343.

[9] *See* Notice, 80 FR at 25343.

[10] *Id.*

[11] *Id.*

[12] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78(b)(1).

[14] 15 U.S.C. 78(b)(5).

[15] *See, e.g.,* Bylaws of NASDAQ Stock Market LLC, Article III, Section 5(c); Third Amended and Restated Bylaws of BATS Exchange, Inc., Article V, Section 6(c); Amended and Restated Bylaws of Miami International Securities Exchange, LLC, Article IV, Section 4.5(c).

proposed requirement that the members of the ROC consist of either directors of the Exchange or directors of NYSE Regulation who satisfy the independence requirements of the Exchange's Company Director Independence Policy, and the provisions relating to the removal of a member of the ROC either for cause or for failing to qualify as independent, should help ensure the continued independence of the members of the ROC. The proposal to establish a ROC should assist the Exchange in meeting its statutory obligations to comply, and to enforce compliance by its members and persons associated with its members, with the Act, the rules and regulations thereunder, and the rules of the Exchange.

The Commission notes that, while the proposal removes the requirement that the independent directors who make up the majority of the Board also be ICE directors, it does not alter the requirement under the Operating Agreement that a majority of the Board must satisfy the Exchange's Company Director Independence Policy.[16] Thus, the majority of directors on the Exchange's Board must still qualify as independent directors under the Exchange's Company Director Independence Policy. Moreover, removing the requirement that the independent directors on the Exchange's Board also be directors of ICE may result in a more diversified Board composition as candidates for membership on the Board who qualify as independent under the Company Director Independence Policy need not be limited to those candidates who also serve on the board of directors of ICE.

Accordingly, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–NYSEMKT–2015–27) is approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–14822 Filed 6–16–15; 8:45 am]

BILLING CODE 8011–01–P

[16] *See supra* note 6.

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75147; File No. SR–EDGA–2015–24]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of EDGA Exchange, Inc.

June 11, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 2015, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') 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.[3] The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend its fees and rebates applicable to Members[6] of the Exchange pursuant to EDGA Rule 15.1(a) and (c) (''Fee Schedule'') to: (i) Increase the rebate from $0.00040 per share to $0.00150 per share for orders that yield fee code A, which routes to the Nasdaq Stock Market LLC (''Nasdaq'') and adds liquidity; and (ii) adopt fees for the use of a communication and routing service known as BATS Connect.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that a previous version of the proposal was filed as SR–EDGA–2015–21. The proposal was withdrawn on June 9, 2015.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to: (i) Increase the rebate from $0.00040 per share to $0.00150 per share for orders that yield fee code A, which routes to Nasdaq and adds liquidity; and (ii) adopt fees for the use of a communication and routing service known as BATS Connect.

Fee Code A

In securities priced at or above $1.00, the Exchange currently provides a rebate of $0.00040 per share for Members' orders that yield fee code A, which routes to Nasdaq and adds liquidity. The Exchange proposes to amend its Fee Schedule to increase this rebate to $0.00150 per share for Members' orders that yield fee code A. The proposed change represents a pass through of the rate that BATS Trading, Inc. (''BATS Trading''), the Exchange's affiliated routing broker-dealer, is rebated for routing orders to Nasdaq when it does not qualify for a volume tiered rebate. When BATS Trading routes to Nasdaq, it is rebated a standard rate of $0.00150 per share.[7] BATS Trading will pass through this rate on Nasdaq to the Exchange and the Exchange, in turn, will pass through this rate to its Members. The Exchange notes that the proposed change is in response to Nasdaq's June 2015 fee change where Nasdaq will no longer offer a rebate of $0.00040 per share for orders in select symbols (''Nasdaq's Select Symbol Program'') to its customers, such as

[7] The Exchange notes that to the extent BATS Trading does or does not achieve any volume tiered discount on Nasdaq or routes an order to Nasdaq in a symbol that is not included in Nasdaq's Select Symbol Program to receive a rebate of $0.00150 per share, its rate for fee code A will not change. The Exchange further notes that, due to billing system limitations that do not allow for separate rates by tape, it will pass through the lesser rebate of $0.00150 per share for all Tapes A, B & C securities.

BATS Trading, and such orders will be subject to the regular Nasdaq Pricing Schedule.[8]

BATS Connect

On May 27, 2015, the Exchange filed a proposed rule change with the Commission to adopt a communication and routing service known as BATS Connect.[9] The Exchange now proposes to adopt fees related to the use of BATS Connect that are equal to the fees charged for an identical service, also called BATS Connect, offered by the Exchange's affiliate, EDGX.[10] BATS Connect is offered by the Exchange on a voluntary basis in a capacity similar to a vendor. In sum, BATS Connect is a communication service that provides subscribers an additional means to receive market data from and route orders to any destination connected to the Exchange's network. BATS Connect does not provide any advantage to subscribers for connecting to the Exchange's affiliates [11] as compared to other method of connectivity available to subscribers. The servers of the subscriber need not be located in the same facilities as the Exchange in order to subscribe to BATS Connect. Subscribers may also seek to utilize BATS Connect in the event of a market disruption where other alternative connection methods become unavailable.

The Exchange will charge a monthly connectivity fee to subscribers utilizing BATS Connect to route orders to other exchanges and broker-dealers that are connected to the Exchange's network. The amount of the connectivity fee varies based solely on the bandwidth selected by the subscriber. Specifically, the Exchange proposes to charge $350 for 1 Mb, $700 for 5 Mb, $950 for 10 Mb, $1,500 for 25 Mb, $2,500 for 50 Mb, and $3,500 for 100 Mb.

BATS Connect would also allow subscribers to receive market data feeds from the exchanges connected to the Exchange's network. In such case, the subscriber would pay the Exchange a connectivity fee, which varies and is based solely on the amount of bandwidth required to transmit the selected data product to the subscriber. The proposed connectivity fees are set forth in the Exhibit 5 attached hereto and range from no charge to $11,500 based on the market data product the subscriber selects.

The Exchange also proposes to adopt a discounted fee of $4,160 per month for subscribers who purchase connectivity to a bundle of select market data products. The following market data products would be included in the bundle: UQDF/UTDF/OMDF, CQS/CTS, Nasdaq TotalView, Nasdaq BX TotalView, Nasdaq PSX TotalView, NYSE ArcaBook, NYSE MKT OpenBook Ultra, and BBS/TTDS. Absent the discount, a subscriber purchasing connectivity through BATS Connect for each of these market data products would pay a total monthly fee of $5,200. As proposed, a subscriber who purchases connectivity to each of the above market data products would be charged a monthly fee of $4,160, which represents a 20% discount. The subscribers would pay any fees charged by the exchange providing the market data feed directly to that exchange.

The Exchange notes that it will not charge a fee to subscribers utilizing BATS Connect to route orders to or receive market data products from the Exchange's affiliates, EDGX, BZX, and BYX. BATS Connect provides subscribers a means to access exchanges and market centers on the Exchange's network. In all cases, BATS Connect subscribers would be continue to be liable for the necessary fees charged by that exchange or market center, including any required connectivity fees. Market participants who chose a method other than BATS Connect to connect to another exchange or market center would also pay any required connectivity fees directly to that exchange or market center. Likewise, BATS Connect subscribers would be liable for any connectivity fees charged by the Exchange's affiliate.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

Fee Code A

The Exchange believes that its proposal to increase the pass through rebate for Members' orders that yield fee code A from $0.00040 to $0.00150 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. Prior to Nasdaq's Select Symbol Program, Nasdaq provided BATS Trading a rebate of $0.00150 per share for orders yielding fee code A, which BATS Trading passed through to the Exchange and the Exchange passed through to its Members. In June 2015, Nasdaq terminated its Select Symbol Program, thereby increasing the rebate it provides its customers, such as BATS Trading, from a rebate of $0.00040 per share to its standard rebate of $0.00150 per share for orders that are routed to Nasdaq in symbols included in its Select Symbol Program.[14] Therefore, the Exchange believes that the proposed change in fee code A from a rebate of $0.00040 per share to a rebate of $0.00150 per share is equitable and reasonable because it accounts for the pricing changes on Nasdaq. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed to Nasdaq. The Exchange notes that routing through BATS Trading is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

[8] *See* Nasdaq Equity Trader Alert #2015–70, *Nasdaq Ends Access Fee Experiment, available at http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2015-70.*

[9] *See* file no. SR–EDGA–2015–20.

[10] *See* the EDGX fee schedule *available at http://batstrading.com/support/fee_schedule/edgx/. See also* Securities Exchange Act Release No. 73780 (December 8, 2014), 79 FR 73942 (December 12, 2014) (SR–EDGX–2014–28) *and* file no. SR–EDGX–2015–27.

[11] The Exchange's affiliated exchanges are EDGX, BATS Exchange, Inc. (''BZX''), and BATS Y-Exchange, Inc. (''BYX''). The Exchange understands that its affiliated Exchange's intend to file identical proposed rule changes to adopt the fees for the BATS Connect service with the Commission. The Exchange also notes that its affiliated Exchanges have also filed proposed rule changes with the Commission to adopt rules describing the BATS Connect service.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] *See supra* note 7.

BATS Connect

The Exchange also believes that its proposal is consistent with Section 6(b)(4) of the Act,[15] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities. First, the Exchange will charge a connectivity fee to subscribers utilizing BATS Connect to route orders to other exchanges and market centers that are connected to the Exchange's network, which varies based solely on the amount of bandwidth selected by the subscriber. The amounts of the connectivity fees are also reasonable as compared to similar fees charged by other exchanges. For purposes of order routing, the Exchange proposes to charge $350 for 1 Mb, $700 for 5 Mb, $950 for 10 Mb, $1,500 for 25 Mb, $2,500 for 50 Mb, and $3,500 for 100 Mb. The New York Stock Exchange, Inc. (''NYSE'') currently charges $300 for 1 Mb, $700 for 5 Mb, $900 for 10 Mb, $1,500 for 25 Mb, $2,000 for 50 Mb, and $2,600 for 100 Mb.[16] The Exchange notes that, overall, the connectivity fee for routing of orders to other market centers proposed by the Exchange is similar to than that charged by the NYSE.

Second, with regard to utilizing BATS Connect to receive market data products from other exchanges, the Exchange would only charge subscribers a connectivity fee, the amount of which is based solely on the amount of bandwidth required to transmit that specific data product to the subscribers. The amounts of the connectivity fees are also reasonable as compared to similar fees charged by other exchanges. For example, for market data connectivity, the Nasdaq Stock Market LLC (''Nasdaq'') charges $1,412 per month for CQS/CTS data feed, and the Exchange proposes to charge $1,000 per month connectivity for CQS/CTS data feed.[17] The Exchange notes that, overall, the connectivity fee for receipt of other market centers' data feed proposed by the Exchange is similar to that charged by Nasdaq.

The Exchange believes it is reasonable to offer such discounted pricing to subscribers who purchase connectivity to a bundle of market data products as it would enable them to reduce their overall connectivity costs for the receipt of market data. As stated above, BATS Connect is offered and purchased on a voluntary basis and subscribers can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Moreover, the Exchange believes the proposed fees are reasonable and equitable because they continue to be based on the Exchange's costs to cover the amount of bandwidth required to provide connectivity to the select bundle of data feeds. The proposed fees will continue to allow the Exchange to recoup this cost, while providing subscribers with an alternative means to connect to the select bundle of data feeds at a discounted rate.

The subscribers would pay any fees: (i) Charged by the exchange providing the market data feed directly to that exchange (ii) charged by a market center to which they routed an order and an execution occurred directly to that market center. The Exchange itself would not charge any additional fees.[18] BATS Connect is offered and purchased on a voluntary basis, in that neither the Exchange nor subscribers are required by any rule or regulation to make this product available. Accordingly, subscribers can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged.

Moreover, the Exchange believes the proposed fees are reasonable and equitable because they are based on the Exchange's costs to cover hardware, installation, testing and connection, as well as expenses involved in maintaining and managing the service. The proposed fees allow the Exchange to recoup these costs, while providing subscribers with an alternative means to connect to other exchange and market centers. The Exchange believes that the proposed fees are reasonable and equitable in that they reflect the costs and the benefit of providing alternative connectivity.

The Exchange also believes it is equitable and reasonable to provide BATS Connect to subscribers for no charge to route orders to or receive market data products from the Exchange's affiliates. BATS Connect provides subscribers a means to access exchanges and market centers on the Exchange's network. In all cases, BATS Connect subscribers would be continue to be liable for the necessary fees charged by the Exchange, its affiliate, or another exchange or market center, including any required connectivity fees. As stated above, BATS Connect is offered and purchased on a voluntary basis, and subscribers and market participants may choose an alternative method to connect to the Exchange, its affiliates, or another exchange or market center connected to the Exchange's network. Such other services may also offer at no charge connectivity to certain exchanges or a group of exchanges.[19] Therefore, the Exchange believes that the [sic] providing BATS Connect to subscribers at no charge to route orders to or receive market data products from the Exchange's affiliates is reasonable and equitable as they will continue to be liable to the Exchange or its affiliate for any required connectivity fees.

Lastly, the Exchange also believes that the proposed amendments to its fee schedule are non-discriminatory because they will apply uniformly to all subscribers. All subscribers that voluntarily select various service options will be charged the same amount for the same services. All subscribers have the option to select any connectivity option, and there is no differentiation among subscribers with regard to the fees charged for the service. Further, the benefits of selecting such services are the same for all subscribers, irrespective of whether their servers are located in the same facility as the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Fee Code A

The Exchange believes that its proposal to pass through a rebate of $0.00150 per share for Members' orders that yield fee code A would increase intermarket competition because it offers customers an alternative means to

[15] 15 U.S.C. 78f(b)(4).

[16] *See* NYSE's SFTI Americas Product and Service List *available at http://www.nyxdata.com/docs/connectivity*.

[17] *See* Nasdaq Rule 7034 (setting forth Nasdaq's connectivity fees for receipt of third party market data products).

[18] The Exchange's rules and fees would not address the fees or manner of operation of any destination to which the subscriber asked that an order be routed.

[19] *See* NYSE's SFTI Americas Product and Service List *available at http://www.nyxdata.com/docs/connectivity (offering at no charge connectivity to the NYSE, NYSE MKT LLC, and NYSE Arca, Inc.).*

route to Nasdaq for a similar rate as entering orders in certain symbols on Nasdaq directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

BATS Connect

The Exchange believes the proposed fees for BATS Connect will not result in any burden on competition. The proposed rule change is designed to provide subscribers with an alternative means to access other market centers on the Exchange's network if they choose or in the event of a market disruption where other alternative connection methods become unavailable. BATS Connect is not the exclusive method to connect to these market centers and subscribers may utilize alternative methods to connect to the product if they believe the Exchange's proposed pricing is unreasonable or otherwise. Therefore, the Exchange does not believe the proposed rule change will have any effect on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [20] and paragraph (f) of Rule 19b–4 thereunder.[21] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGA–2015–24 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2015–24. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2015–24 and should be submitted on or before July 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

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[20] 15 U.S.C. 78s(b)(3)(A).

[21] 17 CFR 240.19b–4(f).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75156; File No. SR–NYSEArca–2015–45]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Revising the Schedule for Implementing the Exchange's Recently Approved Rule To Provide a Price Protection for Market Maker Quotes Pursuant to Rule 6.61

June 11, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on June 5, 2015, NYSE Arca, Inc. (the ''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to revise the schedule for implementing the Exchange's recently approved rule to provide a price protection for Market Maker quotes pursuant to Rule 6.61. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to revise the schedule for implementing the Exchange's recently approved rule to provide a price protection risk mechanism for Market Maker quotes pursuant to Rule 6.61.[4]

Rule 6.61 provides two layers of price protection to incoming Market Maker quotes, rejecting those Market Maker quotes that exceed certain parameters, as a risk mitigation tool. The first layer of price protection, set forth in Rule 6.61(a)(1), assesses incoming sell quotes against the NBB and incoming buy quotes against the NBO (the ''NBBO Price Reasonability Check''). Specifically, per Rule 6.61(a)(1), provided that an NBBO is available, a Market Maker quote would be rejected if it is priced a specified dollar amount or percentage through the contra-side NBBO.

The second layer of price protection assesses the price of call or put bids against a specified benchmark (the ''Underlying Stock Price/Strike Price Check''), per Rule 6.61(a)(2) and (3). This second layer of protection applies to bids in call options or put options when (1) there is no NBBO available, for example, during pre-opening or prior to conducting a re-opening after a trading halt, or (2) if the NBBO is so wide as to not reflect an appropriate price for the respective options series.

Rule 6.61(b) operates as an additional safeguard and risk control feature. In particular, when a Market Maker quote is rejected pursuant to Rule 6.61(a), the Exchange will also cancel any resting same-side quote(s) in the affected series, if rejected pursuant to (a)(1); or the Exchange will also cancel any resting same-side quote(s) in the affected class(es), if rejected pursuant to (a)(2) or (a)(3) of the Rule.

When the Exchange proposed Rule 6.61, it stated that it would announce via Trader Update the implementation date of the Rule.[5] Because of the differing technology associated with the two layers of price protection, the Exchange now proposes a two-stage implementation of the Rule. Specifically, the Exchange proposes to implement Rule 6.61(a)(1) and Rule 6.61(b) as it relates to quotes that have been rejected pursuant to the NBBO Price Reasonability Check first. The Exchange believes that because the NBBO Price Reasonability Check is an approved rule of the Exchange, implementing it as soon as practicable would enable Market Makers and investors alike to benefit from the protections that would be afforded by the NBBO Price Reasonability Check.[6] The Exchange would announce the implementation date by Trader Update to be published no later than five (5) days after the Commission's publication of this filing.

The Exchange further proposes a separate, later implementation date for Rule 6.61(a)(2) and (3) (the Underlying Stock Price/Strike Price Check) and Rule 6.61(b) as it relates to the Underlying Stock Price/Strike Price Check. This two-stage implementation would provide the Exchange additional time to implement the technology related to the Underlying Stock Price/Strike Price Check. The Exchange proposes to add Commentary .01 to the rule, directing OTP Holders and OTP Firms to consult Trader Updates for additional information regarding the implementation schedule for paragraphs (a)(2) and (a)(3) of the Rule, with final implementation of such paragraphs to be completed by no later than March 4, 2016. As noted above, the Exchange proposes to announce the implementation date via Trader Update and would indicate those symbols for which the Underlying Stock Price/Strike Price Check will be unavailable, as the Exchange anticipates that this functionality would be implemented on an iterative basis depending on the symbol. Further, the Exchange will issue subsequent Trader Updates whenever there is a change to the list of symbols for which the Underlying Stock Price/Strike Price Check is unavailable.

The Exchange is proposing this rule change to provide transparency regarding the implementation schedule regarding the two layers of price protection for Marker Maker quotes pursuant to Rule 6.61.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Exchange believes that providing an iterative implementation schedule for the approved price protection features set forth in Rule 6.61 is consistent with the Act because it would enable Market Makers and the public to immediately benefit from the approved NBBO Reasonability Check while allowing the Exchange additional time to implement the technology associated with the Underlying Stock Price/Strike Price Check when there is no reliable NBBO available.

Specifically, the proposed iterative implementation schedule for Rule 6.61 would assist with the maintenance of a fair and orderly market and protect investors and the public interest because it would enable the Exchange to implement the NBBO Reasonability Check immediately, thereby helping to mitigate the risks associated with the entry of quotes that are priced a specified dollar amount or percentage through the prevailing contra-side market, which the Exchange believes is evidence of error. The Exchange further believes that announcing the implementation dates of the new risk mitigation tools via Trader Updates would remove impediments to and perfects the mechanism of a free and open market because they would provide notice of when each of the approved risk control features is being implemented, and for which symbols.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather, to propose an iterative implementation schedule for an approved rule of the Exchange. Therefore, the Exchange does not believe that the proposed rule change will impose any burden on competition, but rather, would enable Market Makers, the public, and investors to immediately benefit from the additional price protection offered by the NBBO Reasonability Check and delay the implementation of the Underlying Stock Price/Strike Price Check pending finalization of the technology associated with that feature.

[4] *See* Securities Exchange Act Release No. 74441 (March 4, 2015), 80 FR 12664 (March 10, 2015) (SR–NYSEArca–2014–150) (Approval Order); *see also* Securities Exchange Act Release No. 74018 (January 8, 2015), 80 FR 1982 (January 14, 2015) (SR–NYSEArca–2014–150) (Notice).

[5] *See* Notice, *id.,* 80 FR at 1985.

[6] The Exchange notes that to the extent that Rule 6.61(b) references Rule 6.61(a)(2) and (3), that language would be without force until the implementation of the latter sections of the Rule.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement would enable the Exchange to implement immediately the approved price protection risk mechanisms for which the associated Exchange technology is currently available or is in the process of becoming finalized, consistent with the proposed implementation schedule. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposal operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2015–45 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2015–45. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca-2015–45, and should be submitted on or before July 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–14830 Filed 6–16–15; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75145; File No. SR–BX–2015–033]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule Under Exchange Rule 7018 With Respect to Transactions in Securities Priced at $1 or More per Share and the Exchange's Retail Price Improvement Program

June 11, 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, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BX Rule 7018 with respect to transactions in securities priced at $1 or more per share and the Exchange's Retail Price Improvement Program.

The text of the proposed rule change is also available on the Exchange's Web site at *http://nasdaqomxbx.cchwallstreet.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend the fee schedule under Rule 7018(a), relating to fees and credits provided for orders in securities priced and $1 or more per share that execute on BX, and is proposing to increase a credit provided by the Retail Price Improvement program under Rule 7018(e).

Under Rule 7018(a), the Exchange provides credits to member firms that access certain levels of liquidity on BX per month. The Exchange is proposing to add two new credit tiers of $0.0017 and $0.0012 per share executed, which will be provided for orders that access liquidity, excluding orders with Midpoint pegging [3] and orders that receive price improvement and execute against an order with Midpoint pegging, entered by a member that accesses liquidity equal to or exceeding 0.20% and 0.05% of total Consolidated Volume [4] during a month, respectively.

In a related change, the Exchange is amending existing credit tiers that provide a credit to members with orders that access liquidity, excluding orders with Midpoint pegging and orders that receive price improvement and execute against an order with Midpoint pegging, entered by a member that accesses liquidity equal to or exceeding 0.1% and 0.015% of total Consolidated Volume during a month, which currently provide credits of $0.0010 and $0.0008 per share executed, respectively. The Exchange is proposing to increase the credit provided under the 0.1% Consolidated Volume tier from $0.0010 per share executed to $0.0015 per share executed. The Exchange is also proposing to increase the total Consolidated Volume required to receive the $0.0008 per share executed credit from 0.015% to 0.02%.

The Exchange is proposing to increase the credit it provides for all other orders that remove liquidity from BX and that do not qualify under another higher credit from $0.0004 per share executed to $0.0006 per share executed. In related changes, the Exchange is eliminating two credit tiers, which currently provide credits of $0.0006 per share executed and both of which are rendered moot in light of the increased credit the Exchange is provided for all other orders that remove liquidity from BX. Specifically, the Exchange is proposing to eliminate a $0.0006 per share executed credit provided to a member firm for an order that accesses liquidity, excluding orders with Midpoint pegging and orders that receive price improvement and execute against an order with Midpoint pegging, entered by a member that provides an average daily volume of at least 25,000 shares of liquidity during the month. The Exchange is also proposing to eliminate the $0.0006 per share executed credit provided to members with a BSTG,[5] BSCN,[6] BMOP,[7] BTFY,[8] BCRT,[9] BDRK [10] or BCST [11] order that accesses liquidity in the NASDAQ OMX BX Equities System, excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with Midpoint pegging.

The Exchange is also proposing to modify and eliminate certain charges it assesses under Rule 7018(a). Specifically, the Exchange is proposing to increase the charge assessed for a Displayed order entered by a Qualified Market Maker [12] (''QMM'') from $0.0009 per share executed to $0.0014 per share executed. The Exchange is also proposing to adopt a new charge tier of $0.0014 per share executed assessed a member that (i) adds liquidity equal to or exceeding 0.25% of total Consolidated Volume during a month, and (ii) adds and accesses liquidity equal to or exceeding 0.50% of total Consolidated Volume during a month.

The Exchange is proposing to increase the charges assessed under two tiers for a displayed order that adds liquidity equal to or exceeding 0.25% and 0.04% of total Consolidated Volume during a month, respectively, which are currently set a $0.0012 per share executed and $0.0014 per share executed, respectively. The Exchange is proposing to increase the charge under the 0.25% tier to $0.0018 per share executed, while also decreasing the minimum liquidity needed to be provided to qualify under the tier from 0.25% of total Consolidated Volume during a month to 0.20% of total Consolidated Volume during a month. The Exchange is proposing to increase the charge under the 0.04% tier to $0.0019 per share executed and is additionally proposing to increase the total Consolidated Volume required to receive the charge from 0.04% to 0.10%.

The Exchange is also proposing to amend charges it assesses for providing liquidity in orders with Midpoint pegging. Specifically, it is proposing to eliminate the $0.0002 per share executed charge assessed for an order with Midpoint pegging entered by a member that adds 0.03% of total Consolidated Volume of non-displayed liquidity. The Exchange is also proposing to increase the charge assessed for an order with Midpoint pegging entered by a member that adds 0.015% of total Consolidated Volume of non-displayed liquidity from $0.0004 per share executed to $0.0005 per share executed and is additionally increasing the total Consolidated Volume requirement from 0.015% to 0.02%. The Exchange is proposing to increase the $0.0010 per share executed charge for an order with Midpoint pegging entered by a member that does not qualify for a lower charge for such an order to $0.0015 per share executed.

The Exchange is proposing to amend certain charges relating to non-displayed orders. Specifically, the Exchange is proposing to eliminate the $0.0014 per share executed charge assessed for a non-displayed order, other than orders with Midpoint

[3] A Midpoint Peg order has its priced [sic] based upon the national best bid and offer, excluding the effect that the Midpoint Peg Order itself has on the inside bid or inside offer. Primary Pegged Orders with an offset amount and Midpoint Pegged Orders will never be displayed. A Midpoint Pegged Order may be executed in sub-pennies if necessary to obtain a midpoint price. A new timestamp is created for the order each time it is automatically adjusted.

[4] Consolidated Volume is defined as the total consolidated volume reported to all consolidated transaction reporting plans by all exchanges and trade reporting facilities during a month in equity securities, excluding executed orders with a size of less than one round lot. For purposes of calculating Consolidated Volume and the extent of a member's trading activity, expressed as a percentage of or ratio to Consolidated Volume, the date of the annual reconstitution of the Russell Investments Indexes shall be excluded from both total Consolidated Volume and the member's trading activity. *See* Rule 7018(a).

[5] *See* BX Rule 4758(a)(1)(A)(iii).

[6] *See* BX Rule 4758(a)(1)(A)(iv).

[7] *See* BX Rule 4758(a)(1)(A)(vi).

[8] *See* BX Rule 4758(a)(1)(A)(v).

[9] *See* BX Rule 4758(a)(1)(A)(vii).

[10] *See* BX Rule 4758(a)(1)(A)(viii).

[11] *See* BX Rule 4758(a)(1)(A)(ix).

[12] A member firm may become a QMM by providing through one or more of its NASDAQ OMX BX Equities System market maker participant identifier (''MPIDs'') more than 0.30% of Consolidated Volume during the month. For a member qualifying under this method, the member must have at least one Qualified MPID, that is, an MPID through which, for at least 200 securities, the QMM quotes at the NBBO an average of at least 50% of the time during regular market hours (9:30 a.m. through 4:00 p.m.) during the month. The member must also provide an average daily volume of 1.5 million shares or more using orders with Midpoint pegging during the month.

pegging, entered by a member that adds 0.075% of total Consolidated Volume of non-displayed liquidity. The Exchange is also proposing to increase the $0.0019 per share executed charge assessed for a non-displayed order, other than orders with Midpoint pegging, entered by a member that adds 0.055% of total Consolidated Volume of non-displayed liquidity to $0.0024 per share executed and is additionally increasing the total Consolidated Volume requirement to 0.06%. The Exchange is proposing to increase the charge assessed for all other non-displayed orders from $0.0028 per share executed to $0.0030 per share executed.

The Exchange is proposing to reduce the level of Consolidated Volume required to qualify as a QMM. Currently, to be considered a QMM a member firm must provide through one or more of its NASDAQ OMX BX Equities System MPIDs more than 0.30% of Consolidated Volume during the month. To qualify under this method, the member firm must have at least one Qualified MPID, that is, an MPID through which, for at least 200 securities, the QMM quotes at the NBBO an average of at least 50% of the time during regular market hours (9:30 a.m. through 4:00 p.m.) during the month. The member firm must also provide an average daily volume of 1.5M shares or more using orders with Midpoint pegging during the month. The Exchange is proposing to reduce the level of Consolidated Volume under the rule from 0.30% to 0.15%.

Lastly, the Exchange is proposing to amend a charge assessed under the Retail Price Improvement Program of Rule 7018(e). The Exchange's Retail Price Improvement (''RPI'') program provides incentives to member firms (or a division thereof) approved by the Exchange to participate in the program (a ''Retail Member Organization'') to submit designated ''Retail Orders'' [13] for the purpose of seeking price improvement. The Exchange is proposing to increase the $0.0012 per share executed credit provided for a Retail Order that accesses other liquidity on the Exchange book to $0.0017 per share executed. The credit applies to Retail Orders not covered by other credit tiers available for accessing liquidity under the rule.

2. Statutory Basis

BX believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[14] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[15] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the Exchange operates or controls, and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed two new credit tiers based on Consolidated Volume together with the proposed changes to existing credit tiers based on Consolidated Volume under BX Rule 7018(a) are reasonable because they provide additional opportunities for market participants to receive credits for participation on BX. The Exchange also believes that the proposed changes to the credit tiers based on the level Consolidated Volume are reasonable because the credits tiers are directly tied to the level of Consolidated Volume a member firm accesses in a given month, with the highest credit provided for the greatest level of Consolidated Volume, and the lowest credit provided to the lowest level of Consolidated Volume. Specifically, the Exchange is proposing a new $0.0017 per share executed credit tier, which will require the highest level of Consolidated Volume in liquidity removal from the Exchange. The Exchange is proposing to increase the credit provided for the next lower tier, which requires liquidity accessed of 0.1% or more of Consolidated Volume, to $0.0015 per share executed. The Exchange is proposing to adopt a new $0.0012 per share executed credit tier, which will require adding liquidity equal to or exceeding 0.05% of total Consolidated Volume during the month. Lastly, the Exchange is modifying an existing credit tier by increasing the minimum total Consolidated Volume required from 0.015% to 0.02%. As such, the Exchange is generally providing increased credits to provide incentive to member firms to remove liquidity, excluding orders with Midpoint pegging and excluding orders that receive price improvement and execute against an order with Midpoint pegging, from the Exchange. With respect to the increased Consolidated Volume required to receive the $0.0008 credit, the Exchange notes that member firms are being required to provide increased Consolidated Volume to receive the credit, which will improve market quality for all participants. The Exchange believes that the proposed credits noted above are both equitably allocated and are not unfairly discriminatory as they are provided to all member firms that achieve the minimum level of Consolidated Volume required by the tier, with the member firms that provide the greatest level of Consolidated Volume receiving the greatest credit.

The Exchange believes that elimination of the two $0.0006 per share executed credit tiers is reasonable because the Exchange has increased the credit it provides for all orders that do not otherwise receive a higher credit, which the Exchange is increasing to $0.0006 per share executed. This increased ''default'' credit is reasonable because the Exchange desires to further incentivize member firms to participate in the Exchange by removing liquidity, generally. The Exchange believes that the proposed elimination of the two $0.0006 per share executed credit tiers, and the proposed increase in the ''default'' credit to $0.0006 per share executed are both an equitable allocation and are not unfairly discriminatory because more member firms will have the opportunity to qualify for a higher credit based on their participation in BX by removing liquidity.

The Exchange believes that the proposed change to increase the charge assessed a QMM for entering a displayed order is reasonable because the exchange must balance the cost of credits provided for orders removing liquidity and the desire to provide QMMs with incentives to provide displayed orders. The Exchange notes that the proposed charge continues to be lower than the default charge assessed for all other displayed orders that do not otherwise qualify for a lower charge, and as such continues to act as an incentive to market participants to provide such liquidity. Moreover, the Exchange will continue to provide a reduced charge in return for the

[13] A Retail Order is defined in BX Rule 4780(a)(2), in part, as ''an agency or riskless principal order that satisfies the criteria of FINRA Rule 5320.03, that originates from a natural person and is submitted to the Exchange by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price (except in the case that a market order is changed to a marketable limit order) or side of market and the order does not originate from a trading algorithm or any other computerized methodology.''

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(4) and (5).

provision of market improving order activity. The Exchange believes that the proposed change is both equitably allocated and is not unfairly discriminatory because the increased charge applies uniformly to all member firms that previously had qualified to receive such a credit.

The Exchange believes that the proposed new $0.0014 per share executed charge available to a member firm that adds liquidity equal to or exceeding 0.25% of total Consolidated Volume during a month and adds and accesses liquidity equal to or exceeding 0.50% of total Consolidated Volume during a month, is reasonable because it provides a new means by which a member firm may qualify for a lower charge than the default charge applied to liquidity-providing displayed orders. The Exchange provides incentives to member firms to enter displayed orders on BX and, in the present case, it is providing a reduced charge to a member that enters such an order, but also provides market improving liquidity in the form of significant levels of Consolidated Volume of adding and accessing liquidity during the month. The Exchange believes that the proposed change is both equitably allocated and is not unfairly discriminatory because the new charge applies uniformly to all member firms that qualify under the tier's requirements, which requires beneficial market activity by the member firm in return for the lower charge.

The Exchange believes that the proposed increase to the $0.0012 per share executed and $0.0014 per share executed charge tiers assessed for Displayed orders entered by a member firm that adds liquidity equal to or exceeding 0.25% and 0.04% of total Consolidated Volume during a month, respectively, is reasonable because it reflects a small increase to the charges assessed for such orders by qualifying members, while each continue to remain lower than the default charge assessed for providing liquidity in displayed orders. As such, the proposed charges will continue [sic] act as an incentive to market participants to provide displayed orders. The Exchange also believes that decreasing the level of Consolidated Volume required to receive the proposed $0.0018 per share executed charge from 0.025% to 0.020% is reasonable because it lowers the total Consolidated Volume requirement, which the Exchange has observed was set too high to effectively provide incentive to market participants to improve the market. The Exchange also believes that it is reasonable to increase the level of Consolidated Volume required to receive the $0.0019 per share executed charge from 0.04% to 0.10% because the Exchange believes that increasing the level may result in improved market quality in the form of additional total Consolidated Volume in return for the reduced charge. The Exchange believes that the proposed changes to the $0.0012 charge tier is both an equitable allocation and is not unfairly discriminatory because the increased charge applies uniformly to all member firms that qualify under the tier's revised, lower Consolidated Volume requirement, which will continue to provide a charge lower than the default charge assessed for displayed orders. The Exchange also believes that the proposed changes to the $0.0014 charge tier is both an equitable allocation and is not unfairly discriminatory because the increased charge applies uniformly to all member firms that qualify under the tier's revised, higher Consolidated Volume requirement, which will continue to provide a charge lower than the default charge assessed for displayed orders.

The Exchange believes that elimination of the $0.0002 per share executed charge provided for an order with Midpoint pegging entered by a member firm that adds 0.03% of total Consolidated Volume of non-displayed liquidity is reasonable because the Exchange will continue to provide opportunity for member firms to receive a reduced charge for such non-displayed liquidity based on a certain level of total Consolidated Volume. Specifically, the Exchange will provide a member firm with a reduced charge for non-displayed liquidity if it achieves 0.02% of total Consolidated Volume during a month. The Exchange believes that the 0.03% total Consolidated Volume tier is no longer needed to provide incentive to market participant [sic] to provide such Midpoint pegging orders. The Exchange believes that the proposed change is both equitably allocated and is not unfairly discriminatory because member firms will continue to receive a charge lower than the default charge assessed for non-displayed orders in return for providing beneficial liquidity in the form of Midpoint pegging orders, albeit at an increased charge.

The Exchange believes that the proposed increase to the charge assessed for an order with Midpoint pegging entered by a member firm that adds 0.015% of total Consolidated Volume from $0.0004 per share executed to $0.0005 per share executed is reasonable because it represents a modest increase to the charge assessed for such orders, while remaining lower than the default charge assessed for other non-displayed orders. Moreover, the Exchange believes that the proposed increased charge will continue [sic] act as an incentive to market participants to provide orders with Midpoint pegging. The Exchange believes that the proposed change is both equitably allocated and is not unfairly discriminatory because member firms will continue to receive a charge lower than the default charge assessed for orders in return for providing beneficial liquidity in the form of Midpoint pegging orders, albeit at an increased charge. The Exchange also believes that the proposed increase to the charge is equitably allocated and not unfairly discriminatory because all members entering orders with Midpoint pegging that meet the criteria of the tier will be assessed the proposed charge.

The Exchange believes that the increase the [sic] charge for Midpoint pegging orders that do not otherwise qualify for a lower charge from $0.0010 per share executed to $0.0015 per share executed is reasonable because it represents a modest increase to the charge assessed for such orders, while remaining lower than the default charge assessed for non-displayed orders. Moreover, the Exchange believes that the proposed increased charge will continue [sic] act as an incentive to market participants provide orders with Midpoint pegging. The Exchange believes that the proposed change is both equitably allocated and is not unfairly discriminatory because member firms will continue to receive a charge lower than the default charge assessed for non-displayed orders in return for providing beneficial liquidity in the form of Midpoint pegging orders, albeit at an increased charge. The Exchange also believes that the proposed increase to the charge is equitably allocated and not unfairly discriminatory because all members entering orders with Midpoint pegging that do not otherwise qualify for a lower charge under another tier will be assessed the proposed charge.

The Exchange believes that elimination of the $0.0014 per share executed charge assessed for non-displayed orders, other than orders with Midpoint pegging, entered by a member firm that adds 0.075% of total Consolidated Volume of non-displayed liquidity is reasonable because the Exchange will continue to offer member firms opportunity to receive a reduced charge for such orders, albeit at a higher charge under a separate tier. The Exchange notes that, while the proposed charge under the remaining tier is $0.0024 per share executed, member firms will only be required to provide a minimum of 0.06% of total

Consolidated Volume of non-displayed liquidity. The Exchange believes that this charge tier will continue [sic] act as an incentive to market participants to provide non-displayed liquidity. The Exchange believes that the proposed change is both equitably allocated and is not unfairly discriminatory because member firms will continue to receive a charge lower than the default charge assessed for non-displayed orders that qualify under the deleted tier in return for providing non-displayed liquidity, albeit at an increased charge under the remaining tier.

The Exchange believes that increasing the charge assessed and total Consolidated Volume required for non-displayed orders, other than orders with Midpoint pegging, entered by a member firm that adds 0.055% of total Consolidated Volume of non-displayed liquidity is reasonable because the charge continues to be lower than the charge assessed for other non-displayed orders, thereby continuing to serve as an incentive to market participants to provide non-displayed liquidity, and the modest increase in required total Consolidated Volume will encourage members to provide additional non-displayed liquidity. The Exchange notes that non-displayed liquidity is not as beneficial to market quality as other forms of displayed liquidity and, accordingly, the Exchange assesses a higher charge for such liquidity. The Exchange believes that the proposed change is both equitably allocated and is not unfairly discriminatory because member firms will continue to receive a charge lower than the default charge assessed for non-displayed orders that qualify under the tier in return for providing non-displayed liquidity at a level slightly higher than is currently required, which will apply to all member firms that qualify under the tier. Additionally, the Exchange believes that the proposed change is equitably allocated and not unfairly discriminatory because all members can add liquidity to BX and the more liquidity a member adds the lower the charge because the member is improving the quality of the market by providing this additional liquidity.

The Exchange believes that the proposed increase to the default charge assessed for non-displayed orders that do not otherwise qualify for a lower charge from $0.0028 per share executed to $0.0030 per share executed is reasonable because it is reflective of the Exchange's need to balance the fees assessed with the desire to improve market quality. The Exchange believes that non-displayed liquidity on BX is sufficient that it can support a minor increase to the charge assessed, thus allowing the Exchange to apply other discounted charges and offer credits designed to further increase participation on the Exchange. The Exchange also believes that the proposed increase to the default charge is equitably allocated and not unfairly discriminatory because all members entering non-displayed orders on BX that do not qualify for a reduced charge will be assessed the proposed charge.

The Exchange believes the proposed reduction in the level of Consolidated Volume required to qualify as a QMM from 0.30% to 0.15% is reasonable because it will provide a greater incentive to market participants to participate in the program, which is designed to improve the market by providing member firms with incentive to participate in the market in return for reduced charge for providing Displayed Orders. The Exchange also believes that the proposed reduction in Consolidated Volume required to qualify as a QMM is equitably allocated and not unfairly discriminatory because all member firms that qualify under the amended QMM eligibility standard will be considered QMMs, and therefore be eligible for the reduced charge. As noted, the proposed change is designed to expand participation in the program, which will benefit all market participants in the form of improved liquidity.

The Exchange believes the proposed increased credit provided for a Retail Order that accesses other liquidity on the Exchange book from $0.0012 per share executed to $0.0017 per share executed is reasonable because it will provide a greater incentive to market participants to participate in the program, which is designed to improve the market for retail order flow. The Exchange also believes that the proposed increase to the credit is equitably allocated and not unfairly discriminatory because all members entering a Retail Order that accesses other liquidity on the Exchange book will receive the credit.

Finally, BX notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. The changes reflect this environment because although they reflect both increases in credits and fees, with the price increases being minor and lower than the default charges assessed under the fee schedule, while the increased credits are designed to incentivize changes in market participant behavior to the benefit of the market overall.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[16] BX notes that it operates in a highly competitive market in which market participants can readily favor dozens of different competing exchanges and alternative trading systems if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, BX must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, BX believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

In this instance, the changes to fees and credits do not impose a burden on competition because participation in the Exchange is optional and is the subject of competition from other exchanges. The proposed changes to the credits and charges are reflective of the Exchange's overall efforts to provide greater incentives to market participants in the form of credits and reduced charges for market participation it believes needs improvement to the benefit of all participants. For these reasons, the Exchange does not believe that any of the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets. Moreover, because there are numerous competitive alternatives to the use of the Exchange, it is likely that BX will lose market share as a result of the changes if they are unattractive to market participants.

Accordingly, BX does not believe that the proposed rule changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

[16] 15 U.S.C. 78f(b)(8).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A) of the Act [17] and paragraph (f) of Rule 19b–4 [18] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2015–033 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BX–2015–033. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–BX–2015–033, and should be submitted on or before July 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–14819 Filed 6–16–15; 8:45 am]

BILLING CODE 8011–01–P

[17] 15 U.S.C. 78s(b)(3)(A).

[18] 17 CFR 240.19b–4(f).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75152; File No. SR–MIAX–2015–19)

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Order Approving a Proposed Rule Change To Amend Exchange Rule 515

June 11, 2015.

I. Introduction

On April 13, 2015, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Exchange Rule 515 regarding the functionality of Customer Cross Order and Qualified Contingent Cross Order types. The proposed rule change was published for comment in the **Federal Register** on April 30, 2015.[3] The Commission did not receive any comments on the proposal. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes amendments to MIAX Rule 515(h) to provide that trading interest that is subject to an ongoing timer or auction will maintain priority over a new incoming Customer Cross Order or Qualified Contingent Cross Order. MIAX Rule 515(h)(1) provides that Customer Cross Orders [4] are automatically executed upon entry provided that the execution (i) is at or between the best bid and offer on the Exchange; (ii) is not at the same price as a Priority Customer Order on the Exchange's Book; and (iii) will not trade at a price inferior to the national best bid or offer (''NBBO''). Customer Cross Orders are automatically canceled if they cannot be executed.[5] Customer Cross Orders may only be entered in the minimum trading increments applicable to the options class under Rule 510.[6]

MIAX Rule 515(h)(2) provides that Qualified Contingent Cross Orders [7] are automatically executed upon entry provided that the execution (i) is not at the same price as a Priority Customer Order on the Exchange's Book; and (ii) is at or between the NBBO. Qualified Contingent Cross Orders are automatically canceled if they cannot be executed.[8] Qualified Contingent Cross Orders may only be entered in the minimum trading increments applicable to the options class under MIAX Rule 510.[9]

Although neither the Customer Cross Order nor the Qualified Contingent Cross Order may be executed at a price inferior to the NBBO, the Exchange notes that there are situations at the Exchange during which trading interest may exist in the Exchange's System that could be executable at prices up to the NBBO but is not automatically executed because the Exchange is either attempting to obtain additional price improvement for the order or additional liquidity to trade against the order on the Exchange. The Exchange states that it employs a variety of timers and auctions to provide market participants with an opportunity to obtain additional price improvement for their order or to access additional liquidity to trade against the order on the Exchange. Specifically, during the liquidity refresh pause or managed interest process

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 74809 (April 24, 2015), 80 FR 24297 (SR–MIAX–2015–19) (''Notice'').

[4] *See* MIAX Rules 515(h)(1) and 516(i). The Commission notes that the Customer Cross Order type is currently not available for use on the Exchange. *See* MIAX Options Regulatory Circular, RC–2015–05.

[5] *See* Notice, *supra* note 3, at 24297.

[6] *See* MIAX Rule 515(h)(1).

[7] *See* MIAX Rules 515(h)(2) and 516(j). *See also* MIAX Rule 516, Interpretations and Policies .01. The Qualified Contingent Cross Order is currently not deployed; however, the Exchange represents that it intends to make the order type available pending Commission approval of the proposed rule change. *See* Notice, *supra* note 3, at 24297.

[8] *See* Notice, *supra* note 3, at 24297.

[9] *See* MIAX Rule 515(h)(2).

pursuant to MIAX Rule 515(c),[10] or a route timer pursuant to MIAX Rule 529,[11] the Exchange has trading interest that exists that may be executable up to the NBBO but is displayed at a price one minimum price increment away. In addition, during the price improvement mechanisms such as the PRIME Auction or PRIME Solicitation Auction pursuant to MIAX Rule 515A,[12] the Exchange has trading interest that exists that may be executable up to the NBBO but is not displayed.[13]

According to the Exchange, the execution of a Customer Cross Order or Qualified Contingent Cross Order that arrives during a timer or auction at a potentially better price than the interest subject to the timer or auction has the potential to cause confusion and perceived disruption to market participants that are subject to the pre-existing timers or auctions that may see executions occurring at better prices than their trading interest. In addition, the Exchange believes that the timers and auctions provide a valuable service to market participants and that the use of these mechanisms, which provide market participants with opportunities to obtain additional price improvement for their orders or to access additional liquidity to trade against the orders, should be promoted on the Exchange. The Exchange proposes to modify its Rules in order to maintain the priority of trading interest subject to timers and auctions that are initiated prior to the arrival of these specified order types. The proposed changes also would codify existing functionality for Customer Cross Orders that is not currently detailed in the Exchange's Rules.[14]

Thus, the Exchange proposes to amend Rule 515 to provide that Customer Cross Orders and Qualified Contingent Cross Orders will be rejected if there is a timer or price improvement auction in progress when either of these orders is received. Specifically, the Exchange proposes to amend Rule 515(h)(1) to provide that if trading interest exists on the MIAX Book that is subject to the liquidity refresh pause or managed interest process pursuant to Rule 515(c), or a route timer pursuant to Rule 529, when the Exchange receives a Customer Cross Order, the System will reject the Customer Cross Order. The Exchange also proposes to amend Rule 515(h)(1) to provide that if trading interest exists that is subject to a PRIME Auction or PRIME Solicitation Auction pursuant to Rule 515A when the Exchange receives a Customer Cross Order, the System will reject the Customer Cross Order.

In addition, the Exchange proposes to amend Rule 515(h)(2) to provide that if trading interest exists on the MIAX Book that is subject to the liquidity refresh pause or managed interest process pursuant to Rule 515(c), or a route timer pursuant to Rule 529, when the Exchange receives a Qualified Contingent Cross Order, the System will reject the Qualified Contingent Cross Order. The Exchange also proposes to amend Rule 515(h)(2) to provide that if trading interest exists that is subject to a PRIME Auction or PRIME Solicitation Auction pursuant to Rule 515A when the Exchange receives a Qualified Contingent Cross Order, the System will reject the Qualified Contingent Cross Order. The Exchange proposes no changes to the Customer Cross Order and the Qualified Contingent Cross Order order types, and represents that both order types will continue to be subject to the same requirements as before.[15]

III. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of Section 6 of the Act[16] and the rules and regulations thereunder applicable to a national securities exchange.[17] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[18] which requires, among other things, that the Exchange's rules be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that it is reasonable for the Exchange's rules to provide that trading interest subject to ongoing timers and auctions will maintain priority over a new incoming Customer Cross Order or Qualified Contingent Cross Order. The proposed rule change provides that a Customer Cross Order or Qualified Contingent Cross Order will be rejected by the System if there is a timer or price improvement auction in progress. In that instance, market participants may choose to route their orders to other exchanges or resubmit their Customer Cross Order or Qualified Contingent Cross Order to the Exchange. The proposed rule change may eliminate potential confusion by market participants as to the functionality of the Customer Cross Order and Qualified Contingent Cross Order types. The proposed rule change also provides clarity regarding the functionality of Customer Cross Orders; the Commission notes that the proposed changes would codify existing functionality for Customer Cross Orders that is not currently detailed in the Exchange's Rules.[19] Finally, the Commission emphasizes that the proposed rule change does not change any of the requirements for submitting a Customer Cross Order or Qualified Contingent Cross Order set forth in Rule 515.[20]

[10] The ''liquidity refresh pause'' is a process during which the System will pause the market for a time period not to exceed one second to allow additional orders or quotes refreshing the liquidity at the MIAX best bid or offer (''MBBO'') to be received when at the time of receipt or reevaluation of the initiating order by the System: (A) either the initiating order is a limit order whose limit price crosses the NBBO or the initiating order is a market order, and the limit order or market order could only be partially executed; (B) a Market Maker quote was all or part of the MBBO when the MBBO is alone at the NBBO; and (C) and the Market Maker quote was exhausted. *See* MIAX Rule 515(c)(2). The ''managed interest process'' is a process for non-routable orders during which, if the limit price locks or crosses the current opposite side NBBO, the System will display the order one MPV away from the current opposite side NBBO, and book the order at a price that will lock the current opposite side NBBO. Should the NBBO price change to an inferior price level, the order's Book price will continuously re-price to lock the new NBBO and the managed order's displayed price will continuously re-price one MPV away from the new NBBO until (i) the order has traded to and including its limit price, (ii) the order has traded to and including its price protection limit at which any remaining contracts are cancelled, (iii) the order is fully executed or (iv) the order is cancelled. *See* MIAX Rule 515(c)(1)(ii).

[11] *See* MIAX Rule 529. The ''route timer'' is a process for those initiating Public Customer orders that are routable, but do not meet the additional criteria for Immediate Routing, during which the System will implement a route timer not to exceed one second, in order to allow Market Makers and other participants an opportunity to interact with the initiating order.

[12] The ''PRIME Auction'' is a process by which a Member may electronically submit for execution (''auction'') an order it represents as agent (''agency order'') against principal interest, and/or an agency order against solicited interest. *See* MIAX Rule 515A(a). The ''PRIME Solicitation Mechanism'' is a process by which a Member that represents agency orders of a size of 500 contracts or more may electronically execute against solicited orders provided it submits both the agency order and solicited orders for electronic execution into the PRIME Solicitation Mechanism pursuant to Rule 515A. *See* MIAX Rule 515A(b).

[13] *See* Notice, *supra* note 3, at 24298.

[14] *See id.* at 24297.

[15] *See id.* at 24298.

[16] 15 U.S.C. 78f.

[17] Additionally, in approving the proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[18] 15 U.S.C. 78f(b)(5).

[19] *See* Notice, *supra* note 3, at 24297.

[20] *See id.* at 24298.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[21] that the proposed rule change (File No. SR–MIAX–2015–19) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[22]

Robert W. Errett,

Deputy Secretary.

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[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75157; File No. 10–214]

Automated Matching Systems Exchange, LLC; Order Denying an Application for a Limited Volume Exemption From Registration as a National Securities Exchange Under Section 5 of the Securities Exchange Act of 1934

June 11, 2015.

I. Introduction

Automated Matching Systems Exchange, LLC (''AMSE'') believes that its proposed business model would qualify it as an exchange. As defined in Section 3(a)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''), an ''exchange'' is ''any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.'' [1] Under Section 5 of the Act, it is unlawful for an exchange to effect any transaction in a security, or to report such transaction, ''unless such exchange (1) is registered as a national securities exchange . . . or (2) is exempted from such registration upon application by the exchange because, in the opinion of the Commission, by reason of the limited volume of transactions effected on such exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require such registration.'' [2]

AMSE has chosen the latter option, seeking from the Commission an exemption from registration as a national securities exchange.[3] After a careful review of the exemption application, however, we have determined to deny it.

Although our review leads us to identify a number of potential issues that might warrant this result (including whether AMSE would even qualify as an exchange),[4] we find that the application is fatally flawed because AMSE is proposing to possess the broad regulatory powers and responsibilities that are reserved for self-regulatory organizations (''SROs''), while simultaneously seeking exemption from registration as an exchange.[5] Under the Act, for an exchange to possess the powers and responsibilities of an SRO, it must register as a national securities exchange. An exchange that is exempt from such registration does *not* meet the definition of an SRO under the Act. Moreover, the Commission has never allowed an exempt exchange to possess the broad range of regulatory powers and responsibilities of an SRO. We believe that doing so here would be contrary to the Act and inconsistent with the public interest and the protection of investors.

II. Background

A. Procedural History

On July 7, 2014, AMSE filed with the Commission an application seeking a limited volume exemption, under Section 5 of the Act, from the requirement to register as a national securities exchange under Section 6 of the Act.[6] Notice of AMSE's exemption application was published for comment in the **Federal Register** on July 29, 2014.[7]

On October 23, 2014, the Commission issued an order instituting proceedings to determine whether to grant or deny AMSE's exemption application.[8] In that order, the Commission explained that it ''is concerned that AMSE's exemption application does not meet a key threshold requirement for being granted an exemption from exchange registration—namely, that the applicant actually be an 'exchange' as defined under Section 3(a)(1) of the Exchange Act and Rule 3b–16 thereunder.'' [9] The Commission specifically identified the fact that ''it does not appear that any AMSE system would operate as an exchange by bringing together purchasers and sellers of securities.'' [10]

[1] 15 U.S.C. 78c(a)(1). Rule 3b–16 under the Act further provides that an organization, association, or group of persons shall be considered to constitute, maintain, or provide 'a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange,' as those terms are used in Section 3(a)(1) of the Act, (15 U.S.C. 78c(a)(1)), if such organization, association, or group of persons: (1) Brings together the orders for securities of multiple buyers and sellers; and (2) Uses established, non-discretionary methods (whether by providing a trading facility or by setting rules) under which such orders interact with each other, and the buyers and sellers entering such orders agree to the terms of a trade. 17 CFR 240.3b–16(a).

[2] 15 U.S.C. 78e.

[3] We note that, in a December 2014 public notice, the Commission expressly stated that it understood AMSE to be seeking an exemption under Section 5—not registration—and that AMSE did not respond otherwise. *See* Securities Exchange Act Release No. 73911 (December 22, 2014), 79 FR 78507, note 1 (December 30, 2014) (''Amendment Notice'') (''The Commission notes that AMSE's application only seeks a limited volume exemption under Section 5 of the Exchange Act from registration as a national securities exchange under Section 6 of the Exchange Act. AMSE's application does not seek to register as a national securities exchange.''). We therefore deem any claim to the contrary waived.

[4] *See infra* Section III.A.

[5] SROs are privately-funded entities, entrusted with quasi-governmental authority, which generally adopt rules to govern their members and enforce these rules as well as the federal securities laws. *See generally Free Enterprise Fund* v. *Public Co. Accounting Oversight Bd.,* 561 U.S. 477, 484 (2010) (explaining that ''private self-regulatory organizations in the securities industry—such as the New York Stock Exchange—. . . investigate and discipline their own members subject to Commission oversight''). The quasi-governmental authority afforded to SROs includes prosecutorial, adjudicatory, and rulemaking authority.

[6] In the interest of completeness, we note the events that preceded AMSE's filing of its July 7th application. From December 2013 through March 2014, staff had numerous communications with AMSE about its (then-draft) application, including multiple email exchanges and at least one phone call; during these exchanges, the staff explained that it was concerned that AMSE's proposed business model was not an ''exchange.'' In March 2014, AMSE formally submitted a Form 1 application. On April 24, 2014, the staff returned AMSE's application because, based on its review, the staff believed that AMSE had erred in submitting an application for an exchange and instead should have submitted an application for a national securities association, a classification that the staff believed better fit with AMSE's proposed business model. On May 6, 2014, the staff had a phone call with AMSE in which the staff again explained its view that AMSE's proposed business model was not an exchange. On June 16, 2014, AMSE brought suit against the Commission in the U.S. District Court for the District of South Dakota seeking certain injunctive and declaratory relief in connection with its application. *See AMSE* v. *SEC,* Civ. 14–4095 (D.S.D.). On June 24, 2014, the Commission staff and AMSE reached an agreement pursuant to which AMSE would submit a new Form 1 application that would include certain additional information needed to complete the application and the staff would thereafter proceed to process the revised application for Commission consideration.

[7] *See* Securities Exchange Act Release No. 72661 (July 23, 2014), 79 FR 44070.

[8] *See* Securities Exchange Act Release No. 73419, 79 FR 64421 (October 29, 2014) (''Order Instituting Proceedings'').

[9] *Id.* at 64422.

[10] *Id.*

On November 10, 2014, AMSE submitted Amendment No. 1 to its exemption application. Notice of Amendment No. 1 to AMSE's exemption application was published for comment in the **Federal Register** on December 30, 2014.[11] In the notice, the Commission advised interested parties that it was considering potential ''additional grounds for denial.'' As the Commission explained, ''AMSE's exemption application states that AMSE would operate as a self-regulatory organization that would exercise self-regulatory authority over its members,'' [12] but under the Act an exempt exchange is not an SRO; thus, ''any attempts by AMSE to hold itself out as a self-regulatory organization while simultaneously seeking an exemption under Section 5 would be contrary to the Exchange Act.'' [13]

On February 11, 2015, AMSE submitted Amendment Nos. 2A and 2B, along with a comment letter.[14] Among other things, Amendments 2A and 2B changed most of the application's references to ''self-regulatory organization'' to ''limited volume exempt regulatory organization.'' [15] Notwithstanding this change in nomenclature, AMSE did not otherwise modify the accompanying description of the powers and responsibilities it contemplated possessing. In some instances, AMSE continued to refer to itself in terms that pertain only to SROs under the Act or implied that it falls generally within the category of an SRO and would exercise authority as such.[16]

The Commission received thereafter one comment letter from 1st Trade opposing AMSE's exemption application,[17] to which AMSE subsequently submitted a response.[18]

B. AMSE's Proposed Regulatory Functions

In its exemption application, AMSE proposes that it would operate a marketplace for securities processing.[19] According to the application, persons seeking to buy or sell securities could only enter their orders through an AMSE member.[20] And pursuant to AMSE's proposed rules, any person may become a member of AMSE, provided that the person submits an application and complies with any conditions imposed by AMSE.[21] AMSE proposes a specific application form for broker-dealer firms to become its members.[22]

Although AMSE's application seeks approval as an exempt exchange, its proposal reveals AMSE's aim to exist simultaneously as an SRO. Throughout its exemption application, AMSE refers to itself in terms that pertain only to SROs under the Act. For example, AMSE's exemption application refers to AMSE's rules being filed with the Commission under Section 19(b) of the Act,[23] which governs the filing of rules by SROs with the Commission.[24] AMSE's rules also state that its disciplinary decisions and access decisions would be subject to agency review under the Act,[25] where such review is available only for the activities of SROs under Section 19 of the Act.[26] AMSE's exemption application also repeatedly implies that it falls generally within the category of an SRO and that it would exercise authority as such.[27] AMSE also has stated in a comment letter that AMSE ''will become a dedicated SRO for securities matching systems. . . .'' [28] Further, AMSE asserts that its members would hold a status under the Act that is only conferred on members of SROs.[29]

In addition, throughout its exemption application, AMSE proposes to perform regulatory oversight of its members that is consistent with the powers and responsibilities of an SRO.[30]

[11] *See* Amendment Notice, *supra* note 3. In Amendment No. 1, AMSE added language to Exhibit E that described proposed consolidated quotation systems and a proposed optional order router that could send orders between the distinct member-operated order books.

[12] 79 FR at 78508.

[13] *Id.* On January 22, 2015, the Commission provided notice of an extension of the time for the conclusion of the proceedings to determine whether to grant or deny AMSE's exemption application. *See* Securities Exchange Act Release No. 74116 (January 22, 2015), 80 FR 4321 (January 27, 2015) (''Extension Notice''). The Extension Notice extended the time for the conclusion of the proceedings by 90 days, to April 24, 2015. *Id.* AMSE subsequently consented to an additional 60-day extension of the time for the conclusion of the proceedings to June 23, 2015. *See* Letter from Michael Stegawski, Chief Regulatory Officer, AMSE, to SEC staff, dated February 27, 2015 (''AMSE February 27 Letter'').

[14] *See* Letter from Michael Stegawski, Chief Regulatory Officer, AMSE, to SEC staff, dated February 8, 2015 (''AMSE February 8 Letter''). Attached to the AMSE February 8 Letter were five exhibits: Exhibit A—Amendment to Form 1 Application 2A, February 16, 2015 (''Amendment 2A''); Exhibit B—Amendment to Form 1 Application 2B, February 16, 2015 (''Amendment 2B''); Exhibit C—January 16, 2015 Correspondence—Paul G. Alvarez; Exhibit D—January 5, 2015 Correspondence—Michael Stegawski (''AMSE January 5 Letter''); Exhibit E—Discussion Draft—Form 1 Application, January 5, 2015.

[15] *See* AMSE February 8 Letter. We note that Amendment Nos. 2A and 2B appear to present different business models. We find it unnecessary to analyze these proposed alternatives separately, however, because both involve the same fatal flaw concerning AMSE's proposal to exercise the panoply of self-regulatory powers and responsibilities. Further, we note that neither the Act, nor Form 1, nor the rules relating thereto provide for amendments in the alternative.

[16] *See infra* notes 23–30 and accompanying text.

[17] *See* Letter from Lori C. Sarian, Managing Partner, 1st Trade, to Kevin M. O'Neill, Deputy Secretary, Commission, dated April 14, 2015 (''1st Trade Letter''). This comment letter expresses concerns about an overall lack of clarity and detail in AMSE's application. This comment letter also raises concerns with respect to specific aspects of AMSE's application, citing, among other things, an ambiguity and vagueness surrounding membership qualifications and obligations, an unclear application process for certain potential members, proposed best execution obligations that may be inconsistent with industry standards, an inadequate description of operations and trade processing, inadequate issuer requirements, and the duplication of requirements for potential members who are already broker-dealers. Because the Commission's focus in this order is on threshold matters with respect to AMSE's application, many of 1st Trade's specific concerns are not addressed herein.

[18] *See* Letter from Michael Stegawski, Chief Regulatory Officer, AMSE, to Kevin M. O'Neill, Deputy Secretary, Commission, dated April 22, 2015 (''AMSE Response Letter''). The AMSE Response Letter provides responses to each of 1st Trade's specific comments. *See supra* note 17.

[19] *See* Amendment 2B, Exhibit E, Section A.

[20] *See* Amendment 2B, Exhibit E, Section E. The definition of ''participant'' was added to the AMSE rules in Amendment 2B. Participant means ''a Person who has entered into a contractual agreement with an Exchange Member for the purpose of effecting transactions in securities or submitting, disseminating, or displaying orders.'' *See* AMSE Rule 1.5(w). In addition, Amendment 2B replaced the term ''customer'' with ''participant'' throughout AMSE's rules and other Form 1 Exhibits. *See, e.g.,* AMSE Rules Chapters III, IV, VI, VII, XI, and Amendment 2B, Exhibit E.

[21] *See* AMSE Rule 2.3. Amendment 2B removed the requirement that AMSE members be registered broker-dealers. *See* Amendment No. 1, AMSE Rule 2.3. In addition, Amendment 2B removed the requirement that AMSE members comply with Regulation ATS. *See* Amendment No. 1, Rules 15.1 -15.5.

[22] *See* Amendment 2B, Exhibit F and Rule 2.6(b).

[23] *See* AMSE Rule 1.5(b).

[24] *See* 15 U.S.C. 78s(b).

[25] *See* AMSE Rules 8.14 and 9.7.

[26] *See* 15 U.S.C. 78s(b), (d).

[27] *See, e.g.,* AMSE Rule 1.5(j) (''a self-regulatory organization, other than the Exchange . . .'') and AMSE Rule 12.5 (''The Exchange may enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Act. . . .Notwithstanding the fact that the Exchange may enter into one or more regulatory services agreements, the Exchange shall retain ultimate legal responsibility for, and control of, its self-regulatory responsibilities . . .'').

[28] *See* AMSE Response Letter at 10; *see also id.* at 9 (AMSE states that it ''will exercise self-regulatory powers.'').

[29] *See* AMSE Rule 1.5(l) (''An Exchange Member shall have the status as provided in Section 3(a)(3) of the Act or, where applicable, a Person operating pursuant to an exemption from registration under the Act''). Section 3(a)(3) of the Act defines ''member'' exclusively within the context of either a national securities exchange or a national securities association, which are self-regulatory organizations. *See* 15 U.S.C. 78c(a)(3), (26).

[30] SROs' wide-ranging responsibilities generally involve rulemaking, examining member firms for compliance with those rules and the securities laws (including the Commission's rules thereunder), taking disciplinary action against members that fail to comply, and market monitoring, as well as professional activities such as testing, training, and licensing. *See, e.g.,* 15 U.S.C. 78f(b)(1) (requiring a national securities exchange to be so organized and

Specifically, AMSE proposes to regulate its members with respect to: training, experience, and competence;[31] financial responsibility and operational capacity;[32] the maintenance of books and records;[33] business conduct;[34] anti-money laundering compliance programs;[35] extension of margin or credit;[36] custody of customer funds or securities;[37] fraud and manipulation;[38] and compliance with broker best execution obligations.[39] AMSE also proposes to regulate the associated persons of its members and would require each member to establish, maintain, and enforce written supervisory procedures to enable the member to supervise the activities of its associated persons and to ensure their compliance with the securities laws, rules, regulations and statements of policy promulgated thereunder, as well as with AMSE rules.[40] Moreover, at times AMSE asserts that it is required to perform such functions under the Act,[41] implying that it will be an SRO, or acting in an equivalent, self-designated capacity it calls a ''limited volume exempt regulatory organization.''[42] As the 1st Trade Letter observed, AMSE appears to be ''attempting to operate with the most lenient regulatory constraints possible and in this attempt are circumventing many accepted practices and regulatory requirements.''[43]

AMSE also proposes to require its members and their associated persons to agree to be regulated by AMSE and to recognize AMSE as being obligated to enforce their compliance with the Act and regulations thereunder.[44] AMSE also would require its members and associated persons to recognize AMSE as being required to discipline them for violations of the Act, including through: expulsion; suspension; limitation of activities, functions, and operation; fines; censure; suspension or bar from association with an AMSE member; or any other sanction determined in AMSE's discretion for violations of the Act.[45] Here again, these are powers and responsibilities exercised by an SRO.[46]

III. Discussion

A. AMSE Does Not Appear to Meet the Definition of an ''Exchange.''

At the outset, we note that AMSE has urged the Commission to conclude that AMSE should be granted an exemption from exchange registration under the Act. Certain provisions of AMSE's amended application indicate that AMSE's members may operate multiple distinct trading systems, under an AMSE umbrella, while other provisions indicate that AMSE itself would operate the proposed trading systems.[47]

These conflicting provisions make it difficult to ascertain the operation of the trading system. Moreover, the lack of detail and clarity in AMSE's exemption application prevents the Commission from understanding precisely how AMSE proposes to bring together the orders of multiple buyers and sellers and otherwise satisfy the definition of ''exchange.'' Under these circumstances, we would have grave doubts as to whether AMSE could in fact qualify as an exchange exempt from registration under the Act. We need not reach the merits of this issue, however, because as we describe below AMSE's exemption application suffers from a separate, fatal flaw.

B. It Is Contrary to the Act and Inconsistent With the Public Interest and the Protection of Investors for an Exempt Exchange To Exercise the Powers and Responsibilities of an SRO

Even assuming that AMSE were deemed to be an exchange, the Commission cannot find that AMSE should be granted an exemption from the requirement to register as a national securities exchange under Section 6 of the Act because the Commission believes that AMSE's proposal is inconsistent with the Act.[48] As described above, AMSE proposes to exercise extensive self-regulatory powers that are reserved under the Act for an SRO—indeed, the bulk of AMSE's rules are devoted to this proposed regulatory function, and at times AMSE even refers to itself as an SRO. But the Act does not afford the powers and responsibilities of an SRO to an exchange that is exempt from registration, nor does it require an exchange that is exempt from registration to exercise such powers and responsibilities.[49]

Section 3(a)(26) of the Act defines an SRO, in pertinent part, as any ''national

have the capacity to enforce compliance by its members and associated persons with the Exchange Act, the rules and regulations thereunder, and the rules of the exchange); 15 U.S.C. 78*o*–3(b)(2) (requiring the same of registered securities associations); 15 U.S.C. 78f(b)(2)–(10) (specifying requirements for the rules of a national securities exchange, including with respect to preventing fraudulent acts and practices, and with the discipline of members); 15 U.S.C. 78*o*–3(b)(3)–(15) (specifying requirements for rules of a registered securities association, including with respect to preventing fraudulent acts and practices, and with the discipline of members); 15 U.S.C. 78*o*–3(g)(3)(B) (providing that a registered securities association may bar natural persons from association with a member if the person does not meet standards of training, experience, and competence prescribed by rules of the association); and 15 U.S.C. 78q(d) (providing for allocation of examination authority across self-regulatory organizations).

[31] *See* AMSE Rule 2.4(b).

[32] *See* AMSE Rule 2.4(c)(1).

[33] *See* AMSE Rules 2.4(c)(2) and 4.1–4.4.

[34] *See* AMSE Rules 3.1–3.14.

[35] *See* AMSE Rule 5.6.

[36] *See* AMSE Rule 6.1.

[37] *See* AMSE Rule 10.12.

[38] *See* AMSE Rules 11.1–11.4.

[39] *See* AMSE Rule 11.8.

[40] *See* AMSE Rule 5.1; *see also* AMSE Rules 5.2–5.5.

[41] *See, e.g.,* AMSE February 8 Letter at 5 (stating ''AMSE has expressly elected not to register as a broker-dealer and comply with the provisions of Regulation ATS and therefore is required to exercise self-regulatory powers.''); and AMSE Rule 12.5 (''The Exchange may enter into one or more agreements with another self-regulatory organization to provide regulatory services to the Exchange to assist the Exchange in discharging its obligations under Section 6 and Section 19(g) of the Act . . .''). Section 6 of the Act imposes regulatory obligations on national securities exchanges, which are self-regulatory organizations; Section 19(g) of the Act imposes obligations on self-regulatory organizations. *See* 15 U.S.C. 78f and 78s(g); *see also* 15 U.S.C. 78c(26) (defining self-regulatory organization to include registered national securities exchange, national securities associations, and clearing agencies).

[42] The term ''limited volume exempt regulatory organization'' is not a recognized term under the Act. AMSE created this defined term in its rules. *See* AMSE Rule 1.5(ee) ('''LVERO' means an entity exercising self-regulatory powers pursuant to an exemption from registration under the Act''). As noted above, prior to submitting Amendments 2A and 2B, AMSE had referred to itself as an SRO; AMSE replaced many of these references with ''limited volume exempt regulatory organization'' after the Commission explained in December 2014 its preliminary view that AMSE would not qualify as an SRO. Critically, AMSE did not accompany this nomenclature change with any meaningfully limitations on the powers and responsibilities that it proposed to exercise.

[43] 1st Trade Letter at 3.

[44] *See* AMSE Rules 2.2 and 2.5(e).

[45] *See* AMSE Rule 2.2. AMSE's rules quote the language in the Act that gives national securities exchanges and national securities associations the authority to enforce compliance by their members with the Act. *See* 15 U.S.C. 78f(b)(6) and 78*o*–3(b)(7).

[46] *See infra* Section III.B.

[47] *Compare* AMSE Rule 11.8 (referring to participant orders being executed ''on a designated trading platform, including that of a trading system operated by the Exchange Member''); and Amendment 2B, Exhibit E, Section D (requiring AMSE members to be responsible for having procedures for safeguarding their systems); *with* Amendment 2B, Exhibit E, Section A (''the Exchange will operate one or more fully automated electronic order books''); *id.* at Section E (''[o]rders of Participants shall be ranked and maintained in the Exchange's electronic books for orders''); and *id.* at Section F (''[o]rders shall be matched for execution . . . on the Exchange's electronic order book'').

[48] For a history of the formation and regulation of stock exchanges, *see generally* Concept Release Concerning Self-Regulation, Securities Exchange Act Release No. 50700 (November 18, 2004), 69 FR 71256, at 71257–58 (December 8, 2004); Charles R. Geisst, Wall Street: A History (1997); Michael E. Parrish, Securities Regulation and the New Deal (1970); Joel Seligman, The Transformation of Wall Street: A History of the Securities and Exchange Commission and Modern Corporate Finance (3d ed. 2003).

[49] *See supra* note 42 and accompanying text.

securities exchange.'' [50] An entity may only become a ''national securities exchange'' by registering under Section 6(a) of the Act, [51] as the Commission has previously explained.[52] And, although Section 5 of the Act permits an exempt exchange to operate lawfully without registering as a national securities exchange,[53] an exempt exchange is, by definition, not a national securities exchange,[54] and, thus, does not fall within the definition of ''self-regulatory organization'' under the Act. It necessarily follows that, were we to grant AMSE the exemption it seeks, AMSE would not be entitled, much less required by the Act, to hold itself out as an SRO or to exercise the self-regulatory authority that is statutorily afforded to SROs.

Nevertheless, there remains the question whether, in our discretion, we could allow AMSE to exercise the powers and responsibilities of an SRO, notwithstanding the fact that AMSE, as an exempt exchange, would not meet the definition of an SRO. Although the statutory language does not unambiguously forbid such a result, we conclude that we lack the authority under the Act to permit an exempt exchange to exercise the powers and responsibilities reserved for an SRO. In our view, the Act reflects a deliberate balance between, on the one hand, granting SROs the broad, quasi-governmental authority that AMSE proposes to exercise, and, on the other hand, ensuring that an SRO's exercise of this authority is carefully checked by close Commission oversight.[55] Indeed, we believe this understanding is further supported by a primary Congressional purpose underlying the 1975 amendments to the Act,[56] through which ''Congress specifically and importantly modified [the system of self-regulation in the securities industry] to enhance the SEC's oversight of self-regulatory organizations.'' [57] As the Senate Report accompanying the 1975 amendments explained, ''[t]he SEC is charged with supervising the exercise of this self-regulatory power in order to assure that it is used effectively to fulfill the responsibilities assigned to the self-regulatory agencies, and that it is not used in a manner inimical to the public interest or unfair to private interests.'' [58]

Yet were we to allow AMSE to exercise the powers and responsibilities of an SRO without actually qualifying as such under the Act—*i.e.,* without registering as a national securities exchange—we would be deprived of many of the means that Congress thought were critical for our effective oversight of the exercise of self-regulatory powers. By its express terms, the Act affords us such oversight authority only over an entity that qualifies as an SRO, which AMSE would not have done. Accordingly, if we allowed an exempt exchange to exercise the broad powers and responsibilities of an SRO, we would lack the authority over that exempt entity that we would normally have possessed over SROs to, among other things, ''approve or disapprove the proposed rule change[s],'' [59] ''abrogate, add to, [or] delete from'' an exchange rule,[60] review a final disciplinary sanction imposed by the exchange or any denial of access,[61] ''suspend for a period not exceeding twelve months . . . or to censure or impose limitations upon the activities, functions, and operations'' of the exchange for specified misconduct,[62] or ''remove from office or censure'' any officer or director of the exchange for specified misconduct.[63] We do not believe that such a result would be consistent with the Congressional desire, as revealed through the statutory language and the legislative history, that the Commission closely oversee the exercise of self-regulatory authority.[64]

This conclusion is consistent with our prior reading of the Act. As the Commission has previously stated, ''any system exercising self-regulatory powers, such as regulating its members' or subscribers' conduct when engaged in activities outside of that trading system, must register as an exchange or be operated by a national securities association [which is also an SRO under the statutory definition]. This is because self-regulatory activities in the securities markets must be subject to Commission oversight under Section 19 of the Exchange Act.'' [65] As we have explained, under our view of the Act, ''any system that uses its market power to regulate its participants should be regulated as an SRO.'' [66]

[50] 15 U.S.C. 78c(a)(26) (defining SRO as ''any national securities exchange, registered securities association, or registered clearing agency''). *See generally Barbara* v. *New York Stock Exchange, Inc.,* 99 F.3d 49, 51 (2d Cir. 1996) (explaining that ''[u]nder the Act, [a national securities exchange] 'is a self-regulatory organization'''').

[51] ''An exchange may be registered as a national securities exchange under the terms and conditions hereinafter provided in this section and in accordance with the provisions of section 19(a) of this title, by filing with the Commission an application for registration. . . .'' 15 U.S.C. 78f(a).

[52] In a previous order granting an exemption from registration under Section 5 of the Act, the Commission stated that ''[b]y virtue of this exemption from registration, the Wunsch System falls outside the definition of a national securities exchange because the term 'national securities exchange' implies a registered entity (*see, e.g.,* sections 3(a)(26) of the Act (defining the term 'self-regulatory organization') and section 6(a) of the Act.''). *See* Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 8377, 8382 note 51 (February 28, 1991).

[53] To grant an exemption from the requirement to register as a national securities exchange, the Commission must conclude that, in the opinion of the Commission, by reason of the limited volume of transactions effected on such exchange, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require registration. 15 U.S.C. 78e.

[54] It is self-evident that an exchange cannot be exempt, under Section 5, from registering as a national securities exchange under Section 6, while simultaneously existing as a national securities exchange under Section 6.

[55] *See, e.g., In re Series 7 Broker Qualification Exam Scoring Litig.,* 548 F.3d 110, 112, 114 (D.C. Cir. 2008) (explaining that ''[t]he Exchange Act reveals a deliberate and careful design for regulation of the securities industry'' that ''depends on the SEC's delegation of certain governmental functions to private SROs'' and describing how this ''delegation involves close oversight'' by the Commission). *See also* S. Rep No. 94–75, at 24 (''self-regulatory organizations exercise government power'').

[56] Securities Acts Amendments of 1975, P.L. 94–29.

[57] *NASD* v. *SEC,* 431 F.3d 803, 807 (D.C. Cir. 2005).

[58] S. Rep No. 94–75, at 23. *See also id.* at 22 (explaining that the 1975 amendments were intended to ''clarify and strengthen the Commission's oversight role with respect to the self-regulatory organizations''); *id.* at 23 (''The self-regulatory organizations exercise authority subject to SEC oversight. They have no authority to regulate independently of the SEC's control.''); *id.* (explaining that an objective of the 1975 amendments was ''assuring that the self-regulatory organizations follow effective and fair procedures, that their activities are not anticompetitive and that the Commission's oversight powers are ample and its responsibility to correct self-regulatory lapses is unmistakable''). *See generally* Onnig H. Dombalagian, *Demythologizing the Stock Exchange: Reconciling Self-Regulation and the National Market System,* 39 U. Rich. L. Rev. 1069, 1080 (2005) (''One of the principal changes [of the 1975 amendments] to the framework for exchange self-regulation was to impose greater limitations on the exercise of rule making and disciplinary authority by exchanges.'').

[59] 15 U.S.C. 78s(b).

[60] 15 U.S.C. 78s(c).

[61] 15 U.S.C. 78s(d)-(e).

[62] 15 U.S.C. 78s(h)(1). *See generally* S. Rep No. 94–75, at 34 (explaining that the oversight authorities under Section 19(h)(1) of the Act are ''in addition to suspension and deregistration and are intended to provide more usable sanctions than the SEC's traditional 'big stick'''').

[63] 15 U.S.C. 78s(h)(4).

[64] We note that Congress also afforded the Commission authority to enlist the assistance of the federal courts in carrying out its oversight role. *See* S. Rep No. 94–75, at 35 (''Sections 21(e) and 21(f) [of the Exchange Act] would empower the SEC to apply to a federal court for an order to (1) enjoin the violation of the rules of a self-regulatory organization, (2) command a member of a self-regulatory organization to comply with the rules of such organization, or (3) command a self-regulatory organization to enforce compliance by its members with the Exchange Act, the rules thereunder, and the organization's own rules.'').

[65] *See* Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844, 70847 (December 22, 1998) (''Regulation ATS Adopting Release'').

[66] *See* Regulation ATS Adopting Release, 63 FR at 70859.

Accordingly, as we read the Act, an exempt exchange is relieved of the statutory obligations of a registered SRO but also forfeits the ability to exercise the statutory authority of an SRO. To the extent that AMSE desires to perform the extensive range of self-regulatory responsibilities described in its exemption application, it must qualify and register as a national securities exchange (or a national securities association).

In any event, even if we possessed the authority to grant AMSE an exemption notwithstanding its intention to exercise the powers and responsibilities reserved for SROs, we do not believe that doing so would be consistent either with investor protection or the public interest. In our view, when an exchange wants to exercise the broad powers and responsibilities that AMSE is seeking here, an exemption from registration is not appropriate because the Commission would lack sufficient oversight mechanisms to ensure that the self-regulatory authority is not exercised in a manner inimical to the public interest or unfair to private interests. The Commission's oversight responsibilities towards SROs has been a cornerstone of self-regulation from its inception.[67] Indeed, due to the potential harm to capital formation, investors, and the public interest that could result from the misuse of the securities markets, as noted above, Congress intentionally created a highly regulated environment in which SROs must be subject to close oversight by the Commission. Put simply, an entity seeking to establish and enforce a comprehensive regulatory structure with respect to the securities business of its broker-dealer members—including the full range of business conduct, financial condition, and regulatory compliance matters—could have a substantial impact on the way those members engage in the securities business and comply with the federal securities laws.[68] In our view, any such entity should be subject to full Commission oversight to assure its performance of such functions is consistent with the protection of investors and the public interest. For these additional reasons, in the exercise of our discretion under Section 5 of the Act, we would deny the exemption application.

Our conclusion today is not inconsistent with prior Commission practice. At the outset, we think it is important to observe that the Commission has rarely exercised its exemptive authority under Section 5—indeed, it has granted a limited volume exemption, as sought by AMSE here, on only two prior occasions in the past 79 years.[69] And while the Commission imposed certain conditions upon exemptions from exchange registration when it granted them, the exemptions and conditions thereto neither allowed nor required the exercise of the extensive SRO authority that AMSE is seeking.[70] Moreover, although the Commission acknowledged in the Regulation ATS Adopting Release that an exemption under Section 5 could be available for an exchange that has self-regulatory *attributes,*[71] the Commission has *never* granted an exemption to an exchange seeking to carry out the broad range of self-regulatory functions performed by registered SROs, as proposed by AMSE.[72] Rather, the Commission has granted an exemption only once to an exchange with ''self-regulatory attributes'' [73] and, in that case, the exchange sought only to impose financial and operational standards as a condition for eligibility

[67] *See* William O. Douglas, Democracy and Finance 82 (1940).

[68] *See, e.g.,* Securities Industry Study, Report of the Subcommittee on Securities, Committee on Banking, Housing, and Urban Affairs, U.S. Senate, 93rd Cong., at 14 (1973) (''The broad powers delegated to the exchanges and the NASD under the Exchange Act include the power to affect the interests of individuals and firms, both members and non-members.'').

[69] In 1991, the Commission issued a limited volume exemption from exchange registration for Wunsch Auction Systems, Inc. (''WASI'') (now known as ''Arizona Stock Exchange''). *See* Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 8377(February 28, 1991) (''WASI Order''). WASI proposed to operate an auction trading system for after-hours trading three times a week, at a half an hour each. In 1999, the Commission issued a limited volume exemption from exchange registration for Tradepoint Financial Networks plc (''Tradepoint'') (now known as ''Swiss Exchange''). *See* Securities Exchange Act Release No. 41199 (March 22, 1999), 64 FR 14953 (March 29, 1999). Tradepoint operated as a U.K.-registered trading facility and offered trading only in securities listed on the London Stock Exchange. Aside from these two exemptions, the Commission has only issued limited volume exemptions under Section 5 of the Act in the period from 1935 to1936; the exemptions issued then were for a small group of municipally-based securities exchanges that were already in existence at the time of the initial adoption of the Act in 1934. *See* Securities Exchange Act Release No. 416, November 14, 1935 (exempting the Honolulu Stock Exchange, the Milwaukee Grain and Stock Exchange, and Minneapolis-St. Paul Stock Exchange); Securities Exchange Act Release No. 432, December 2, 1935 (exempting the Richmond Stock Exchange and Wheeling Stock Exchange); Securities Exchange Act Release No. 472, February 3, 1936 (exempting the Colorado Springs Stock Exchange); Securities Exchange Act Release No. 589, April 10, 1936 (exempting the Seattle Stock Exchange).

[70] *See* Securities Exchange Act Release No. 416, November 14, 1935 (requiring the Honolulu Stock Exchange, the Milwaukee Grain and Stock Exchange, and the Minneapolis-St. Paul Stock Exchange to keep up-to-date and available to the public the data contained in the application for exemption, make and keep required records, provide reports as necessary, and provide in their rules that a willful violation of any of the exemption conditions shall be inconsistent with just and equitable principles of trade, and providing that the same restrictions with regard to the extension of credit for registered securities are imposed on securities listed on these exchanges, that members of the exchanges are subject to Commission-imposed financial responsibility rules and regulations, that the manipulation provisions of the Securities Exchange Act apply to the exchanges and their members, and that companies whose securities are listed on the exchanges are required to file with the exchange and Commission certain annual financial statements); Securities Exchange Act Release No. 432, December 2, 1935 (granting exemptions for the Richmond Stock Exchange and the Wheeling Stock Exchange upon the same conditions imposed on the exchanges in Securities Exchange Act Release No. 416); Securities Exchange Act Release No. 472, February 3, 1936 (granting an exemption to the Colorado Springs Stock Exchange upon the same conditions imposed on the exchanges in Securities Exchange Act Release Nos. 416 and 432); Securities Exchange Act Release No. 589, April 10, 1936 (granting an exemption to the Seattle Stock Exchange upon the same conditions imposed on the exchanges in Securities Exchange Act Release Nos. 416, 432, and 472); WASI Order (granting an exemption based on the condition that WASI (1) permit the Commission to conduct examinations; (2) comply with its agreement to report volume and price data to the Commission and to SROs, and provide other information (such as the identities of participants who have entered orders) to the Commission and the SROs upon request; (3) comply with its undertaking to implement procedures to conduct surveillance of its employees and adopt requirements to ensure the non-disclosure of confidential information; (4) suspend trading in any security subject to a regulatory halt for pending news called by the primary market for the security or during suspensions of trading ordered by the Commission pursuant to Section 12(k) of the Act, and consult with the Commission subsequent to an exchange or NASDAQ session in which an operational trading halt has occurred or a circuit breaker has gone into effect; (5) suspend any auction at the request of the Commission, assuming adequate notice is given, and (6) continue to comply with the capacity, security, and contingency planning guidelines contained in the Commission's Automation Review Policy).

[71] In the Regulation ATS Adopting Release, the Commission stated that it ''believes that the low volume exemption continues to be appropriate for some exchanges, such as an exchange that, for example, disciplines its members (other than by excluding them or limiting them from trading based on objective criteria, such as creditworthiness), or has other self-regulatory attributes that exclude it from the definition of alternative trading system.'' *See* Regulation ATS Adopting Release, 63 FR at 70848, note 33.

[72] *See supra* notes 31–46 and accompanying text.

[73] The Commission notes the distinction between entities that display ''self-regulatory attributes''—which implies having only a few features of an SRO, such as disciplining members for violations of its own rules—and entities seeking to exercise all or nearly all of the powers of SROs under the Act. As discussed above, AMSE's application shows that it is not proposing merely to have a few self-regulatory attributes, but rather seeks to exercise the full range of powers available to SROs under the Act. *See supra* notes 31–46 and accompanying text. Under these conditions, the Commission continues to believe, as previously stated, that the SRO functions can be exercised only by an SRO, not an exempt exchange.

for trading.[74] The limited self-regulatory attributes in that case stand in stark contrast to the full scope of self-regulatory powers sought by AMSE here.

C. AMSE Is Mistaken in Its Interpretation of the Relevant Procedural Requirements Relating to Its Exemption Application

AMSE has labored under certain misunderstandings of the relevant procedures throughout its interactions with the staff on this matter. To the extent that there is any ambiguity in these procedures, we take this opportunity to provide clarification. AMSE erroneously reads Rule 202.3(b)(2) of the Commission's procedural rules as establishing an enforceable right on the part of AMSE to require the Commission's staff to confer with AMSE. Rule 202.3(b)(2) provides, in relevant part:

> Applications for registration as national securities exchanges, or exemption from registration as exchanges by reason of such exchanges' limited volume of transactions filed with the Commission are routed to the Division of Market Regulation, which examines these applications to determine whether all necessary information has been supplied and whether all required financial statements and other documents have been furnished in proper form. . . . The staff confers with applicants and makes suggestions in appropriate cases for amendments and supplemental information. Where it appears appropriate in the public interest and where a basis therefore exists, denial proceedings may be instituted.

AMSE appears to construe the second sentence in the quoted language above to establish a binding obligation on the Commission staff to work with AMSE to achieve Commission approval of its exemption application.

But the rule contains no such requirement; indeed, it does not prescribe any procedure that the Commission staff must follow when working with applicants on applications for registration or exemption from registration. To the contrary, when the rule refers to Commission staff conferring with applicants, it is expressly descriptive, rather than prescriptive, as to the staff's actions. And, critically, it provides only that the staff will ''confer[] with applicants and make[] suggestions *in appropriate cases* . . . .'' [75] The rule thus explicitly leaves it to the staff to identify the situations in which it would be appropriate to confer with applicants.[76] It certainly does not (as AMSE appears to believe) entitle applicants to obtain guidance from the staff so that the applicants can repeatedly amend their applications before the Commission issues its final order.[77] In any event, as noted above, Commission staff in fact consulted with AMSE and provided views and input to AMSE about its application.[78]

IV. Conclusion

The Commission has reviewed AMSE's application for a limited volume exemption from registration as a national securities exchange and has determined, for the reasons described above, to deny AMSE's application.[79]

It is therefore ordered, pursuant to Section 5 of the Act, that AMSE's application for an exemption from registration as a national securities exchange be, and hereby is, denied.

By the Commission.

Brent J. Fields,

Secretary.

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[74] *See* Securities Exchange Act Release No. 41199 (March 22, 1999), 64 FR 14953 (March 29, 1999) (order granting a limited volume exemption under Section 5 of the Act to Tradepoint).

[75] 17 CFR 202.3(b)(2) (emphasis added).

[76] *See, e.g., Dichter–Mad Family Partners, LLP* v. *United States,* 707 F.Supp.2d 1016, 1042–43 (C.D. Cal. 2010), *aff'd,* 709 F.3d 749 (9th Cir. 2013) (dismissing plaintiffs' claims upon finding, among other things, that even though statute mandated that agency staff ''shall'' engage in certain conduct, such language was ''modified by the discretionary 'as appropriate''' and thus statute conferred discretion upon agency officials). *Cf. Nat'l Env't. Dev. Ass'n's Clean Air Project* v. *EPA,* 686 F.3d 803, 813 (D.C. Cir. 2012) (concluding that the statutory phrase ''as appropriate'' conferred ''significant discretion'' upon the agency); *Bear Valley Mut. Water Co.* v. *Salazar,* No. 11–01263, 2012 WL 5353353 (C.D. Cal. Oct. 17, 2012) (same); *City of Toledo* v. *Beazer Materials & Servs., Inc.,* No. 90–CV–7344, 1995 WL 770396 (N.D. Ohio June 14, 1995) (the same phrase in a federal regulation indicated that the described activity was ''not mandatory'').

[77] Nor does the rule contain any suggestion that, absent such a conference with the staff, the administrative record would be fatally deficient and any subsequent action by the Commission on the application would be improper.

[78] *See supra* note 6 (discussing communications between Commission staff and AMSE regarding AMSE's application occurring between December 2013 and March 2014).

[79] We note that, at times during the pendency of its exemption application, AMSE made unsubstantiated claims of bad faith on the staff's part. We see no indication of any bad faith, however. And in any event, we have reached our determination to deny AMSE's exemption application based on our own independent review of the application. Accordingly, we are confident that AMSE has had a full and fair opportunity to present its application to us for consideration and that AMSE has suffered no prejudice.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75151; File No. SR–NYSEMKT–2015–42]

Self-Regulatory Organizations; NYSE MKT, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Revising the Schedule for Implementing the Exchange's Recently Approved Rule To Provide a Price Protection for Market Maker Quotes Pursuant to Rule 967.1NY

June 11, 2015.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that on June 5, 2015, NYSE MKT LLC (the ''Exchange'' or ''NYSE MKT'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

The Exchange proposes to revise the schedule for implementing the Exchange's recently approved rule to provide a price protection for Market Maker quotes pursuant to Rule 967.1NY. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com*, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to revise the schedule for implementing the Exchange's recently approved rule to provide a price protection risk mechanism for Market Maker quotes pursuant to Rule 967.1NY.[4]

Rule 967.1NY provides two layers of price protection to incoming Market Maker quotes, rejecting those Market Maker quotes that exceed certain parameters, as a risk mitigation tool. The first layer of price protection, set forth in Rule 967.1NY(a)(1), assesses incoming sell quotes against the NBB and incoming buy quotes against the NBO (the ''NBBO Price Reasonability Check''). Specifically, per Rule 967.1NY(a)(1), provided that an NBBO is available, a Market Maker quote would be rejected if it is priced a specified dollar amount or percentage through the contra-side NBBO.

The second layer of price protection assesses the price of call or put bids against a specified benchmark (the ''Underlying Stock Price/Strike Price Check''), per Rule 967.1NY(a)(2) and (3). This second layer of protection applies to bids in call options or put options when (1) there is no NBBO available, for example, during pre-opening or prior to conducting a re-opening after a trading halt, or (2) if the NBBO is so wide as to not reflect an appropriate price for the respective options series.

Rule 967.1NY(b) operates as an additional safeguard and risk control feature. In particular, when a Market Maker quote is rejected pursuant to Rule 967.1NY(a), the Exchange will also cancel any resting same-side quote(s) in the affected series, if rejected pursuant to (a)(1); or the Exchange will also cancel any resting same-side quote(s) in the affected class(es), if rejected pursuant to (a)(2) or (a)(3) of the Rule.

When the Exchange proposed Rule 967.1NY, it stated that it would announce via Trader Update the implementation date of the Rule.[5] Because of the differing technology associated with the two layers of price protection, the Exchange now proposes a two-stage implementation of the Rule. Specifically, the Exchange proposes to implement Rule 967.1NY(a)(1) and Rule 967.1NY(b) as it relates to quotes that have been rejected pursuant to the NBBO Price Reasonability Check first. The Exchange believes that because the NBBO Price Reasonability Check is an approved rule of the Exchange, implementing it as soon as practicable would enable Market Makers and investors alike to benefit from the protections that would be afforded by the NBBO Price Reasonability Check.[6] The Exchange would announce the implementation date by Trader Update to be published no later than five (5) days after the Commission's publication of this filing.

The Exchange further proposes a separate, later implementation date for Rule 967.1NY(a)(2) and (3) (the Underlying Stock Price/Strike Price Check) and Rule 967.1NY(b) as it relates to the Underlying Stock Price/Strike Price Check. This two-stage implementation would provide the Exchange additional time to implement the technology related to the Underlying Stock Price/Strike Price Check. The Exchange proposes to add Commentary .01 to the rule, directing ATP Holders to consult Trader Updates for additional information regarding the implementation schedule for paragraphs (a)(2) and (a)(3) of the Rule, with final implementation of such paragraphs to be completed by no later than March 4, 2016. As noted above, the Exchange proposes to announce the implementation date via Trader Update and would indicate those symbols for which the Underlying Stock Price/Strike Price Check will be unavailable, as the Exchange anticipates that this functionality would be implemented on an iterative basis depending on the symbol. Further, the Exchange will issue subsequent Trader Updates whenever there is a change to the list of symbols for which the Underlying Stock Price/Strike Price Check is unavailable.

The Exchange is proposing this rule change to provide transparency regarding the implementation schedule regarding the two layers of price protection for Marker Maker quotes pursuant to Rule 967.1NY.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest.

The Exchange believes that providing an iterative implementation schedule for the approved price protection features set forth in Rule 967.1NY is consistent with the Act because it would enable Market Makers and the public to immediately benefit from the approved NBBO Reasonability Check while allowing the Exchange additional time to implement the technology associated with the Underlying Stock Price/Strike Price Check when there is no reliable NBBO available.

Specifically, the proposed iterative implementation schedule for Rule 967.1NY would assist with the maintenance of a fair and orderly market and protect investors and the public interest because it would enable the Exchange to implement the NBBO Reasonability Check immediately, thereby helping to mitigate the risks associated with the entry of quotes that are priced a specified dollar amount or percentage through the prevailing contra-side market, which the Exchange believes is evidence of error. The Exchange further believes that announcing the implementation dates of the new risk mitigation tools via Trader Updates would remove impediments to and perfects the mechanism of a free and open market because they would provide notice of when each of the approved risk control features is being implemented, and for which symbols.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is not designed to address any competitive issues, but rather, to propose an iterative implementation schedule for an approved rule of the Exchange. Therefore, the Exchange does not believe that the proposed rule change will impose any burden on competition, but rather, would enable Market Makers, the public, and investors to immediately benefit from the additional price protection offered by the NBBO Reasonability Check and delay the implementation of the Underlying Stock Price/Strike Price Check pending finalization of the technology associated with that feature.

[4] *See* Securities Exchange Act Release No. 74440 (March 4, 2015), 80 FR 12687 (March 10, 2015) (SR–NYSEMKT–2014–116) (Approval Order); *see also* Securities Exchange Act Release No. 74017 (January 8, 2015), 80 FR 1979 (January 14, 2015) (SR–NYSEMKT–2014–116) (Notice).

[5] *See* Notice, *id.*, 80 FR at 1981.

[6] The Exchange notes that to the extent that Rule 967.1NY(b) references Rule 967.1NY(a)(2) and (3), that language would be without force until the implementation of the latter sections of the Rule.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

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

Because the proposed rule change does not (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6)(iii) thereunder.[10]

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Exchange stated that waiver of this requirement would enable the Exchange to implement immediately the approved price protection risk mechanisms for which the associated Exchange technology is currently available or is in the process of becoming finalized, consistent with the proposed implementation schedule. The Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest. Therefore, the Commission hereby waives the operative delay and designates the proposed rule change to be operative upon filing.[11]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2015–42 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEMKT–2015–42. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2015–42, and should be submitted on or before July 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–14825 Filed 6–16–15; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6)(iii). As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change, along with a brief description and the text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission.

[11] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

In the Matter of Joymain International Development Group, Inc.; Order of Suspension of Trading

June 15, 2015.

It appears to the Securities and Exchange Commission (''Commission'') that the public interest and the protection of investors require a suspension of trading in the securities of Joymain International Development Group, Inc. (CIK No. 0001061169) (''Joymain''), because of recent, unusual and unexplained market activity raising concerns regarding the adequacy and accuracy of publicly-available information, including information concerning Joymain's financial condition and scope of operations. Joymain is a Nevada corporation with a business address in Miami, Florida, and its common stock is quoted on the OTC Link (previously ''Pink Sheets'') operated by OTC Markets Group, Inc. (''OTC Link'') under the ticker symbol JIDG.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Joymain is suspended for the period from 9:30 a.m. EDT on June 15, 2015, through 11:59 p.m. EDT on June 26, 2015.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 2015–14991 Filed 6–15–15; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75150; File No. SR–EDGX–2015–27]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of EDGX Exchange, Inc.

June 11, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the

''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 2015, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') 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.[3] The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend its fees and rebates applicable to Members[6] of the Exchange pursuant to EDGX Rule 15.1(a) and (c) (''Fee Schedule'') to: (i) increase the rebate from $0.00040 per share to $0.00150 per share for orders that yield fee code A, which routes to the Nasdaq Stock Market LLC (''Nasdaq'') and adds liquidity; and (ii) amend fees related to the use of BATS Connect.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to: (i) increase the rebate from $0.00040 per share to $0.00150 per share for orders that yield fee code A, which routes to Nasdaq and adds liquidity; and (ii) amend fees related to the use of BATS Connect.

Fee Code A

In securities priced at or above $1.00, the Exchange currently provides a rebate of $0.00040 per share for Members' orders that yield fee code A, which routes to Nasdaq and adds liquidity. The Exchange proposes to amend its Fee Schedule to increase this rebate to $0.00150 per share for Members' orders that yield fee code A. The proposed change represents a pass through of the rate that BATS Trading, Inc. (''BATS Trading''), the Exchange's affiliated routing broker-dealer, is rebated for routing orders to Nasdaq when it does not qualify for a volume tiered rebate. When BATS Trading routes to Nasdaq, it is rebated a standard rate of $0.00150 per share.[7] BATS Trading will pass through this rate on Nasdaq to the Exchange and the Exchange, in turn, will pass through this rate to its Members. The Exchange notes that the proposed change is in response to Nasdaq's June 2015 fee change where Nasdaq will no longer offer a rebate of $0.00040 per share for orders in select symbols (''Nasdaq's Select Symbol Program'') to its customers, such as BATS Trading, and such orders will be subject to the regular Nasdaq Pricing Schedule.[8]

BATS Connect

The Exchange proposes to amend the fees related to the use of BATS Connect by: (i) adopting a fee of $11,500 per month for receipt of the NYSE Integrated data feed; (ii) adopt a fee of $1,000 per month for the NYSE MKT Trades data feed; (iii) adopt a discounted fee of $4,160 per month for subscribers who purchase a bundle of select U.S. equity market data products; and (iv) make a series of ministerial changes to the description of each market data product available through BATS Connect. BATS Connect is a communication and routing service that provides subscribers an additional means to receive market data from and route orders to any destination connected to the Exchange's network. BATS Connect does not affect trade executions and would not report trades to the relevant Securities Information Processor. The servers of the subscriber need not be located in the same facilities as the Exchange in order to subscribe to BATS Connect. Subscribers may also seek to utilize BATS Connect in the event of a market disruption where other alternative connection methods become unavailable.[9]

BATS Connect allows subscribers to receive market data feeds from exchanges connected to the Exchange's network. In such case, the subscriber would pay the Exchange a connectivity fee, which varies and is based solely on the amount of bandwidth required to transmit the selected data product to the subscriber. The current connectivity fees range from no charge to $3,500 based on the market data product the subscriber selects. The Exchange now proposes to offer connectivity to the NYSE Integrated and NYSE MKT Trades data feeds through BATS Connect. As result, the Exchange proposes to adopt a fee of $11,500 per month for connectivity to the NYSE Integrated data feed and $1,000 per month for connectivity to the NYSE MKT Trades data feed. NYSE Integrated is a data feed that provides market data in a unified view of events, in sequence, as they appear on the New York Stock Exchange, Inc. (''NYSE'') matching engines and includes depth of book order data, last sale data, and opening and closing imbalance data.[10] NYSE MKT Trades is a data feed providing last sale information for all securities traded on the NYSE MKT LLC (''NYSE

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that a previous version of the proposal was filed as SR–EDGX–2015–24. The proposal was withdrawn on June 9, 2015.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

[7] The Exchange notes that to the extent BATS Trading does or does not achieve any volume tiered discount on Nasdaq or routes an order to Nasdaq in a symbol that is not included in Nasdaq's Select Symbol Program to receive a rebate of $0.00150 per share, its rate for fee code A will not change. The Exchange further notes that, due to billing system limitations that do not allow for separate rates by tape, it will pass through the lesser rebate of $0.00150 per share for all Tapes A, B & C securities.

[8] *See* Nasdaq Equity Trader Alert #2015–70, *Nasdaq Ends Access Fee Experiment, available at http://www.nasdaqtrader.com/TraderNews.aspx?id=ETA2015–70.*

[9] This service is an alternative to a service that the Exchange already provides to its Members—current order-sending Members route orders through access provided by the Exchange to the Exchange that either check the Exchange for available liquidity and then route to other destinations or, in certain circumstances, bypass the Exchange and route to other destinations. *See* Exchange Rule 11.11(g) (setting forth routing options whereby Members may select their orders be routed to other market centers).

[10] *See* Securities Exchange Act Release No. 74128 (January 23, 2015), 80 FR 4951 (January 29, 2015) (SR–NYSE–2015–03).

MKT'').[11] The proposed fees are designed to reflect the amount of bandwidth required to transmit the NYSE Integrated and NYSE MKT Trades data feeds to the subscriber. Subscribers would pay any fees charged by NYSE for NYSE Integrated or NYSE MKT Trades directly to the NYSE.

The Exchange also proposes to adopt a discounted fee of $4,160 per month for subscribers who purchase connectivity to a bundle of select market data products. The following market data products would be included in the bundle: UQDF/UTDF/OMDF, CQS/CTS, Nasdaq TotalView, Nasdaq BX TotalView, Nasdaq PSX TotalView, NYSE ArcaBook, NYSE MKT OpenBook Ultra, and BBS/TTDS. Currently, a subscriber purchasing connectivity through BATS Connect for each of these market data products would pay a total monthly fee of $5,200. As proposed, a subscriber who purchases connectivity to each of the above market data products would be charged a monthly fee of $4,160, which represents a 20% discount from the current rates.

The Exchange also proposes to make the following ministerial changes to the description of each market data product set forth in the BATS Connect fee table:

- Remove ''Level 1 0'' from the description of UQDF/UTDF/OMDF;
- Remove ''4.1'' from the descriptions of Nasdaq TotalView; Nasdaq BX TotalView; and Nasdaq PSX TotalView as well as correct a typographical error in the spelling of Nasdaq BX TotalView; and Nasdaq PSX TotalView;
- Rename ''Arca Book XDP'' as ''NYSE ArcaBook'';
- Rename ''Arca Book Refresh'' as ''NYSE ArcaBook Refresh'';
- Rename ''NYSE MKT OpenBook'' as ''NYSE MKT OpenBook Ultra'';
- Consolidate references to each BATS market data product with EDGX and EDGA;
- Relocate reference to OPRA to earlier in the fee table; and
- Rename ''Arca Trades'' as ''NYSE Arca Trades''.

None of these changes alter the market data products that connectivity is available to through BATS Connect. Nor do any of these changes alter the fees charged for connectivity to each product. These changes are simply intended to amend the descriptions of each product to more closely align with that market data product's name.

Implementation Date

The Exchange proposes to implement these amendments to its Fee Schedule immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[12] in general, and furthers the objectives of Section 6(b)(4),[13] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

Fee Code A

The Exchange believes that its proposal to increase the pass through rebate for Members' orders that yield fee code A from $0.00040 to $0.00150 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities. Prior to Nasdaq's Select Symbol Program, Nasdaq provided BATS Trading a rebate of $0.00150 per share for orders yielding fee code A, which BATS Trading passed through to the Exchange and the Exchange passed through to its Members. In June 2015, Nasdaq terminated its Select Symbol Program, thereby increasing the rebate it provides its customers, such as BATS Trading, from a rebate of $0.00040 per share to its standard rebate of $0.00150 per share for orders that are routed to Nasdaq in symbols included in its Select Symbol Program.[14] Therefore, the Exchange believes that the proposed change in fee code A from a rebate of $0.00040 per share to a rebate of $0.00150 per share is equitable and reasonable because it accounts for the pricing changes on Nasdaq. In addition, the proposal allows the Exchange to continue to charge its Members a pass-through rate for orders that are routed to Nasdaq. The Exchange notes that routing through BATS Trading is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

BATS Connect

The Exchange believes its proposal to amend fees for the use of BATS Connect is consistent with Section 6(b)(4) of the Act,[15] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities. The Exchange charges a connectivity fee to Members utilizing BATS Connect to route orders to or receive market data from other exchanges and market centers that are connected to the Exchange's network, the amounts of which vary based solely on the amount of bandwidth selected by the Member or required to transmit the market data.

The Exchange believes that the proposed connectivity fees for market data connectivity to the NYSE Integrated and MYSE MKT Trades data feeds are consistent with Section 6(b)(4) of the Act,[16] in that they provide for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities. BATS Connect is offered and purchased on a voluntary basis, in that neither the Exchange nor subscribers are required by any rule or regulation to make this product available. Accordingly, subscribers can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Moreover, the Exchange believes the proposed fees are reasonable and equitable because they are based on the Exchange's costs to cover the amount of bandwidth required to provide connectivity to the NYSE Integrated and MYSE MKT Trades data feeds. The proposed fees allow the Exchange to recoup this cost, while providing subscribers with an alternative means to connect to the NYSE Integrated and MYSE MKT Trades data feeds. The Exchange believes that the proposed fees are reasonable and equitable in that they reflect the costs and the benefit of providing alternative connectivity.

The Exchange also believes that the proposed discounted fee of $4,160 per month for subscribers who purchase connectivity to a bundle of select market data products is consistent with Section

[11] *See http://www.nyxdata.com/Data-Products/NYSE–MKT-Trades* for a description of NYSE MKT Trades.

[12] 15 U.S.C. 78f.

[13] 15 U.S.C. 78f(b)(4).

[14] *See supra* note 6.

[15] 15 U.S.C. 78f(b)(4).

[16] 15 U.S.C. 78f(b)(4).

6(b)(4) of the Act,[17] in that it also provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using its facilities. As proposed, subscribers who purchase connectivity to each of the included market data products would be charged a monthly fee of $4,160, which represents a 20% discount from the current rates. The Exchange believes it is reasonable to offer such discounted pricing to subscribers who purchase connectivity to a bundle of market data products as it would enable them to reduce their overall connectivity costs for the receipt of market data. As stated above, BATS Connect is offered and purchased on a voluntary basis and subscribers can discontinue use at any time and for any reason, including due to an assessment of the reasonableness of fees charged. Moreover, the Exchange believes the proposed fees are reasonable and equitable because they continue to be based on the Exchange's costs to cover the amount of bandwidth required to provide connectivity to the select bundle of data feeds. The proposed fees will continue to allow the Exchange to recoup this cost, while providing subscribers with an alternative means to connect to the select bundle of data feeds at a discounted rate.

The Exchange believes that the ministerial changes to the description of certain market data products in the BATS Connect fee table are reasonable because they are not designed to amend the types of market data products that connectivity is available to through BATS Connect. Nor do any of these changes alter the fees charged for connectivity to each product. These changes are simply intended to amend the descriptions of each product to more closely align with that market data product's name. Therefore, the Exchange believes these changes will remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

Lastly, the Exchange also believes that the proposed amendments to its fee schedule are non-discriminatory because they will apply uniformly to all subscribers. All subscribers that voluntarily select various service options will be charged the same amount for the same services. All subscribers have the option to select any connectivity option, and there is no differentiation among Members with regard to the fees charged for the service.

[17] 15 U.S.C. 78f(b)(4).

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes its proposed amendments to its Fee Schedule would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed change represents a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed change will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Fee Code A

The Exchange believes that its proposal to pass through a rebate of $0.00150 per share for Members' orders that yield fee code A would increase intermarket competition because it offers customers an alternative means to route to Nasdaq for a similar rate as entering orders in certain symbols on Nasdaq directly. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

BATS Connect

The Exchange believes the proposed connectivity fee for the NYSE Integrated and MYSE MKT Trades data feeds will not result in any burden on competition. The proposed rule change is designed to provide subscribers with an alternative means to access the NYSE Integrated and MYSE MKT Trades data feeds if they choose or in the event of a market disruption where other alternative connection methods become unavailable. BATS Connect is not the exclusive method to connect to the NYSE Integrated and MYSE MKT Trades data feeds and subscribers may utilize alternative methods to connect to the product if they believe the Exchange's proposed pricing is unreasonable or otherwise. Therefore, the Exchange does not believe the proposed rule change will have any effect on competition.

The Exchange believes that the proposed discounted fee of $4,160 per month for subscribers who purchase connectivity to a bundle of select market data products will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. In fact, the Exchange believes that he proposed discounted fee would help increase competition because it will offer subscribers an alternative means to connect to the selected market data products for a reduced fee, thereby simulating price competition between the various connectivity services. The Exchange reiterates that BATS Connect is offered and purchased on a voluntary basis, and subscribers can discontinue use at any time and for any reason, including choosing to purchase an alternate means to connect to those market data products should if find the proposed fees unreasonable.

The Exchange believes that the proposed the ministerial changes to its to description of certain market data products in the BATS Connect fee table will not affect intermarket nor intramarket competition because these changes do not alter the market data products that connectivity is available to through BATS Connect or their related fees.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [18] and paragraph (f) of Rule 19b–4 thereunder.[19] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f).

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–EDGX–2015–27 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2015–27. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGX–2015–27 and should be submitted on or before July 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–14824 Filed 6–16–15; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75146; File No. SR–EDGA–2015–23]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Fees for Use of EDGA Exchange, Inc.

June 11, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 9, 2015, EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') 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.[3] The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[4] and Rule 19b–4(f)(2) thereunder,[5] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend its fees and rebates applicable to Members[6] of the Exchange pursuant to EDGA Rule 15.1(a) and (c) (''Fee Schedule'') to increase the fee for orders yielding fee code K, which routes to NASDAQ OMX PSX (''PSX'') using ROUC or ROUE routing strategy.

The text of the proposed rule change is available at the Exchange's Web site at *www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission notes that a previous version of the proposal was filed as SR–EDGA–2015–22. The proposal was withdrawn on June 9, 2015.

[4] 15 U.S.C. 78s(b)(3)(A)(ii).

[5] 17 CFR 240.19b–4(f)(2).

[6] The term ''Member'' is defined as ''any registered broker or dealer, or any person associated with a registered broker or dealer, that has been admitted to membership in the Exchange. A Member will have the status of a ''member'' of the Exchange as that term is defined in Section 3(a)(3) of the Act.'' *See* Exchange Rule 1.5(n).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to increase the fee for orders yielding fee code K, which routes to PSX using ROUC or ROUE routing strategy. In securities priced at or above $1.00, the Exchange currently assesses a fee of $0.0026 per share for Members' orders that yield fee code K. The Exchange proposes to amend its Fee Schedule to increase this fee to $0.0028 per share. The proposed change would enable the Exchange to pass through the rate that BATS Trading, Inc. (''BATS Trading''), the Exchange's affiliated routing broker-dealer, is charged for routing orders to PSX when it does not qualify for a volume tiered reduced fee. The proposed change is in response to PSX's June 2015 fee change where PSX decreased the fee to remove liquidity via routable order types it charges its customers, from a fee of $0.0029 per share to a fee of $0.0027 per share for Tapes A and B securities and $0.0028 per share for Tape C securities.[7] When BATS Trading routes to PSX, it will now be charged a standard rate of $0.0027 per share for Tapes A and B securities and $0.0028 per share for Tape C securities.[8] BATS Trading will pass through this rate to the Exchange and the Exchange, in turn, will pass through of a rate of $0.0028 per share for Tape A, B, and C securities to its Members.[9] The proposed increase to the

[7] *See* PSX, Equity Trader Alert 2015–05, Updates to PSX Pricing for June 2015, dated May 28, 2015, *available at http://www.nasdaqtrader.com/MicroNews.aspx?id=ETA2015-78.*

[8] The Exchange notes that to the extent BATS Trading does or does not achieve any volume tiered reduced fee on PSX, its rate for fee code K will not change.

[9] The Exchange notes that, due to billing system limitations that do not allow for separate rates by tape, it will pass through the higher fee of $0.0028 per share for all Tapes A, B & C securities.

fee under fee code K would enable the Exchange to equitably allocate its costs among all Members utilizing fee code K. The Exchange proposes to implement this amendment to its Fee Schedule immediately.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[10] in general, and furthers the objectives of Section 6(b)(4),[11] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. The Exchange believes that its proposal to increase the fee for Members' orders that yield fee code K from $0.0026 per share to $0.0028 per share represents an equitable allocation of reasonable dues, fees, and other charges among Members and other persons using its facilities because the Exchange does not levy additional fees or offer additional rebates for orders that it routes to PSX through BATS Trading. As of June 1, 2015, PSX amended its fee to remove liquidity via routable order types it charges its customers, from a fee of $0.0029 per share to a fee of $0.0027 per share for Tapes A and B securities and $0.0028 per share for Tape C securities.[12] Therefore, the Exchange believes that its proposal to pass through a fee of $0.0028 per share for orders that yield fee code K is equitable and reasonable because it accounts for the pricing changes on PSX. In addition, the proposal allows the Exchange to now charge its Members a pass-through rate for orders that are routed to PSX. Furthermore, the Exchange notes that routing through BATS Trading is voluntary. Lastly, the Exchange also believes that the proposed amendment is non-discriminatory because it applies uniformly to all Members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

These proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that any of these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGA's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. The Exchange believes that its proposal to pass through a fee of $0.0028 per share for Members' orders that yield fee code K would increase intermarket competition because it offers customers an alternative means to route to PSX. The Exchange believes that its proposal would not burden intramarket competition because the proposed rate would apply uniformly to all Members.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[13] and paragraph (f) of Rule 19b–4 thereunder.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

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–EDGA–2015–23 on the subject line.

Paper Comments

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGA–2015–23. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–EDGA–2015–23 and should be submitted on or before July 8,2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–14820 Filed 6–16–15; 8:45 am]

BILLING CODE 8011–01–P

[10] 15 U.S.C. 78f.

[11] 15 U.S.C. 78f(b)(4).

[12] *See* supra *note 6.*

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75154; File No. SR–FINRA–2015–015]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Notice of Filing of a Proposed Rule Change To Provide a Web-Based Delivery Method for Completing the Regulatory Element of the Continuing Education Requirements

June 11, 2015.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

notice is hereby given that on June 4, 2015, Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by FINRA. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

FINRA is proposing to amend FINRA Rule 1250 (Continuing Education Requirements) to provide a Web-based delivery method for completing the Regulatory Element of the Continuing Education (''CE'') requirements and to amend Section 4(f) of Schedule A to the FINRA By-Laws to establish the fee for the Web-based delivery of the Regulatory Element. The proposed rule change would phase out the current option of completing the Regulatory Element in a test center as well as the current option for in-firm delivery of the Regulatory Element.

In addition, FINRA is proposing to delete NASD Rule 1043 (Proctors of In-Firm Delivery of Regulatory Element), Incorporated NYSE Rule 345A (Continuing Education for Registered Persons) [3] and NYSE Rule Interpretation 345A (Continuing Education for Registered Persons).

The text of the proposed rule change is available on FINRA's Web site at *http://www.finra.org,* at the principal office of FINRA and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, FINRA included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. FINRA has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[3] For convenience, the proposed rule change refers to Incorporated NYSE Rules as NYSE Rules.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background

The CE requirements under FINRA Rule 1250 consist of a Regulatory Element [4] and a Firm Element.[5]

The Regulatory Element applies to registered persons [6] and consists of periodic computer-based training on regulatory, compliance, ethical, and supervisory subjects and sales practice standards, which must be completed within prescribed time frames.[7] In addition, a registered person is required to retake the Regulatory Element in the event such person is: (1) Subject to a statutory disqualification as defined by Section 3(a)(39) of the Act; (2) subject to a suspension or imposition of a fine of $5,000 or more by a self-regulatory organization (SRO) or securities governmental agency; or (3) ordered to do so as a sanction in a disciplinary action by an SRO or a securities governmental agency. There are four Regulatory Element programs: (1) The S106 for Investment Company and Variable Contracts Representatives; (2) the S201 for registered principals and supervisors; (3) the S901 for Operations Professionals; and (4) the S101 for all other registration categories. Currently, the Regulatory Element may be administered in a test center or in-firm subject to specified procedures.[8]

In addition, NASD Rule 1043 requires that an associated person designated as a proctor by a firm for the purposes of the in-firm delivery of the Regulatory Element be registered as a Proctor with FINRA through the filing of a Form U4 (Uniform Application for Securities Industry Registration or Transfer); [9] provided that an associated person who is already registered with FINRA in another registration category, such as a General Securities Representative, may be designated as a proctor by a firm without having to register as a Proctor with FINRA.

The Firm Element consists of annual, member-developed and administered training programs designed to keep covered registered persons [10] current regarding securities products, services and strategies offered by the member.

NYSE Rule 345A and NYSE Rule Interpretation 345A include corresponding requirements.[11]

Today, most registered persons complete the Regulatory Element in a test center rather than in-firm. Given advances in Web-based technology, FINRA believes that there is diminishing utility in the test center and in-firm delivery methods. Moreover, members and registered persons have raised concerns with the test center

[4] *See* FINRA Rule 1250(a) (Regulatory Element).

[5] *See* FINRA Rule 1250(b) (Firm Element).

[6] For purposes of the Regulatory Element, a ''registered person'' is defined as any person registered with FINRA as a representative, principal, assistant representative or Research Analyst. *See* FINRA Rule 1250(a)(5) (Definition of Registered Person).

[7] Pursuant to FINRA Rule 1250(a), each registered person is required to complete the Regulatory Element initially within 120 days after the person's second registration anniversary date and, thereafter, within 120 days after every third registration anniversary date. Any registered person who has not completed the Regulatory Element program within the prescribed time frames will have his or her FINRA registrations deemed inactive and designated as ''CE inactive'' on the Central Registration Depository (CRD®) system until such time as the requirements of the program have been satisfied. A CE inactive person is prohibited from performing, or being compensated for, any activities requiring registration, including supervision. *See also Notice to Members* 95–35 (Continuing Education Program Update: Regulatory Element Questions and Answers) (May 1995). Moreover, if a registered person is CE inactive for a two-year period, FINRA will administratively terminate the person's registration status with FINRA. The two-year period would be calculated from the date the person becomes CE inactive. If a registered person becomes CE inactive but is not registered with a member when the two-year period ends, FINRA will nevertheless update the CRD system to reflect that the person did not satisfy the Regulatory Element program. In either case, such person must reapply for registration and requalify (or obtain a waiver of the applicable qualification examination(s)) to be eligible to register again.

[8] The in-firm delivery procedures require, among other things, that (1) the firm designate a principal to be responsible for the in-firm delivery; (2) the delivery site be under the control of the firm and in an appropriate location and layout; (3) the firm satisfy the technology standards defined by FINRA or its designated vendor; (4) the firm's written supervisory procedures specify the in-firm delivery procedures; (5) the in-firm sessions be administered by a proctor who will be responsible for ensuring compliance with the required procedures and for monitoring the candidates; (6) appointments be scheduled in advance using the procedures and software specified by FINRA to communicate with FINRA's system and designated vendor; (7) the firm maintain and preserve a sign-in log; and (8) firms file a signed letter or attestation with FINRA prior to commencing in-firm delivery. *See* FINRA Rule 1250(a)(6) (In-Firm Delivery of the Regulatory Element).

[9] Proctors are not subject to a qualification examination. Further, an associated person who is registered solely as a Proctor is not qualified to function in any registered capacity other than a proctor for in-firm delivery.

[10] For purposes of the Firm Element, the term ''covered registered persons'' is defined as any registered persons who have direct contact with customers in the conduct of the member's securities sales, trading and investment banking activities, any person registered as an Operations Professional pursuant to FINRA Rule 1230(b)(6) (Operations Professional) or a Research Analyst pursuant to NASD Rule 1050 (Registration of Research Analysts), and the immediate supervisors of such persons. *See* FINRA Rule 1250(b)(1) (Persons Subject to the Firm Element).

[11] *See also* NYSE *Information Memorandum* 02–49 (November 2002).

delivery method because of the travel involved, the limited time currently available to complete a Regulatory Element session [12] and the use of rigorous security measures at test centers, which are appropriate for taking qualification examinations but onerous for a CE program. Also, the test center delivery method is expensive to operate.

In response to the issues noted above, FINRA engaged in extensive outreach with the industry and completed a pilot of a Web delivery system for administering the Regulatory Element. The proposed Web-based system performed well during the pilot in terms of both performance and accessibility. FINRA also received positive feedback from firms and the individual pilot participants. Among other things, pilot participants appreciated the expanded time to focus on the provided learning materials without the pressure of a timed session and the ability to resume or complete their session from where they left off.

Proposal

Based on FINRA's evaluation of different delivery methods and consultation with the Securities Industry Regulatory Council on Continuing Education (''CE Council''),[13] FINRA is proposing to provide a Web-based delivery method for completing the Regulatory Element. Specifically, FINRA is proposing to amend FINRA Rule 1250(a)(6) to provide that the Regulatory Element program will be administered through Web-based delivery or such other technological manner and format as specified by FINRA. In addition to allowing the use of Web-based delivery, the proposed rule change would allow FINRA to adopt different delivery methods in the future based on technology changes without having to amend the rule each time. However, FINRA will notify members through a *Regulatory Notice* of any future changes to the delivery method.

FINRA would like to launch the first phase of Web-based delivery, which will include the S106, S201 and S901 Regulatory Element programs, on October 1, 2015. FINRA would like to launch the second phase of Web-based delivery, which will include the S101 Regulatory Element program, on January 4, 2016.

FINRA is proposing to phase out test-center delivery by no later than six months after January 4, 2016. Registered persons will continue to have the option of completing the Regulatory Element in a test center until the phase out of the test center delivery method, but they will be required to use the Web-based system after that date.

Further, FINRA is proposing to phase out the current option for in-firm delivery on a rolling basis as each Regulatory Element program becomes available for Web-based delivery. Firms will not be able to establish new in-firm delivery programs after October 1, 2015. Moreover, firms that have pre-existing in-firm delivery programs established prior to October 1, 2015 would not be able to use that delivery method for the S106, S201 and S901 Regulatory Element programs after October 1, 2015, which is the anticipated launch date of Web-based delivery for these programs. However, such firms may continue to use their pre-existing in-firm delivery programs for the S101 Regulatory Element program until January 4, 2016, which is the anticipated launch date of Web-based delivery for the S101 program.

FINRA is also proposing to eliminate NASD Rule 1043 relating to the registration of Proctors for in-firm delivery. FINRA is proposing to automatically terminate the Proctor registration category in the CRD system on January 4, 2016, which, as noted above, is the launch date of the second phase of Web-based delivery. Therefore, associated persons who are registered as Proctors in the CRD system will not be required to take any actions.

The proposed Web-based delivery method will provide registered persons the flexibility to complete the Regulatory Element at a location of their choosing, including their private residence, at any time during their 120-day window for completion of the Regulatory Element.[14]

In addition, Web-based delivery will significantly reduce the cost to the industry. The current fee for test-center and in-firm deliveries is $100 per session.[15] In-firm deliveries receive a three dollar rebate per session. FINRA is proposing to amend Section 4(f) of Schedule A to the FINRA By-Laws to assess a fee of $55 for each candidate who completes the Regulatory Element via the Web-based delivery method.[16] FINRA is also proposing to amend Section 4(f) of Schedule A to the FINRA By-Laws to clarify that registered persons will not be required to complete the Regulatory Element in a test center or via the in-firm method during the phase-out period.

The Web-based format will include safeguards to authenticate the identity of the CE candidate. For instance, prior to commencing a Web-based session, the candidate will be asked to provide a portion of their SSN (either first five or last four digits) and their date of birth. This information will only be used for matching data in the CRD system. The Web CE system will discard this information after the matching process.

Further, before commencing a Web-based session, FINRA will require that each candidate agree to the Rules of Conduct for Web-based delivery. Among other things, the Rules of Conduct will require each candidate to attest that he or she is in fact the person who is taking the Web-based session. The Rules of Conduct will also require that each candidate agree that the Regulatory Element content is the intellectual property of FINRA and that the content cannot be copied or redistributed by any means. If FINRA discovers that a candidate has violated the Rules of Conduct, the candidate will forfeit the results of the Web-based session and may be subject to disciplinary action by FINRA.[17] Violation of the Rules of Conduct will be considered conduct inconsistent with high standards of commercial honor and just and equitable principles of trade, in violation of FINRA Rule 2010 (Standards of Commercial Honor and Principles of Trade).[18]

[12] The current session time is 3½ hours.

[13] The CE Council is composed of up to 20 industry members from broker-dealers, representing a broad cross section of industry firms, and representatives from FINRA and other SROs as well as liaisons from the SEC and the North American Securities Administrators Association.

[14] While the proposed rule change provides such flexibility, firms may choose to impose their own conditions based on their supervisory and compliance needs. For instance, a firm that wishes to have registered persons complete CE on the firm's premises can do so by having the registered person access Web-based CE from a firm device and location. Moreover, firms would have to update their written policies and procedures regarding the Regulatory Element to reflect the transition to Web-based CE and communicate the update to registered persons.

[15] There are also additional fees for taking the session outside the United States, failing to appear on time for an appointment or cancelling or rescheduling an appointment. *See* Section 4 of Schedule A to the FINRA By-Laws.

[16] FINRA is not proposing any changes to the session fees for test-center and in-firm deliveries until it has completed the phase-out process described above.

[17] For instance, for cheating on the Regulatory Element, FINRA's Sanction Guidelines recommend a bar. *See* FINRA Sanction Guidelines at 40 (2013 [sic]), *http://www.finra.org/sites/default/files/Sanctions_Guidelines.pdf.*

[18] Further, an associated person that assists another associated person in violating the Rules of Conduct will also be considered to have violated FINRA Rule 2010. Firms must also consider whether they have an obligation to report violations of the Rules of Conduct to FINRA. For instance, FINRA Rule 4530.01 (Reporting of Firms'

Continued

FINRA is not proposing any changes to the Firm Element requirements under FINRA Rule 1250(b).

FINRA is proposing to delete NYSE Rule 345A and NYSE Rule Interpretation 345A in their entirety as they are substantially similar to FINRA Rule 1250.

FINRA will announce the effective date of the proposed rule change, which FINRA intends for October 2015, in a *Regulatory Notice* to be published no later than 90 days following Commission approval.

2. Statutory Basis

FINRA believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[19] which requires, among other things, that FINRA rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest, and Section 15A(g)(3) of the Act,[20] which authorizes FINRA to prescribe standards of training, experience, and competence for persons associated with FINRA members.

FINRA believes that the proposed rule change will improve members' compliance efforts and will allow registered persons to spend a greater amount of time on the review of CE materials and potentially achieve better learning outcomes, which will in turn enhance investor protection. Further, while the proposed rule change will provide more flexibility to members and registered persons, it will maintain the integrity of the CE program.

B. Self-Regulatory Organization's Statement on Burden on Competition

FINRA does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

FINRA notes that the proposed rule change is specifically intended to reduce the burden on firms while preserving the integrity of the CE program. As described above, the Web-based delivery method will provide registered persons the flexibility to complete the Regulatory Element at any location that they choose. Further, Web-based delivery is efficient and offers significant cost savings over test-center and in-firm deliveries. With respect to the authentication process for Web-based delivery, the CE candidate's personal identifying information will be masked and will be submitted to FINRA through a secure, encrypted, network. The personal identifying information submitted via the Web-based system will be used for authentication purposes only—the information will not be stored in the Web-based system.

Economic Impact Assessment

(a) Need for the Rule

As discussed above, FINRA believes that there is diminishing utility in the test-center and in-firm delivery of the Regulatory Element given advances in Web-based technology. Moreover, members and registered persons have raised concerns with the test center delivery method because of the travel involved, the limited time currently available to complete a Regulatory Element session and the use of rigorous security measures at test centers. In addition, the test center delivery method is expensive to operate and support.

(b) Regulatory Objective

The proposed rule change is intended to reduce the burden on firms while preserving the integrity of the CE program.

(c) Economic Baseline

The proposed Web-based delivery method will affect members and registered persons through changes in the fee, location and allotted time for Regulatory Element sessions. The average annual in-firm and test-center deliveries over the past three years are 1,174 and 207,474, respectively. The current fee for in-firm and test-center deliveries is typically $100 per session. In addition, the Regulatory Element must be completed at a test center or in-firm subject to specific conditions, and the current Regulatory Element session time is 3½ hours. The proposed rule change will permit FINRA to provide CE training at a reduced cost, reduce the fee for the Regulatory Element session and provide registered persons with more flexibility regarding the location and allotted time to complete the session.

The proposed Web-based delivery of the Regulatory Element will also improve FINRA's ability to update content in response to rule changes and other industry demands. The current test center delivery method involves a multi-layered release and quality control process for implementing new content through the delivery vendors because FINRA and the delivery vendors each employ a release and quality control process. The overlapping processes, while necessary, require additional effort for FINRA staff to support. The proposed rule change will enable FINRA to update the content of the Regulatory Element directly and more efficiently through a single release and quality control process.

(d) Economic Impacts

The proposed Web-based delivery of the Regulatory Element will reduce direct and indirect costs of the program in a number of ways. First, the industry will benefit from the proposed decrease in the session fee from $100 to $55. Under the proposal, the total reduction in fees is estimated to be approximately $1 million in 2015, $9 million in 2016, and $11 million in 2017 compared to the fee structure of the test-center delivery. Second, in contrast with the test center delivery method, the proposed Web-based delivery will not involve travel, meaning that registered persons will not lose travel time in order to participate, or overly rigorous security measures. Registered persons will be able to complete the Regulatory Element at a location of their choosing, including their private residence. Third, the proposed Web-based delivery will not impose any limit on the session time other than the 120-day window for completion of the Regulatory Element. Under the proposed Web-based delivery method, registered persons will be able to spend a greater amount of time on the review of CE materials and potentially achieve better learning outcomes.

The Web-based format will provide FINRA the ability to update content in response to rule changes and other industry changes on a more timely basis. Also, it will significantly reduce the effort and cost associated with a multi-layered release and quality control process for implementing new content through the delivery vendors. Therefore, the proposed rule change will likely improve regulatory efficiency, promote better education of associated persons and enhance investor protection.

The proposed rule change is not expected to negatively impact the integrity of the CE program. The proposed Web-based delivery method will include safeguards to authenticate the identity of the CE candidate. Further, before commencing a Web-based session, FINRA will require that each candidate agree to the Rules of Conduct for Web-based delivery.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

Conclusions of Violations) requires a firm to report, among other things, if it concludes that an associated person has engaged in multiple instances of any violative conduct.

[19] 15 U.S.C. 78*o*–3(b)(6).

[20] 15 U.S.C. 78*o*–3(g)(3).

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–FINRA–2015–015 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–FINRA–2015–015. 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 FINRA. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FINRA–2015–015 and should be submitted on or before July 8, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–14828 Filed 6–16–15; 8:45 am]

BILLING CODE 8011–01–P

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14344 and #14345]

Oklahoma Disaster Number OK–00081

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 2.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for Public Assistance Only for the State of Oklahoma (FEMA–4222–DR), dated 06/04/2015.

Incident: Severe Storms, Tornadoes, Straight Line Winds, and Flooding.

Incident Period: 05/05/2015 through 06/04/2015.

Effective Date: 06/09/2015.

Physical Loan Application Deadline Date: 08/03/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 03/04/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: The notice of the President's major disaster declaration for Private Non-Profit organizations in the State of Oklahoma, dated 06/04/2015, is hereby amended to include the following areas as adversely affected by the disaster.

Primary Counties: Canadian; Carter; Choctaw; Coal; Le Flore; Love; Murray; Okmulgee; Pottawatomie.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

James E. Rivera,

Associate Administrator for Disaster Assistance.

[FR Doc. 2015–14843 Filed 6–16–15; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #14348 and #14349]

Massachusetts Disaster #MA–00065

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the Commonwealth of Massachusetts dated 06/11/2015.

Incident: Brookside Condominium Complex Fire.

Incident Period: 05/05/2015.

Effective Date: 06/11/2015.

Physical Loan Application Deadline Date: 08/10/2015.

Economic Injury (EIDL) Loan Application Deadline Date: 03/11/2016.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW., Suite 6050, Washington, DC 20416.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Middlesex.

Contiguous Counties:

Massachusetts: Essex, Norfolk, Suffolk, Worcester.

New Hampshire: Hillsborough.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere	3.375
Homeowners Without Credit Available Elsewhere	1.688
Businesses With Credit Available Elsewhere	6.000
Businesses Without Credit Available Elsewhere	4.000
Non-Profit Organizations With Credit Available Elsewhere	2.625

	Percent
Non-Profit Organizations Without Credit Available Elsewhere	2.625
For Economic Injury:	
Businesses & Small Agricultural Cooperatives Without Credit Available Elsewhere	4.000
Non-Profit Organizations Without Credit Available Elsewhere	2.625

The number assigned to this disaster for physical damage is 14348 5 and for economic injury is 14349 0.

The States which received an EIDL Declaration # are Massachusetts, New Hampshire.

(Catalog of Federal Domestic Assistance Numbers 59002 and 59008)

Dated: June 11, 2015.

Maria Contreras-Sweet,

Administrator.

[FR Doc. 2015–14842 Filed 6–16–15; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2015–33]

Petition for Exemption; Summary of Petition Received; Seaborne Virgin Island

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before July 7, 2015.

ADDRESSES: Send comments identified by docket number FAA–2015–1638 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–4025, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 11, 2015.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–1638.

Petitioner: Seaborne Virgin Island, Inc.

Section(s) of 14 CFR Affected: § 61.159(a)(3).

Description of Relief Sought: Seaborne Virgin Island, Inc. requests relief from the aeronautical experience requirement in part 61 for the Airline Transport Pilot (ATP) certificate that requires the ATP applicant have at least 50 hours of flight time in the class of airplane for the rating sought in order to be eligible for that certificate. The relief sought is specific to those pilots seeking an ATP certificate in the airplane category with a multiengine sea class rating.

[FR Doc. 2015–14913 Filed 6–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. 2015–41]

Petition for Exemption; Summary of Petition Received; Major Daniel K. Florence

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14 of the Code of Federal Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before July 7, 2015.

ADDRESSES: Send comments identified by docket number FAA–2015–0695 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE., Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the

West Building Ground Floor at 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Keira Jones (202) 267–4025, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on June 11, 2015.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–0695.

Petitioner: Major Daniel K. Florence.

Section(s) of 14 CFR Affected: § 61.159 (a)(5).

Description of Relief Sought: Major Daniel K. Florence requests relief from § 61.159 (a)(5) to allow 105.9 hours of his powered-lift aircraft flight time to be credited toward the 250 hours of flight time in an airplane as a pilot in command, or as second in command performing the duties of pilot in command while under the supervision of a pilot in command, required for an Airline Transport Pilot certificate.

[FR Doc. 2015–14915 Filed 6–16–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2015–0051]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with part 235 of title 49 of the Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this provides the public notice that by a document dated May 12, 2015, the Union Pacific Railroad Company (UP) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2015–0051.

Applicant: Union Pacific Railroad Company, Mr. Neal Hathaway, AVP Engineering—Signals, 1400 Douglas Street, MS 0910, Omaha, NE 68179.

The UP seeks approval of the modification of the Traffic Control System at control points (CP) B000, milepost (MP) 0.6 and CP B001, MP 0.9, on the Omaha Subdivision, at Council Bluffs, IA. The modification will involve the relocation of most signals and the elimination of signals which are no longer needed. The reason for the modification is to facilitate yard operations and expedite train movements in the area.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U. S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- Web site: *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- Fax: 202–493–2251.
- Mail: Docket Operations Facility, U.S. DOT, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- Hand Delivery: 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by August 3, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC on June 11, 2015.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2015–14896 Filed 6–16–15; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA–2012–0033

Notice of Intent To Grant a Buy America Waiver to the City of Sacramento, California, Department of Public Works, for the Purchase of a Variable Refrigerant Flow Heating, Ventilation, and Air Conditioning System

AGENCY: Federal Railroad Administration (FRA), United States Department of Transportation (DOT).

ACTION: Notice of intent to grant Buy America waiver.

SUMMARY: FRA is issuing this notice to advise the public that it intends to grant the City of Sacramento, California, Department of Public Works (Sacramento), a waiver from FRA's Buy America requirement under 49 U.S.C. 24405(a)(2)(B) for the purchase of a variable refrigerant flow (VRF) heating, ventilation, and air conditioning system for use in the Sacramento Valley Station Phase II intermodal project. The $30 million project is partially funded with a $15 million 2012 Transportation Infrastructure Generating Economic Recovery grant. The cost of the non-domestic material in the VRF system is approximately $202,500. FRA believes a waiver is appropriate under 49 U.S.C. 24405(a)(2)(B) for the VRF system because VRF systems are not currently produced in the U.S.

DATES: Written comments on FRA's determination to grant Sacramento's Buy America waiver request should be provided to the FRA on or before June 22, 2015.

ADDRESSES: Please submit your comments by one of the following means, identifying your submissions by docket number FRA–2012–0033. All electronic submissions must be made to the U.S. Government electronic site at *http://www.regulations.gov.* Commenters should follow the instructions below for mailed and hand-delivered comments.

(1) *Web site: http://www.regulations.gov.* Follow the instructions for submitting comments on the U.S. Government electronic docket site;

(2) *Fax:* (202) 493–2251;

(3) *Mail:* U.S. Department of Transportation, 1200 New Jersey Avenue SE., Docket Operations, M–30, Room W12–140, Washington, DC 20590–0001; or

(4) *Hand Delivery:* Room W12–140 on the first floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must make reference to the ''Federal Railroad Administration'' and include docket number FRA–2012–0033. Due to security procedures in effect since October 2001, mail received through the U.S. Postal Service may be subject to delays. Parties making submissions responsive to this notice should consider using an express mail firm to ensure the prompt filing of any submissions not filed electronically or by hand. Note that all submissions received, including any personal information therein, will be posted without change or alteration to *http://www.regulations.gov.* For more information, you may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477), or visit *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. John Johnson, Attorney-Advisor, FRA Office of Chief Counsel, 1200 New Jersey Avenue SE., Mail Stop 25, Washington, DC 20590, (202) 493–0078, *John.Johnson@dot.gov.*

SUPPLEMENTARY INFORMATION:

The letter granting Sacramento's request is quoted below:

Mr. Gregory Taylor
AIA, Supervising Architect/Project Manager
City of Sacramento, Department of Public Works
915 I Street
Room 2000
Sacramento, CA 95814–2604.

Re: Request for Waiver of Buy America Requirement

Dear Mr. Taylor:

As you are aware, on November 24, 2014, the City of Sacramento, California, Department of Public Works (Sacramento) requested a waiver from the Federal Railroad Administration's (FRA) Buy America requirement (49 U.S.C. 24405(a)) to purchase a variable refrigerant flow (VRF) heating, ventilation, and air conditioning (HVAC) system for use in the Sacramento Valley Station (SVS) Phase II intermodal project.[1]

The SVS Phase II intermodal project is the rehabilitation of the historic 68,000 square foot train station in downtown Sacramento, California. The $30 million project is partially funded with a $15 million 2012 Transportation Infrastructure Generating Economic Recovery (TIGER) grant. The U.S. Department of Transportation (DOT) selected each project for 2012 TIGER Grant funding based on whether it would, among other things, promote a more environmentally sustainable transportation system. 77 FR 4863, 4867 (January 31, 2012). After rehabilitation, the SVS will include Amtrak station facilities, commercial retail and office space.

FRA is granting Sacramento's waiver request. FRA concludes a waiver is appropriate under 49 U.S.C. 24405(a)(2)(B) for the VRF system because domestically-produced HVAC systems meeting the specific needs of Sacramento for this application (*i.e.,* energy efficiency and historic preservation) are not currently ''produced in sufficient and reasonably available amount or are not of a satisfactory quality.'' 49 U.S.C. 24405(a)(2)(B).

With respect to historic building preservation and energy efficiency, FRA concludes that the VRF system is the only choice for the rehabilitation of the SVS for the following reasons:

- The VRF system has small distribution pipes instead of larger ductwork that would create problematic penetrations in the existing older structures.
- The VRF system has smaller equipment in the conditioned allowable space.
- The VRF system does not require heavy, large air handling units that would overburden an historic building's capacity.
- The VRF system has zone-to-zone heat recovery and high efficiency heating and cooling.

In addition to concluding that VRF is the only system meeting the project's needs, FRA also conducted due diligence with regard to determining the availability of domestic manufacturers of the VRF system. FRA concludes that no company manufactures VRF systems domestically. FRA bases this determination on the following facts:

- In 2010, the U.S. Department of Energy (DOE) issued a blanket non-availability waiver for VRF HVAC systems procured with American Reinvestment and Recovery Act funding. See 75 FR 35447, June 22, 2010.
- In 2014, the Federal Transit Administration (FTA) granted two non-availability waivers for VRF systems. See St. Louis' MetroLink, 79 FR 34653, June 17, 2014, and San Bernardino Associated Governments, 79 FR 61129, October 9, 2014. FTA is currently reviewing another non-availability waiver for a VRF system.
- On December 9, 2014, FRA provided public notice of this waiver request and a 15-day opportunity for comment on its Web site. FRA also emailed notice to over 6,000 persons who have signed up for Buy America notices through ''GovDelivery.'' See *http://www.fra.dot.gov/Page/P0719.* FRA received one comment. The commenter supported granting the waiver and stated, ''The efficiency of the VRF system cannot be matched by other types of conventional systems.''
- In February 2015, FTA engaged National Institute of Standards and Technology's Hollings Manufacturing Extension Partnership (NIST–MEP) to scout for Buy America-compliant VRF systems. NIST–MEP did not locate any domestic VRF systems. In fact, Carrier Corporation responded to NIST–MEP's scouting efforts, stating ''VRF system is a new technology . . . there are no current domestic manufacturers of VRF systems.''

Pursuant to 49 U.S.C. 24405(a)(4), FRA will publish this letter granting Sacramento's request in the **Federal Register** and provide notice of such finding and an opportunity for public comment after which this waiver will become effective.

Question about this letter can be directed to, John Johnson, Attorney-Advisor, at *John.Johnson@dot.gov* or (202) 493–0078.

Sincerely,

Sarah Feinberg
Acting Administrator

Melissa L. Porter,
Chief Counsel.

[FR Doc. 2015–14887 Filed 6–16–15; 8:45 am]

BILLING CODE 4910–06–P

[1] Sacramento also requested a waiver for Marmoleum flooring. However, FRA has chosen to bifurcate the waiver requests since the VRF waiver is more advanced in terms of processing and in urgent need by Sacramento. FRA is still deciding whether a waiver for the flooring is warranted.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2015–0045]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this provides the public notice that by a document dated May 4, 2015, Canadian Pacific Railway, Ltd. (CPR) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232, Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment. Specifically, CPR requests relief from 49 CFR 232.305(b)(2), which requires that a single car air brake test (SCABT) be performed when a car is on a shop or repair track, as defined in section 232.303(a), for any reason and has not received a SCABT within the previous 12-month period. FRA assigned the petition docket number FRA–2015–0045.

In its petition, CPR requests relief allowing for replacements of wheels condemnable by all applicable Association of American Railroads (AAR) Field Manual Rule 41 defects at Battle Creek Yard, St. Paul, MN, on a track designated for minor repairs using a drop table. CPR identifies these defects either by the Wheel Impact Load Detector (WILD) or visually by a qualified inspector designated under 49 CFR 215.11 and verified by that

inspector before being repaired using the drop table on a track designated for minor repairs. CP will continue to perform SCABTs as required in sections 232.305(b)(1), (4), (5) and 232.305(c)–(e). CPR states that this request is consistent with 49 CFR 232.303(a)(2) which allows for an exception to the definition of ''major repair'' for wheels changed on an intermodal loading ramp. Similar to changing wheels on an intermodal loading ramp, wheel replacements using a drop table are completed in a short period of time and with no disruption to the other car components, including the brake system. The wheelset change-out takes an average of 0.337 person-hours. Besides the drop table, the repair requires only the use of hand tools and does not require additional specialized equipment.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by August 3, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC, on June 11, 2015.

Ron Hynes,

Director of Technical Oversight.

[FR Doc. 2015–14858 Filed 6–16–15; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2015–0050]

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System

In accordance with Part 235 of Title 49 of the Code of Federal Regulations (CFR) and 49 U.S.C. 20502(a), this provides the public notice that by a document dated March 27, 2015, the Union Pacific Railroad Company (UP) petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of a signal system. FRA assigned the petition Docket Number FRA–2015–0050.

Applicant: Union Pacific Railroad Company, Mr. Neal Hathaway, AVP Engineering—Signal, 1400 Douglas Street, MS 0910, Omaha, NE 68179.

The UP seeks approval of the modification of the traffic control system (TCS) at control point (CP) T342, at milepost 342.20, on the Baird Subdivision, by the conversion of dispatcher controlled signals, 45L and 45R, to intermediate signals. The CP was installed to hold trains clear of switching operations which took place at a yard which is no longer there.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by August 3, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC, on June 11, 2015.

Ron Hynes,

Director, Office of Technical Oversight.

[FR Doc. 2015–14859 Filed 6–16–15; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2015–0044]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 of the Code of Federal Regulations (CFR), this provides the public notice that by a document dated May 4, 2015, Siemens Industry, Inc. has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 232.409(d). FRA assigned the petition docket number FRA–2015–0044.

Siemens Industry, Inc. (Siemens) is submitting a request for a waiver of compliance from 49 CFR 232.409(d)—Inspection and Testing of End-of-Train Devices. Siemens manufactures railroad electronics, including end-of-train (EOT) devices. In its waiver request, Siemens states that thousands of its EOT devices are deployed by Class 1 and short line railroads.

Specifically, Siemens is seeking the waiver for two EOT models: Q3920 and R3930 (the dual air pipe version of Q3920). The Q3920 and R3930 EOT devices use a Ritron DTX–445 radio. Previously, Ritron has received a waiver of compliance from 49 CFR 232.409(d) for their DTX–445 radio (see Docket Number FRA–2009–0015). Siemens requests a waiver from 49 CFR 232.409(d), similar to the waiver granted to Ritron in Docket Number FRA–2009–0015. Siemens asserts that as long as the waiver in FRA–2009–0015 is valid, Siemens EOT devices using the Ritron DTX–445 radio should also be permitted to take advantage of the waiver since there are no components in the EOT device with an annual calibration requirement and there are no adjustable components that can affect radio performance.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the Department of Transportation's Docket Operations Facility, 1200 New Jersey Ave. SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by August 3, 2015 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its processes. 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.* See also *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov.

Issued in Washington, DC, on June 11, 2015.

Ron Hynes,

Director of Technical Oversight.

[FR Doc. 2015–14854 Filed 6–16–15; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. DOT–NHTSA–2015–0051]

Notice and Request for Comments

AGENCY: National Highway Traffic Safety Administration (NHTSA), U.S. Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: The DOT invites public comments about our intention to request the Office of Management and Budget (OMB) approval for new information collection. Before a Federal agency can collect certain information from the public, it must receive approval from OMB. Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatement of previously approved collections.

DATES: Written comments should be submitted by August 17, 2015.

ADDRESSES: You may submit comments (identified by Docket No. DOT–NHTSA–2015–0051) through one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1 (202) 493–2251.
- *Mail or Hand Delivery:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Susan McHenry, (202) 366–6540, Office of Emergency Medical Services, National Highway Traffic Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: New.

Title: National Emergency Medical Services Information System (NEMSIS)—State Submission to National Emergency Medical Services (EMS) Database.

Type of Review: New Information Collection.

Abstract: NHTSA supports and funds NEMSIS to further its goal of reducing death and disability on the Nation's roadways. The NEMSIS Technical Assistance Center (TAC) assists State and local EMS agencies and software vendors in implementing NEMSIS Version 3.0 (and higher)-compliant EMS data systems and the corresponding XML standard to support data transmission and interoperability. NHTSA also maintains the National EMS Database and a national reporting system. NHTSA supported the initial development of the National EMS Information System, including the supporting Data Dictionary and technology infrastructure, at the request

of the National Association of State EMS Officials. This effort developed the first-ever standardized EMS patient care reporting mechanism, which would provide essential information that could lead to improved patient care at local, State and national levels. Both the Senate and House included NEMSIS language in FY05 NHTSA Appropriations, directing NHTSA to continue implementation of NEMSIS and the National EMS Database. Congress has continued to support funding for the NEMSIS TAC and the National EMS Database. The information collected in the National EMS Database will be used to: (1) Better describe EMS across the country, (2) provide information that will help NHTSA better understand the serious injuries sustained as a result of motor vehicle crashes, (3) inform the NHTSA Office of EMS on changes in clinical practices/protocols, medications and other factors that impact National EMS Education Standards, developed by NHTSA, (4) support EMS research, and (5) support a comprehensive set of local and State EMS Performance Measures that are currently under development, with support of NHTSA.

The National EMS Database is populated by collecting data from State EMS databases. State EMS databases are populated with patient care records from local or regional EMS agencies. The most complete report is the local EMS electronic patient care report completed for each EMS response. A subset of each the local EMS report is submitted electronically to the State EMS database and the State EMS office electronically transmits a smaller subset of all the local data to the NEMSIS TAC for inclusion in the National EMS Database. The data at the national level contains no personally identifiable information, and is reported in the aggregate.

Affected Public: State and territory EMS offices, and, in some cases, EMS software vendors.

Estimated Number of Respondents: 56.

Frequency: Through Web services, within a few hours of when the State receives the local record.

Number of Responses: Depends on each State and how many patient calls are responded to. All transmissions are machine to machine.

Total Annual Burden: Estimate total annual burden to be approximately 12 hours per respondent and cumulative total of 672 hours.

Form Numbers: No forms.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including (a) whether the proposed collection of information is necessary for the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1:48.

Jeffrey P. Michael,

Associate Administrator, Research and Program Development.

[FR Doc. 2015–14922 Filed 6–16–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0094; Notice 1]

Ferrari North America, Inc., Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of petition.

SUMMARY: Ferrari North America, Inc. (FNA) has determined that certain model year (MY) 2007–2009 Ferrari F430 passenger cars do not fully comply with paragraph S4.4(c)(2), of Federal Motor Vehicle Safety Standard (FMVSS) No. 138, *Tire Pressure Monitoring Systems.* FNA has filed an appropriate report dated July 16, 2014, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

DATES: The closing date for comments on the petition is July 17, 2015.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Deliver:* Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by: Logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/.* Follow the online instructions for submitting comments.

Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

SUPPLEMENTARY INFORMATION:

I. FNA's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, FNA submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of FNA's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Affected are approximately 1,975 MY 2007–2009

Ferrari F430 passenger cars manufactured from September 1, 2007 through July 29, 2009.

III. Noncompliance: FNA explains that the Tire Pressure Monitoring System (TPMS) malfunction indicator illuminates as required by FMVSS No. 138 when a malfunction is first detected, however, if the malfunction is caused by an incompatible wheel, when the vehicle ignition is deactivated and then reactivated to the ''On'' (''Run'') position after a five-minute period, the malfunction indicator does not re-illuminate immediately as required. FNA added, that the malfunction indicator in the subject vehicles will re-illuminate after a maximum of 40 seconds of driving above 23 mph.

Rule Text: Paragraph S4.4(c)(2) of FMVSS No. 138 requires in pertinent part:

S4.4 TPMS Malfunction.

(c) *Combination low tire pressure/TPMS malfunction telltale.* The vehicle meets the requirements of S4.4(a) when equipped with a combined Low Tire Pressure/TPMS malfunction telltale that: . . .

(2) Flashes for a period of at least 60 seconds but no longer than 90 seconds upon detection of any condition specified in S4.4(a) after the ignition locking system is activated to the ''On'' (''Run'') position. After each period of prescribed flashing, the telltale must remain continuously illuminated as long as a malfunction exists and the ignition locking system is in the ''On'' (''Run'') position. This flashing and illumination sequence must be repeated each time the ignition locking system is placed in the ''On'' (''Run'') position until the situation causing the malfunction has been corrected. . . .

V. Summary of FNA's Analyses: FNA stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(A) FNA stated that the TPMS in the subject vehicles generally functions properly to alert the driver to a low tire pressure. Moreover, the TPMS malfunction indicator illuminates as required when a problem is first detected. If, however, there is an incompatible wheel and tire unit, when the vehicle ignition is deactivated and then reactivated after a five-minute period, the malfunction indicator does not re-illuminate immediately as required by FMVSS No. 138. It nevertheless generally will illuminate shortly thereafter, and, in any event, it will illuminate in no more than 40 seconds, even in vehicles containing the noncompliance.

Once a vehicle has started and is accelerating above 23 mph for a period of 15 seconds, the TPMS will seek to confirm that the sensors are fitted, the TPMS will detect this within a further period of 15–20 seconds (up to a maximum of 25 seconds), and the TPMS malfunction indicator will correctly illuminate. Once the malfunction indicator is illuminated, it will remain illuminated throughout the ignition cycle, regardless of the vehicle's speed. Thus, even in the presence of the noncompliance, drivers are warned of the malfunction in less than one minute of driving at or above normal urban speeds.

(B) FNA also stated that if the TPMS fails to detect a compatible sensor, the TPMS monitor will display no value for the tire pressure of the affected wheel(s). The monitor will also alert the driver to the fact that something is not functioning properly with the system, pending the illumination of the malfunction indicator.

(C) FNA further states that the noncompliance is confined to one particular aspect of the functionality of the otherwise compliant TPMS indicator. All other aspects of the low-pressure monitoring system functionality are fully compliant with the requirements of FMVSS No. 138.

(D) FNA is not aware of any customer complaints, field communications, incidents or injuries related to this condition.

In summation, FNA believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt FNA from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject vehicles that FNA no longer controlled at the time it determined that the noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after FNA notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: delegations of authority at 49 CFR 1.95 and 501.8)

Jeffrey Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2015–14779 Filed 6–16–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2014–0077; Notice 1]

Automobili Lamborghini SpA, Receipt of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Receipt of Petition.

SUMMARY: Automobili Lamborghini SpA (Lamborghini), has determined that certain model year (MY) 2008–2014 Lamborghini Aventador, Gallardo and Muricielago Coupe, Roadster and Spyder model passenger cars do not fully comply with paragraph S4.4(c)(2), of Federal Motor Vehicle Safety Standard (FMVSS) No. 138, *Tire Pressure Monitoring Systems.* Lamborghini has filed an appropriate report dated May 23, 2014, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.*

DATES: The closing date for comments on the petition is July 17, 2015.

ADDRESSES: Interested persons are invited to submit written data, views, and arguments on this petition. Comments must refer to the docket and notice number cited at the beginning of this notice and submitted by any of the following methods:

- *Mail:* Send comments by mail addressed to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.
- *Hand Deliver:* Deliver comments by hand to: U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590. The Docket Section is open on weekdays from 10 a.m. to 5 p.m. except Federal Holidays.
- *Electronically:* Submit comments electronically by: Logging onto the Federal Docket Management System (FDMS) Web site at *http://www.regulations.gov/* Follow the online instructions for submitting comments.

Comments may also be faxed to (202) 493–2251.

Comments must be written in the English language, and be no greater than 15 pages in length, although there is no limit to the length of necessary attachments to the comments. If comments are submitted in hard copy form, please ensure that two copies are provided. If you wish to receive confirmation that your comments were received, please enclose a stamped, self-addressed postcard with the comments. Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided.

Documents submitted to a docket may be viewed by anyone at the address and times given above. The documents may also be viewed on the Internet at *http://www.regulations.gov* by following the online instructions for accessing the dockets. DOT's complete Privacy Act Statement is available for review in the **Federal Register** published on April 11, 2000, (65 FR 19477–78).

The petition, supporting materials, and all comments received before the close of business on the closing date indicated below will be filed and will be considered. All comments and supporting materials received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, notice of the decision will be published in the **Federal Register** pursuant to the authority indicated below.

SUPPLEMENTARY INFORMATION:

I. Lamborghini's Petition: Pursuant to 49 U.S.C. 30118(d) and 30120(h) and the rule implementing those provisions at 49 CFR part 556, Lamborghini submitted a petition for an exemption from the notification and remedy requirements of 49 U.S.C. Chapter 301 on the basis that this noncompliance is inconsequential to motor vehicle safety.

This notice of receipt of Lamborghini's petition is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

II. Vehicles Involved: Affected are 690 MY 2012–2014 Lamborghini Aventador Coupe and Roadster model passenger cars manufactured between July 15, 2011 and May 13, 2014; 456 MY 2008–2010 Lamborghini Muricielago Coupe and Roadster model passenger cars manufactured between April 3, 2007 and April 29, 2010; and 2361 Lamborghini Gallardo Coupe and Spyder model passenger cars manufactured between June 14, 2007 and November 20, 2013, for a total of 3507 vehicles.

III. Noncompliance: Lamborghini explains that the Tire Pressure Monitoring System (TPMS) malfunction indicator illuminates as required by FMVSS No. 138 when a malfunction is first detected, however, if the malfunction is caused by an incompatible wheel, when the vehicle ignition is deactivated and then reactivated to the ''On'' (''Run'') position after a five-minute period, the malfunction indicator does not re-illuminate immediately as required. Lamborghini added, that the malfunction indicator in the subject vehicles will re-illuminate after a maximum of 40 seconds of driving above 23 mph.

Rule Text: Paragraph S4.4(c)(2) of FMVSS No. 138 requires in pertinent part:

S4.4 TPMS Malfunction.

(c) *Combination low tire pressure/TPMS malfunction telltale.* The vehicle meets the requirements of S4.4(a) when equipped with a combined Low Tire Pressure/TPMS malfunction telltale that:

(2) Flashes for a period of at least 60 seconds but no longer than 90 seconds upon detection of any condition specified in S4.4(a) after the ignition locking system is activated to the ''On'' (''Run'') position. After each period of prescribed flashing, the telltale must remain continuously illuminated as long as a malfunction exists and the ignition locking system is in the ''On'' (''Run'') position. This flashing and illumination sequence must be repeated each time the ignition locking system is placed in the ''On'' (''Run'') position until the situation causing the malfunction has been corrected . . .

V. Summary of Lamborghini's Analyses: Lamborghini stated its belief that the subject noncompliance is inconsequential to motor vehicle safety for the following reasons:

(A) Lamborghini stated that the primary function of the TPMS is not affected by the subject noncompliance and that the vehicle and system will operate as intended. Specifically, the TPMS system properly monitors the tire pressures and properly notifies the driver if the tire pressure falls below the threshold required by the standard. Lamborghini also stated the noncompliance is confined to one particular aspect of the functionality of the malfunction indicator, which itself is otherwise compliant.

(B) Lamborghini mentioned that NHTSA recognized in the TPMS final rule (70 FR 18150, April 8, 2005), ''A TPMS malfunction does not itself represent a safety risk to vehicle occupants, and we expect that the chances of having a TPMS malfunction and a significantly under-inflated tire at the same time are unlikely.'' Lamborghini responded by saying that if a TPMS malfunction is not considered a safety risk, then *ipso facto* the limited noncompliance of the malfunction indicator in this case does not present an unreasonable risk to safety.

(C) Lamborghini stated that if the TPMS fails to detect the wheel sensors, the TPMS will in fact display on the TPMS pressures screen within the instrument cluster a ''no value'' for the tire pressure on the affected tire, indicating that the status of the wheel sensor is unconfirmed. Thus, the driver is still notified of an anomaly.

(D) Lamborghini stated that although the malfunction indicator does not re-illuminate immediately after the vehicle is restarted, it will illuminate shortly thereafter, and in any event it will illuminate in no more than approximately 40 seconds. Lamborghini explained that once a vehicle has started and is moving above 23 mph for a period of 15 seconds the TPMS will seek to confirm the sensors fitted to the vehicle. Lamborghini stated that a wheel without a sensor will be detected within an additional 15–25 seconds, the TPMS malfunction indicator will illuminate correctly, and once the malfunction indicator is illuminated it will remain illuminated throughout that ignition cycle, regardless of the vehicle's speed.

(E) Lamborghini is not aware of any customer complaints, field communications, incidents or injuries related to this condition.

Lamborghini has additionally informed NHTSA that all unsold vehicles in Lamborghini's custody and control will have a reprogramming of the TPMS Electronic Control Unit prior to sale.

In summation, Lamborghini believes that the described noncompliance of the subject vehicles is inconsequential to motor vehicle safety, and that its petition, to exempt Lamborghini from providing recall notification of noncompliance as required by 49 U.S.C. 30118 and remedying the recall noncompliance as required by 49 U.S.C. 30120 should be granted.

NHTSA notes that the statutory provisions (49 U.S.C. 30118(d) and 30120(h)) that permit manufacturers to file petitions for a determination of inconsequentiality allow NHTSA to exempt manufacturers only from the duties found in sections 30118 and 30120, respectively, to notify owners, purchasers, and dealers of a defect or noncompliance and to remedy the defect or noncompliance. Therefore, any decision on this petition only applies to the subject motor vehicles that Lamborghini no longer controlled at the time it determined that the

noncompliance existed. However, any decision on this petition does not relieve vehicle distributors and dealers of the prohibitions on the sale, offer for sale, or introduction or delivery for introduction into interstate commerce of the noncompliant vehicles under their control after Lamborghini notified them that the subject noncompliance existed.

Authority: (49 U.S.C. 30118, 30120: Delegations of authority at 49 CFR 1.95 and 501.8)

Jeffrey Giuseppe,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 2015–14856 Filed 6–16–15; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Voucher for Payment of Awards

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning the Voucher for Payment of Awards.

DATES: Written comments should be received on or before August 17, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for further information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kevin McIntyre, Manager, Judgement Fund Branch, Room 630F, 3700 East West Highway, Hyattsville, MD 20782, 202–874–1130 *kevin.mcintyre@fiscal.treasury.gov*.

SUPPLEMENTARY INFORMATION:

Titles: Voucher for Payment of Awards.

OMB Number: 1530–0012 (Previously approved as 1510–0037 as a collection conducted by Department of the Treasury/Financial Management Service.) Transfer of OMB Control Number: The Financial Management Service (FMS) and the Bureau of Public Debt (BPD) have consolidated to become the Bureau of the Fiscal Service (Fiscal Service). Information collection requests previously held separately by FMS and BPD will now be identified by a 1530 prefix, designating Fiscal Service.

Form Number: FS Form 5135.

Abstract: Awards certificate to Treasury are paid annually as funds are received from foreign governments. Vouchers are mailed to award holders showing payments due. Award holders sign vouchers certifying that he/she is entitled to payment. Executed vouchers are used as a basis for payment.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,400.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 700.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: June 11, 2015.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2015–14800 Filed 6–16–15; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Bureau of the Fiscal Service

Proposed Collection of Information: Trace Request for Electronic Funds Transfer (EFT) Payment; and Trace Request Direct Deposit

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a proposed and/or continuing information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Fiscal Service within the Department of the Treasury is soliciting comments concerning Fiscal Service Form 150.1, Trace Request for Electronic Funds Transfer (EFT) Payment; and Form 150.2 Trace Request Direct Deposit.

DATES: Written comments should be received on or before August 17, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments and requests for further information to Bureau of the Fiscal Service, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@fiscal.treasury.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Kwema Ledbetter, Director, Project Management Division, Room 611B, 3700 East West Highway, Hyattsville, MD 20782, 202–874–5151 *kwema.ledbetter@fiscal.treasury.gov.*

SUPPLEMENTARY INFORMATION:

Titles: Trace Request for Electronic Funds Transfer (EFT) Payment; and Trace Request Direct Deposit.

OMB Number: 1530–0002 (Previously approved as 1510–0045 as a collection conducted by Department of the Treasury/Financial Management Service.).

Transfer of OMB Control Number: The Financial Management Service (FMS) and the Bureau of Public Debt (BPD) have consolidated to become the Bureau of the Fiscal Service (Fiscal Service). Information collection requests previously held separately by FMS and BPD will now be identified by a 1530 prefix, designating Fiscal Service.

Form Number: FS Form 150.1 and FS Form 150.2.

Abstract: These forms are used to notify the financial organization that a customer (beneficiary) has claimed non-receipt of credit for a payment. The forms are designed to help the financial organization locate any problems and to keep the customer (beneficiary) informed of any action taken.

Current Actions: Extension of a currently approved collection.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 59,714.

Estimated Time per Respondent: 8 minutes.

Estimated Total Annual Burden Hours: 7,961.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Date: June 12, 2015.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2015–14891 Filed 6–16–15; 8:45 am]

BILLING CODE 4810–AS–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Sanctions Actions Pursuant to Executive Order 13224

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The Treasury Department's Office of Foreign Assets Control (OFAC) is publishing the names of 3 individuals and 4 entities whose property and interests in property are blocked pursuant to Executive Order (E.O.) 13224 and whose names have been added to OFAC's list of Specially Designated Nationals and Blocked Persons (SDN List).

DATES: OFAC's actions described in this notice were effective June 10, 2015.

FOR FURTHER INFORMATION CONTACT: Associate Director for Global Targeting, tel.: 202/622–2420, Assistant Director for Sanctions Compliance & Evaluation, tel.: 202/622–2490, Assistant Director for Licensing, tel.: 202/622–2480, Office of Foreign Assets Control, or Chief Counsel (Foreign Assets Control), tel.: 202/622–2410, Office of the General Counsel, Department of the Treasury (not toll free numbers).

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

The SDN List and additional information concerning OFAC sanctions programs are available from OFAC's Web site (*www.treas.gov/ofac*). Certain general information pertaining to OFAC's sanctions programs is also available via facsimile through a 24-hour fax-on-demand service, tel.: 202/622–0077.

Notice of OFAC Actions

On June 10, 2015, OFAC blocked the property and interests in property of the following 3 individuals and 4 entities pursuant to E.O. 13224, ''Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten To Commit, or Support Terrorism'':

Individuals

1. HEJEIJ, Kassem (a.k.a. HAJIJ, Qasim; a.k.a. HUJAYJ, Qasim Muhammad); DOB 05 Mar 1953; POB Lagos, Nigeria; nationality Lebanon; Gender Male; Passport RL0000432 (Lebanon) issued 31 Jan 2013 expires 31 Jan 2018 (individual) [SDGT] (Linked To: HIZBALLAH).

2. FA'UR, Husayn Ali (a.k.a. FAOUR, Housein Ali); DOB 1966; POB Al-Khayam, Lebanon; nationality Lebanon; Gender Male (individual) [SDGT] (Linked To: HIZBALLAH).

3. TABAJA, Adham Husayn (a.k.a. TABAJA, Adham Hussein; a.k.a. TABAJAH, Adham); DOB 24 Oct 1967; POB Kfartebnit 50, Lebanon; alt. POB Kfar Tibnit, Lebanon; alt. POB Ghobeiry, Lebanon; alt. POB Al Ghubayrah, Lebanon; nationality Lebanon; Gender Male; Passport RL1294089 (Lebanon); Identification Number 00986426 (Iraq) (individual) [SDGT] (Linked To: HIZBALLAH).

Entities

1. CAR CARE CENTER (a.k.a. CAR CARE CENTER CCC; a.k.a. CAR CARE CENTER COMPANY; a.k.a. ''CCC COMPANY''), Hadeth Kafaat, Hadi Nasrallah Highway, Baabda, Lebanon [SDGT] (Linked To: HIZBALLAH).

2. AL–INMAA ENGINEERING AND CONTRACTING (a.k.a. AL–INMAA GROUP FOR ENGINEERING AND CONTRACTING; a.k.a. INMAA 'AL' FOR ENGINEERING AND CONTRACTING SARL), Ground Floor, Inmaa Building, New Airport Highway, Beirut, Lebanon; Airport Highway, Bir Hassan, Beirut, Lebanon; Aljadriya, Baghdad, Iraq; Aljazzar Road, Basra, Iraq; Al-Jaza'ir Street, 'Oman Neighborhood, Basra, Iraq; Web site *www.alinmaa.com.lb* [SDGT] (Linked To: TABAJA, Adham Husayn; Linked To: AL–INMAA GROUP FOR TOURISM WORKS, LLC).

3. AL–INMAA FOR ENTERTAINMENT AND LEISURE PROJECTS (a.k.a. AL–INMAA FOR ENTERTAINMENTS AND LEISURE PROJECTS; a.k.a. AL–INMAA GROUP FOR ENTERTAINMENT AND LEISURE PROJECTS), Ground Floor, Al Rabieh Building, New Airport Highway, Beirut, Lebanon [SDGT] (Linked To: AL–INMAA GROUP FOR TOURISM WORKS, LLC).

4. AL–INMAA GROUP FOR TOURISM WORKS, LLC (a.k.a. AL–INMAA GROUP; a.k.a. AL–INMAA GROUP FOR TOURISM WORK, LLC; a.k.a. AL–INMAA GROUP, LLC), Al-Inmaa Group Building, New Airport Highway, Beirut, Lebanon; Web site *www.alinmaa-group.com;* Commercial Registry Number 8–0788 (Lebanon) [SDGT] (Linked To: TABAJA, Adham Husayn).

Dated: June 10, 2015.

John E. Smith,

Acting Director, Office of Foreign Assets Control.

[FR Doc. 2015–14925 Filed 6–16–15; 8:45 am]

BILLING CODE 4810–AL–P

FEDERAL REGISTER

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Part II

Department of Veterans Affairs

38 CFR Parts 17, 51, and 52

Per Diem Paid to States for Care of Eligible Veterans in State Homes; Proposed Rules

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 17, 51 and 52

RIN 2900–AO88

Per Diem Paid to States for Care of Eligible Veterans in State Homes

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) proposes to reorganize, update (based on revisions to statutory authority), and clarify its regulations that govern paying per diem to State homes providing nursing home and adult day health care to eligible veterans. The reorganization will improve consistency and clarity throughout these State home programs. We propose to revise the regulations applicable to adult day health care programs of care so that States may establish diverse programs that better meet participants' needs for socialization and maximize their independence. Currently, we require States to operate these programs exclusively using a medical supervision model. We expect that these liberalizing changes would result in an increase in the number of States that have adult day health care programs. We also propose to establish new regulations governing the payment of per diem to State homes providing domiciliary care to eligible veterans, because the current regulations are inadequate. Moreover, we propose to eliminate the regulations governing per diem for State home hospitals because there are no longer any State home hospitals. In general, this rulemaking is consistent with current regulations and policies, and we do not expect that these proposed rules would have a negative impact on State homes; rather, we believe that these proposed regulations would clarify current law and policy, which should improve and simplify the payment of per diem to State homes, and encourage participation in these programs.

DATES: Comments must be received on or before August 17, 2015.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to the Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Comments should indicate that they are submitted in response to ''RIN 2900–AO88-Per Diem Paid to States for Care of Eligible Veterans in State Homes.'' Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1068, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. (This is not a toll-free number.) In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Dr. Richard Allman, Chief Consultant, Geriatrics and Extended Care Services (10P4G), Veterans Health Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 461–6750. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Currently, VA pays per diem to State homes for three types of care provided to eligible veterans: nursing home care, domiciliary care, and adult day health care. The statutory authority for these payment programs is set forth at 38 U.S.C. 1741–43 and 1745. Currently, VA has regulations at 38 CFR part 51 that apply to the payment of per diem for nursing home care and 38 CFR part 52 that apply to the payment of per diem for adult day health care. Many of the sections in parts 51 and 52 are similar or identical. In particular, subparts A, B and C of both parts (which collectively concern procedural rules, recognition, and certification requirements for the payment of per diem) contain a great deal of redundancy. In some cases, we have regulations in parts 51 and 52 that have identical substantive effect, but we have unintentionally worded them differently. Subparts D of parts 51 and 52 set forth unique standards applicable to the recognition and certification of nursing homes or adult day health care programs (although both subparts D do contain some overlap).

In order to eliminate redundancy and clarify the procedures for recognition and certification of State homes, we propose this extensive rewrite and reorganization of parts 51 and 52. This rulemaking would remove part 52. Part 51 would be re-titled ''Per Diem for Nursing Home, Domiciliary, or Adult Day Health Care of Veterans in State Homes,'' adding domiciliary and adult day health care to the title of part 51, which had formerly applied only to nursing home care. The regulations in subparts A and B of part 52 would be consolidated with similar regulations in part 51, and would be organized in subparts A and B of part 51. Proposed part 51, subpart C, would include regulations governing payments and eligibility for all three types of care. These proposed regulations would supersede the regulations currently contained in 38 CFR 17.190 through 17.200, which pertain to the payment of per diem for hospital and domiciliary care in State homes. Therefore, we propose to remove §§ 17.190 through 17.200.

Subpart D of part 51 would continue to set forth the standards applicable to the payment of per diem for nursing home care.

The regulations in subpart D of part 52, concerning adult day health care programs, would be moved to a new subpart F of part 51, and would be revised to broaden the ability of State home adult day health care programs to operate in a manner that emphasizes participant independence over a strict medical model of care. There are currently only two State homes receiving per diem from VA for adult day health care, and we wish to increase the number of such homes throughout the country because we believe that such care is a viable and healthier alternative for veterans who otherwise would require nursing home care.

This rulemaking would also establish new regulations that set forth standards that State homes must meet to receive per diem for domiciliary care. The proposed standards would supersede all non-CFR policies that contain standards for VA payment of per diem for domiciliary care in State homes.

Moreover, the proposed rule is generally consistent with the current regulations on the payment of per diem for domiciliary care except as discussed below. In fact, much of the current guidance for domiciliary per diem is substantively similar to the rules already established for nursing home care and adult day health care in current parts 51 and 52, and therefore the general rules in proposed subparts A and B would apply equally to domiciliary care. The standards applicable to domiciliary care are proposed at subpart E. In other words, for purposes of regulatory organization, we propose to treat domiciliary care in the same manner that we would treat our other two State home programs.

We would also update the authority citation for part 51 to include 38 U.S.C. 1745, which pertains to State home nursing home care for certain veterans with service-connected disabilities and was enacted after we published part 51. We have not yet updated the authority citation for all of part 51 to include 38 U.S.C. 1745, though certain sections

were updated to include a citation to it. This amendment would have no substantive effect but would clarify that it is one of VA's authorities for all of part 51.

A detailed discussion of the proposed revised part 51 follows, organized by subpart and section.

Subpart A—General

51.1 Purpose and Scope of Part 51

Section 51.1would describe the purpose, scope, and organization of part 51.

51.2 Definitions

Section 51.2 would set forth definitions applicable to terms used throughout part 51. Definitions of terms that are currently defined in § 51.2 are unchanged, except where the same term was technically (but not substantively) defined differently in current § 52.2 such that minor technical revision was required. Definitions in current § 52.2 would be added to § 51.2 without substantive change, except as noted below. Also, we would adopt the regulatory definition of domiciliary care in 38 CFR 17.30(b) that currently applies to State homes in proposed § 51.2 except that the proposed definition would not include ''travel and incidental expenses pursuant to § 17.143'' because State homes are not required to pay these expenses pursuant to § 17.143. Finally, a few new definitions would be added, as explained below.

Current § 52.2 does not define ''adult day health care;'' however, part 52 does establish standards applicable to State home adult day health care. Many States would like to use a model of adult day health care that emphasizes socialization and maximizes participant independence, but does not provide as much medical supervision or involvement as is generally required by current part 52. Therefore, we propose to amend the regulations governing State home adult day health care to allow for flexibility and to establish standards of medical care only when the State home provides such care. These revisions are discussed in greater detail in the portion of this notice describing proposed subpart F of part 51. In § 51.2, we would set forth a definition of adult day health care that will allow for flexibility in terms of the services provided. As revised, this type of adult day health care program would serve as an alternative to full-time nursing home care; it emphasizes group activities and is designed to reduce or postpone the need for institutional placement (such as placement in a nursing home), rather than emphasizing medical treatment. We believe that these proposed revisions will expand the availability of adult day health care within State homes and for veterans who wish to live at home but who require daily care, and may lead to decreased demand for costly nursing home care. As such, we believe that this would produce a positive result for veterans.

We note that current 38 CFR 17.111(c)(1) defines ''adult day health care'' for the purposes of a copayment determination for adult day health care provided by VA. This regulation does not apply to the State home program. However, VA is currently considering whether the expanded definition of adult day health care that would apply to State homes under this rulemaking should also apply to VA adult day health care. Any revisions to part 17 would appear in a separate rulemaking.

We will not provide different rates of payment to State home adult day health care programs that provide intensive medical supervision and those that do not. Adult day health care provided under the current definition is typically more expensive than what States could offer using the broader definition of adult day health care programs proposed in this rulemaking; however, current State participation in adult day health care for veterans is virtually nonexistent due to this higher cost. In part because current VA requirements are too expensive to implement, we are proposing these revisions in an effort to expand State home adult day health care as an option for our veterans.

We propose a definition of clinical nurse specialist that accords with the intended meaning of the term for all these State home programs. Currently, both parts 51 and 52 require that a clinical nurse specialist be ''a licensed professional nurse with a master's degree in nursing and a major in a clinical nursing specialty from an academic program accredited by the National League for Nursing.'' However, current § 51.2 also requires that the nurse be ''certified by a nationally recognized credentialing body (such as the National League for Nursing, the American Nurses Credentialing Center, or the Commission on Collegiate Nursing Education).'' We no longer believe that such certification is necessary in order for a nurse to be qualified, which is why we had dropped that additional language when we promulgated part 52. Therefore, in these new regulations, we would also drop the additional language from the rules that apply to nursing home care.

We would establish that references to ''Director'' in this part would be to the Director of the VA medical center of jurisdiction, unless the section specifically refers to another type of director. This is a nonsubstantive change that is intended to clarify references in the regulations.

Current § 17.30(b) defines ''domiciliary care'' for the purposes of VA's ''medical regulations,'' *i.e.,* current part 17. VA's current regulations for payment of per diem to state homes for domiciliary care are part of those regulations. Therefore, this definition applies to the State home program. We propose adopting a similar definition of domiciliary care in § 51.2, except that we would update the language and delete the requirement that State home domiciliaries provide ''travel and incidental expenses pursuant to § 17.143,'' which previously was the regulation implementing VA's authority to pay beneficiary travel of certain veterans. VA's current beneficiary travel regulations are set forth in 38 CFR part 70, and they generally require VA to pay for eligible Veterans' travel to and from VA facilities. In any case, those regulations only require VA to pay for travel; they do not apply to State homes. We thus propose to not require State homes to pay for travel in the same manner as VA does under VA's beneficiary travel program. We also propose to remove the requirement that State home domiciliaries provide residents with clothing. Although VA is required by 38 U.S.C. 1723 to provide clothing under certain circumstances in its own facilities, this statute does not apply to State homes. VA erroneously included provision of clothing in the current regulation.

We would add a definition of ''[e]ligible veteran.'' The term would refer to a veteran whose care may serve as a basis for per diem payments. The definition would reference the substantive sections under which such eligibility would be established for each of the three per diem programs.

We would eliminate the current definition of ''facility'' in §§ 51.2 and 52.2 because it is not necessary. We would add a definition of ''licensed medical practitioner.'' The term would encompass and would refer to the following terms we further define in this section: Nurse practitioner; physician; physician assistant; and primary physician or primary care physician.

We would revise the definition of ''nursing home care'' to be consistent with the statutory definition of that term in 38 U.S.C. 101(28).

We would define ''participant'' as an individual receiving adult day health care and ''resident'' as an individual receiving nursing home or domiciliary

care. The proposed definitions would be consistent with the uses of those terms in both the current regulations and the proposed regulations.

The last sentence of the definition of ''physician assistant'' in current § 51.2 states that a physician assistant must be able to perform certain tasks ''under appropriate physician supervision which is approved by the primary care physician.'' The last sentence of the same definition in § 52.2 states that a physician assistant must be able to perform the same tasks ''under the appropriate supervision by the primary care physician.'' Thus, part 52 requires actual supervision by the primary care physician, but part 51 does not. We did not intend these provisions to be different, and would require in revised § 51.1 that the physician assistant be able to perform such tasks ''under appropriate physician supervision.'' This would allow clinicians to determine on a case-by-case basis what level of supervision is required.

We would define a ''program of care'' as any of the three levels of care for which VA may pay per diem under part 51. Current regulations use this term, and it is convenient to retain it.

We would revise the definition of ''State,'' which currently includes ''possessions of the United States.'' Although this definition is consistent with the definition in 38 U.S.C. 101(20), the definition of State home, in 38 U.S.C. 101(19), does not include a home established in a possession of the United States. Because the definition of State in part 51 applies only to part 51, and we are not authorized to provide per diem to State homes in possessions of the United States, we would delete the reference to possessions in the definition of ''State.'' This is a substantive change; however, it has no actual impact because there are not any State homes established in a possession. Also, we are not aware that any possessions have permanent populations that would justify the establishment of a State home.

The statutory definition of ''State'' includes ''Territories'' of the United States. 38 U.S.C. 101(20). The Department of the Interior, which has administrative responsibility for coordinating federal policy in Island groups in the Insular Area, has identified the United States Virgin Islands, Guam and American Samoa as territories of the United States, and the Northern Mariana Islands as a Commonwealth in Political Union with the United States, which is treated as a U.S. territory for purposes of the State home per diem payment program. See VAOPGCCONCL 10–98 and VAOPGCPREC 55–91. We thus propose to amend the definition of ''State'' to include the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa. The Commonwealth of Puerto Rico would remain part of the definition. The proposed revisions would make this definition of ''State'' consistent with the definition of ''State'' for purposes of the program that provides grants to States for construction and acquisition of State homes. See 38 CFR 59.2. Because this proposed definition of ''State'' would name each of the included territories of the United States, we propose to delete the reference to ''territories'' in the definition.

We would revise the current regulatory definition of ''State home'' to eliminate the reference to hospital care because we no longer pay per diem for hospital care through the State home per diem program. This is also an important reason to eliminate current 38 CFR 17.190–17.200 which concern in part payment of per diem for hospital care in State homes.

We would define a ''veteran'' as a veteran under 38 U.S.C. 101.

We would not include from current § 52.2 the definition of ''instrumental activities of daily living'' because the term would not appear in part 51. It is no longer necessary to the adult day health care program, and is not used in the administration of nursing home care or domiciliary care. Changes to the adult day health care program are further explained below.

Subpart B—Obtaining Recognition and Certification for Per Diem Payments

Subpart B would establish the procedures for obtaining State home recognition and certification, in order to receive per diem payments. These procedures would be common to all three programs, except as specifically noted in the proposed regulations. We propose to remove current § 51.10, because it is unnecessary and merely restates information that is set forth in more detail in other sections of subpart B. Despite the removal of § 51.10, we would keep the section numbering in subpart B the same, or reasonably similar, to the current numbering.

51.20 Recognition of a State Home

Section 51.20 is based on current regulations governing the recognition and certification process, but the proposed rule would establish clearer and simpler procedures, without making significant substantive changes to the current process. We discuss the proposed process in detail below.

A key difference in the new process is that the current process requires both recognition and ''initial certification'' by the Under Secretary for Health for State home nursing homes and adult day health care programs, but does not clearly distinguish between the requirements for recognition versus the requirements for initial certification. Moreover, ''initial certification'' is no different from the ongoing annual certification, except that ''initial certification'' is provided by the Under Secretary for Health while annual certifications are authorized by the Director of the VA medical center of jurisdiction. It is confusing to have the same decision, certification, be authorized by two different individuals, particularly because the annual certification is then appealable to the Under Secretary for Health. Therefore, the proposed process would refer to the initial determination by the Under Secretary solely as a ''recognition'' determination, and all subsequent determinations (other than those following revocation) as ''certifications.'' We emphasize that this change would not affect the State homes themselves, because current regulations require State homes to follow all applicable regulations in order to obtain recognition and initial certification as well as annual certification. We believe that it is clearer to distinguish recognition, which requires the Under Secretary for Health's approval, from certification, which requires only approval at the level of the Director of the VA medical center of jurisdiction. Another significant change is the delegation to the Under Secretary for Health for all recognition and appeal decisions related to domiciliaries. We believe it is more appropriate for the Under Secretary, who has direct responsibility for the provision of health care by VA, to make such decisions. This difference, and any other differences between the current regulations in part 17 regarding State homes and proposed part 51, would be resolved by this rulemaking for the policy reasons set forth in this rulemaking.

In current § 51.20(a), we require that requests for recognition be sent to the Chief Consultant, Office of Geriatrics and Extended Care (114). The Veterans Health Administration (VHA) recently changed its management structure, so that the Director of the Office of Geriatrics and Extended Care Operations now performs the management and operations duties for State homes that were formerly performed by the Chief Consultant of

the Office of Geriatrics and Extended Care. The proposed rule would change references to the ''Chief Consultant'' to the ''Office of Geriatrics and Extended Care'' in § 51.20(a). We make the same change in proposed §§ 51.120(a)(3) and 51.210(b). VHA will publish policy documents to inform State homes of the addresses to which any documents must be mailed.

Current §§ 51.20 and 52.20 require that the request for recognition be signed by ''the State official authorized to establish the State home.'' State homes are often established through acts of the State legislature. Therefore, we would revise the language to require signature by ''the State official authorized to make the request.'' This is in fact how the current process works, so this revision would merely be a clarification. Current § 17.191 requires that applications for recognition of State home domiciliaries be filed with the Under Secretary for Health and provides that the Secretary of VA will make the final decision after considering a recommendation from the Under Secretary for Health. As noted above, the proposed rules would delegate recognition authority to the Under Secretary for Health. In addition, proposed § 51.20 would make the process of requesting and obtaining recognition of a State home domiciliary otherwise consistent with the process applicable to State nursing homes and adult day health care programs. There is simply no longer any reason to support using different procedures.

Proposed § 51.20(b)(1) would state that after receiving a request for recognition under § 51.20(a), VA will survey the home in accordance with § 51.31. This is consistent with current practice governing domiciliaries and with current §§ 51.30 and 52.30. Paragraph (b)(1) would also provide that in surveying the home VA must determine if the home meets the standards set forth in this Part and that those standards which impose requirements on State homes would apply to homes that are being considered for recognition. This is necessary because proposed § 51.2 defines ''State home'' as a home that has already been recognized by VA.

Paragraphs (b)(2) and (3) would require the Director to submit to the Under Secretary for Health a written recommendation for or against recognition. Proposed paragraph (b)(3), concerning recommendations against recognition, is based on parallel provisions in the current regulations; however, we would revise the description, currently in §§ 51.30(a)(2) and 52.30(a)(2), of the State's rights in a case where the Director does not recommend recognition. The current regulations provide that the State may appeal such recommendation to the Under Secretary for Health; however, the Director is not authorized to award recognition and therefore the Director's recommendation has no direct adverse effect on the State. The Director's recommendation carries no legal effect, and merely serves as evidence considered by the Under Secretary for Health. Therefore, it would be incorrect to characterize the State's response to this recommendation as an appeal. At the same time, the Director's recommendation may influence the Under Secretary for Health's determination on the recognition request, and therefore the State should have an opportunity to present evidence to the Under Secretary for Health to support a decision that is contrary to the Director's recommendation. Thus, we would explain that the State must be afforded 30 days to submit a response and any additional evidence to the Under Secretary for Health.

In proposed paragraph (c), we would clearly state that the Under Secretary for Health's decision may be appealed to the Board of Veterans' Appeals. This is consistent with current law and practice and current § 51.30(f), but is not clearly stated in our regulations governing per diem for State home domiciliaries and adult day health care programs.

In addition, current § 52.30(a)(1) requires the Director to make a ''tentative determination'' regarding recognition and certification, while current § 51.30(a)(2) requires the director to make a ''recommendation.'' The latter is more accurate, and § 51.30 would accordingly refer throughout to a ''recommendation.''

Proposed § 51.20(d) is based on the last sentences of current §§ 51.30(b) and 52.30(b). Paragraph (d)(1) would clarify that recognition of a home means that the State home met all applicable requirements of part 51 at the time of recognition. Paragraph (d)(1) would also indicate, for purposes of clarity, that certification must thereafter be obtained no later than 450 days after the home is recognized and every 450 days thereafter, in accordance with § 51.30(b).

Proposed paragraph (d)(2) would state that ''any new annex, new branch, or other expansion in the size of a home or any relocation of the home to a new facility must be separately recognized.'' This is consistent with current practice and §§ 51.30(b) and 52.30(b). We also propose in paragraph (d)(2) a substantive change to the current requirements, which would be that ''changes in the use of particular beds between recognized programs of care and increases in the number of beds that are not described in the previous sentence require certification of the beds, but not recognition.'' This means that a State with a recognized domiciliary and nursing home may change the use of one or more beds in the domiciliary to nursing home care without requesting recognition from the Under Secretary for Health. A survey would still be required, but only certification by the Director would be needed. This would allow State homes to change the uses of beds without going through the cumbersome recognition process and at the same time would enable VA to ensure that the State home meets the applicable standards of care and can adequately meet the needs of the new residents assigned to those beds.

We note that current §§ 17.190 through 17.193 impose several requirements regarding recognition and certification of State home domiciliaries. Some of these requirements are similar to the requirements in this Notice of Proposed Rulemaking, but others conflict. For example, current § 17.192 provides that separate applications for domiciliary recognition must be filed for any annex, branch, enlargement, expansion, or relocation of a recognized home that is not on the same or contiguous grounds on which the parent facility is located. But proposed § 51.20(d) would require a separate application for recognition of any such change, regardless of whether the change would be made on the same or contiguous grounds. This is necessary to ensure that the facility continues to meet the standards applicable to domiciliaries. It is also consistent with the manner in which VA handles similar applications in the nursing home or adult day health care contexts.

51.30 Certification

Proposed § 51.30 is based on the annual and provisional certification requirements in current §§ 51.30 and 52.30. Although the recognition process proposed in § 51.20 is similar to the current process, we propose significant simplifications and changes to the certification process that will improve VA's ability to authorize programmatic changes and allow State homes greater flexibility in meeting the needs of their resident populations.

Proposed paragraph (a) would state that State homes must allow a VA survey of the home in order to be certified by VA. It would also state that a State home must be certified within 450 days after the State home is

recognized and that certifications expire 600 days after they are issued. This would ensure that VA has sufficient time to survey and recertify State homes if certification is warranted. This provision is based on current §§ 51.30(c) and 52.30(c), with clarifications due to the proposed simplified certification procedures.

Proposed § 51.30(b)(1) would state that the Director of the VA medical center of jurisdiction would certify a State home based on a survey conducted at least once every 270–450 days, at VA's discretion, and would require the Director to notify the State home of a certification decision within 20 days of the decision. Twenty days is sufficient time for VA to ensure notification, and is comparable to the time periods required for other actions under this rulemaking. See proposed § 51.30(c)(1)(iii). Requiring a periodic survey is entirely consistent with current regulations and practice as to all three programs of care.

Proposed paragraph (c) would revise VA's current certification procedures to make it easier for a State to change the size of a recognized program of care. Under current regulations, changes to the size of a program of care require a new recognition decision.

In proposed paragraph (c)(1), we would require only a new survey and certification decision when an existing State home increases the number of available nursing home or domiciliary beds in a recognized program of care, except increases described in the first sentence of § 51.20(d)(2), or when a State home recognized to provide both domiciliary and nursing home care switches beds between recognized programs of care. The proposed regulations would allow the Director to precertify, at the request of a State home, the increased number of beds or beds switched between recognized programs of care in an existing State home so that payments can be made for care of eligible veterans in these beds during the certification survey process for up to 360 days or until VA issues a certification decision, whichever occurs first. We would provide that precertification would be authorized if the Director reasonably expects, based on prior surveys and any other relevant information, that the State home would continue to comply with part 51 until the State home is surveyed and certified. We would also provide that VA would pay per diem for the care of eligible veterans in the beds provided on and after the date the Director precertifies the beds. Permitting precertification would allow VA to provide guidance to the State home in advance of VA's certification survey.

In proposed paragraph (c)(2), we would require the State to report to the Director any decreases in the number of beds available and an explanation of such decrease within 30 days. Currently, 38 CFR 51.30(b) requires certification when a State home reduces the number of beds, and we do not believe that it is a good use of resources to require VA, or the State home, to go through the certification process in such cases. Thus, under paragraph (c)(2), decreases in size would be explicitly exempted from requiring certification.

Proposed paragraph (d) would govern the provisional certification process. Paragraph (d)(1) would require the Director to issue a provisional certification under specified circumstances. This is mostly consistent with current practice. We would require that the State's corrective action plan be submitted to the Director no later than 20 days after receipt by the State home of the survey report. If the State does not submit a corrective action plan within 20 days, the Director would not issue a provisional certification. Twenty days is a reasonable amount of time, particularly because proposed § 51.30(b) would require VA to provide a copy of the survey report within 20 days after the survey is completed. We would provide that the Director must determine that the corrective action plan is reasonable. We would also require the Director to send written notice to the appropriate person(s) at the State home informing them that the Director agrees with the plan.

The current regulations recommend that certifications, including provisional certifications, should be made every 12 months. But they do not address how a provisional certification of more than 12 months would affect the annual certification requirement. This can be confusing. Therefore, proposed paragraph (d)(2) would clarify that VA will continue to survey the State home while it is under a provisional certification in accordance with proposed §§ 51.30 and 51.31, and will continue the provisional certification so long as the criteria for issuing the initial provisional certification, listed in proposed paragraph 51.30(d)(1), remain true. This means that if new deficiencies are identified during an annual survey, then a new provisional certification (or denial of certification) would be required as to those new deficiencies.

Proposed paragraph (d)(3) would clarify what happens if a State home fails to adhere to the corrective action plan. In such instances, we would no longer make issuance of a provisional certification mandatory, but would allow the Director the discretion to issue another one if the State submits a new written plan to remedy each remaining deficiency within a reasonable time. The new written plan must be submitted no later than 20 days after the expiration of the time specified to remedy all deficiencies in the original plan, which VA has determined is a reasonable time to develop a plan to remedy any remaining deficiencies. This would enable a case-specific approach, so that State homes that have made efforts to correct problems and that otherwise provide important services to veterans can continue to receive per diem, but VA would not be required to fund State homes that, in the Director's view, have not shown either the ability or willingness to correct problems. Under paragraph (e), the State home would have the right to appeal the Director's decision not to issue an additional provisional certification, which is described in more detail in the discussion of proposed § 51.30(e) that follows.

Proposed § 51.30(e) is based on current § 51.30(a)(2), (d), (e), and (f), and parallel provisions in current § 52.30. Although the information on notice and the right to appeal is reorganized, it is not substantively different, except as noted below.

First, in § 51.30(e), we would eliminate any implied right to appeal provisional certifications. These certifications have no adverse effect on the State, and, indeed, the State must agree to correct any deficiency before VA would issue a provisional certification. Therefore, there is no need to appeal provisional certifications.

In proposed § 51.30(e)(1) through (3), we would clearly set forth the review and appeal procedures for a decision by VA not to issue a certification of a State home. Currently, VA delegates the annual certification process to its local VA medical center Directors—unlike the recognition decision, which is made by the Under Secretary for Health. Therefore, an appeal from the Director's decision includes review by the Under Secretary for Health. The proposed rule is consistent with current practice. Also consistent with current practice, we would explain in paragraphs (e)(1) and (e)(2) that per diem payments will continue during the appeals process. Finally, we would state in § 51.30(e)(3) that a denial of certification may be appealed to the Board of Veterans' Appeals only if it results in a loss of payments to the State, and that VA would discontinue payment of per diem if the Under Secretary for Health affirms the Director's decision. The current

regulation at § 51.30(f) allows States to appeal any denial of certification to the Board of Veterans' Appeals. VA proposes this change because deficiencies at a State home that do not result in a loss of per diem payments are best remedied through a written plan and corrective actions, as required by proposed paragraph (d). Under the proposed rule, VA would terminate payments on the date of a decision affirming the denial of certification, or on a later date specified in the decision by the Under Secretary for Health, which allows the Under Secretary to accommodate State homes that lose certification while providing care to veterans.

Proposed § 51.30(f) would state that appeals of all other matters will be governed by VHA's appeals regulations in 38 CFR part 20.

Current § 51.31, ''Automatic recognition,'' was essentially a grandfather clause allowing those State homes recognized by VA at the time that part 51 was promulgated in 2000 to maintain their recognition, but requiring them to be certified annually. There is no need to maintain this provision because all such State homes have been ''grandfathered in.'' We therefore propose to remove this section.

51.31 Surveys for Recognition and/or Certification

Proposed § 51.31 concerns surveys, and applies to both the first VA survey for recognition and surveys for certification. Paragraph (a) is based on current §§ 51.30(c) and 52.30(c), except as noted below.

VA routinely conducts annual surveys without advance notice, but VA always provides advance notice before the recognition survey is conducted. In fact, for recognition surveys VA wants the home to be fully prepared so that VA can determine whether it has the capability to meet the applicable requirements. Accordingly, proposed § 51.31(a) would indicate that VA will provide advance notice before a recognition survey, and may notify the State before other surveys. This is a substantive change to both parts 51 and 52 that should improve the ability of State homes to prepare for VA recognition surveys.

Current VA regulations (§§ 51.30(c) and 52.30(c)) provide that a survey will cover all parts of a nursing home or adult day health care facility. There are times, however, when VA needs to survey only part of a home. For example, if a recognition survey finds that a home does not meet several standards, the State may request another VA survey after fixing those deficiencies. VA believes that only a survey of that part of the home that would permit a determination as to whether the standards have been met would be necessary. Accordingly, § 51.31(a) would permit surveys to cover all parts of a home or only certain parts.

In the last sentence of proposed paragraph (a), we would permit the Director to designate VA officials and/or contractors to survey a home. The designation of contractors is not specifically authorized by the current regulations, but it reflects the modern way in which VA conducts these surveys. The use of contractors, rather than local VA employees, is one way in which VA attempts to ensure that surveys across the country are conducted in a timely and similar manner. Moreover, we would eliminate the current language stating that the surveying team ''may include'' certain listed professionals (*i.e.,* physicians, nurses, fiscal officers, etc.), because the language is hortatory and because we have found that the use of specifically trained contractors has, in most cases, eliminated the need to include some of these professionals.

Proposed § 51.31(b)(1) would establish the minimum occupancy threshold required before VA will conduct a recognition survey of a domiciliary. We would require that a domiciliary have at least 21 residents or a number of residents consisting of at least 50 percent of the resident capacity of the domiciliary before VA will undertake a survey. This is the same requirement for nursing homes which is in current § 51.30(a)(1) and which we propose including in this paragraph. Proposed § 51.31(b)(2) would establish the minimum participation threshold required before VA will conduct a recognition survey of an adult day health care program. For an adult day health care program of care, we would require that it have at least 10 participants or a number of participants consisting of at least 50 percent of participant capacity. We believe that this is the minimum participant capacity necessary for VA to determine whether the program is able to meet the applicable standards. We also note that the current rule applies the occupancy requirement to ''new'' nursing homes. By ''new,'' we intended to refer to homes that have not previously been recognized, but did not intend the requirement to apply only to new construction. We would remove the word ''new'' because it is unnecessary and potentially ambiguous. No substantive change is intended.

Proposed § 51.31(c) is based on current §§ 51.30(g) and 52.30(g), without substantive change.

51.32 Terminating Recognition

As noted above, proposed § 51.32 is based on the first sentence of current §§ 51.30(b) and 52.30(b). VA would terminate recognition of a State home if the State requests that VA terminate it or if VA makes a final decision not to certify the State home.

Subpart C—Eligibility, Rates, and Payments

51.40 Basic Per Diem Rates

Proposed § 51.40 would set forth the basic method for calculating the basic per diem payment rate, and establish that this method is the same for all three programs. The per diem rates would be calculated in the same manner as they are in the current regulations, but technical aspects of the rules on per diem rates are outdated or in need of revision and would be updated.

First, current § 17.197, applicable to domiciliary care, indicates that VA will publish the actual per diem rates, whenever they change, in a **Federal Register** Notice. Proposed § 51.40 does not include this requirement because any State home providing domiciliary care would be given actual and timely notice of any changes in the per diem rates. Second, current § 52.40(a)(1), which applies to adult day health care, includes an outdated reference to the rate for fiscal year 2002. The current rule on basic per diem rates for nursing home care, at § 51.40(a)(2), is also outdated because it refers to the rate for fiscal year 2008. The rates are currently, and would continue to be, established in accordance with 38 U.S.C. 1741(a) and (c). We propose to make a more general statement, without reference to any particular fiscal year, describing how the basic per diem rate is calculated. This would ensure that our regulations do not become outdated within a year of publication.

Proposed § 51.40(b) would set forth VA's formula for calculating the daily cost of care of a veteran, which is consistent with current practice and regulation at § 51.43(e). We do not propose any substantive revisions to this formula for calculating basic per diem rates.

Paragraph (c) of proposed § 51.40 would incorporate current § 51.43(c), with minor clarifying changes to the paragraph, which was amended by the direct final rule published on September 27, 2012. 77 FR 59318, 59320, Sept. 27, 2012.

Proposed paragraph (d) would describe how to determine whether a

veteran has spent a day in an adult day health care program. Current § 52.40(a)(2) defines ''a day'' as ''[s]ix hours or more in one calendar day; or . . . [a]ny two periods of at least 3 hours each (but each less than six hours) in any two calendar days in a calendar month.'' A question has arisen regarding whether time spent in State-provided transportation between the veteran's home and the State home, in transportation to a health care visit, or accompanied by State home staff during a health care visit, should be included as time a veteran received adult day health care. If adult day health care were not available to these veterans, they would need to leave their own residences for nursing home care, and therefore special State-provided transportation is an important part of their care. State homes offer most adult day health care program participants transportation to and from health care visits with drivers who are certified in basic life safety and can provide basic assessments, ambulation escorts, wheelchair lift services, and proper handoffs at the site of the health care visit. Transportation between the veteran's residence and the State home includes door-to-door care. Therefore, to ensure continuity of care, we believe that time spent in transportation and accompanied by State home staff should be included as times that veterans receive adult day health care, and we propose to clarify paragraph (d)(3) accordingly.

51.42 Payment Procedures

Proposed § 51.42(a)(1) is based on current §§ 51.43(a) and 52.40(a)(5); proposed § 51.42(a)(2) is based on current §§ 51.43(b) and 52.40(a)(3); proposed § 51.42(b)(1) is based on current §§ 51.43(d) and 52.40(a)(4); proposed § 51.42(b)(2) is based on current §§ 51.43(d) and 52.40(a)(4). Proposed 51.42(b)(3) is based on current §§ 51.43(a) and 52.40(a)(5). Slight differences between regulations in parts 51 and 52 have been corrected to accurately reflect the forms required under this section.

In proposed paragraph (a)(1), we would clarify that the forms required under the regulation must be submitted when a veteran is admitted to a State home (for State homes that have already been recognized and certified), or at the time of the recognition survey (for a home that a State has submitted an application for recognition as a State home).

In addition, we would clarify in paragraph (a)(2) that the VA Form 10–5588 must be submitted every month in order for VA to pay per diem for the prior month. The proposed rule is also consistent with payment rules related to domiciliaries, at § 17.198, but provides greater clarity. Finally, we would add a statement to § 51.42(a)(1)(i) to clarify that nursing home applicants and residents and enrolled adult day health care participants do not need to complete the financial disclosure section of VA Forms 10–10EZ and 10–10EZR under certain specified circumstances, but domiciliary applicants and residents must do so, and adult day health care applicants may be required to provide financial information to enroll with VA.

In paragraph (b)(1), we would state that payments will not be made until the home is recognized, which is consistent with the current regulations, and that each veteran resident is verified as eligible for the program, which is not stated in the current regulations, but has been VA's consistent practice, as VA may only pay for care provided to veterans who are eligible for the program.

In paragraph (b)(2), we would clarify that VA will make payments for care in beds certified or precertified under § 51.30(c) retroactive to the date of precertification of the beds and to the date of the completion of the survey if the Director certifies the beds as a result of that survey. The current regulations in §§ 51.43(d) and 52.40(a)(4) specify that VA will pay retroactive to the date of the completion of the recognition survey, but do not address precertification and certification of State home beds provided for in proposed § 51.30(c).

Proposed paragraph (b)(3) explains when VA would begin making payments or make retroactive payments based on the State home's submissions of forms in accordance with the proposed rule. VA proposes to expand the current deadline to receive paperwork and begin per diem payments from 10 days to 12 days.

51.43 Drugs and Medicines for Certain Veterans

Proposed § 51.43(a) is substantively identical to current § 51.42(a); the only changes made were technical changes to conform to the proposed reorganization.

Proposed § 51.43(b) would reference the other authority for VA to provide drugs and medicines to veterans in a State home: 38 U.S.C. 1712(d), as implemented by § 17.96. Consistent with current § 51.41(c), this authority would be subject to the limitation in proposed § 51.41.

Proposed § 51.43(c) is based on current § 51.42(b). We propose to extend its application, however, to drugs and medicines furnished under 38 U.S.C. 1712(d), as implemented by § 17.96. Requiring that VA furnish a drug or medicine only if the drug or medicine is included on VA's National Formulary unless VA determines a non-Formulary drug or medicine is medically necessary should result in significant savings because, insofar as possible, the VA National Formulary consists of generic medications that often cost much less than brand medications. These are the same medications used for VA nursing home residents.

Proposed § 51.43(d) is substantively identical to current § 51.43(f). Most of current § 51.43 would be deleted and reincorporated into proposed § 51.40, but paragraph (f) deals specifically with payments for drugs and medicines, and therefore would be moved to proposed § 51.43. For consistency and to avoid confusion, we propose to require that States also submit a completed VA Form 10–0460 when requesting drugs for veterans eligible under § 17.96.

51.50–51.52 Eligibility

Proposed §§ 51.50, 51.51, and 51.52 would set forth the eligibility criteria that a veteran must meet in order for that veteran's care to serve as a basis for a per diem payment under each of the three programs. The minimum periods of active duty service required in 38 U.S.C. 5303 and 5303A apply to all three programs of care; therefore proposed §§ 51.50, 51.51, and 51.52 would each state the requirement. The minimum service requirement is in the current adult day health care regulations at § 51.52, but was inadvertently omitted from the nursing home eligibility regulations in current § 51.50. Nevertheless, VA has enforced this provision, as required by law, and therefore this proposed rule does not impose a new limitation on eligibility. In addition, in these sections we adopt the interpretation of 38 U.S.C. 101(2) regarding the character of discharge required for the provision of VA benefits to veterans that is set forth in 38 CFR 3.12. The interpretation of 38 U.S.C. 101(2) regarding the character of discharge is adopted in order to be consistent with the interpretation adopted for purposes of other VA benefit programs.

Section 51.50 (nursing home care) is virtually identical to current § 51.50, except for the addition of the requirement regarding the character of the veteran's discharge and certain other minor technical changes. We propose to add veterans who were awarded the Purple Heart or the medal of honor to the eligibility category in § 51.50(b) because these veterans are now eligible

by statute. See 38 U.S.C. 1705(a)(3), 1710(a)(2)(D). We propose to remove the provision regarding eligibility for veterans of the Mexican border period and World War I, because there are no living veterans of these eras. We also propose to add a note to § 51.50 to clarify that enrollment and eligibility to enroll in the VA health care system are not required for a veteran to be an ''eligible veteran'' for purposes of per diem payments. Finally, we propose to add veterans seeking care ''for any illness associated with service in combat in a war after the Gulf War or during a period of hostility after November 11, 1998, as provided and limited in 38 U.S.C. 1710(e)'' because these veterans are now eligible by statute. See 38 U.S.C. 1710(e)(1)(D), (e)(2)–(3).

Current § 17.194 provides that VA pays per diem for domiciliary care for veterans who are eligible for domiciliary care in a VA domiciliary. This is consistent with the statutory requirement in 38 U.S.C. 1741(a). However, we believe that it would be useful to the States and VA personnel for the regulation to set forth which veterans are eligible for domiciliary care in VA facilities. Eligibility for VA domiciliary care is set forth in §§ 17.46(b) and 17.47(b)(2). Proposed § 51.51 would thus describe the veterans who meet the requirements set forth in §§ 17.46(b) and 17.47(b)(2) and state that they are ''eligible veterans'' for the purpose of payment of per diem for domiciliary care in a State home.

Section 51.52 would set forth the criteria for determining whether a veteran's care is eligible for per diem for adult day health care. Based on a statutory change to 38 U.S.C. 1720(f)(1)(A), a veteran is now eligible for adult day health care if the veteran is enrolled in the VA health care system and otherwise would require nursing home care. Accordingly, § 51.52 would reflect the new requirement.

In addition, we propose to include in paragraph (d) criteria that reflect the level of care required by a veteran who would benefit from adult day health care. These criteria are derived from current § 52.80, but have been modified (made less stringent) to encompass an alternative model in addition to the medical model required by current § 52.80. For example, the requirements in proposed paragraph (c) are identical to the requirements in current § 52.80, except that we would add criteria to address individuals who live alone in the community or who are determined by a VA licensed medical practitioner to need adult day health care services. These additional criteria should broaden the potential adult day health care population to include others who could benefit from such care. In the regulation text, the medical model would be referred to as an adult day health care program that offers medical supervision. We are attempting to encourage States to provide adult day health care for our Nation's veterans. For example, we would eliminate the requirement that the veteran be dependent in three or more instrumental activities of daily living (such as using a telephone, cooking, shopping, etc.), and instead require that the veteran be dependent in three activities of daily living (such as ambulation, eating, bathing etc.). This decreased dependency requirement reflects our desire to permit State homes to provide an alternative to the medical model of adult day health care and to increase the number of veterans who could qualify for this less-institutionalized form of care. This rationale explains the other changes from the current requirements, such as the elimination of the requirements of recent discharge from a nursing home or hospital and of significant cognitive impairment characterized by multiple behavior problems.

Proposed § 51.52(d) would allow VA to pay for adult day health care based on less severe disabilities than those for which veterans currently may be eligible. This change would expand the cohort of eligible veterans and assist in cultivating a broader spectrum of adult day health care programs, which would be consistent with the rest of this rulemaking.

51.58 Standards Applicable for Payment of Per Diem

Proposed § 51.58 is based on current §§ 51.60 and 52.60, without substantive change.

51.59 Authority To Continue Payment of Per Diem When Veterans Are Relocated Due to Emergency

Proposed § 51.59 is substantively identical to current § 51.59, which was promulgated on September 8, 2011, after having been published for public comment. See 76 FR 55570. A few minor, technical changes are included that would conform to this rewritten regulatory framework.

Subpart D—Standards Applicable to the Payment of Per Diem for Nursing Home Care

Subpart D would set forth the standards applicable to the payment of per diem for nursing home care. VA proposes to change the title of this subpart from the current title of ''Standards'' to ensure clarity and aid readers in distinguishing between the new standards being set forth for domiciliary and adult day health care. These standards are currently set forth at §§ 51.70–51.210, and would not be changed by this notice of proposed rulemaking, except as noted below.

51.140 Dietary Services

Current § 51.140(d)(4) requires a State home to offer substitutes of similar nutritive value to residents ''who refuse food served.'' We propose to delete ''who refuse food served.'' We do not believe that residents should have to refuse food in order to be offered alternative choices. Residents should always have more than one option at meal time.

51.210 Administration

We would amend the current rule concerning administration of nursing homes, which we also propose to make applicable in whole to domiciliaries and in part to adult day health care programs. The amendment would require a State home to disclose to VA whenever there is a change in the State home's director of nursing services, or any other individual who is in charge of nursing services. Such changes may have significant ramifications for a State home, and may also affect VA's coordination of VA care with the care provided by the State home. Therefore, VA needs to be aware of the change. We note that most adult day health care programs do not offer nursing services; however, this paragraph would apply to those that do. Thus, the proposed change would require those adult day health care programs that have a person in charge of nursing services to notify VA when such person changes.

VA proposes to add a new paragraph (h)(3) to clarify procedures for State homes to assist veterans who need health care that State homes are not required to provide under part 51. This provision would state that State homes may assist the veteran with seeking care from other sources, including VA. It would also state that if VA is contacted, VA would make a determination about the best way to provide the needed services and would notify the Veteran, or the authorized representative, of that decision. This is consistent with the manner in which VA currently handles these situations, and ensures that veterans receive all needed health care.

Subpart E—Standards Applicable to the Payment of Per Diem for Domiciliary Care and Subpart F—Standards Applicable to Adult Day Health Care Programs of Care

Subpart E would provide the standards for domiciliary care. As we have noted throughout this notice, these standards would supersede all existing regulations, directives, handbooks, or other statements of policy to the extent that some might be read to conflict with these proposed regulations. Subpart F would be based on current part 52, subpart D (current §§ 52.60 *et seq.*). Several sections in current part 52, subpart D, were intended to be (or are) identical to sections in current part 51, subpart D. Rather than restate identical requirements, we would simply refer the reader to the current part 51 section. We believe that this would simplify the process and help all parties concerned—residents, their families, State staff, and VA surveyors—understand where identical requirements are intended. However, there may be a few examples where we have restated the requirements rather than cross-reference them—this was done for ease of use.

We would do the same when identical standards apply to domiciliary care in subpart E, for which we do not currently have detailed regulatory standards.

Finally, we would remove several sections from subpart D of part 52, without proposing parallel sections in part 51. First, we propose to remove § 52.61without establishing a similar provision in subpart F. Current § 52.61, ''General requirements for adult day health care program,'' describes a program requiring medical supervision, which is cost prohibitive for many States. Thus, there are currently only two adult day health care programs in the nation. We are restructuring program guidelines to provide States an opportunity to establish a range of adult day health care programs that reflect the needs of the local veteran population. Many States have expressed an interest in establishing adult day health care programs under these proposed new guidelines. More adult day health care programs would help VA support the provision of non-institutional care to veterans who might otherwise be forced into a nursing home in order to receive adequate care. Our goal is to increase participation in these non-institutional programs.

51.300 Resident Rights and Behavior; State Home Practices; Quality of Life

Proposed § 51.300 would state that States must protect and promote the rights and quality of life of participants in domiciliary programs of care, as they do for residents in State nursing homes. We would thus require domiciliary programs of care to comply with § 51.70, 51.80, 51.90, and 51.100.

51.310 Resident Assessment

The proposed rule is based on current § 51.110. However, different specific requirements would apply in paragraphs (b) through (d) because under § 51.110(b)(1)(i), which would not be revised by this rulemaking, the assessment tool for nursing homes is a nationally published tool, the Resident Assessment Instrument/Minimum Data Set. No such tool exists for domiciliaries or adult day health care programs. The requirements that would apply under the proposed rule are currently used by VA in assessments of State home domiciliary and adult day health care programs of care. We welcome comments on these provisions, but expect that they will be familiar to the affected State homes.

51.320 Quality of Care

Proposed § 51.320 is based on current § 51.120, which describes quality of care standards for State home nursing home residents; however, we would tailor the proposed regulation to the needs of the domiciliary care population, which is generally capable of a greater level of self-care than those in nursing homes. For this reason, the examples of ''sentinel events'' in paragraph (a)(2) are slightly different; however, the term is intended, and defined, to have the same meaning throughout part 51.

Paragraphs (d) through (f), (h) and (k) of current § 51.120 would not be included in the proposed rule because they pertain to medical issues that would not be presented by domiciliary residents. In proposed § 51.320(f), we would not include the references to ''[p]arenteral and enteral fluids,'' which is contained in current § 51.120(l)(2), ''[t]racheostomy care,'' which is contained in current § 51.120(l)(4), or ''[t]racheal suctioning,'' which is contained in 51.120(l)(5), because these services are not provided by domiciliaries.

51.330 Nursing Care

Proposed § 51.330 would describe the nursing care required in domiciliaries. What would be required would be similar to what is required in nursing homes, except that we would not require the same level of skilled nursing supervision, based on the lower level of care required by residents of domiciliaries. To be admitted, domiciliary residents must retain higher functional capabilities than a nursing home resident, and therefore domiciliary residents require less skilled nursing care. Due to these key differences, we cannot simply adopt the standards applicable to nursing homes; therefore, we would modify them to meet the generally accepted needs of domiciliary residents. These standards are similar to the expectations currently placed on State home domiciliaries. We welcome comments on these provisions, but expect that they will not present a new burden to the affected State homes.

51.340 Physician and Other Licensed Medical Practitioner Services

We propose to establish that State homes must provide the necessary primary care for their residents. This is consistent with VA General Counsel Precedent opinion 1–2014 which is on the web at: *http://www.va.gov/OGC/docs/2014/VAOPGCPREC1-2014.pdf*. We also propose that when a resident needs care that is other than what the State home is required to provide under this subpart, the State home is responsible for assisting the resident in obtaining that care. This would allow State homes to refer veterans to VA and other outside providers for care that the State home is not required to provide. Under the proposed rule, we would require that a physician must ''personally approve[ ] in writing a recommendation that an individual be admitted to a domiciliary.'' We would also require that each resident ''must remain at all times under the care of a licensed medical practitioner assigned by the State home.'' This accommodates those homes that may utilize, in addition to primary care physicians, other practitioners who are licensed to practice medicine. We clearly define by title those professions to be considered licensed medical practitioners in proposed § 51.2. By requiring State homes to provide physician services as set forth in the proposed regulation, it would continue VA policy of not providing physician services for Veterans in State home domiciliaries because the State home has a duty to provide these services. See 38 CFR 17.30(b), 17.38(c)(5).

Proposed paragraphs (a) and (b) address the appropriate use and supervision of non-physician licensed medical practitioners. Under paragraph (a), we would require that ''[a]ny licensed medical practitioner who is not a physician may provide medical care to a resident within the practitioner's scope of practice without physician supervision when permitted by state law.'' This would clarify that homes must ensure that residents receive appropriate medical supervision at all

times. Under proposed paragraph (b), when the licensed medical practitioner assigned to a particular resident is unavailable, we would require that the home ensure that another licensed medical practitioner be available to provide care to that resident. This would assist VA in providing a resident-centered approach to domiciliary care. It would also provide consistency between the level of care provided to veterans in State homes and in VA settings, in which we utilize supervised licensed medical practitioners.

Proposed paragraph (c) would define the scope of care expected to be provided by primary care physicians or other licensed medical practitioners to residents during visits. We would specify that the resident's total program of care be reviewed, to include medications and treatment, and that progress notes documenting each visit must be in writing, signed, and dated. We would also require that all orders be signed and dated.

Proposed paragraph (d) would mandate the frequency of primary care physician or other licensed medical practitioner visits. We would specify that the resident must be seen by the primary care physician or other licensed medical practitioner at least once every 30 days for the first 90 days after admission, and at least once a calendar year thereafter, or more frequently based on the condition of the resident. We believe this requirement would be sufficient to meet the needs of the resident population in these homes. It strikes an appropriate balance between providing needed medical care and the lower need for ongoing medical supervision of residents in domiciliaries.

Proposed paragraph (e) would mandate that the domiciliary provide or arrange for the provision of physician or other licensed medical practitioner services 24 hours a day, 7 days a week, in case of an emergency.

51.350, 51.390 Incorporation of Standards to State Home Domiciliaries

Proposed § 51.350 would apply VA's State nursing home standards for dietary, dental, pharmacy services, infection control, and the physical environment to State home domiciliaries. Proposed § 51.390 would apply VA's State nursing home standards for administration to State home domiciliaries.

51.400 Participant Rights

Proposed § 51.400 would state that States must protect and promote the rights of participants in adult day health care programs of care, as they do for residents in State nursing homes. We would thus require adult day health care programs of care to comply with § 51.70 except for § 51.70(m) regarding the right of married residents to share a room when both live in the State home.

51.405 Participant and Family Caregiver Responsibilities

Section 51.405 would be based on current § 52.71, with minor technical and stylistic revision. Additionally, we would revise the introductory paragraph to permit the adult day health care program to provide a copy of the statement of participant and family caregiver responsibilities ''at or before the time of the intake screening.'' The current regulation requires that the copy be provided at the intake screening, which is too restrictive.

51.410 Transfer and Discharge

Section 51.410 is based on current §§ 52.80(b) and 52.210(p), with the substantive changes noted below.

We would not include the requirement in current § 52.80(b)(2) that ''[a]ll participants' preparedness for discharge from adult day health care must be a part of a comprehensive care plan.'' We do not maintain comprehensive care plans for VA-operated adult day health care programs. The State home must record information about a participants' discharge from an adult day health care program in the clinical record as described in § 51.410(c) and the participant must receive information about the discharge as described in proposed § 51.410(e).

Proposed § 51.410(a) also would not include a provision parallel to current § 52.80(b)(3), concerning the documentation by a primary physician that is required for a transfer and discharge. We would not include this requirement because the veteran's primary physician would generally not be on staff with the adult day health care program, and therefore would generally not have privileges to document notes in the program's clinical records.

Finally, we would incorporate current § 52.210(p) into this rule at proposed § 51.410(g) because it also concerns transfers.

51.411 Program Practices

Proposed § 51.411 would include those parts of current § 52.80 that are not included elsewhere. We would not include a provision parallel to current § 52.80(f) because we do not require VA-operated adult day health care programs to have caregiver support programs. The purpose of adult day health care is to provide most or all of the services generally performed by caregivers.

51.415 Restraints, Abuse, and Staff Treatment of Participants

Proposed § 51.415 would apply to State home adult day health care programs the same requirements regarding the use of restraints and staff treatment of participants as apply to State home nursing homes.

51.420 Quality of Life

Section 51.420 would be based on current § 52.100, with minor revisions in paragraph (g). Current § 52.100(g)(3) states that the State home must provide private storage space for each participant sufficient for a change of clothes. We propose to require that each private storage space be capable of being secured with a lock for protection of the contents. Requiring a lock would ensure that whatever the participant stores in their private space (such as clothes, a wallet, or a purse) can be safely stored. Current § 52.100(g)(5) requires State homes to provide a clean bed for acute illness. We propose in § 52.420(g)(5) to require that the State home provide either a clean bed or a reclining chair.

51.425 Physician Orders and Participant Medical Assessment

Section 51.425 would restate current § 52.110, with a number of changes concerning physician orders and participant assessments. This section, among other things, is designed to ensure that appropriate plans of care are prepared and updated based on assessments.

Proposed paragraph (a) would restate the admission requirements in current § 52.110(b), with some changes. We would continue to require a medical history and physical examination of the participant, but would additionally require documentation of tuberculosis (TB) screening. Presently, VA requires the examination within a reasonable time of the resident's admission, not to exceed 72 hours following admission. We propose to require that the examination occur no earlier than 30 days before admission. The proposed changes to this section would ensure that State homes receive current information about veterans' conditions for the purposes of making determinations regarding admission, and would ensure that participants will not endanger themselves or others because of TB, which could easily spread in an adult day health care setting.

Proposed paragraph (b) would revise current § 52.110(c), with a proposed change to the method for conducting

assessments of participants. The current regulation requires that a comprehensive plan of care be developed from comprehensive assessments based on the Minimum Data Set for Home Care (MDS–HC) Instrument Version 2.0, August 2, 2000. The MDS–HC is not used in adult day health care programs because it requires more of an assessment than is necessary for participants in such programs. We propose to base assessments conducted under proposed paragraph (b) on the criteria stated in proposed paragraph (d), described below.

In proposed paragraph (c)(2), we would continue to require that each person who completes a portion of the assessment sign and certify the accuracy of that portion of the assessment in order to ensure accuracy and accountability for the assessment.

In proposed paragraph (d), we would require the State home to ensure that each participant has a care plan based on criteria VA developed to describe the issues that need to be addressed for participation in an adult day health care program. The criteria would be set forth under paragraph (d), and would ensure that participants receive appropriate care. Current § 52.110(e)(1) requires the State home to ''develop'' such a plan. We are changing the language to require that the participant have a plan rather than that the State home develop the plan because, in some cases, the plan may have been created before the participant entered into the State home's program of adult day health care. The word ''develop'' in the current rule can be misread to require the State home to create a new plan, even when VA has already created one. Under the proposed paragraph (d)(1), the plan of care must include measurable objectives and timetables for meeting the needs identified in the assessment. With the simplified assessments this can and should be readily accomplished without the need for interdisciplinary teams that are required by the current regulations.

Proposed paragraph (e) is based on current 52.110(f), with no substantial changes.

51.430 Quality of Care

Section 51.430 would restate current § 52.120, with some significant changes. First, we would clarify in proposed § 51.430(a)(2) that a home must report only sentinel events that happen ''while the participant is under the care of the State home, including while in State home-provided transportation.'' It is not necessary for a program to report a sentinel event that did not occur while the veteran was under the care of the State home. Thus, to the extent that a sentinel event—such as an attempted suicide or misuse of prescribed medication—may occur in the evening, the adult day health care program would not be required to report that event to VA. In proposed § 51.430(c), State homes would continue to be required to make counseling and related psychosocial services available to improve the mental and psychological functioning of adult day health care participants with psychosocial needs, as individuals in such programs often have, or are at risk for developing, psychosocial problems. We would update the phrasing of this requirement to make clear the types of services that State homes must provide. Other paragraphs in § 51.430 of the proposed rule are identical to current § 51.210, and would reference that section.

Current § 52.120(c) through (f) and § 52.120(k) set forth requirements concerning vision and hearing, pressure ulcers, urinary and fecal incontinence, range of motion, accidents, nutrition, hydration, unnecessary drugs, and antipsychotic drugs in adult day health care programs of care. We propose to remove these provisions because they are not pertinent to care at a State home providing adult day health care.

51.435 Nursing Services

Current § 52.130 would become § 51.435, and the last sentence of paragraph (a) of the current rule would be removed. That sentence recommends that duty nurses be geriatric nurse practitioners or clinical nurse specialists. We propose to remove this recommendation because this level of specialty is not necessary for an adult day health care program. Because there is no collection of information associated with this regulation, we propose to remove the OMB control number that appears in current § 52.130 from proposed § 51.435.

51.440 Dietary Services

Proposed § 51.440 would apply to State home adult day health care programs the State nursing home standards for dietary services.

51.445 Physician Services

Proposed § 51.445 would be based on current § 52.150, which sets standards for physician services in adult day health care. The first two sentences of the current rule require that adult day health care participants ''obtain a written physician order for enrollment'' and ''remain under the care of a physician.'' This would be required in the proposed rule, irrespective of the level of medical supervision provided in the State home adult day health care program. The requirement that participants remain under the care of a physician would not impose a staffing burden on State homes because the veterans would be enrolled in the VA health care system, and therefore many would be under the care of a VA physician. A physician must approve a veteran's participation in an adult day health care program in the written order for enrollment and, moreover, must indicate whether there are medical needs that would require placement in an adult day health care program that offers medical supervision.

However, the level of involvement of the State home adult day health care program in the participant's medical care depends on whether the program of care offers medical supervision. Therefore, we propose changes to paragraphs (a), (b) and (c) of the current rule text to indicate that they only apply if the program of care offers ''medical supervision.'' If medical supervision is offered, physician supervision and review must be appropriate to the level of care required by the participant.

We propose to revise the language of current § 52.150(d) to clarify that the program management need only ensure that participants are able to obtain emergency care when necessary. This requirement could be met if the program management called 911 on behalf of the participant. States may provide emergency care if they desire, but they would not be required to do so.

51.450 Specialized Rehabilitative Services

Current § 52.160, which sets standards for specialized rehabilitative services in adult day health care, would become proposed § 51.450. We note that unlike current § 52.150 and proposed § 51.445, no adjustments to the current language are required. This rule would apply only where the participant's individualized care plan requires the provision of specialized rehabilitative services. If a State home does not have the capability to provide specialized rehabilitative services, it would not accept a veteran with such needs for placement in its adult day health care program. Because there is no collection of information associated with this regulation, we propose to remove the OMB control number that appears in current § 52.160 from proposed § 51.450.

51.455 Dental Services

Current § 52.170, which sets standards for dental services in adult day health care, would become proposed § 51.455. We propose minor changes to the current language so that

this regulation would apply only to State homes that offer an adult day health care program with medical supervision.

51.460 Administration of Drugs

Current § 52.180, which sets standards for administration of drugs in adult day health care, would become proposed § 51.460. We propose minor changes to the current language so that this regulation would apply only to State homes that offer medical supervision in their adult day health care programs.

51.465 Infection Control

Proposed § 51.465 would apply the State nursing home standards for infection control to State home adult day health care programs.

51.470 Physical Environment

Proposed § 51.470 is based on current § 52.200, with the following revisions.

First, current § 52.200 requires State homes to meet certain standards established in outdated editions of the National Fire Protection Association (NFPA) code. However, current § 51.200 cites more recent editions of the standards. We propose to merely cross-reference the § 51.200(a) requirement in § 51.470, to clarify that the same fire-safety standards apply to adult day health care programs, except that those provisions that only apply to nursing homes would not apply. In this manner, we would ensure that adult day health care programs and nursing homes are required to comply with the same edition of the appropriate NFPA publication. We note that most State homes must abide by the current versions of these standards in order to obtain appropriate permits and licenses from authorities other than VA.

In addition, current 38 CFR 52.200(b)(4)(v) requires a State home to have a quiet room with at least one bed, which functions to isolate participants who become ill or disruptive, or who require rest, privacy, or observation. We propose to change this requirement to permit the home to have either a bed or a reclining chair. We believe that this would satisfy the specified needs. Also, we would indicate that the purpose of the quiet room is for separation from other participants rather than isolation from other participants. This accomplishes the intended purpose without the connotation of restraint which often would not apply.

51.475 Administration

We would adopt all of the requirements of current § 51.210 except for those that do not apply to adult day health care programs that do not provide medical supervision. We would update the authority citation to reflect VA's current adult day health care authorities.

51.480 Transportation

Current 38 CFR § 52.220 concerns the transportation of participants. Paragraph (b) specifies that the program management must have a transportation policy that includes routine and emergency procedures. The current regulation further states that a copy of the procedures must be located in all program vehicles. We propose to delete the provisions regarding the placement of the procedures in program vehicles. Instead, we propose to add language requiring that all such transportation (including that provided under contract) must be in compliance with the procedures. The goal is to achieve compliance, and we do not believe that it is necessary to impose requirements regarding the methods of obtaining compliance.

Current 38 CFR 52.220(c) requires that all vehicles transporting participants be equipped with a device for two-way communication. We propose revising this to clarify that the vehicle itself does not need to be equipped with the device. However, we propose to require that the driver have access to such a device. We also propose to revise this requirement to clarify that it only applies to State home-provided transportation, not transportation arranged by the veteran.

Current § 52.220(e) specifies that the time to transport a participant to or from the home must not be more than 60 minutes except under unusual conditions, *e.g.,* bad weather. We propose to delete this provision. Instead, we propose to require that State homes ensure that the care needs of each participant are addressed during travel. This requirement more directly addresses the particular needs of each participant.

Other Technical Changes

We would make other technical, non-substantive changes to provisions amended by or established by this rulemaking. Notably, we describe veterans as being ''admitted'' (or a derivative) when discussing the adult day health care program, where the current part 52 often uses the term ''enrolled'' (or a derivative). This is intended to make sure that a reader does not mistake the use of the term ''enrolled'' to mean enrollment in the VA health care system when it is intended to refer to participation in a State home program of care.

Effect of Rulemaking

The Code of Federal Regulations, as proposed to be revised by this proposed rulemaking, would represent the exclusive legal authority on this subject. No contrary rules or procedures would be authorized. All VA guidance would be read to conform with this proposed rulemaking if possible or, if not possible, such guidance would be superseded by this rulemaking.

Paperwork Reduction Act

This proposed rule includes provisions constituting collections of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) that require approval by the Office of Management and Budget (OMB). Accordingly, under 44 U.S.C. 3507(d), VA has submitted a copy of this rulemaking to OMB for review.

OMB assigns control numbers to collections of information it approves. VA 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. Proposed § 17.74(q) contains a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3521). Proposed §§ 51.20, 51.30, 51.31, 51.42, 51.210, 51.300, 51.310, 51.320, 51.350, and 51.390 contain new collections of information under the Paperwork Reduction Act of 1995. State home domiciliaries are already submitting this information voluntarily as part of their participation in VA's State home program, because this is necessary in order for VA to provide payment to them for the care that they provide. There is, therefore, little or no additional burden to State home domiciliary programs due to this rulemaking. Because these requirements are virtually identical to those imposed upon the other two programs of care and approved under control number 2900–0160, VA seeks to amend that approved collection of information to include State home domiciliaries, as described in further detail below. Additionally, VA proposes minor modifications to collections of information from State home nursing homes and adult day health care programs that are already approved under control number 2900–0160 and set forth at §§ 51.210, 51.415, 51.425, 51.430, and 51.460 of the proposed regulations.

If OMB does not approve the collections of information as requested, VA will immediately remove the provisions containing a collection of information or take such other action as is directed by OMB.

Comments on the collections of information contained in this proposed rule should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies sent by mail or hand delivery to the Director, Regulation Policy and Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; fax to (202) 273–9026; or through *www.Regulations.gov.* Comments should indicate that they are submitted in response to ''RIN 2900–AO88 Per Diem Paid to States for Care of Eligible Veterans in State Homes.''

OMB is required to make a decision concerning the collections of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment on the proposed rule.

VA considers comments by the public on proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of VA, including whether the information will have practical utility;
- Evaluating the accuracy of VA's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collections 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.

The proposed amendments to title 38 CFR part 51 contain collections of information under the Paperwork Reduction Act of 1995 for which we are requesting approval by OMB. These collections of information are described immediately following this paragraph, under their respective titles.

Title: Per Diem Paid to States for Care of Eligible Veterans in State Homes.

- *Summary of collection of information:* Section 51.210 would require State homes to submit information about the individuals responsible for administration of the homes. Most of the collections in § 51.210 are currently approved for State home nursing homes and adult day health care programs of care, with the exception of a new collection in proposed § 51.210(b)(3), which would require State homes to submit the name of the director of nursing services. All of the collections in proposed § 51.210 would constitute new collections for State home domiciliaries.

Sections 51.20, 51.30, 51.31, 51.42, 51.300, 51.310, 51.320, 51.350, and 51.390 would require State homes domiciliary programs to submit information about veterans receiving domiciliary care. State home domiciliaries would be required to furnish an application for recognition based on certification; appeal information, application and justification for payment; records and reports which program management must maintain regarding activities of residents or participants; information relating to whether the domiciliary meets standards concerning residents' rights and responsibilities prior to admission or enrollment, during admission or enrollment, and upon discharge; the records and reports which management and health care professionals must maintain regarding residents or participants and employees; documents pertain to the management of the home; food menu planning; pharmaceutical records; and life safety documentation. Without access to such information, VA would not be able to determine whether high quality care is being provided to veterans.

The information that VA would collect from State home domiciliaries under this proposed rulemaking is already collected from State home nursing homes and adult day health care programs under OMB control number 2900–0160, pursuant to 38 CFR parts 51 and 52, State Home Programs, and on VA forms as follows: State Home Inspection—Staffing Profile, VA Form 10–3567, Instructions for State Home Report and Statement of Federal Aid Claimed, VA Form 10–5588, State Home Program Application for Veteran Care—Medical Certification, VA Form 10–10SH, Department of Veterans Affairs Certification Regarding Drug-Free Workplace Requirements for Grantees Other Than Individuals, VA Form 10–0143, Statement of Assurance of Compliance with Section 504 of the Rehabilitation Act of 1973, VA Form 10–0143a, Certification Regarding Lobbying, VA Form 10–0144; Statement of Assurance of Compliance with Equal Opportunity Laws, VA Form 10–0144a, and Request for Prescription Drugs from an Eligible Veteran in a State Home, VA Form 10–0460. VA is amending these forms in a separate request; that request includes a request to include State home domiciliaries as respondents to the forms, in addition to other amendments that would apply as to all State Home programs of care. VA therefore seeks approval in this proposed rule only for the information that would be required of State home domiciliaries by proposed part 51 that would not be included on the forms listed above.

VA proposes to modify the collections of information from State home adult day health care programs of care as set forth at proposed §§ 51.415, 51.425, and 51.430. OMB has approved most of the collections in these sections under OMB control number 2900–0160. VA proposes to modify these collections as follows. In proposed § 51.425(a), VA would require programs to collect documentation of participants' tuberculosis screening, in addition to the current requirement that State homes record the participant's medical history and document a physical examination. In proposed § 51.425(b), VA would change the criteria that programs would use to record each participants' assessment from the Minimum Data Set for Home Care to new criteria developed by VA. In proposed § 51.430(a), VA would clarify that State homes must report sentinel events only when they occur while the veteran is under the care of the home; the current regulations indicate such reports are necessary regardless of when or where a sentinel event occurs.

- *Description of the need for information and proposed use of information:* VA uses this information in order to effectively manage the operations and payment of per diem through the State home domiciliary program of care. Specifically, the information collected is used to determine eligibility of veterans for participation in the program; whether State home domiciliary programs meet appropriate clinical, safety, and quality standards; and to calculate the amount of payments that are due for care provided to veterans on a monthly basis.
- *Description of likely respondents:* State home domiciliary programs that seek payment from VA.
- *Estimated number of respondents:* 53 per year.
- *Estimated frequency of responses:* Once per year.
- *Estimated average burden per response:* 7 minutes.
- *Estimated total annual reporting and recordkeeping burden:* 6.2 hours.

State Home Nursing Homes and Adult Day Health Care Programs

Although this action contains provisions constituting collections of information at 38 CFR 51.20, 51.30, 51.31, 51.42, 51.210, 51.300, 51.310, 51.320, 51.350, 51.390, 51.400, 51.405, 51.410, 51.415, 51.420, 51.425, 51.430, 51.445, 51.460, and 51.475, under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521), no new or proposed revised collections of information are associated with these sections. The proposed regulations impose certain paperwork requirements on States with State homes receiving per diem for nursing home care (at §§ 51.20, 51.30, 51.31, 51.42, and 51.210) and impose similar paperwork requirements on State homes receiving per diem for adult day health care (at §§ 51.20, 51.30, 51.31, 51.210, 51.400, 51.405, 51.410, 51.415, 51.420, 51.425, 51.430, 51.460, and 51.475). The information collection requirements for §§ 51.20, 51.30, 51.31, 51.42, 51.210, 51.400, 51.405, 51.410, 51.415, 51.420, 51.425, 51.430, 51.460, and 51.475 are currently approved by OMB (except for the proposed minor modifications to §§ 51.415, 51.425, and 51.430 described above) and have been assigned OMB control number 2900–0160. This rulemaking simply reorganizes the material to which this control number has already been applied in the current U.S. Code of Federal Regulations. As stated above, VA is revising the forms used for these approved collections from State Home nursing home and adult day health care programs under OMB control number 2900–0160, and will seek approval for the proposed revisions in a separate request for OMB review. Additionally, § 51.42 in effect imposes paperwork requirements on certain Veterans seeking admission to a State home program of care. The information collection requirement pertaining to Veterans under these sections is currently approved by OMB and has been assigned OMB control number 2900–0091.

Regulatory Flexibility Act

The Secretary hereby certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule would affect veterans, State homes, and pharmacies. The State homes that are subject to this rulemaking are State government entities under the control of State governments. All State homes are owned, operated and managed by State governments except for a small number that are operated by entities under contract with State governments. These contractors are not small entities. Also, this rulemaking would not have a consequential effect on any pharmacies that could be considered small entities. Therefore, pursuant to 5 U.S.C. 605(b), this rulemaking is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. Executive Order 12866 (Regulatory Planning and Review) defines a ''significant regulatory action'' requiring review by the Office of Management and Budget (OMB), unless OMB waives such review, as ''any regulatory action that is likely to result in a rule that may: (1) 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, or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.''

The economic, interagency, budgetary, legal, and policy implications of this regulatory action have been examined, and it has been determined to be a significant regulatory action under Executive Order 12866. VA's impact analysis can be found as a supporting document at *http://www.regulations.gov,* usually within 48 hours after the rulemaking document is published. Additionally, a copy of the rulemaking and its impact analysis are available on VA's Web site at *http://www.va.gov/orpm/,* by following the link for ''VA Regulations Published From FY 2004 Through Fiscal Year to Date.''

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in an expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This proposed rule would have no such effect on State, local, and tribal governments, or on the private sector.

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers and titles for the programs affected by this document are 64.005, Grants to States for Construction of State Home Facilities; 64.007, Blind Rehabilitation Centers; 64.008, Veterans Domiciliary Care; 64.009, Veterans Medical Care Benefits; 64.010, Veterans Nursing Home Care; 64.011, Veterans Dental Care; 64.012, Veterans Prescription Service; 64.013, Veterans Prosthetic Appliances; 64.014, Veterans State Domiciliary Care; 64.015, Veterans State Nursing Home Care; 64.016, Veterans State Hospital Care; 64.018, Sharing Specialized Medical Resources; 64.019, Veterans Rehabilitation Alcohol and Drug Dependence; 64.022, Veterans Home Based Primary Care; and 64.026, Veterans State Adult Day Health Care.

Signing Authority

The Secretary of Veterans Affairs, or designee, approved this document and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs. Jose D. Riojas, Chief of Staff, approved this document on January 15, 2015, for publication.

List of Subjects in 38 CFR Parts 17, 51 and 52

Administrative practice and procedure, Claims, Day care, Dental health, Government contracts, Grant programs—health, Grant programs—veterans, Health care, Health facilities, Health professions, Health records, Mental health programs, Nursing homes, Reporting and recordkeeping requirements, Travel and transportation expenses, Veterans.

Approved: June 2, 2015.

William F. Russo,

Acting Director, Office of Regulation Policy & Management.

For the reasons stated in the preamble and under the authority of of 38 U.S.C. 1741–1743 and 38 U.S.C. 1745, the Department of Veterans Affairs proposes to amend 38 CFR parts 17, 51, and 52 as set forth below:

PART 17—MEDICAL

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 38 U.S.C. 501, and as noted in specific sections.

§§ 17.190–17.200 [Removed].

■ 2. Amend part 17 by removing §§ 17.190–17.200.

PART 51—PER DIEM FOR NURSING HOME, DOMICILIARY, OR ADULT DAY HEALTH CARE OF VETERANS IN STATE HOMES

■ 3. The authority citation for part 51 is amended to read as follows:

Authority: 38 U.S.C. 101, 501, 1710, 1720, 1741–1743, 1745, and as stated in specific sections.

■ 4. Subparts A, B, and C of part 51 are revised to read as follows:

Subpart A—General

Sec.
51.1 Purpose and Scope of part 51
51.2 Definitions

Subpart B—Obtaining Recognition and Certification for Per Diem Payments

51.20 Recognition of a State home
51.30 Certification
51.31 Surveys for recognition and/or certification
51.32 Terminating recognition

Subpart C—Eligibility, Rates, and Payments

51.40 Basic per diem rates
51.42 Payment procedures
51.43 Drugs and medicines for certain veterans
51.50 Eligible veterans-nursing home care
51.51 Eligible veterans-domiciliary care
51.58 Standards applicable for payment of per diem
51.59 Authority to continue payment of per diem when veterans are relocated due to emergency

Subpart A—General

§ 51.1 Purpose and scope of part 51.

The purpose of this part is to establish VA's policies, procedures, and standards applicable to the payment of per diem to State homes that provide nursing home care, domiciliary care, or adult day health care to eligible veterans. Subpart B of this part sets forth the procedures for recognition and certification of a State home. Subpart C sets forth rules governing the rates of, and procedures applicable to, the payment of per diem; the provision of drugs and medicines; and which veterans on whose behalf VA will pay per diem. Subparts D, E, and F set forth standards that must be met by any State home seeking per diem payments for nursing home care (subpart D), domiciliary care (subpart E), or adult day health care (subpart F).

(Authority: 38 U.S.C. 501)

§ 51.2 Definitions.

For the purposes of this part:

Activities of daily living (ADLs) means the functions or tasks for self-care usually performed in the normal course of a day, *i.e.,* mobility, bathing, dressing, grooming, toileting, transferring, and eating.

Adult day health care means a therapeutic outpatient care program that includes one or more of the following services, based on patient care needs: medical services, rehabilitation, therapeutic activities, socialization, and nutrition. Services are provided in a congregate setting.

Clinical nurse specialist means a licensed professional nurse with a master's degree in nursing and a major in a clinical nursing specialty from an academic program accredited by the National League for Nursing.

Director means the Director of the VA medical center of jurisdiction, unless the reference is specifically to another type of director.

Domiciliary care means the furnishing of a home to a veteran, including the furnishing of shelter, food, and other comforts of home, and necessary medical services as defined in this regulation.

Eligible veteran means a veteran whose care in a State home may serve as a basis for per diem payments to the State. The requirements that an eligible veteran must meet are set forth in §§ 51.50 (nursing home care), 51.51 (domiciliary care), and 51.52 (adult day health care).

Licensed medical practitioner means a nurse practitioner, physician, physician assistant, and primary physician or primary care physician.

Nurse practitioner means a licensed professional nurse who is currently licensed to practice in a State; who meets that State's requirements governing the qualifications of nurse practitioners; and who is currently certified as an adult, family, or gerontological nurse practitioner by a nationally recognized body that provides such certification for nurse practitioners, such as the American Nurses Credentialing Center or the American Academy of Nurse Practitioners.

Nursing home care means the accommodation of convalescents or other persons who are not acutely ill and not in need of hospital care, but who require nursing care and related medical services, if such nursing care and medical services are prescribed by, or are performed under the general direction of, persons duly licensed to provide such care. Such term includes services furnished in skilled nursing care facilities, in intermediate care facilities, and in combined facilities. It does not include domiciliary care.

Participant means an individual receiving adult day health care.

Physician means a doctor of medicine or osteopathy legally authorized to practice medicine or surgery in the State.

Physician assistant means a person who meets the applicable State requirements for physician assistant, is currently certified by the National Commission on Certification of Physician Assistants as a physician assistant, and has an individualized written scope of practice that determines the authorization to write medical orders, prescribe medications and to accomplish other clinical tasks under appropriate physician supervision.

Primary physician or *Primary care physician* means a designated generalist physician responsible for providing, directing and coordinating health care that is indicated for the residents or participants.

Program of care means any or all of the three levels of care for which VA may pay per diem under this part.

Resident means an individual receiving nursing home or domiciliary care.

State means each of the several states, the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, the Commonwealth of the Northern Mariana Islands, and American Samoa.

State home means a home recognized and, to the extent required by this part, certified pursuant to this part that a State established primarily for veterans disabled by age, disease, or otherwise, who by reason of such disability are incapable of earning a living. A State home must provide at least one program of care (*i.e.,* domiciliary care, nursing home care, or adult day health care).

VA means the U.S. Department of Veterans Affairs.

Veteran means a veteran under 38 U.S.C. 101.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

Subpart B—Obtaining Recognition and Certification for Per Diem Payments

§ 51.20 Recognition of a State home.

(a) *How to apply for recognition.* To apply for initial recognition of a home for purposes of receiving per diem from VA, a State must submit a letter requesting recognition to the Office of Geriatrics and Extended Care in VA Central Office, 810 Vermont Avenue NW., Washington, DC 20420. The letter must be signed by the State official authorized to make the request. The letter will be reviewed by VA, in accordance with this section.

(b) *Survey and recommendation by Director.* (1) After receipt of a letter requesting recognition, VA will survey the home in accordance with § 51.31 to determine whether the facility and program of care meet the standards in subpart D, E, or F, as applicable. For purposes of the recognition process including the survey, references to State homes in the standards apply to homes that are being considered by VA for recognition as State homes.

(2) If the Director of the VA Medical Center of jurisdiction determines that the applicable standards are met, the Director will submit a written recommendation for recognition to the Under Secretary for Health.

(3) If the Director does not recommend recognition, the Director will submit a written recommendation against recognition to the Under Secretary for Health and will notify in writing the State official who signed the letter submitted under paragraph (a) of this section and the State official authorized to oversee operations of the home. The notification will state the following:

(i) The specific standard(s) not met; and

(ii) The State's right to submit a response, including any additional evidence, within 30 days after the date of the notification to the State.

(c) *Decision by the Under Secretary for Health.* After receipt of a recommendation from the Director, the Under Secretary for Health will award or deny recognition based on all available evidence. The applicant will be notified of the decision. Adverse decisions may be appealed to the Board of Veterans' Appeals (see 38 CFR part 20).

(d) *Effect of recognition.*

(1) Recognition of a State home means that, at the time of recognition, the facility and its program of care meet the applicable requirements of this part. The State home must obtain certification after recognition in accordance with § 51.30.

(2) After a State home is recognized, any new annex, new branch, or other expansion in the size of a home or any relocation of the home to a new facility must be separately recognized. However, changes in the use of particular beds between recognized programs of care and increases in the number of beds that are not described in the previous sentence require certification of the beds, but not recognition, in accordance with paragraph (c)(1) of this section.

(Authority: 38 U.S.C. 501, 511, 1742, 1743, 7104, 7105)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–XXXX.)

§ 51.30 Certification.

(a) *General certification requirement.* In order to be certified, the State home must allow VA to survey the home in accordance with § 51.31. A State home must be certified within 450 days after the State home is recognized. Certifications expire 600 days after the date of their issuance.

(b) *Periodic certifications required.* The Director of the VA medical center of jurisdiction will certify a State home based on a survey conducted at least once every 270–450 days, at VA's discretion, and will notify the State official authorized to oversee operations of the State home of the decision regarding certification within 20 days after the Director's decision.

(c) *Certification of beds based on changes in the program of care*—(1) *Switching beds between programs of care or increasing beds in a program of care.* When a State home that is recognized to provide both domiciliary and nursing home care changes the care provided in one or more beds, or when a State home increases the number of nursing home or domiciliary beds (except increases described in the first sentence of § 51.20(d)(2) of this part), VA must survey the home taking the proposed changes into account and the Director must certify the beds before VA may pay per diem under this part for care provided in those beds. However, the Director may precertify, at the request of a State home, the increased number of beds or beds that are switched between programs of care. Precertification is authorized if the Director reasonably expects, based on prior surveys and any other relevant information, that the State home will continue to comply with this part until such time as the State home is surveyed and certified. Precertifications will continue for 360 days or until the Director next issues a certification of the State home under § 51.30(b), whichever occurs first. VA will pay per diem for the care of eligible veterans in the beds provided on and after the date the Director precertifies the beds.

(2) *Decreasing beds for a program of care.* The State must report any decreases in the number of beds that may be used for a particular program of care to the Director within 30 days after such decrease, and must provide an explanation for the decrease.

(d) *Provisional certification*—(1) *When issuance is required.* After a VA survey, the Director must issue a provisional certification for the surveyed State home if the Director determines that all of the following are true:

(i) The State home does not meet one or more of the applicable standards in this part;

(ii) None of these deficiencies jeopardize the health or safety of any resident or participant;

(iii) No later than 20 days after receipt by the State home of the survey report, the State submitted to the Director a written plan to remedy each deficiency in a specified amount of time; and

(iv) The plan is reasonable and the Director has sent a written notice to the appropriate person(s) at the State home informing them that the Director agrees to the plan.

(2) *Surveys to continue while under provisional certification.* VA will continue to survey the State home while it is under a provisional certification in accordance with this section and § 51.31. After such a survey, the Director will continue the provisional certification if the Director determines that the four criteria listed in paragraphs (c)(1)(i)–(iv) of this section are true.

(3) *Issuance of additional provisional certification.* If the State fails to remedy the identified deficiencies within the amount of time specified in the written plan described in paragraph (d)(1)(iii) of this section, the State must submit, no later than 20 days after the expiration of the time specified in the written plan, a new written plan to remedy each remaining deficiency in a reasonable time. Upon receiving the plan within the 20 day period, the Director may issue another provisional certification if all the criteria listed in paragraphs (c)(1)(i)–(iv) of this section are true. If not, the Director will deny certification.

(e) *Notice and the right to appeal a denial of certification.* A State home has the right to appeal when the Director determines that a State home does not meet the requirements of this part (*i.e.,* denies certification). An appeal is not provided to a State for a State home that

receives a provisional certification because, by providing the corrective action plan necessary to receive a provisional certification, a State demonstrates its acceptance of VA's determination that it does not meet the VA standards for which the corrective action plan was submitted.

(1) *Notice of decision denying certification.* The Director will issue in writing a decision denying certification that sets forth the specific standard(s) not met. The Director will send a copy of this decision to the State official authorized to oversee operations of the State home, and notify that official of the State's right to submit a written appeal to the Under Secretary for Health as stated in paragraph (d)(2). If the State home does not submit a timely written appeal, the Director's decision becomes final and VA will not pay per diem for any care provided on or after the 31st day after the State's receipt of the Director's decision.

(2) *Appeal of denial of certification.* The State must submit a written appeal no later than 30 days after the date of the notice of the denial of certification. The appeal must explain why the denial of certification is inaccurate or incomplete and provide any relevant information not considered by the Director. Any appeal that does not identify a reason for disagreement will be returned to the sender without further consideration. If the State home submits a timely written appeal, the Director's decision will not take effect and VA will continue to pay per diem to the State home pending a decision by the Under Secretary for Health.

(3) *Decision on appeal of a denial of certification.* The Under Secretary for Health will review the matter, including any relevant supporting documentation, and issue a written decision that affirms or reverses the Director's decision. The State will be notified of the decision, which may be appealed to the Board of Veterans' Appeals (see 38 CFR part 20) if it results in a loss of per diem payments to the State. VA will terminate recognition and certification and discontinue per diem payments for care provided on and after the date of the Under Secretary for Health's decision affirming a denial of certification or on a later date that must be specified by the Under Secretary for Health.

(f) *Other appeals.* Appeals of matters not addressed in this section will be governed by 38 CFR part 20.

(Authority: 38 U.S.C. 501, 511, 1741–1743, 7104, 7105).

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–XXXX)

§ 51.31 Surveys for recognition and/or certification.

(a) *General.* Both before and after a home is recognized and certified, VA may survey the home as necessary to determine whether it complies with applicable regulations. VA will provide advance notice before a recognition survey, but advance notice is not required before other surveys. A survey, as necessary, may cover all parts of the home or only certain parts, and may include review, audit, and production of any records that have a bearing on compliance with the requirements of this part (including any reports from state or local entities), as well as the completion and submission to VA of all required forms. The Director will designate the VA officials and/or contractors to survey the home.

(b) *Recognition surveys.* VA will not conduct a recognition survey unless the following minimum requirements are met:

(1) For nursing homes and domiciliaries, the home has at least 21 residents or has a number of residents consisting of at least 50 percent of the resident capacity of the home;

(2) For adult day health care programs of care, the program has at least 10 participants or has a number of participants consisting of at least 50 percent of participant capacity of the program.

(c) *Threats to public, resident, or participant safety.* If VA identifies a condition at the home that poses an immediate threat to public, resident or participant safety, or other information indicating the existence of such a threat, the Director of the VA medical center of jurisdiction will immediately report this to the VA Network Director (10N1–22); the Assistant Deputy Under Secretary for Health (10N); the Office of Geriatrics and Extended Care in VA Central Office; and the State official authorized to oversee operations of the home.

(Authority: 38 U.S.C. 501, 1741, 1742)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–XXXX)

§ 51.32 Terminating recognition.

Once a home has achieved recognition, the recognition will be terminated only if the State requests that the recognition be terminated or VA makes a final decision that affirms the Director's decision not to certify the State home.

(Authority: 38 U.S.C. 501, 1742)

Subpart C—Eligibility, Rates, and Payments

§ 51.40 Basic per diem rates.

(a) *Basic rate.* Except as provided in § 51.41, VA will pay per diem for care provided to an eligible veteran at a State home at the lesser of the following rates:

(1) One-half of the daily cost of the care for each day the veteran is in the State home, as calculated under paragraph (b) of this section.

(2) The basic per diem rate for each day the veteran is in the State home. The basic per diem rate is established by VA for each fiscal year in accordance with 38 U.S.C. 1741(a) and (c).

Note: To determine the number of days that a veteran was in a State home, see paragraph (c) of this section.

(b) *How to calculate the daily cost of a veteran's care.* The daily cost of care consists of those direct and indirect costs attributable to care at the State home, divided by the total number of residents serviced by the program of care. Relevant cost principles are set forth in the Office of Management and Budget (OMB) Circular number A–87, dated May 10, 2004, ''Cost Principles for State, Local, and Indian Tribal Governments.'' (OMB Circulars are available at the addresses in 5 CFR 1310.3.)

(c) *Determining whether a veteran spent a day receiving nursing home and domiciliary care.* Per diem will be paid for each day that the veteran is receiving nursing home or domiciliary care and has an overnight stay. Per diem also will be paid for a day when there is no overnight stay if the State home has an occupancy rate of 90 percent or greater on that day. However, these payments will be made only for the first 10 consecutive days during which the veteran is admitted as a patient for any stay in a VA or other hospital (a hospital stay could occur more than once in a calendar year) and only for the first 12 days in a calendar year during which the veteran is absent for purposes other than receiving hospital care. Occupancy rate is calculated by dividing the total number of residents (including nonveterans) in the nursing home or domiciliary on that day by the total recognized nursing home or domiciliary beds in that State home.

(d) *Determining whether a Veteran spent a day receiving adult day health care.* Per diem will be paid only for a day of adult day health care. For purposes of this section a day of adult day health care means:

(1) Six hours or more in one calendar day in which a veteran receives adult day health care; or

(2) Any two periods of at least 3 hours each but less than 6 hours each in any 2 calendar days in the same calendar month in which the veteran receives adult day health care.

(3) Time during which the State home provides transportation between the veteran's residence and the State home or to a health care visit, or provides staff to accompany a veteran during transportation or a health care visit, will be included as time the veteran receives adult day health care.

(Authority: 38 U.S.C. 501, 1710, 1741–1744)

§ 51.42 Payment procedures.

(a) *Forms required*—(1) *Forms required at time of admission or enrollment.* As a condition for receiving payment of per diem under this part, the State home must submit the forms identified in paragraphs (i) through (ii) of this paragraph to the VA medical center of jurisdiction for each veteran at the time of the veteran's admission or enrollment (or, if the home is not a recognized State home, the home must, after recognition, submit forms for Veterans who received care on and after the date of the completion of the VA survey that provided the basis for determining that the home met the standards of this part), and with any request for a change in the type of per diem paid on behalf of a veteran as a result of a change in the veteran's program of care or a change in the veteran's service-connected disability rating that makes the veteran's care eligible for payment under § 51.41. Copies of VA Forms can be obtained from any VA Medical Center and are available on our Web site at *www.va.gov/vaforms.* The required forms are:

(i) A completed VA Form 10–10EZ, Application for Medical Benefits (or VA Form 10–10EZR, Health Benefits Renewal Form, if a completed Form 10–10EZ is already on file at VA). *Note:* Domiciliary applicants and residents must complete the financial disclosure sections of VA Forms 1010–EZ and 10–10EZR, and adult day health care applicants may be required to complete the financial disclosure sections of these forms in order to enroll with VA; however, State homes should not require nursing home applicants or residents or adult day health care participants to complete the financial disclosure sections of VA Forms 10–10EZ and 10–10EZR as long as these veterans sign the form, thereby indicating knowledge of, and willingness to pay, any applicable co-pays for the treatment of nonservice-connected conditions by VA.

(ii) A completed VA Form 10–10SH, State Home Program Application for Care—Medical Certification.

(2) *Form required for monthly payments.* Except as provided in (b)(1) and (b)(2), VA pays per diem on a monthly basis for care provided during the prior month. To receive payment, the State must submit each month to the VA a completed, VA Form 10–5588, State Home Report and Statement of Federal Aid Claimed.

(b) *Commencement of payments*—(1) *Per diem payments for a newly-recognized State home.* No per diem payments will be made until VA recognizes the home and each veteran resident for whom VA pays per diem is verified as being eligible; however, per diem payments will be made retroactively for care that was provided on and after the date of the completion of the VA survey that provided the basis for determining that the home met the standards of this part.

(2) *Per diem payments for beds certified or precertified under § 51.30(c).* Per diem will be paid for the care of veterans in beds precertified in accordance with § 51.30(c) retroactive to the date of precertification. Per diem will be paid for the care of veterans in beds certified in accordance with § 51.30(c) retroactive to the date of the completion of the survey if the Director certifies the beds as a result of that survey.

(3) *Payments for eligible veterans.* When a State home admits or enrolls an eligible veteran, VA will pay per diem under this part from the date of receipt of the completed forms required by this section, except that VA will pay per diem from the day on which the veteran was admitted or enrolled if the Director receives the completed forms within 12 days of the date of admission or enrollment. VA will make retroactive payments of per diem under paragraphs (b)(1) and (b)(2) only if the Director receives the completed forms that must be submitted under this section.

(Authority: 38 U.S.C. 510, 1741, 1743)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–XXXX.)

§ 51.43 Drugs and medicines for certain veterans.

(a) In addition to the per diem payments under § 51.40 of this part, the Secretary will furnish drugs and medicines to a State home as may be ordered by prescription of a duly licensed physician as specific therapy in the treatment of illness or injury for a veteran receiving nursing home care in a State home, if:

(1) The veteran:

(i) Has a singular or combined rating of less than 50 percent based on one or more service-connected disabilities and is in need of such drugs and medicines for a service-connected disability; and

(ii) Is in need of nursing home care for reasons that do not include care for a VA adjudicated service-connected disability, or

(2) The veteran:

(i) Has a singular or combined rating of 50 or 60 percent based on one or more service-connected disabilities and is in need of such drugs and medicines; and

(ii) Is in need of nursing home care for reasons that do not include care for a VA adjudicated service-connected disability.

(b) VA will also furnish drugs and medicines to a State home for a veteran receiving nursing home, domiciliary and adult day health care in a State home pursuant to 38 U.S.C. 1712(d), as implemented by § 17.96 of this chapter, subject to the limitation in § 51.41(c)(2).

(c) VA may furnish a drug or medicine under paragraph (a) of this section and under § 17.96 of this chapter only if the drug or medicine is included on VA's National Formulary, unless VA determines a non-Formulary drug or medicine is medically necessary.

(d) VA may furnish a drug or medicine under this section and § 17.96 of this chapter by having the drug or medicine delivered to the State home in which the veteran resides by mail or other means and packaged in a form that is mutually acceptable to the State home and VA set forth in a written agreement.

(e) As a condition for receiving drugs or medicine under this section or under § 17.96 of this chapter, the State must submit to the VA medical center of jurisdiction a completed VA Form 10–0460 for each eligible veteran. The corresponding prescriptions also should be submitted to the VA medical center of jurisdiction.

(Authority: 38 U.S.C. 501, 1712, 1745)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–XXXX.)

§ 51.50 Eligible veterans-nursing home care.

A veteran is an eligible veteran for the purposes of payment of per diem for nursing home care under this part if VA determines that the veteran needs nursing home care; is not barred from receiving care based on his or her service (see 38 U.S.C. 5303–5303A), is

not barred from receiving VA pension, compensation or dependency and indemnity compensation based on the character of a discharge from military service (see 38 CFR 3.12) and is within one of the following categories:

(a) Veterans with service-connected disabilities;

(b) Veterans who are former prisoners of war, who were awarded the Purple Heart, or who were awarded the medal of honor under 10 U.S.C. 3741, 6241, or 8741 or 14 U.S.C. 491;

(c) Veterans who were discharged or released from active military service for a disability incurred or aggravated in the line of duty;

(d) Veterans who receive disability compensation under 38 U.S.C. 1151;

(e) Veterans whose entitlement to disability compensation is suspended because of the receipt of retired pay;

(f) Veterans whose entitlement to disability compensation is suspended pursuant to 38 U.S.C. 1151, but only to the extent that such veterans' continuing eligibility for nursing home care is provided for in the judgment or settlement described in 38 U.S.C. 1151;

(g) Veterans who VA determines are unable to defray the expenses of necessary care as specified under 38 U.S.C. 1722(a);

(h) Veterans solely seeking care for a disorder associated with exposure to a toxic substance or radiation, for a disorder associated with service in the Southwest Asia theater of operations during the Persian Gulf War, as provided in 38 U.S.C. 1710(e), or for any illness associated with service in combat in a war after the Gulf War or during a period of hostility after November 11, 1998, as provided and limited in 38 U.S.C. 1710(e);

(i) Veterans who agree to pay to the United States the applicable co-payment determined under 38 U.S.C. 1710(f) and 1710(g).

Note: Neither enrollment in the VA healthcare system nor eligibility to enroll is required to be an eligible veteran for the purposes of payment of per diem for nursing home care.

(Authority: 38 U.S.C. 501, 1710, 1741–1743)

§ 51.51 Eligible veterans-domiciliary care.

(a) A veteran is an eligible veteran for the purposes of payment of per diem for domiciliary care in a State home under this part if VA determines that the veteran is not barred from receiving care based on his or her service (see 38 U.S.C. 5303–5303A), is not barred from receiving VA pension, compensation or dependency and indemnity compensation based on the character of a discharge from military service (see 38 CFR 3.12), and the veteran is:

(1) A veteran whose annual income does not exceed the maximum annual rate of pension payable to a veteran in need of regular aid and attendance; or

(2) A veteran who VA determines has no adequate means of support. The phrase no adequate means of support refers to an applicant for domiciliary care whose annual income exceeds the rate of pension described in paragraph (1), but who is able to demonstrate to competent VA medical authority, on the basis of objective evidence, that deficits in health and/or functional status render the applicant incapable of pursuing substantially gainful employment, as determined by the Chief of Staff of the VA medical center of jurisdiction, and who is otherwise without the means to provide adequately for self, or be provided for in the community.

(b) For purposes of this section, the eligible veteran must be able to perform the following:

(1) Daily ablutions, such as brushing teeth; bathing; combing hair; body eliminations, without assistance.

(2) Dress self, with a minimum of assistance.

(3) Proceed to and return from the dining hall without aid.

(4) Feed self.

(5) Secure medical attention on an ambulatory basis or by use of personally propelled wheelchair.

(6) Have voluntary control over body eliminations or control by use of an appropriate prosthesis.

(7) Share in some measure, however slight, in the maintenance and operation of the State home.

(8) Make rational and competent decisions as to his or her desire to remain or leave the State home.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.52 Eligible veterans-adult day health care.

A veteran is an eligible veteran for payment of per diem to a State for adult day health care if VA determines that the veteran

(a) Is not barred from receiving VA pension, compensation or dependency and indemnity compensation based on the character of a discharge from military service (see 38 CFR 3.12)

(b) Is enrolled in the VA health care system,

(c) Would otherwise require nursing home care;

and

(d) Needs adult day health care because the veteran meets any one of the following conditions:

(1) The veteran has three or more Activities of Daily Living (ADL) dependencies.

(2) The veteran has significant cognitive impairment.

(3) The veteran has two ADL dependencies and two or more of the following conditions:

(i) Seventy-five years old or older;

(ii) High use of medical services, *i.e.,* three or more hospitalizations per calendar year, or twelve or more visits to outpatient clinics and emergency evaluation units per calendar year;

(iii) Diagnosis of clinical depression; or

(iv) Living alone in the community.

(4) The veteran does not meet the criteria in paragraphs (d)(1), (d)(2), or (d)(3) of this section, but nevertheless is determined by a VA licensed medical practitioner to need adult day health care services.

(Authority: 38 U.S.C. 501, 1720(f), 1741–1743)

§ 51.58 Standards applicable for payment of per diem.

A State home must meet the standards in the applicable subpart to be recognized, certified, and receive per diem for that program of care:

(a) For nursing home care, subpart D.

(b) For domiciliary care, subpart E.

(c) For adult day health care, subpart F.

(Authority: 38 U.S.C. 501)

§ 51.59 Authority to continue payment of per diem when veterans are relocated due to emergency.

(a) *Definition of emergency.* For the purposes of this section, emergency means an occasion or instance where all of the following are true:

(1) It would be unsafe for veterans receiving care at a State home to remain in that home.

(2) The State is not, or believes that it will not be, able to provide care in the State home on a temporary or long-term basis for any or all of its veteran residents due to a situation involving the State home, and not due to a situation where a particular veteran's medical condition requires that the veteran be transferred to another facility, such as for a period of hospitalization.

(3) The State determines that the veterans must be evacuated to another facility or facilities.

(b) *General authority to pay per diem during relocation period.* Notwithstanding any other provision of this part, VA will continue to pay per diem for a period not to exceed 30 days for any eligible veteran who resided in a State home, and for whom VA was paying per diem, if such veteran is evacuated during an emergency into a facility other than a VA nursing home,

hospital, domiciliary, or other VA site of care if the State is responsible for providing or paying for the care. VA will not pay per diem payments under this section for more than 30 days of care provided in the evacuation facility, unless the official who approved the emergency response under paragraph (e) of this section determines that it is not reasonably possible to return the veteran to a State home within the 30-day period, in which case such official will approve additional period(s) of no more than 30 days in accordance with this section. VA will not provide per diem if VA determines that a veteran is or has been placed in a facility that does not meet the standards set forth in paragraph (c)(1) of this section, and VA may recover all per diem payments made for the care of the veteran in that facility.

(c) *Selection of evacuation facilities.* The following standards and procedures apply to the selection of an evacuation facility in order for VA to continue to pay per diem during an emergency; these standards and procedures also apply to evacuation facilities when veterans are evacuated from a nursing home in which care is being provided pursuant to a contract under 38 U.S.C. 1720.

(1) Each veteran who is evacuated must be placed in a facility that, at a minimum, will meet the needs for food, shelter, toileting, and essential medical care of that veteran.

(2) For veterans evacuated from nursing homes, the following types of facilities may meet the standards under paragraph (c)(1) of this section:

(i) VA Community Living Centers;

(ii) VA contract nursing homes;

(iii) Centers for Medicare and Medicaid Services certified facilities; and

(iv) Licensed nursing homes.

Note to paragraph (c)(2): If none of the above options are available, veterans may be evacuated temporarily to other facilities that meet the standards under paragraph (c)(1) of this section.

(3) For veterans evacuated from domiciliaries, the following types of facilities may meet the standards in paragraph (c)(1) of this section:

(i) Emergency evacuation facilities identified by the city or State;

(ii) Assisted living facilities; and

(iii) Hotels.

(d) *Applicability to adult day health care programs of care.* Notwithstanding any other provision of this part, VA will continue to pay per diem for a period not to exceed 30 days for any eligible veteran who was receiving adult day health care, and for whom VA was paying per diem, if the adult day health care facility becomes temporarily unavailable due to an emergency. Approval of a temporary program of care for such veteran is subject to paragraph (e) of this section. If after 30 days the veteran cannot return to the adult day health care program in the State home, VA will discontinue per diem payments unless the official who approved the emergency response under paragraph (e) of this section determines that it is not reasonably possible to provide care in the State home or to relocate an eligible veteran to a different recognized or certified facility, in which case such official will approve additional period(s) of no more than 30 days at the temporary program of care in accordance with this section. VA will not provide per diem if VA determines that a veteran was provided adult day health care in a facility that does not meet the standards set forth in paragraph (c)(1) of this section, and VA may recover all per diem payments made for the care of the veteran in that facility.

(e) *Approval of response.* Per diem payments will not be made under this section unless and until the Director of the VA medical center of jurisdiction determines, or the director of the VISN in which the State home is located (if the VAMC Director is not capable of doing so) determines, that an emergency exists and that the evacuation facility meets VA standards set forth in paragraph (c)(1) of this section.

(Authority 38 U.S.C. 501, 1720, 1742)

■ 4. Amend the heading of Subpart D, part 51, to read as follows:

Subpart D—Standards applicable to the payment of per diem for nursing home care.

§ 51.120 [Amended]

■ 5. Amend § 51.120(a)(3) by replacing ''Chief Consultant, Office of Geriatrics and Extended Care (114)'' with ''Office of Geriatrics and Extended Care in VA Central Office.''

§ 51.140 [Amended]

■ 6. Amend § 51.140(d)(4) by removing ''who refuse food served''.

■ 7. Amend § 51.210 by:

■ a. In paragraph (b), replacing ''Chief Consultant, Office of Geriatrics and Extended Care (114)'' with ''Office of Geriatrics and Extended Care''.

■ b. Revising paragraph (b)(2), redesignating (b)(3) as (b)(4), and adding new paragraphs (b)(3) and (h)(3), to read as follows:

§ 51.210 Administration.

* * * * *

(b) * * *

(2) The State home administrator;

(3) The director of nursing services (or other individual in charge of nursing services); and

(4) The State employee responsible for oversight of the State home if a contractor operates the State home.

* * * * *

(h)(3) If a veteran requires health care that the State home is not required to provide under this part, the State home may assist the veteran in obtaining that care from sources outside the State home, including the Veterans Health Administration. If VA is contacted about providing such care, VA will determine the best option for obtaining the needed services and will notify the veteran or the authorized representative of the veteran.

* * * * *

■ 8. Amend part 51 by adding subparts E and F, to read as follows:

Subpart E—Standards Applicable to the Payment of Per Diem for Domiciliary Care

Sec

51.300 Resident rights and behavior; State home practices; quality of life
51.310 Resident assessment
51.320 Quality of care
51.330 Nursing care
51.340 Physician and other licensed medical practitioner services
51.350 Provision of certain specialized services and environmental requirements
51.390 Administration

Subpart F—Standards Applicable to Adult Day Health Care Programs of Care

51.400 Participant rights
51.405 Participant and family caregiver responsibilities
51.410 *Transfer and discharge*
51.411 Program practices
51.415 Restraints, abuse, and staff treatment of participants
51.420 Quality of life
51.425 Physician orders and participant medical assessment
51.430 Quality of care
51.435 Nursing services
51.440 Dietary services
51.445 Physician services
51.450 Specialized rehabilitative services
51.455 Dentist
51.460 Administration of drugs
51.465 Infection control
51.470 Physical environment
51.475 Administration
51.480 Transportation

Subpart E—Standards Applicable to the Payment of Per Diem for Domiciliary Care

§ 51.300 Resident rights and behavior; state home practices; quality of life.

The State home must protect and promote the rights and quality of life of each resident receiving domiciliary care, and otherwise comply with the

requirements set forth in §§ 51.70, 51.80, 51.90, and 51.100. For purposes of this section, the references in the cited sections to nursing home and nursing facility refer to a domiciliary.

(Authority: 38 U.S.C. 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–XXXX.)

§ 51.310 Resident assessment.

The State home must conduct a comprehensive, accurate, and written assessment of each resident's medical and functional capacity upon admission, annually, and as required by a change in the resident's condition.

(a) *Admission orders.* At the time each resident is admitted, the State home must have physician orders for the resident's immediate care and a medical assessment, including a medical history and physical examination, within a time frame appropriate to the resident's condition, not to exceed 72 hours after admission, except when the required physical examination was performed within five days before admission and the findings were recorded in the medical record on admission, in which case the physician orders may be submitted when available.

(b) *Use.* The State home must use the results of the assessment to develop, review, and revise the resident's treatment plan.

(c) *Coordination of assessments.* Each assessment must be conducted or coordinated by a registered nurse with the appropriate participation of health professionals, including at least one physician, the registered nurse, and one social worker. The registered nurse must sign and certify the assessment.

(d) *Treatment plans.* (1) The State home must develop a treatment plan for each resident that includes measurable objectives and timetables to address a resident's physical, mental, and psychosocial needs that are identified in the written assessment. The treatment plan must describe the following:

(i) The services that are to be furnished to support the resident's highest practicable physical, mental, and psychosocial well-being as required under § 51.350; and

(ii) Any services that would otherwise be required under § 51.350 but are not provided due to the resident's exercise of rights under § 51.300, including the right to refuse treatment.

(2) A treatment plan must be:

(i) Developed within 7 calendar days after completion of the comprehensive assessment;

(ii) Prepared by health professionals, that include the primary physician, a social worker, and a registered nurse who have responsibility for the resident, and other appropriate staff in disciplines as determined by the resident's needs, and, to the extent practicable, the participation of the resident and the resident's family (subject to the consent of the resident) or the resident's legal representative, if appropriate; and

(iii) Periodically reviewed and revised by a team of qualified persons after each assessment.

(3) The services provided by the facility must—

(i) Meet professional standards of quality; and

(ii) Be provided by qualified persons in accordance with each resident's written treatment plan.

(e) *Discharge summary.* Prior to discharging a resident, the State home must prepare a discharge summary that includes—

(1) A recapitulation of the resident's stay;

(2) A summary of the resident's status at the time of the discharge to include a summary of the resident's progress on the treatment plan in paragraph (d)(2) of this section; and

(3) A post-discharge plan of care that is developed with the participation of the resident and, to the extent practicable and appropriate, his or her family, (subject to the consent of the resident) and legal representative, which will assist the resident to adjust to his or her new living environment.

(Authority: 38 U.S.C. 501, 1720(f), 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–XXXX.)

§ 51.320 Quality of care.

The State home must provide each resident with the care described in this subpart in accordance with the assessment and plan of care.

(a) *Reporting of sentinel events.* (1) A sentinel event is an adverse event that results in the loss of life or limb or permanent loss of function.

(2) Examples of sentinel events are as follows:

(i) Any resident death, paralysis, coma or other major permanent loss of function associated with a medication error; or

(ii) Any suicide of a resident; or

(iii) Assault, homicide or other crime resulting in resident death or major permanent loss of function; or

(iv) A resident fall that results in death or major permanent loss of function as a direct result of the injuries sustained in the fall.

(3) The State home must report sentinel events to the Director within 24 hours of identification. The VA medical center of jurisdiction must report sentinel events by notifying the VA Network Director (10N1–10N22) and the Director, Office of Geriatrics and Extended Care—Operations (10NC4) within 24 hours of notification.

(4) The State home must establish a mechanism to review and analyze a sentinel event resulting in a written report to be submitted to the VA Medical Center of jurisdiction no later than 10 working days following the event. The purpose of the review and analysis of a sentinel event is to prevent injuries to residents, visitors, and personnel, and to manage those injuries that do occur and to minimize the negative consequences to the injured individuals and the State home.

(b) *Activities of daily living.* Based on the comprehensive assessment of a resident, the State home must ensure that a resident's abilities in activities of daily living do not diminish unless circumstances of the individual's clinical condition demonstrate that diminution was unavoidable, and the resident is given appropriate treatment and services to maintain or improve his activities of daily living. This includes the resident's ability to:

(1) Bathe, dress, and groom;

(2) Transfer and ambulate;

(3) Toilet;

(4) Eat; and

(5) Talk or otherwise communicate.

(c) *Vision and hearing.* To ensure that residents receive proper treatment and assistive devices to maintain vision and hearing abilities, the State home must, if necessary, assist the resident:

(1) In making appointments, and

(2) By arranging for transportation to and from the office of a practitioner specializing in the treatment of vision or hearing impairment or the office of a professional specializing in the provision of vision or hearing assistive devices.

(d) *Mental and Psychosocial functioning.* Based on the comprehensive assessment of a resident, the State home must assist a resident who displays mental or psychosocial adjustment difficulty, obtain appropriate treatment and services to correct the assessed problem.

(e) *Accidents.* The State home must ensure that:

(1) The resident environment remains as free of accident hazards as possible; and

(2) Each resident receives adequate supervision and assistance devices to prevent accidents.

(f) *Nutrition.* The State home must follow § 51.120(j) regarding nutrition in providing domiciliary care.

(g) *Special needs.* The State home must provide residents with the following services, if needed:

(1) Injections;

(2) Colostomy, ureterostomy, or ileostomy care;

(3) Respiratory care;

(4) Foot care; and

(5) Non-customized or non-individualized prosthetic devices.

(h) *Unnecessary drugs.* The State home must ensure that the standards set forth in § 51.120(m) regarding unnecessary drugs are followed in providing domiciliary care.

(i) *Medication Errors.* The State home must ensure that the standards set forth in § 51.120(n) regarding medication errors are followed in providing domiciliary care.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–XXXX.)

§ 51.330 Nursing care.

The State home must provide an organized nursing service with a sufficient number of qualified nursing personnel to meet the total nursing care needs, as determined by the resident assessment and individualized treatment plans, of all residents within the facility, 24 hours a day, 7 days a week.

(a) The nursing service must be under the direction of a full-time registered nurse who is currently licensed by the State and has, in writing, administrative authority, responsibility, and accountability for the functions, activities, and training of the nursing service's staff.

(b) The director of nursing service must designate a licensed nurse as the supervising nurse for each tour of duty.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.340 Physician and other licensed medical practitioner services.

The State home must provide the necessary primary care for its residents to permit them to attain or maintain the highest practicable physical, mental, and psychosocial well-being. When a resident needs care other than what the State home is required to provide under this subpart, the State home is responsible for assisting the resident in obtaining that care. The State home must ensure that a physician personally approves in writing a recommendation that an individual be admitted to a domiciliary. Each resident must remain at all times under the care of a licensed medical practitioner assigned by the State home. The name of the practitioner will be listed in the resident's medical record. The State home must ensure that all of the following conditions are met:

(a) *Supervision of medical practitioners.* Any licensed medical practitioner who is not a physician may provide medical care to a resident within the practitioner's scope of practice without physician supervision when permitted by state law.

(b) *Availability of medical practitioners.* If the resident's assigned licensed medical practitioner is unavailable, another licensed medical practitioner must be available to provide care for that resident.

(c) *Visits.* The primary care physician or other licensed medical practitioner, for each visit required by paragraph (d) of this section, must—

(1) Review the resident's total program of care, including medications and treatments;

(2) Write, sign, and date progress notes; and

(3) Sign and date all orders.

(d) *Frequency of visits.* The resident must be seen by the primary care physician or other licensed medical practitioner at least once every 30 days for the first 90 days after admission, and at least once a calendar year thereafter, or more frequently based on the condition of the resident.

(e) *Availability of emergency care.* The State home must assist residents in obtaining emergency care.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

§ 51.350 Provision of certain specialized services and environmental requirements.

The State home must comply with the requirements, set forth in §§ 51.140, 51.170, 51.180, 51.190, and 51.200 concerning dietary, dental, pharmacy services, infection control, and physical environment. For purposes of this section, the references in the cited sections to nursing home and nursing facility refer to a domiciliary.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–XXXX.)

§ 51.390 Administration.

The State home must follow § 51.210 regarding administration in providing domiciliary care. For purposes of this section, the references in the cited section to nursing home and nursing home care refer to a domiciliary and domiciliary care.

(Authority: 38 U.S.C. 101, 501, 1710, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–XXXX.)

Subpart F—Standards Applicable to Adult Day Health Care Programs of Care

§ 51.400 Participant rights.

The State home must protect and promote the rights of a participant in an adult day health care program, including the rights set forth in § 51.70, except for the right set forth in § 51.70(m). For purposes of this section, the references in the cited section to resident refer to a participant.

(Authority: 38 U.S.C. 501)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0160.)

§ 51.405 Participant and family caregiver responsibilities.

The State home must post in a place where participants in the adult day health care program and their families will see it a written statement of participant and family caregiver responsibilities and must provide a copy to the participant and caregiver at or before the time of the intake screening. The statement of responsibilities must include the following responsibilities:

(a) Treat personnel with respect and courtesy;

(b) Communicate with staff to develop a relationship of trust;

(c) Make appropriate choices and seek appropriate care;

(d) Ask questions and confirm your understanding of instructions;

(e) Share opinions, concerns, and complaints with the program director;

(f) Communicate any changes in the participant's condition;

(g) Communicate to the program director about medications and remedies used by the participant;

(h) Let the program director know if the participant decides not to follow any instructions or treatment; and

(i) Communicate with the adult day health care staff if the participant is unable to attend adult day health care.

(Authority: 38 U.S.C. 501)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0160)

§ 51.410 Transfer and discharge.

(a) *Definition.* For purposes of this section, the term ''transfer and discharge'' includes movement of a participant to a program outside of the adult day health care program whether or not that program of care is in the same facility.

(b) *Transfer and discharge requirements.* The possible reasons for transfer and discharge must be discussed with the participant and, to the extent practicable and appropriate, with family members (subject to the consent of the participant) and legal representatives at the time of intake screening. In the case of a transfer and discharge to a hospital, the transfer and discharge must be to the hospital closest to the adult day health care facility that is capable of providing the necessary care. The State home must permit each participant to remain in the program of care, and not transfer or discharge the participant from the program of care unless:

(1) The transfer and discharge is necessary for the participant's welfare and the participant's needs cannot be met in the adult day health care setting;

(2) The transfer and discharge is appropriate because the participant's health has improved sufficiently so the participant no longer needs the services provided in the adult day health care program;

(3) The safety of individuals in the facility is endangered;

(4) The health of individuals in the facility would otherwise be endangered;

(5) The participant has failed, after reasonable and appropriate notice, to pay for participation in adult day health care; or

(6) The adult day health care program of care ceases to operate.

(c) *Notice before transfer.* Before an adult day health care program undertakes the transfer and discharge of a participant, the State home must:

(1) Notify the participant or the legal representative of the participant and, if appropriate, a family member, of the transfer and discharge and the reasons for the move in writing and in a language and manner they can understand;

(2) Record the reasons in the participant's clinical record; and

(3) Include in the notice the items described in paragraph (e) of this section.

(d) *Timing of the notice.* (1) The notice of transfer and discharge required under paragraph (c) of this section must be made by the State home at least 30 days before the participant is given a transfer and discharge, except when specified in paragraph (d)(2) of this section.

(2) Notice may be made as soon as practicable before a transfer and discharge when—

(i) The safety of individuals in the facility would be endangered;

(ii) The health of individuals in the facility would be otherwise endangered;

(iii) The participant's health improves sufficiently so the participant no longer needs the services provided by the adult day health care program of care; or

(iv) The resident's needs cannot be met in the adult day health care program of care.

(e) *Contents of the notice.* The written notice specified in paragraph (c) of this section must include the following:

(1) The reason for the transfer and discharge;

(2) The effective date of the transfer and discharge;

(3) The location to which the participant is taken in accordance with the transfer and discharge, if any;

(4) A statement that the participant has the right to appeal the action to the State official responsible for the oversight of State Veterans Home programs; and

(5) The name, address and telephone number of the State long-term care ombudsman.

(f) *Orientation for transfer and discharge.* The State home must provide sufficient preparation and orientation to participants to ensure safe and orderly transfer and discharge from the State home.

(g) *Written policy.* The State home must have in effect a written transfer and discharge procedure that reasonably ensures that:

(1) Participants will be given a transfer and discharge from the adult day health care program to the hospital, and ensured of timely admission to the hospital when transfer and discharge is medically appropriate as determined by a physician; and

(2) Medical and other information needed for care and treatment of participants will be exchanged between the facility and the hospital.

(Authority: 38 U.S.C. 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0160)

§ 51.411 Program practices.

(a) *Equal access to quality care.* The State home must establish and maintain identical policies and practices regarding transfer and discharge under § 51.410 and the provision of services for all participants regardless of the source of payment.

(b) *Admission policy.* The State home must not require a third-party guarantee of payment as a condition of admission or expedited admission, or continued admission in the program of care. However, the State home may require a participant or an individual who has legal access to a participant's income or resources to pay for the care from the participant's income or resources, when available.

(c) *Hours of operation.* Each adult day health care program of care must provide at least 8 hours of operation 5 days a week. The hours of operation must be flexible and responsive to caregiver needs.

(Authority: 38 U.S.C. 501, 1741–1743)

§ 51.415 Restraints, abuse, and staff treatment of participants.

The State home must meet the requirements regarding the use of restraints, abuse, and other matters concerning staff treatment of participants set forth in § 51.90. For purposes of this section, the references in the cited section to resident refer to a participant.

(Authority: 38 U.S.C. 501)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–XXXX.)

§ 51.420 Quality of life.

The State home must provide an environment that supports the quality of life of each participant by maximizing the participant's potential strengths and skills.

(a) *Dignity.* The State home must promote care for participants in a manner and in an environment that maintains or enhances each participant's dignity and respect in full recognition of his or her individuality.

(b) *Self-determination and participation.* The State home must ensure that the participant has the right to—

(1) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;

(2) Interact with members of the community both inside and outside the facility; and

(3) Make choices about aspects of his or her life in the facility that are significant to the participant.

(c) *Participant and family concerns.* The State home must document any concerns submitted to the management of the program by participants or family members.

(1) A participant's family has the right to meet with families of other participants in the program.

(2) Staff or visitors may attend meetings of participant or family groups at the group's invitation.

(3) The State home must respond to written requests that result from group meetings.

(4) The State home must listen to the views of any participant or family group and act upon the concerns of participants and families regarding policy and operational decisions affecting participant care in the program.

(d) *Participation in other activities.* The State home must ensure that a participant has the right to participate in social, religious, and community activities that do not interfere with the rights of other participants in the program.

(e) *Therapeutic participant activities.* (1) The State home must provide for an ongoing program of activities designed to meet, in accordance with the comprehensive assessment, the interests and the physical, mental, and psychosocial well-being of each participant.

(2) The activities program must be directed by a qualified professional who is a qualified therapeutic recreation specialist or an activities professional who:

(i) Is licensed, if applicable, by the State in which practicing; and

(ii) Is certified as a therapeutic recreation specialist or an activities professional by a recognized certifying body.

(3) A critical role of adult day health care is to build relationships and create a culture that supports, involves, and validates the participant. Therapeutic activity refers to that supportive culture and is a significant aspect of the individualized plan of care. A participant's activity includes everything the individual experiences during the day, not just arranged events. As part of effective therapeutic activity, the adult day health care program of care must:

(i) Provide direction and support for participants, including breaking down activities into small, discrete steps or behaviors, if needed by a participant;

(ii) Have alternative programming available for any participant unable or unwilling to take part in group activity;

(iii) Design activities that promote personal growth and enhance the self-image and/or improve or maintain the functioning level of participants to the extent possible;

(iv) Provide opportunities for a variety of involvement (social, intellectual, cultural, economic, emotional, physical, and spiritual) at different levels, including community activities and events;

(v) Emphasize participants' strengths and abilities rather than impairments and contribute to participants' feelings of competence and accomplishment; and

(vi) Provide opportunities to voluntarily perform services for community groups and organizations.

(f) *Social services.* (1) The State home must provide medically-related social services to participants and their families.

(2) An adult day health care program of care must provide a qualified social worker to furnish social services.

(3) Qualifications of social worker. A qualified social worker is an individual with:

(i) A bachelor's degree in social work from a school accredited by the Council of Social Work Education (*Note:* A master's degree social worker with experience in long-term care is preferred);

(ii) A social work license from the State in which the State home is located, if that license is offered by the State; and

(iii) A minimum of one year of supervised social work experience in a health care setting working directly with individuals.

(4) The State home must have sufficient social workers and support staff to meet participant and family social services needs. The adult day health care program of care must:

(i) Provide counseling to participants and families/caregivers;

(ii) Facilitate the participant's adaptation to the adult day health care program of care and active involvement in the plan of care, if appropriate;

(iii) Arrange for services not provided by adult day health care and work with these resources to coordinate services;

(iv) Serve as an advocate for participants by asserting and safeguarding the human and civil rights of the participants;

(v) Assess signs of mental illness and/or dementia and make appropriate referrals;

(vi) Provide information and referral for persons not appropriate for adult day health care;

(vii) Provide family conferences and serve as liaison between participant, family/caregiver and program staff;

(viii) Provide individual or group counseling and support to caregivers and participants;

(ix) Conduct support groups or facilitate participant or family/caregiver participation in support groups;

(x) Assist program staff in adapting to changes in participants' behavior; and

(xi) Provide or arrange for individual, group, or family psychotherapy for participants with significant psychosocial needs.

(5) Space for social services must be adequate to ensure privacy for interviews.

(g) *Environment.* The State home must provide:

(1) A safe, clean, comfortable, and homelike environment, and support the participants' ability to function as independently as possible and to engage in program activities;

(2) Housekeeping and maintenance services necessary to maintain a sanitary, orderly, and comfortable interior;

(3) Private storage space that can be secured with a lock for each participant sufficient for a change of clothes;

(4) Interior signs to facilitate participants' ability to move about the facility independently and safely;

(5) A clean bed or reclining chair available for acute illness;

(6) A shower for residents;

(7) Adequate and comfortable lighting levels in all areas;

(8) Comfortable and safe temperature levels; and

(9) Comfortable sound levels.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0160.)

§ 51.425 Physician orders and participant medical assessment.

(a) *Admission.* At the time of admission, the State home must have physician orders for the participant's immediate care and a medical assessment including a medical history and physical examination (with documentation of TB screening) completed no earlier than 30 days before admission.

(b) *Assessments.* On the participant's first visit, the State home must ensure that the participant has an individualized care plan that meets the requirements of paragraph (d) of this section. Additional assessments must be conducted annually, as well as promptly after every significant change in the participant's physical, mental, or social condition. The State home must immediately change the participant's

care plan when warranted by an assessment. Assessments must meet the other applicable criteria of this section, and the written assessment must address the following:

(1) Ability to ambulate,

(2) Ability to use bathroom facilities,

(3) Ability to eat and swallow,

(4) Ability to hear,

(5) Ability to see,

(6) Ability to experience feeling and movement,

(7) Ability to communicate,

(8) Risk of wandering,

(9) Risk of elopement,

(10) Risk of suicide,

(11) Risk of deficiencies regarding social interactions, and

(12) Special needs (such as regarding medication, diet, nutrition, hydration, prosthetics, etc.).

(c) *Coordination of assessment.* (1) Each assessment must be conducted or coordinated with the appropriate participation of health professionals.

(2) Each person who completes a portion of the assessment must sign and certify the accuracy of that portion of the assessment.

(d) *Care plans.* (1) The State home must ensure that each participant has a care plan. A participant's care plan must be individualized and must include measurable objectives and timetables to meet all physical, mental, and psychosocial needs identified in the most recent assessment. The care plan must describe the following:

(i) The services that are to be provided as part of the program of care and by other sources to attain or maintain the participant's highest physical, mental, and psychosocial well-being as required under § 51.430;

(ii) Any services that would otherwise be required under § 51.430 but are not provided due to the participant's exercise of rights under § 51.70, including the right to refuse treatment under § 51.70(b)(4);

(iii) Type and scope of interventions to be provided in order to reach desired, realistic outcomes;

(iv) Roles of participant and family/caregiver; and

(v) Discharge or transition plan, including specific criteria for discharge or transfer.

(2) The services provided or arranged by the State home must:

(i) Meet professional standards of quality; and

(ii) Be provided by qualified persons in accordance with each participant's care plan.

(e) *Discharge summary.* Prior to discharging a participant, the State home must prepare a discharge summary that includes:

(1) A recapitulation of the participant's care;

(2) A summary of the participant's status at the time of the discharge to include items in paragraph (b) of this section; and

(3) A discharge/transition plan related to changes in service needs and changes in functional status that prompted another level of care.

(Authority: 38 U.S.C. 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–XXXX.)

§ 51.430 Quality of care.

Each participant must receive, and the State home must provide, the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care.

(a) *Reporting of sentinel events.*

(1) *Definition.* A ''sentinel event'' is defined in § 51.120(a)(1).

(2) *Duty to report, review, and prevent sentinel events.* The State home must comply with the duties to report, review, and prevent sentinel events as set forth in § 51.120(a)(3) and (4) except that the duty to report applies only to a sentinel event that occurs while the participant is under the care of the State home, including while in State home-provided transportation.

(3) *Review and prevention of sentinel events.* The State home must establish a mechanism to review and analyze a sentinel event resulting in a written report to be submitted to the VA Medical Center of jurisdiction no later than 10 working days after the event. The purpose of the review and analysis of a sentinel event is to prevent future injuries to participants, visitors, and personnel.

(b) *Activities of daily living.* Based on the comprehensive assessment of a participant, the State home must ensure that:

(1) *No diminution in activities of daily living.* A participant's abilities in activities of daily living do not diminish unless the circumstances of the individual's clinical condition demonstrate that diminution was unavoidable. This includes the participant's ability to—

(i) Bathe, dress, and groom;

(ii) Transfer and ambulate;

(iii) Toilet; and

(iv) Eat.

(2) *Appropriate treatment and services given.* A participant is given the appropriate treatment and services to maintain or improve his or her abilities specified in paragraph (b)(1) of this section.

(3) *Necessary services provided to participant unable to carry out activities of daily living.* A participant who is unable to carry out activities of daily living receives the necessary services to maintain good nutrition, hydration, grooming, personal and oral hygiene, mobility, and bladder and bowel elimination.

(c) *Mental and Psychosocial functioning.* The State home must make counseling and related psychosocial services available for improving mental and psychosocial functioning of participants with mental or psychosocial needs. The services available must include counseling and psychosocial services provided by licensed independent mental health professionals.

(d) *Medication errors.* The State home must comply with § 51.120(n) with respect to medication errors.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–XXXX.)

§ 51.435 Nursing services.

The State home must provide an organized nursing service with a sufficient number of qualified nursing personnel to meet the total nursing care needs, as determined by participant assessment and individualized comprehensive plans of care, of all participants in the program.

(a) There must be at least one registered nurse on duty each day of operation of the adult day health care program of care. This nurse must be currently licensed by the State and must have, in writing, administrative authority, responsibility, and accountability for the functions, activities, and training of the nursing and program assistants.

(b) The number and level of nursing staff is determined by the authorized capacity of participants and the nursing care needs of the participants.

(c) Nurse staffing must be adequate for meeting the standards of this part.

(Authority: 38 U.S.C. 501, 1741–1743)

§ 51.440 Dietary services.

The State home must comply with the requirements concerning the dietary services set forth in § 51.140. For purposes of this section, the references in the cited section to resident refer to a participant.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

§ 51.445 Physician services.

As a condition of enrollment in adult day health care program, a participant must have a written physician order for enrollment. If a participant's medical needs require that the participant be placed in an adult day health care program that offers medical supervision, the order for enrollment from the physician must state that. Each participant must remain under the care of a physician.

(a) *Physician supervision.* If the adult day health care program offers medical supervision, the program management must ensure that:

(1) The medical care of each participant is supervised by a primary care physician;

(2) Each participant's medical record must contain the name of the participant's primary physician; and

(3) Another physician is available to supervise the medical care of participants when their primary physician is unavailable.

(b) *Frequency of physician reviews.* If the adult day health care program offers medical supervision:

(1) The participant must be seen by the primary physician at least annually and as indicated by a change of condition.

(2) The program management must have a policy to help ensure that adequate medical services are provided to the participant.

(3) At the option of the primary physician, required reviews in the program after the initial review may alternate between personal physician reviews and reviews by a physician assistant, nurse practitioner, or clinical nurse specialist in accordance with paragraph (e) of this section.

(c) *Availability of acute care.* If the adult day health care program offers medical supervision, the program management must provide or arrange for the provision of acute care when it is indicated.

(d) *Availability of physicians for emergency care.* In case of an emergency, the program management must ensure that participants are able to obtain emergency care when necessary.

(e) *Physician delegation of tasks.* (1) A primary physician may delegate tasks to:

(i) A certified physician assistant or a certified nurse practitioner, or

(ii) A clinical nurse specialist who—

(A) Is acting within the scope of practice as defined by State law; and

(B) Is under the supervision of the physician.

(2) The primary physician may not delegate a task when the provisions of this part specify that the primary physician must perform it personally, or when the delegation is prohibited under State law or by the State home's own policies.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0160)

§ 51.450 Specialized rehabilitative services.

(a) *Provision of services.* If specialized rehabilitative services such as, but not limited to, physical therapy, speech therapy, occupational therapy, and mental health services for mental illness are required in the participant's comprehensive plan of care, program management must:

(1) Provide the required services; or

(2) Obtain the required services and equipment from an outside resource, in accordance with § 52.210(h), from a provider of specialized rehabilitative services.

(b) *Written order.* Specialized rehabilitative services must be provided under the written order of a physician by qualified personnel.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

§ 51.455 Dental services.

(a) If the adult day health care program offers medical supervision, program management must, if necessary, assist the participant and family/caregiver:

(1) In making appointments; and

(2) By arranging for transportation to and from the dental services.

(b) If the adult day health care program offers medical supervision, program management must promptly assist and refer participants with lost or damaged dentures to a dentist.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

§ 51.460 Administration of drugs.

If the adult day health care program offers medical supervision, the program management must assist participants with the management of medication and have a system for disseminating drug information to participants and program staff in accordance with this section.

(a) *Procedures.* The State home must:

(1) Provide reminders or prompts to participants to initiate and follow through with self-administration of medications.

(2) Establish a system of records to document the administration of drugs by participants and/or staff.

(3) Ensure that drugs and biologicals used by participants are labeled in accordance with currently accepted professional principles, and include the appropriate accessory and cautionary instructions, and the expiration dates when applicable.

(4) Store all drugs, biologicals, and controlled schedule II drugs listed in 21 CFR 1308.12 in locked compartments under proper temperature controls, permit only authorized personnel to have access, and otherwise comply with all applicable State and Federal laws.

(b) *Service consultation.* The State home must provide the services of a pharmacist licensed in the State in which the program is located who provides consultation, as needed, on all the provision of drugs.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0160)

§ 51.465 Infection control.

The State home must meet the requirements concerning infection control set forth in § 51.190. For purposes of this section, the references in the cited section to resident refer to a participant.

(Authority: 38 U.S.C. 501)

§ 51.470 Physical environment.

The State home must ensure that the physical environment is designed, constructed, equipped, and maintained to protect the health and safety of participants, personnel and the public.

(a) *Life safety from fire.* The State home must meet the requirements of § 51.200(a), except as to any standard in the National Fire Protection Association code that only applies to nursing homes.

(b) *Space and equipment.* (1) The State home must—

(i) Provide sufficient space and equipment in dining, health services, recreation, and program areas to enable staff to provide participants with needed services as required by these standards and as identified in each participant's plan of care; and

(ii) Maintain all essential mechanical, electrical, and patient care equipment in safe operating condition.

(2) Each adult day health care program of care, when it is co-located in a nursing home, domiciliary, or other care facility, must have its own separate designated space during operational hours.

(3) The indoor space for adult day health care must be at least 100 square feet per participant including office space for staff and must be 60 square feet per participant excluding office space for staff.

(4) Each program of care will need to design and partition its space to meet its

own needs, but the following functional areas must be available:

(i) A dividable multipurpose room or area for group activities, including dining, with adequate table-setting space.

(ii) Rehabilitation rooms or an area for individual and group treatments for occupational therapy, physical therapy, and other treatment modalities.

(iii) A kitchen area for refrigerated food storage, the preparation of meals and/or training participants in activities of daily living.

(iv) An examination and/or medication room.

(v) A quiet room (with a bed or a reclining chair), which functions to separate participants who become ill or disruptive, or who require rest, privacy, or observation. It should be separate from activity areas, near a restroom, and supervised.

(vi) Bathing facilities adequate to facilitate bathing of participants with functional impairments.

(vii) Toilet facilities and bathrooms easily accessible to people with mobility problems, including participants in wheelchairs. There must be at least one toilet for every eight participants. The toilets must be equipped for use by persons with limited mobility, easily accessible from all programs areas, *i.e.,* preferably within 40 feet from that area, designed to allow assistance from one or two staff, and barrier-free.

(viii) Adequate storage space. There should be space to store arts and crafts materials, wheelchairs, chairs, individual handiwork, and general supplies. Locked cabinets must be provided for files, records, supplies, and medications.

(ix) An individual room for counseling and interviewing participants and family members.

(x) A reception area.

(xi) An outside space that is used for outdoor activities that is safe, accessible to indoor areas, and accessible to those with a disability. This space may include recreational space and garden area. It should be easily supervised by staff.

(c) *Furnishings.* Furnishings must be available for all participants. This must include functional furniture appropriate to the participants' needs. Furnishings must be attractive, comfortable, and homelike, while being sturdy and safe.

(d) *Participant call system.* The coordinator's station must be equipped to receive participant calls through a communication system from:

(1) Clinic rooms; and

(2) Toilet and bathing facilities.

(e) *Other environmental conditions.* The State home must provide a safe, functional, sanitary, and comfortable environment for the participants, staff and the public. The facility management must:

(1) Establish procedures to ensure that water is available to essential areas if there is a loss of normal water supply;

(2) Have adequate outside ventilation by means of windows, or mechanical ventilation, or a combination of the two;

(3) Equip corridors, when available, with firmly-secured handrails on each side; and

(4) Maintain an effective pest control program so that the facility is free of pests and rodents.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

§ 51.475 Administration.

For purposes of this section, the references in the cited section to nursing home and nursing home care refer to adult day health care programs and adult day health care. The State home must comply with all administration requirements set forth in § 51.210 except for the following if the adult day health care program does not offer medical supervision:

(a) *Medical director.* State home adult day health care programs are not required to designate a primary care physician to serve as a medical director, and therefore are not required to comply with § 51.210(i).

(b) Laboratory services, radiology, and other diagnostic services. State home adult day health care programs are not required to provide the medical services identified in § 51.210(m) and (n).

(c) *Quality assessment and assurance committee.* State home adult day health care programs are not required to comply with § 51.210(p), regarding quality assessment and assurance committees consisting of specified medical providers and staff.

(Authority: 38 U.S.C. 501, 1741–1743)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0160)

§ 51.480 Transportation.

Transportation of participants to and from the adult day health care facility must be a component of the overall program of care.

(a)(1) Except as provided in paragraph (a)(2) of this section, the State home must provide for transportation to enable participants, including persons with disabilities, to attend the program and to participate in State home-sponsored outings.

(2) The veteran or the family of a veteran may decline transportation offered by the adult day health care program of care and make their own arrangements for the transportation.

(b) The State home must have a transportation policy that includes procedures for routine and emergency transportation. All transportation (including that provided under contract) must be in compliance with such procedures.

(c) The State home must ensure that the transportation it provides is done by drivers who have access to a device for two-way communication.

(d) All systems and vehicles used by the State home to comply with this section must meet all applicable local, State and federal regulations.

(e) The State home must ensure that the care needs of each participant are addressed during transportation furnished by the home.

(Authority: 38 U.S.C. 101, 501, 1741–1743)

PART 52—[REMOVED]

■ 8. Remove part 52.

[FR Doc. 2015–13838 Filed 6–16–15; 8:45 am]

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FEDERAL REGISTER

Vol. 80 Wednesday,

No. 116 June 17, 2015

Part III

The President

Proclamation 9294—Flag Day and National Flag Week, 2015
Proclamation 9295—World Elder Abuse Awareness Day, 2015

Federal Register
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Title 3—

The President

Proclamation 9294 of June 12, 2015

Flag Day and National Flag Week, 2015

By the President of the United States of America

A Proclamation

For more than 200 years, the American flag has been a proud symbol of the people of our Nation and the values for which we stand. In hues of red, white, and blue, it reflects centuries of struggle and sacrifice—a constant reminder of our journey from 13 colonies to a Nation united in freedom and liberty, and of the patriots and pioneers who fought for these ideals at home and abroad. On Flag Day and during National Flag Week, we pay tribute to this banner of hope and opportunity, and we celebrate the story of progress it represents.

With broad stripes and bright stars, our flag has connected Americans across our country, around the globe, and throughout the chapters of our history. In a new world, it stood as a beacon of promise and possibility; in the dawn's early light, it offered a glimmer of hope as the fate of our young Nation was decided; and after a civil war that divided our Union, the Star Spangled Banner once again united our people. As courageous women and men marched and protested to broaden our democracy's reach and secure their civil rights, they carried the American flag, understanding the enormous potential it embodied—even as the Nation it represented denied them their fundamental rights. Today, it is because of an unbroken chain of heroes, who have served in our Armed Forces and worn the flag they defend, that Old Glory still waves over the land of the free and the home of the brave.

From storefronts and homes, atop monuments, and over the institutions that sustain our Nation at home and abroad, the American flag stands watch as we strive to perfect our Union. As we place our hand over our heart or as we salute this symbol of the country we love, let us pause to reflect on the legacy of our Nation and embrace the common threads that bind us together as Americans.

To commemorate the adoption of our flag, the Congress, by joint resolution approved August 3, 1949, as amended (63 Stat. 492), designated June 14 of each year as ''Flag Day'' and requested that the President issue an annual proclamation calling for its observance and for the display of the flag of the United States on all Federal Government buildings. The Congress also requested, by joint resolution approved June 9, 1966, as amended (80 Stat. 194), that the President annually issue a proclamation designating the week in which June 14 occurs as ''National Flag Week'' and call upon citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, do hereby proclaim June 14, 2015, as Flag Day and the week beginning June 14, 2015, as National Flag Week. I direct the appropriate officials to display the flag on all Federal Government buildings during that week, and I urge all Americans to observe Flag Day and National Flag Week by displaying the flag. I also call upon the people of the United States to observe with pride and all due ceremony those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211), as a time to honor America, to celebrate our heritage in public gatherings

and activities, and to publicly recite the Pledge of Allegiance to the Flag of the United States of America.

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

[FR Doc. 2015–15110
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Presidential Documents

Proclamation 9295 of June 12, 2015

World Elder Abuse Awareness Day, 2015

By the President of the United States of America

A Proclamation

For 10 years, Americans have marked World Elder Abuse Awareness Day by joining with individuals worldwide to take a stand against elder abuse, neglect, and exploitation. Often under-identified and under-reported, elder abuse is a public health crisis that crosses all socioeconomic lines, and it is an affront to human rights around the world. Today, we once again take this opportunity to raise awareness of this injustice, and with the international community, we recommit to ending this abuse, supporting those who are victims, and holding perpetrators accountable.

Every year, millions of older Americans experience abuse, neglect, or exploitation. They are our friends and neighbors, and our parents, grandparents, and loved ones, and we must do more to change this unacceptable reality. Elder abuse can take many forms—including physical, emotional, and sexual abuse, as well as neglect, abandonment, and financial exploitation—and it is important for all Americans to learn how to recognize and report mistreatment. The way we treat our older citizens reflects our values as a society, and it is our shared responsibility to ensure all our seniors receive the support and protection they deserve. To find out more and to learn what you can do to combat elder abuse, visit *www.NCEA.AOA.gov.*

My Administration is committed to protecting and empowering our Nation's older Americans so they can live out their years with dignity and independence. Through the Affordable Care Act, we enacted the Elder Justice Act, which authorized important new initiatives to prevent elder abuse. We have worked tirelessly to strengthen and protect the programs that provide essential support, quality care, and economic security to our seniors, including Medicare, Medicaid, the Older Americans Act, and Social Security. And to help safeguard those who responsibly prepare for retirement from financial exploitation, I have called for new rules to require financial advisors to put their clients' interests before their own.

The Federal Government is working with non-profit and private sector leaders, as well as State, local, and tribal governments to provide education, outreach, and resources that help older Americans live safe and productive lives. As part of my Administration's efforts to address these critical issues, next month I will host the White House Conference on Aging. Connecting older Americans, their families, caregivers, advocates, community leaders, and experts, the Conference will be an important opportunity to continue our efforts to promote healthy aging, provide long-term services and support, defend retirement security, and protect older Americans from abuse in all its forms.

After a lifetime of contributions to their families, their communities, and our world, older Americans deserve to live free from harm and abuse. As a society, we must lift up our seniors by advancing policies of inclusion and combating ageism wherever it exists. On World Elder Abuse Awareness Day, let us join with law enforcement officials, adult protective services professionals, health and human services providers, neighbors, caregivers,

and community leaders to strengthen our long-term care systems and redouble our efforts to build communities that safeguard our elders and support long and healthy lives for all people throughout the world.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim June 15, 2015, as World Elder Abuse Awareness Day. I call upon all Americans to observe this day by learning the signs of elder abuse, neglect, and exploitation, and by raising awareness about this important public health issue.

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

[FR Doc. 2015–15112
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