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

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Doc. No. AMS–FV–13–0087; FV14–985–1C FIR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 2014–2015 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim rule recommended by the Spearmint Oil Administrative Committee (Committee) that further revised the quantity of Class 3 (Native) spearmint oil that handlers may purchase from, or handle on behalf of, producers during the 2014–2015 marketing year under the Far West spearmint oil marketing order. The salable quantity and allotment percentage for Native spearmint oil was initially established at 1,090,821 pounds and 46 percent, respectively, and was subsequently increased to 1,280,561 pounds and 54 percent in a separate rulemaking action. This action further increases the Native spearmint oil salable quantity to 1,351,704 pounds and the allotment percentage to 57 percent for the 2014–2015 marketing year. This change is expected to help maintain orderly marketing conditions in the Far West spearmint oil market.

DATES: Effective August 21, 2015.

FOR FURTHER INFORMATION CONTACT: Barry Broadbent, Senior Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA; Telephone: (503) 326–2724, Fax: (503) 326–7440, or Email: *Barry.Broadbent@ams.usda.gov* or *GaryD.Olson@ams.usda.gov.*

Small businesses may obtain information on complying with this and other marketing order regulations by viewing a guide at the following Web site: *http://www.ams.usda.gov/MarketingOrdersSmallBusinessGuide;* or by contacting Jeffrey Smutny, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, Fax: (202) 720–8938, or Email: *Jeffrey.Smutny@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR part 985), as amended, regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the ''order.'' The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.''

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Orders 12866, 13563, and 13175.

The handling of spearmint oil produced in the Far West is regulated by the order and is administered locally by the Committee. Under the authority of the order, salable quantities and allotment percentages were established for both Scotch and Native spearmint oil for the 2014–2015 marketing year. However, during the course of the 2014–2015 marketing year, it became evident to the Committee and the industry that demand for Native spearmint oil was greater than previously projected and an intra-seasonal increase in the salable quantity and allotment percentage for Native spearmint oil was necessary to adequately supply the increased demand. The salable quantity and allotment percentage was subsequently increased from 1,090,821 pounds and 46 percent to 1,280,561 and 54 percent in a separate rulemaking action. The increased salable quantity and allotment percentage proved insufficient to fully supply demand and were further increased in the interim rule to 1,351,704 pounds and 57 percent. Therefore, this rule continues in effect the interim rule that increased the Native spearmint oil salable quantity from 1,280,561 pounds to 1,351,704 pounds and the allotment percentage from 54 percent to 57 percent.

In an interim rule published in the **Federal Register** on March 30, 2015, effective on March 30, 2015, and applicable to the 2014–2015 marketing year (80 FR 16547, Doc. No. AMS–FV–13–0087, FV14–985–1C IR), § 985.233 was amended to reflect the aforementioned increase in the salable quantity and allotment percentage for Native spearmint oil for the 2014–2015 marketing year.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are 8 spearmint oil handlers subject to regulation under the order, and approximately 39 producers of Scotch spearmint oil and approximately 91 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) as those having annual receipts of less than $7,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000 (13 CFR 121.201).

Based on the SBA's definition of small entities, the Committee estimates that only two of the eight handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 22 of the 39 Scotch spearmint oil producers and 29 of the 91 Native spearmint oil producers could be

classified as small entities under the SBA definition. Thus, the majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The use of volume control regulation allows the spearmint oil industry to fully supply spearmint oil markets while avoiding the negative consequences of over-supplying these markets. Without volume control regulation, the supply and price of spearmint oil would likely fluctuate widely. Periods of oversupply could result in low producer prices and a large volume of oil stored and carried over to future crop years. Periods of undersupply could lead to excessive price spikes and could drive end users to source their flavoring needs from other markets, potentially causing long-term economic damage to the domestic spearmint oil industry. The order's volume control provisions have been successfully implemented in the domestic spearmint oil industry since 1980 and provide benefits for producers, handlers, manufacturers, and consumers.

This rule increases the quantity of Native spearmint oil that handlers may purchase from or handle on behalf of producers during the 2014–2015 marketing year, which ended on May 31, 2015. The 2014–2015 Native spearmint oil salable quantity was initially established at 1,090,821 pounds and the allotment percentage initially set at 46 percent. In a separate rulemaking action, the salable quantity was increased to 1,280,561 pounds and the allotment percentage was increased 54 percent. This rule continues in effect the action that further increased the 2014–2015 Native spearmint oil salable quantity to 1,351,704 and the allotment percentage to 57 percent.

The Committee reached its decision to recommend a further increase in the salable quantity and allotment after consideration of all available information. With the increase, the Committee believes that the industry will be able to satisfactorily meet the current market demand for this class of spearmint oil. This rule amends the salable quantity and allotment percentage previously established for Native spearmint oil in § 985.233. Authority for this action is provided in §§ 985.50, 985.51, and 985.52 of the order.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the order's information collection requirements have been previously approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581–0178, Vegetable and Specialty Crop Marketing Orders. No changes in those requirements as a result of this action are necessary. Should any changes become necessary, they would be submitted to OMB for approval.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the February 18, 2015, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue.

Comments on the interim rule were required to be received on or before May 29, 2015. One comment was received. The comment was non-substantive in nature and did not address the merits of the rule. Accordingly, no changes were made to the rule. For the reasons given in the interim rule, we are adopting the interim rule as a final rule.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-13-0087-0006.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866, 12988, 13175, and 13563; the Paperwork Reduction Act (44 U.S.C. Chapter 35); and the E-Gov Act (44 U.S.C. 101).

After consideration of all relevant material presented, it is found that finalizing the interim rule, without change, as published in the **Federal Register** (80 FR 16547, March, 2015) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

Accordingly, the interim rule that amended 7 CFR part 985 and that was published at 80 FR 16547 on March 30, 2015, is adopted as a final rule, without change.

Dated: August 13, 2015.

Rex A. Barnes,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2015–20442 Filed 8–19–15; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0282; Directorate Identifier 2012–NM–168–AD; Amendment 39–18242; AD 2015–17–09]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 98–18–02 for certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R variant F airplanes (collectively called A300–600 series airplanes). AD 98–18–02 required inspections to detect cracks in the center spar sealing angles adjacent to the pylon rear attachment and in the adjacent butt strap and skin panel, and correction of discrepancies. This new AD continues to require inspections for cracks. This new AD also requires a modification by cold expansion of the center spar sealing angles, replacement of both sealing angles and cold expansion of the attachment holes if necessary, and post-repair repetitive inspections and corrective actions if necessary. This AD was prompted by reports of cracking in the vertical web of the center spar sealing angles of the wing, and subsequent analyses that showed that the inspection threshold and interval specified in AD 98–18–02 must be reduced to allow timely detection of cracks on the sealing angles of the center spar, adjacent to rib 8. We are issuing this AD to prevent crack formation in the sealing angles, which could rupture the sealing angle and lead to subsequent crack formation in the bottom skin of the wing, and result in reduced structural integrity of the center spar section of the wing.

DATES: This AD becomes effective September 24, 2015.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of September 24, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0282;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0282.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2006–07–07, Amendment 39–14534 (71 FR 16206, March 31, 2006; corrected April 21, 2006 (71 FR 20530)). AD 2006–07–07 applied to certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R variant F airplanes (collectively called A300–600 series airplanes). The NPRM published in the **Federal Register** on May 9, 2014 (79 FR 26651). The NPRM was prompted by reports of cracking in the vertical web of the center spar sealing angles of the wing, and subsequent analyses that showed that the inspection threshold and interval must be reduced to allow timely detection of cracks. The NPRM proposed to continue to require the actions in AD 2006–07–07: Modification of bolt holes in the vertical flange of the center spar sealing angles, and applicable related investigative and corrective actions. The NPRM also proposed to require inspections for cracks, a modification by cold expansion of the center spar sealing angles, replacement of both sealing angles and cold expansion of the attachment holes if necessary, and post-repair repetitive inspections and corrective actions if necessary. We are issuing this AD to prevent crack formation in the sealing angles, which could rupture the sealing angle and lead to subsequent crack formation in the bottom skin of the wing, and result in reduced structural integrity of the center spar section of the wing.

Although we proposed to supersede AD 2006–07–07, Amendment 39–14534 (71 FR 16206, March 31, 2006; corrected April 21, 2006 (71 FR 20530)), this AD instead supersedes AD 98–18–02, Amendment 39–10718 (63 FR 45689, August 27, 1998). AD 98–18–02 required inspections using an earlier revision of Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, which is the appropriate source of service information for doing the inspections required by this AD. This change to the proposed actions is explained in the ''Request to Supersede a Different AD'' paragraph in the preamble of this final rule.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2012–0194, dated September 25, 2012 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A300 B4–600, B4–600R, and F4–600R series airplanes, and Model C4–605R variant F airplanes (collectively called A300–600 series airplanes). The MCAI states:

> Fatigue testing applied to a test airframe confirmed the initiation of cracks on the sealing angles of the centre spar, adjacent to rib 8, which could lead to the rupture of the sealing angles and the subsequent crack initiation in the bottom skin of the wing.
>
> This condition, if not detected and corrected, could affect the structural integrity of the aeroplane.
>
> To address this unsafe condition, DGAC [French Civil Aviation Authority] France issued * * * [an earlier AD][which corresponds to FAA AD 98–18–02, Amendment 39–10718, (63 FR 45689, August 27, 1998)] to require inspection of centre spar sealing angles adjacent to pylon rear attachment fittings of Left Hand (LH) and Right Hand (RH) wings.
>
> Early cracks reported on an in-service aeroplane prompted Airbus to conduct additional investigations. Based on the results, DGAC France issued * * * [an AD that superseded the earlier DGAC AD], to require modification of the affected aeroplanes as specified in Airbus Service Bulletin (SB) A300–57–6033 (Airbus Mod 8609), as well as post-modification repetitive inspections. [DGAC France AD 2003–290(B)R1 (*http://www.regulations.gov/#!documentDetail;D=FAA-2006-24364-0008*) revised the DGAC AD that required modification and post-modification repetitive inspections.]
>
> Since DGAC France AD 2003–290(B)R1 was issued [which corresponds to FAA AD 2006–07–07, Amendment 39–14534 (71 FR 16206, March 31, 2006; corrected April 21, 2006 (71 FR 20530))], a fleet survey and updated Fatigue and Damage Tolerance analyses have been performed in order to substantiate the second A300–600 Extended Service Goal (ESG2) exercise. The results of these analyses have shown that the inspection threshold and interval must be reduced to allow timely detection of cracks on the sealing angles of the centre spar, adjacent to rib 8.
>
> For the reasons described above, this new [EASA] AD retains the requirements of DGAC France AD 2003–290(B)R1, which is superseded, and requires the accomplishment instructions at the new thresholds and intervals given by Revision 07 of Airbus Service Bulletin (SB) A300–57–6027.

The required actions also include repetitive high frequency eddy current (HFEC) inspections of the center spar sealing angles adjacent to the pylon rear attachment fitting for cracks, modifying the airplane by cold expansion of the center spar sealing angles outboard of rib 8 if necessary, replacing both of the forward and aft sealing angles with new sealing angles and cold expanding the attachment holes if necessary, and doing post-repair repetitive inspections and corrective actions if necessary. You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-0282-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The following presents the comments received on the NPRM (79 FR 26651, May 9, 2014) and the FAA's response to each comment.

Request To Supersede a Different AD

UPS requested that AD 98–18–02, Amendment 39–10718 (63 FR 45689, August 27, 1998), be superseded and AD 2006–07–07, Amendment 39–14534 (71 FR 16206, March 31, 2006; corrected April 21, 2006 (71 FR 20530)), remain a stand-alone AD to address potential conflicts with the inspection interval differences. UPS stated that AD 98–18–02 refers to Airbus Industrie Service Bulletin A300–57–6027, Revision 2, dated September 13, 1994, as the appropriate source of service information for accomplishing inspections required by AD 98–18–02.

UPS also stated that the NPRM (79 FR 26651, May 9, 2014) refers to Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, as the

appropriate source of service information for accomplishing inspections specified in the NPRM. UPS stated there is a conflict in the inspection intervals between Airbus Industrie Service Bulletin A300–57–6027, Revision 2, dated September 13, 1994; and Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011. UPS also noted that AD 2006–07–07, Amendment 39–14534 (71 FR 16206, March 31, 2006; corrected April 21, 2006 (71 FR 20530)), requires a one-time modification in accordance with different service information (Airbus Service Bulletin A300–57–6033, Revision 01, dated December 18, 2003) and therefore that AD could be a stand-alone AD.

We agree with the commenter's request and rationale. We have revised this AD to supersede AD 98–18–02, Amendment 39–10718 (63 FR 45689, August 27, 1998), and require inspections using Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011. This AD does not retain the inspections specified in Airbus Industrie Service Bulletin A300–57–6027, Revision 2, dated September 13, 1994, and required by AD 98–18–02. In addition, AD 2006–07–07, Amendment 39–14534 (71 FR 16206, March 31, 2006; corrected April 21, 2006 (71 FR 20530)), is not superseded by this AD. Therefore, we have removed paragraphs (g) and (h) of the proposed AD (79 FR 26651, May 9, 2014) from this AD and redesignated the subsequent paragraphs.

We have also revised the ''prompted by'' sentence in the SUMMARY section of this final rule and paragraph (e) of this AD to specify the AD ''was prompted by reports of cracking in the vertical web of the center spar sealing angles of the wing, and subsequent analyses that showed that the inspection threshold and interval specified in AD 98–18–02, Amendment 39–10718 (63 FR 45689, August 27, 1998), must be reduced to allow timely detection of cracks on the sealing angles of the center spar, adjacent to rib 8.''

Request To Revise Compliance Times

UPS requested that we revise the compliance times in the proposed AD (79 FR 26651, May 9, 2014) to reflect specific times regardless of the aircraft utilization rate. UPS stated that a comment response in AD 98–18–02, Amendment 39–10718 (63 FR 45689, August 27, 1998), noted that the FAA did not concur with the ''average flight time'' (''AFT'') compliance time methodology as it may not address the unsafe condition in a timely manner. UPS stated that paragraphs (i) and (j) of the proposed AD specify that the compliance time is at the applicable times specified in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, which establishes the initial and repetitive inspection compliance times based on AFT methodology. UPS requested changing the compliance times in paragraphs (i) and (j) of the proposed AD to reflect specific values regardless of the aircraft utilization rate to provide consistency in the compliance times for the actions required by paragraph (i) of the proposed AD.

We disagree with the commenter's request to revise the compliance times in this AD. At the time the FAA issued AD 98–18–02, Amendment 39–10718 (63 FR 45689, August 27, 1998), the required actions in Airbus Industrie Service Bulletin A300–57–6027, Revision 2, dated September 13, 1994, contained inspection thresholds and intervals based on airplane flight cycles, and provided instructions for adjusting the flight cycle threshold and interval using each individual airplane's AFT utilization. The FAA did not agree with the AFT method because it could result in a different inspection threshold and interval for each individual airplane, and the FAA did not agree with adjusting a flight cycle based threshold and interval using the average flight time utilization without also having a related flight hour based threshold and interval. In Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, the inspection thresholds and intervals are now based on the accumulation of both flight cycles and flight hours, and are listed in tables appropriately grouping airplanes with AFT utilization above 1.5 hours, and airplanes with AFT utilization at or below 1.5 hours. The changes made in Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, have addressed the FAA's original concerns with the AFT method. Therefore, the current AFT method is acceptable for this AD.

We acknowledge that a fixed compliance time for a fleet could be easier for operators to schedule and record compliance. Therefore, under the provisions of paragraph (m)(1) of this AD, we will consider requests for approval of an alternative method of compliance (AMOC) if a proposal is submitted that is supported by technical data that includes fatigue and damage tolerance analysis. We have not changed this AD in this regard.

Request To Combine Paragraphs (i) Through (m) of the Proposed AD (79 FR 26651, May 9, 2014)

UPS requested that we combine paragraphs (i) through (m) of the proposed AD (79 FR 26651, May 9, 2014) because the complexity of the paragraphs could easily result in incorrect interpretation of the proposed requirements and be counterproductive to the intent of the rule. The commenter stated that the requirements are distributed over five separate paragraphs. The commenter recommended that the requirements be revised by first requiring operators to identify whether Repair Drawing R57140588 or R57150404 or Airbus Service Bulletin A300–57–6033 was done and then by specifying the corresponding actions and compliance times for the affected airplanes.

We acknowledge the requirements are complex. However, we disagree with the request to combine paragraphs (g) through (k) of this AD (which were designated as paragraphs (i) through (m) in the proposed AD (79 FR 26651, May 9, 2014)). As stated previously, we are superseding AD 98–18–02, Amendment 39–10718 (63 FR 45689, August 27, 1998), to prevent any incorrect interpretation of the inspection compliance times. This AD corresponds to EASA AD 2012–0194, dated September 25, 2012, and both ADs refer to Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, for compliance times, which specifies the affected airplanes and corresponding compliance times. Paragraph (k) of this AD also specifies exceptions to Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, in order to clarify certain actions and compliance times. We have not changed the final rule regarding this issue.

Request To Revise Compliance Time Header

UPS requested that the header for paragraph (j) of the proposed AD (79 FR 26651, May 9, 2014) be revised from ''Initial Compliance Times'' to ''Inspection Compliance Times.'' (Paragraph (j) of the proposed AD is redesignated as paragraph (h) of this AD.) UPS stated that ''Initial Compliance Times'' implies that requirements for subsequent or repetitive actions will be defined elsewhere in the final rule.

We agree to revise the header for paragraph (h) of this AD; however we do not agree to use the terminology specified by the commenter. The requirements for subsequent and

repetitive actions are, in fact, identified elsewhere in the final rule. The repetitive intervals for the inspections are specified in paragraph (g) of this AD, which was designated as paragraph (i) of the proposed AD (79 FR 26651, May 9, 2014). Paragraph (g) of this AD contains a sentence that specifies, ''Repeat the inspection required by paragraph (g)(1) of this AD thereafter at intervals not to exceed . . . .'' For clarity, we have revised the header for paragraph (h) of this AD to specify ''Initial Compliance Times for the Actions Required by Paragraph (g) of this AD.''

In addition, we have clarified the corrective action statement in paragraph (i) of this AD by also referring to paragraph (g) of this AD, which contains the repetitive interval for the inspections specified in paragraph (g)(1) of this AD.

Request To Remove Requirement To Refer to This AD in Repair Approvals

UPS requested that we remove the sentence ''For a repair method to be approved, the repair approval must specifically refer to this AD'' from paragraph (m)(1) of the proposed AD (79 FR 26651, May 9, 2014), which is designated as paragraph (k)(1) of this AD. UPS stated that the FAA included this sentence in the NPRM because there is a ''potential'' for operators to do repairs that do not adequately address the unsafe condition. UPS commented that adding a reference to the applicable AD on repair documentation does not address the root cause of repair documentation availability. UPS stated that previously approved repairs for an AD should have been vetted as part of the corrective action and AD development process. However, if a repair is not identified during that process, the operator is still responsible for adhering to the Airworthy Product provision in an AD. UPS added that the Airworthy Product provision, in conjunction with FAA Advisory Circular 120–77, ''Maintenance and Alteration Data,'' dated October 7, 2002 (*http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/199e798c7ee4347786256c4d004ae5dc/$FILE/AC%20120-77.pdf*), provides sufficient guidance and clarification for repairs accomplished during compliance with the requirements of an AD.

We concur with the commenter's request to remove from this AD the requirement that repair approvals specifically refer to this AD. We have revised paragraph (k)(1) of this AD accordingly (designated as paragraph (m)(1) of the proposed AD (79 FR 26651, May 9, 2014)).

In addition, to address misinterpretation of the Airworthy Product paragraph, we have changed that paragraph and retitled it ''Contacting the Manufacturer.'' This paragraph now clarifies that for any requirement in this AD to obtain corrective actions from a manufacturer, the actions must be accomplished using a method approved by the FAA, or the European Aviation Safety Agency (EASA), or Airbus's EASA Design Organization Approval (DOA).

The Contacting the Manufacturer paragraph also clarifies that, if approved by the DOA, the approval must include the DOA-authorized signature. The DOA signature indicates that the data and information contained in the document are EASA approved, which is also FAA approved. Messages and other information provided by the manufacturer that do not contain the DOA-authorized signature approval are not EASA approved, unless EASA directly approves the manufacturer's message or other information. This clarification does not remove flexibility afforded previously by the Airworthy Product paragraph. Consistent with long-standing FAA policy, such flexibility was never intended for required actions. Once we determine that an action is required, any deviation from the requirement must be approved as an alternative method of compliance.

Request To Clarify Actions in Paragraphs (k) and (l) of the Proposed AD (79 FR 26651, May 9, 2014)

UPS requested that we clarify paragraphs (k) and (l) of the proposed AD (79 FR 26651, May 9, 2014). UPS stated that paragraph (l) of the proposed AD specifies ''post-modification'' actions, but paragraph (k) refers to accomplishing a ''repair'' using Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011. UPS noted that Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, includes subsequent inspection requirements for airplanes on which the actions specified in repair drawing R57140588 or R57150404 or Airbus Service Bulletin A300–57–6033 were done. UPS concluded that the intent of paragraph (l) of the proposed AD was for repairs outside of Repair Drawing R57140588 or R57150404 or Airbus Service Bulletin A300–57–6033.

We agree that clarification is necessary regarding which action is the ''modification'' specified in paragraph (j) in this AD, which was designated as paragraph (l) of the proposed AD (79 FR 26651, May 9, 2014). We have replaced the text ''After modification of the airplane, as specified in Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011,'' with the following text: ''For airplanes on which the modification specified in Airbus Repair Drawing R571504040 has been done.''

Request To Clarify Applicability

UPS requested that we revise paragraph (c) of the proposed AD (79 FR 26651, May 9, 2014) to clarify that airplanes are excluded from the applicability if Airbus Modification 8608 is incorporated ''in production.''

We agree with the commenter. Airbus Modification 8608 is a production modification. We have revised paragraph (c) of this AD accordingly by adding ''in production'' to the text.

Request To Fix Typographical Error

UPS requested that the paragraph designation for paragraph (o)(3) of the proposed AD (79 FR 26651, May 9, 2014) be revised because there are only two sub-paragraphs in paragraph (o) of the proposed AD.

We agree. Paragraph (o) of the proposed AD (79 FR 26651, May 9, 2014) has been redesignated as paragraph (m) of this AD. Therefore, we have redesignated paragraph (o)(3) of the proposed AD (79 FR 26651, May 9, 2014) as paragraph (m)(2) of this AD.

Clarification of Compliance Times and Actions

We have revised the compliance time exception in paragraph (k)(4) of this AD, designated as paragraph (m)(4) of the proposed AD (79 FR 26651, May 9, 2014), to clarify the specified compliance times are since first flight of the airplane.

We have also revised the reference to ''paragraph (k)(3) of this AD'' within paragraph (g) of this AD to specify ''paragraph (k) of this AD'' for the compliance time exception.

We have also replaced the word ''repairing'' with the word ''inspecting'' in paragraph (k)(1) of this AD because that paragraph specifies compliance times for inspection requirements.

Conclusion

We reviewed the available data, including 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 (79 FR 26651, May 9, 2014) for correcting the unsafe condition; and

• Do not add any additional burden upon the public than was already proposed in the NPRM (79 FR 26651, May 9, 2014).

Related Service Information Under 1 CFR Part 51

Airbus has issued the following service information:

• Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, describes procedures for repetitive high frequency eddy current inspections for cracking of the center spar sealing angles adjacent to the pylon rear attachment fitting, and repair.

• Service Bulletin A300–57–6033, Revision 02, dated September 19, 2011, describes procedures for modifying the airplane by cold expansion of the center spar sealing angles outboard of rib 8, including doing the eddy current inspections for cracks of the bolt holes.

This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

Costs of Compliance

We estimate that this AD affects 21 airplanes of U.S. registry.

We estimate that it takes 8 work-hours per product to comply with the new basic requirements of this AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the AD on U.S. operators to be $14,280, or $680 per product.

In addition, we estimate that any necessary follow-on actions will take about 42 work-hours and require parts costing $10,000, for a cost of $13,570 per product. We have no way of determining the number of aircraft that may need these actions.

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 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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-0282*; 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 street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

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) 98–18–02, Amendment 39–10718 (63 FR 45689, August 27, 1998), and adding the following new AD:

2015–17–09 Airbus: Amendment 39–18242. Docket No. FAA–2014–0282; Directorate Identifier 2012–NM–168–AD.

(a) Effective Date

This AD becomes effective September 24, 2015.

(b) Affected ADs

This AD replaces AD 98–18–02, Amendment 39–10718 (63 FR 45689, August 27, 1998).

(c) Applicability

This AD applies to Airbus Model A300 B4–601, B4–603, B4–620, B4–622, B4–605R, and B4–622R airplanes, Model A300 F4–605R and F4–622R airplanes, and Model A300 C4–605R Variant F airplanes, certificated in any category, except those on which Airbus Modification 8608 is incorporated in production.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Reason

This AD was prompted by reports of cracking in the vertical web of the center spar sealing angles of the wing, and subsequent analyses that showed that the inspection threshold and interval specified in AD 98–18–02, Amendment 39–10718 (63 FR 45689, August 27, 1998), must be reduced to allow timely detection of cracks on the sealing angles of the center spar, adjacent to rib 8. We are issuing this AD to prevent crack formation in the sealing angles; such cracks could rupture the sealing angle and lead to subsequent crack formation in the bottom skin of the wing, and resultant reduced structural integrity of the center spar section of the wing.

(f) Compliance

You are responsible for having the actions required by this AD performed within the compliance times specified, unless the actions have already been done.

(g) Inspection and Modification

For all airplanes, at the applicable time specified in paragraph (h) of this AD, accomplish the actions specified in paragraphs (g)(1) and (g)(2) of this AD concurrently. Repeat the inspection required by paragraph (g)(1) of this AD thereafter at intervals not to exceed the values as specified in the ''Repeat Interval'' column in Table 1 or Table 2 of Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, as applicable to the airplane configuration and utilization; except as required by paragraph (k) of this AD.

(1) Do a high frequency eddy current (HFEC) inspection of the center spar sealing angles adjacent to the pylon rear attachment fitting for cracks, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011.

(2) Unless already done: Modify the airplane by cold expansion of the center spar sealing angles outboard of rib 8, adjacent to the pylon rear attachment fitting, including doing the eddy current inspections for cracks

of the bolt holes, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6033, Revision 02, dated September 19, 2011.

(h) Initial Compliance Times for the Actions Required by Paragraph (g) of This AD

At the later of the times specified in paragraphs (h)(1) and (h)(2) of this AD, except as required by paragraph (k) of this AD, do the actions required by paragraph (g) of this AD.

(1) At the applicable compliance time specified in Table 1 and Table 2 in the ''Threshold Inspection,'' column in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011.

(2) At the applicable compliance time specified in Table 1 and Table 2 in the ''Grace Period,'' column in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011.

(i) Corrective Actions

If, during any inspection required by paragraph (g), (g)(1), or (g)(2) of this AD, any crack is found: Before further flight, repair the crack by replacing both of the forward and aft sealing angles with new sealing angles and cold expansion of the attachment holes, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011. The corrective actions, as required by this paragraph, do not constitute as a terminating action for the repetitive inspections specified in paragraph (g)(1) of this AD.

(j) Post-Modification Actions

For airplanes on which the modification specified in Airbus Repair Drawing R571504040 has been done: Within 3 months after the effective date of this AD, or before further flight after doing the modification, whichever occurs later, contact the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA) for repetitive post-repair inspections and corrective actions, and do those actions.

(k) Exceptions to the Service Information

(1) Where Note 01 and Note 02 of paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, specify to contact Airbus for inspection requirements, this AD requires, at the applicable compliance time specified in Table 1 and Table 2 in the ''Grace Period,'' column in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, inspecting using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA.

(2) Where Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, specifies a compliance time in Table 1 and Table 2 in the ''Grace Period,'' column in paragraph 1.E., ''Compliance,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(3) Where Table 1 and Table 2 in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, specify a choice between flight cycles or flight hours, this AD requires a compliance time within the specified flight cycles or flight hours, whichever occurs first.

(4) Where Table 1 and Table 2 in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, specify compliance times in the ''Threshold Inspection'' column for pre-modification 8609, those compliance times are flight cycles or flight hours since first flight of the airplane.

(5) Where Table 1 and Table 2 in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011, specify compliance times in the ''Threshold Inspection'' column for any post modification or repair, this AD requires compliance within the applicable compliance time specified in the ''Threshold Inspection'' column of Table 1 and Table 2 in paragraph 1.E., ''Compliance,'' of Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011. Those compliance times are flight cycles or flight hours since accomplishing the modification or repair.

(l) Credit for Previous Actions

This paragraph provides credit for the actions required by paragraph (g)(1) of this AD, if those actions were performed before the effective date of this AD using the service information specified in paragraphs (l)(1) through (l)(3) of this AD, which is not incorporated by reference in this AD.

(1) Airbus Service Bulletin A300–57–6027, Revision 04, dated August 4, 1999.

(2) Airbus Service Bulletin A300–57–6027, Revision 05, dated November 21, 2002.

(3) Airbus Service Bulletin A300–57–6027, Revision 06, dated March 2, 2005.

(m) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Dan Rodina, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone (425) 227–2125; fax (425) 227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: As of the effective date of this AD, for any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or EASA; or Airbus's EASA DOA. If approved by the DOA, the approval must include the DOA-authorized signature.

(n) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA AD 2012–0194, dated September 25, 2012, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0282.

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (o)(3) and (o)(4) of this AD.

(o) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Service Bulletin A300–57–6027, Revision 07, dated June 6, 2011.

(ii) Airbus Service Bulletin A300–57–6033, Revision 02, dated September 19, 2011.

(3) For service information identified in this AD, contact Airbus SAS—EAW (Airworthiness Office), 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 10, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–20382 Filed 8–19–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0643; Directorate Identifier 2013–SW–059–AD; Amendment 39–18235; AD 2015–17–02]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada (Bell) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2001–13–51 for Bell Model 206L–4, 407, and 427 helicopters. AD 2001–13–51 required inspecting certain driveshafts for a crack, a loose bolt or nut, or red powder residue and replacing a driveshaft if there is a crack, a loose bolt or nut, or red powder residue. AD 2001–13–51 also required notifying the FAA within 10 days if a crack is found in the driveshaft. This new AD retains the inspection requirement of AD 2001–13–51, expands the applicability to include the Model 429 helicopter, and removes the reporting requirement. This AD is intended to prevent failure of a driveshaft, loss of drive to the main rotor system, and a subsequent emergency landing.

DATES: This AD is effective September 24, 2015.

ADDRESSES: For service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/*. You may review service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, Texas 76177.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov,* by searching for and locating Docket No. FAA–2014–0643, 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 Transport Canada Civil Aviation (TCCA) AD, the economic 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: Matthew Fuller, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, Texas 76177; telephone (817) 222–5110; email *matthew.fuller@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On August 22, 2014, we issued a notice of proposed rulemaking (NPRM) (79 FR 54922, September 15, 2014) to amend 14 CFR part 39 to supersede AD 2001–13–51, Amendment 39–12443 (66 FR 48535, September 21, 2001). AD 2001–13–51 applied to Bell Model 206L–4, 407 and 427 helicopters. AD 2001–13–51 required visually inspecting driveshaft, part number (P/N) 206–340–300–105, for a crack, a loose bolt or nut, or red powder residue and replacing a driveshaft if there is a crack, a loose bolt or nut, or red powder residue. AD 2001–13–51 also required notifying the FAA within 10 days if a crack is found in the driveshaft and prohibited interchanging a driveshaft between different models if the driveshaft has ever been installed on a Bell Model 407 helicopter.

After we issued AD 2001–13–51, the Model 429 helicopter was certificated. TCCA, which is the aviation authority for Canada, issued Canadian AD CF–2002–03R3, Revision 3, dated September 26, 2013, to add Model 429 helicopters to the applicability and to require removing any driveshaft, part number (P/N) 206–340–300–105, if it has ever been installed on a Bell Model 407 helicopter.

The NPRM proposed to retain the inspection requirements of AD 2001–13–51, expand the applicability to include the Model 429 helicopters, and remove the reporting requirement.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (79 FR 54922, September 15, 2014).

FAA's Determination

These helicopters have been approved by the aviation authority of Canada and are approved for operation in the United States. Pursuant to our bilateral agreement with Canada, TCAA, its technical representative, has notified us of the unsafe condition described in the Canadian AD. We are issuing this AD because we evaluated all information provided by TCAA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Differences Between This AD and the TCCA AD

The TCCA AD requires following the compliance time specified in the Bell ASBs, which allows more time, based on the hours TIS, for removing the driveshaft. This AD requires replacing the driveshaft before accumulating 1,250 hours TIS.

Related Service Information

We reviewed Bell Alert Service Bulletin (ASB) No. 206L–01–123, Revision A, dated February 22, 2006, for Bell Model 206L–4 helicopters and ASB No. 427–01–04, Revision A, dated March 31, 2006, for Bell Model 427 helicopters. Both ASBs describe inspecting the Historical Service Record of the engine-to-transmission driveshaft, P/N 206–340–300–105, to determine whether the driveshaft has ever been installed on a Bell Model 407 helicopter and removing the driveshaft if it has ever been installed on a Model 407 helicopter. We also reviewed Bell ASB No. 407–01–45, Revision B, dated April 23, 2013, for Bell Model 407 helicopters, which describes an engine-to-transmission driveshaft 1,250-Hour overhaul. TCCA classified these ASBs as mandatory and issued AD No. CF–2002–03R3, Revision 3, dated September 26, 2013, to ensure the continued airworthiness of these helicopters.

Costs of Compliance

We estimate that this AD affects 970 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work-hour. We estimate 0.25 work-hour to determine whether the driveshaft has ever been installed on a Bell Model 407 helicopter for a total cost of $22 per helicopter or $21,340 for the fleet. If a driveshaft has been installed on a Model 407 helicopter, we estimate 1 work hour to inspect the driveshaft for a cost of $85 per helicopter, and 2 work hours and $39,724 for required parts to replace a driveshaft for a cost of $39,894 per helicopter.

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) 2001–13–51, Amendment 39-12443 (66 FR 48535, September 21, 2001), and adding the following new AD:

2015–17–02 Bell Helicopter Textron Canada (Bell): Amendment 39–18235; Docket No. FAA–2014–0643; Directorate Identifier 2013–SW–059–AD.

(a) Applicability

This AD applies to Model 206L–4, 407, 427, and 429 helicopters with an engine-to-transmission driveshaft assembly (driveshaft), part number (P/N) 206–340–300–105, installed, certificated in any category.

(b) Unsafe Condition

This AD defines the unsafe condition as failure of a driveshaft due to cracking of the flex frame on the forward end of the driveshaft. This condition could result in loss of drive to the main rotor system and a subsequent emergency forced landing.

(c) Affected ADs

This AD supersedes AD 2001–13–51, Amendment 39–12443, Docket No. 2001–SW–29–AD (66 FR 48535, September 21, 2001).

(d) Effective Date

This AD becomes effective September 24, 2015.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) Within 50 hours time-in-service (TIS), determine whether driveshaft, P/N 206–340–300–105, has ever been installed on a Bell Model 407 helicopter, and record this on the component history card or equivalent record. If driveshaft, P/N 206–340–300–105, has ever been installed on a Bell Model 407 helicopter:

(i) For Bell Model 206L–4, 407, and 427 helicopters, within 25 hours TIS, inspect each driveshaft for a crack, a loose bolt or nut, and red powder residue. If there is a crack, a loose bolt or nut, or red powder residue, replace the driveshaft with an airworthy driveshaft before further flight.

(ii) For all affected Bell model helicopters, on or before accumulating 1,250 hours TIS, replace each driveshaft with an airworthy driveshaft.

(2) Do not install driveshaft, P/N 206–340–300–105, on any helicopter if it has ever been installed on a Bell Model 407 helicopter.

(g) Special Flight Permit

Special flight permits are prohibited.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Matthew Fuller, Aviation Safety Engineer, Safety Management Group, Rotorcraft Directorate, FAA, 10101 Hillwood Pkwy, Fort Worth, Texas 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov.*

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office before operating any aircraft complying with this AD through an AMOC.

(i) Additional Information

(1) Bell Alert Service Bulletin (ASB) No. 206L–01–123, Revision A, dated February 22, 2006; ASB No. 427–01–04, Revision A, dated March 31, 2006; and ASB No. 407–01–45, Revision B, dated April 23, 2013, which are not incorporated by reference, contain additional information about the subject of this AD. For service information identified in this AD, contact Bell Helicopter Textron Canada Limited, 12,800 Rue de l'Avenir, Mirabel, Quebec J7J1R4; telephone (450) 437–2862 or (800) 363–8023; fax (450) 433–0272; or at *http://www.bellcustomer.com/files/*. You may review a copy of the service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, Texas 76177.

(2) The subject of this AD is addressed in Transport Canada Civil Aviation (TCCA) AD No. CF–2002–03R3, Revision 3, dated September 26, 2013. You may view the TCCA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2014–0643.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 6300 Main Rotor Drive System.

Issued in Fort Worth, Texas, on August 6, 2015.

Larry M. Kelly,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2015–20509 Filed 8–19–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–1051; Directorate Identifier 2014–NM–171–AD; Amendment 39–18239; AD 2015–17–06]

RIN 2120–AA64

Airworthiness Directives; Airbus Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Airbus Model A319, A320, and A321 series airplanes. This AD was prompted by reports that on airplanes equipped

with sharklets, discretes (used to activate the load alleviation function) are connected on various flight computers using the same ground point. In these cases, the ground point segregation is no longer effective, and a single failure could lead to loss of sharklet identification by flight computers causing a return to the wing tip fence (no sharklet configuration) performance. This AD requires modification of the sharklet ground connection. We are issuing this AD to prevent loss of sharklet identification by the flight computers and subsequent reduced control of the airplane.

DATES: This AD becomes effective September 24, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 24, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-1051* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email account.airworth*eas@airbus.com;* Internet *http://www.airbus.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–1051.

FOR FURTHER INFORMATION CONTACT: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116,Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Airbus Model A319, A320, and A321 series airplanes. The NPRM published in the **Federal Register** on January 23, 2015 (80 FR 3520). The NPRM was prompted by reports that on airplanes equipped with sharklets, discretes (used to activate the load alleviation function) are connected on various flight computers using the same ground point. In these cases, the ground point segregation is no longer effective and a single failure could lead to loss of sharklet identification by flight computers causing a return to the wing tip fence (no sharklet configuration) performance. The NPRM proposed to require modification of the sharklet ground connection. We are issuing this AD to prevent loss of sharklet identification by the flight computers and subsequent reduced control of the airplane.

The European Aviation Safety Agency (EASA), which is the Technical Agent for the Member States of the European Union, has issued EASA Airworthiness Directive 2014–0186, dated August 19, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Airbus Model A319, A320, and A321 series airplanes. The MCAI states:

> During A320 Neo review, Airbus design office identified that on A320 family aeroplanes equipped with sharklets, discretes used to activate the load alleviation function are connected on various flight computers using the same ground point. In that case, the ground point segregation is no longer effective and a single failure could lead to loss of sharklet identification by the flight computers, inducing a return to the wing tip fence (no sharklet configuration) behaviour.
>
> This condition, if not corrected, could lead to reduced control of the aeroplane, depending on aeroplane configuration and flight phase.
>
> It has been determined that Airbus mod 156108 restores the correct segregation. However, since introduction of sharklet mod 160500 and mod 160023, a number of aeroplanes equipped with sharklets have been delivered without incorporating mod 156108. In addition, mod 156108 was not included in certain SBs [service bulletins] that introduce the sharklet device in service onto aeroplanes with a reinforced wing, previously operated with a wing tip fence. Airbus mod 156108 has now been introduced into Airbus SB A320–57–1186 at Rev.03 and will be introduced at next revisions of SB A320–57–1173 and SB A320–57–1187.
>
> To address this potential unsafe condition, Airbus published SB A320–27–1240 for in-service installation of mod 156108.
>
> For the reasons described above, this AD requires modification of the sharklet ground connection.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-1051-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. We received no comments on the NPRM (80 FR 3520, January 23, 2015) or on the determination of the cost to the public.

Conclusion

We reviewed the relevant data and determined that air safety and the public interest require adopting this AD as proposed except for minor editorial changes. We have determined that these minor changes:

- Are consistent with the intent that was proposed in the NPRM (80 FR 3520, January 23, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 3520, January 23, 2015).

Related Service Information Under 1 CFR Part 51

Airbus has issued Service Bulletin A320–27–1240, dated June 18, 2014. The service information describes procedures for modification of the sharklet ground connection. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this or AD.

Costs of Compliance

We estimate that this AD affects 46 airplanes of U.S. registry.

We also estimate that it will take about 14 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $347 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $70,702, or $1,537 per product.

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 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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);
3. Will not affect intrastate aviation in Alaska; and
4. Will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2014-1051;* 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 street address for the Docket Operations office (telephone 800–647–5527) is in the **ADDRESSES** section.

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 adding the following new airworthiness directive (AD):

2015–17–06 Airbus: Amendment 39–18239. Docket No. FAA–2014–1051; Directorate Identifier 2014–NM–171–AD.

(a) Effective Date

This AD becomes effective September 24, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus airplanes, certificated in any category, identified in paragraphs (c)(1), (c)(2), and (c)(3) of this AD, all manufacturer serial numbers on which Airbus modification (mod) 160500 or mod 160023 has been embodied in production, and those that have been modified in service through the Airbus Service Bulletin A320–57–1173, A320–57–1186, or A320–57–1187, except those on which Airbus mod 156108 has been embodied in production.

(1) Model A319–111, –112, –113, –114, –115, –131, –132, and –133 airplanes.

(2) Model A320–211, –212, –214, –231, –232, and –233 airplanes.

(3) Model A321–111, –112, –131, –211, –212, –213, –231, and –232 airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by reports that on airplanes equipped with sharklets, discretes (used to activate the load alleviation function) are connected on various flight computers using the same ground point. In these cases, the ground point segregation is no longer effective, and a single failure could lead to loss of sharklet identification by flight computers causing a return to the wing tip fence (no sharklet configuration) performance. We are issuing this AD to prevent loss of sharklet identification by the flight computers and subsequent reduced control of the airplane.

(f) Compliance

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

(g) Modification

Within 24 months after the effective date of this AD, modify the sharklet ground connection, in accordance with the Accomplishment Instructions of Airbus Service Bulletin A320–27–1240, dated June 18, 2014.

(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Branch, ANM–116, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the International Branch, send it to ATTN: Sanjay Ralhan, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue SW., Renton, WA 98057–3356; telephone 425–227–1405; fax 425–227–1149. Information may be emailed to: *9-ANM-116-AMOC-REQUESTS@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Airbus's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(i) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) EASA Airworthiness Directive 2014–0186, dated August 19, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2014-1051-0002*.

(j) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Airbus Service Bulletin A320–27–1240, dated June 18, 2014.

(ii) Reserved.

(3) For service information identified in this AD, contact Airbus, Airworthiness Office—EIAS, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France; telephone +33 5 61 93 36 96; fax +33 5 61 93 44 51; email *account.airworth-eas@airbus.com;* Internet *http://www.airbus.com*.

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 10, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–20383 Filed 8–19–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2014–0364; Directorate Identifier 2013–SW–041–AD; Amendment 39–18234; AD 2015–17–01]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters (Previously Eurocopter France) (Airbus Helicopters) Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: We are superseding Airworthiness Directive (AD) 2013–21–01 for Eurocopter France Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters. AD 2013–21–01 required certain inspections of each tail rotor pitch horn assembly (pitch horn) for a crack, replacing a cracked pitch horn before further flight, and a one-time visual inspection of pitch horns above certain hours time-in-service (TIS). This new AD retains the requirements of AD 2013–21–01 but requires a repetitive visual inspection for all pitch horns regardless of hours TIS. This AD was prompted by a report of a crack in the yoke of a pitch horn and is intended to detect a crack in the pitch horn to prevent failure of the pitch horn, loss of the anti-torque function, and subsequent loss of control of the helicopter.

DATES: This AD is effective September 24, 2015.

The Director of the Federal Register approved the incorporation by reference of certain documents listed in this AD as of October 25, 2013 (78 FR 63853, October 25, 2013).

ADDRESSES: For service information identified in this AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.* You may view this referenced service information at the FAA Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, Texas 76177.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2014–0364; 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 European Aviation Safety Agency (EASA) AD, any incorporated-by-reference information, the economic 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: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 10101 Hillwood Pkwy, Fort Worth, Texas 76177; telephone (817) 222–5110; email *robert.grant@faa.gov.*

SUPPLEMENTARY INFORMATION:

Discussion

On May 30, 2014, we issued a notice of proposed rulemaking (NPRM) (79 FR 32881, June 9, 2014) to amend 14 CFR part 39 to remove AD 2013–21–01, Amendment 39–17625 (78 FR 63853, October 25, 2013) and add a new AD. AD 2013–21–01 applied to Eurocopter France Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters and required a one-time visual inspection of each pitch horn with 135 or more hours TIS for a crack and replacing the pitch horn if there is a crack. AD 2013–21–01 also required a dye-penetrant inspection of any pitch horn before it is installed. AD 2013–21–01 was prompted by AD No. 2013–0133, dated June 28, 2013, issued by EASA, which is the Technical Agent for the Member States of the European Union, to correct an unsafe condition for Model AS350B, AS350BA, AS350BB, AS350B1, AS350B2, AS350B3, AS350D, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters. EASA advises of an ongoing investigation of a crack in the yoke of a pitch horn for which a cause has not been determined. The EASA AD requires repetitive visual inspections of each pitch horn for a crack and replacing the pitch horn with a serviceable assembly if a crack is found.

The NPRM proposed to continue to require the visual inspection for the pitch horn but to require it for all pitch horns regardless of hours TIS. The NPRM also proposed to require repeating the visual inspection every 165 hours TIS and changing the requirement for the dye penetration inspection so that it only applies to pitch horns that are not new. Also, since we issued AD 2013–12–01, Eurocopter France changed its name to Airbus Helicopters. The NPRM proposed to reflect that change.

Comments

We gave the public the opportunity to participate in developing this AD, but we did not receive any comments on the NPRM (79 FR 32881, June 9, 2014).

FAA's Determination

These helicopters have been approved by the aviation authority of France and are approved for operation in the United States. Pursuant to our bilateral agreement with France, EASA, its technical representative, has notified us of the unsafe condition described in the EASA AD. We are issuing this AD because we evaluated all information provided by EASA and determined the unsafe condition exists and is likely to exist or develop on other helicopters of these same type designs and that air safety and the public interest require adopting the AD requirements as proposed.

Interim Action

We consider this AD to be an interim action. If final action is later identified, we might consider further rulemaking then.

Differences Between This AD and the EASA AD

The EASA AD applies to Eurocopter Model AS350BB that does not have an FAA type certificate and therefore is not a part of this AD. The EASA AD does not apply to Eurocopter Model AS350C or AS350D1, but this AD does because those models have an FAA type certificate and may have the applicable pitch horn installed. This AD requires a dye-penetrant inspection before installing a pitch horn; the EASA AD does not.

Related Service Information Under 1 CFR Part 51

We reviewed a Eurocopter (now Airbus Helicopters) Emergency Alert Service Bulletin (EASB), Revision 1, dated June 25, 2013, with four different numbers. EASB No. 05.00.74 is for Model AS350B, B1, B2, B3, BA, and D helicopters; and EASB No. 05.00.65 is for Model AS355E, F, F1, F2, N, and NP helicopters. EASB No. 05.00.74 and EASB No. 05.00.65 are co-published as one document along with EASB No. 05.00.49 and EASB No. 05.00.44, which are not incorporated by reference in this AD. These EASBs specify Airbus

Helicopters has been informed of a case of a crack on the yoke of a pitch horn, which may lead to failure of the pitch horn, resulting in loss of the anti-torque function. These EASBs specify a check for cracks on the yokes of the two pitch horns and specifies replacing any cracked pitch horn. These EASBs state that it may be necessary to modify the log card of the tail rotor blade assembly due to some of the pitch horn part numbers being recorded incorrectly. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

EASA classified these EASBs as mandatory and issued EASA AD No. 2013–0133, dated June 28, 2013, to ensure the continued airworthiness of these helicopters.

Costs of Compliance

We estimate that this AD will affect 938 helicopters of U.S. Registry. We estimate that operators may incur the following costs in order to comply with this AD. Labor costs are estimated at $85 per work hour. We estimate 0.1 work hours to visually inspect a pitch horn for a total cost of $8.50 per helicopter or $7,973 for the fleet, per inspection cycle. We estimate 1 work hour to do a dye-penetrant inspection for a total cost of $85 per helicopter. We estimate 1 work hour to replace a part, if necessary, and a cost for required parts of $1,946, for a total cost of $2,031 per helicopter.

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) 2013–21–01, Amendment 39-17625 (78 FR 63853, October 25, 2013), Docket No. FAA–2013–0878, Directorate Identifier 2013–SW–033–AD, and adding the following new AD:

2015–17–01 Airbus Helicopters (Previously Eurocopter France) (Airbus Helicopters): Amendment 39–18234; Docket No. FAA–2014–0364; Directorate Identifier 2013–SW–041–AD.

(a) Applicability

This AD applies to Airbus Helicopters Model AS350B, AS350BA, AS350B1, AS350B2, AS350B3, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, AS355N, and AS355NP helicopters with tail rotor hub pitch horn (pitch horn) assembly, part number (P/N) 350A121368.01, 350A121368.02, 350A121368.03, or 350A121368.04, with a pitch horn, P/N 350A121368.XX, where XX stands for a two-digit dash number, installed, certificated in any category. The pitch horn may be marked with either the pitch horn assembly P/N or pitch horn P/N.

(b) Unsafe Condition

This AD defines the unsafe condition as a crack in the yoke of a pitch horn. This condition could result in failure of a pitch horn, loss of the anti-torque function, and subsequent loss of control of the helicopter.

(c) Affected ADs

This AD supersedes 2013–21–01, Amendment 39–17625 (78 FR 63853, October 25, 2013).

(d) Effective Date

This AD becomes effective September 24, 2015.

(e) Compliance

You are responsible for performing each action required by this AD within the specified compliance time unless it has already been accomplished prior to that time.

(f) Required Actions

(1) For parts with 155 or less hours time-in-service (TIS), before exceeding 165 hours TIS, or for parts with more than 155 hours TIS, within 10 hours TIS, and thereafter at intervals not to exceed 165 hours TIS, visually inspect each pitch horn for a crack in the areas shown in Figure 1 of Eurocopter Emergency Alert Service Bulletin (EASB) No. 05.00.74 or No. 05.00.65, both Revision 1 and both dated June 25, 2013, as appropriate for your model helicopter.

(2) If there is a crack, before further flight, replace the pitch horn with an airworthy pitch horn.

(3) Do not install a pitch horn, P/N 350A121368 (any dash number), with more than 0 hours TIS on any helicopter unless it has passed a dye penetrant inspection for a crack in the areas shown in Figure 1 of Eurocopter EASB No. 05.00.74 or No. 05.00.65, both Revision 1 and both dated June 25, 2013, as appropriate for your model helicopter.

(g) Special Flight Permits

Special flight permits are prohibited.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Safety Management Group, FAA, may approve AMOCs for this AD. Send your proposal to: Robert Grant, Aviation Safety Engineer, Safety Management Group, FAA, 10101 Hillwood Pkwy, Fort Worth, Texas 76177; telephone (817) 222–5110; email *9-ASW-FTW-AMOC-Requests@faa.gov*.

(2) For operations conducted under a 14 CFR part 119 operating certificate or under 14 CFR part 91, subpart K, we suggest that you notify your principal inspector, or lacking a principal inspector, the manager of the local flight standards district office or certificate holding district office, before operating any aircraft complying with this AD through an AMOC.

(i) Additional Information

The subject of this AD is addressed in European Aviation Safety Agency (EASA) AD No. 2013–0133, dated June 28, 2013. You may view the EASA AD on the Internet at *http://www.regulations.gov* in Docket No. FAA–2014–0364.

(j) Subject

Joint Aircraft Service Component (JASC) Code: 6400 Tail Rotor.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless the AD specifies otherwise.

(3) The following service information was approved for IBR on October 25, 2013 (78 FR 63853, October 25, 2013).

(i) Eurocopter Emergency Alert Service Bulletin No. 05.00.74, Revision 1, dated June 25, 2013.

(ii) Eurocopter Emergency Alert Service Bulletin No. 05.00.65, Revision 1, dated June 25, 2013.

Note 1 to paragraph (k)(3) of this AD: Eurocopter Emergency Alert Service Bulletin No. 05.00.74 and No. 05.00.65, both Revision 1, and both dated June 25, 2013, are co-published as one document along with Eurocopter Emergency Alert Service Bulletin No. 05.00.49 and No. 05.00.44, both Revision 1, and both dated June 25, 2013, which are not incorporated by reference in this AD.

(4) For Eurocopter service information identified in this AD, contact Airbus Helicopters, Inc., 2701 N. Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *http://www.airbushelicopters.com/techpub.*

(5) You may view this service information at FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy, Room 6N–321, Fort Worth, Texas 76177. For information on the availability of this material at the FAA, call (817) 222–5110.

(6) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call (202) 741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Fort Worth, Texas, on August 6, 2015.

Larry M. Kelly,

Acting Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 2015–20510 Filed 8–19–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2015–0492; Directorate Identifier 2014–NM–232–AD; Amendment 39–18237; AD 2015–17–04]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

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

ACTION: Final rule.

SUMMARY: We are adopting a new airworthiness directive (AD) for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes. This AD was prompted by reports of a disconnect between the elevator lever and control rod. This AD requires replacement of left and right fixed control rods and lever assemblies of the elevator control system. We are issuing this AD to prevent a disconnect between the elevator lever and control rod, which could lead to un-commanded elevator movement of the associated control surface, a large difference between the position of the left and the right elevator control surfaces, and consequent reduced controllability of the airplane and degradation of the structural integrity of the horizontal stabilizer.

DATES: This AD becomes effective September 24, 2015.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 24, 2015.

ADDRESSES: You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-0492;* or in person at the Docket Management Facility, U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC.

For service information identified in this AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone: 514–855–5000; fax: 514–855–7401; email: *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.* You may view this referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221. It is also available on the Internet at *http://www.regulations.gov* by searching for and locating Docket No. FAA–2015–0492.

FOR FURTHER INFORMATION CONTACT: Cesar Gomez, Aerospace Engineer, Airframe and Mechanical Systems Branch, ANE–171, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7318; fax: 516–794–5531.

SUPPLEMENTARY INFORMATION:

Discussion

We issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes. The NPRM published in the **Federal Register** on March 24, 2015 (80 FR 15528).

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2014–44, dated December 9, 2014 (referred to after this as the Mandatory Continuing Airworthiness Information, or ''the MCAI''), to correct an unsafe condition for certain Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702), CL–600–2D15 (Regional Jet Series 705), and CL–600–2D24 (Regional Jet Series 900) airplanes. The MCAI states:

> During an engineering review of the Elevator Control system, it was discovered that a disconnect between the elevator lever and control rod could lead to uncommanded elevator movement of the associated control surface. This uncommanded movement may cause a large difference between the position of the left and the right elevator control surface resulting in reduced controllability of the aeroplane and degradation of the structural integrity of the horizontal stabilizer.
>
> This [Canadian] AD mandates the replacement of the existing elevator lever assemblies and control rods with newly designed ones, which will prevent a disconnect between the components of the elevator control system should a failure occur.

You may examine the MCAI in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-0492-0002.*

Comments

We gave the public the opportunity to participate in developing this AD. The

following presents the comments received on the NPRM (80 FR 15528, March 24, 2015), and the FAA's response to each comment.

Request To Include Latest Revision of the Service Information in This AD

SkyWest Airlines and Mesa Airlines Inc. requested that we include Bombardier Service Bulletin 670BA–27–062, Revision C, dated February 13, 2015, in paragraph (g) of this AD. Both commenters also requested that we revise paragraph (h) of this AD to include credit for actions performed before the effective date of this AD using Bombardier Service Bulletin 670BA–27–062, Revision B, dated October 10, 2014. SkyWest Airlines indicated that Bombardier Service Bulletin 670BA–27–062, Revision C, dated February 13, 2015, includes changes to some steps and addition of others that deal with the rigging pins P2 and P3. SkyWest Airlines pointed out that Bombardier Service Bulletin 670BA–27–062, Revision C, dated February 13, 2015, also makes a change to Sheet 1 of 1 of Figure 4, which consists of adding part numbers to the item descriptions.

We agree with the request to include Bombardier Service Bulletin 670BA–27–062, Revision C, dated February 13, 2015, in paragraph (g) of this AD and revise paragraph (h) of this AD to include credit for actions performed before the effective date of this AD using Bombardier Service Bulletin 670BA–27–062, Revision B, dated October 10, 2014. Although some steps have changed, the procedures remain the same in both revisions of the service information. We have revised paragraphs (g) and (h) of this AD accordingly.

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 (80 FR 15528, March 24, 2015) for correcting the unsafe condition; and
- Do not add any additional burden upon the public than was already proposed in the NPRM (80 FR 15528, March 24, 2015).

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

Related Service Information Under 1 CFR Part 51

Bombardier, Inc. has issued Service Bulletin 670BA–27–062, Revision C, dated February 13, 2015. The service information describes procedures for replacing the elevator lever assemblies and control rods. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section of this AD.

Costs of Compliance

We estimate that this AD affects 400 airplanes of U.S. registry.

We also estimate that it will take about 14 work-hours per product to comply with the basic requirements of this AD. The average labor rate is $85 per work-hour. Required parts will cost about $6,712 per product. Based on these figures, we estimate the cost of this AD on U.S. operators to be $3,160,800, or $7,902 per product.

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 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 the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979);

3. Will not affect intrastate aviation in Alaska; and

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

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov/#!docketDetail;D=FAA-2015-0492;* 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 street address for the Docket Operations office (telephone: 800–647–5527) is in the **ADDRESSES** section.

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 adding the following new airworthiness directive (AD):

2015–17–04 Bombardier, Inc.: Amendment 39–18237. Docket No. FAA–2015–0492; Directorate Identifier 2014–NM–232–AD.

(a) Effective Date

This AD becomes effective September 24, 2015.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the airplanes, certificated in any category, identified in paragraphs (c)(1) and (c)(2) of this AD.

(1) Bombardier, Inc. Model CL–600–2C10 (Regional Jet Series 700, 701, & 702) airplanes, serial numbers (S/N) 10002 through 10337 inclusive.

(2) Bombardier, Inc. Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, S/Ns 15001 through 15298 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight Controls.

(e) Reason

This AD was prompted by reports of a disconnect between the elevator lever and control rod. We are issuing this AD to prevent a disconnect between the elevator lever and control rod, which could lead to un-commanded elevator movement of the associated control surface, a large difference between the position of the left and the right elevator control surfaces, and consequent reduced controllability of the airplane and degradation of the structural integrity of the horizontal stabilizer.

(f) Compliance

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

(g) Replacement of Elevator Lever Assemblies and Control Rods

Within 9,200 flight hours or 5 years, whichever occurs first, after the effective date of this AD: Replace the left and right fixed control rods and lever assemblies of the elevator control system with newly designed control rods and lever assemblies, in accordance with the Accomplishment Instructions of Bombardier Service Bulletin 670BA–27–062, Revision C, dated February 13, 2015.

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Bombardier Service Bulletin 670BA–27–062, dated December 12, 2013; Bombardier Service Bulletin 670BA–27–062, Revision A, dated April 1, 2014; or Bombardier Service Bulletin 670BA–27–062, Revision B, dated October 10, 2014. This service information is not incorporated by reference in this AD.

(i) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) Alternative Methods of Compliance (AMOCs): The Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the ACO, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone: 516–228–7300; fax: 516–794–5531. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office. The AMOC approval letter must specifically reference this AD.

(2) Contacting the Manufacturer: For any requirement in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, New York ACO, ANE–170, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(j) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) Canadian Airworthiness Directive CF–2014–44, dated December 9, 2014, for related information. This MCAI may be found in the AD docket on the Internet at *http://www.regulations.gov/#!documentDetail;D=FAA-2015-0492-0002.*

(2) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (k)(3) and (k)(4) of this AD.

(k) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(i) Bombardier Service Bulletin 670BA–27–062, Revision C, dated February 13, 2015.

(ii) Reserved.

(3) For service information identified in this AD, contact Bombardier, Inc., 400 Côte Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone: 514–855–5000; fax: 514–855–7401; email: *thd.crj@aero.bombardier.com;* Internet *http://www.bombardier.com.*

(4) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

(5) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202–741–6030, or go to: *http://www.archives.gov/federal-register/cfr/ibr-locations.html.*

Issued in Renton, Washington, on August 10, 2015.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2015–20366 Filed 8–19–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 157

[Docket No. RM12–11–003; Order No. 790–B]

Revisions to Auxiliary Installations, Replacement Facilities, and Siting and Maintenance Regulations

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule, order on clarification; correction.

SUMMARY: This document contains corrections to the final rule (RM12–11–003) which was published in the **Federal Register** of Friday, July 24, 2015 (80 FR 43944). The final rule amended regulations to: provide pre-granted authority under a new paragraph to abandon or replace auxiliary facilities, subject to certain conditions; permit auxiliary facilities that cannot meet the conditions for the pre-granted abandonment authority in the new paragraph to be abandoned under the blanket certificate regulations, subject to those regulations' requirements; and permit replacement facilities constructed under the regulations to be abandoned under the blanket certificate regulations, subject to those regulations' requirements.

DATES: Effective October 7, 2015.

FOR FURTHER INFORMATION CONTACT:

Katherine Liberty, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6491, *katherine.liberty@ferc.gov.*

Gordon Wagner, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8947, *gordon.wagner@ferc.gov.*

Howard Wheeler, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–8688, *howard.wheeler@ferc.gov.*

Shannon Jones, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, (202) 502–6410, *shannon.jones@ferc.gov.*

SUPPLEMENTARY INFORMATION:

Revisions to Auxiliary Installations, Replacement Facilities, and Siting and Maintenance Regulations Docket No. RM12–11–003

Errata Notice

On July 16, 2015, the Commission issued a Final Rule in the above

captioned proceeding. *Revisions to Auxiliary Installations, Replacement Facilities, and Siting and Maintenance Regulations,* 152 FERC ¶ 61,049 (2015). This errata notice makes a correction to the Final Rule as issued.

In FR Doc. 2015–17919 appearing on page 43949 in the **Federal Register** of Friday, July 24, 2015, the following correction is made:

1. On page 43949, in the second column, § 157.216(b)(2)(i)(A) of the regulatory text is revised to read as follows:

''(A) Will not exceed the cost limit in § 157.208(d) for activities under the prior notice provisions;''

Dated: August 14, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–20538 Filed 8–19–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 317

[Docket No. FDA–2008–N–0567]

RIN 0910–AG37

Designating Additions to the Current List of Tropical Diseases in the Federal Food, Drug, and Cosmetic Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Final order.

SUMMARY: The Federal Food, Drug, and Cosmetic Act (the FD&C Act) authorizes the Food and Drug Administration (FDA or Agency) to award priority review vouchers (PRVs) to tropical disease product applicants when the applications meet certain criteria. The FD&C Act lists the diseases that are considered to be tropical diseases for purposes of obtaining PRVs, and also provides for Agency expansion of that list to include other diseases that satisfy the definition of ''tropical diseases'' as set forth in the FD&C Act. FDA has determined that Chagas disease and neurocysticercosis satisfy this definition, and therefore is adding them to the list of designated tropical diseases whose product applications may result in the award of PRVs. Sponsors submitting certain applications for the treatment of Chagas disease and neurocysticercosis may be eligible to receive a PRV if such applications are approved by FDA.

DATES: This order is effective August 20, 2015.

ADDRESSES: Submit electronic comments on additional diseases suggested for designation to *www.regulations.gov.* Submit written comments on additional diseases suggested for designation to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Kristiana Brugger, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 6262, Silver Spring, MD 20993–0002, 301–796–3601; or Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, rm. 7301, Silver Spring, MD 20993–0002, 240–402–7911.

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I. Background: Priority Review Voucher Program

Much of the global burden of disease falls on populations who lack the resources to develop, encourage development of, or purchase disease preventions or treatments. For this reason, many of the diseases afflicting these populations do not receive the same level of innovation investment as diseases afflicting wealthier or more empowered populations.

Section 524 of the FD&C Act (21 U.S.C. 360n), which was added by section 1102 of the Food and Drug Administration Amendments Act of 2007 (FDAAA), is designed to address the lack of treatment development incentives for such tropical diseases. It uses a PRV incentive to encourage the development of new drugs for prevention and treatment of certain diseases that, in the aggregate, affect millions of people throughout the world. Specifically, section 524 of the FD&C Act defines the term ''tropical disease product application'' and sets forth criteria which, if met, enable those who submit an application for a tropical disease product to be eligible to receive a PRV upon approval of that tropical disease product application. To be eligible for a PRV, the tropical disease product application must meet all of the following criteria:

- The application must be a ''human drug application,'' as defined in section 735(1) of the FD&C Act (21 U.S.C. 379g(1)).
- The application must be for the ''prevention or treatment of a tropical disease,'' as defined by statute.
- The application must be deemed eligible for priority review by the Secretary of HHS.
- The application must be approved after the date of enactment of FDAAA (*i.e.,* September 27, 2007) for use in the prevention, detection, or treatment of a tropical disease.
- The application must be for ''a human drug, no active ingredient (including any ester or salt of the active ingredient) of which has been approved in any other application under section 505(b)(1) [21 U.S.C. 355(b)(1)] or section 351 of the [PHS Act].''

Section 524(a)(4) of the FD&C Act. In particular, the requirement that an application must be eligible for priority review demonstrates the PRV program's intent to reward tropical disease product applications that have the potential to demonstrate *significant improvements* in safety or effectiveness in the treatment or prevention of tropical diseases (Ref. 1).

FDA will award a PRV to the application holder upon the approval of a qualifying tropical disease product application that meets the criteria previously listed. The voucher entitles the holder to a priority review of a human drug application, submitted under section 505(b)(1) of the FD&C Act or section 351 of the PHS Act, of the voucher holder's choosing. Once awarded to the application holder, the PRV may be transferred to another entity, and the original holder may receive consideration (including payment) for the transfer. To redeem the voucher, a PRV holder must notify FDA of its intent to use the PRV at least 90 days prior to the submission of the application for which the PRV will be used. This notification constitutes a legally binding agreement to pay the user fee that must be applied to applications using a PRV.

Section 524(a)(3) of the FD&C Act lists the following diseases as tropical diseases qualifying for a PRV:

- Tuberculosis

- Malaria
- Blinding trachoma
- Buruli ulcer
- Cholera
- Dengue/Dengue haemorrhagic fever
- Dracunculiasis (guinea-worm disease)
- Fascioliasis
- Human African trypanosomiasis
- Leishmaniasis
- Leprosy
- Lymphatic filariasis
- Onchocerciasis
- Schistosomiasis
- Soil transmitted helminthiasis
- Yaws
- Filoviruses

In addition, section 524(a)(3)(R) of the FD&C Act authorizes the Secretary to expand by order the list of tropical diseases to include ''[a]ny other infectious disease for which there is no significant market in developed nations and that disproportionately affects poor and marginalized populations[,]'' and that is the purpose of this order.

II. Criteria for Expansion of the List of Tropical Diseases

On December 12, 2008, FDA convened a public hearing, at which the public provided suggestions regarding the following topics: (1) Criteria that should be used to determine the eligibility of an infectious disease for designation as a tropical disease, (2) the process that should be used to make tropical disease designations, and (3) recommendations for specific diseases that should be designated as tropical diseases. A number of participants in the public meeting commented that, given the lack of definitive data for some diseases, as well as the lack of consensus on how these criteria should be defined, FDA should use a flexible approach in determining whether specific diseases meet the criteria.

FDA agrees with the use of a flexible approach to tropical disease designation and is proposing that a scientifically informed, qualitative assessment of disease candidates is appropriate. FDA also is establishing a public docket that will continuously remain open to receive future suggestions for tropical disease designations under section 524 of the FD&C Act. The Agency proposes to review the contents of this public docket periodically and to take action to designate additional diseases when appropriate.

As stated previously, section 524(a)(3)(R) of the FD&C Act authorizes the Secretary to designate by order ''[a]ny other infectious disease for which there is no significant market in developed nations and that disproportionately affects poor and marginalized populations'' as a ''tropical disease.'' In the following paragraphs, FDA sets forth its interpretation of this provision and the criteria we propose to use in determining which diseases may be designated by order of the Secretary as ''tropical diseases'' under section 524.

A. No Significant Market in Developed Nations

1. ''Developed Nations''

In interpreting the term ''developed nations,'' FDA acknowledges at the outset that the standards for determining a nation's level of development, as well as the threshold for a ''developed'' country, are the subject of debate. Some nations may score well in some markers of development (*e.g.,* gross domestic product) and poorly in others (*e.g.,* sanitation), leading to disagreements regarding which measures of development should serve as dominant indicators. After also examining the International Monetary Fund (IMF)'s list of advanced economies (Ref. 2) and the United Nations (U.N.)'s human development index (Ref. 3), the Agency is proposing to use a country's presence on the World Bank's [1] list of ''high income economies'' (Ref. 4) as evidence that the country should be considered a ''developed nation'' for ''tropical disease'' determination purposes. Similarly, FDA will use a country's presence on the World Bank's list of ''low income economies'' (id.) as evidence that the country should not be considered a ''developed nation'' for purposes of ''tropical disease'' determination.

FDA recognizes that there is a correlation between economic strength (particularly purchasing power) and the market incentive for drug creation: People in high-income economies are more likely to be able to afford disease treatments and, thus, drug companies have an incentive to create products that will be in demand in those countries. The World Bank list of high-income economies is calculated based on gross national income per capita, and, importantly, it thus reflects wealth as a primary basis for categorization. FDA's recognition of the role of wealth is why we deemed the U.N. development index less helpful: It measures development across a broad array of categories (*e.g.,* mean years of schooling) that, while informative, are less directly correlated with the drug development incentives reflected in the statutory scheme. Indeed, the U.N. itself has acknowledged that ''[t]he [human development index] was created to emphasize that people and their capabilities should be the ultimate criteria for assessing the development of a country, not economic growth alone'' (Ref. 5). And although the IMF's list of ''advanced economies'' reflects purchasing power to some degree, the World Bank calculus is more transparent and predictable than the IMF's calculus, and the U.S. government routinely uses the World Bank lists when determining a country's eligibility for Generalized System of Preferences benefits for trade in goods (Ref. 6).

2. ''No Significant Market''

The list of tropical diseases in section 524(a)(3) of the FD&C includes ''[a]ny other infectious disease for which there is no significant market in developed nations. . .designated by order of the Secretary.'' As an initial matter, the Agency notes that ''infectious diseases,'' as such do not have markets—but drugs for the treatment or prevention of infectious diseases do. Because the statute offers vouchers for applications for drugs for either the treatment or prevention of infectious diseases, it is reasonable to assume that ''no significant market'' can refer to drugs for the treatment or prevention of infectious diseases. Thus, FDA will analyze the market for drugs for both the treatment and prevention of infectious diseases for a particular infectious disease.

The threshold for what constitutes a ''significant market'' for drugs for the treatment or prevention of infectious diseases is difficult to quantify. Because of the challenges in providing a rigid definition of this term, FDA proposes that the following factors be considered in determining whether a ''significant market'' exists in developed countries.

a. Occurrence of the Disease in Developed Nations

As discussed previously, market forces are important drivers of drug development. The purpose of section 524 of the FD&C Act is to provide an incentive (through a PRV) for innovation where there otherwise would be an insufficient financial or market incentive to invest in developing drugs for tropical diseases. The market for many FDA-approved products includes situations in which individuals (often reimbursed by their insurers) purchase the products for use by a specific patient. This reflects what we will refer to as the ''direct'' market, and the direct market for a drug in a

[1] The ''World Bank'' is a term used to refer collectively to the International Development Association and the International Bank for Reconstruction and Development, which are two of the five organizations that comprise the World Bank Group.

developed country can often be estimated by assessing the occurrence of a particular disease in that country.[2]

If the prevalence of a disease in developed countries is less than 0.1 percent of the population of those countries, it is unlikely that ordinary market forces will offer a sufficient incentive to drive the development of new preventions or treatments. Thus, it is unlikely that there will be a ''significant market'' for the disease's treatment in those countries. Accordingly, FDA has decided to use a disease prevalence rate of 0.1 percent of the population as a factor for aiding in the determination of whether a ''significant market'' may exist for a disease's treatment.

b. The Existence of a Sizeable Indirect Market for the Tropical Disease Drug (*e.g.,* Government, Including the Military) That Would Constitute a Financial Incentive for Drug Development

As discussed previously, the market for many FDA-approved products is the ''direct'' market, involving patients purchasing drugs for their own use. However, some drugs may have a sizeable ''indirect'' market composed of, for example, government entities or nongovernmental organizations that wish to purchase and distribute a drug for the treatment or prevention of an infectious disease, often for public health reasons, to a particular group of people. Indeed, for some diseases identified as high priorities for public health preparedness, governmental entities have initiated programs to provide support for product development and/or stockpiling (Ref. 7).[3] In such cases, FDA would consider that market as a factor in determining whether a significant market for a drug for the treatment or prevention of an infectious diseases disease exists in developed nations.

[2] Exceptions may occur for diseases that have a low incidence in developed countries through use of preventive drugs or biologics. Thus, although the disease incidence is lower in developed countries these are less likely to be the types of diseases for which section 524 of the FD&C Act is intended to spur innovation.

[3] For example, certain diseases have been prioritized for medical countermeasure development and investment (see Ref. 7) or are listed as priority pathogens by government entities such as the National Institutes of Health (NIH)/National Institute of Allergy and Infectious Diseases (NIAID), Center for Disease Control or Prevention, and military programs (Refs. 8, 9, and 10). These and other indications of potential priority designation that could affect governmental resource allocation may be taken into account in assessment of whether a market exists in developed countries.

B. Disproportionately Affects Poor and Marginalized Populations

As with the term ''no significant market in developed nations,'' FDA has elected to analyze multiple factors—none of which, alone, invariably will be outcome-determinative—in assessing whether a given disease meets the requirement of ''disproportionately affects poor and marginalized populations'' for classification as a ''tropical disease'' under section 524 of the FD&C Act. Those factors are the following:

1. The Proportion of Global Disability-Adjusted Life Years for the Disease That Is Attributable to Developing Countries

A disability-adjusted life year (DALY) measurement is not a direct measure of the prevalence of the disease; rather, it is a measure of the impact of that disease on a given population. ''One DALY can be thought of as one lost year of 'healthy' life'' (Ref. 11). An estimate of disease-related morbidity (a term which, as used in this order, refers to the state of being diseased (see Ref. 12)) and mortality in affected countries thus can be made by assessing available information about the DALY burden of a particular disease. ''DALYs for a disease or health condition are calculated as the sum of the Years of Life Lost. . .due to premature mortality in the population and the Years Lost due to Disability. . .for people living with the health condition or its consequences'' (Ref. 11). DALYs are an important measurement, enabling FDA to weigh ''tropical disease'' eligibility for those diseases that, although they may be present to some degree in developed countries (*e.g.,* because of travel or immigration), cause much more harm to the public health of developing countries.

2. The Relative Burden of the Disease in the Most Impoverished Populations Within the Countries in Which It Is Found

If a disease's prevalence is high in populations who cannot afford treatment and low in populations that can, there likely will be little market incentive for drug companies to create new treatments. In light of section 524 of the FD&C Act's intent to create treatment development incentives, as well as its clear goal of improving the health of impoverished populations, FDA will consider the demographic distribution of a disease in determining whether it should be designated as a ''tropical disease'' for the purposes of section 524 of the FD&C Act.

3. The Relative Burden of the Disease in Infants, Children, or Other Marginalized Segments of the Population (*e.g.,* Women, the Elderly) Within the Countries in Which It Is Found

One of the clear goals of section 524 of the FD&C Act is improving the health of marginalized populations, who generally suffer poorer health outcomes than their non-marginalized neighbors, even within the same country. To ''marginalize'' is to place (or keep) a person or population in a powerless or unimportant position (see, *e.g.,* Ref. 13). Individuals or groups may be marginalized for any number of reasons, including, for example, gender, age, or extreme poverty. Marginalized populations generally lack a meaningful voice in societal decisionmaking, including decisions relating to the acquisition, distribution, and use of health resources. These populations, therefore, are less likely to have their health needs met and less likely to have the resources or political power needed to effect change in those aspects of health policy that most affect them—including incentivizing governments or private industry to offer disease treatments. Understanding the relative prevalence of a disease in these populations will help FDA determine whether treatment development for that disease would be spurred by the provision of section 524 of the FD&C Act's PRV incentive.

4. Designation by the World Health Organization as a Neglected Tropical Disease

The World Health Organization (WHO), in its role as the directing and coordinating authority on international health within the U.N. system, has identified a list of diseases that it refers to as ''neglected tropical diseases'' (Ref. 14). According to the WHO, these diseases ''are strongly associated with poverty'' and tend to affect those with ''little political voice''; rarely receive the attention of disease treatment innovators or the broader international community; and often flourish in tropical climates (id.). The WHO's list includes 12 of the 17 enumerated diseases in section 524(a)(3) of the FD&C Act (see Ref. 15). Because the WHO's list of ''neglected tropical diseases'' includes many of the types of diseases for which section 524 was designed to incentivize treatment development, FDA believes it is reasonable to consider WHO's ''neglected tropical disease'' designations in determining whether a disease should be designated as a

''tropical disease'' for purposes of section 524 of the FD&C Act.

III. Diseases Being Designated

FDA has considered a number of diseases recommended in response to the **Federal Register** document announcing the December 12, 2008, public meeting (see 73 FR 66050, November 6, 2008), by meeting participants or others directing communications to FDA on the same topic. Based on an assessment using the criteria proposed previously, FDA has determined that the following diseases will be designated as ''tropical diseases'' under section 524 of the FD&C Act:

- Chagas disease.
- Neurocysticercosis.

FDA's rationale for adding these diseases to the list is discussed in the analyses that follow.

A. Chagas Disease

Chagas disease, also known as American trypanosomiasis, is a vector-borne parasitic disease caused by the protozoan *Trypanosoma cruzi* (Ref. 16). After the initial infection, a 2-month ''acute'' phase occurs, during which there are some antiparasitic drugs that can be used for treatment in some patients (*id.*). Treatment efficacy generally decreases with length of infection, and if the disease is not cured during the initial ''acute'' infection phase, the chronic infection lingers over the next several years or decades, often causing organ and tissue damage (*id.*). For example, some Chagas disease sufferers who contract the disease during childhood die in early adulthood due to heart arrhythmias or other effects of organ damage. Efforts to reduce Chagas disease center around controlling the spread of the vector insects (*e.g.,* through insecticide and roof repair) and protecting people from insect bites (*e.g.,* through bed net use) (*id.*).

Chagas disease has a disproportionate effect on poor and marginalized populations. Developing countries in Central and South America suffer most of the global DALYs lost because of the disease (*id.*). Estimates vary, but approximately 8 million people are believed to be infected in Mexico, Central America, and South America (Ref. 17). Within Chagas-endemic countries, the disease often affects rural and/or poor populations who live in the mud huts that also are inhabited by the vector insects (Ref. 16). WHO has designated Chagas as a neglected tropical disease (Ref. 15).

There also is no significant market for Chagas disease treatment in developed nations. Based on estimates derived by applying published seroprevalence data to immigrant population estimates in the United States, it is estimated that there are just over 300,000 persons infected with *T. cruzi* in the United States (Refs. 17, 18, and 19). The number of persons with chronic cases for whom definitive recommendations for treatment would apply is likely less than 300,000. Transmission and acute cases of Chagas disease would be considered unlikely either in the United States or in other developed countries. The most common insect vector that transmits the parasite, the triatomine bug, is found mostly in Central and South America. The main risk of Chagas transmission to uninfected persons in developed countries is due to mother-to-child transmission, or blood transfusions or organ donations where the donor has lived in or visited Chagas-endemic countries—although there have been a few reports of vector-borne Chagas infecting people in the United States (Refs. 16 and 17).

There are no approved vaccines or other preventative therapies for the disease, either in the United States or elsewhere. The only drugs used to treat Chagas are benznidazole and nifurtimox, which are not approved in the United States for this use. In addition to the lack of a commercial market in developed countries (presumably because of the low prevalence of disease), there does not seem to be a sizeable indirect (*e.g.,* government) market for Chagas treatments either—presumably because of the geographical limitations of the disease. As a general matter, Chagas-endemic countries are developing countries in Central and South America, and thus neither persons with Chagas disease nor their governments are likely to be in a position to provide a financial incentive for treatment development. Given the disease's geographical limitations and its prevalence in non-touristed rural areas, it is unlikely that the travelers' market would be a sufficient incentive to encourage treatment development for Chagas.

Given the factors described in this document, FDA has determined that Chagas disease meets both statutory criteria of ''no significant market in developed nations'' and ''disproportionately affects poor and marginalized populations.'' Therefore, FDA is designating Chagas disease as a tropical disease under section 524 of the FD&C Act.

B. Neurocysticercosis

Cysticercosis is a disease caused by infection with *Taenia solium,* a tapeworm of the phylum Platyhelminthes, and is contracted when a person ingests the tapeworm eggs. After a person ingests the eggs, the tapeworm enters the larval stage and begins to infect the host's tissues. The most severe form of the disease, called neurocysticercosis, occurs when larvae enter the central nervous system and establish cysts that can cause epilepsy (see, *e.g.,* Ref. 20). Treatment guidelines from the American Academy of Neurology recommend treatment with anti-helminthic drugs like albendazole, with consideration for adjunctive corticosteroid therapy (Ref. 20).

Neurocysticercosis disproportionately affects poor and marginalized populations. Indeed, patients who have infection with *T. solium* generally have similar socioeconomic and demographic characteristics to those patients with soil transmitted helminthiasis, a disease already on the statutory list of ''tropical diseases'' in section 524 of the FD&C Act. As of the late 1990s, approximately 50 million people worldwide were estimated to harbor the tapeworm *T. solium* (Ref. 21), most of them living in poverty in the world's poorest countries that lack effective systems for meat inspection and adequate sanitation (Refs. 22 and 23). Estimates of the number of people who have epilepsy caused by neurocysticercosis ranges from 450,000 to 1,350,000 in Central and South America and from 300,000 to 4,600,000 in sub-saharan Africa (Ref. 23). Neurocysticercosis is believed to contribute to high levels of human morbidity, notably epilepsy, though efforts are underway to adequately characterize an estimate of DALY for neurocysticercosis (Ref. 24). Notably, cysticercosis is included on WHO's list of neglected tropical diseases (Ref. 15).

FDA also has determined that neurocysticercosis products have no significant market in developed nations. Although the disease does occur in the United States, estimates of annual incidence rates in the general U.S. population are low, at approximately 0.2 cases per 100,000 population. Incidence rates are much higher among Hispanics living in the United States, who most likely acquired the tapeworm in cysticercosis-endemic areas of Central and South America (Ref. 25), with estimates ranging between 3.1 and 5.8 cases per 100,000 Hispanic population (Ref. 26). FDA also is unaware of evidence suggesting any sizeable military, government, or other indirect market for neurocysticercosis products.

In view of the disease characteristics discussed previously, FDA considers the statutory criteria for addition of neurocysticercosis to the list of tropical

diseases in section 524 of the FD&C Act to be satisfied. This addition is effective upon the publication of this order.

IV. Process for Requesting Additional Diseases To Be Added to the List

The purpose of this order is to add diseases to the list of tropical diseases that FDA has found to meet the criteria in section 524(a)(3)(R) of the FD&C Act. By expanding the list with this order, FDA does not mean to preclude the future addition of other diseases to this list. To facilitate the consideration of future additions to the list, FDA is establishing a public docket (see *http://www.regulations.gov,* Docket No. FDA–2008–N–0567) through which interested persons may submit requests for additional diseases to be added to the list. Such requests should be accompanied by information to document that the disease meets the criteria set forth in section 524(a)(3)(R) of the FD&C Act. FDA will periodically review these requests, and, when appropriate, expand the list.

V. Paperwork Reduction Act

This final order establishes a public docket through which interested persons may submit requests for additional diseases to be added to the list of tropical diseases that FDA has found to meet the criteria in section 524(a)(3)(R) of the FD&C Act. This request for information is exempt from Office of Management and Budget review under 5 CFR 1320.3(h)(4) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). Specifically, ''[f]acts or opinions submitted in response to general solicitations of comments from the public, published in the **Federal Register** or other publications, regardless of the form or format thereof'' are exempt, ''provided that no person is required to supply specific information pertaining to the commenter, other than that necessary for self-identification, as a condition of the agency's full consideration of the comment.''

VI. 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, but FDA is not responsible for any subsequent changes to the Web sites after this document publishes in the **Federal Register**.)

1. U.S. Food and Drug Administration, ''Guidance for Industry: Expedited Programs For Serious Conditions—Drugs and Biologics'' (available at *http://www.fda.gov/downloads/drugs/guidancecompliance regulatoryinformation/guidances/ucm358301.pdf*), 2014.
2. IMF, ''World Economic Outlook: Recovery Strengthens, Remains Uneven,'' Table B1 (available at *http://www.imf.org/external/pubs/ft/weo/2014/01/pdf/tblpartb.pdf*).
3. U.N. Development Programme, ''Human Development Index (HDI)'' (available at *http://hdr.undp.org/en/content/human-development-index-hdi*).
4. The World Bank, ''Country and Lending Groups'' (available at *http://data.worldbank.org/about/country-and-lending-groups*).
5. U.N. Development Programme, ''Frequently Asked Questions—Human Development Index (HDI)'' (available at *http://hdr.undp.org/en/faq-page/human-development-index-hdi#t292n36*).
6. Congressional Research Service, ''Generalized System of Preferences: Background and Renewal Debate,'' pp. 7, 11 (available at *http://fas.org/sgp/crs/misc/RL33663.pdf*).
7. U.S. Department of Health and Human Services, ''Public Health Emergency Medical Countermeasures Enterprise (PHEMCE) Implementation Plan,'' December 2012 (available at *http://www.phe.gov/Preparedness/mcm/phemce/Documents/2012-PHEMCE-Implementation-Plan.pdf*).
8. National Institute of Allergy and Infectious Diseases, NIAID Emerging Infectious Diseases/Pathogens (available at *http://www.niaid.nih.gov/topics/biodefenserelated/biodefense/pages/cata.aspx*).
9. Centers for Disease Control and Prevention, Bioterrorism Agents/Diseases (available at *http://www.bt.cdc.gov/agent/agentlist-category.asp*).
10. Joint Program Executive Office for Chemical and Biological Defense, Joint Vaccine Acquisition Program (JVAP) (available at *http://www.jpeocbd.osd.mil/packs/Default.aspx?pg=1208*).
11. WHO, ''Metrics: Disability Adjusted Life Year (DALY)'' (available at *http://www.who.int/healthinfo/global_burden_disease/metrics_daly/en/*).
12. Medline Plus/Merriam-Webster Medical Dictionary Online, ''Morbidity'' (available at *http://www.merriam-webster.com/medlineplus/morbidity*).
13. Merriam-Webster Dictionary Online, ''Marginalize'' (available at *http://www.merriam-webster.com/dictionary/marginalize*).
14. WHO, ''First WHO Report on Neglected Tropical Diseases: Working to Overcome the Global Impact of Neglected Tropical Diseases'' (available at *http://whqlibdoc.who.int/publications/2010/9789241564090_eng.pdf*).
15. WHO, ''Neglected Tropical Diseases: Diseases Covered by NTD Department'' (available at *http://www.who.int/neglected_diseases/diseases/en/*).
16. Centers for Disease Control and Prevention, ''Parasites—American Trypanosomiasis (also known as Chagas Disease): Detailed FAQs'' (available at *http://www.cdc.gov/parasites/chagas/gen_info/detailed.html*).
17. Centers for Disease Control and Prevention, ''Parasites—American Trypanosomiasis (also known as Chagas Disease): Epidemiology and Risk Factors,'' (available at *http://www.cdc.gov/parasites/chagas/epi.html*).
18. Bern, C. and S.P. Montgomery, ''An Estimate of the Burden of Chagas Disease in the United States,'' *Clinical Infectious Diseases,* 49:e52–54, 2009 (available at *http://cid.oxfordjournals.org/content/49/5/e52.full*).
19. Centers for Disease Control and Prevention, ''Congenital Transmission of Chagas Disease—Virginia, 2010,'' *MMWR. Morbidity and Mortality Weekly Report,* 61(26):477–479, July 6, 2012 (available at *http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6126a1.htm?s_cid=mm6126a1_w*).
20. Baird, R.A., S. Weibe, J.R. Zunt, et al., ''Evidence-Based Guideline: Treatment of Parenchymal Neurocysticercosis,'' *Neurology,* 80:1424–1429, 2013 (available at *http://www.neurology.org/content/80/15/1424.full.pdf*).
21. White, A.C., Jr., ''Neurcysticercosis: A Major Cause of Neurological Disease Worldwide,'' *Clinical Infectious Disease,* 24:101–115, 1997 (available at *http://cid.oxfordjournals.org/content/24/2/101.long*).
22. Institute of Medicine, ''The Causes and Impacts of Neglected Tropical and Zoonotic Diseases: Opportunities for Integrated Intervention Strategies,'' Washington, DC: The National Academies Press (available at *http://www.ncbi.nlm.nih.gov/books/NBK62507/pdf/TOC.pdf*).
23. Mewara, A., K. Goyal, and R. Sehgal, ''Neurocysticercosis: A Disease of Neglect,'' *Tropical Parasitology,* 3(2):106–113, 2013 (available at *http://www.ncbi.nlm.nih.gov/pmc/articles/PMC3889086/?report=printable*).
24. Bhattarai, R., H. Carabin, and C. Budke, ''The Burden of Cysticercosis,'' *Novel Aspects on Cysticercosis and Neurocysticercosis,* H.F. Sibat, ed. (available at *http://www.intechopen.com/books/novel-aspects-on-cysticercosis-and-neurocysticercosis/the-burden-of-cysticercosis*).
25. Wallin, M.T. and J.F. Kurtzke, ''Neurocysticercosis in the United States: Review of an Important Emerging Infection,'' *Neurology,* 63:1559–1564, 2004 (available at *http://www.neurology.org/content/63/9/1559.long*).
26. O'Neal, S., J. Noh, P. Wilkins, *et al*, ''*Taenia solium* Tapeworm Infection, Oregon, 2006–2009,'' *Emerging Infectious Disease,* 17(6):1030–1036, 2011 (available at *http://wwwnc.cdc.gov/eid/article/17/6/10-1397_article*).

Dated: August 14, 2015.

Leslie Kux,

Associate Commissioner for Policy.

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–5453–F–02]

RIN 2577–AC86

Housing Choice Voucher Program: Streamlining the Portability Process

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations governing portability in the Housing Choice Voucher (HCV) program. Portability is a feature of the HCV program that allows an eligible family with a housing choice voucher to use that voucher to lease a unit anywhere in the United States where there is a public housing agency (PHA) operating an HCV program. The purpose of HUD's changes to the portability regulations is to enable PHAs to better serve families and expand housing opportunities by improving portability processes.

DATES: *Effective:* September 21, 2015.

FOR FURTHER INFORMATION CONTACT: Becky Primeaux, Director, Housing Voucher and Management Operations Division, Office of Housing Choice Vouchers, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street SW., Room 4216, Washington, DC 20410–8000, telephone number 202–708–0477 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number through TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Purpose of the Regulatory Action

The purpose of this final rule is to improve the portability process of the HCV program. Under the HCV program, the participating family is free to choose any housing that meets the requirements of the program. As a means to enable housing choice and mobility to encourage social and economic integration, the HCV program offers voucher portability; that is, the ability of a voucher holder to use the voucher assistance outside the jurisdiction of the PHA that initially issues the family its voucher. While portability offers an important mechanism to increase housing choice, this feature has not been maximized by PHAs and participating families because the current process for allowing a family to move from one jurisdiction to another is time consuming and burdensome. HUD recognizes that for the HCV program's goals to support mobility and housing choice to be realized, the regulations governing the portability process must be clarified so that the burden on families and the PHA is reduced. This final rule completes the rulemaking process, which commenced in 2012, to revise the existing portability regulations to streamline the portability process and facilitate the ability of participating families to move to the jurisdiction of their choice.

B. Summary of the Major Provisions of the Regulatory Action

The key regulatory changes by this final rule include:

- Removing the mandatory absorption requirement discussed in the proposed rule and clarifying the notification requirement for mandatory voucher suspension;
- Requiring an initial PHA to notify the local HUD office within 10 business days of a determination to deny a portability move based on insufficient funding;
- Providing that the voucher issued by the receiving PHA to the family may not expire before 30 calendar days has passed from the expiration date of the initial PHA's voucher;
- Requiring briefings for all participating on how portability works and the benefits of living in low-poverty census tracts; and
- Allowing a family to choose the receiving PHA to administer their voucher should they choose to use portability.

Please see Section III of this preamble, entitled ''Changes at the Final Rule Stage'' for a more detailed discussion of all the changes proposed by this rule.

C. Costs and Benefits

The changes made by this final rule are designed to minimize burden for PHAs and participating HCV families and thereby increase the ability of participating families to live in areas of their choice or relocate to a new area for employment opportunities or to gain access to preferred schools for their children. In addition, the improved portability process contributes to helping victims of domestic violence, dating violence, sexual assault, and stalking have access to the resources necessary to relocate to a safe, stable home away from an abuser. Further, moves to areas with relatively low concentrations of neighborhood poverty have shown to relay important benefits to housing choice voucher families, in particular mental and physical health for adults and long-term educational and earning gains for young children. HUD recognizes that some policies may increase burden for some PHAs; however, the added clarity to the portability process afforded by this final rule is expected to improve the portability process and reduce the burden on families and PHAs.

The streamlining changes do not add any substantial cost to the HCV program.

II. Background—the March 28, 2012, Proposed Rule

On March 28, 2012, at 77 FR 18731, HUD published a rule in the **Federal Register** that proposed to amend HUD's regulations governing portability in the HCV program. The HCV program is the Federal Government's largest program for assisting very low-income families, the elderly, and persons with disabilities to afford decent, safe, and sanitary housing in the private market. The HCV program is authorized by section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1473f(o)) (1937 Act), and the HCV program regulations are found in 24 CFR part 982.

Housing choice vouchers are administered locally by PHAs. PHAs receive Federal funds from HUD to administer the HCV program. Under the HCV program, housing assistance is provided on behalf of the participating family who is responsible for finding a suitable housing unit of their choice where the owner agrees to rent under the program. The participant is free to choose any rental housing, including single family homes, townhouses, and apartments, that meets the requirements of the program and is not limited to units located in subsidized housing projects. Under certain circumstances, if authorized by the PHA, a family may use its voucher to purchase a modest home.

A housing subsidy is paid to the landlord directly by the PHA on behalf of the participating family. The family then pays the difference between the actual rent charged by the landlord and the amount subsidized by the program. The PHA determines the amount that the family will contribute toward rent, which is generally 30 percent of its adjusted annual income. A key feature

of the HCV program is the mobility of the voucher assistance. Section 8(r) of the 1937 Act provides that HCV participants may choose a unit that meets program requirements anywhere in the United States, provided that a PHA administering the tenant-based program has jurisdiction over the area in which the unit is located.

The term ''portability'' refers to the process of leasing a dwelling unit with tenant-based housing voucher assistance outside of the jurisdiction of the PHA that initially issued the family its voucher (the initial PHA). The HCV regulations, found at 24 CFR 982.353 through 982.355, detail where a family may move and the responsibilities of the initial PHA and the receiving PHA (the PHA with jurisdiction over the area to which the family desires to move). Situations have arisen over time that caused HUD to identify several issues that may delay or impede the ability of families to relocate with their voucher.

This final rule takes into consideration public comment received on the March 28, 2012, proposed rule and: (1) More clearly delineates the roles of initial and receiving PHAs; (2) improves accountability in portability billing arrangements between PHAs; and (3) allows families to more easily search for and lease a rental unit in their desired location.

III. Changes at the Final Rule Stage

In response to public comment and following further consideration of portability issues by HUD, this final rule makes certain changes to the regulations proposed in the March 28, 2012, rule. Changes made in response to public comment, issues raised by commenters, and HUD's responses to the comments are further addressed in Section III of this preamble.

The following highlights the more substantive changes made to the proposed rule at this final rule stage:

1. *Definition of Absorption (§ 982.4(b)).* To be consistent with HUD's portability regulations at § 982.355(d), which allows a PHA to absorb the family instead of billing the initial PHA, HUD revises the definition of absorption under the HCV program to mean the point at which a receiving PHA starts making assistance payments with funding under its consolidated Annual Contributions Contract (ACC), rather than billing, the initial PHA. The current definition implies that, in order to absorb a family, the receiving PHA has to first bill the initial PHA. The definition in this final rule also amends the recently revised definition in HUD's ''Removal of Obsolete Section 8 Rental Assistance Certificate Program Regulations,'' [1] which was effective on March 19, 2015, to be consistent with this final portability final rule.

2. *Mandatory voucher suspension (§ 982.4 and § 982.303(c)).* HUD revises the notification requirement and definition pertaining to mandatory voucher suspension to provide clarity and avoid the possibility of disputes between families and PHAs.

3. *Notification requirement before denying moves for insufficient funding (§ 982.354).* HUD revises the written notification requirement to require an initial PHA to notify the local HUD office within 10 business days of a determination to deny a portability move based on insufficient funding.

4. *Portability processing procedures (§ 982.355(g)).* HUD revises § 982.355(g), which pertains to special purpose vouchers (SPVs), to clarify that PHAs must administer SPVs in accordance with HUD-established policy, including any alternative program requirements established by HUD for SPVs.

5. *Term of receiving PHA voucher (§ 982.355(c)(13)).* HUD revises § 982.355(c)(13) to provide that the voucher, issued by the receiving PHA to the family, may not expire before 30 calendar days have passed from the expiration date of the initial PHA's voucher. However, if the initial PHA's voucher has expired before the family arrives in the jurisdiction of the receiving PHA, the PHA must contact the initial PHA to determine if the initial PHA will extend the voucher. Unless the initial PHA is willing to extend its voucher under these circumstances, the receiving PHA may not issue the family a voucher.

6. *Administrative fee (§ 982.355(e)(3)).* HUD revises § 982.355(e)(3) to clarify that if the ongoing administrative fees for the program have been prorated due to insufficient administrative fee funding, the administrative fee that the receiving PHA may bill the initial PHA is also subject to the same proration.

7. *Mandatory absorption of portability vouchers (§ 982.355(d)(2)).* HUD removes the mandatory voucher absorption requirement and instead states that if HUD should choose to require mandatory absorption, HUD must publish a notice in the **Federal Register** and provide PHAs or affected PHAs (if not applicable to all PHAs) with the opportunity for public comment under § 982.355(d)(2)).

8. *Family briefings (§ 982.301(a)(2), (a)(3), (b)(1), (b)(4), and (b)(9)).* HUD revises § 982.301(a)(2), (a)(3), (b)(4), and (b)(9) to require briefings for all families with a HCV on the benefits of living in low-poverty census tracts.

9. *Providing list of landlords to moving families (§ 982.301(b)(11)).* HUD revises § 982.301(b)(11) to replace the current reference to ''other parties known to the PHA'' for ''other resources (such as newspapers, organizations, and online search tools) known to the PHA'' that may assist the family in locating a unit, and to provide that the list of landlords or other resources covers areas outside of poverty or minority concentration.

10. *Allow a family to choose the receiving PHA (§ 982.355(b)).* HUD revises § 982.355(b) to allow a family to choose the receiving PHA to administer its voucher, if there is more than one PHA for the jurisdiction where the family seeks to lease a unit.

11. *Portability and Project-Based Vouchers (PBV) (§ 982.355).* HUD did not adopt the change to § 982.355(g) in the proposed rule, which stated that the provisions on portability do not apply to the PBV program. HUD is concerned that the provision as proposed could be misinterpreted to preclude any potential touchpoints between the two regulations. To address such issues, HUD plans to issue separate guidance on this subject.

12. *Other technical changes.* In addition to the changes discussed above, HUD makes additional technical changes in this final rule. HUD revises § 982.355(d)(1), which addresses HCV absorption by the receiving PHA and the availability of funding under the consolidated ACC for the receiving PHA's HCV program. HUD revises this section to remove the reference to the effective date of the Housing Assistance Payment (HAP) contract as the date that the receiving PHA must know if it has funding to absorb the voucher. Since the receiving PHA may choose to subsequently end a billing arrangement and absorb the family after the effective date of the HAP contract, the reference was confusing. The change clarifies that if the receiving PHA wishes to absorb the family into the receiving PHA program, the receiving PHA must have funding available under its consolidated ACC to do so.

HUD makes technical revisions to §§ 982.301(b)(1), 982.554(c)(4), and 982.637(c)(1) to conform with the policy changes implemented elsewhere in this final rule. Finally, HUD revises §§ 982.403(c), 982.551(f), and 982.641(b)(11) to correct an incorrect citation.

[1] See *http://www.gpo.gov/fdsys/pkg/FR-2015-02-17/pdf/2015-03037.pdf.*

IV. Discussion of Public Comments Received on March 28, 2012, Proposed Rule

The comment period for the proposed rule closed May 29, 2012. HUD received 52 comments on this proposed rule. The commenters included PHAs, organizations representing the public housing industry, tenant advocacy groups, State and local government agencies, and other interested members of the public.

The majority of comments were from PHAs and public housing representative organizations. The PHAs that commented varied in size and geography. In general, the comments from PHAs were mixed. There were several proposals that PHAs supported (*e.g.,* allowing an extension beyond 30 days for porting vouchers, and actively providing a list of landlords) and others to which PHAs expressed opposition (*e.g.,* restricting receiving PHAs from rescreening the porting family). Advocacy group commenters opposed the proposal regarding rescreening of porting families by the receiving PHA and expressed concern about the civil rights implications of such proposals. Specific issues raised by commenters and HUD's responses are as follows:

Comment: Concerns that the rule will increase regulatory burden and reduce local PHA discretion. Many commenters, while supportive of portability and HUD's goals to streamline and reduce administrative burdens, expressed concerns that the proposed regulatory changes did not sufficiently meet these goals. The commenters wrote that, rather than streamlining portability administration, the proposed rule would place additional requirements on PHAs (such as notifying the HUD field office before denying moves for insufficient funding, extending the term of the voucher for at least 30 days beyond the initial termination, requiring mandatory absorptions, and capping administrative fees). The commenters wrote that these policies would add to the burden and costs of administering vouchers, and suggested that HUD consider including the proposed new regulatory requirements in HUD's upcoming voucher administrative fee study to determine their real cost on PHAs and families. The commenters also stated that many of the new requirements would reduce local PHA discretion and flexibility.

HUD Reponses: HUD understands that some policies may increase burden for some PHAs. However, HUD disagrees that other policies in this rule, such as capping administrative fees, will increase administrative burden. HUD further believes that the added clarity to the portability process afforded by this final rule will improve the portability process and reduce the burden on families and PHAs. To address such concerns, each of these four issues is specifically addressed below. With respect to HUD's study on voucher administrative fees, the study is complete and, because of the time frame, took into consideration costs associated with portability, before this rulemaking.

Comment: Mandatory voucher suspension (§ 982.4 and § 982.303). Several commenters supported HUD's proposed change to the definition of ''suspension.'' The commenters wrote that the proposed language would increase the likelihood that families will successfully move during their voucher term. Other commenters, however, expressed concerns about the change, writing that the proposed revision would eliminate local discretion and increase administrative complexities and costs. The commenters wrote that the proposed change would require PHAs to monitor the term of the suspension and to notify families of that term and its subsequent expiration. The commenters also wrote that the mandatory suspension could result in two PHAs administering the same voucher, with the voucher remaining outstanding indefinitely and limiting the ability of the PHA to accurately report, budget, and forecast available voucher funding.

HUD Response: The proposed rule provided that the suspension term starts when the family submits a request for tenancy approval and ends when the PHA approves or denies such request. While HUD understands how voucher suspensions may impact a PHA's processes, HUD believes the benefit to the family outweighs the possible increase in administrative burden placed on the PHA. Based on the length of time an inspection takes to be completed, and the possibility that the voucher could expire if it were not suspended, families may be harmed by such delays due to no fault of their own. Furthermore, PHAs should be actively monitoring and managing their process for approving the assisted tenancy so the mandatory suspension rule should not significantly affect a PHAs ability to report, budget, and forecast available funding.

As noted earlier, HUD revised the proposed language on mandatory voucher suspensions to clarify that the suspension lasts until the family is notified in writing by the PHA whether the request for PHA-approval of the tenancy has been approved or denied. Specifying that the family must be notified before the voucher suspension ends provides clarity and avoids potential disputes between families and PHAs. See § § 982.4 and 982.303(c).

Comment: Notification requirement before denying moves for insufficient funding (§ 982.354). Several commenters expressed support for this provision, but suggested that HUD specify the time period in which a PHA must submit notice to HUD, as well as the date by which HUD will respond to the PHA's written notice. Other commenters expressed opposition to the requirement. They said that the receiving PHA is already required to notify the initial PHA whether the receiving PHA will bill the initial PHA for the family, or will absorb the voucher, and such requirement results in additional delays for the family.

HUD Response: Notification to the local HUD office when a PHA is denying moves due to insufficient funding is not a new requirement. Notice PIH 2012–42 (HA) [2] provides for this notification requirement, and the inclusion of this provision in the proposed rule was intended to codify it in regulation. HUD understands that requiring the PHA to notify the local HUD office adds to the administrative process. However, this requirement is important to HUD in carrying out its oversight and monitoring function. Through the notification requirement, HUD can better ensure that participants are not unnecessarily prohibited from moving under portability or within the PHA jurisdiction.

HUD agrees that more specificity is needed with respect to the time frames associated with this requirement. The final rule provides that a PHA must notify HUD in writing within 10 business days of the date on which the PHA determines it is necessary to deny moves based on insufficient funding. If HUD determines that the PHA lacks the grounds to deny moves due to insufficient funding, the PHA must immediately inform any affected family and immediately process the family's request to move.

Comment: Require HUD approval to deny incoming families and other portability processing procedures (§ 982.355). Several commenters expressed support for the requirement that a PHA must have written approval from HUD before refusing any incoming families. The commenters also suggested that HUD should clarify the procedures that PHAs must use when

[2] See *http://portal.hud.gov/hudportal/documents/huddoc?id=pih2012-42.pdf.*

allowing portability of special purpose vouchers, referred to in this preamble as SPVs (*e.g.,* Non-Elderly Disabled (NED), Veterans Affairs Supportive Housing (VASH), Family Unification Program (FUP), and 5-Year Mainstream). Commenters suggested that HUD specify limited circumstances in which a PHA may not be required to accept incoming families. Other commenters expressed concern that prohibiting the reversal of a decision to absorb vouchers will keep PHAs from deciding to absorb vouchers, thus increasing the amount of portability billing.

HUD Response: HUD appreciates these comments and has made some clarifying changes in the final rule with respect to SPVs, in § 982.355(g). The proposed rule included an example of a circumstance where a PHA may be allowed to deny an incoming family—a PHA in a declared disaster area. However, HUD cannot predict all limited circumstances that would warrant a denial of incoming families and instead prefers to handle such requests on a case-by-case basis.

In order to specify the procedures related to SPVs, the proposed rule set out requirements relating to portability moves of SPVs that were applicable to all SPVs; however, due to the intricacies of each SPV program, HUD determined that specific portability procedures for each SPV are better suited for guidance and not regulation.

Finally, some commenters claimed that HUD's policy to prohibit PHAs from reversing a decision to absorb a voucher may cause some PHAs to be more inclined to not absorb a voucher. HUD was unable to find evidence that the requirement will have such an effect, or that the impact on portability billings will be significant. Moreover, HUD determined that it is important to eliminate the potential negative effect such a reversal could have on the family.

Comment: Portability processing procedures and allowing email communications between initial and receiving PHA (§ 982.355). Several commenters expressed support for the requirement that PHAs communicate with other PHAs through email or other confirmed delivery methods. Commenters wrote that email is simpler than other methods, and its use has already been implemented by many PHAs. Some commenters wrote that some PHAs do not have email contacts for other PHAs, so it would be helpful for HUD to add an email field to the HUD–52665 form. Other commenters, however, had concerns about relying on email, and suggested that email supplement, rather than replace, other forms of communication.

HUD Response: While HUD supports email as the preferred method of communication, the final rule allows for the use of other methods of communication that have delivery confirmation. HUD also made a technical change to § 982.355(c)(4) to correct the reference to the ''receiving'' and not the ''initial PHA.''

Comment: Voucher term of receiving PHA voucher (§ 982.355). Several commenters expressed support for the requirement that PHAs provide an additional 30 days on the voucher term to accommodate the time a family needs to attend a briefing session and locate a new unit. Some commenters, however, suggested that the extension be provided at the agency's discretion and not be mandatory. Another commenter encouraged HUD to add language to the regulation making it clear that receiving PHAs may choose to issue vouchers with more than the additional 30 days of search time. Other commenters objected to extending the voucher for 30 days. These commenters wrote that a blanket, national requirement that voucher terms last an additional 30 days would reduce the number of unit months leased nationally.

HUD Response: While requiring a receiving PHA to add an additional 30 calendar days to the term of the voucher may increase a PHA's administrative burden, providing an additional 30 calendar days to the receiving PHA's voucher term accommodates the additional time that the portability process requires, and does not count against the family's search time.

HUD agrees that the language in the proposed rule was too restrictive and has changed the language in the final rule to accommodate extensions of the term of the receiving PHA voucher beyond 30 calendar days if the receiving PHA chooses to allow such extensions. See § 982.355(c)(13).

Comment: Capping administrative fees (§ 982.355). Several commenters supported capping the amount paid to the receiving PHA for administrative fees at 100 percent of the receiving PHA's administrate fee rate. Other commenters were opposed to this proposal stating that it would be unfair for a receiving PHA to receive 100 percent of the fee since they are not doing 100 percent of the work.

Several commenters requested clarification of the administrative fee structure. The commenters wrote the proposed rule does not address the proration issue and that it is unclear if the cap is based on the receiving PHAs' published fee or prorated fee. These commenters stated that they were also unclear which PHA is responsible for determining fees.

Other commenters suggested alternatives or changes to the proposed administrative fee requirements. Commenters suggested that HUD consider prohibiting PHAs from prorating administrative fees for their outgoing portability vouchers and simply use the 80 percent of the published administrative fee. Other commenters suggested a flat administrative fee to be paid to the receiving PHA. Commenters also suggested that HUD consider reinstatement of the ''hard to house'' fee for SPVs.

HUD Response: Under the proposed rule, the initial PHA must reimburse the receiving PHA for the lesser of 80 percent of the initial PHA ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program unit. Under this structure, the initial PHA always gets to keep a percentage of the administrative fee of the voucher, and the receiving PHA does not bill for an amount that is higher than the receiving PHA's administrative fee. Prior to this final rule provision, if the receiving PHA's prorated administrative fee was $45 and the initial PHA's prorated administrative fee was $60, for example, the receiving PHA would receive $48 (or 80 percent of $60) for the voucher, which is more than the $45 it would get for administering its own vouchers. In the same scenario under this final rule, the receiving PHA would bill for $45 for its share of the administrative fee and the initial PHA would keep $15 of the prorated monthly on-going admin fee for that unit under lease.

HUD also revises § 982.355(e)(3) to mirror, where appropriate, the language concerning ongoing administrative fees under current voucher regulations at § 982.152(b)(1). The paragraph is also revised to clarify that the receiving PHA is not precluded from billing an initial PHA for more than 100 percent of its own administrative fee if both PHAs agree to a different amount of reimbursement that is more than 100 percent of the receiving PHA's administrative fees. HUD agrees with commenters that, as stated in the proposed rule, HUD does not address whether the administrative fee is based on the initial PHA's published or prorated fee. Therefore, HUD is adding language to clarify that, if administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill under this section (*i.e.,* the receiving PHA may bill

for the lesser of 80 percent of the initial PHA's prorated ongoing administrative fee or 100 percent of the receiving PHA's prorated ongoing administrative fee).

Comment: Mandatory absorption of portability vouchers (§ 982.355(d)). Several commenters expressed support to require PHAs to absorb porting vouchers. However, several of the commenters requested clarification on the following areas: (1) The time period HUD will use to determine a PHA is below the 95 percent threshold; (2) how much notice a PHA will be provided before being required to absorb vouchers; (3) what data HUD will use to measure utilization of vouchers and budget authority; and (4) whether the receiving PHA will be prohibited from issuing vouchers to new families in their jurisdiction without having first absorbed all billed portability families.

Several other commenters expressed opposition to the proposal, stating that the proposed provision fails to take local circumstances into consideration. Some commenters expressed concern about possible negative consequences for small PHAs. They wrote that mandatory absorption may hurt small PHAs if they have a small allocation of vouchers or some vouchers are canceled or terminated. Therefore, a small PHA may instead prefer to draw from its waiting list, instead of absorbing porting vouchers. Other commenters wrote that imposing requirements on some PHAs to absorb portable vouchers without making absorption the standard solution is problematic. Finally, commenters also expressed concern that the burden would fall disproportionately on SPVs.

HUD Response: In this final rule, HUD removes the mandatory absorption requirement from the proposed rule. In considering the mandatory absorption requirement, HUD weighed various factors such as: (1) Monitoring leasing rates to assess when the requirement should be put in place and when it should be removed; (2) the impact on the utilization rate of initial PHAs (when a receiving PHA absorbs a port-in voucher for which it was previously billing, it frees-up budget authority and reduces the number of unit months leased for the initial PHA, and the initial PHA may not have sufficient time to utilize its increased budget authority or increase its reduced unit months leased); (3) determining the timing of such assessments; (4) the impact on the receiving PHA's waiting list as absorption would reduce the number of families on the waiting list that could be served; (5) the impact such a requirement could have on renewal funding; and (6) the impact requiring the use of Net Restricted Position (NRP) would have on PHAs.

After consideration of such factors, HUD decided not to adopt the mandatory absorption requirement as proposed. This final rule continues to afford HUD the ability to mandate absorptions on a case-by-case basis. Should HUD determine to impose such a requirement in the future for all PHAs that: (1) Are utilizing less than 95 percent of their available budget authority, and (2) have a leasing rate of less than 95 percent, it shall do so through a notice in the **Federal Register** stating such proposed policy and procedures, with an opportunity for public comment for a period of no less than 60 calendar days. After consideration of public comments, HUD will publish a final notice in the **Federal Register** advising PHAs and the public of HUD's final determination on mandatory absorption.

V. Comments on Specific Issues Raised by HUD

Comment: Transfer of ACC funds between initial and receiving PHA. HUD invited comments on how to redesign portability in a way that would eliminate or minimize the administrative burdens associated with portability billings. In the past, some PHAs suggested that HUD transfer funds from the initial PHA's consolidated ACC to the receiving PHA's consolidated ACC, in order to transfer the money without direct PHA involvement. Others suggested a sharing of costs by the initial and receiving PHA, whereby the initial PHA would pay to the receiving PHA no more than the family's subsidy at the initial PHA location.

Of those commenters that responded to the request in the proposed rule, a few supported a transfer of funds between the initial and receiving PHAs for portability vouchers, while others were against it. Some commenters wrote that tracking transfers of this type would be an added administrative burden on HUD and PHAs. Commenters noted that PHAs with a high percentage of outgoing portability vouchers would be disproportionately affected by such transfers. A high volume of voucher transfers may jeopardize these PHAs' operations, and make the PHAs' budgets more unstable and less predictable. Commenters favoring the transfers of ACC funds for portability wrote that such transfers would result in numerous efficiencies by eliminating billing arrangements among PHAs.

As for sharing the costs between PHAs, a commenter wrote that it is unfair for the initial PHA to pay no more than the family's subsidy to the receiving PHA because it does not recognize the real cost for the receiving PHA for administering the voucher, but the commenter suggested that an administrative fee should still be paid.

HUD Response: HUD agrees with the commenters that expressed concerns that transfers of ACC funds under portability may have potential negative effect on PHAs, especially those with a high percentage of outgoing portability vouchers. Also the administrative burden of such transfers on HUD and PHAs outweighs eliminating or minimizing portability billings. With respect to limiting the amount the initial PHA pays for HAP under the billing option to no more than it would pay for that voucher if leasing in their jurisdiction, and having the receiving PHA share the cost, HUD concluded that such sharing of the costs would be administratively burdensome on PHAs, disproportionately affect PHAs with a high percentage of incoming portability vouchers, needlessly complicate the portability process, and would not reduce portability billings. Therefore, HUD did not incorporate this change into this final rule.

Comment: Rescreening of families using portability. HUD solicited comments on how to minimize hardship on families when the receiving PHA's screening criteria is more stringent than the initial PHA's criteria. Several commenters supported a proposed restriction on rescreening of porting families. These commenters wrote that rescreening presents a significant barrier for voucher families trying to relocate to areas that offer greater opportunity. The commenters wrote that, for true mobility, rescreening must not be allowed.

Other commenters, all PHAs, supported rescreening by the receiving PHA. A commenter wrote that PHAs cannot be expected to operate using multiple screening standards. A commenter also wrote that it is unfair to families that are ineligible under the receiving PHA's criteria, while those from another jurisdiction are allowed to participate in the HCV program.

HUD Response: HUD agrees that receiving PHAs should be allowed to apply their own screening standards consistently among families in their program and for families moving into their jurisdiction under portability. However, it is important that moving families be informed that they are subject to screening based on the receiving PHA's criteria, and that the receiving PHA's screening criteria may be different than that of the initial PHA. Any potential hardship on the family may be minimized, to some extent, if

families are aware ahead of time if the receiving PHA will be rescreening incoming families. This information should be incorporated into the briefing packet as discussed below.

Comment: Requirement and content of HCV family briefings. HUD solicited comments on whether the briefing should be revised to highlight the factors and trade-offs a family should consider when leasing a unit with voucher assistance. These factors include, but are not limited to: employment opportunities; safety, health and environmental amenities; public transportation; the quality of schools; access to social services; the quality of housing; and proximity to family and friends. Comments were also solicited on whether information on the benefits of living in low-poverty census tracts should be provided to all families selected to participate in the HCV program, and not just those families living in high-poverty census tracts, as is provided in the codified regulation. The majority of commenters expressed opposition to expanding the briefing requirements, stating that the existing briefing requirements are already complex and any expansion would increase administrative burden. Several commenters wrote that the requirements of the family briefings are already covered under the Section 8 Management Assessment Program indicator on expanding housing opportunities and deconcentration.

HUD Response: HUD has determined that providing information about the factors the family should consider when determining where to lease a unit with voucher assistance will only be required as part of the briefing should HUD make such information available to PHAs for distribution. If required, PHAs are to provide such information as part of the oral briefing and the information packet provided to families selected to participate in the program. HUD therefore revises the regulation at § 982.301 accordingly.

HUD has also determined that an explanation of the benefits of living in low-poverty census tracts should be provided to all families, not just those families living in high-poverty census tracts. This explanation of benefits should also be included in the information packet provided to families selected to participate in the HCV program.

In making this determination HUD considered the effect on both families and PHAs. While families who already live in low-poverty census tracts may be aware of the benefits of living in such areas, not all families may have such awareness, and HUD does not see any disadvantages in providing all families such information. While there may be some administrative cost to PHAs in providing such information to all families selected to participate in the program, this change will also provide some administrative relief for PHAs. With the change, PHAs will not have to determine which families live in high-poverty census tracts to determine who needs the additional briefing. In this regard, a commenter wrote that most PHAs already provide the same information regardless of where the family lives.

HUD determined that information on how portability works should be provided during the briefing and as part of the information packet to every family, not just those who are eligible to move under portability. Accordingly, HUD revised the regulation at § 982.301(a)(2) and § 982.301(b)(4). HUD is also revising some of the required content of the family briefings related to portability in this final rule. In addition to an explanation of how portability works, the briefing should also include information on how portability may affect the family's assistance through rescreening, changes in subsidy standards and payment standards, and any other elements of the portability process that may affect the family's assistance.

Comment: Providing list of landlords. HUD solicited comments on whether to continue requiring PHAs to provide families with a list of landlords or other parties known to the PHA who may be willing to lease a unit to the family, and whether additional information on areas of opportunity or neighborhoods would be beneficial for families. The majority of commenters responding to this solicitation of comments were PHAs that supported the provision of a list of landlords. These commenters stated that such lists may be extremely helpful to voucher participants who are seeking housing and may not be aware of local housing opportunities. Some commenters suggested that providing the list to voucher participants should be voluntary. A minority of commenters expressed concern that such lists may result in steering families to high-poverty and racially concentrated areas, and that PHAs should be required to assess such lists to ensure they do not steer such families.

HUD Response: HUD agrees that such written references could be essential to a successful housing search, particularly to families who are moving under portability and may not be familiar with the new jurisdiction. HUD also agrees that PHAs that choose to maintain such lists should be mindful of the need to provide housing opportunities to families in nonracially and nonpoverty concentrated areas. At this final rule stage, HUD retains the requirement to provide a list of landlords known to the PHA that may be willing to lease a unit to the family. Accordingly, HUD modifies § 982.301(b)(11), to replace the current reference to ''other parties known to the PHA'' for ''other resources (such as newspapers, organizations, and online search tools) known to the PHA'' that may assist the family in locating a unit, and to provide that the list of landlords or other resources covers areas outside of poverty or minority concentration.

Comment: Allow a family to select the receiving PHA. HUD solicited comments on whether a family should have the option to select the receiving PHA when more than one PHA has jurisdiction over the area to which the family wishes to move. Under the codified HCV program regulations, the initial PHA selects the receiving PHA for the porting family. The majority of commenters responding to this solicitation supported HUD's proposal to allow families to select the receiving PHA. Other commenters wrote that it would be burdensome for participants to have to review sometimes dozens of PHAs' information. These commenters suggested that HUD should maintain a national register of HCV program contacts for voucher participants, if the policy were to be implemented.

HUD Response: HUD determined that families should be given the option to select the receiving PHA when there is more than one PHA that has jurisdiction over the area where the family wishes to lease a unit. As stated in the proposed rule, giving such choice to families allows families to select receiving PHAs that best meet their needs. While HUD understands that in certain cases it may be burdensome for the family to select a receiving PHA, this change does not preclude a family from seeking assistance from the initial PHA in selecting the receiving PHA if the family so chooses. The final rule, therefore, provides that it will be the responsibility of the initial PHA to inform the family of the PHAs that serve the area and provide the family with the contact information for those PHAs. The initial PHA is not required to provide information of the options or services that each PHA may offer.

Accordingly, HUD is revising § 982.355(b) to clarify that the family has the option to select the receiving PHA.

VI. Other Public Comments

Comment: Limit liability for families to move with portability. Several commenters suggested that HUD adopt qualifying criteria (such as families moving for educational or employment opportunities, or families in flight of domestic violence) for moves under portability to ensure that families have a good reason to move. Other commenters suggested limiting the number of times a family may move to one move per year. Another commenter suggested that HUD limit the percentage of portability moves a receiving PHA must handle at a time.

HUD Response: There are provisions already in place that allow PHAs to manage family moves. For example, current regulation at § 982.314(c) provides that the PHA may establish policies that prohibit any move during the initial lease term, and prohibits more than one move by the family during any 1-year period, either within the PHA's jurisdiction or through portability. Moreover, receiving PHAs may always choose to absorb into its voucher program a participant who has moved under portability, provided that the receiving PHA has funding available to do so.

Comment: PHAs should be required to remind families they may move with portability. Some commenters suggested that PHAs should be required to actively remind families that they may move using the HCV portability process. Specifically, the commenters suggested that PHAs should be required to remind families at their annual recertification that they may move to other jurisdictions with continued voucher assistance.

HUD Response: HUD's regulation at § 982.301(a) and (b) provides for a family briefing and for an information packet to be given to the family when the family first participates in the voucher program. As provided in this final rule, every family must receive a briefing, and during such briefing, must be given information on how portability works. HUD finds this initial briefing to be sufficient and declines to require PHAs to remind families about portability at other times.

Comment: Provide additional support for victims of domestic violence. Commenters wrote that victims of domestic violence need additional support, beyond briefings. The commenters were supportive of the effectiveness of transitional housing and briefing residents on such services.

HUD Response: PHAs are required to offer victims of domestic violence, dating violence, sexual assault, and stalking the protections afforded under the Violence Against Women Act (VAWA) as reflected in HUD's regulations (24 CFR part 5, subpart L). These requirements include providing the victim with a notification of his or her rights under VAWA (24 CFR 5.2005). PHAs have the option and are encouraged to provide the victim with contact information for supportive services for victims of abuse. At a minimum, PHAs are encouraged to provide the number for the National Domestic Violence Hotline (1–800–799–SAFE (7233)) or the National Sexual Assault Hotline (1–800–656–HOPE (4673)) to victims. Victims who call these numbers may be able to locate supportive services in their area.

Comment: Exempt small PHAs from portability requirements. Several commenters wrote that portability should not apply to participants in small PHAs' programs. The commenters pointed out that a small PHA often has to pay a significantly higher cost for vouchers that port to higher-cost areas than the small PHA would pay for vouchers in their own jurisdiction. This higher cost limits the small PHA's ability to lease its own vouchers and serve families in its jurisdiction.

HUD Response: Since portability is authorized by statute, small PHAs cannot be exempted from allowing eligible families to move. Furthermore, HUD believes that portability is a key feature of the HCV program and families should not be denied the opportunity to move to other jurisdictions based on the size of the administering PHA. With regard to the cost impact, moves to higher-cost areas can impact the PHAs' ability to serve families from its waiting list. However, it is noted that these higher costs are taken into consideration in determining the PHA's renewal eligibility under the HCV program. Furthermore, the appropriations act typically provides that the higher costs of portability are an eligible category for set-aside funding that is used to adjust a PHA's renewal funding. Finally, as discussed in the preamble of this final rule, HUD has strived to clarify the portability process and thus reduce burden for PHAs.

Comment: Concerns about billing for portability vouchers. Several commenters wrote that the rule encourages billing the initial PHA, but should instead encourage absorption of vouchers by the receiving PHA. The commenters wrote that if a receiving PHA can receive 100 percent of its fee for a billed incoming voucher and only 80 percent of its fee for its own voucher, a PHA would have a strong incentive to bill rather than absorb the voucher. Several commenters also wrote that delays in payment by the initial PHA to a receiving PHA are a burden. They suggested that HUD should impose a firm deadline by which the initial PHA must pay its bills or establish other sanctions or tools for a PHA to use for chronic late-payers. Commenters also suggested that HUD develop a program to be used by all PHAs in tracking portability payments.

HUD Response: Prior to this final rule, a receiving PHA would be paid 80 percent of the initial PHA's administrative fees. The March 28, 2012, rule proposed and this final rule revises the administrative fee amount that can be billed to the initial PHA to the lesser of the amount currently provided in the codified regulation (80 percent of the initial PHA's ongoing administrative fee or 100 percent of the receiving PHA's administrative fee). Under this rule, a receiving PHA cannot bill for more than the administrative fee it would otherwise receive for its own program, regardless of whether the initial PHA's administrative fee is higher than the receiving PHA's administrative fee. Prorations applicable to an initial PHA's administrative fees due to an appropriations act that does not fully fund administrative-fee eligibility will apply to those amounts. Therefore, the receiving PHA cannot bill and receive more in administrative fees for a portability voucher than it would receive for its own vouchers, unless both PHAs have agreed on a different amount of reimbursement.

As noted earlier in this preamble, HUD already imposes a firm deadline on portability billings and provides mechanisms that the receiving PHA may use in cases where the initial PHA fails to comply with the initial and subsequent billing due dates. (See Section 8 of Notice PIH 2012–42, Housing Choice Voucher Family Moves with Continued Assistance.)

Comment: HUD should present data to define portability success for voucher-assisted households. Commenters suggested that the use of data to define portability success would be beneficial for stakeholders to more fully comment on the proposed rule. A commenter suggested that American Community Survey data could be used, in conjunction with HUD data, to provide an overlay of assisted and unassisted households to determine at each income quintile, how many households move and how often they move within their existing city and county, outside of their county, or outside of their State. The commenter further wrote that such an analysis may help show that a high percentage of mobility moves results in

voucher-assisted households relocating to neighborhoods of opportunity or deconcentrated neighborhoods.

HUD Response: HUD believes that portability success can be defined in a multitude of ways and is unclear how the analysis described by the commenter would successfully indicate the effects of portability on families. While HUD appreciates the suggestion for additional research into portability success, the intent of this final rule is to simplify the administration of portability issues within the voucher program. HUD believes this analysis is not necessary for successful implementation of the proposed reforms.

VII. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and therefore subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned.'' Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. This rule was determined to be a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866 (although not an economically significant regulatory action, as provided under section 3(f)(1) of the Executive order).

This final rule amends HUD's regulations governing portability in the HCV program. These regulatory changes streamline the portability process and enable initial and receiving PHAs to better serve families and expand housing opportunities. HUD's analysis determined that these regulatory amendments will not have an economic effect of greater than $100 million but would yield certain nontangible benefits. The findings of HUD's analysis are summarized below, and addressed in more detail in the accompanying regulatory analysis:

1. *Benefits of final rule.* The HCV portability policy helps ensure that families have the opportunity to relocate in order to pursue increased or new employment opportunities or to gain access to preferred schools for their children. An efficient portability process also helps ensure that victims of domestic violence and stalking have access to the resources necessary to relocate to a safe, stable home away from an abuser.

Moves to areas with relatively low concentrations of neighborhood poverty have important benefits to housing choice voucher families. Research from HUD's Moving to Opportunity (MTO) demonstration [3] showed that moving from housing developments in high-poverty neighborhoods to private housing in lower-poverty neighborhoods had strong positive effects on girls' and adults' mental health, as well as on adults' physical health. Under the *Gautreaux* desegregation program in Chicago,[4] children and adults who moved with HCV assistance to middle-income suburbs appear to have experienced educational gains compared to families that remained in urban or higher-poverty neighborhoods. It is expected that the rule will remove potential barriers to mobility and will increase the number of families that may move to areas of opportunities. Some research indicates that families often use their vouchers to move to better opportunities, including employment opportunities.

2. *Costs of rule.* HUD expects that portability billing arrangements in this rule will place only a slightly additional administrative burden on PHAs. Portability may add to the cost of the HCV program through higher HAP costs, but the fiscal year (FY) 2015 appropriations act provides a set-aside of up to $120 million from HCV renewal funds to allow HUD to provide PHAs with additional renewal funding under certain circumstances. One of the eligible categories permitted under the appropriations act is for increased costs resulting from unforeseen circumstances and portability. HUD is in the process of receiving the FY 2015 set-aside applications; however, an average of $23 million has been found eligible in the past for PHAs for portability adjustments.

4. *Administrative Fee.* Prior to this rule, for a voucher in a portability billing arrangement between the initial PHA and receiving PHA, the initial PHA had to pay the receiving PHA 80 percent of its administrative fee for each month that the family received assistance at the receiving PHA, unless the PHAs mutually agreed to a different billing amount. Removal of potential barriers to mobility is expected to increase the number of portability vouchers and, thus, increase the amount of administrative fee transfers between PHAs.

The final rule would set the maximum amount that the initial PHA is required to pay at 100 percent of the receiving PHA's administrative fee rate. In other words, the initial PHA would reimburse the receiving PHA for the lesser of: (1) 80 percent of the initial PHA's ongoing fee or (2) the full amount of the receiving PHA's administrative fee. This change eliminates the incentive for a receiving PHA with a lower administrative fee to bill an initial PHA with a higher administrative fee in order to receive a higher administrative fee than it would normally earn from HUD. This action should reduce portability billings for those PHAs for whom 80 percent of the initial PHA's fee is more than 100 percent of their own administrative fee. For example, assume that a receiving PHA's administrative fee is $60. Prior to this rule, if a family moves to the receiving PHA's jurisdiction from an initial PHA that receives $100 in administrative fees for a housing voucher, the receiving PHA may bill the initial PHA for $80, which is $20 more than the PHA would earn if it simply absorbed the voucher. Under the final rule, the receiving PHA will receive $60 regardless of whether the receiving PHA bills the initial PHA or absorbs the family into its own program.

The full economic analysis is available for review at *www.regulations.gov.* The docket file for this rule is available for public inspection in the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW., Room 10276, Washington, DC 20410–0500. Due to security measures at the HUD Headquarters building, please schedule an appointment to review the docket file by calling the Regulations Division at 202–402–3055 (this is not a toll-free number). Individuals with speech or hearing impairments may access this number via TTY by calling the Federal Relay Service at 800–877–8339 (this is a toll-free number).

[3] See: *http://www.huduser.org/publications/pdf/MTOFHD_fullreport_v2.pdf.*

[4] The *Gatreaux* desegregation program is a housing desegregation program initiated by court order. In a consent decree, the court ordered the Chicago Housing Authority to provide scattered-site housing for public housing residents residing in poverty concentrated areas.

Information Collection Requirements

The information collection requirements in the proposed rule were submitted to OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless the collection displays a currently valid OMB control number. The information collection requirements of this rule was assigned this OMB Control Number 2577–0169.

Unfunded Mandates Reform Act (UMRA)

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This final rule does not impose any federal mandates on any State, local, or tribal government or the private sector within the meaning of UMRA.

Executive Order 13132, Federalism

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. This final rule does not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 605(b)) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This final rule is solely concerned with the portability feature of the voucher program. There currently are approximately 739 small PHAs (*i.e.,* PHAs with less than 250 public housing units or vouchers) [5] that will be subject to the rule. Since portability is authorized by statute, small PHAs administering the HCV program cannot be exempt from allowing eligible families to move, and HUD has strived to reduce burden for all PHAs. Therefore, while this final rule will impact these PHAs, the impact will not be significant. As stated previously in this preamble, through the amendments to the HCV regulations provided in this rule, HUD will reduce the administrative burden of portability for both PHAs and families, reduce portability billing arrangements between PHAs, and ensure maximum family choice in locating suitable housing. HUD also removed the proposed requirement for mandatory absorption of portability vouchers by the receiving PHA that was in the proposed rule. Through this final rule, HUD strives to clarify the portability process and reduce administrative burden for all PHAs, large or small. As explained more fully above in the ''Executive Order 12866 and 13563'' section of this preamble, the benefits of the regulatory changes will largely outweigh the administrative and compliance costs to PHAs. Accordingly, this rule will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

This rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise, or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

List of Subjects in 24 CFR Part 982

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

Accordingly, HUD amends 24 CFR part 982, as follows:

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

■ 1. The authority citation for 24 CFR part 982 continues to read as follows:

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

■ 2. In § 982.4, in paragraph (b), revise the definitions of ''Absorption'' and ''Suspension'' to read as follows:

§ 982.4 Definitions.

* * * * *

(b) * * *

Absorption. For purposes of subpart H, the point at which a receiving PHA starts making assistance payments with funding under its consolidated ACC, rather than billing, the initial PHA.

* * * * *

Suspension. The term on the family's voucher stops from the date that the family submits a request for PHA approval of the tenancy, until the date the PHA notifies the family in writing whether the request has been approved or denied.

* * * * *

■ 3. In § 982.54, revise paragraphs (d)(2) and (19) to read as follows:

§ 982.54 Administrative plan.

* * * * *

(d) * * *

(2) Issuing or denying vouchers, including PHA policy governing the voucher term and any extensions of the voucher term. If the PHA decides to allow extensions of the voucher term, the PHA administrative plan must describe how the PHA determines whether to grant extensions, and how the PHA determines the length of any extension.

* * * * *

(19) Restrictions, if any, on the number of moves by a participant family (see § 982.354(c));

* * * * *

■ 4. In § 982.301, revise paragraphs (a)(2), (a)(3), (b)(1), (b)(4), (b)(9), and (b)(11) to read as follows:

§ 982.301 Information when family is selected.

(a) * * *

(2) An explanation of how portability works. The PHA may not discourage the family from choosing to live anywhere in the PHA jurisdiction, or outside the PHA jurisdiction under portability procedures, unless otherwise expressly authorized by statute, regulation, PIH Notice, or court order. The family must be informed of how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process which may affect the family's assistance.

(3) The briefing must also explain the advantages of areas that do not have a high concentration of low-income families.

* * * * *

[5] The number of 739 PHAs includes HCV-only PHAs and PHAs with combined HCV-public housing portfolios. This number does not include public housing-only PHAs, which is the largest category of small PHAs but which are not affected by this rule.

(b) * * *

(1) The term of the voucher, voucher suspensions, and PHA policy on any extensions of the term. If the PHA allows extensions, the packet must explain how the family can request an extension;

* * * * *

(4) Where the family may lease a unit and an explanation of how portability works, including information on how portability may affect the family's assistance through screening, subsidy standards, payment standards, and any other elements of the portability process which may affect the family's assistance.

* * * * *

(9) Materials (*e.g.,* brochures) on how to select a unit and any additional information on selecting a unit that HUD provides.

* * * * *

(11) A list of landlords known to the PHA who may be willing to lease a unit to the family or other resources (*e.g.,* newspapers, organizations, online search tools) known to the PHA that may assist the family in locating a unit. PHAs must ensure that the list of landlords or other resources covers areas outside of poverty or minority concentration.

* * * * *

■ 5. In § 982.303, revise paragraph (c) to read as follows:

§ 982.303 Term of voucher.

* * * * *

(c) *Suspension of term.* The PHA must provide for suspension of the initial or any extended term of the voucher from the date that the family submits a request for PHA approval of the tenancy until the date the PHA notifies the family in writing whether the request has been approved or denied.

* * * * *

§ 982.314 [Redesignated as § 982.354]

■ 6. Redesignate § 982.314 as § 982.354.

■ 7. Section 982.353 is amended as follows:

■ a. Remove the word ''or'' from paragraph (c)(1) and in its place add the word ''nor'';

■ b. Revise paragraphs (c)(3) and (d)(2);

■ c. Remove paragraph (d)(3); and

■ d. Remove paragraph (e), redesignate paragraph (f) as paragraph (e), and revise newly redesignated paragraph (e).

The revisions read as follows:

§ 982.353 Where family can lease a unit with tenant-based assistance.

* * * * *

(c) * * *

(3) If the initial PHA approves, the family may lease a unit outside the PHA jurisdiction under portability procedures.

(d) * * *

(2) If a family is a participant in the initial PHA's voucher program, income eligibility is not redetermined when the family moves to the receiving PHA program under portability procedures.

* * * * *

(e) *Freedom of choice.* The PHA may not directly or indirectly reduce the family's opportunity to select among available units, except as provided in paragraph (a) of this section, or elsewhere in this part 982 (*e.g.,* prohibition on the use of ineligible housing, housing not meeting HQS, or housing for which the rent to owner exceeds a reasonable rent). However, the PHA must provide families the information required in § 982.301 for both the oral briefing and the information packet to ensure that they have the information they need to make an informed decision on their housing choice.

■ 8. Amend newly designated § 982.354 as follows:

■ a. Revise paragraphs (c)(1) and (2);

■ b. Remove paragraphs (c)(3) and (d)(1);

■ c. Redesignate paragraph (d)(2) as paragraph (d); and

■ d. Revise paragraph (e)(1).

The revisions read as follows:

§ 982.354 Move with continued tenant-based assistance.

* * * * *

(c) *How many moves.* (1) A participant family may move with continued assistance under the program, either inside the PHA jurisdiction, or under the portability procedures (See § 982.353) in accordance with the PHA's policies.

(2) Consistent with applicable civil rights laws and regulations, the PHA may establish policies that:

(i) Prohibit any move by the family during the initial lease term; and

(ii) Prohibit more than one move by the family during any one-year period.

* * * * *

(e) *When the PHA may deny permission to move.* (1) The PHA may deny permission to move if the PHA does not have sufficient funding for continued assistance. The PHA must provide written notification to the local HUD Office within 10 business days of determining it is necessary to deny moves to a higher-cost unit based on insufficient funding.

* * * * *

■ 9. Revise § 982.355 to read as follows:

§ 982.355 Portability: Administration by initial and receiving PHA.

(a) *General.* When a family moves under portability (in accordance with § 982.353(b)) to an area outside the initial PHA jurisdiction, the receiving PHA must administer assistance for the family if a PHA with a HCV program has jurisdiction in the area where the unit is located.

(b) *Requirement to administer assistance.* A receiving PHA cannot refuse to assist incoming portable families or direct them to another neighboring PHA for assistance. If there is more than one such PHA, the initial PHA provides the family with the contact information for the receiving PHAs that serve the area, and the family selects the receiving PHA. The family must inform the initial PHA which PHA it has selected as the receiving PHA. In cases where the family prefers not to select the receiving PHA, the initial PHA selects the receiving PHA on behalf of the family. HUD may determine in certain instances that a PHA is not required to accept incoming portable families, such as a PHA in a declared disaster area. However, the PHA must have approval in writing from HUD before refusing any incoming portable families.

(c) *Portability procedures.* The following portability procedures must be followed:

(1) When the family decides to use the voucher outside of the PHA jurisdiction, the family must notify the initial PHA of its desire to relocate and must specify the location where it wants to live.

(2) The initial PHA must determine the family's eligibility to move in accordance with §§ 982.353 and 982.354.

(3) Once the receiving PHA is determined in accordance with paragraph (b) of this section, the initial PHA must contact the receiving PHA, via email or other confirmed delivery method, prior to approving the family's request to move in order to determine whether the voucher will be absorbed or billed by the receiving PHA. The receiving PHA must advise the initial PHA in writing, via email or other confirmed delivery method, of its decision.

(4) If the receiving PHA notifies the initial PHA that it will absorb the voucher, the receiving PHA cannot reverse its decision at a later date without consent of the initial PHA.

(5) If the receiving PHA will bill the initial PHA for the portability voucher and the cost of the HAP will increase due to the move, the initial PHA may deny the move if it does not have sufficient funding for continued

assistance in accordance with § 982.354 (e)(1).

(6) If a billing arrangement is approved by the initial PHA or if the voucher is to be absorbed by the receiving PHA, the initial PHA must issue the family a voucher to move, if it has not already done so, and advise the family how to contact and request assistance from the receiving PHA.

(7) The initial PHA must promptly notify the receiving PHA to expect the family. The initial PHA must give the receiving PHA the form HUD–52665, the most recent form HUD 50058 (Family Report) for the family, and all related verification information.

(8) The family must promptly contact the receiving PHA in order to be informed of the receiving PHA's procedures for incoming portable families and comply with these procedures. The family's failure to comply may result in denial or termination of the receiving PHA's voucher.

(9) The receiving PHA does not redetermine eligibility for a participant family. However, for a family that was not already receiving assistance in the PHA's HCV program, the initial PHA must determine whether the family is eligible for admission to the receiving PHA's HCV program. In determining income eligibility, the receiving PHA's income limits are used by the initial PHA.

(10) When a receiving PHA assists a family under portability, administration of the voucher must be in accordance with the receiving PHA's policies. This requirement also applies to policies of Moving to Work agencies. The receiving PHA procedures and preferences for selection among eligible applicants do not apply to the family, and the receiving PHA waiting list is not used.

(11) If the receiving PHA opts to conduct a new reexamination for a current participant family, the receiving PHA may not delay issuing the family a voucher or otherwise delay approval of a unit.

(12) The receiving PHA must determine the family unit size for the family, and base its determination on the subsidy standards of the receiving PHA.

(13) The receiving PHA must issue a voucher to the family. The term of the receiving PHA voucher may not expire before 30 calendar days from the expiration date of the initial PHA voucher. If the voucher expires before the family arrives at the receiving PHA, the receiving PHA must contact the initial PHA to determine if it will extend the voucher.

(14) Once the receiving PHA issues the portable family a voucher, the receiving PHA's policies on extensions of the voucher term apply. The receiving PHA must notify the initial PHA of any extensions granted to the term of the voucher.

(15) The family must submit a request for tenancy approval to the receiving PHA during the term of the receiving PHA voucher. As required in § 982.303, if the family submits a request for tenancy approval during the term of the voucher, the PHA must suspend the term of that voucher.

(16) The receiving PHA must promptly notify the initial PHA if the family has leased an eligible unit under the program, or if the family fails to submit a request for tenancy approval for an eligible unit within the term of the voucher.

(17) At any time, either the initial PHA or the receiving PHA may make a determination to deny or terminate assistance to the family in accordance with § 982.552 and 982.553.

(d) *Absorption by the receiving PHA.* (1) If funding is available under the consolidated ACC for the receiving PHA's HCV program, the receiving PHA may absorb the family into the receiving PHA's HCV program. After absorption, the family is assisted with funds available under the consolidated ACC for the receiving PHA's HCV program.

(2) HUD may require that the receiving PHA absorb all, or a portion of, incoming portable families. Under circumstances described in a notice published in the **Federal Register**, HUD may determine that receiving PHAs, or categories of receiving PHAs, should absorb all or a portion of incoming portable families. If HUD makes such a determination, HUD will provide an opportunity for public comment, for a period of no less than 60 calendar days, on such policy and procedures. After consideration of public comments, HUD will publish a final notice in the **Federal Register** advising PHAs and the public of HUD's final determination on the subject of mandatory absorption of incoming portable families.

(3) HUD may provide financial or nonfinancial incentives (or both) to PHAs that absorb portability vouchers.

(e) *Portability billing.* (1) To cover assistance for a portable family that was not absorbed in accordance with paragraph (d) of this section, the receiving PHA may bill the initial PHA for housing assistance payments and administrative fees.

(2) The initial PHA must promptly reimburse the receiving PHA for the full amount of the housing assistance payments made by the receiving PHA for the portable family. The amount of the housing assistance payment for a portable family in the receiving PHA program is determined in the same manner as for other families in the receiving PHA program.

(3) The initial PHA must promptly reimburse the receiving PHA for the lesser of 80 percent of the initial PHA ongoing administrative fee or 100 percent of the receiving PHA's ongoing administrative fee for each program unit under HAP contract on the first day of the month for which the receiving PHA is billing the initial PHA under this section. If administrative fees are prorated for the HCV program, the proration will apply to the amount of the administrative fee for which the receiving PHA may bill under this section (*e.g.,* the receiving PHA may bill for the lesser of 80 percent of the initial PHA's prorated ongoing administrative fee or 100 percent of the receiving PHA's prorated ongoing administrative fee). If both PHAs agree, the PHAs may negotiate a different amount of reimbursement.

(4) When a portable family moves out of the HCV program of a receiving PHA that has not absorbed the family, the PHA in the new jurisdiction to which the family moves becomes the receiving PHA, and the first receiving PHA is no longer required to provide assistance for the family.

(5) In administration of portability, the initial PHA and the receiving PHA must comply with financial procedures required by HUD, including the use of HUD-required billing forms. The initial and receiving PHA must also comply with billing and payment deadlines under the financial procedures.

(6) A PHA must manage the PHA HCV program in a manner that ensures that the PHA has the financial ability to provide assistance for families that move out of the PHA's program under the portability procedures, and that have not been absorbed by the receiving PHA, as well as for families that remain in the PHA's program.

(7) HUD may reduce the administrative fee to an initial or receiving PHA if the PHA does not comply with HUD portability requirements.

(f) *Portability funding.* (1) HUD may transfer units and funds for assistance to portable families to the receiving PHA from funds available under the initial PHA ACC.

(2) HUD may provide additional funding (*e.g.,* funds for incremental units) to the initial PHA for funds transferred to a receiving PHA for portability purposes.

(3) HUD may provide additional funding (*e.g.,* funds for incremental units) to the receiving PHA for absorption of portable families.

(4) HUD may require the receiving PHA to absorb portable families.

(g) *Special purpose vouchers.* (1) The initial PHA must submit the codes used for special purpose vouchers on the form HUD–50058, Family Report, and the receiving PHA must maintain the codes on the Family Report, as long as the Receiving PHA chooses to bill the initial PHA.

(2) Initial and receiving PHAs must administer special purpose vouchers, such as the HUD-Veterans Affairs Supportive Housing vouchers, in accordance with HUD-established policy in cases where HUD has established alternative program requirements of such special purpose vouchers.

§ 982.403 [Amended]

■ 10. In § 982.403, paragraph (b)(3) is amended by removing the citation ''§ 982.314'' and in its place adding the citation ''§ 982.354.''

§ 982.551 [Amended]

■ 11. In § 982.551, paragraph (f) is amended by removing the citation ''§ 982.314'' and in its place adding the citation ''§ 982.354.''

■ 12. In § 982.554, revise paragraph (c)(4) to read as follows:

§ 982.554 Informal review for applicant.

* * * * *

(c) * * *

(4) A PHA determination not to approve an extension of the voucher term.

* * * * *

■ 13. In § 982.555, revise paragraph (b)(4) to read as follows:

§ 982.555 Informal hearing for participant.

* * * * *

(b) * * *

(4) A PHA determination not to approve an extension of the voucher term.

* * * * *

■ 14. In § 982.637, revise paragraph (c)(1) to read as follows:

§ 982.637 Homeownership option: Move with continued tenant-based assistance.

* * * * *

(c) * * *

(1) *Lack of funding to provide continued assistance.* The PHA may deny permission to move with continued rental or homeownership assistance if the PHA determines that it does not have sufficient funding to provide continued assistance. The PHA must provide written notification to the local HUD Office within 10 business days of determining it is necessary to deny moves based on insufficient funding.

* * * * *

§ 982.641 [Amended]

■ 15. Section 982.641(b)(11) is amended by removing the citation ''§ 982.314'' and in its place adding the citation ''§ 982.354.''

Dated: August 13, 2015.

Jemine A. Bryon,

General Deputy Assistant Secretary for Public and Indian Housing.

Approved on August 13, 2015.

Nani A. Coloretti,

Deputy Secretary.

[FR Doc. 2015–20551 Filed 8–19–15; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket Number USCG–2015–0705]

RIN 1625–AA08

Special Local Regulations; Marine Events Held in the Sector Long Island Sound Captain of the Port Zone; Correction

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule; correction.

SUMMARY: On August 13, 2015, the Coast Guard published in the **Federal Register** (80 FR 48436) a temporary final rule establishing five special local regulations for marine events held in the Sector Long Island Sound Captain of the Port Zone. Four of the marine events have already taken place. Inadvertently, this rule included an error in the date of the fifth special local regulation established in support of the ''War Writers Campaign Kayak For Cause'' event. This document corrects that error.

DATES: This rule is effective from August 20, 2015 through August 23, 2015.

ADDRESSES: Documents mentioned in this preamble are part of Docket Number USCG–2015–0705. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Open Docket Folder'' on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, contact Petty Officer Ian Fallon, Prevention Department, Coast Guard Sector Long Island Sound, telephone (203) 468–4565, email *Ian.M.Fallon@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION: On August 13, 2015, the Coast Guard published in the **Federal Register** a temporary final rule establishing five special local regulations for marine events held in the Sector Long Island Sound Captain of the Port Zone (80 FR 48436). Four of the marine events have already taken place. Inadvertently, the rule included an error in the date of the fifth special local regulation established in support of the ''War Writers Campaign Kayak For Cause'' event.

As stated in the **Federal Register** publication of the temporary final rule, the special local regulation for the ''War Writers Campaign Kayak For Cause'' event would be enforced on August 28, 2015. Due to a clerical error, the enforcement date was incorrect. The correct date for the special local regulation in support of the ''War Writers Campaign Kayak For Cause'' event is August 23, 2015.

Shortly after publication of the temporary final rule in the **Federal Register**, the Coast Guard became aware of the error in the text relating to the date. This notice corrects the error by publishing the correct date of the special local regulation, August 23, 2015.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 100 as follows:

PART 100—SAFETY OF LIFE ON NAVIGABLE WATERS

■ 1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233.

■ 2. Revise item (5) of TABLE to § 100.35T01–0705 to read as follows:

§ 100.35T01–0705 Special Local Regulations; Marine Events in Captain of the Port Long Island Sound Zone.

* * * * *

(5) War Writers Campaign Kayak For Cause	• Date: August 23, 2015. • Time: 7:30 a.m. to 4:30 p.m. • Location: All waters of Long Island Sound along the regatta route from Bridgeport, CT to Port Jefferson, NY along positions 41°09′40″ N; 073°11′04″ W, then southeast near Stratford Shoal at position 41°03′41″ N; 073°06′24″ W then south to Port Jefferson at position 40°58′37″ N; 073° 05′49″ W. (NAD 83). • Additional stipulations: All persons transiting through the area shall maintain a minimum distance of 100 yards from the kayakers.

Dated: August 17, 2015.

Katia Kroutil,

Chief, Office of Regulations and Administrative Law, U.S. Coast Guard.

[FR Doc. 2015–20608 Filed 8–19–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2015–0764]

Drawbridge Operation Regulation; Hutchinson River, Bronx, NY

AGENCY: Coast Guard, DHS.

ACTION: Notice of deviation from drawbridge regulation.

SUMMARY: The Coast Guard has issued a temporary deviation from the operating schedule that governs the Pelham Bay Bridge, across the Hutchinson River, mile 0.5, at Bronx, New York. This deviation is necessary to replace bridge timbers, miter rails, and concrete work. This deviation allows the bridge to remain in the closed position for eighteen days.

DATES: This deviation is effective from 11 p.m. on September 11, 2015 to 11 p.m. on October 4, 2015.

ADDRESSES: The docket for this deviation, [USCG–2015–0764] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140, on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, contact Ms. Judy K. Leung-Yee, Project Officer, First Coast Guard District, telephone (212) 514–4330, email *judy.k.leung-yee@uscg.mil.* If you have questions on viewing the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

The Pelham Bay Bridge, mile 0.5, across Hutchinson River has a vertical clearance in the closed position of 8 feet at mean high water and 15 feet at mean low water. The existing bridge operating regulations are found at 33 CFR 117.793(a).

The waterway has commercial oil barge traffic of various sizes.

Amtrak requested this temporary deviation from the normal operating schedule to facilitate essential maintenance repairs.

Under this temporary deviation, the Pelham Bay Bridge will operate according to the schedule below:

a. From 11 p.m. on September 11, 2015 through 5 a.m. on September 14, 2015, the bridge will not open to marine traffic.

b. From 5 a.m. on September 14, 2015 through 11 p.m. on September 18, 2015, the bridge will open fully on signal upon 3 hour advance notice.

c. From 11 p.m. on September 25, 2015 through 5 a.m. on September 28, 2015, the bridge will not open for marine traffic.

d. From 5 a.m. on September 28, 2015 through 11 p.m. on October 4, 2015, the bridge will open fully on signal upon 3 hour advance notice.

The bridge will not be able to open in the event of an emergency. There is no alternate route for vessel traffic; however, vessels that can pass under the closed draws during this closure may do so at any time.

The Coast Guard will inform the users of the waterway through our Local and Broadcast Notice to Mariners of the change in operating schedule for the bridge so that vessels can arrange their transits to minimize any impact caused by the temporary deviation.

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

Dated: August 12, 2015.

C.J. Bisignano,

Supervisory Bridge Management Specialist, First Coast Guard District.

[FR Doc. 2015–20604 Filed 8–19–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 160

[Docket No. USCG–2005–21869]

RIN 1625–AA99

Vessel Requirements for Notices of Arrival and Departure, and Automatic Identification System; Notice of Arrival Information Collection

AGENCY: Coast Guard, DHS.

ACTION: Final rule; information collection approval.

SUMMARY: The Coast Guard announces that it has received approval from the Office of Management and Budget for an information collection request associated with notice of arrival requirements in a final rule we published in the **Federal Register** on January 30, 2015. In that rule, we stated we would publish a document in the **Federal Register** announcing the effective date of these collection-of-information related sections. This rule

establishes today as the effective date for those sections.

DATES: Sections 160.204(a)(5)(vii), 160.205, and 160.208(a) and (c) are effective August 20, 2015.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Michael Lendvay, Office of Commercial Vessel Compliance (CG–CVC), Coast Guard; telephone 202–372–1218, email *Michael.D.Lendvay@uscg.mil.* If you have questions on viewing or submitting material to the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION:

Viewing Documents Associated With This Rule

To view the final rule published on January 30, 2015 (80 FR 5282), or other documents in the docket for this rulemaking, go to *www.regulations.gov,* type the docket number, USCG–2005–21869, in the ''SEARCH'' box and click ''SEARCH.'' Click on ''Open Docket Folder'' in the first item listed. Use the following link to go directly to the docket: *www.regulations.gov/#!docketDetail;D=USCG-2005-;21869.*

Background

On January 30, 2015, the Coast Guard published a final rule that revised or amended existing notice of arrival and automatic identification system requirements. 80 FR 5282. The final rule delayed the effective date of 33 CFR 160.204(a)(5)(vii), 160.205, and 160.208(a) and (c) because these sections contain collection-of-information provisions that require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. On August 5, 2015, OMB approved the collection assigned OMB Control Number 1625–0100, Advance Notice of Vessel Arrival. Accordingly, we announce that sections 33 CFR 160.204(a)(5)(vii), 160.205, and 160.208(a) and (c) are effective August 20, 2015. The approval for this collection of information expires on February 28, 2017.

We have not yet received approval from OMB regarding the 1625–0112 collection of information, Enhanced Maritime Domain Awareness via Electronic Transmission of Vessel Transit Data, which relates to automatic identification system requirements in the January 2015 final rule (80 FR 5282).

This document is issued under the authority of 33 U.S.C. 1231.

Dated: August 14, 2015.

J.G. Lantz,

Director of Commercial Regulations and Standards, U.S. Coast Guard.

[FR Doc. 2015–20607 Filed 8–19–15; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2015–0716]

RIN 1625–AA00

Safety Zone; Whiskey Island Paddleboard Festival and Race; Lake Erie, Cleveland, OH

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on Lake Erie, Cleveland Harbor, Cleveland, OH. This safety zone is intended to restrict vessels from a portion of Lake Erie during the Whiskey Island Paddleboard Festival and Race. This temporary safety zone is necessary to protect mariners and race participants from the navigational hazards associated with a paddleboard race.

DATES: This rule is effective from 6:45 a.m. until 12:15 p.m. on August 22, 2015.

ADDRESSES: Documents mentioned in this preamble are part of docket [USCG–2015–0716]. To view documents mentioned in this preamble as being available in the docket, go to *http://www.regulations.gov,* type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rulemaking. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call LT Stephanie Pitts, Chief of Waterways Management, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216–937–0128. If you have questions on viewing the docket, call Ms. Cheryl Collins, Program Manager, Docket Operations, telephone 202–366–9826 or 1–800–647–5527.

SUPPLEMENTARY INFORMATION:

Table of Acronyms

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

A. Regulatory History and Information

The Coast Guard is issuing this temporary final rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The final details for this event were not known to the Coast Guard until there was insufficient time remaining before the event to publish an NPRM. Thus, delaying the effective date of this rule to wait for a comment period to run would be both impracticable because it would inhibit the Coast Guard's ability to protect spectators and vessels from the hazards associated with a paddle sport regatta.

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

B. Basis and Purpose

The legal basis and authorities for this rule are found in 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; and Department of Homeland Security Delegation No. 0170.1, which collectively authorize the Coast Guard to establish and define regulatory safety zones.

Between 6:45 a.m. and 12:15 p.m. on August 22, 2015, a paddleboard race will be held on the shoreline of Lake Erie, Cleveland Harbor in Cleveland, OH, in the vicinity of Whiskey Island. It is anticipated that to 100 paddle boarders and safety vessels will participate in the event. The Captain of the Port Buffalo has determined that such an event proximate to a gathering of watercraft pose a significant risk to public safety and property. Such hazards include hazardous navigation situations with less maneuverable watercraft and people falling into the water.

C. Discussion of the Final Rule

With the aforementioned hazards in mind, the Captain of the Port Buffalo has determined that this temporary safety zone is necessary to ensure the safety of participants and safety vessels during the Whiskey Island Paddleboard Festival and Race. This zone will be enforced from 6:45 a.m. until 12:15 p.m. on August 22, 2015. This zone will encompass all waters of Lake Erie; Cleveland Harbor, Cleveland, OH within the following positions: 41°29′59.5″ N and 081°42′59.3″ W, then East to 41°30′4.4″ N and 081°42′ 44.5″ W, then North to 41°30′17.3″ N and 081°43′0.6″ W, then Southwest to 41°30′9.4″ N and 081°43′2.0″ W, then East to 41°29′54.9″ N and 081°43′34.4″ W, then Southeast returning to the point of origin (NAD 83).

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

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on these statutes and executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of Executive Order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under those Orders.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a relatively short time. Also, the safety zone is designed to minimize its impact on navigable waters. Furthermore, the safety zone has been designed to allow vessels to transit around it. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Under certain conditions, moreover, vessels may still transit through the safety zone when permitted by the Captain of the Port.

2. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered the impact of this rule on small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which might be small entities: The owners or operators of vessels intending to transit or anchor in a portion of Cleveland Harbor on the morning of August 22, 2015.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: This safety zone would be effective, and thus subject to enforcement, for only five and a half hours early in the morning. Traffic may be allowed to pass through the zone with the permission of the Captain of the Port. The Captain of the Port can be reached via VHF channel 16. Before the enforcement of the zone, we would issue local Broadcast Notice to Mariners.

3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

4. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and determined that this rule does not have implications for federalism.

6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the ''For Further Information Contact'' section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and

does not create an environmental risk to health or risk to safety that may disproportionately affect children.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

12. Energy Effects

This action is not a ''significant energy action'' under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use.

13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards.

14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023–01 and Commandant Instruction M16475.lD, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves the establishment of a safety zone and, therefore it is categorically excluded from further review under paragraph 34(g) of Figure 2–1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under **ADDRESSES**. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

■ 1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 165.T09–0716 to read as follows:

§ 165.T09–0716 Safety Zone; Whiskey Island Paddleboard Festival and Race; Lake Erie, Cleveland, OH.

(a) *Location.* This zone will encompass all waters of Lake Erie; Cleveland Harbor, Cleveland, OH within the following positions: 41°29′59.5″ N and 081°42′59.3″ W, then East to 41°30′4.4″ N and 081°42′44.5″ W, then North to 41°30′17.3″ N and 081°43′0.6″ W, then Southwest to 41°30′9.4″ N and 081°43′2.0″ W, then East to 41°29′54.9″ N and 081°43′34.4″ W, then Southeast returning to the point of origin (NAD 83).

(b) *Enforcement Period.* This regulation will be enforced on August 22, 2015 from 6:45 a.m. until 12:15 p.m.

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

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

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

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

Dated: August 7, 2015.

B.W. Roche,

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

[FR Doc. 2015–20610 Filed 8–19–15; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2014–0660; FRL–9932–18–Region 5]

Air Plan Approval; Indiana; Alcoa BART

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a revision to the Alcoa Best Available Retrofit Technology (BART) averaging time for nitrogen oxides (NO_X) in the Indiana State Implementation Plan (SIP). On July 23, 2014, the Indiana Department of Environmental Management (IDEM) submitted to EPA a revision to the daily NO_X emissions limits, changing from a rolling 24-hour average to a 24-hour daily average. IDEM provided a statistical analysis showing that no significant increase in emissions will occur as a result of this change. EPA is approving this SIP revision because it will not interfere with attainment or maintenance of the National Ambient Air Quality Standard (NAAQS).

DATES: This direct final rule is effective October 19, 2015, unless EPA receives adverse comments by September 21, 2015. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2014–0660, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for deliveries of boxed information. The Regional Office official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R05–OAR–2014–0660. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *www.regulations.gov* or email. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy at the Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. This facility is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays. We recommend that you telephone Carolyn Persoon, Environmental Engineer, at (312) 353–8290, before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: Throughout this document whenever ''we,'' ''us,'' or ''our'' is used, we mean EPA. This supplementary information section is arranged as follows:

I. Alternate Averaging Calculation
II. What action is EPA taking?
III. Incorporation by Reference
IV. Statutory and Executive Order Reviews

I. Alternate Averaging Calculation

Background for Alcoa BART NO_X Emission Limits and Calculations

On June 11, 2012, EPA approved BART NO_X emission limits and compliance requirements for Alcoa into the Indiana SIP to meet Regional Haze requirements (77 FR 34218).[1] The rule, 326 IAC 26–2–2, sets emission limits, which include averaging times, for Alcoa's Warrick Power Station located in Newburgh, Indiana.

For the original Regional Haze SIP, IDEM submitted an engineering analysis for the rulemaking that included recommended BART limits for particulate matter (PM), sulfur dioxide (SO_2) and NO_X. For Alcoa's Warrick Plant Boilers 2 and 3, the averaging time for the NO_X limit was a 24-hour rolling average. IDEM revised the rule 326 IAC 26–2–2 on March 12, 2014, with an effective date of June 29, 2014 to change the NO_X averaging time for Boilers 2 and 3 to be 24-hour daily averages rather than 24-hour rolling averages, in order to be consistent with other pollutant averaging times.

On March 12, 2014, the Indiana Environmental Rules Board approved these rule changes in accordance with the provisions of Title 13 of the Indiana Code. On November 20, 2013, IDEM provided a public notice and comment on the SIP revision in the Indiana Register. There were no requests for a public hearing, and no public comments were received.

Analysis of Revision

EPA's approval is based on whether the rule revision meets the requirements of section 110(l) of the Clean Air Act (CAA), 42 U.S.C. 4202(l). In particular, EPA considered whether the changes made to the compliance averaging times for Boilers 2 and 3 would allow for higher overall emissions of NO_X on an hourly basis while still meeting the emission limits. IDEM submitted to EPA a supplemental analysis showing the maximum difference between the two calculation methods.

IDEM's analysis compared the two averaging times using the Warrick Plant continuous emissions monitor (CEM) data for NO_X from August 2013, the month with the highest NO_X emissions. This data and analysis can be found in the docket. Using this data, IDEM calculated both 24-hour rolling and 24-hour daily averages for the NO_X emissions, and then calculated the difference between each 24-hour period. The maximum calculated difference in emissions between the two methods was 0.01 pounds per million BTU (lbs/mmBTU), which EPA determined not to be statistically significant using a paired t-test analysis. EPA also evaluated air quality monitoring data for nitrogen dioxide (NO_2), as well as fine particulate ($PM_{2.5}$) and ozone, since NO_X is a precursor for both. Current design values (2012–2014) for the NO_2 1-hour standard (100 ppb), ozone (75 ppb) and $PM_{2.5}$ standards (12 $\mu g/m^3$ for the annual and 35 $\mu g/m^3$ for the 24-hour standard) for the area all show attainment of the standards at 35 ppb, 72 ppb, and 10.9 and 25 $\mu g/m^3$, respectively. See EPA's Web site on design values at *http://www.epa.gov/airtrends/values.html.* EPA has determined that the area will maintain the standards because ambient levels are currently below the NAAQS and continue to decline. A potential emissions increase of 0.01 lbs/mmBTU is not likely to cause a violation of the NAAQS, therefore noninterference has been demonstrated.

The Indiana SIP revision is therefore approvable because the revision meets the requirements under 110(l), given that the area is attaining all applicable NAAQS, and that the revision will not impact the ability to maintain the NAAQS.

II. What action is EPA taking?

EPA is approving a revision to the Alcoa BART averaging times for the Warrick Plant Boilers 2 and 3 (326 lAC 26–2–2(2)(C)(i)), from 24-hour rolling average to 24-hour daily average. EPA's review and analysis has determined the revision will not interfere with attainment or maintenance of the NAAQS, as prescribed by section 110(l) of the CAA.

[1] EPA finalized a limited approval of revisions to the Indiana State Implementation Plan (SIP) submitted by the Indiana Department of Environmental Management (IDEM) on January 14, 2011, and March 10, 2011, addressing regional haze for the first implementation period that ends 2018. This action was in accordance with the requirements of the Clean Air Act (CAA) and EPA's rules for states to prevent and remedy future and existing anthropogenic impairment of visibility in mandatory Class I areas through a regional haze program. As part of this action, EPA approved limits for the Alcoa facility that EPA finds satisfy the requirements for best available retrofit technology (BART).

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan amendment if relevant adverse written comments are filed. This rule will be effective October 19, 2015 without further notice unless we receive relevant adverse written comments by September 21, 2015. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective October 19, 2015.

III. Incorporation by Reference

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Indiana Regulations described in the amendments to 40 CFR part 52 set forth below. EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

IV. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 19, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

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

Dated: August 3, 2015.

Susan Hedman,

Regional Administrator, Region 5.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. In § 52.770 the table in paragraph (c) is amended under ''Article 26. Regional Haze'', ''Rule 2. Best Available Retrofit Technology Emission Limitations'' by revising the entry for 26–2–2 ''Alcoa emission limitations and compliance methods'' to read as follows:

§ 52.770 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED INDIANA REGULATIONS

Indiana citation	Subject	Indiana effective date	EPA Approval date	Notes
*	*	*	*	*
Article 26. Regional Haze				
Rule 2. Best Available Retrofit Technology Emission Limitations				
*	*	*	*	*
26–2–2	Alcoa emission limitations and compliance methods.	6/29/2014	8/20/2015, [Insert **Federal Register** citation].	
*	*	*	*	*

* * * * *

[FR Doc. 2015–20528 Filed 8–19–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2010–0304, FRL 9932–53–Region 8]

Approval and Promulgation of Air Quality Implementation Plans; Montana; Revisions to the Administrative Rules of Montana; Correction

AGENCY: Environmental Protection Agency.

ACTION: Final rule; correction.

SUMMARY: The Environmental Protection Agency (EPA) is approving State Implementation Plan (SIP) revisions submitted by the State of Montana on March 17, 2010, August 1, 2011, November 22, 2011, and September 19, 2014. The revisions are to the Administrative Rules of Montana (ARM) and include minor editorial and grammatical changes, updates to citations and references to federal and state laws and regulations, revisions to open burning rules, changes to the process for appealing air quality permits, and providing a process for revocation of air quality permits when owners cannot be found by mail. Also in this action, EPA is correcting final rules pertaining to Montana's SIP. On January 29, 2010, EPA took direct final action to approve SIP revisions as submitted by the State of Montana on January 16, 2009 and May 4, 2009. EPA subsequently discovered an error in our January 29, 2010 direct final action related to ''incorporation by reference'' (IBR) materials and the associated regulatory text numbering. EPA is correcting this error with today's action. Finally, EPA is updating the Montana nonregulatory provisions table to add carbon monoxide maintenance plans for Billings, Montana, and Great Falls, Montana approved by EPA on March 30, 2015 and April 1, 2015, respectively. This action is being taken under section 110 of the Clean Air Act (CAA).

DATES: This rule is effective on September 21, 2015.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2010–0304. All documents in the docket are listed on the *www.regulations.gov* Web site. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through *www.regulations.gov* or in hard copy at the Air Program, Environmental Protection Agency (EPA), Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. EPA requests that if at all possible, you contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section to view the hard copy of the docket. You may view the hard copy of the docket Monday through Friday, 8:00 a.m. to 4:00 p.m., excluding federal holidays.

FOR FURTHER INFORMATION CONTACT: Abby Fulton, Air Program, U.S. Environmental Protection Agency (EPA), Region 8, Mail Code 8P–AR, 1595 Wynkoop Street, Denver, Colorado 80202–1129, 303–312–6563, *fulton.abby@epa.gov.*

I. Background

The State of Montana submitted SIP revisions containing amendments to IBR current federal regulations and other material into air quality rules of the ARM. The notice of proposed rulemaking (NPR) published on June 1, 2015 (80 FR 30984) proposed approval of Montana's submissions with respect to the following: Grammatical changes made to ARM 17.8.102(1), and all revisions of 17.8.802(1)(c) and 17.8.822(9) from the March 17, 2010 submittal; revisions to ARM 17.8.604(1)(a), 17.8.610(2), 17.8.612(10) and (11), 17.8.613(8) and (9), 17.8.614(8) and (9), 17.8.615(6) and (7), and 17.8.763(3) from the November 22, 2011 submission; citations and references to federal law and State rules superseding and replacing all previous versions of ARM 17.8.102(1)(a), 17.8.102(1)(b), and 17.8.102(1)(c) from the September 19, 2014 submittal; and language added to ARM 17.8.102(3) and 17.8.102(4)(a) through (d) from the September 19, 2014 submittal. The reasons for our approval are provided in detail in the NPR.

For reasons explained in the NPR, EPA also provided notice that language in ARM 17.8.102 with a State effective date of October 26, 2007 was in effect between January 16, 2010 and publication of our proposed notice on June 1, 2015. Finally, for reasons explained in our NPR, EPA proposed to correct erroneous amendatory instructions published in the **Federal Register** on January 29, 2010 (75 FR 4698).

II. Response to Comments

No comments were received on our June 1, 2015 NPR.

III. Final Action

EPA is approving grammatical changes made to ARM 17.8.102(1), and all revisions of 17.8.802(1)(c) and 17.8.822(9) from the March 17, 2010 submittal. We are approving the November 22, 2011 submittal's revisions

to ARM 17.8.604(1)(a), 17.8.610(2), 17.8.612(10) and (11), 17.8.613(8) and (9), 17.8.614(8) and (9), 17.8.615(6) and (7), and 17.8.763(3). We are approving the September 19, 2014 submittal's citations and references to federal law and State rules superseding and replacing all previous versions of ARM 17.8.102(1)(a), 17.8.102(1)(b), and 17.8.102(1)(c). Previous submittals were received on March 17, 2010 and August 1, 2011. We are also approving language added to ARM 17.8.102(3) and 17.8.102(4)(a) through (d) from the September 19, 2014 submittal.

Our action provides notice that language in ARM 17.8.102 with a State effective date of October 26, 2007 was in effect between January 16, 2010 and June 1, 2015. EPA is also adding to table (e) of CAA § 52.1370, ''EPA-approved nonregulatory provisions,'' to reflect the final EPA approval of carbon monoxide limited maintenance plans for the Billings (80 FR 16571, March 30, 2015) and Great Falls (80 FR 17331, April 1, 2015) carbon monoxide maintenance areas. These additions were inadvertently left out of the table when these maintenance plans were approved. Finally, EPA is correcting erroneous amendatory instructions published in the **Federal Register** on January 29, 2010 (75 FR 4698).

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of the ARM regarding citations and references to federal and State laws and regulations; open burning rules; air quality permits appeal process; and revocation of air quality permits discussed in section III, *EPA's Review of the State of Montana's March 17, 2010; August 1, 2011; November 22, 2011; and September 19, 2014 Submittals, and CFR Correction,* of the NPR (80 FR 30984, June 1, 2015). EPA is also correcting incorporation by reference errors in our final rulemaking ''Air Quality State Implementation Plans; Approvals and Promulgations: Montana; Revised Format for Materials Being Incorporated by Reference'' (80 FR 22909, April 24, 2015) to reflect the final EPA approval of carbon monoxide limited maintenance plans for the Billings (80 FR 16571, March 30, 2015,) and Great Falls (80 FR 17331, April 1, 2015) carbon monoxide maintenance areas. The EPA has made, and will continue to make, these documents generally available electronically through *www.regulations.gov* and/or in hard copy at the appropriate EPA office (see the **ADDRESSES** section of this preamble for more information).

V. Statutory and Executive Orders Review

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by October 19, 2015. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See CAA section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Greenhouse gases, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

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

Dated: August 4, 2015.

Shaun L. McGrath,
Regional Administrator, Region 8.

40 CFR part 52 is amended to read as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart BB—Montana

■ 2. Section 52.1370 is amended by:

■ a. In paragraph (c), revising the table entries for ''17.8.102'', ''17.8.604'', ''17.8.610'', ''17.8.612'', ''17.8.613'', ''17.8.614'', ''17.8.615'', ''17.8.763'', ''17.8.802'', ''17.8.822.''

■ b. In paragraph (e), revising the second table entry under ''(2) Cascade County'' and the first table entry under ''(9) Yellowstone County.''

The revisions read as follows:

§ 52.1370 Identification of plan.

* * * * *

(c) * * *

State citation	Rule title	State effective date	EPA final rule date	Final rule citation	Comments
(i) Administrative Rules of Montana, Subchapter 01, General Provisions					
*	*	*	*	*	*
17.8.102	Incorporation by Reference	10/16/2009, 06/12/2014	8/20/2015	[insert **Federal Register** citation].	
*	*	*	*	*	*
(iv) Administrative Rules of Montana, Subchapter 06, Open Burning					
*	*	*	*	*	*
17.8.604	Prohibited Open Burning—When Permit Required.	04/15/2011	8/20/2015	[insert **Federal Register** citation].	
*	*	*	*	*	*
17.610	Major Open Burning Source Restrictions.	04/15/2011	8/20/2015	[insert **Federal Register** citation].	
*	*	*	*	*	*
17.8.612	Conditional Air Quality Open Burning Permits.	04/15/2011	8/20/2015	[insert **Federal Register** citation].	
17.8.613	Christmas Tree Waste Open Burning Permits.	04/15/2011	8/20/2015	[insert **Federal Register** citation].	
17.8.614	Commercial Film Production Open Burning Permits.	04/15/2011	8/20/2015	[insert **Federal Register** citation].	
17.8.615	Firefighter Training	04/15/2011	8/20/2015	[insert **Federal Register** citation].	
(v) Administrative Rules of Montana, Subchapter 07, Permit Construction and Operation of Air Contaminant Sources					
*	*	*	*	*	*
17.8.763	Revocation of Permit	04/15/2011	8/20/2015	[insert **Federal Register** citation].	
*	*	*	*	*	*
(vi) Administrative Rules of Montana, Subchapter 08, Prevention of Significant Deterioration of Air Quality					
*	*	*	*	*	*
17.8.802	Incorporation by Reference	10/16/2009	8/20/2015	[insert **Federal Register** citation].	
*	*	*	*	*	*
17.8.822	Air Quality Analysis	10/16/2009	8/20/2015	[insert **Federal Register** citation].	
*	*	*	*	*	*

* * * * *

(e) * * *

Title/Subject	State effective date	Notice of final rule date	NFR Citation
*	*	*	*
(2) Cascade County			
*	*	*	*
Great Falls Carbon Monoxide (CO)—Maintenance Plan, State of Montana Air Quality Control Implementation Plan, Cascade County Carbon Monoxide Limited Maintenance Plan, Chapter 7, Great Falls Carbon Monoxide (CO) Limited Maintenance Plan and the Associated Alternative Monitoring Strategy	N/A	4/1/2015	80 FR 17331

Title/Subject	State effective date	Notice of final rule date	NFR Citation
* * * * *		*	*
(9) Yellowstone County			
Billings Carbon Monoxide (CO)—Maintenance Plan, State of Montana Air Quality Control Implementation Plan, Yellowstone County Carbon Monoxide Limited Maintenance Plan, Chapter 56, Billings Carbon Monoxide (CO) Limited Maintenance Plan and the associated Alternative Monitoring Strategy	N/A	3/30/2015	80 FR 16571
* * * * *		*	*

* * * * *

■ 3. Section 52.1397 is amended by adding paragraph (c)(69) to read as follows:

§ 52.1397 Original identification of plan.

* * * * *

(c) * * *

(69) Revisions to the State Implementation Plan which were submitted by the State of Montana on January 16, 2009 and May 4, 2009. The revisions are to the Administrative Rules of Montana; they make minor editorial and grammatical changes, update the citations and references to Federal laws and regulations, and make other minor changes to conform to federal regulations.

(i) Incorporation by reference.

(A) Administrative Rules of Montana (ARM) sections 17.8.102 *Incorporation by Reference—Publication Dates,* 17.8.301 *Definitions,* 17.8.901 *Definitions,* and 17.8.1007 *Baseline for Determining Credit for Emissions and Air Quality Offsets,* effective October 24, 2008.

(B) Administrative Rules of Montana (ARM) section 17.8.308 *Particulate Matter, Airborne,* effective February 13, 2009.

* * * * *

[FR Doc. 2015–20496 Filed 8–19–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 120403249–2492–02]

RIN 0648–XE088

Snapper-Grouper Fishery of the South Atlantic; 2015 Recreational Accountability Measure and Closure for South Atlantic Hogfish

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 hogfish recreational sector in the exclusive economic zone (EEZ) of the South Atlantic for the 2015 fishing year through this temporary rule. NMFS estimates recreational landings from the 2014 and 2015 fishing years have exceeded the recreational annual catch limit (ACL) for hogfish. Therefore, NMFS reduces the length of the 2015 recreational fishing season, *i.e.,* closes the recreational sector, for hogfish in the South Atlantic EEZ on August 24, 2015. This closure is necessary to protect the hogfish resource.

DATES: This rule is effective 12:01 a.m., local time, August 24, 2015, until 12:01 a.m., local time, January 1, 2016.

FOR FURTHER INFORMATION CONTACT: Britni LaVine, NMFS Southeast Regional Office, telephone: 727–824–5305, email: *britni.lavine@noaa.gov.*

SUPPLEMENTARY INFORMATION: The snapper-grouper fishery of the South Atlantic includes hogfish and 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 by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

The recreational ACL for hogfish is 85,355 lb (38,716 kg) and was implemented through Regulatory Amendment 13 to the FMP (78 FR 36113, June 17, 2013). In accordance with regulations at 50 CFR 622.193(u)(2), if recreational landings exceed the recreational ACL, then NMFS will monitor recreational landings for a persistence in increased landings during the following fishing year. If necessary, the Assistant Administrator, NMFS (AA), will file a notification with the Office of the Federal Register to reduce the length of the following fishing season by the amount necessary to ensure landings do not exceed the recreational ACL in the following fishing year.

During the 2014 fishing year, hogfish recreational landings exceeded the recreational ACL by 26,448 lb (11,996 kg). For the 2015 fishing year, preliminary landings data from the NMFS Southeast Fisheries Science Center indicate that the hogfish recreational ACL has been exceeded by 142,364 lb (64,575 kg). Therefore, this temporary rule implements an AM to reduce the length of the hogfish recreational sector (*i.e.,* close the recreational sector) of the snapper-grouper fishery for the remainder of the 2015 fishing year. As a result, the recreational sector for hogfish in the South Atlantic EEZ will be closed effective 12:01 a.m., local time August 24, 2015.

During the closure, the bag and possession limits for hogfish in or from the South Atlantic EEZ are zero. The recreational sector for hogfish will reopen on January 1, 2016, the beginning of the 2016 recreational fishing season.

Classification

The Regional Administrator, Southeast Region, NMFS, has determined this temporary rule is necessary for the conservation and management of hogfish and 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(u)(2) 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 public 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 recreational sector for hogfish constitutes good cause to waive the requirements to provide prior notice and opportunity for public comment on this temporary rule pursuant to 5 U.S.C. 553(b)(B), because such procedures are unnecessary and contrary to the public interest. Such procedures are unnecessary because the AMs established by the Comprehensive ACL Amendment (77 FR 15916, March 16, 2012) and located at 50 CFR 622.193(u)(2) have already been subject to notice and public comment. All that remains is to notify the public of the reduced recreational season (recreational closure) for hogfish for the remainder of the 2015 fishing year. Such procedures are contrary to the public interest because of the need to immediately implement this action to protect the hogfish resource, since time for notice and public comment will allow for continued recreational harvest and further exceedance of the recreational 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.*

Alan D. Risenhoover,

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

[FR Doc. 2015–20596 Filed 8–17–15; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register

Vol. 80, No. 161

Thursday, August 20, 2015

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 1, 23, 25, 27, 29, 61, 91, 121, 125, 135

[Docket No. FAA–2013–0485; Notice No. 12–09B]

RIN 2120–AJ94

Revisions to Operational Requirements for the Use of Enhanced Flight Vision Systems (EFVS) and to Pilot Compartment View Requirements for Vision Systems; Reopening of Comment Period

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: This action reopens the comment period for the regulatory evaluation associated with the FAA's June 11, 2013 Notice of Proposed Rulemaking (NPRM), *Revisions to Operational Requirements for the Use of Enhanced Flight Vision Systems (EFVS) and to Pilot Compartment View Requirements for Vision Systems.* The regulatory evaluation associated with the NPRM was not posted to the docket prior to the close of the comment period. Therefore, the FAA is reopening the comment period to allow the public the opportunity to adequately analyze the full regulatory evaluation for the NPRM. The FAA will accept comments on the regulatory evaluation only; and not on the regulatory changes proposed in the NPRM.

DATES: The comment period for the NPRM published on June 11, 2013 (78 FR 34935) closed October 15, 2013, and is reopened until September 21, 2015.

ADDRESSES: You may send comments on the posted regulatory evaluation identified by docket number FAA–2013–0485 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: Valentine Castaneda, ARM–104, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–7977; email *val.castaneda@faa.gov.*

SUPPLEMENTARY INFORMATION: See the ''Additional Information'' section for information on how to comment on this action and how the FAA will handle comments received. The ''Additional Information'' section also contains related information about the docket, privacy, and the handling of proprietary or confidential business information. In addition, there is information on obtaining copies of related rulemaking documents.

Background

On June 11, 2013, the FAA issued Notice No. 1209, entitled ''*Revisions to Operational Requirements for the Use of Enhanced Flight Vision Systems (EFVS) and to Pilot Compartment View Requirements for Vision Systems,''* 78 FR 34935. The FAA requested that comments on that proposal be received on or before September 9, 2013.

Dassault Aviation submitted a request to extend the comment period from September 9, 2013 to October 15, 2013 to allow adequate time to analyze and provide comments on the NPRM, draft AC 90–106A, and draft AC 20–167A, all of which are directly related to the proposed rule. On September 6, 2013, the FAA published a notice in the **Federal Register** extending the NPRM comment period to October 15, 2013 to coincide with the close of the comment period for draft AC 90–106A and draft AC 20–167A. 78 FR 54790.

The regulatory evaluation associated with the NPRM was not posted to the docket prior to the close of the comment period. Therefore, to ensure that the public has the opportunity to provide comments specifically on the regulatory evaluation posted in the docket (FAA–2013–0485), the FAA is reopening the comment period for 30 days to allow for comments on the regulatory evaluation only. The FAA will not address comments on the NPRM because the comment period for the NPRM closed on October 15, 2013.

Accordingly, the comment period for Notice No. 12–09 is reopened until September 21, 2015.

Additional Information

A. Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data or views. The most helpful comments reference a specific portion of the regulatory evaluation, explain the reasons for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should send only one copy of written comments, or if comments are filed electronically, commenters should submit only one time.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. Before acting on this proposal, the FAA will consider all comments it receives on or before the closing date for comments. The FAA

will consider comments filed after the comment period has closed if it is possible to do so without incurring expense or delay. The agency may change this proposal in light of the comments it receives.

B. Availability of Rulemaking Documents

An electronic copy of rulemaking documents may be obtained from the Internet by—

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

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

All documents the FAA considered in developing this proposed rule, including economic analyses and technical reports, may be accessed from the Internet through the Federal eRulemaking Portal referenced in item (1) above.

Issued in Washington, DC, on August 14, 2015.

Lirio Liu,

Director, Office of Rulemaking.

[FR Doc. 2015–20555 Filed 8–19–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[Docket ID ED–2015–OPE–0103]

Negotiated Rulemaking Committee; Public Hearings

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Intent to establish negotiated rulemaking committee.

SUMMARY: We announce our intention to establish a negotiated rulemaking committee to prepare proposed regulations for the Federal Student Aid programs authorized under title IV of the Higher Education Act of 1965, as amended (HEA). The committee will include representatives of organizations or groups with interests that are significantly affected by the subject matter of the proposed regulations. We also announce two public hearings at which interested parties may comment on the topics suggested by the Department and may suggest additional topics that should be considered for action by the negotiating committee. In addition, we announce that the Department will accept written comments on the topics suggested by the Department and suggestions for additional issues that should be considered for action by the negotiating committee.

DATES: The dates, times, and locations of the public hearings are listed under the **SUPPLEMENTARY INFORMATION** section of this document. We must receive written comments suggesting issues that should be considered for action by the negotiating committee on or before September 16, 2015.

ADDRESSES: Submit your comments through the Federal eRulemaking Portal or via postal mail, commercial delivery, or hand delivery. We will not accept comments by fax or by email. 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 ''How to use Regulations.gov'' in the Help section.
- *Postal Mail, Commercial Delivery, or Hand Delivery.* If you mail or deliver your comments about these proposed regulations, address them to Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8013, Washington, DC 20006.

Privacy Note: The Department's policy is to make all comments received from members of the public (including those comments submitted by postal mail, commercial delivery, or hand delivery) 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: For information about the public hearings, go to *www2.ed.gov/policy/highered/reg/hearulemaking/2016/index.html* or contact: Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8013, Washington, DC 20006. Telephone: (202) 502–7526 or by email: *Wendy.Macias@ed.gov.*

For information about negotiated rulemaking in general, see *The Negotiated Rulemaking Process for Title IV Regulations, Frequently Asked Questions* at *www2.ed.gov/policy/highered/reg/hearulemaking/hea08/neg-reg-faq.html* or contact: Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8013, Washington, DC 20006. Telephone: (202) 502–7526 or by email: *Wendy.Macias@ed.gov.*

If you use a telecommunications device for the deaf (TDD) or text telephone (TTY), call the Federal Relay Service (FRS) toll free at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Section 492 of the HEA requires that, before publishing any proposed regulations to implement programs authorized under title IV of the HEA, the Secretary obtain public involvement in the development of the proposed regulations. After obtaining advice and recommendations from the public, the Secretary conducts negotiated rulemaking to develop the proposed regulations. We announce our intent to develop proposed title IV regulations by following the negotiated rulemaking procedures in section 492 of the HEA.

We intend to select participants for the negotiated rulemaking committee from nominees of the organizations and groups that represent the interests significantly affected by the proposed regulations. To the extent possible, we will select from the nominees individual negotiators who reflect the diversity among program participants, in accordance with section 492(b)(1) of the HEA.

Regulatory Issues

We intend to convene a committee to develop proposed regulations for determining which acts or omissions of an institution of higher education (''institution'') a borrower may assert as a defense to repayment of a loan made under the William D. Ford Federal Direct Loan (Federal Direct Loan) Program (''borrower defenses'') and the consequences of such borrower defenses for borrowers, institutions, and the Secretary. Specifically, we intend to address: (1) The procedures to be used for a borrower to establish a defense to repayment; (2) the criteria that the Department will use to identify acts or omissions of an institution that constitute defenses to repayment of Federal Direct Loans to the Secretary; (3) the standards and procedures that the Department will use to determine the liability of the institution participating in the Federal Direct Loan Program for amounts based on borrower defenses; and (4) the effect of borrower defenses on institutional capability assessments.

After a complete review of the public comments presented at the public hearings and in the written submissions, we will publish a document (or documents) in the **Federal Register** announcing the specific topics for which we intend to establish a negotiated rulemaking committee and a request for nominations for individual negotiators for the committee who represent the communities of interest that would be significantly affected by the proposed regulations. This document will also be posted on the Department's Web site at: *www2.ed.gov/policy/highered/reg/hearulemaking/2016/index.html.*

Public Hearings

We will hold two public hearings for interested parties to discuss the rulemaking agenda. The public hearings will be held:

- September 10, 2015, at the U.S. Department of Education, 1990 K Street NW., Eighth Floor Conference Center, Washington, DC 20006.
- September 16, 2015, at the Courtyard San Francisco Downtown, 299 2nd Street, Rincon Hill Room, San Francisco, CA 94105.

The public hearings will be held from 9:00 a.m. to 4:00 p.m., local time. Further information on the public hearing sites is available at *www2.ed.gov/policy/highered/reg/hearulemaking/2016/index.html.*

Individuals who would like to present comments at the public hearings must register by sending an email to *negreghearing@ed.gov.* The email should include the name of the presenter along with the public hearing at which the individual would like to speak, and a general timeframe during which the individual would like to speak (for example, a presenter could indicate morning or afternoon, or before 11:00 a.m. or after 3:00 p.m.). We will attempt to accommodate each speaker's preference, but, if we are unable to do so, we will make the determination on a first-come first-served basis (based on the time and date the email was received). It is likely that each participant will be limited to five minutes. The Department will notify registrants of the location and time slot reserved for them. An individual may make only one presentation at the public hearings. If we receive more registrations than we are able to accommodate, the Department reserves the right to reject the registration of an entity or individual that is affiliated with an entity or individual that is already scheduled to present comments, and to select among registrants to ensure that a broad range of entities and individuals is allowed to present. We will accept walk-in registrations for any remaining time slots on a first-come first-served basis, beginning at 8:30 a.m. on the day of the public hearing at the Department's on-site registration table. Registration is not required to observe the public hearings.

The Department will post transcriptions of the hearings to *www2.ed.gov/policy/highered/reg/hearulemaking/2016/index.html.* Although the Department will not be filming the hearings, as this is a public meeting, speakers should be aware that they may be filmed or recorded by members of the public.

Speakers may submit written comments at the public hearings. In addition, the Department will accept written comments via the Federal eRulemaking portal, and by postal mail, commercial delivery, or hand delivery, through September 16, 2015. (See the **ADDRESSES** section of this document for submission information.)

Schedule for Negotiations

We anticipate that any committee established after the public hearings will begin negotiations in January 2016, with the committee meeting for up to three sessions of approximately three days each at roughly monthly intervals. The committee will meet in the Washington, DC area. The dates and locations of these meetings will be published in a subsequent document in the **Federal Register**, and will be posted on the Department's Web site at: *www2.ed.gov/policy/highered/reg/hearulemaking/2016/index.html.*

Accessible Format: Individuals with disabilities can obtain this document in an accessible format (*e.g.,* braille, large print, audiotape, or compact disc) by contacting Wendy Macias, U.S. Department of Education, 1990 K Street NW., Room 8013, Washington, DC 20006. Telephone: (202) 502–7526 or by email: *Wendy.Macias@ed.gov.*

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.

Delegation of Authority: The Secretary of Education has delegated authority to Jamienne S. Studley, Deputy Under Secretary, to perform the functions and duties of the Assistant Secretary for Postsecondary Education.

Program Authority: 20 U.S.C. 1098a.

Dated: August 18, 2015.

Jamienne S. Studley,

Deputy Under Secretary.

[FR Doc. 2015–20669 Filed 8–19–15; 8:45 am]

BILLING CODE 4000–01–P

POSTAL REGULATORY COMMISSION

39 CFR Part 3050

[Docket No. RM2015–17; Order No. 2661]

Periodic Reporting

AGENCY: Postal Regulatory Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is noticing a recent Postal Service filing requesting that the Commission initiate an informal rulemaking proceeding to consider changes to analytical principles relating to periodic reports (Proposal Eight). This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 8, 2015. *Reply Comments are due:* September 22, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. Summary of Proposal
III. Initial Commission Action
IV. Ordering Paragraphs

I. Introduction

On August 5, 2015, the Postal Service filed a petition pursuant to 39 CFR 3050.11 requesting that the Commission initiate an informal rulemaking proceeding in order to consider changes

in analytical principles relating to periodic reports.[1] Proposal Eight is attached to the Petition and proposes an analytical method change related to the avoided costs for 5-Digit pallets Standard Mail Carrier Route flats discounts. Petition at 1.

This Petition was filed in response to Order No. 2472, which directed the Postal Service ''to file a proposed methodology for determining the costs avoided for the 5-digit pallet presort Standard Mail Carrier Route flats workshare discount, as described in the body of [Order No. 2472], within 90 days of the date of [Order No. 2472].'' [2]

II. Summary of Proposal

The Postal Service explains that prior to the planned price adjustments in Docket No. R2015–4, the Carrier Route product only afforded customers entry discounts. Petition, Proposal Eight at 1. The Postal Service's price adjustment in Docket No. R2015–4 introduced a preparation discount on 5-Digit Carrier Route pallets. Proposal Eight seeks to modify the Standard Mail Flats Cost Model to produce estimates of mail processing cost avoidances for Carrier Route pieces on 5-Digit Carrier Route pallets. *Id.* The Petition states that the general architecture of the model is retained, but it is expanded to explicitly model the unique characteristics and flows of Carrier Route flats. *Id.*

The Petition further states that when a commercial mailer has at least 250 pounds of Carrier Route mail destinating in a 5-Digit or 5-Digit Scheme (Labeling List L001) the customer can prepare a Carrier Route pallet. Preparation of a Carrier Route pallet enables the Postal Service to cross-dock the pallet directly to the delivery unit and bypass bundle sortation operations. *Id.* at 1–2.

The structure and methodology used in estimating cost avoidances of Standard Mail Flats provide estimates of costs avoided for pieces prepared on Carrier Route pallets. *Id.* at 2. The Postal Service explains that this model provides engineering cost estimates of bundles and pieces based on the preparation profile of pieces within each rate element. *Id.*

The Postal Service states that as in the model to estimate cost avoidances for Standard Mail Flats, the proposed Carrier Route pallet cost avoidance model's mail preparation profile is taken from the Mail Characteristics Study in USPS–FY14–14 to account for Carrier Route pieces on Carrier Route pallets and Carrier Route pieces on all other containers. The Postal Service asserts that the Carrier Route data from the Mail Characteristics Study in USPS–FY14–14 is modified to exclude pieces prepared in FSS bundles. *Id.* The new preparation profile includes only pieces that qualify for Carrier Route rates under the new qualification standards. *Id.*

The Postal Service's methodology used to calculate bundle flow and piece flow are unchanged from the Standard Mail Flats Cost Model.[3] *Id.* However, the Postal Service contends that the proposal amends the flow parameters within the model that are specific to Carrier Route.[4]

III. Initial Commission Action

The Commission establishes Docket No. RM2015–17 for consideration of matters raised by the Petition. Additional information concerning the Petition may be accessed via the Commission's Web site at *http://www.prc.gov.* Interested persons may submit comments on the Petition and Proposal Eight no later than September 8, 2015. Reply comments are due no later than September 22, 2015. Pursuant to 39 U.S.C. 505, the Commission designates Nina Yeh to serve as an officer of the Commission (Public Representative) representing the interests of the general public in this proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. RM2015–17 for consideration of the matters raised by the Petition of the United States Postal Service Requesting Initiation of a Proceeding to Consider a Proposed Change in Analytical Principles (Proposal Eight), filed August 5, 2015.

2. Comments are due no later than September 8, 2015. Reply comments are due no later than September 22, 2015.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Nina Yeh to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this docket.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015–20534 Filed 8–19–15; 8:45 am]

BILLING CODE 7710–FW–P

[1] Petition of the United States Postal Service for the Initiation of a Proceeding to Consider Proposed Changes in Analytical Principles (Proposal Eight), August 5, 2015 (Petition).

[2] Docket No. R2015–4, Order on Revised Price Adjustments for Standard Mail, Periodicals and Package Services Products and Related Mail Classification Changes, May 7, 2015, at 63 (Order No. 2472).

[3] Including all assumptions, for example the bundle breakage rate.

[4] The Postal Service cites to the Excel files submitted with its petition in Docket No. RM2015–16, USPS–RM2015–16/1, August 5, 2015. *Compare, e.g.,* File STD_FLATS_Order 2472.xlsx, tab CR Pallet Model *with* tab 5D Auto Model Rev.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R05–OAR–2014–0660; FRL–9932–17–Region 5]

Air Plan Approval; Indiana; Alcoa BART

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a revision to the Alcoa Best Available Retrofit Technology (BART) averaging time for nitrogen oxides (NO_X) in the Indiana State Implementation Plan (SIP). On July 23, 2014, the Indiana Department of Environmental Management (IDEM) submitted to EPA a revision to the daily NO_X emissions limits, changing from a rolling 24-hour average to a 24-hour daily average. IDEM provided an analysis showing that no significant increase in emissions will occur as a result of this change. EPA is approving this SIP revision because it will not interfere with attainment or maintenance of the National Ambient Air Quality Standard (NAAQS).

DATES: Comments must be received on or before September 21, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R05–OAR–2014–0660, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: blakley.pamela@epa.gov.*
3. *Fax:* (312) 692–2450.
4. *Mail:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.
5. *Hand Delivery:* Pamela Blakley, Chief, Control Strategies Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Such deliveries are only accepted during the Regional Office normal hours of operation, and special arrangements should be made for

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

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

FOR FURTHER INFORMATION CONTACT: Carolyn Persoon, Environmental Engineer, Control Strategies Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8290, *persoon.carolyn@epa.gov.*

SUPPLEMENTARY INFORMATION: In the Final Rules section of this **Federal Register**, EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. For additional information, see the direct final rule which is located in the Rules section of this **Federal Register**.

Dated: August 3, 2015.

Susan Hedman,

Regional Administrator, Region 5.

[FR Doc. 2015–20529 Filed 8–19–15; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R04–OAR–2015–0337; FRL–9932–57–Region 4]

Approval and Promulgation of Implementation Plans; Florida; Regional Haze Plan Amendment—Lakeland Electric C.D. McIntosh

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve the State of Florida's March 10, 2015, State Implementation Plan (SIP) revision, submitted by the Florida Department of Environmental Protection (FDEP). This submittal fulfills Florida's commitment to EPA to provide a regional haze SIP revision with a Best Available Retrofit Technology (BART) nitrogen oxides (NO_X) emissions limit for Unit 1 at the Lakeland Electric–C.D. McIntosh Power Plant (McIntosh) reflecting best operating practices for good combustion. States are required to address the BART provisions of the Clean Air Act (CAA or Act) and EPA's regional haze regulations as part of a program to prevent any future and remedy any existing anthropogenic impairment of visibility in mandatory Class I areas (national parks and wilderness areas) caused by emissions of air pollutants from numerous sources located over a wide geographic area (also referred to as the ''regional haze program'') and to assure reasonable progress toward the national goal of achieving natural visibility conditions in Class I areas. In this action, EPA proposes to approve the BART NO_X emissions limit for Unit 1 at McIntosh into the Florida SIP.

DATES: Written comments must be received on or before September 21, 2015.

ADDRESSES: Submit your comments, identified by Docket ID No EPA–R04–OAR–2015–0337, by one of the following methods:

1. *www.regulations.gov:* Follow the on-line instructions for submitting comments.
2. *Email: R4-ARMS@epa.gov.*
3. *Fax:* (404) 562–9019.
4. *Mail:* ''EPA–R04–OAR–2015–0337,'' Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960.
5. *Hand Delivery or Courier:* Lynorae Benjamin, Chief, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

Instructions: Direct your comments to Docket ID No. EPA–R04–OAR–2015–0337. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit through *www.regulations.gov* or email, information that you consider to be CBI or otherwise protected. The *www.regulations.gov* Web site is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD–ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket visit the EPA Docket Center homepage at *http://www.epa.gov/epahome/dockets.htm.*

Docket: All documents in the electronic docket are listed in the *www.regulations.gov* index. Although listed in the index, some information may not be publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket

materials are available either electronically in *www.regulations.gov* or in hard copy at the Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michele Notarianni, Air Regulatory Management Section, Air Planning and Implementation Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street SW., Atlanta, Georgia 30303–8960. Ms. Notarianni can be reached by phone at (404) 562–9031 or via electronic mail at *notarianni.michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Overview

On December 10, 2012, EPA proposed to approve the BART and reasonable progress determinations for a number of EGUs in Florida as part of Florida's regional haze SIP. *See* 77 FR 73369. In that action, EPA proposed approval of Florida's BART determination for emissions Units 1 and 2 at McIntosh found subject to BART. On August 29, 2013, EPA issued a final, full approval of Florida's regional haze SIP. *See* 78 FR 53250. In that final action, EPA approved the BART determination for the McIntosh facility, including the determination that the existing level of control for NO_X at Unit 1, best operating practices for good combustion, is the NO_X BART control for Unit 1. *See* 78 FR 53263. As described in the August 29, 2013, final action, FDEP submitted a letter to EPA dated July 30, 2013, in which the State committed to provide EPA with a regional haze SIP revision no later than March 19, 2015, the deadline for the State's five-year regional haze periodic progress report SIP, that would include a NO_X BART emissions limit for Unit 1 reflecting best operating practices for good combustion.[1] FDEP also committed to modify the title V permit for McIntosh to include this new limit.[2]

To fulfill its commitment in accordance with the July 30, 2013 letter, the State of Florida submitted a SIP revision dated March 10, 2015, seeking to revise its regional haze SIP to include a NO_X BART emissions limit for Unit 1 and the April 30, 2014, construction permit establishing this NO_X BART emissions limit for Unit 1. The permit contains supporting conditions (*e.g.,* monitoring requirements) and a condition specifying a schedule for McIntosh to apply for a revision to its title V permit to reflect the new permit conditions. In this action, EPA proposes to approve Florida's March 10, 2015, SIP submittal for the reasons discussed in Section II, below.

II. What is EPA's Analysis of Florida's Plan?

Florida's March 10, 2015, SIP revision seeks to revise the State's regional haze SIP to include a NO_X BART emissions limit for McIntosh Unit 1 and a construction permit (DEP Permit No. 1050004–034–AC) dated April 30, 2014, for Unit 1 containing this limit. The SIP revision and construction permit establish a NO_X BART emissions limit of 0.46 pounds per million British Thermal Unit (lb/MMBtu) of heat input on a 30-operating day rolling average for Unit 1 in accordance with Florida's July 30, 2013, commitment letter and the NO_X BART control determination. Florida set this limit by considering NO_X emissions data for Unit 1 from 2001–2003, the baseline period used by the State as the basis for its BART determination for McIntosh.[3] The permit states that the limit is effective no later than EPA's approval of Florida's March 10, 2015, regional haze SIP revision. Compliance with the BART NO_X emissions limit will be demonstrated with a NO_X CEMS that must comply with the certification and quality assurance, and other applicable requirements of Rule 62–297.520, F.A.C.; 40 CFR 60.13, including certification of each device in accordance with 40 CFR part 60, Appendix B, Performance Specifications and 40 CFR 60.7(a)(5); or 40 CFR part 75. Quality assurance procedures must conform to all applicable sections of 40 CFR part 60, Appendix F or 40 CFR part 75.

The construction permit also sets the deadlines for McIntosh to submit an application to revise its title V permit to include the NO_X BART limit and supporting conditions for Unit 1. Section 2.8 of the permit states that the ''permittee shall apply for the Title V permit revision within 180 days of U.S. EPA's approval of the amendment to Florida's Regional Haze State Implementation Plan (SIP).''

EPA proposes to find that the March 10, 2015, SIP revision containing the NO_X BART emissions limit and new permit conditions for Unit 1 fulfills Florida's commitment to establish a NO_X BART emissions limit for Unit 1 that reflects best operating practices for good combustion and to amend the facility's title V permit to include the permit limit and supporting conditions. EPA has evaluated the CEMS data reported to EPA's Clean Air Markets Division (CAMD) for Unit 1 from 2001–2003 and believes that the NO_X BART emissions limit is consistent with the NO_X BART control determination.[4] Therefore, EPA proposes to incorporate the NO_X BART limit for Unit 1 and Air Permit No. 1050004–034–AC into Florida's regional haze SIP.

III. Proposed Action

EPA is proposing to approve Florida's March 10, 2015, regional haze SIP revision and revise the regional haze SIP to include the NO_X BART emissions limit for Unit 1 described above and the April 30, 2014, construction permit containing this limit. EPA is proposing to approve Florida's SIP submission because the submission meets the applicable regional haze requirements as set forth in the CAA and in EPA's regional haze regulations and the applicable requirements of section 110 of the CAA. As discussed above, EPA fully approved Florida's regional haze SIP on August 29, 2013. Today's action does not reopen EPA's final BART control determination for McIntosh Unit 1 or any other aspect of EPA's August 29, 2013 final action.

IV. Statutory and Executive Order Reviews

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

[1] In that final action, EPA concluded that it ''is reasonable for the State to implement a NO_X BART emissions limit for Unit 1 upon EPA's approval of the'' five-year regional haze periodic progress report ''because of the limited visibility impact of NO_X emissions from Unit 1 and because the BART limit will reflect the existing level of control.'' 78 FR 53263.

[2] FDEP's July 30, 2013, commitment letter is located in the docket for today's proposed action.

[3] See July 22, 2015, email from Preston McLane, FDEP, to Lynorae Benjamin, EPA Region 4, located in the docket for today's proposed action.

[4] The docket for today's proposed action contains the 2001–2003 CEMS data for Unit 1 from CAMD.

beyond those imposed by state law. For that reason, this proposed action:

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

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

List of Subjects in 40 CFR Part 52

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

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

Dated: August 5, 2015.

Heather McTeer Toney,

Regional Administrator, Region 4.

[FR Doc. 2015–20497 Filed 8–19–15; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 37

[Docket DOT–OST–2015–0075]

Transportation for Individuals With Disabilities; Service Criteria for Complementary Paratransit Fares

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

ACTION: Notice of petition for rulemaking; request for comments.

SUMMARY: This document seeks public comments on a petition for rulemaking from Access Services concerning the Department's regulations implementing the Americans with Disabilities Act (ADA) with respect to the method of determining the fare for a trip charged to an ADA paratransit eligible user. The petition asks the Department to revise its regulation to allow for a ''coordinated'' or two-tier fare structure. The current regulation provides that the fare shall not exceed twice the fare that would be charged to an individual paying full fare for a similar trip on the fixed route system.

DATES: Comments must be received by September 21, 2015.

ADDRESSES: Please submit your comments by only one of the following methods:

- *Online:* Use the Federal eRulemaking portal at *http://www.regulations.gov* and follow the instructions for submitting comments.
- *U.S. Mail:* Send your comments to the Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Go to Room W12–140 on the ground floor of the West Building, U.S. Department of Transportation headquarters, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. Eastern-time, Monday through Friday except Federal holidays.
- *Telefax:* Send your comments to 202–493–2251.

Instructions: All comments must include the docket number for this rulemaking: DOT–OST–2015–0075. Submit two copies of your comments if you submit them by mail. For confirmation that DOT received your comments, include a self-addressed, stamped postcard. All comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading under ''Supplementary Information,'' below, for Privacy Act information pertinent to any submitted comments or materials, and you may review DOT's complete Privacy Act Statement published in the **Federal Register** on April 11, 2000, at 65 FR 19477.

Docket Access: For access to background documents and comments received in the rulemaking docket, go to *http://www.regulations.gov* or to the U.S. Department of Transportation, 1200 New Jersey Avenue, SE., Room W12–140, Washington, DC 20590 between 9:00 a.m. and 5:00 p.m., Monday through Friday except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jill Laptosky, Attorney-Advisor, Office of General Counsel, U.S. DOT, 1200 New Jersey Ave. SE., Washington, DC 20590, phone: (202) 493–0308, or email, *Jill.Laptosky@dot.gov;* or Bonnie Graves, Assistant Chief Counsel for Legislation and Regulations, Office of Chief Counsel, Federal Transit Administration, same address, phone: (202) 366–4011, or email, *Bonnie.Graves@dot.gov.*

SUPPLEMENTARY INFORMATION: On March 4, 2015, the U.S. Department of Transportation (DOT) received a petition for rulemaking from Access Services, the Americans with Disabilities Act (ADA) complementary paratransit provider for 44 fixed route transit providers in Los Angeles County, California. Access Services uses a ''coordinated'' or two-tier fare structure where it generally charges $2.75 for one-way trips up to 19.9 miles, and $3.50 for one-way trips of 20 miles or more. In some cases, these fares exceed twice the fixed route fare. The DOT's ADA regulation at 49 CFR 37.131(c) provides that the fare for a trip charged to an ADA paratransit eligible user of the complementary paratransit service shall not exceed twice the fare that would be charged to an individual paying full fare for a trip of similar length, at a similar time of day, on the entity's fixed route system. In recent triennial reviews of some fixed route providers in Los Angeles County, the Federal Transit Administration (FTA) has made findings that the ADA paratransit fares exceed twice the fixed route fare. In other words, some paratransit riders are paying more for ADA paratransit fares than they should be under the Department's existing regulations.

Access Services' petition for rulemaking has been placed in the docket. Access Services asserts in its petition that its two-tier fare structure is simple for riders to understand and easy for Access Services and its providers to implement. In its petition, Access Services requests that the Department propose amending its ADA regulations to allow for a coordinated fare structure as follows:

Proposed Amendment to DOT ADA Regulations

The Access Services proposes the following addition to 49 CFR 37.131(c) on service criteria for complementary paratransit:

- Alternatively, the maximum fare that may be charged by an entity which administers a coordinated paratransit plan for 20 or more fixed route members pursuant to 49 CFR 37.141 and approved pursuant to 49 CFR 37.147 shall be no more than twice the regional average fixed-route fare determined as follows:
  - The entity may calculate a regional average fixed-route fare by obtaining a statistically-valid, random sample of its recent paratransit trips, calculating the applicable fixed-route fare for those trips and averaging the results. The sample may be subdivided by distance to determine the regional average fixed-route fares for trips of a certain mileage.

The Department's regulations at 49 CFR 5.11 permit any person to petition the Secretary to amend a rule. It is solely within the discretion of the Secretary to grant or deny such a petition, and the Secretary has not yet decided whether or not to grant or deny the Access Services' petition. In order to supplement the information provided by Access Services in support of its petition for rulemaking, the Department is requesting public comments on the issue presented in the petition. The Department will use this collective information in the development of the technical review that will serve as the basis for determining whether to grant or deny the petition.

The Department is especially interested in hearing from individuals who use ADA complementary paratransit services in order to better understand how they would be impacted if the Department adopted the Access Services' language or similar language. Would a more simplified tiered fare system, set by the local transit agencies, be beneficial to individuals with disabilities using public transportation in regions with multiple fixed route providers? Would any tiered system need to be capped at a certain amount (*e.g.,* twice the fare on a comparable fixed route trip)? How many tiers would be unmanageable for individuals with disabilities?

The Department is also interested to hear from ADA complementary paratransit providers throughout the country. How do these paratransit providers, particularly in regions with many fixed-route operators, currently determine fares in order to comply with the Department's current regulations? What procedures or best practices do they use? What challenges do ADA complementary paratransit providers face in setting fares under the current regulations? How many fixed-route providers do you coordinate with?

Issued in Washington, DC, this 29th day of July 2015, under authority delegated in 49 CFR 1.27(a).

Kathryn B. Thomson,

General Counsel.

[FR Doc. 2015–20467 Filed 8–19–15; 8:45 am]

BILLING CODE 4910–9X–P

Notices

Federal Register

Vol. 80, No. 161

Thursday, August 20, 2015

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

August 13, 2015.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), *OIRA_Submission@OMB.EOP.GOV* or fax (202) 395–5806 and to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–8958.

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

Foreign Agricultural Service

Title: Agriculture Wood Apparel Manufacturers Trust Fund.

OMB Control Number: 0551–0045.

Summary of Collection: Section 12315 of the Agricultural Act of 2014 (P.L. 113–79) authorizes distribution out of the Agriculture Wood Apparel Manufacturers Trust Fund (''Agriculture Wool Trust Fund'') in each of calendar years 2014 through 2019, payable to qualifying claimants. Eligible claimants are directed to submit a notarized affidavit, following the statutory procedures specified Section 12314 (c) or (d) of the Act.

Need and Use of the Information: The Foreign Agricultural Service will use the information provided in the affidavits to certify the claimants' eligibility and to authorize payment from the Agriculture Wood Trust Fund.

Description of Respondents: Business or other-for-profit.

Number of Respondents: 55.

Frequency of Responses: Record keeping, Reporting: Annually.

Total Burden Hours: 165.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2015–20432 Filed 8–19–15; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. APHIS–2014–0094]

Availability of a Final Environmental Assessment and Finding of No Significant Impact for the Biological Control of Emerald Ash Borer

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a final environmental assessment and finding of no significant impact relative to the release of a parasitic wasp, *Spathius galinae,* into the continental United States for use as a biological control agent to reduce the severity of emerald ash borer infestations. Based on the finding of no significant impact, we have determined that an environmental impact statement need not be prepared.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Tichenor, Entomologist, Pest Permitting Branch, Regulations Permits and Manuals, Plant Health Programs, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1231; (301) 851–2198.

SUPPLEMENTARY INFORMATION: The emerald ash borer (EAB), *Agrilus planipennis,* is an invasive wood-boring beetle from Asia threatening ash trees (*Fraxinus* spp.) in the United States. EAB larvae feed on ash phloem, cutting off the movement of resources within the tree and killing the tree in 4–5 years. EAB is able to attack and kill healthy trees in both natural and urban environments and is well suited for climatic conditions in the continental United States. As a result, EAB infestations have been detected in 24 States: Arkansas, Colorado, Connecticut, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and Wisconsin. The Animal and Plant Health Inspection Service (APHIS) is proposing to issue permits for the field release of a parasitic wasp, *Spathius galinae,* into the continental United States to reduce the severity of EAB infestations.

On February 12, 2015, we published in the **Federal Register** (80 FR 7827, Docket No. APHIS–2014–0094) a notice [1] in which we announced the availability, for public review and comment, of an environmental assessment (EA) that examined the potential environmental impacts associated with the proposed release of *S. galinae* into the continental United States.

We solicited comments on the EA for 30 days ending March 16, 2015. We received 10 comments by that date. The comments were from a government agency, State departments of agriculture, an organization of state plant regulatory agencies, and private

[1] To view the notice, the comments we received, the final EA, and the FONSI, go to *http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0094.*

citizens. Five commenters supported the action and five were opposed. The commenters who were opposed to the action raised issues related to the potential effects the release of *S. galinae* would have on human and environmental health and post-release monitoring methods. APHIS has provided responses to specific concerns raised by the comments in an appendix to the final EA.

In this document, we are advising the public of our finding of no significant impact (FONSI) regarding the release of *S. galinae* into the continental United States for use as a biological control agent for EAB. The finding, which is based on the final EA, reflects our determination that release of this biological control agent will not have a significant impact on the quality of the human environment.

The final EA and FONSI may be viewed on Regulations.gov Web site (see footnote 1). Copies of the EA and FONSI are also available for public inspection at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead to (202) 799–7039 to facilitate entry into the reading room. In addition, copies may be obtained by calling or writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

The EA and FONSI have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et seq.*); (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508); (3) USDA regulations implementing NEPA (7 CFR part 1b); and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 17th day of August 2015.

Kevin Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2015–20573 Filed 8–19–15; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Forest Service

Land Between The Lakes Advisory Board

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Land Between The Lakes Advisory Board (Board) will meet in Golden Pond, Kentucky. The Board is authorized under section 450 of the Land Between The Lakes Protection Act of 1998 (Act) and operates in compliance with the Federal Advisory Committee Act. The purpose of the Board is to advise the Secretary of Agriculture on the means of promoting public participation for the land and resource management plan for the recreation area; and environmental education. Additional Board information, including the meeting agenda and the meeting summary/minutes can be found at the following Web site: *http://www.landbetweenthelakes.us/about/working-together/*.

DATES: The meeting will be held at 9:00 a.m. on Thursday, September 24, 2015.

All Board 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 Land Between The Lakes Administration Building, 100 Van Morgran Drive, Golden Pond, Kentucky.

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 Land Between The Lakes Adminstrative Building. Please call ahead to facilitate entry into the building.

FOR FURTHER INFORMATION CONTACT: Rosemary Bray, Acting Board Coordinator, by phone at 270–924–2017 or via email at *rosemaryhbray@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. Discuss Environmental Education; and
2. Effectively communicate future land management plan activities.

The meeting is open to the public. Board discussion is limited to Forest Service staff and Board members. Written comments are invited and should be sent to Tina Tilley, Area Supervisor, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211; and must be received by September 4, 2015, in order for copies to be provided to the members for this meeting. Board members will review written comments received, and at their request, oral clarification may be requested for a future meeting.

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: August 13, 2015.

Tina R. Tilley,

Area Supervisor, Land Between The Lakes.

[FR Doc. 2015–20570 Filed 8–19–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Description and Final Map for Grande Ronde Wild and Scenic River, Umatilla National Forest (OR and WA), Wallowa Whitman National Forest (WA) and Bureau of Land Management (WA).

AGENCY: Forest Service, USDA.

ACTION: Notice of availability.

SUMMARY: In accordance with section 3(b) of the Wild and Scenic Rivers Act, the USDA Forest Service, Washington Office, is transmitting the final boundary description and map of the Grande Ronde Wild and Scenic River to Congress.

DATES: The boundaries and classification of the Grande Ronde Wild and Scenic River shall not become effective until ninety (90) days after they have been forwarded to the President of the Senate and the Speaker of the House of Representatives. In accordance with Section 3(b) of the Wild and Scenic Rivers Act (82 Stat. 906 as amended; 16 U.S.C. 1274), the detailed boundary descriptions and final maps were forwarded on August 11, 2015.

ADDRESSES: Documents may be viewed at USDA Forest Service, Yates Federal Building, 201 14th Street SW., Washington, DC 20250; at the Supervisors Office of the Umatilla National Forest 72510 Coyote Road, Pendleton, OR 97801; at the Supervisors Office of the Wallowa-Whitman National Forest, 1550 Dewey Ave, Suite A, Baker City, OR 97814; and at the Bureau of Land Management Public

Room at 1220 SW 3rd Ave, Portland, OR 97208.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting the following office: Umatilla National Forest, 72510 Coyote Road, Pendleton, OR 97801; *lrandall@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 Omnibus Oregon Wild and Scenic Rivers Act of October 28, 1988 designated the Grande Ronde Wild and Scenic River, to be Administered by the Secretary of Agriculture. As specified by law, the boundary will not be effective until ninety (90) days after Congress receives the transmittal.

Dated: August 11, 2015.

James Peña,

Regional Forester, Pacific Northwest Region.

[FR Doc. 2015–20513 Filed 8–19–15; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF COMMERCE

U.S. Census Bureau

Proposed Information Collection; Comment Request; Automated Export System (AES) Program

AGENCY: U.S. Census Bureau, Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: To ensure consideration, written comments must be submitted on or before October 19, 2015.

ADDRESSES: Direct all written comments to Jennifer Jessup, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6616, 14th and Constitution Avenue NW., Washington, DC 20230 (or via the Internet at *jjessup@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Kiesha Downs, Chief, Trade Regulations Branch, U.S. Census Bureau, 4600 Silver Hill Road, Washington, DC 20233–6700, (301) 763–7079, by fax (301) 763–8835 or by email *kiesha.downs@census.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

The Automated Export System (AES) or successor system, is the instrument used for collecting export trade information. The data collected from this source is compiled by the U.S. Census Bureau and functions as the basis for the official U.S. export trade statistics. These statistics are used to determine the balance of international trade and are also designated for use as a principal economic indicator. Title 13, United States Code (U.S.C.), Chapter 9, Section 301 authorizes the Census Bureau to collect, compile, publish, and require the electronic filing of export data. Section 302 of Title 13, U.S.C., authorizes the Secretary of Commerce to publish regulations for the collection, publication, confidentiality, and disclosure of data collected pursuant to Chapter 9. Title 15, Code of Federal Regulations (CFR), Part 30, contains these regulatory provisions, and is known as the Foreign Trade Regulations (FTR). These data collected are used in the development of U.S. Government policies that affect the economy. These data also enable U.S. businesses to develop practical export marketing strategies as well as provide a means for the assessment of the impact of exports on the domestic economy. These data collected from the AES record are also used for export control purposes under Title 50, U.S.C., Export Administration Act, to detect and prevent the export of certain items by unauthorized parties or to unauthorized destinations or end users.

The FTR was recently amended on February 9, 2015, through the issuance of a Final Rule, ''Clarification on Uses of Electronic Export Information,'' to provide clarity on the confidentiality provisions of the Electronic Export Information (EEI) and to facilitate the legitimate sharing of export data consistent with the goals for the International Trade Data System (ITDS). However, these changes did not impact the reporting burden imposed upon the export trade community.

Currently, the Census Bureau is drafting a Notice of Proposed Rulemaking (NPR) to amend the FTR with new export reporting requirements. The proposed changes include the addition of two new data elements in the AES and clarification to existing reporting requirements. The proposed fields are not mandatory data elements and will only be required if a shipment meets a specific reporting requirement.

The proposed data elements are an Original Internal Transaction Number (ITN) field and a New or Used Electronics indicator field. The Original ITN field will be an optional field that may be utilized if the filer has to create an additional AES record for a shipment that was previously filed. Adding the Original ITN field will assist the export trade community and enforcement agencies in identifying that a filer completed the mandatory filing requirements for the original shipment. In doing so, this may decrease the issuance of unnecessary penalties for these types of shipments. Because this data element is optional and only applies to a small percentage of shipments, it will have a minimal impact on response burden.

The proposed New or Used Electronics indicator field will be used to improve information on trade flows and the disposal of used electronics. This information will be collected from the trade community for those who export electronics, in order to better understand the quantity and destinations of used electronics being exported. This field is being added to ensure compliance with Executive Order 13693, Planning for Federal Sustainability in the Next Decade, signed on March 19, 2015. The goal of the Executive Order is to employ environmentally sound practices with respect to Federal agency's disposal of all excess or surplus electronic products, to reduce the likelihood of negative impacts to the health and environment in developing countries. Adding the New or Used Electronics indicator will not contribute significantly to response burden because it is optional and is a check box that only applies to shipments of electronics.

The draft NPR also includes language to address the implementation of the ITDS in compliance with the Executive Order 13659, *Streamlining the Export/Import Process for America's Businesses.* The ITDS is an electronic information exchange capability, or ''single window,'' through which businesses will transmit data required by participating agencies for the importation or exportation of cargo.

Lastly, the draft NPR also includes language to clarify the reporting requirements for items such as Department of Treasury, Office of Foreign Assets Control (OFAC), specific or general licenses and split shipments. Unlike other export licenses, general and specific licenses issued by OFAC do not require a specific value or quantity

to be reported. Currently, the definition of export license in the FTR does not account for licenses that do not have a specific value or quantity and, as a result, we are adding language to clarify 15 CFR 30.2(a)(1)(iv). The Census Bureau is revising requirements for split shipments to incorporate new timeframes that were initially announced in FTR Letter #6, Notice of Regulatory Change for Split Shipments. In practice, the export trade community already adheres to these filing timeframes. These clarifications do not impose new reporting requirements because these shipments currently require filing in the AES.

While the Census Bureau is proposing to add two additional data elements, the overall time per response is expected to remain at three minutes per AES filing. Data captured based on the new export reporting requirements are essential in compiling complete and accurate export statistics, as well as strengthening export controls.

II. Method of Collection

Except as noted in 15 CFR 30.2(a)(1)(iv), an electronic AES record is required for all export shipments valued more than $2,500 per Schedule B number from the United States, including Foreign Trade Zones located therein, Puerto Rico, and the U.S. Virgin Islands to foreign countries; for exports between the United States and Puerto Rico; and for exports to the U.S. Virgin Islands from the United States or Puerto Rico. Additionally, an AES record is required for the export of rough diamonds, used self-propelled vehicles and all exports requiring an export license from any other government agency or license exemption from the Department of State, regardless of value. The AES record is also required for exports with certain license exceptions from the Bureau of Industry and Security. The AES program is unique among Census Bureau statistical collections since respondents are not solicited for responses, as is the case with surveys. Filing export information via the AES is a mandatory process under Title 13, Chapter 9, U.S.C. The export trade community can access the AES via a free Internet-based system, AES*Direct,* or they can use software that connects directly with the U.S. Customs and Border Protection's (CBP) Automated Commercial Environment.

For exports to Canada, a Memorandum of Understanding (MOU) signed by CBP, Canada Border Services Agency, Statistics Canada, and the U.S. Census Bureau enables the United States to substitute Canadian import statistics for U.S. export statistics. Similarly, in accordance with the MOU, Canada substitutes U.S. import statistics for Canadian exports to the United States. This exchange of data eliminates the requirement for the export trade community to file the EEI with the U.S. Government for the majority of export shipments to Canada, thus resulting in the elimination of over eight million AES records annually. Export shipments to Canada of rough diamonds, used vehicles, or those that require a license must be filed through the AES. In addition, export shipments from the United States through Canada destined to a country other than Canada require an AES record.

In most instances, a U.S. Principal Party in Interest or authorized agent must file EEI via the AES and annotate the commercial loading documents with the proof of filing citation prior to the export of a shipment. In instances where the AES filing is not required, the proper exemption legend must be noted on the commercial loading documents per 15 CFR 30.7.

The AES enables the U.S. Government to significantly improve the quality, timeliness, and coverage of export statistics. Since July 1995, the Census Bureau and the CBP have utilized the AES to improve the reporting of export trade information, customer service, increase compliance with and enforcement of export laws, and provides paperless reports of export information. The AES also enables the U.S. Government to increase its ability to prevent the export of certain items by unauthorized parties, to unauthorized destinations and end users through electronic filing.

III. Data

OMB Control Number: 0607–0152.

Form Number(s): Automated Export System (AES) submissions.

Type of Review: Regular submission.

Affected Public: Exporters, Forwarding agents, Export Carriers.

Estimated Number of Respondents: 304,223 filers who submit 15,218,820 shipments through the AES.

Estimated Time per Response: 3 minutes for each AES submission.

Estimated Total Annual Burden Hours: 760,941.

Estimated Total Annual Cost to Public: $14,724,208.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13, United States Code, Chapter 9, Sections 301–307.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: August 14, 2015.

Glenna Mickelson,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 2015–20537 Filed 8–19–15; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–54–2015]

Notification of Proposed Production Activity, Mercedes-Benz U.S. International, Inc., Subzone 98A, (Passenger Motor Vehicles), Vance, Alabama

Mercedes-Benz U.S. International, Inc. (MBUSI), operator of Subzone 98A, submitted a notification of proposed production activity to the FTZ Board for its facility in Vance, Alabama. The notification conforming to the requirements of the regulations of the FTZ Board (15 CFR 400.22) was received on July 22, 2015.

MBUSI already has authority to produce multipurpose/sport utility passenger motor vehicles. The current request would add a new finished product (passenger vehicle bodies) and foreign-status materials and components to the scope of authority. Pursuant to 15 CFR 400.14(b), additional FTZ authority would be limited to the specific foreign-status materials and components and specific finished products described in the submitted notification (as described below) and subsequently authorized by the FTZ Board.

Production under FTZ procedures could exempt MBUSI from customs duty payments on the foreign status materials and components used in export production. On its domestic sales, MBUSI would be able to choose

the duty rate during customs entry procedures that applies to passenger motor vehicles and related bodies (duty rate 2.5%) for the foreign status materials and components noted below and in the existing scope of authority. Customs duties also could possibly be deferred or reduced on foreign status production equipment.

The materials and components sourced from abroad include: First-aid kits; adhesives; putties; caulks; lubricating oils; cleaning agents/polishing compounds; plastic protective sheets; paper shapes with adhesive backing; felt shapes; tufted floor coverings; adhesive cotton tape; steel tacks; aluminum fasteners (rivets, washers, nuts); wrenches (lug, socket); iron/steel rivets; windshield washer assemblies and related parts; electromechanical hydraulic units/appliances; power supplies; magnets; engine heaters; block heaters; telematics/media/GPS assemblies; microphone assemblies; speaker/amplifier assemblies; parts of speakers and microphones; radio/television transmission apparatus; cameras; radar devices; radio navigation equipment; radio remote controls; video monitors; vehicle angle modules; control modules; carrier plates; wheel speed sensors; radio interference filters; flat panel displays; checking instruments; electrical instruments; and, felt strips (HTSUS Subheading 5602.10) (duty rate ranges from free to 12%). Inputs included in textile category 223 (classified within HTSUS Subheading 5602.10) will be admitted to Subzone 98A under privileged foreign status (19 CFR 146.41), thereby precluding inverted tariff benefits on such items.

Public comment is invited from interested parties. Submissions shall be addressed to the FTZ Board's Executive Secretary at the address below. The closing period for their receipt is September 29, 2015.

A copy of the notification will be available for public inspection at the Office of the Executive Secretary, Foreign-Trade Zones Board, Room 21013, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230–0002, and in the ''Reading Room'' section of the FTZ Board's Web site, which is accessible via *www.trade.gov/ftz.*

FOR FURTHER INFORMATION CONTACT: Pierre Duy at *Pierre.Duy@trade.gov* or (202) 482–1378.

Dated: August 6, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–20601 Filed 8–19–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–25–2015]

Foreign-Trade Zone 122—Corpus Christi, TX; Authorization of Production Activity; M & G Resins, LLC (Polyethylene Terephthalate and Terephthalic Acid); Corpus Christi, TX

On April 17, 2015, the Port of Corpus Christi Authority, grantee of FTZ 122, submitted a notification of proposed production activity to the Foreign-Trade Zones (FTZ) Board on behalf of M & G Resins, LLC, within Subzone 122S, in Corpus Christi, Texas.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (80 FR 24231–24232, 4–30–2015). The FTZ Board has determined that no further review of the activity is warranted at this time. The production activity described in the notification is authorized, subject to the FTZ Act and the Board's regulations, including Section 400.14.

Dated: August 17, 2015.

Andrew McGilvray,

Executive Secretary.

[FR Doc. 2015–20602 Filed 8–19–15; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XD513

Marine Mammal Stock Assessment Reports

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

ACTION: Notice of availability; response to comments.

SUMMARY: As required by the Marine Mammal Protection Act (MMPA), NMFS has incorporated public comments into revisions of the 2014 marine mammal stock assessment reports (SARs).

ADDRESSES: Electronic copies of SARs are available on the Internet as regional compilations and individual reports at the following address: *http://www.nmfs.noaa.gov/pr/sars/.*

FOR FURTHER INFORMATION CONTACT: Shannon Bettridge, Office of Protected Resources, 301–427–8402, *Shannon.Bettridge@noaa.gov;* Marcia Muto, Alaska Fisheries Science Center, 206–526–4026, *Marcia.Muto@noaa.gov;* Peter Corkeron, Northeast Fisheries Science Center, 508–495–2191, *Peter.Corkeron@noaa.gov;* or Jim Carretta, Southwest Fisheries Science Center, 858–546–7171, *Jim.Carretta@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 117 of the MMPA (16 U.S.C. 1361 *et seq.*) requires NMFS and the U.S. Fish and Wildlife Service (FWS) to prepare SARs for each stock of marine mammals occurring in waters under the jurisdiction of the United States. These reports contain information regarding the distribution and abundance of the stock, population growth rates and trends, the stock's Potential Biological Removal (PBR) level, estimates of annual human-caused mortality and serious injury from all sources, descriptions of the fisheries with which the stock interacts, and the status of the stock. Initial reports were completed in 1995.

The MMPA requires NMFS and FWS to review the SARs at least annually for strategic stocks and stocks for which significant new information is available, and at least once every three years for non-strategic stocks. NMFS and FWS are required to revise a SAR if the status of the stock has changed or can be more accurately determined. NMFS, in conjunction with the Alaska, Atlantic, and Pacific Scientific Review Groups (SRGs), reviewed the status of marine mammal stocks as required and revised reports in each of the three regions.

As required by the MMPA, NMFS updated SARs for 2014, and the revised reports were made available for public review and comment for 90 days (80 FR 4881, January 29, 2015). NMFS received comments on the draft SARs and has revised the reports as necessary. This notice announces the availability of the final 2014 reports for the 88 stocks that are currently finalized. These reports are available on NMFS' Web site (see **ADDRESSES**).

Comments and Responses

NMFS received letters containing comments on the draft 2014 SARs from the Marine Mammal Commission (Commission), the Makah Tribe, seven non-governmental organizations (The Humane Society of the United States, Center for Biological Diversity, Oceana, Turtle Island Restoration Network, Hawaii Longline Association, Sustainable Fisheries Association, and the Maine Lobstermen's Association), and five individuals. Responses to substantive comments are below;

comments on actions not related to the SARs are not included below. Comments suggesting editorial or minor clarifying changes were incorporated in the reports, but they are not included in the summary of comments and responses. In some cases, NMFS' responses state that comments would be considered or incorporated in future revisions of the SARs rather than being incorporated into the final 2014 SARs.

Comments on National Issues

Comment 1: The Humane Society of the United States and Center for Biological Diversity commented that NMFS failed to submit the draft 2014 SARs for public review in timely manner, thus rendering any comments on the draft 2014 SARs moot as the draft 2015 SARs had already been reviewed by the SRGs.

Response: We acknowledge that the draft 2014 SARs were made available for public comment later than usual. While the SRG review of the draft 2015 SARs occurred prior to the 2014 reports being finalized, should any substantive comments on the draft 2014 reports have been received that would have led to changes to the draft 2015 reports and required SRG review, we would have sent the revisions to the SRGs for review prior to submitting the draft 2015 reports for public review.

Comment 2: The Commission recommended that NMFS expand its efforts to understand and estimate the recovery rates of carcasses for marine mammal stocks (where the requisite data are available) and report those estimated rates and their associated uncertainties in future stock assessment reports.

Response: We agree that there is a need to better understand and estimate undetected marine mammal mortalities and serious injuries. We are working on estimating carcass recovery rates for some species, and by extension, estimating the ''cryptic mortality'' rate for these species. When such rates are estimated and it is appropriate to do so, NMFS will report those estimated rates and their associated uncertainties in the SARs on a stock-by-stock basis.

Comment 3: The Commission recommended that NMFS immediately publish new stock-assessment guidelines from the Guidelines for Assessing Marine Mammal Stocks (GAMMS) III recommendations that are not controversial or problematic.

Response: We appreciate this recommendation and will endeavor to do so as promptly as feasible.

Comment 4: The Commission recommended that NMFS develop guidelines for the development of new stock assessment methods that include review by appropriate experts not only on their scientific merit but also on their application to the management decision-making process. The Commission also recommended that NMFS develop a mechanism for the timely (*i.e.,* faster than the GAMMS process), joint review and adoption of new methods by all six of the science centers.

Response: NMFS thanks the Commission for this recommendation. We are investigating the most efficient process to incorporate new methodologies in a standardized way across regions where appropriate. NMFS is working to ensure that all centers have access to comparable analytical tools as new methods become available, and that these methodologies are being applied consistently across regions.

Comment 5: The Commission recommended that when NMFS reviews and revises the policy on serious injury that it considers changing criterion L8 by deleting the provision for altering initial assessments about risks of separating mothers and calves pending better information on the length of calf dependence and in the interim refrain from making alterations based on subsequent sightings.

Response: NMFS appreciates this recommendation and will consider it when reviewing and revising the Policy and Procedure for Distinguishing Serious from Non-Serious Injury of Marine Mammals. Each injury event is carefully evaluated and all available information used to make the best judgment of prognosis under the serious injury definition of ''likely to die'' being equal to or greater than a 50 percent. Our intention is to provide the most accurate injury outcome results given the information available. A whale that has sustained a serious injury and is re-sighted many months later with the injury resolving and in relatively good health compared to non-injured conspecifics is considered not likely to die due to that injury and is no longer counted against PBR as a removal from the population. In the rare case of subsequent sightings indicating deterioration of health that can be attributed to the injury, the whale would again be considered seriously injured and counted against PBR.

Comments on Atlantic Regional Reports

Comment 6: To clarify the information presented in the Atlantic stock assessment reports, the Commission recommended that NMFS replace the term ''Fate'' as a column header in Table 2 with the term ''Injury Determination'' and limit the categories used under that heading to the following three: ''Mortality'' (when the individual is known to have died), ''Serious injury,'' or ''Prorated serious injury'' as appropriate based on the large whale injury determination categories.

Response: NMFS will rename the ''Fate'' column to ''Injury Determination'' and change the ''unknown'' category to ''prorated injury'' in the Atlantic reports. We would rather not use the phrase ''prorated serious injury'' because in such cases it not known whether the injury is serious or not.

Comment 7: The Commission suggests that three serious injuries to North Atlantic right whales (#1151, #4160, and #3308) should be added to Table 2 in the SAR.

Response: The following is a summary statement about each case. Cases were reviewed by NMFS Northeast Fisheries Science Center (NEFSC) staff and determinations made by NEFSC staff were later reviewed by experienced staff at all other Fisheries Science Centers, per the Policy and Procedure for Distinguishing Serious from Non-Serious Injury of Marine Mammals.

- 08/09/09–#1151 was badly entangled but freed with her condition subsequently deteriorating. Re-sightings confirmed the whale was gear free and indicate both mom and calf healthy. This whale was categorized L2 but assigned a serious injury value of 0 due to disentanglement and evident healing.
- 07/19/11–#4160, Calf of #2660—Entanglement Scarred Calf with significant cuts and wounds seen off Provincetown. The whale was re-sighted healthy in 2014. The last SAR listed this whale with a serious injury value as 1.0, but that was changed to 0 in the 2014 report based on the healthy re-sight.
- 7/20/12–#3308—Entanglement scarred (but gear free) whale found in Gulf of Maine with extensive wounds whose condition subsequently declined in 2013 and 2014. Re-sights showed some health decline but overall condition was fair and injuries healing. This whale was categorized as L10 but assigned a serious injury value of 0 due to evident healing.

Comment 8: The Maine Lobstermen Association (MLA) recommended that the ''Population Size'' section of the North Atlantic right whale SAR should have a more in-depth discussion of recent changes in right whale distribution over the last five years, during which time fewer are being seen in their known historic habitats. The comment stated that since the minimum population estimate (N_{MIN}) for right

whales is based only on those whales observed in surveys in combination with photo-identification of whales, if they are not seen, they are not counted. The MLA fears that as the population continues its positive growth trend, the population estimate could actually decrease because the whales are no longer frequenting the same habitats, which would impact PBR.

Response: This comment may be valid in future SARs; however, the data used in this assessment show no appreciable decline in capture probability during the years succeeding the reference year. Because it is the probability of seeing an individual *at least once* that determines the robustness of N_{MIN} when calculated as Minimum Number Alive, there has been no discernible impact on that estimate due to changes in right whale residence times in surveyed habitats. NMFS closely monitors mean group-wise capture probabilities using a mark recapture (MRR) statistical model. At the point in time that population estimation via MRR offers a more robust estimate of N_{MIN} than does Minimum Number Alive, that new estimate can then be vetted and used in the SAR.

Comment 9: The MLA recommended that the minimum population estimate for the North Atlantic right whale should be revised to 510 whales, based on the best available science from the North Atlantic Right Whale Consortium 2014 Annual Report Card.

Response: The MMPA requires that NMFS report a minimum abundance estimate that provides reasonable assurance that the stock size is equal to or greater than the estimate. The estimates provided by the North Atlantic Right Whale Consortium do not meet that standard in that they count whales that are likely to be dead (what the Consortium calls ''presumed alive''—those whales not seen for one to five consecutive years). Including those whales in an N_{MIN} for the SAR would increase the likelihood that the estimate is biased high, which fails to meet the mandate of MMPA. Note also that the North Atlantic Right Whale Consortium's 2014 Annual Report Card includes the statement that their number ''should not be considered a 'population estimate.' ''

Comment 10: The MLA recommended that the ''Current Population Trend'' section of the SAR for the North Atlantic right whale should be revised to reflect that the population has been increasing over the past decade.

Response: The SAR provides a graph that depicts the population increase over a 12-year period and it includes in the text an estimate of growth during that time frame. The current wording in the ''Current Population Trend'' section is ''Examination of the minimum number alive population index calculated from the individual sightings database, as it existed on 25 October 2013, for the years 1990–2011 (Figure 1) suggests a positive and slowly accelerating trend in population size. These data reveal a significant increase in the number of catalogued whales with a geometric mean growth rate for the period of 2.8 percent.'' This text reflects that the population has been increasing over the past decade.

Comment 11: The MLA recommended that the ''Current and Maximum Net Productivity Rates'' section of the North Atlantic right whale SAR be revised to include a more recent analysis of the pool of reproductive females, mean calving intervals, and age structure of the population.

Response: NMFS agrees that providing a demographically-based productivity value in the SAR would be slightly more informative than the present SAR's accounting of the number of detected calves. NMFS will revise the section in future years by providing a per capita production value. Because many whales are of unknown age, the development of detailed information on age structure will require vetting estimates through a peer review process that cannot be organized in the short term, but will be included in the next SAR feasible. The same is true for calving interval.

Comment 12: The MLA recommended that the PBR for the North Atlantic Right Whale should be revised to 1.02, using 510 as the minimum population size for the population as referenced above.

Response: See response to comment 9.

Comment 13: The MLA recommended that the North Atlantic right whale SAR include a short explanation of the methodology used to make the assignment for serious injury and mortality rates in U.S. versus Canadian waters. The comment states that the SAR should not include 13.75 reported fisheries entanglements as being ''from U.S. waters,'' as the origin of the gear in these cases is unknown. The location of where the entanglement was first observed does not indicate the origin of the gear, so this extrapolation cannot be made.

Response: The SAR text will be revised to read ''Of the 13.75 reported fisheries entanglements first reported in U.S. waters during this five-year time period . . .'' Further details on assigning entanglements to countries can be found in Cole T.V.N., and Henry A.G. (2013) Serious injury determinations for baleen whale stocks along the Gulf of Mexico, United States East Coast and Atlantic Canadian Provinces, 2007–2011. Northeast Fish Sci Cent Ref Doc. 13–24; 14p. *http://www.nefsc.noaa.gov/publications/crd/crd1324/crd1324.pdf.*

Comment 14: The MLA recommended that the North Atlantic right whale SAR be revised to include data from the last ten years to characterize the overall impacts of serious injury and mortality on the North Atlantic right whale population size.

Response: NMFS is presently working on a more robust depiction of the impact of entanglement-related serious injury and mortality on the right whale population, which should be available in subsequent SARs (assuming the procedures receive a favorable peer review, possibly beginning with the next SAR).

Comment 15: The MLA recommended that the North Atlantic right whale SAR note that it is unknown whether any of U.S. fisheries entanglements relate to the efficacy of the sinking line rule.

Response: At this point, too little time as passed to make any statements relative to entanglement rates and the sinking ground rule.

Comment 16: The MLA recommended that the North Atlantic right whale SAR include the value of Optimal Sustainable Population (OSP) for right whales, as well as the value of the size of the stock to substantiate the statement that the ''size of the stock is extremely low relative to OSP in the US Atlantic EEZ.''

Response: NMFS has provided a graph that depicts North Atlantic right whale population growth during 1990–2011. That graph indicates that population growth is accelerating and has not passed an inflection point. An inflection point would suggest that the population could be reaching Maximum Net Productivity Level (MNPL). Because the population appears to be at levels clearly lower than MNPL it is, by mathematical definition, less than OSP. Until population growth begins to decelerate—due to density dependence, not deaths caused by human activities—then it would be unwise to attempt to fit a growth curve and estimate OSP from the population data.

Comment 17: The MLA recommended that in the North Atlantic right whale SAR NMFS revise the sentence ''the North Atlantic right whale is considered one of the most critically endangered populations of large whales in the world.'' The comment states that this conclusion is based on a 1999 report that estimates the population of right whales to be 295 animals, which is substantially lower than the current estimate of 510 whales. The comment

states that therefore, more recent data should be used to substantiate such a statement.

Response: NMFS' comment regarding the critically endangered status of North Atlantic right whale is still true. There are likely only four large whale stocks in more dire straits than the North Atlantic right whale: Western gray whales, Gulf of Mexico Brydes whales, Arabian humpback whales, and North Pacific right whales.

Comment 18: Two individuals noted data deficiencies in the stock assessment reports for North Atlantic gray seals and recommended that NMFS provide current abundance and trend estimates.

Response: NMFS gray seal research has been constrained by lack of resources allocated specifically to seal work. Aerial surveys of index sites have occurred sporadically over the past decade, when resources allowed. Images from those surveys are being processed to inform trend estimates for seals in U.S. waters, and should provide a minimum estimate of abundance. NMFS is working with collaborators (at Woods Hole Oceanographic Institution and Duke University, particularly) to develop cost-effective tools to better survey seals along the New England coast. In addition, NMFS is actively pursuing additional resources and expanding partnerships with other seal research groups to improve and enhance data collection and analytical methods.

Comments on Pacific Regional Reports

Comment 19: The Commission recommended that NMFS conduct further research on the ecological relationship between Hawaiian monk seals and two deep-water fish species also targeted by the Main Hawaiian Islands (MHI) bottomfish handline fishery and explicitly incorporate the requirements of the MHI monk seal population into future stock assessments of the two fish species in question.

Response: The NMFS Pacific Islands Fisheries Science Center (PIFSC) is conducting ongoing research on the habitat use and diet of MHI monk seals using a variety of tools, including fatty acid analysis, seal-mounted video cameras and a variety of telemetry devices. Information about the presence, prevalence, and importance of any commercially fished bottomfish species in the monk seal diet is currently too uncertain to determine the requirements of the MHI monk seal population. This issue is a high priority of MHI monk seal research and the Hawaiian Monk Seal Research Program is working with the State of Hawaii and PIFSC Fisheries Research and Monitoring Division to better understand and quantify direct and ecological (or indirect) interactions between monk seals and the bottomfish fishery.

Comment 20: The Commission recommended that NMFS use the default R_{MAX} for cetaceans (four percent) for the Eastern North Pacific Southern Resident stock of killer whales, until such time that the research from which the specific R_{MAX} estimate for this stock was derived has been peer reviewed and published.

Response: There are published estimates of R_{MAX} for other resident killer whales in the region that can be used as a reasonable substitute for the default R_{MAX} of four percent. Matkin et al. (2014) provides an R_{MAX} estimate of 3.5 percent for southern Alaska resident killer whales, which is applied to southern resident killer whales. This represents a better estimate than the default maximum, while also providing a lower, and hence, more conservative estimate of PBR than that calculated using the default R_{MAX} of four percent. In context, the difference between PBR calculated using the default R_{MAX} of four percent (PBR = 0.16 animals) and the published estimate of 3.5 percent for southern Alaska resident killer whales (PBR = 0.14 animals) is negligible.

Comment 21: The Turtle Island Restoration Network recommended that NMFS calculate the PBR for the CA/OR/WA stock of sperm whale using the full range of abundance estimates available—rather than only one study by Moore and Barlow (2014)—and the species-specific growth rate estimates from the scientific literature. They stated that this will result in a PBR calculation of 0.4, rather than the current estimate of 2.7 calculated in the SAR. The comment cites Whitehead (2002), IWC (1982), and Moore and Barlow (2014), which estimate annual population growth rates ranging from 0.6 to 1.5 percent.

Response: Abundance estimates from the Moore and Barlow (2014) study were used, rather than prior published estimates, because these newer estimates are considered to represent the best available science, based on the use improved statistical methodology that has been vetted through multiple peer-reviewed journal publications (Moore and Barlow 2011, 2013, and 2014), and based on revised estimates of g(0) (from Barlow 2015). The analytical method employed makes use of all available survey data dating back to 1991 to estimate abundance in each year, rather than basing each estimate solely on information contained within an individual survey. As such, the annual estimates are substantially more stable through time (not less, counter to Turtle Island Restoration Network's suggestion). In contrast, sperm whale estimates based only on data from a particular survey are highly imprecise estimates due to small within-year sample sizes. The strong increase in mean estimated abundance compared to previously published estimates is mostly due to the use of new g(0) estimates (from Barlow 2015), not due to revised statistical methodology. General imprecision in the estimates for many of the model parameters is a problem of limited information in the data, not of the method. The minimum (20th percentile) abundance estimate accounts explicitly for these uncertainties. Substantial estimated levels of process variance are not surprising given that the population is highly mobile and wide-ranging (*i.e.,* the study area is not closed). The current PBR estimates do not make use of estimates older than eight years. Rather, the current PBR estimate is based on a current abundance estimate, which is appropriately informed by data spanning two decades. The default maximum population growth rate of four percent for cetaceans is used in the calculation of PBR for this stock. There are no reliable empirical estimates of maximum potential population growth rates for sperm whales. The values used by the International Whaling Commission (IWC) (1982) were based on uncertain estimates of life history parameters now considered to have been pessimistic (Whitehead 2002). Potential growth estimates proposed by Whitehead (2002) were based on a survival schedule for killer whales, while those of Chiquet *et al.* (2013) were based on assumed ranges for annual survival. Distributions for the growth rate estimates by Chiquet *et al.* were centered on approximately zero percent per year with half of the distribution being negative. Such results suggest consideration of implausible life table schedules. Reproductive rate estimates for sperm whales used in these and other previous models may also be pessimistic in that the data come from heavily exploited populations rather than maximally growing ones.

Comment 22: Oceana recommended NMFS update the estimates of fishing-induced mortality and serious injury (M/SI) for both humpback and gray whales, based on: (1) New data through 2014 on whale entanglements, which reflect substantially higher rates than reported in the 2008–2012 period; and (2) revising the mortality and serious injury estimates to reflect the best

available scientific estimate of the number of M/SI from entanglements that go unreported.

Response: The SARs incorporate serious injury determinations that have been vetted through the Procedure for Distinguishing Serious from Non-Serious Injury of Marine Mammals and reviewed by the SRGs. As a result of the reporting and revision process, data used for these determinations typically lag two years behind the year of the SAR; in this case, the 2014 SARs include mortality and serious injury estimates for the 2008–2012 period.

NMFS acknowledges in the SARs that observed whale entanglements represent underestimates, because the number of undetected cases is unknown. The NMFS report cited by the commenter (Saez *et al.* 2013) refers to an unpublished estimate for Gulf of Maine humpback whales indicating that approximately ten percent of entanglements were documented (Robbins and Mattila 2004). The Robbins and Mattila (2004) report is not directly applicable to large whale entanglements on the U.S. west coast, as fishery characteristics and spatial overlap with large whales are different in each region. NMFS will continue to pursue the development of methods that would enable the accurate correction for underestimating entanglement impacts on large whales.

Comment 23: Oceana recommended that NMFS assess how the decreased availability of humpback whale prey may be affecting the stock, and cited a Hill*et al.* (2015) presentation related to Pacific sardine and anchovy fisheries.

Response: NMFS assumes this comment was directed at the SAR for the CA/OR/WA stock of humpback whales, which was not updated in 2014. We appreciate the comment and will consider it when the SAR is next updated.

Comment 24: The Makah Tribe recommended that NMFS note in the SAR for Western North Pacific (WNP) gray whales that the newly seen non-calves may be immigrants to the Sakhalin feeding aggregation.

Response: Text in the SAR for WNP gray whales has been revised to state that: ''While a few previously unidentified non-calves are identified annually, a recent population assessment using photo-identification data from 1994 to 2011 fitted to an individually-based model found that whales feeding off Sakhalin Island have been demographically self-contained, at least in recent years, as new recruitment to the population is almost exclusively a result of calves born to mothers from within the group (Cooke *et al.* 2013).''

Comment 25: The Makah Tribe questioned the assertion that the WNP stock of gray whales is listed as endangered under the Endangered Species Act and further recommended that in the absence of scientific evidence for rejecting hypotheses 1 through 6 and adopting hypothesis 7 from Bickham et al. (2014) [a list of hypotheses regarding the population biology of North Pacific gray whales], NMFS alter the SAR for WNP gray whales in the following ways:

(1) Remove the statements in the draft SAR asserting that the Sakhalin feeding aggregation is considered ''endangered'' under the ESA and ''strategic and depleted'' under the MMPA;

(2) state instead that the Sakhalin feeding aggregation does not have a formal status under the MMPA, although the population size has been increasing for the last ten years;

(3) change the title of the draft SAR to ''GRAY WHALE (*Eschrichtius robustus*): Sakhalin Feeding Aggregation'' to help eliminate confusion between the whales identified as a stock in the SAR and the WNP stock listed as endangered under the ESA; and

(4) re-calculate the Sakhalin feeding aggregation's PBR based on a recovery factor of 0.5 (the default factor for a stock of unknown status).

Response: In 2012, a NMFS Task Force (TF) was established to assess stock structure of gray whales in the North Pacific. With respect to gray whales in the western North Pacific, the primary objective of the TF was to determine if currently available data supported the recognition of gray whales in the WNP as a ''population stock'' under the guidance provided in the MMPA and the GAMMS (Weller et al. 2013). After completion of their review, the TF provided unambiguous advice that WNP gray whales should be ''recognized as a population stock pursuant to the GAMMS guidelines and the MMPA'' (Weller et al. 2013). The TF did not explicitly consider how the available data fit in with the hypotheses presented in Bickham et al. (2014). However, the datasets examined by the TF and by Bickham et al. (2014) were very similar, and both included a review of the results of genetic analyses of biopsies collected from whales feeding off Sakhalin as well as of information on the movements of some whales between Sakhalin Island, Russia and the eastern North Pacific.

In the TF's consideration of whether gray whales in the WNP represent a population stock under the MMPA, most of the data reviewed were collected from the gray whales off Sakhalin Island, Russia. Thus the recognition of a western North Pacific stock of gray whales that includes those animals that feed off Sakhalin is consistent with the TF's advice. Similarly, the listing of western gray whales as ''Endangered'' under the ESA and designation as ''Critically Endangered'' by the IUCN were largely based on data collected from the gray whales that feed off Sakhalin. The recent data on movements of gray whales between the eastern and western North Pacific were not available when these whales were listed under the ESA and would be considered in any future reviews of these populations. Until such reviews are conducted, however, the continued recognition of the gray whales that feed off Sakhalin as ''Endangered'' under the ESA is consistent with the data used to inform these listings.

As outlined in the report of the IWC Scientific Committee (SC) (2015), additional analysis and modeling of gray whale range-wide population structure and status has been underway since 2014 and will be the topic of further review of a third IWC inter-sessional workshop in April 2016. This report states the following: In order to successfully complete modeling efforts required for the workshop, data need to be compiled on: (1) Updated abundance estimates and variance and covariance matrices for feeding grounds, (2) complete matching of gray whales photographed south of Sakhalin Island along the coast of Asia, (3) fishing effort along the U.S. and Canadian west coast to determine trends by fishery type (*e.g.* pots, gillnets, set nets, etc.), and (4) further analyses to narrow the bounds on the stock composition of whales observed at Sakhalin Island. Modelling efforts will include (1) update modelling framework with revised abundance estimates and mixing matrices, (2) conduct further sensitivity examination to pre-specified parameter values, (3) incorporate available data on fishing effort for the west coast of the United States, (4) evaluate parameter uncertainty using bootstrapping, and (5) integrate the gray whale and PCFG strike limit algorithms (SLA) into the modelling framework.

Comment 26: The Makah Tribe recommended that the SAR for WNP gray whales should discuss the available data regarding whales seen feeding off of both Sakhalin and Kamchatka, and the implications of this information for the conclusions and analysis in the SAR, including the identification of a separate WNP stock and the abundance estimate for this stock.

Response: A description of information regarding whales off

Kamchatka is provided in the Stock Definition and Geographic Range section as well as the Population Size section of the report. Division of nearshore vs. offshore feeding areas off Sakhalin is not provided because both areas are considered to be part of the overall Sakhalin feeding area and the intra-seasonal interchange of whales between the two sites is extensive. See response to Comment 25 regarding the IWC's upcoming range-wide population structure and status workshop.

Comment 27: The Makah Tribe recommended that NMFS explain the basis of using a 0.575 multiplier in the PBR calculation for WNP gray whales.

Response: Moore and Weller (2013) evaluated the risk that a proposed Makah hunt of Eastern North Pacific (ENP) gray whales posed to WNP gray whales and stated that ''The proportion of the WNP population that migrates along the North American coast is unknown but based on recent photo-identification, telemetry, and genetic matches of WNP whales to Eastern North Pacific (ENP) areas, we estimate the value to be at least 0.15, based on there being 23 known matches out of an estimated population size of 155 (Mate et al., 2011; IWC, 2012; Urbán et al., 2012; Weller et al. 2012).'' The upper limit of this estimate is 1.0, or a precautionary value that represents the entire WNP population. The 0.575 multiplier represents the estimated proportion of the WNP population that utilizes U.S. EEZ waters and represents the mean value of a uniform distribution ranging from 0.15 to 1.0 that was used in risk models. NMFS has clarified the origin of the 0.575 multiplier in the final SAR.

Comment 28: The Makah Tribe recommended that NMFS update the SAR and PBR calculation for WNP gray whales to include information from Cooke (2015), which concludes that the proportion of gray whales feeding off Sakhalin that utilize wintering grounds off the coast of Asia is no greater than 63 percent. The comment stated that as a result, the proportion of such whales that migrate to North America would be between 0.37 and 1.0.

Response: At the IWC SC inter-sessional workshop on gray whale population structure held in April 2015, a number of recommendations were made for work to be undertaken that would narrow the confidence range for this estimate of 63 percent reported in Cooke et al. (2015). Revision of this work will be reviewed at the next IWC inter-sessional workshop on gray whales (tentatively scheduled for April 2016).

Comment 29: The Makah Tribe recommended that NMFS update the SAR for the Sakhalin population of WNP gray whales to include the new abundance estimate from the 14th IUCN Western Gray Whale Advisory Panel's meeting's Second Rangewide Workshop (IUCN 2014), which concluded that as of 2013, the population contained 38 mature females (SE = ±2) growing at an average rate of 2.5 percent (SE = ± 0.5 percent) over the previous 10 years, and that the best estimate of the age 1-plus population in 2013 was 176 (SE = ± 2). The comment stated that the estimate currently listed in the SAR is biased low because it only accounts for whales observed at Sakhalin Island, and that the SAR should include and utilize this new abundance estimate (IUCN 2014), including whales sighted in Kamchatka, in the PBR calculation.

Response: While it is true that an analysis of the data from the parallel photo-ID team of the Vladivostok Institute of Marine Biology (IBM) has been conducted, including incorporation of their photo-ID data from Kamchatka, the reliability of these datasets is unclear. That is, analysis of the IBM photo-ID data from Sakhalin resulted in a ''less optimistic population projection'' as compared to the Russia-United States data, ''with a high probability of future decline.'' Until the reasons for the apparent difference in results from the two datasets have been elucidated, this difference should be treated as a potential caveat to the assessment results presented in Cooke et al. (2013). Therefore, we have reported numbers from only the Russia-United States data which at this time represent the best available science.

Comment 30: The Makah Tribe recommended that the SAR for the ENP gray whale, the recovery factor for the Pacific Coast Feeding Group should be 0.75 instead of 0.5. The comment stated that in the 2013 SAR, NMFS agreed to consider this change in the 2014 SAR. The Makah Tribe believe that a recovery factor of 0.75 is consistent with the best available science regarding the PCFG, the guidelines for preparing marine mammal stock assessments, the available precedent, and NMFS' February 27, 2014 analysis.

Response: NMFS considered alternatives to the recovery factor of 0.5 in consultation with the Pacific Scientific Review Group (PSRG) in 2014, including a proposal to increase the recovery factor to 0.75. The PSRG did not support the change in recovery factor and NMFS has retained the default factor of 0.5.

Comment 31: The Hawaii Longline Association (HLA) recommended that NMFS streamline the SAR administrative process to be more timely, because at any given time ''there are presently three versions of the False Killer Whale (FKW) SAR available to the public, any one of which might be construed by the public to be ''current'': (i) The Final 2013 SAR; (ii) the Draft 2014 SAR (dated October 2014), presently open for public comment; and (iii) the Draft 2015 SAR (dated February 2015).''

Response: While we understand the potential for confusion, at any given time the most recent ''final'' SARs should be considered the ''current'' version of the reports. The draft reports are reviewed by the Scientific Review Groups and then by the public; they are not considered ''final'' until the agency has addressed comments and issued a notice of availability of final reports. In this case, the draft 2014 reports were made available for public comment from January 29, 2015 through April 29, 2015; during that time, the final 2013 SARs were the most current final versions, and the draft 2015 reports were made available to the Scientific Review Groups for review but not yet available to the general public (and therefore should not have caused any confusion for the public). With this **Federal Register** notice, NMFS is finalizing the 2014 SARs and the 2014 reports should be construed as the ''current'' assessment reports. The draft 2015 SARs are forthcoming and will be made available for public comment for 90 days, as directed by the statute.

Comment 32: The HLA recommended that the draft SAR be revised to reflect the current FKW management framework. The comment states that ''the Draft 2014 SAR will effectively report information in 2015 that is current only through the end of 2012. However, the FKW Take Reduction Plan (TRP) regulations became effective in 2013 and a full two years of data gathered under the significantly new regulatory framework established by the TRP regulations are available. None of this (*sic*) data will be reported in the final SAR and, as a result, the Draft 2014 SAR is entirely irrelevant to the management of the Hawaii longline fisheries because it is based upon data gathered under a very different management framework.''

Response: The timelines associated with the drafting of SARs unfortunately require some lag in the use of various datasets. The SAR is prepared early in the calendar year, at which time the previous year's Observer Program data are not yet available for use in estimating bycatch. In the case of the 2014 SAR, bycatch estimates were available only through 2012 at the time

the SAR was reviewed by the Pacific Scientific Review Group.

Comment 33: The HLA requested that NMFS eliminate the five-year look-back period for the FKW SAR. The comment states ''data reported in the FKW SAR should reflect the data gathered after the implementation of the TRP regulations to accurately measure the effects of the Hawaii longline fisheries on FKW stocks.''

Response: As already indicated, the draft 2014 SAR uses data through 2012. The TRP regulations did not go into effect until early 2013, such that no data after the period of TRP implementation are included. It is appropriate to continue the 5-year look back for data collected prior to the TRP. When 2013 bycatch data are available, NMFS will evaluate whether it is appropriate to continue use of the five-year look-back in the bycatch estimates.

Comment 34: The HLA recommended that the draft SAR for the Hawaii pelagic FKW stock should expressly recognize the discrepancy between the reported M/SI rate for the deep-set fishery and the positive population trend for the stock, and requests that NMFS revisit the manner in which it determines M/SI for FKW interactions. The comment states ''For a decade, NMFS has reported a M/SI rate for the deep-set fishery that far exceeds PBR for the Hawaii pelagic FKW stock . . . However, the best available information suggests that the number of FKWs in the Hawaii EEZ has not declined during the same time that the supposedly unsustainable M/SI rate was occurring.''

Response: This comment has been addressed previously (see 78 FR 19446, April 1, 2013, comments 45 and 51; 79 FR 49053, August 18, 2014, comment 26). The comment and included footnote continue to suggest that the pelagic stock of FKWs is increasing or stable since 2002 and, as such, deep-set fishery takes are not of concern, although serious injury and mortality have been above PBR for more than a decade. The commenter attributes this persistence of FKWs despite high levels of fishery mortality to NMFS' ''improper'' assessment of the severity of injuries resulting from fisheries interactions, ''improper'' assessment of population abundance and trend, or both. Assessment of injury severity under the NMFS Policy and Procedure for Distinguishing Serious from Non-Serious Injury of Marine Mammals has been discussed in numerous previous comment responses, and is based on the best available science on whether a cetacean is likely to survive a particular type of injury. Further study of FKWs would certainly better inform the assigned outcomes, but until better data become available, the standard established in the NMFS 2012 Policy and Procedure for Distinguishing Serious from Non-Serious Injury of Marine Mammals will stand.

The referenced 2002 and 2010 survey abundance estimates are not comparable in their published form, as the methodology for accurately enumerating FKW groups changed between surveys, significantly increasing the average group size of false killer whales and therefore, the resulting abundance estimate. Further, because the entire stock range of pelagic FKWs is unknown, but certainly extends beyond the Hawaii EEZ, the available abundance estimates do not reflect true population size. A robust assessment of population trend would require assessment of environmental variables that influence FKW distribution and the proportion of the population represented within the survey area during each survey period. Finally, many years of unsustainable take does not automatically lead to the conclusion that the population is declining. PBR was designed to provide a benchmark, in the face of great uncertainty about marine mammal populations, below which human-caused mortalities would not reduce the population beyond its OSP, which is defined as the abundance where there is ''the greatest net annual increment in population numbers or biomass resulting from additions to the population due to reproduction and/or growth less losses due to natural mortality.'' The benchmark does not consider whether a population is declining, as this is very hard to prove, particularly for population abundance estimates with low precision.

Comment 35: The HLA recommended that NMFS produce a publicly available report that documents further analysis of the 2010 Hawaiian Islands Cetacean and Ecosystem Assessment Survey data for pelagic FKWs. The comment states that otherwise, NMFS should remove the comment from the draft 2014 SAR that states that there was ''some suggestion'' of ''attractive movement'' of FKWs in the 2010 survey. The comment states that there is no citation to support this statement.

Response: Citation to Bradford et al. (2014) has been added to the SAR within the sentence: ''There is some suggestion of such attractive movement within the acoustic data, though the extent of any bias created by this movement is unknown.'' Reports of responsive movement and its potential impact on the estimates is discussed within the Bradford et al. (2014) peer-reviewed publication.

Comment 36: The HLA recommended that the SAR for the pelagic stock of FKWs use a recovery factor greater than 0.5 (*i.e.,* closer to 1.0 than to 0.5). The comment stated that the pelagic stock is not depleted or threatened, nor is its status unknown, and therefore the draft SAR should not assign it a recovery factor of 0.5.

Response: The current status of pelagic FKWs is unknown. This population may be depleted given fishing pressures within and outside of the EEZ over several decades. The status of Hawaii pelagic FKWs is considered unknown because there are no trend data available to evaluate whether the population is increasing, stable, or declining. Designation of a stock as ''depleted'' requires specific analysis of population trend which is not currently possible with the available data. The recovery factor for Hawaii pelagic FKWs will remain 0.5, as indicated, for a stock of unknown status with a coefficient of variation of the mortality and serious injury estimate ≤0.30, as directed by the GAMMS.

Comment 37: The HLA recommended that the 2014 draft SAR for the insular stock of FKW be revised to report the ''correct'' range, M/SI level, and status (*i.e.,* status should be non-strategic). The comment stated that ''. . . the Draft 2015 SAR appropriately proposes to modify the range of the insular stock. . . the Draft 2014 SAR continues to present the inaccurately assumed insular stock range, which will effectively be reported as the ''best available science'' through most of 2016. This inaccuracy is very significant. The draft 2014 SAR reports an M/SI rate of 0.9, which is greater than the PBR of 0.3. In contrast, if the correct insular stock range were used, then the M/SI rate should be 0.0.''

Response: NMFS has not completed the draft 2015 SARs, nor have we made them available for public notice and comment and, therefore, we cannot make this comparison.

Comment 38: The HLA recommended that the language of the draft SAR be revised to remove all implied allegations that the Hawaii-based longline fisheries are responsible for dorsal fin disfigurements observed in Insular Stock animals. The comment states that these fisheries have been excluded from nearshore fishing grounds for several years.

Response: The sentence has been reworded to be less explicit about any specific type of fishery. It now reads: ''The commercial or recreational hook-and-line fishery or fisheries responsible for these injuries is/are unknown.''

Comment 39: The HLA recommended that NMFS acknowledge in the SAR for the insular stock of FKW that the population has maintained a stable abundance since 2000, as maintained by the best available information, and asserted that the assumption that the insular stock has declined is speculative.

Response: The SAR cites the most recent Status Review for the MHI insular stock of FKW. Within that Review, a Population Viability Analysis was conducted, including 45 different scenarios incorporating various uncertainties in anthropogenic and natural mortality, the impact of allee and other small population size effects, and uncertainty around various measures of abundance. All but one model indicated the population has undergone decline. The SAR acknowledges that some two-stage models suggest a lower rate of decline since 2000. The Status Review does not consider the two-stage models as any more appropriate than the single growth rate models. When new data become available to support an updated analysis of trend in the MHI insular stock, NMFS will update the assessment of population status accordingly.

Comment 40: The HLA recommended that NMFS alter the proration assumptions used in the draft SAR for FKW interactions, as they do not reflect the best available information. The comment stated: ''NMFS categorizes certain interactions as FKW interactions when, in fact, no data exist from which NMFS can reliably determine whether the interactions in question involved FKWs . . . First, NMFS assigns a proportion of FKW interactions for which no injury determination has been made as M/SI interactions that ultimately count against the fisheries. Second, NMFS assigns a proportion of ''blackfish'' interactions (*i.e.,* interactions with unidentified cetaceans) as FKW interactions that also count against the fisheries. Neither of these methods is reasonable or lawful.''

Response: FKW bycatch proration reflects the best available information on the species and injury status of cetaceans observed hooked or entangled in the longline fishery. First, NMFS prorates injuries with a status of 'cannot be determined' according to the ratio of known serious and non-serious injuries. To treat all 'cannot be determined' cases as non-serious would be a clear under-representation of total M/SI within the fishery. This proration supported within GAMMS, judged by NMFS, and supported by external peer-review, as the best approach for dealing appropriately accounting for injuries whose injury status cannot be determined based on the information provided by the observer. Second, when a species code of ''unidentified blackfish'' has been assigned to an interaction by the Pacific Islands Regional Office Observer Program, the Program has determined that the species identity is known to be either FKW or short-finned pilot whale. This species assignment is much more specific than ''unidentified cetacean.'' Because the species identity is known within two possible candidates, NMFS has used all other interactions with those two species to develop a proration model for assigning these blackfish interactions to be false killer whales or short-finned pilot whales. All available interaction data inform the proration scheme. Cetacean interaction with a species identity of ''unidentified cetacean'' are not currently prorated to any specific species and are therefore not included in any assessment of M/SI.

Comment 41: The HLA recommended that NMFS further consider its delineation of a Northwestern Hawaiian Islands (NWHI) stock of FKWs. HLA's comment indicates that HLA remains ''highly skeptical of NMFS's ability to so quickly and conclusively 'confirm' that NWHI whales are a distinct stock separate from the Insular Stock and the Pelagic Stock.'' HLA believes that ''NMFS's rush to judgment regarding the existence of this new 'stock' appears to reflect an aversion to attributing these additional 552 whales to the Insular Stock or to the Pelagic Stock.''

Response: NMFS disagrees with the comment: The separation of the NWHI stock and the Hawaii insular and pelagic stocks is sound and based on multiple lines of evidence including genetic analyses indicating significant differentiation in both mitochondrial and nuclear DNA, photo-ID indicating separation from the tight social network of the Main Hawaiian Islands animals, and satellite telemetry data suggesting island and atoll association within the NWHI. The data on FKW stock structure, including the new NWHI stock, have been evaluated both for demographic independence, the benchmark for separation under the MMPA, and for evolutionary separation, the more stringent standard for separation under the ESA.

Comment 42: The HLA recommended that the draft 2014 SAR for the NWHI stock of FKWs be revised to state that the M/SI rate for the NWHI Stock is zero. The comment stated, ''The Hawaii longline fisheries are excluded from fishing within the range of the NWHI Stock and, moreover, there has never been a reported interaction between either of the Hawaii longline fisheries and the NWHI Stock.''

Response: The Hawaii longline fishery is not excluded from fishing within the range of the NWHI stock of FKWs. The range of the NWHI stock extends outside of the Papahanaumokuakea Marine National Monument (where fishing is prohibited) to the islands of Kauai. Much of the NWHI stock range east of the Monument is exposed to longline fishery for a portion of the year when the Longline Exclusion Zone contracts toward the islands. Although such contraction was eliminated in 2013, prior to that time the NWHI stock did overlap with a reasonable level of fishing effort during the contraction period. There are in fact two takes of FKWs within the overlap zone between the fishery and all three stocks of FKWs in 2012.

Comment 43: One commenter recommended that NMFS include a statistical test to determine whether the regression analysis of California harbor seals net production is statistically different from no change.

Response: The previous text (and figure) in this SAR addressing net production for this harbor seal population is being deleted, because any assessment of net production needs to incorporate accurate information on human-caused mortality. Such information is lacking for this stock, as the fishery historically responsible for most mortality has only been observed sporadically in recent years. Text appears in the SAR detailing why the estimation of net production for this stock is not possible.

Comment 44: One commenter suggested that the population estimate for California harbor seals does not represent the entire population of the stock. Another commenter suggested that NMFS's current sampling methods understate harbor seal and California sea lion populations along the California coast.

Response: The SAR states that a complete count of all harbor seals is not possible because not all seals will be hauled out of the water during the time of surveys. NMFS has worked with other researchers to develop haul-out correction factors, which are used to account for the number of animals not hauled out at the time of surveys. Such correction factors are incorporated into final population size estimates, which represents the best available method to adjust raw counts upwards to account for animals in the water at the time of surveys.

Comments on Alaska Regional Reports

Comment 45: The Commission recommended that NMFS reference in the Alaska Region SARs any workshop reports or recommendations that came from meetings in December 2010 and March 2011, when NMFS partnered with the Indigenous People's Council on Marine Mammals to convene two workshops of marine mammal hunters and representatives from Alaska Native Organizations.

Response: We appreciate the recommendation and will review the workshop reports and recommendations from these meetings to determine whether to include any of this information in future SAR revisions.

Comment 46: The Commission recommended that NMFS provide an update on the status of the development of a statewide program for monitoring subsistence hunting and harvests. The Commission further recommended that NMFS should update all related information in the SARs and address concerns about any potential shortcomings in these efforts. For example, NMFS should clarify if the following statement from the ribbon seal SAR is still accurate: ''at this time, there are no efforts to quantify the total statewide level of harvest of ribbon seals by all Alaska communities.''

Response: NMFS agrees that a comprehensive statewide program for monitoring subsistence hunting and harvests would be desirable, but is not funded. NMFS works with our partners in Alaska Native Organizations and the Alaska Department of Fish and Game to obtain information for many subsistence-harvested marine mammal species. While incomplete, these efforts provide some assurance that the current and foreseeable levels of subsistence use are sustainable for all marine mammal species under NMFS jurisdiction that are presently harvested.

We have made considerable updates of the subsistence harvest information in the draft 2015 ringed seal, ribbon seal, and bearded seal SARs, and we will update this information in the spotted seal SAR the next time it is revised.

Comment 47: For the SAR for the North Pacific stock of right whales, the Commission recommended that NMFS estimate the range of ship-strike probabilities and assess the results in the context of this stock's PBR level and a population viability analysis.

Response: Unfortunately, at this time there are no data with which to undertake this exercise and too few data on other relevant variables to construct a meaningful population viability analysis for North Pacific right whales.

Dated: August 14, 2015.

Cathryn E. Tortorici,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–20502 Filed 8–19–15; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–XE098

Endangered and Threatened Species; Take of Anadromous Fish

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

ACTION: Issuance of one permit and receipt of four permit modification requests for scientific research and enhancement.

SUMMARY: Notice is hereby given that NMFS has issued Endangered Species Act (ESA) scientific research Permit 18251 to the Marine Science Institute. Additionally, NMFS has received four scientific research and enhancement permit modification requests relating to anadromous species listed under the ESA. The proposed research activities are intended to increase knowledge of the species and to help guide management and conservation efforts. The application for each permit is available on the Applications and Permits for Protected Species (APPS), *https://apps.nmfs.noaa.gov* Web site by searching the permit number within the Search Database page. The applications for each permit modification request may be viewed online at: *https://apps.nmfs.noaa.gov/preview/preview_open_for_comment.cfm.*

DATES: Comments or requests for a public hearing on the applications must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. Pacific standard time on September 21, 2015.

ADDRESSES: Written comments on the applications should be submitted to the California Central Valley Office, NMFS, 650 Capitol Mall, Suite 5–100, Sacramento, CA 95814. Comments may also be submitted via fax to 916–930–3629 or by email to *nmfs.swr.apps@noaa.gov* (include the permit number in the subject line of the fax or email).

FOR FURTHER INFORMATION CONTACT: Amanda Cranford, Sacramento, CA (ph.: 916–930–3706), Fax: 916–930–3629, email: *Amanda.Cranford@noaa.gov*). Permit application instructions are available from the address above, or online at *https://apps.nmfs.noaa.gov.*

SUPPLEMENTARY INFORMATION:

Species Covered in This Notice

The following listed species are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Central Valley spring-run (CVSR); endangered Sacramento River winter-run (SRWR).

Steelhead (*O. mykiss*): threatened California Central Valley (CCV);

North American green sturgeon (*Acipenser medisrostris*): threatened southern distinct population segment (SDPS).

Authority

Scientific research permits are issued in accordance with section 10(a)(1)(A) of the ESA (16 U.S.C. 1531 *et. seq*) and regulations governing listed fish and wildlife permits (50 CFR parts 222–227). NMFS issues permits based on findings that such permits: (1) Are applied for in good faith; (2) if granted and exercised, would not operate to the disadvantage of the listed species that are the subject of the permit; and (3) are consistent with the purposes and policy of section 2 of the ESA. The authority to take listed species is subject to conditions set forth in the permits.

Anyone requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). Such hearings are held at the discretion of the Assistant Administrator for Fisheries, NMFS.

Permits Issued

Permit 18251

A notice of the receipt of an application for a scientific research and enhancement permit (18251) was published in the **Federal Register** on March 10, 2014 (79 FR 13279). Permit 18251 was issued to the Marine Science Institute on June 30, 2014 and expires on December 31, 2018. Permit 18251 authorizes take of SRWR Chinook salmon smolts, CVSR Chinook salmon smolts, CCV steelhead smolts, and juvenile SDPS green sturgeon associated with monitoring and research activities conducted in the Sacramento-San Joaquin Delta, Central Valley, California. The purpose of the research is to educate local 6th graders and their parents about the Delta ecosystem and to teach them how to be better stewards of the watershed. The students will go on a 3.5 hour voyage. During the voyage

they will rotate through four stations: Hydrology (discussion based), Benthic (mud grab and invertebrate study), Plankton (plankton tow and identification), and Ichthyology (Otter trawl and fish identification). During the Ichthyology station a five minute mid-water trawl using an Otter trawl will be deployed to collect fish for the students to study. The net will be emptied by instructional staff into a tank that is constantly refilled with water from the Delta. Any species of concern are then identified and immediately released back into the Delta. Fish are transferred from the tank back into Delta by buckets filled with water from the Delta to minimize stress.

Modification Requests Received

Permit 18181—2M

The California Department of Fish and Wildlife (CDFW) is requesting to modify Permit 18181. Permit 18181 was issued to CDFW on January 14, 2014 for take of CVSR Chinook salmon, SRWR Chinook salmon, CCV steelhead, and SDPS green sturgeon associated with research and rescue activities in the Upper Sacramento River and associated tributaries in Shasta and Tehama counties, the Colusa Basin Drainage Canal (CBDC), Wallace and Fremont weirs in the Yolo Bypass, and Tisdale Weir in the Sutter Bypass. CDFW is requesting to modify Permit 18181 to include additional rescue and monitoring efforts that routinely occur throughout the Central Valley. Further, after conducting capture and relocation activities within the CBDC and at Wallace Weir, the project description, sampling methodologies and take estimates can be refined to better reflect the current rescue operations. The primary purpose of the proposed monitoring will be to assess entrainment of ESA-listed salmonids and SDPS green sturgeon resulting from extreme environmental conditions and complex water operations within California's Central Valley. CDFW will assess the conditions leading to entrainment and determine whether rescue and relocation activities are warranted. The rescue and relocation efforts proposed are: (1) The CBDC Trapping and Relocation Operation, which aims to trap and relocate adult Chinook salmon and other species of management concern before they enter and become entrained within the CDBC; (2) Monitoring of Sacramento River Flood Control Project Weirs and Flood Relief Structures, bypasses are surveyed after high flow events to determine the level of entrainment and if warranted rescues will be conducted, with a specific focus on Tisdale and Fremont weirs in the Sacramento River; and (3) Upper Sacramento River Redd Dewatering Surveys and Rescue of Stranded Juvenile Winter-run Chinook Salmon, which allows CDFW biologists to predict the flow at which redds will be dewatered on a redd-by-redd basis and conduct rescues if necessary. Rescue and relocation of ESA-listed fish will be carried out using fyke traps, Alaskan-style resistance board weirs, block nets, hoop nets, fyke nets, and beach seines. Observational surveys using dual identification sonar (DIDSON) imagery may also be conducted if necessary. The majority of captured fish would be identified to species, enumerated, measured for standard length, sampled for tissues and released. Juvenile SRWR and CVSR Chinook salmon would be identified using the Length-at-Date-of-Capture Table. ESA-listed species would be processed first and released. Adult salmonids that are trapped during rescue and relocation activities will be sampled for tissues (genetics), tagged with two individually numbered Floy tags, and relocated to the nearest, accessible location on the Sacramento River. If SDPS green sturgeon are encountered during rescue activities, acoustic tags will be surgically implanted by trained staff and data will be recorded on fish size, condition, and time of release. To reduce handling mortality, investigators will conduct water to water transfers, use fish-friendly nets, avoid handling when possible, and release fish will at the nearest suitable location to reduce handling and transport times.

Permit 14808–2M

Permit 14808 was issued to CDFW on September 26, 2012 for take of juvenile CVSR Chinook salmon, SRWR Chinook salmon, and CCV steelhead while conducting juvenile emigration monitoring at Knights Landing in the Lower Sacramento River, Yolo County, California. The permit modification is being requested in order to refine sampling methods, increase take levels and address changes to the proposed procedures. Additionally, CDFW requested that all ongoing research and monitoring be consolidated into a single section 10(a)(1)(A) Permit to improve efficiencies associated with reporting. In addition to the juvenile emigration monitoring at Knights Landing, which aims to compile information on timing, composition (species/race), and relative abundance of juvenile Chinook salmon and steelhead emigrating from the Upper Sacramento River system into the Sacramento-San Joaquin Delta, CDFW is requesting that the following research and monitoring efforts be added to Permit 14808: (1) The Central Valley Steelhead Monitoring Program, that includes studies targeting CCV steelhead throughout the Sacramento River and San Joaquin River basins in order to examine the distribution, abundance, and population trends of CCV steelhead and provide the data necessary to help assess progress towards restoration and recovery goals; and (2) Upper Sacramento River Restoration Site Monitoring, which will establish baseline use at proposed restoration sites to help determine the success once restoration projects are implemented through juvenile presence/absence surveys at a variety of sites on the Upper Sacramento River. CDFW will conduct juvenile emigration monitoring through the use of paired 8-foot rotary screw traps (RSTs) on the Sacramento River beginning in October and continuing through June of the following year. Traps will be fished continuously and checked once every 24 hours unless conditions such as high flows or excessive debris warrant more frequent sampling. Captured salmonids will be handled (including measurements), allowed to recover in fresh aerated water and released back into the Sacramento River. A small subsample of adipose fin-clipped (hatchery-origin) Chinook salmon will be sacrificed (directed mortality) daily for coded wire tag extraction and analysis. The Steelhead Monitoring Program will utilize wire fyke traps to capture, mark, and recapture upstream migrating adult steelhead in order to estimate adult steelhead escapement from the Sacramento-San Joaquin River Delta. Fyke trapping will occur annually from August through May. A DIDSON camera or device of similar capabilities will be placed at the entrance to the fyke traps to monitor salmonid movements and assist in adjusting trap placement to maximize capture rates. Traps will be fished 24 hours a day with all traps being inspected, cleaned, and emptied at least once every 24 hours to minimize the period of time steelhead are detained. All captured steelhead (hatchery and wild) will be enumerated, weighed, measured, sexed (if possible), photographed for body condition, checked for previous tags, and sampled for scales. Healthy steelhead captured in good condition will receive a passive integrated transponder (PIT) tag. Hatchery-origin steelhead will receive a two inch, individually numbered, bicolor Floy tag posterior to the dorsal fin. A randomly selected subset of captured steelhead will receive an acoustic tag in addition to PIT and Floy

tags to determine migration and survival behavior. Individuals selected for acoustic tagging will be surgically tagged with a VEMCO acoustic transmitter tag or similarly compatible device in the abdomen posterior to the pelvic fins. Tag recapture monitoring in Sacramento River tributaries will be performed using in-stream PIT tag detection antennas. Current angler harvest surveys and hatchery broodstock collection programs combined with advances in tag detection technology will allow biologists to estimate the number of tag recaptures to Sacramento River tributaries. All Upper Sacramento River Restoration Site Monitoring will be observational and no handling of juvenile salmonids will occur. Sampling methods will include snorkel surveys, video surveys and DIDSON surveys. The survey results will help Restoration Ecologists design better projects in the future. Information collected will also help to determine locations where juvenile Chinook salmon are rearing upstream of Red Bluff Diversion Dam.

Permit 1415–2M

Permit 1415 was issued to the USFWS, Red Bluff Fish and Wildlife Office on February 6, 2014. The overall purpose of the project is to provide monitoring data for various evaluations, including restoration actions, stream flow assessments, management actions, and life-history investigations. Species under investigation include CVSR Chinook salmon, SRWR Chinook salmon, CCV steelhead, and SDPS green sturgeon while conducting research studies in Battle Creek, Clear Creek, and the Upper Sacramento River Basin (*i.e.,* Upper River and surrounding watersheds). The permit modification requested by USFWS is specific to Study 6—Sacramento River Juvenile Fish Monitoring at the Red Bluff Diversion Dam. All other studies authorized under Permit 1415 will remain unchanged at this time. Take resulting from the research and monitoring activities carried out by USFWS will involve observations (snorkel surveys, redd counts and escapement/stream surveys) or capture (by trawl, seine, fyke-net trap, benthic D-net, substrate samplers, hook and line, backpack electrofishing, weir trap, trammel or gill net, rotary screw trap, egg mats, or by dip net), handling (sedation, fin clipping, tissue sampling, coded-wire tag extraction, otolith extraction), marking (Bismark brown Y stain), tagging (acoustic, PIT), and release of fish once adequately recovered. A majority of the ESA-listed fish that are captured will be immediately collected from the sampling gears, placed in containers filled with river water collected at the location being sampled, processed, held in a recovery container filled with aerated river water, and subsequently released at the sampled location. One exception includes the proposed intentional directed mortality of up to 80 SRWR Chinook salmon juveniles associated with Study 6. The purpose of the directed intentional mortality of SRWR Chinook salmon is to determine potential mechanisms for reduced survival in collaboration with the USWFS California-Nevada Fish Health Center. Extreme drought conditions and poor in-river conditions appear to be having adverse effects on emigrating juvenile salmonids. Elevated water temperatures are likely increasing the prevalence of some bacteria and parasite infections. USFWS will obtain up to 10 live juvenile winter-run Chinook salmon per week (for approximately 8 weeks) from RST monitoring carried out at the Red Bluff Diversion Dam (Study 6), from early September through October. The subsample of juveniles collected from the traps will be sacrificed in order to identify microbial (*e.g.* parasite and bacteria) and non-infectious (*e.g.* coagulative yolk, gill hyperplasia) disease in the out-migrant juvenile SRWR Chinook salmon population passing the RSTs during the typical peak period. The low sample number proposed would likely limit detection to high prevalence pathogens. The histological approach will provide information on the severity of any given condition and is logistically prudent for the RST monitoring.

Permit 17299–2M

Permit 17299 was issued to the NMFS Southwest Fisheries Science Center (SWFSC), Fishery Ecology Division (FED), on April 4, 2013 for research to be conducted at various sites and hatcheries within California's Central Valley. The main purpose of the research conducted by the SWFSC is to carry out comparative studies on salmonid ecology across all Central Valley habitats (streams, rivers and Delta) to increase knowledge of California's Chinook salmon and steelhead life histories. The modification request relates to the life stages sampled and the total take associated with Studies 1 and 3 authorized by Permit 17299. These studies include investigations into outmigration survival based upon telemetry technology and investigations of the physiological response (as measured by aerobic scope) to varying temperature and flow regimes. Given the current threats posed to SRWR Chinook salmon including anthropogenic alterations of natural flow regimes and climate change, these studies quantitatively measures the capacity for adaptation of SRWR Chinook salmon juveniles to these conditions. The unprecedented conditions associated with the California drought have exacerbated these challenges, such that more detailed and finer resolution studies are needed to evaluate the potential consequences of a range of water management options including management of cold water storage pools behind large dams and pulse flows. The permit modification request aims to address these needs by increasing the sample sizes and associated take, and by broadening the scope of studies to include additional life stages. Study 1 is a large scale telemetry project to assess habitat use, behavior and survival of hatchery- and natural-origin SRWR and CVSR Chinook salmon and CCV steelhead. Additional take associated with increased sample sizes will allow for better estimates of survival and identification of conditions that may be affecting juvenile salmonid emigration. Study 3 will measure the physiological capacity (aerobic scope and other cardiovascular capabilities) of hatchery-origin salmonids to deal with potential seasonal and geographic temperature challenges, by identifying their combined threshold tolerance to abiotic factors such as temperature, dissolved oxygen and flow. The SWFSC will use this data to determine sites where these factors may be limiting migration, survival and growth. This study requires that all fish tested be euthanized in order to collect the appropriate information and assess the aerobic scope. All euthanized fish will also be sampled for otoliths (age/growth), and organ tissue (isotope, biochemical and genomic expression assays), examined for parasite infections, and will contribute to tag effects/retention studies. The SWFSC proposes to broaden the scope of Study 3 through increased sample sizes and the addition of take for other life stages (eggs, fry, alevin, and parr). This additional take is in response to an urgent data gap on the temperature tolerance of these life stages. The proposed research will benefit ESA-listed fish by supporting conservation and management of anadromous salmonids and green sturgeon in California by directly addressing information needs identified by NMFS and other agencies.

This notice is provided pursuant to section 10(c) of the ESA. NMFS will

evaluate the applications, associated documents, and comments submitted to determine whether the applications meet the requirements of section 10(a) of the ESA and Federal regulations. The final permit decisions will not be made until after the end of the 30-day comment period. NMFS will publish notice of its final action in the **Federal Register**.

Dated: August 14, 2015.

Cathryn E. Tortorici,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2015–20616 Filed 8–19–15; 8:45 am]

BILLING CODE 3510–22–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (CNCS), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. Sec. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, CNCS is soliciting comments concerning its proposed Employers of National Service Enrollment Form. The Employers of National Service program is administered by CNCS (in conjunction with the Peace Corps, the National Peace Corps Association, the Points of Light Foundation and the Aspen Institute), and seeks to connect employers from all sectors with AmeriCorps and Peace Corps alumni. Organizations that are looking to join the initiative will be filling out this form in order to document their participation. Information provided is purely voluntary and will not be used for any grant or funding support.

Copies of the information collection request can be obtained by contacting the office listed in the Addresses section of this Notice.

DATES: Written comments must be submitted to the individual and office listed in the **ADDRESSES** section by *October 19, 2015.*

ADDRESSES: You may submit comments, identified by the title of the information collection activity, by any of the following methods:

(1) By mail sent to: Corporation for National and Community Service; Attention: Erin Dahlin, Deputy Chief of Program Operations, Room 9309; 1201 New York Avenue NW., Washington, DC 20525.

(2) By hand delivery or by courier to the CNCS mailroom at Room 8100 at the mail address given in paragraph (1) above, between 9:00 a.m. and 4:00 p.m. Eastern Time, Monday through Friday, except Federal holidays.

(3) Electronically through *www.regulations.gov.*

Individuals who use a telecommunications device for the deaf (TTY–TDD) may call 1–800–833–3722 between 8:00 a.m. and 8:00 p.m. Eastern Time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Erin Dahlin, 202–606–6931, or by email at *edahlin@cns.gov.*

SUPPLEMENTARY INFORMATION: CNCS is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of CNCS, 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 expected to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.,* permitting electronic submissions of responses).

Background

Organizations from all sectors seeking to become Employers of National Service will be filling out this form, including businesses, nonprofits, institutions of higher education, school districts, state/local governments, and federal agencies. One of the form's key purposes is to document what the organization is committing to doing as an Employer of National Service and provide organizational information to CNCS, the Peace Corps, the Points of Light Foundation, the Aspen Institute and the National Peace Corps Association. The information in the form will also allow CNCS to display the organization's information accurately online as a resource for job seekers. It will also enable CNCS to speak to the diversity within the program's membership, both for internal planning and external audience use. The information will be collected electronically via our Web site.

Current Action

This is a new information collection request. The items on the form are: Employer name; a short description of the employer; the sector in which the employer operates (private, nonprofit, etc.); location (specific address for headquarters and list of additional cities/states or countries, if applicable); workforce information (total employees, hires in last year, and number of national service alumni); human resources policy commitment as an Employer of National Service; contact information; a link to the Web page where alums can apply for employment; optional statement from leadership; the source from which the employer learned about the program, and any optional comments.

Type of Review: New.

Agency: Corporation for National and Community Service.

Title: Employers of National Service Enrollment Form.

OMB Number: None.

Agency Number: None.

Affected Public: Any organization seeking to join the Employers of National Service program.

Total Respondents: 300.

Frequency: Ongoing.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 75 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: August 17, 2015.

Erin Dahlin,

Deputy Chief of Program Operations.

[FR Doc. 2015–20600 Filed 8–19–15; 8:45 am]

BILLING CODE 6050–28–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Transfers of Administrative Jurisdiction, Camp Frank D. Merrill and Lake Lanier, Georgia

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: National Defense Authorization Act for Fiscal Year 2015, ordered transfers of two properties: Camp Frank D. Merrill from the Secretary of Agriculture to the Secretary of the Army and the Lake Lanier Property from the Secretary of the Army to the Secretary of Agriculture, as well as publication of the maps and legal description in the **Federal Register**. This notice provides the required maps and legal description.

ADDRESSES: Documents are on file at locations:

1. U.S. Army Engineer District, Savannah, 100 East Oglethorpe Avenue, Savannah, Georgia 31401–3064.
2. Office of the Southern Region, USDA, 1720 Peachtree Street NW., Room 792, Atlanta, Georgia 30309–2449.

FOR FURTHER INFORMATION CONTACT: Ms. Belinda Estabrook, Realty Specialist, 912–652–5667.

SUPPLEMENTARY INFORMATION: National Defense Authorization Act for Fiscal Year 2015 (Pub. L. 113–291, Section 2836), ordered transfers as follows:

(1) CAMP FRANK D. MERRILL.—Not later than September 30, 2015, the Secretary of Agriculture shall transfer to the administrative jurisdiction of the Secretary of the Army for required Army force protection measures certain Federal land administered as part of the Chattahoochee National Forest, but permitted to the Secretary of the Army for Camp Frank D. Merrill in Dahlonega, Georgia, consisting of approximately 282 acres identified in the permit numbers 0018–01.

(2) LAKE LANIER PROPERTY.—In exchange for the land transferred under paragraph (1), the Secretary of the Army (acting through the Chief of Engineers) shall transfer to the administrative jurisdiction of the Secretary of Agriculture certain Federal land administered by the Army Corps of Engineers and consisting of approximately 10 acres adjacent to Lake Lanier at 372 Dunlap Landing Road, Gainesville, Georgia.

The legal descriptions and maps of the transferred parcels, Camp Merrill and Lake Lanier are provided below:

1. Camp Merrill

Being a part of USA Tracts G–274, G–380, G–641–L, G–641–L–II, G–678a, G–678b, G–1320Ah, G–1320Aj, and G–1634, and lying and being in Land Lots 310, 311, & 312 of the 6th District, 1st Section, and Land Lots 937, 938, 1007, 1008, 1009, 1010, & 1080 of the 11th District, 1st Section, Lumpkin County, Georgia, containing 282.21 acres more or less. Said tracts were acquired by the United States in the hereinafter listed Condemnation Actions:

- *United States of America* v. *J. E. Collins.* Tract G–274, consisting of 399.45 acres, At Law #38, entered on December 29, 1929 and recorded in Lumpkin County at Book Q1–61 on February 26, 1930.
- *United States of America* v. *Craig R. Arnold.* Tract G–380, consisting of 313.00 acres, At Law #144, entered on December 2, 1935 and recorded in Lumpkin County at Book S1–427 on March 16, 1936.
- *United States of America* v. *Rowland Lumber Company.* Tract G–641–L, consisting of 187.56 acres, At Law #59, entered on April 27, 1931 and recorded in Lumpkin County at Book Q1–430 on May 28, 1931.
- *United States of America* v. *Rowland Lumber Company.* Tract G–641–L–II, consisting of 12.44 acres, At Law #59, entered on April 27, 1931 and recorded in Lumpkin County at Book Q1–430 on May 28, 1931.
- *United States of America* v. *J. H. Hawes.* Tract G–678a, consisting of 78.94 acres, At Law #1255, entered on December 15, 1930 and recorded in Lumpkin County at Book Q1–299 on February 9, 1931.
- *United States of America* v. *J. H. Hawes.* Tract G–678b, consisting of 18.08 acres, At Law #1255, entered on December 15, 1930 and recorded in Lumpkin County at Book Q1–299 on February 9, 1931.
- *United States of America* v. *Morse Brothers Lumber Company.* Tract G–1320Ah, consisting of 169.16 acres, At Law #1106, entered on April 11, 1929 and recorded in Lumpkin County at Book Q1–170 on June 9, 1930.
- *United States of America* v. *Morse Brothers Lumber Company.* Tract G–1320Aj, consisting of 267.04 acres, At Law #1106, entered on April 11, 1929 and recorded in Lumpkin County at Book Q1–170 on June 9, 1930.
- *United States of America* v. *William Black.* Tract G–1634, consisting of 188.40 acres, At Law #478, entered on October 21, 1952 and recorded in Lumpkin County at Book C2–305 on December 30, 1952.

Depicted as USA Tract C–2368 on a plat titled ''SURVEY FOR: U.S. Department of Defense U.S. Army Camp Merrill'' dated July 13, 2015 by Georgia Licensed Surveyors Mark E. Chastain and Jason D. Watkins, and recorded in Plat Book _____ Page _____, of the Lumpkin County Superior Court public records, which plat is attached hereto and made part hereof, more particularly described as follows:

Commencing at Corner 2 of USA Tract G–641 L–I, a 1¼″ galvanized pipe, being also the SE corner of land lot 1007, 11th District, 1st Section Lumpkin County, Georgia; thence N. 05°10′13″ W. 1,506.72 feet to Corner 1 of USA Tract C–2368, a 2⅜ inch aluminum post with 3¼ inch USFS cap, being a point interior to USA Tract G–641–L and Land Lot 938, and the Point of Beginning; thence S. 15°08′01″ W. 920.63 feet to Corner 2, a 2⅜ inch aluminum post with 3¼ inch USFS cap in Land Lot 1007; thence S. 61°58′52″ W. 193.61 feet to Corner 3, a 2⅜ inch aluminum post with 3¼ inch USFS cap; thence S. 52°49′47″ W. 1,082.21 feet to Corner 4, a 2⅜ inch aluminum post with 3¼ inch USFS cap in Land Lot 1009; thence N. 74°08′17″ W. 1,074.48 feet to Corner 5, a point in Hightower Church Road, and interior to Land Lot 1008, witnessed by a 2⅜ inch aluminum post with 3¼ inch USFS cap which bears S. 74°08′17″ E. 24.99 feet; thence along and with the meanders of the center of Hightower Church Road the following 14 calls, as shown on the attached plat: S. 32°27′28″ W. 51.69 feet to a point; thence S. 34°30′28″ W. 67.86 feet to a point; thence S. 33°48′29″ W. 66.47 feet to a point; thence S. 32°14′01″ W. 63.81 feet to a point; thence S. 27°59′39″ W. 61.95 feet to a point; thence S. 21°47′03″ W. 63.21 feet to a point; thence S. 15°12′00″ W. 66.96 feet to a point; thence S. 12°01′22″ W. 70.88 feet to a point; thence S. 10°45′50″ W. 72.00 feet to a point; thence S. 10°13′53″ W. 65.57 feet to a point; thence S. 10°32′03″ W. 64.67 feet to a point; thence S. 11°58′44″ W. 63.85 feet to a point; thence S. 12°42′26″ W. 43.48 feet to a point; thence S. 13°58′11″ W. 8.67 feet to Corner 6, a point in Land Lot 310 and the center of Hightower Church Road, witnessed by a 2⅜ inch aluminum post with 3¼ inch USFS cap which bears S 78°58′43″ W. 26.31 feet; thence leaving said Hightower Church Road, S 78°58'43″ E. 208.95 feet to Corner 7, a 2⅜ inch aluminum post with 3¼ inch USFS cap in Land Lot 1009; thence S. 14°09′32″ E. 804.72 feet to Corner 8, a 2⅜ inch aluminum post with 3¼ inch USFS cap in Land Lot 1080; thence S 69°15′21″ W. 455.17 feet to Corner 9, a 2⅜ inch aluminum post with 3¼ inch USFS cap in Land Lot

310; thence S 62°47′26″ W. 828.38 feet to Corner 10, a 2⅜ inch aluminum post with 3¼ inch USFS cap; thence N. 14°08′21″ W. 5,367.35 feet to Corner 11, a 2⅜ inch aluminum post with 3¼ inch USFS cap in Land Lot 312; thence N. 75°52′33″ E. 1,634.85 feet to Corner 12, a 2⅜ inch aluminum post with 3¼ inch USFS cap; thence S. 14°07′40″ E. 698.63 feet to Corner 13, a 2⅜ inch aluminum post with 3¼ inch USFS cap; thence S 29°40′28″ E. 1,806.27 feet to Corner 14, a 2⅜ inch aluminum post with 3¼ inch USFS cap in Land Lot 937; thence N. 67°13′37″ E. 27.86 feet to Corner 15, a nail and washer set in the center of Coopers Gap Road; thence along and with the meanders of the center of Coopers Gap Road the following 28 calls, as shown on the attached plat: N. 19°57′36″ E 51.01 feet to a point; thence N. 39°03′30″ E. 27.54 feet to a point; thence N. 24°43′35″ E 39.60 feet to a point; thence N. 04°00′08″ E. 51.23 feet to a point; thence N. 02°16′55″ E 63.59 feet to a point; thence N. 02°18′19″ E. 67.12 feet to a point; thence N. 05°26′56″ E 56.45 feet to a point; thence N. 17°50′40″ E. 46.12 feet to a point; thence N. 46°03′49″ E 35.38 feet to a point; thence N. 84°08′40″ E. 30.28 feet to a point; thence S. 61°29′42″ E 27.02 feet to a point; thence S. 38°55′06″ E. 49.53 feet to a point; thence S. 47°14′37″ E 64.30 feet to a point; thence S. 50°31′54″ E. 30.94 feet to a point; thence S. 66°57′34″ E 39.25 feet to a point; thence N. 89°49′03″ E. 29.67 feet to a point; thence N. 53°38′19″ E 34.60 feet to a point; thence N. 26°27′55″ E. 38.55 feet to a point; thence N. 12°21′38″ E 34.43 feet to a point; thence N. 00°26′18″ E. 22.52 feet to a point; thence N. 04°56′23″ W. 45.65 feet to a point; thence N. 07°11′01″ W. 81.94 feet to a point; thence N. 06°18′04″ W. 79.77 feet to a point; thence N. 06°02′44″ W. 74.49 feet to a point; thence N. 06°10′43″ W. 22.92 feet to a point; thence N. 05°12′12″ W. 72.09 feet to a point; thence N. 04°48′48″ W. 96.88 feet to a point; thence N. 03°22′36″ W. 23.48 feet to a Corner 16, a point in the center of Coopers Gap Road; witnessed by a 2⅜ inch aluminum post with 3¼ inch USFS cap which bears S. 89°15′22″ E. 21.00 feet; thence leaving said Coopers Gap Road S. 89°15′22″ E. 993.53 feet to Corner 17, a 2⅜ inch aluminum post with 3¼ inch USFS cap in Land Lot 938; thence S. 04°28′28″ E. 1021.46 feet to the Point of Beginning; containing 282.21 acres, more or less; less and except 0.95 acres shown as ''Mount Zion #1'' and 0.26 acres for a cemetery as shown on said plat incorporated herewith; and any easements for existing or established public roads, highways, and utilities, if any.

A Map of Camp Merrill is at Figure 1.

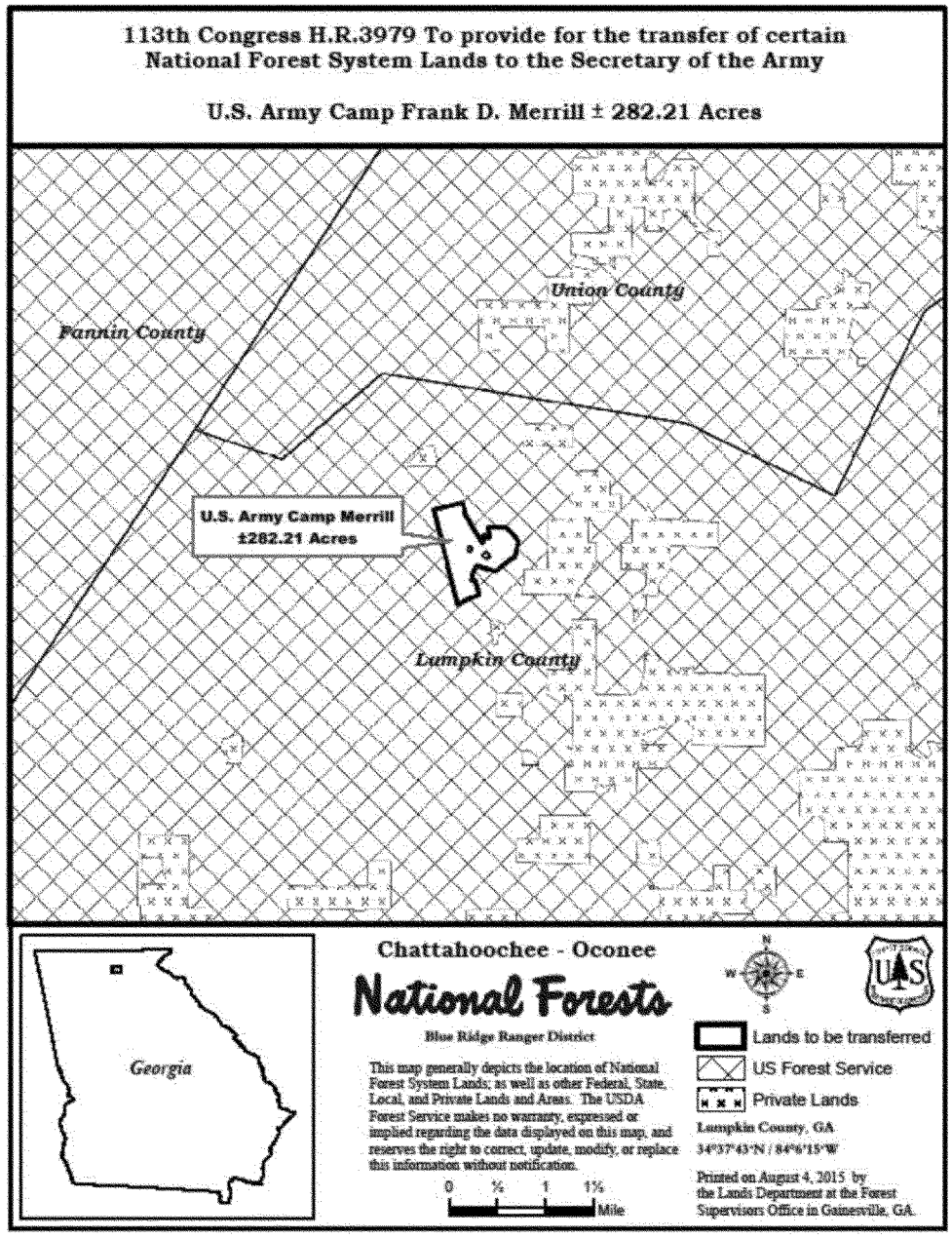

Figure 1 Camp Merrill

2. Lake Lanier Parcel

Being formerly a part of USACE Tract N–1410, which said tract was acquired by the United States of America by means of condemnation proceedings entitled United States of America vs. 1,114.46 acres of land, more or less, situated in Dawson and Hall Counties, State of Georgia, and Fred O. Rowe, et al., Civil Action No. 701, United States District Court for the Northern District of Georgia, Gainesville Division, Buford Dam and Reservoir Project.

All that tract or parcel of land lying and being in Land Lots 122 & 123 of the 10th District, City of Gainesville, Hall County, depicted as USA Tract C–2367 on a plat titled ''SURVEY FOR: United States Forest Service'' dated July 30, 2015 by Georgia Licensed Surveyor Mark E. Chastain, of Chastain & Associates, P.C. (Job #215F42), and recorded in Plat Book _____ Page _____, of the Hall County Superior Court public records, which plat is attached hereto and made part hereof, more particularly described as follows: Beginning at a U.S. Army Corps of Engineers monument found, designated as ''123–C6'', said monument having state plane coordinates (NAD83, Georgia West Zone) of Northing 1582107.49, Easting 2392494.60; thence North 09 Degrees 50 Minutes 54 Seconds West a distance of 264.98 feet to a U.S. Army Corps of Engineers monument found; thence North 09 Degrees 50 Minutes 54 Seconds West a distance of 263.72 feet to a U.S. Army Corps of Engineers monument set, designated ''123–D1''; thence North 52 Degrees 17 Minutes 48 Seconds East a distance of 571.14 feet to a U.S. Army Corps of Engineers monument set, designated as ''123–D2''; passing a U.S. Army Corps of Engineers monument set, designated ''123–D1–A, at a distance of 285.61 feet from the

origin of said course; thence South 54 Degrees 58 Minutes 07 Seconds East a distance of 385.00 feet to a U.S. Army Corps of Engineers monument set, designated ''123–D3'', passing a U.S. Army Corps of Engineers monument set, designated ''123–D2–A'', at a distance of 185.63 feet from the origin of said course; thence South 44 Degrees 28 Minutes 21 Seconds West a distance of 100.77 feet to a U.S. Army Corps of Engineers monument set, designated ''123–D4''; thence South 05 Degrees 49 Minutes 03 Seconds West a distance of 351.98 feet to a U.S. Army Corps of Engineers monument set, designated ''123–D5''; thence with a curve turning to the right with an arc length of 149.69', with a radius of 233.85', with a chord bearing of South 48 Degrees 05 Minutes 12 Seconds West, with a chord length of 147.15', to a point; thence South 66 Degrees 25 Minutes 26 Seconds West a distance of 239.26 feet to a point; thence with a curve turning to the right with an arc length of 171.55′, with a radius of 569.78′, with a chord bearing of South 75 Degrees 02 Minutes 57 Seconds West, with a chord length of 170.90′, to a U.S. Army Corps of Engineers monument set, designated ''123–D6''; thence North 50 Degrees 50 Minutes 59 Seconds West a distance of 14.08 feet to a U.S. Army Corps of Engineers monument found, designated ''123–C5''; thence North 88 Degrees 11 Minutes 43 Seconds West a distance of 65.64 feet to a U.S. Army Corps of Engineers monument found, designated ''123–C6'' and the point of beginning; containing 10.00 acres, more or less.

Together with a single point of access from the subject tract to and across an existing 50-year public road easement, between the Department of the Army, acting by and through the U.S. Army Corps of Engineers (USACE), and the City of Gainesville, dated April 26, 1994, to that adjoining public right-of-way known as Dunlap Landing Road, and in accordance with USACE Contract No. DACW01–2–95–0092, including any extensions or renewals of said aforementioned public road easement.

This statement is being made for the purpose of assuring a legal means of ingress and egress to and from Dunlap Landing Road in accordance with the Transfer of Administrative Jurisdiction of subject tract from the Department of Army to the Department of Agriculture, pursuant to Public Law 113–291, National Defense Authorization Act for Fiscal Year 2015 (H.R. 3979) and those authorities under 16 U.S.C 505a–505b. This transfer is subject to existing easements for public roads, highways, public utilities, pipelines as well as any and all oil, gas, and mineral rights outstanding in third parties.

A Map of Lake Lanier Parcel is at Figure 2.

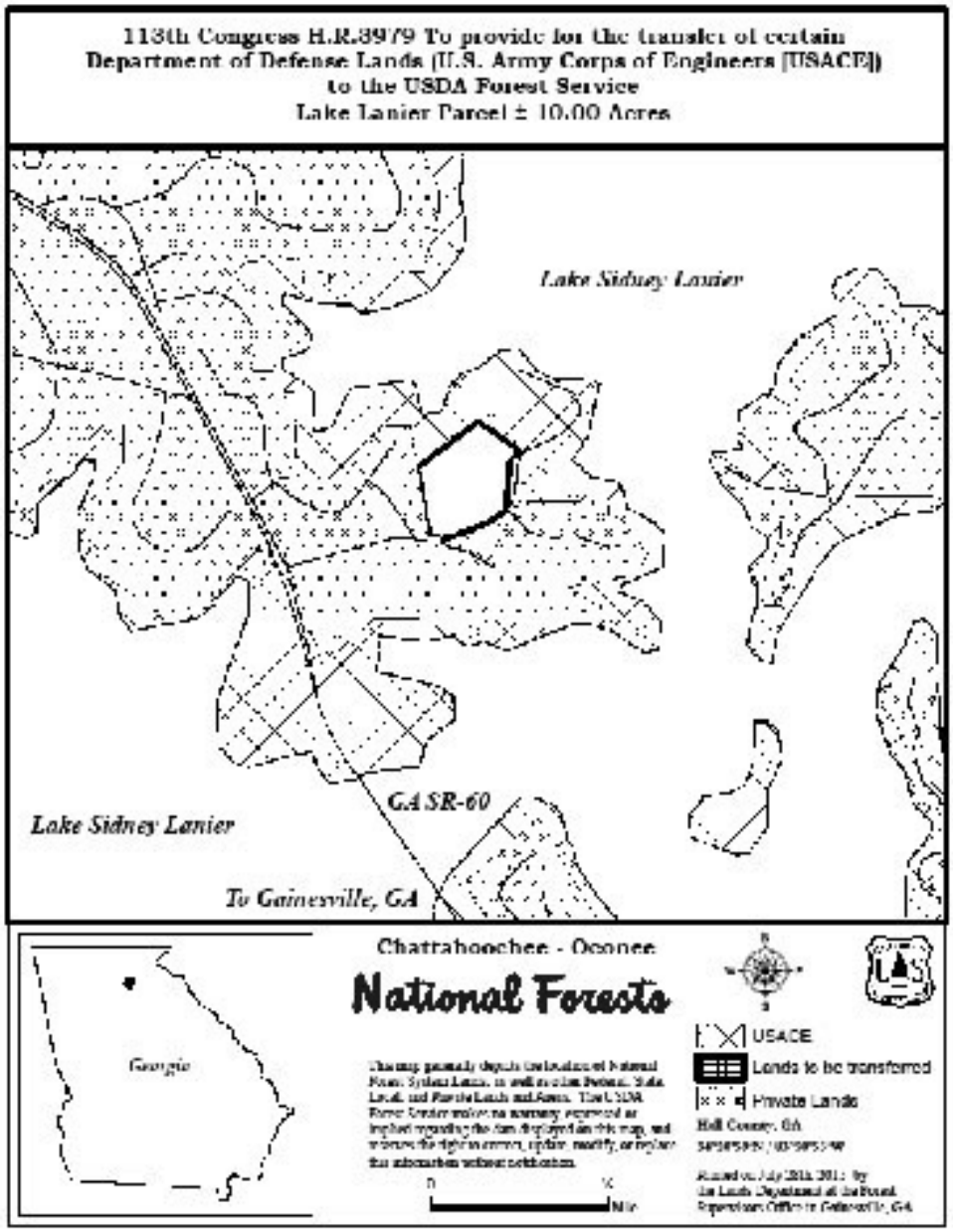

Figure 2 Lake Lanier Parcel

Dated: August 6, 2015.

Ralph J. Werthmann,

Chief, Real Estate Division, Savannah District.

[FR Doc. 2015–20590 Filed 8–19–15; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF DEFENSE

Department of the Navy

Extension of Public Comment Period for the Draft Environmental Impact Statement/Overseas Environmental Impact Statement for Commonwealth of the Northern Mariana Islands Joint Military Training

AGENCY: Department of the Navy, Department of Defense.

ACTION: Notice.

SUMMARY: On April 03, 2015, the Department of Navy (DoN) published a Notice of Availability and Notice of Public Meetings for the Draft Environmental Impact Statement/ Overseas Environmental Impact Statement for Commonwealth of the Northern Mariana Islands Joint Military Training (80 FR 18385, April 03, 2015). Notices extending the public comment period by 60 days and 14 days were published on May 14, 2015 (80 FR 27678) and July 31, 2015 (80 FR 45647), respectively. The purpose of this notice is to announce an additional 45 day extension of the public comment period to October 01, 2015 Eastern Daylight Time (E.D.T.) [October 2, 2015,

Chamorro Standard Time (ChST)]. This extension is made in recognition of damage on Saipan from Typhoon Soudelor and the ongoing recovery effort.

DATES: The public comment period for the Draft EIS began on April 03, 2015, EDT [April 04, 2015, ChST] with the publication of the Notice of Availability in the **Federal Register** by the U.S. Environmental Protection Agency, and with this extension, will end on October 1, 2015, EDT [October 2, 2015, ChST] for a total of 179 days. Mailed comments should be postmarked no later than October 1, 2015, EDT [October 2, 2015, ChST] to ensure they are considered.

ADDRESSES: The public may provide comments through the project Web site at *www.CNMIJointMilitaryTrainingEIS.com,* or by mail at: Naval Facilities Engineering Command, Pacific, Attn: 09PA, Public Affairs Office, 258 Makalapa Drive, Suite 100, JBPHH, HI 96860–3134.

The Draft EIS/OEIS was distributed to federal and local agencies, elected officials, and other interested individuals and organizations. The Draft EIS/OEIS is available for public review at *www.CNMIJointMilitaryTrainingEIS.com,* and at the following libraries:

(1) Joeten Kiyu Public Library, Saipan; (2) Northern Marianas College Olympio T. Borja Memorial Library, Saipan; (3) Tinian Public Library, Tinian; (4) Antonio C. Atalig Memorial Rota Public Library, Rota; (5) University of Guam Robert F. Kennedy Memorial Library, Guam; (6) Nieves M. Flores Memorial Library, Guam.

SUPPLEMENTARY INFORMATION: The DoN's proposed action is to establish live-fire Range Training Areas (RTAs) within the CNMI to address the U.S. Pacific Command Service Components' unfilled unit level and combined level training requirements in the Western Pacific. The DoN recognizes that public comments are an essential part of the National Environmental Policy Act (NEPA) process. Accordingly, the DoN initially established a 60-day public comment period in lieu of the minimum 45-day period required by NEPA implementing regulations. Notices extending the public comment period by 60 days and 14 days were published on May 14, 2015 (80 FR 27678) and July 31, 2015 (80 FR 45647), respectively. Due to Typhoon Soudelor recovery efforts, the DoN is further extending the Draft EIS public comment period by 45 days to October 1, 2015, EDT [October 2, 2015, ChST] for a total of 179 days.

FOR FURTHER INFORMATION CONTACT: CNMI Joint Military Training EIS/OEIS Project Manager by email via the project Web site (*www.CNMIJointMilitaryTrainingEIS.com*).

Dated: August 13, 2015.

N.A. Hagerty-Ford,

Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 2015–20507 Filed 8–19–15; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Crooked River Valley Rehabilitation Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to fund implementation of Crooked River Valley Rehabilitation Project in Idaho County, Idaho. BPA has decided to fund implementation of Alternative 2 identified in the Crooked River Valley Rehabilitation Project Final Environmental Impact Statement (DOE/EIS–0506, June 2015). Alternative 2 consists of: (1) Constructing a 6,000 foot temporary bypass channel and temporary access road/levee and, following construction of the channel, removing and decommissioning these structures; (2) regrading approximately 115 acres of floodplain by moving dredge tailings; (3) filling in approximately 10,960 feet of the current channel, reconstructing approximately 7,400 feet of new channel, and constructing more than 2,700 feet of side channels; (4) replanting the valley bottom with native and approved non-native plant species; (5) staging materials and equipment at campgrounds; and (6) monitoring project activities and effectiveness. All mitigation measures identified in the environmental impact statement (EIS) are adopted.

ADDRESSES: Copies of the ROD and EIS may be obtained by calling BPA's toll-free document request line, 1–800–622–4520. The ROD and EIS Summary are also available on our Web site, *www.bpa.gov/goto/CrookedRiver.*

FOR FURTHER INFORMATION CONTACT: Brenda Aguirre, Bonneville Power Administration—KEC–4, P.O. Box 3621, Portland, Oregon, 97208–3621; toll-free telephone number 1–800–622–4519; fax number 503–230–5699; or email *baguirre@bpa.gov.*

Issued in Portland, Oregon: August 13, 2015.

Elliot E. Mainzer,

Administrator and Chief Executive Officer.

[FR Doc. 2015–20603 Filed 8–19–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice for EV Everywhere Logo Design Competition

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

ACTION: Notice.

SUMMARY: The Department of Energy (DOE) gives notice of the availability of the EV Everywhere Logo Design Competition, to encourage artists and designers to create a graphic representation of the DOE's efforts to increase the use of plug-in electric vehicles. The Logo Contest includes a $5,000 cash prize.

DATES: The submission period for entries begins at August 13, 2015 and must be received electronically by September 25, 2015 by 11:59 p.m. EST. The winning contestant will be announced October 26, 2015. All dates are subject to change. The winning contestant will be notified in advance of the public announcement.

ADDRESSES: Interested persons can find full details about the competition rules and register to participate online at *https://www.challenge.gov/challenge/ev-everywhere-logo-contest/.* See **SUPPLEMENTARY INFORMATION** section for further information.

FOR FURTHER INFORMATION CONTACT:

- *Email: ev-everywhere@ee.doe.gov.*
- *Mail:* Robert Graham, EV Everywhere Director, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, 1000 Independence Ave. SW., Washington, DC 20585, 202–586–3801.

SUPPLEMENTARY INFORMATION:

Competition Details

(1) *Subject of Competition:* The Department of Energy (DOE) is seeking a new design to be used as the official logo of EV Everywhere. EV Everywhere is the umbrella activity for DOE efforts to increase the use of plug-in electric vehicles (PEVs). Its mission is to raise awareness of the benefits of PEVs, help individuals realize that PEVs are a viable option for them, and position DOE as the definitive resource for

unbiased, objective information about PEVs.

EV Everywhere supports DOE's larger goal of reducing the use of petroleum in transportation to increase energy and environmental security. In addition to public outreach and education, it also includes efforts to reduce the cost and improve the convenience of PEVs through research and development as well as increase community readiness for the use of PEVs.

(2) *Dates:* The submission period for entries must be submitted in accordance with the deadline identified in the **DATES** section.

(3) *Eligibility Rules for Participating in the Competition:* To be eligible to win a prize under this Logo Design Competition, you—

(a) Must register to participate in the competition under the link designated for that purpose by DOE on *https://www.challenge.gov;*

(b) Must comply with all the requirements under this notice and the America COMPETES Reauthorization Act of 2010 (Pub. L. 111–358);

(c) In the case of an individual, whether participating singly or in a group, must be a citizen or permanent resident of the United States before the submission period ends;

(d) In the case of a private entity shall be incorporated in and maintain a principal place of business in the United States;

(e) May not be a Federal employee acting within the scope of your employment;

(f) May not be an entity with an outstanding, unresolved financial obligation to, or that is currently suspended or debarred by, the federal government; and

(g) If chosen as the winner of the prize, provide to DOE the necessary personal or business information to allow DOE to award the cash prize.

If you are under 18 years of age, you must have the permission of a parent or legal guardian to participate. If you are a Federal grantee, you may not use Federal funds to develop applications for this competition unless such use is consistent with the purpose of your grant award. If you are a Federal contractor, you may not use Federal funds from a contract to develop or fund efforts in support of applications for this competition. You may use Federal facilities or consult with Federal employees during the competition if the facilities and employees are made available to all contestants participating in the competition on an equitable basis.

(4) *Registration Process for Contestants:* Design competition contestants must submit their ''EV Everywhere'' Logo designs online as a vector-based image in an .ai, .eps, or PDF file using the link designated for that purpose on *https://www.challenge.gov.* Contestants can find the link on *https://challenge.gov,* either by filtering search criteria to ''Department of Energy'' or going to *https://www.vehicles.energy.gov,* where the link will be posted. DOE will accept logo design competition submissions only through *https://www.challenge.gov.*

Things to keep in mind as you design your ''EV Everywhere'' Logo:

(a) The logo should translate the core elements of the EV Everywhere brand, including the benefits of PEVs, the viability of PEVs for the average driver, and EV Everywhere as the source for objective, data-driven, reliable information on PEVs. DOE's *Alternative Fuels Data Center* describes the basic technology of PEVs and PEVs' major benefits;

(b) In addition, the logo can evoke through imagery ideas of: Electricity, the ''fun'' factor of PEVs, PEVs' cost savings, environmental sustainability, and energy security;

(c) The use of the words ''EV Everywhere'' is recommended, but not required;

(d) The use of the words ''U.S. Department of Energy'' is required;

(e) The logo should use the following colors alone or in combination:

a. As primary, dark blue (Pantone 7484; CMYK C45 M27 Y17 K51; RGB R94 G106 B113; HEX 5E6A71) and/or dark green (Pantone 356; CMYK C95 M8 Y93 K27; RGB R0 G121 B52; HEX 007934)

b. As highlights, light blue (Pantone 2995; CMYK C87 M1 Y0 K0; RGB R0 G169 B224; HEX 1F82BB), light green (Pantone 368; CMYK C63 M0 Y97 K0; RGB R105 G190 B40; HEX 69BE28), yellow (Pantone 116; CMYK C0 M12 Y100 K0; RGB R254 G203 B0; HEX FECB00), red (Pantone 158; CMYK C0 M64 Y95 K0; RGB R227 G114 B34; HEX E37222), and light gray (Pantone 428; CMYK C12 M6 Y5 K12; RGB R195 G200 B200; HEX C3C8C8);

(f) If the logo includes text, the text should be in Gotham font, or if not available, Calibri;

(g) The logo should be unique enough that it could be easily recognized by the general public in the future;

(h) Because it will be used on a vehicle magnetic logo the size of a small bumper sticker, the logo needs to be readable and/or understandable from the back of a moving vehicle.

(i) The logo should not focus solely on light-duty PEVs; and

(j) The logo should not conflict or be too similar to existing DOE/EERE logos (available on the *EERE Communications Standards Web site*) or use elements of the DOE or any other federal agency's logo.

When uploading your ''EV Everywhere'' Logo design, in the ''Submission Text'' field, please include a brief description about your logo entry and thought process behind the design, including any personal experience the designer has with PEVs.

(5) *Prize for Winner:* The winning contestant will be awarded a $5,000 prize and the design will become the official logo for the EV Everywhere activities, the magnetic decals, the program's Web site and any official DOE purpose.

(6) *Selection of Winner:* DOE will select a judging panel that will consist of DOE officials, EV industry leaders, and other communications experts. Judges will be fair and impartial. A judge may not have personal or financial interests in, or be an employee, officer, director, or agent of any contestant or have a familial or financial relationship with a contestant.

Judges will use the following weighted criteria to judge the submitted designs:

(a) Effectiveness of communicating the EV Everywhere mission and brand (500/1000 points). This includes the idea of plug-in electric vehicles, their benefits, their viability for the average driver, and the DOE as a source of unbiased, data-driven information. This may be done through a realistic or abstract design;

(b) Creativity and originality (300/1000 points). Is the visual quality of the design at once informative and representative of imagery connected to EV Everywhere; and

(c) Design can be easily replicated, especially as a magnetic decal (200/1000 points). Can this design be replicated successfully, without excessive cost, for many media formats.

The judging panel will evaluate the submissions and choose the final winning design from all submissions. In the event that no entries fully meet the above criteria to the panel's satisfaction, the Department of Energy is under no obligation to select a winner. All decisions by DOE are final and binding with respect to the contest. For questions or further information, please see the contact information listed in the **DATES** section above.

(7) *Applicable Law:* This design competition is being conducted by DOE pursuant to the America COMPETES Reauthorization Act requirements at 15 U.S.C. 3719 and is subject to all

applicable federal laws and regulations. By participating in this design competition, each contestant gives its full and unconditional agreement to these Official Rules. A contestant's eligibility for a prize award is contingent upon their fulfilling all requirements identified in this notice. Publication of this notice is not an obligation of funds on the part of DOE. DOE reserves the right to cancel, suspend, and/or modify this contest, in whole or in part, at any time prior to the award of prizes.

(8) *Resolution of Disputes:* The Department of Energy is solely responsible for administrative decisions, which are final and binding in all matters related to the contest. In the event of a dispute as to any registration, the authorized account holder of the email address used to register will be deemed to be the contestant. The ''authorized account holder'' is the natural person or legal entity assigned an email address by an Internet access provider, online service provider or other organization responsible for assigning email addresses for the domain associated with the submitted address. Contestants and potential winner may be required to show proof of being the authorized account holder.

(9) *Intellectual Property Rights:*

(a) By submitting a design to this competition, you represent and warrant that you are the sole author and copyright owner of the submitted design; that the submission is your original work, and as the contestant, you have sufficient rights to use and authorize others, including DOE, to use the submission, as specified throughout the Official Rules, that the submission does not violate or infringe upon the copyright or upon any other third party rights of other parties, including but not limited to privacy, publicity, or intellectual property rights, or material that constitutes copyright or license infringement. Your design may not contain any material that is inappropriate, indecent, obscene, hateful, defamatory, or in any way disparaging. Your design cannot have been submitted previously in another promotion or contest of any kind.

(b) You understand and agree that if your entry is selected as the winning design, it may be modified or altered by DOE, in its sole discretion, as deemed appropriate or necessary to execute, produce, or distribute the winning design in its final logo format.

(c) The winning contestant will, in consideration of the prize to be awarded, grant to DOE an irrevocable, royalty-free, exclusive worldwide license to reproduce, distribute, copy, display, create derivative works, and publicly post, link to, and share, the winning design or parts thereof, for the purpose of the design competition and for any official EV Everywhere or DOE purpose.

(10) *Publicity Rights:* Upon registration, each contestant consents to DOE's and its agents' use, in perpetuity, of its name, likeness, photograph, voice, opinions, and/or hometown and state information for promotional or informational purposes through any form of media, worldwide, without payment or consideration.

(11) *Liability and Insurance Requirements:*

(a) Any and all information provided by or obtained from the Federal Government is without any warranty or representation whatsoever, including but not limited to its suitability for any particular purpose.

(b) Upon registration, each contestant agrees to assume any and all risks of injury or loss in connection with or in any way arising from participation in this contest. Upon registration, except in the case of willful misconduct, all contestants agree to and, thereby, do waive and release any and all claims or causes of action against the Federal Government and its officers, employees and agents for any and all injury and damage of any nature whatsoever (whether existing or thereafter arising, whether direct, indirect, or consequential and whether foreseeable or not), arising from their participation in the contest, whether the claim or cause of action arises under contract or tort.

(c) Upon registration, you agree to and, thereby, shall indemnify and hold harmless the Federal government and its officers, employees and agents for any and all injury and damage of any nature whatsoever (whether existing or thereafter arising, whether direct, indirect, or consequential and whether foreseeable or not), arising from or related to competition activities.

(d) Contestants are required to demonstrate financial responsibility by certifying that they have $500 to cover claims in the amount of $500 or less, made by: (A) A third party for death, bodily injury, or property damage, or loss resulting from an activity carried out in connection with participation in the Logo competition; and (B) the Federal Government for damage or loss to Government property resulting from such an activity.

(12) *Record Retention and FOIA:* All materials submitted to DOE as part of a submission become DOE records and cannot be returned. Any confidential commercial information contained in a submission should be designated at the time of submission. Submitters will be notified of any Freedom of Information Act requests for their submissions in accordance with 29 CFR 70.26.

Issued in Washington, DC, on August 13, 2015.

David Danielson,

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

[FR Doc. 2015–20475 Filed 8–19–15; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 14657–000]

Appalachian Mountain Club; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879, December 17, 1987), the Office of Energy Projects has reviewed the application for the Zealand Falls Hydroelectric Project, located on the on Whitewall Brook, in the Town of Bethlehem, Grafton County, New Hampshire and has prepared an Environmental Assessment (EA) for the project. The project occupies 0.66 acres of federal land managed by the U.S. Forest Service.

The EA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the EA is available for review at the Commission in the Public Reference Room or may be viewed on the Commission's Web site at *http://www.ferc.gov*using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY).

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact John Baummer at (202) 502–6837.

Dated: August 12, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–20428 Filed 8–19–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC15–189–000.

Applicants: Prairie Breeze Wind Energy LLC, Prairie Breeze Wind Energy II LLC, Prairie Breeze Wind Energy III LLC.

Description: Application for Authorization Under Section 203 of the Federal Power Act and Request for Waivers and Expedited Action of Prairie Breeze Wind Energy LLC, et al.

Filed Date: 8/14/15.

Accession Number: 20150814–5147.

Comments Due: 5 p.m. ET 9/4/15.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG15–115–000.

Applicants: Pavant Solar, LLC.

Description: Notice of Self-certification of Exempt Wholesale Generator Status of Pavant Solar, LLC.

Filed Date: 8/14/15.

Accession Number: 20150814–5081.

Comments Due: 5 p.m. ET 9/4/15.

Docket Numbers: EG15–116–000.

Applicants: Latigo Wind Park, LLC.

Description: Notice of Self-Certification of Exempt Wholesale Generator Status of Latigo Wind Park, LLC under EG15–116.

Filed Date: 8/14/15.

Accession Number: 20150814–5173.

Comments Due: 5 p.m. ET 9/4/15.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER10–2137–013; ER14–2798–005; ER14–2799–005; ER12–161–012; ER12–164–012; ER15–1873–002; ER12–645–014; ER10–2130–013; ER10–2131–013; ER10–2138–013; ER10–2139–013; ER10–2140–013; ER10–2141–013; ER14–2187–007; ER11–4044–014; ER11–4046–013; ER10–2129–010; ER10–2134–010; ER10–2136–011; ER15–103–004; ER10–2127–012; ER10–2125–013; ER14–25–009; ER15–1041–002; ER10–2133–013; ER10–2135–010; ER10–2124–012; ER11–3872–014; ER10–2132–012; ER10–2128–012; ER10–2764–012.

Applicants: Beech Ridge Energy LLC, Beech Ridge Energy II LLC, Beech Ridge Energy Storage LLC, Bishop Hill Energy LLC, Bishop Hill Energy III LLC, Buckeye Wind Energy LLC, California Ridge Wind Energy LLC, Forward Energy LLC, Grand Ridge Energy LLC, Grand Ridge Energy II LLC, Grand Ridge Energy III LLC, Grand Ridge Energy IV LLC, Grand Ridge Energy V LLC, Grand Ridge Energy Storage LLC, Gratiot County Wind LLC, Gratiot County Wind II LLC, Grays Harbor Energy LLC, Hardee Power Partners Limited, Invenergy Cannon Falls LLC, Invenergy Nelson LLC, Invenergy TN LLC, Judith Gap Energy LLC, Prairie Breeze Wind Energy LLC, Prairie Breeze Wind Energy II LLC, Sheldon Energy LLC, Spindle Hill Energy LLC, Spring Canyon Energy LLC, Stony Creek Energy LLC, Willow Creek Energy LLC, Wolverine Creek Energy LLC, Vantage Wind Energy LLC.

Description: Notification of Change in Facts of Beech Ridge Energy LLC, et al.

Filed Date: 8/14/15.

Accession Number: 20150814–5186.

Comments Due: 5 p.m. ET 9/4/15.

Docket Numbers: ER15–517–003.

Applicants: ISO New England Inc., Cross-Sound Cable Company, LLC.

Description: Compliance filing: Standards for Bus Prac & Comm Protocols Cross Sound Cable Errata Filing to be effective 5/15/2015.

Filed Date: 8/14/15.

Accession Number: 20150814–5130.

Comments Due: 5 p.m. ET 8/24/15.

Docket Numbers: ER15–2441–000.

Applicants: California Independent System Operator Corporation.

Description: Section 205(d) Rate Filing: 2015-8-13_Implement Reliability Coordinator Charges Settlement Process to be effective 10/15/2015.

Filed Date: 8/13/15.

Accession Number: 20150813–5219.

Comments Due: 5 p.m. ET 9/3/15.

Docket Numbers: ER15–2442–000.

Applicants: ITC Midwest LLC.

Description: Section 205(d) Rate Filing: Filing of CIAC Agreement with Maquoketa Valley to be effective 10/12/2015.

Filed Date: 8/13/15.

Accession Number: 20150813–5223.

Comments Due: 5 p.m. ET 9/3/15.

Docket Numbers: ER15–2443–000.

Applicants: ISO New England Inc.

Description: ISO New England Inc. submits Second Quarter 2015 Capital Budget Report.

Filed Date: 8/13/15.

Accession Number: 20150813–5248.

Comments Due: 5 p.m. ET 9/3/15.

Docket Numbers: ER15–2444–000.

Applicants: Idaho Power Company.

Description: Idaho Power Company submits Average System Cost Filing for Sales of Electric Power to the Bonneville Power Administration, FY 2016–2017.

Filed Date: 8/13/15.

Accession Number: 20150813–5249.

Comments Due: 5 p.m. ET 9/3/15.

Docket Numbers: ER15–2445–000.

Applicants: Puget Sound Energy, Inc.

Description: Puget Sound Energy, Inc. submits Average System Cost Filing for Sales of Electric Power to the Bonneville Power Administration, FY 2016–2017.

Filed Date: 8/13/15.

Accession Number: 20150813–5250.

Comments Due: 5 p.m. ET 9/3/15.

Docket Numbers: ER15–2446–000.

Applicants: Midcontinent Independent System Operator, Inc.

Description: Section 205(d) Rate Filing: 2015–08–14_SA 2828 MidAmerican Energy-Farmers City Wind GIA (R26) to be effective 8/15/2015.

Filed Date: 8/14/15.

Accession Number: 20150814–5067.

Comments Due: 5 p.m. ET 9/4/15.

Docket Numbers: ER15–2447–000.

Applicants: Midcontinent Independent System Operator, Inc., Union Electric Company.

Description: Compliance filing: 2015–08–14_Union Electric Depreciation Rate Compliance Filing to be effective 6/1/2015.

Filed Date: 8/14/15.

Accession Number: 20150814–5082.

Comments Due: 5 p.m. ET 9/4/15.

Docket Numbers: ER15–2448–000.

Applicants: Prairie Breeze Wind Energy II LLC.

Description: Section 205(d) Rate Filing: Filing of Assignment, Co-Tenancy, and Shared Facilities Agreement to be effective 8/15/2015.

Filed Date: 8/14/15.

Accession Number: 20150814–5125.

Comments Due: 5 p.m. ET 9/4/15.

Docket Numbers: ER15–2449–000.

Applicants: Prairie Breeze Wind Energy III LLC.

Description: Section 205(d) Rate Filing: Filing of Assignment, Co-Tenancy, and Shared Facilities Agreement to be effective 8/15/2015.

Filed Date: 8/14/15.

Accession Number: 20150814–5126.

Comments Due: 5 p.m. ET 9/4/15.

Docket Numbers: ER15–2450–000.

Applicants: Prairie Breeze Wind Energy LLC.

Description: Section 205(d) Rate Filing: Filing of Assignment, Co-Tenancy, and Shared Facilities Agreement to be effective 8/15/2015.

Filed Date: 8/14/15.

Accession Number: 20150814–5128.

Comments Due: 5 p.m. ET 9/4/15.

Docket Numbers: ER15–2451–000.

Applicants: Maine Electric Power Company, Inc.

Description: Section 205(d) Rate Filing: Construction Agreement between MEPCO and Number Nine Wind Farm LLC to be effective 8/13/2015.

Filed Date: 8/14/15.

Accession Number: 20150814–5129.

Comments Due: 5 p.m. ET 9/4/15.

Docket Numbers: ER15–2452–000.

Applicants: Southwest Power Pool, Inc.

Description: Section 205(d) Rate Filing: Revisions to Attachment AE Section 3.9 Net Benefit Test Clean-up to be effective 3/1/2015.

Filed Date: 8/14/15.

Accession Number: 20150814–5179.

Comments Due: 5 p.m. ET 9/4/15.

Docket Numbers: ER15–2453–000.

Applicants: Passadumkeag Windpark, LLC.

Description: Baseline eTariff Filing: Application for Market Based Rate Authority and Request for Waivers to be effective 9/18/2015.

Filed Date: 8/14/15.

Accession Number: 20150814–5182.

Comments Due: 5 p.m. ET 9/4/15.

Docket Numbers: ER15–2454–000.

Applicants: Otter Tail Power Company.

Description: Section 205(d) Rate Filing: Filing of Certificate of Concurrence—TCRA to be effective 9/1/2015.

Filed Date: 8/14/15.

Accession Number: 20150814–5218.

Comments Due: 5 p.m. ET 9/4/15.

Docket Numbers: ER15–2455–000.

Applicants: Koch Energy Services, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate Authorization to be effective 10/1/2015.

Filed Date: 8/14/15.

Accession Number: 20150814–5221.

Comments Due: 5 p.m. ET 9/4/15.

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: August 14, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–20575 Filed 8–19–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP15–541–000]

Tennessee Gas Pipeline Company, L.L.C; Notice of Request Under Blanket Authorization

Take notice that on August 5, 2015, Tennessee Gas Pipeline Company, L.L.C. (Tennessee), 1001 Louisiana Street, Houston, Texas 77002, filed in in Docket No. CP15–541–000, a prior notice request pursuant to sections 157.203, 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA) for authorization to abandon by removal its two inactive supply laterals and associated appurtenances located in Terrebonne Parish, Louisiana. Specifically, Tennessee request to abandon: (1) Line No. 521A–100 consisting of approximately 1,330 feet of 10-inch-diameter pipe and associated appurtenances and (2) Line No. 520A–300 consisting of approximately 36,739 feet of 10-inch-diameter pipeline and associated appurtenances all as more fully set forth in the application which is on file with the Commission and open to public inspection. The filing may 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 Ben Carranza, Manager, Regulatory, Tennessee Gas Pipeline Company, L.L.C. 1001 Louisiana Street, Houston, Texas 77002, by telephone at (713) 420–5535, by facsimile at (713) 420–1605, or by email at *ben_carranza@kindermorgan.com,* or Debbie Kalisek, Regulatory Analyst, Tennessee Gas Pipeline Company, L.L.C. 1001 Louisiana Street, Houston, Texas 77002, by telephone at (713) 420–3292, by facsimile at (713) 420–1605, or by email at *debbie_kalisek@kindermorgan.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 protest to the request, pursuant to section 157.205 of the regulations under the NGA (18 CFR 157.205). 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 commenter's 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 commenter's will not be required to serve copies of filed documents on all other parties. However, the non-party commentary, 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 via the Internet in lieu of paper. See 18 CFR 385.2001(a) (1) (iii) and the instructions on the

Commission's Web site (*www.ferc.gov*) under the ''e-Filing'' link. Persons unable to file electronically should submit original and 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

Dated: August 14, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–20576 Filed 8–19–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 13806–004–NH]

5440 Hydro, Inc; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47879), the Office of Energy Projects has reviewed the application for exemption from licensing for the Brooklyn Dam Hydroelectric Project, to be located on the Upper Ammonoosuc River, in the town of Northumberland, Coos County, New Hampshire, and has prepared an Environmental Assessment (EA). In the EA, Commission staff analyzes the potential environmental effects of the project and concludes that issuing an exemption for the project, with appropriate environmental measures, would not constitute a major federal action significantly affecting the quality of the human environment.

A copy of the EA is on file with the Commission and is available for public inspection. The EA may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact John Ramer at (202) 502–8969 or *john.ramer@ferc.gov.*

Dated: August 14, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–20578 Filed 8–19–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2165–067]

Alabama Power Company; Notice of Application Accepted for Filing, Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection:

a. *Type of Application:* Non-project use of project lands and water.

b. *Project No:* 2165–067.

c. *Date Filed:* July 8, 2015.

d. *Applicant:* Alabama Power Company (licensee).

e. *Name of Project:* Warrior River Hydroelectric Project.

f. *Location:* Lewis Smith Development (Smith Lake) of the Warrior River Hydroelectric Project located in Cullman, Walker, and Winston counties, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a—825r.

h. *Applicant Contact:* James F. Crew, Hydro Services Manager, Alabama Power Company, 600 North 18th Street, 16N–8180, Birmingham, Alabama 35203; phone (205) 257–4265.

i. *FERC Contact:* Mr. Robert Ballantine at 202–502–6289, *robert.ballantine@ferc.gov*

j. Deadline for filing comments, motions to intervene, and protests is 30 days from the issuance of this notice by the Commission. All documents may be filed electronically via the Internet. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov/docs-filing/efiling.asp.* If unable to be filed electronically, documents may be paper-filed. To paper-file, an original and seven copies should be mailed to: Secretary, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426. Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments.

Please include the project number (P–2165–067) on any comments, motions, or recommendations filed.

k. *Description of Request:* Alabama Power Company requests Commission approval to grant Curry Water Authority, Inc. a permit to use project lands and waters within the project boundary on Smith Lake for the construction of a raw water intake facility to withdraw up to 3.8 million gallons per day. A portion of the intake facility would be constructed within the project boundary, consisting of concrete encased columns supporting a pump house containing four vertical turbine pumps over the water (Latitude 33.999941, Longitude -87.283845); a 12 inch water main running from the pump house, and a 25 foot long by 10 foot wide walkway supported by piers. Also included in the construction would be a control building and a security fence located outside the 522 foot contour of the project boundary on land owned by the Curry Water Authority, Inc. off of Bluff Way Drive.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street NE., Room 2A, Washington, DC 20426, or by calling 202–502–8371. This filing may also be viewed on the Commission's Web site at *http://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, call 866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call 202–502–8659. A copy is also available for inspection and reproduction at the address in item (h) above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified

comment date for the particular application.

o. *Filing and Service of Responsive Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS''; ''PROTESTS'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. If an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Dated: August 14, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–20577 Filed 8–19–15; 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 hereby gives notice that members of the Commission's staff will attend the following meeting related to the Midcontinent Independent System Operator, Inc. (MISO)—PJM Interconnection, L.L.C. (PJM) Joint and Common Market Initiative (Docket No. AD14–3–000): MISO/PJM Joint Stakeholder Meeting—August 20, 2015.

The above-referenced meeting will be held at: PJM Conference & Training Center, 2750 Monroe Boulevard, Audubon, PA 19403.

The above-referenced meeting is open to the public.

Further information may be found at *www.pjm.com.*

The discussions at the meeting described above may address matters at issue in the following proceedings:

Docket No. EL13–88, Northern Indiana Public Service Company v. Midcontinent Independent System Operator, Inc. and PJM Interconnection, L.L.C.

Docket No. EL11–34, Midcontinent Independent System Operator, 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. ER11–1844, Midwest Independent Transmission System Operator, Inc.

Docket No. ER13–1864, Southwest Power Pool, Inc.

Docket No. ER10–1791, Midwest Independent Transmission System Operator, Inc.

Docket Nos. ER13–1923, ER13–1938, ER13–1943, ER13–1945, Midcontinent Independent System Operator, Inc.

Docket Nos. ER13–1924, ER13–1926, ER13–1927, ER13–1936, ER13–1944, ER13–1947, PJM Interconnection, L.L.C.

Docket Nos. ER13–1937, ER13–1939, Southwest Power Pool, Inc.

Docket No. ER14–1174, Southwest Power Pool, Inc.

Docket No. ER14–1736, Midcontinent Independent System Operator, Inc.

Docket No. ER14–2022, Midcontinent Independent System Operator, Inc.

Docket No. ER14–2445, Midcontinent Independent System Operator, Inc.

Docket No. ER15–1874, PJM Interconnection, L.L.C.

Docket No. ER15–1890, Midcontinent Independent System Operator, Inc.

For more information, contact Valerie Teeter, Office of Energy Policy and Innovation, Federal Energy Regulatory Commission at (202) 502–8538 or *Valerie.Teeter@ferc.gov.*

Dated: August 13, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–20463 Filed 8–19–15; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Availability of the Final Environmental Impact Statement for the Proposed Lake Charles Liquefaction Project

	Docket No.
Trunkline Gas Company, LLC.	CP14–119–000
Lake Charles LNG Company, LLC.	CP14–120–000
Lake Charles LNG Export Company, LLC.	CP14–122–000

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Lake Charles Liquefaction Project, proposed by Trunkline Gas Company, LLC (Trunkline), Lake Charles LNG Company, LLC, and Lake Charles LNG Export Company, LLC in the above-referenced dockets. Trunkline requests authorization to construct, install, and operate new natural gas pipeline facilities; modify certain existing pipeline facilities; and abandon one compressor unit in the states of Arkansas, Mississippi, and Louisiana (collectively referred to as the Non-Liquefaction Facilities). Lake Charles LNG Company, LLC and Lake Charles LNG Export Company, LLC (collectively referred to as Lake Charles LNG) request authorization to site, construct, and operate new liquefaction facilities adjacent to an existing liquefied natural gas (LNG) terminal located in Calcasieu Parish, Louisiana, and to construct and operate certain facility modifications at the existing LNG terminal. The new liquefaction facilities would have a design production capacity of 16.45 million metric tons of LNG per annum, which would provide an LNG export capacity equivalent to about 2 billion cubic feet per day of natural gas.

Lake Charles LNG also requests authorization to abandon certain terminal facilities previously certificated under the Natural Gas Act (NGA) section 7; and convert such certificated facilities so that the entirety of the company's facilities and operations are authorized solely under NGA section 3.

The final EIS assesses the potential environmental effects of construction and operation of the Lake Charles Liquefaction Project in accordance with the requirements of the National Environmental Policy Act. The FERC staff concludes that approval of the

proposed project would have some adverse environmental impacts; however, most of these impacts would be reduced to less-than-significant levels with the implementation of Lake Charles LNG's and Trunkline's proposed mitigation and the additional measures recommended in the final EIS.

The U.S. Army Corps of Engineers, U.S. Coast Guard, U.S. Department of Energy, U.S. Fish and Wildlife Service, and U.S. Department of Transportation participated as cooperating agencies in the preparation of the final EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by a proposal and participate in the National Environmental Policy Act analysis. Although the cooperating agencies provided input on the conclusions and recommendations presented in the final EIS, the agencies will present their own conclusions and recommendations in their respective records of decision or determinations for the project.

The Lake Charles Liquefaction Project includes:

- Three liquefaction trains, each with a production capacity sufficient to produce 5.48 million metric tons per annum of LNG for export (each train would contain metering and gas treatment facilities, liquefaction and refrigerant units, safety and control systems, and associated infrastructure);
- modifications and upgrades at the existing Trunkline LNG terminal;
- about 0.5 mile of 48-inch-diameter feed gas line to supply natural gas to the liquefaction facility from existing gas transmission pipelines;
- approximately 17.9 miles of 24- and 42-inch-diameter natural gas pipeline;
- a new compressor station with a manufacturer's rating of 103,175 horsepower (hp), which equates to a site-specific rating of 98,685 hp (based on relative humidity and elevation);
- abandonment of a 3,000-hp compressor unit, installation of a unit with a manufacturer's rating of 15,900 hp and site-specific rating of 15,002-hp unit, and piping modifications at one existing compressor station;
- modification of station piping at three other existing compressor stations;
- five new meter stations and modifications and upgrades of five existing meter stations;
- modification of certain existing pipeline facilities; and
- construction of miscellaneous auxiliary and appurtenant facilities.

The FERC staff mailed copies of the final EIS to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners; other interested individuals and non-governmental organizations; newspapers and libraries in the project area; and parties to this proceeding. Paper copy versions of this EIS were mailed to those specifically requesting them; all others received a compact disk version. In addition, the final EIS is available for public viewing on the FERC's Web site (*www.ferc.gov*) using the eLibrary link. A limited number of hardcopies are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference Room, 888 First Street NE., Room 2A, Washington, DC 20426, (202) 502–8371.

Additional information about the project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC Web site (*www.ferc.gov*) using the eLibrary link. Click on the eLibrary link, click on ''General Search,'' and enter the docket number(s) excluding the last three digits in the Docket Number field (*i.e.,* CP14–119, CP14–120, and CP14–122). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676; for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: August 14, 2015.

Kimberly D. Bose,

Secretary.

[FR Doc. 2015–20574 Filed 8–19–15; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System (Board).

SUMMARY: On July 9, 2015, the Federal Reserve published a notice in the **Federal Register** (80 FR 39433) requesting public comment to revise and extend the Banking Organization Systemic Risk Report (FR Y–15; OMB No. 7100–0352). The July 9 proposal would, among other revisions, collect information on short-term wholesale funding.

On July 20, 2015, the Board adopted a final rule establishing a capital surcharge for the largest, most interconnected banks. In that final rule, the Board amended the July 9 proposal to conform the definition of short-term wholesale funding with the definition in the final rule. To allow interested persons to comment on the entire notice, the Board is extending the comment period of the July 9 proposal, to include the July 20 amendments to the proposed short-term wholesale funding collection, until October 19, 2015.

DATES: Comments must be submitted on or before October 19, 2015. The comment period for the proposed revisions and extension of the FR Y–15 published July 9, 2015 (80 FR 39433) is extended from September 8, 2015 to October 19, 2015.

ADDRESSES: You may submit comments, identified by FR Y–15, by any of the following methods:

- *Agency Web site: http://www.federalreserve.gov.* Follow the instructions for submitting comments at *http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.*
- *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, 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 NW., (between 18th and 19th Street 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: 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.

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.*

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, With Revision, of the Following Report

Report title: The Banking Organization Systemic Risk Report.

Agency form number: FR Y–15

OMB control number: 7100–0352.

Frequency: Quarterly.

Reporters: U.S. bank holding companies (BHCs) and savings and loan holding companies (SLHCs) with $50 billion or more of total consolidated assets and any U.S.-based organizations designated as global systemically important banks (G–SIBs) that do not otherwise meet the consolidated assets threshold for BHCs.

Estimated annual reporting hours: One-time implementation: Savings and loan holding companies—1,000 hours; ongoing—54,536 hours.

Estimated average hours per response: One-time implementation: Savings and loan holding companies—1,000 hours; ongoing—401 hours.

Number of respondents: 34

General description of report: This information collection is mandatory and is authorized by the Dodd-Frank Act (sections 163, 165, and 604), the International Banking Act, the Bank Holding Company Act, and the Home Owners' Loan Act (19 U.S.C. 1462, 1467, and 3106).

Abstract: The FR Y–15 report collects systemic risk data from U.S. BHCs and SLHCs with total consolidated assets of $50 billion or more, and any U.S.-based organization identified as a global systemically important bank (G–SIB) [1] based on data from the previous calendar year that does not otherwise meet the consolidated assets threshold for BHCs. The Federal Reserve uses the FR Y–15 data primarily to monitor, on an ongoing basis, the systemic risk profile of the institutions which are subject to enhanced prudential standards under section 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA).[2]

Current Actions: On July 9, 2015, the Federal Reserve published a notice in the **Federal Register** (80 FR 39433) requesting public comment for 60 days to revise and extend the FR Y–15 (July 9 proposal). The July 9 proposal would, among other revisions, collect information on short-term wholesale funding on proposed Schedule G. The proposed definition of ''short-term wholesale funding'' and weightings in the FR Y–15 proposal were based on the definition and weighting of ''short-term wholesale funding'' included in the Board's proposal to establish a capital surcharge for U.S. global systemically important bank holding companies (GSIBs), which was published in the **Federal Register** on December 18, 2014 (December proposal).[3] On July 20, 2015, the Board adopted a final rule to establish a capital surcharge for GSIBs. Like the December proposal, the GSIB final rule incorporates a measure of short-term wholesale funding, but modifies that measure in response to comments.

In connection with the GSIB final rule, the Board is amending the July proposal to align the definition of proposed short-term wholesale funding with the definition in the final GSIB surcharge rule. The amendments to proposed Schedule G include (1) moving three line items to different tiers, (2) adding an item to capture firm short positions, (3) adding two automatically-calculated items, (4) adding one item derived from the FR Y–9C, (5) deleting two items, and (6) collecting customer short positions as part of the secured funding totals. The Board also extended the comment period on the proposed revisions to the FR Y–15 until October 19, 2015 to allow interested persons to comment on the entire notice, including the July 20, 2015, amendments to the proposed short-term wholesale funding collection.

The Board estimates that these minimal differences will not affect the burden estimates provided in the July 9 proposal. The comment period for the proposed changes to the FR Y–15 proposal would also be extended to October 19, 2015, to allow commenters the opportunity to comment on the full proposal, including changes to the short-term wholesale funding measure adopted in this final rule. The Federal Reserve proposes the following revisions to the FR Y–15, which would be effective December 31, 2015:

Schedule G—Short-Term Wholesale Funding Indicator

Consistent with the calculation of short-term wholesale funding in the final rule, the Federal Reserve proposes to move unsecured wholesale funding obtained outside of the financial sector (item 2(b)) and retail brokered deposits and sweeps (item 2(c)) so that they are subcomponents of item 1, and to move unsecured wholesale funding obtained within the financial sector (item 4(a)) so that it is subcomponent of item 3.

The final rule excludes firm short positions involving Level 1 and Level 2A securities from the short-term wholesale funding definition, and assigns a maximum weight of 25 percent to firm short positions involving Level 2B securities or securities that do not

[1] *See 2014 update of list of global systemically important banks (G–SIBs),* available at *www.financialstabilityboard.org/wp-content/uploads/r_141106b.pdf.*

[2] 19 U.S.C. 5365.

[3] See 79 FR 75473 (December 18, 2014).

qualify as high quality liquid assets. To be consistent with this treatment, the Federal Reserve proposes adding firm short positions involving Level 2B liquid assets or non-high quality liquid assets (new item 1(d)). To simplify the reporting requirement, the Federal Reserve further proposes deleting short positions involving a Level 1 or Level 2A liquid asset (item 2(e)), removing shorts from other covered asset exchanges and short positions (item 3(b)), and collecting customer short positions as part of the secured funding totals.

As a consequence of the aforementioned changes, the Federal Reserve also proposes adding total first tier short-term wholesale funding (new item 1(e)) to capture the total of items 1(a) through 1(d), and deleting total other short-term wholesale funding (item 4(c)) which is no longer needed.

The final rule measures short-term wholesale funding as a percent of risk weighted assets. To capture this value, the Federal Reserve proposes adding average risk-weighted assets (new item 7) and short-term wholesale funding metric (new item 8) to the schedule.

Board of Governors of the Federal Reserve System, August 17, 2015.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2015–20632 Filed 8–18–15; 4:15 pm]

BILLING CODE P

FEDERAL TRADE COMMISSION

[File No. 152 3202]

Inbox Group, LLC; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 16, 2015.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/inboxgroupconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Inbox Group, LLC, Consent Agreement; File No. 1523202'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/inboxgroupconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''Inbox Group, LLC, Consent Agreement; File No. 1523202'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Monique Einhorn, Bureau of Consumer Protection, (202) 326–2575, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 17, 2015), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 16, 2015. Write ''Inbox Group, LLC, Consent Agreement; File No. 1523202'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/inboxgroupconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Inbox Group, LLC, Consent Agreement; File No. 1523202'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 16, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to Inbox Group, LLC (''Inbox Group'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that Inbox Group made to consumers concerning its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (''EU'') (''U.S.-EU Safe Harbor Framework'' or ''Safe Harbor Framework''). The Safe Harbor Framework allows U.S. companies to transfer data outside the EU consistent with EU law. To join the Safe Harbor Framework, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing ''adequate'' privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public Web site, *www.export.gov/safeharbor,* where it posts the names of companies that have self-certified to the Safe Harbor Framework. The listing of companies indicates whether their self-certification is ''current'' or ''not current.'' Companies are required to re-certify every year in order to retain their status as ''current'' members of the Safe Harbor Framework.

Inbox Group is a marketing agency that provides email, social media, and mobile marketing programs and services. According to the Commission's complaint, since at least January 2015, Inbox Group set forth on its Web site, *http://www.inboxgroup.com/company/privacy/,* privacy policies and statements about its practices, including statements related to its participation in the U.S.-EU Safe Harbor Framework.

The Commission's complaint alleges that Inbox Group falsely represented that it was a participant in the U.S.-EU Safe Harbor Framework when, in fact, Inbox Group was never a participant in the U.S.-EU Safe Harbor Framework. Commerce has never included the company on its public Web site.

Part I of the proposed order prohibits Inbox Group from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Inbox Group to retain documents relating to its compliance with the Order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures the notification to the FTC of changes in corporate status. Part V mandates that Inbox Group submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2015–20592 Filed 8–19–15; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 152 3141]

Gold Connect, LLC; Analysis of Proposed Consent Order to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 16, 2015.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/golfconnectconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Golf Connect, LLC, Consent Agreement; File No. 1523141'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/golfconnectconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''Golf Connect, LLC, Consent Agreement; File No. 1523141'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Monique Einhorn, Bureau of Consumer Protection, (202) 326–2575, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment

describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 17, 2015), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 16, 2015. Write ''Golf Connect, LLC, Consent Agreement; File No. 1523141'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which * * * is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/golfconnectconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Golf Connect, LLC, Consent Agreement; File No. 1523141'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 16, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to Golf Connect, LLC (''Golf Connect'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that Golf Connect made to consumers concerning its participation in the Safe Harbor privacy frameworks agreed upon by the U.S. and the European Union (''EU'') and the U.S. and Switzerland (collectively, ''Safe Harbor Frameworks''). The Safe Harbor Frameworks allow U.S. companies to transfer data outside the EU and Switzerland consistent with EU and Swiss law. To join the Safe Harbor Frameworks, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a set of principles and related requirements that have been deemed by the European Commission and Switzerland as providing ''adequate'' privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public Web site, *www.export.gov/safeharbor,* where it posts the names of companies that have self-certified to the Safe Harbor Frameworks. The listing of companies indicates whether their self-certification is ''current'' or ''not current.'' Companies are required to re-certify every year in order to retain their status as ''current'' members of the Safe Harbor Frameworks.

Golf Connect provides a communication platform and software and technology services to the golf industry. According to the Commission's complaint, Golf Connect has set forth on its Web site, *http://www.golfhub.com/CustomerService/PrivacyPolicy?lang+en,* privacy policies and statements about its practices, including statements related to its participation in the Safe Harbor Frameworks.

The Commission's complaint alleges that Golf Connect falsely represented that it was a ''current'' participant in the Safe Harbor Frameworks when, in fact, from April 2014 until April 2015, Golf Connect was not a ''current'' participant in the Safe Harbor Frameworks. The company's predecessor in interest had submitted its self-certification to the Safe Harbor Frameworks, but that self-certification had lapsed. Commerce subsequently updated the company's status to ''not current'' on its public Web site.

Part I of the proposed order prohibits Golf Connect from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

Framework and the U.S.-Swiss Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Golf Connect to retain documents relating to its compliance with the order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures notification to the FTC of changes in corporate status. Part V mandates that Golf Connect submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2015–20595 Filed 8–19–15; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 152 3190]

Dale Jarrett Racing Adventure, Inc.; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 16, 2015.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/dalejarrettracingconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Dale Jarrett Racing Adventure, Inc., Consent Agreement; File No. 1523190'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/dalejarrettracingconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''Dale Jarrett Racing Adventure, Inc., Consent Agreement; File No. 1523190'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Monique Einhorn, Bureau of Consumer Protection, (202) 326–2575, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 17, 2015), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 16, 2015. Write ''Dale Jarrett Racing Adventure, Inc., Consent Agreement; File No. 1523190'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. § 46(f), and FTC Rule 4.10(a)(2), 16 CFR § 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/dalejarrettracingconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Dale Jarrett Racing Adventure, Inc., Consent Agreement; File No. 1523190'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 16, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to Dale Jarrett Racing Adventure, Inc. (''Dale Jarrett Racing Adventure'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that Dale Jarrett Racing Adventure made to consumers concerning its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (''EU'') (''U.S.-EU Safe Harbor Framework'' or ''Safe Harbor Framework''). The Safe Harbor Framework allows U.S. companies to transfer data outside the EU consistent with EU law. To join the Safe Harbor Framework, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing ''adequate'' privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public Web site, *www.export.gov/safeharbor,* where it posts the names of companies that have self-certified to the Safe Harbor Framework. The listing of companies indicates whether their self-certification is ''current'' or ''not current.'' Companies are required to re-certify every year in order to retain their status as ''current'' members of the Safe Harbor Framework.

Dale Jarrett Racing Adventure is a race car driving school that offers consumers an opportunity to ride in and drive genuine stock cars with professional drivers, and was founded by NASCAR champion Dale Jarrett. According to the Commission's complaint, since at least January 2015, Dale Jarrett Racing Adventure set forth on its Web site, *http://www.racingadventure.com/privacy.html,* privacy policies and statements about its practices, including statements related to its participation in the U.S.-EU Safe Harbor Framework.

The Commission's complaint alleges that Dale Jarrett Racing Adventure falsely represented that it was a participant in the U.S.-EU Safe Harbor Framework when, in fact, Dale Jarrett Racing Adventure was never a participant in the U.S.-EU Safe Harbor Framework. Commerce has never included the company on its public Web site.

Part I of the proposed order prohibits Dale Jarrett Racing Adventure from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and the U.S.-Swiss Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires Dale Jarrett Racing Adventure to retain documents relating to its compliance with the Order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures the notification to the FTC of changes in corporate status. Part V mandates that Dale Jarrett Racing Adventure submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2015–20593 Filed 8–19–15; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

SES Performance Review Board

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of members to the FTC Performance Review Board.

FOR FURTHER INFORMATION CONTACT: Vicki Barber, Chief Human Capital Officer, 600 Pennsylvania Avenue NW., Washington, DC 20580, (202) 326–2700.

SUPPLEMENTARY INFORMATION: Publication of the Performance Review Board (PRB) membership is required by 5 U.S.C. 4314 (c)(4). The PRB reviews and evaluates the initial appraisal of a senior executive's performance by the supervisor, and makes recommendations regarding performance ratings, performance awards, and pay-for-performance pay adjustments to the Chairwoman.

The following individuals have been designated to serve on the Commission's Performance Review Board:

David Robbins, Executive Director, Chairman
Jonathan Nuechterlein, General Counsel
Deborah Feinstein, Director, Bureau of Competition
Jessica Rich, Director, Bureau of Consumer Protection
Michael Vita, Deputy Director, Bureau of Economics

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2015–20459 Filed 8–19–15; 8:45 am]

BILLING CODE 6750–01–P

FEDERAL TRADE COMMISSION

[File No. 152 3198]

Jhayrmaine Daniels, d/b/a California Skate-Line; Analysis of Proposed Consent Order To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before September 16, 2015.

ADDRESSES: Interested parties may file a comment at *https://ftcpublic.commentworks.com/ftc/caliskatelineconsent* online or on paper, by following the instructions in the Request for Comment part of the **SUPPLEMENTARY INFORMATION** section below. Write ''Jhayrmaine Daniels,

d/b/a California Skate-Line, Consent Agreement; File No. 1523198'' on your comment and file your comment online at *https://ftcpublic.commentworks.com/ftc/caliskatelineconsent* by following the instructions on the web-based form. If you prefer to file your comment on paper, write ''Jhayrmaine Daniels, d/b/a California Skate-Line, Consent Agreement; File No. 1523198'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: Monique Einhorn, Bureau of Consumer Protection, (202) 326–2575, 600 Pennsylvania Avenue NW., Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 15 U.S.C. 46(f), and FTC Rule 2.34, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for August 17, 2015), on the World Wide Web at: *http://www.ftc.gov/os/actions.shtm.*

You can file a comment online or on paper. For the Commission to consider your comment, we must receive it on or before September 16, 2015. Write ''Jhayrmaine Daniels, d/b/a California Skate-Line, Consent Agreement; File No. 1523198'' on your comment. Your comment—including your name and your state—will be placed on the public record of this proceeding, including, to the extent practicable, on the public Commission Web site, at *http://www.ftc.gov/os/publiccomments.shtm.* As a matter of discretion, the Commission tries to remove individuals' home contact information from comments before placing them on the Commission Web site.

Because your comment will be made public, you are solely responsible for making sure that your comment does not include any sensitive personal information, like anyone's Social Security number, date of birth, driver's license number or other state identification number or foreign country equivalent, passport number, financial account number, or credit or debit card number. You are also solely responsible for making sure that your comment does not include any sensitive health information, like medical records or other individually identifiable health information. In addition, do not include any ''[t]rade secret or any commercial or financial information which . . . is privileged or confidential,'' as discussed in Section 6(f) of the FTC Act, 15 U.S.C. 46(f), and FTC Rule 4.10(a)(2), 16 CFR 4.10(a)(2). In particular, do not include competitively sensitive information such as costs, sales statistics, inventories, formulas, patterns, devices, manufacturing processes, or customer names.

If you want the Commission to give your comment confidential treatment, you must file it in paper form, with a request for confidential treatment, and you have to follow the procedure explained in FTC Rule 4.9(c), 16 CFR 4.9(c).[1] Your comment will be kept confidential only if the FTC General Counsel, in his or her sole discretion, grants your request in accordance with the law and the public interest.

Postal mail addressed to the Commission is subject to delay due to heightened security screening. As a result, we encourage you to submit your comments online. To make sure that the Commission considers your online comment, you must file it at *https://ftcpublic.commentworks.com/ftc/caliskatelineconsent* by following the instructions on the web-based form. If this Notice appears at *http://www.regulations.gov/#!home,* you also may file a comment through that Web site.

If you file your comment on paper, write ''Jhayrmaine Daniels, d/b/a California Skate-Line, Consent Agreement; File No. 1523198'' on your comment and on the envelope, and mail your comment to the following address: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW., Suite CC–5610 (Annex D), Washington, DC 20580, or deliver your comment to the following address: Federal Trade Commission, Office of the Secretary, Constitution Center, 400 7th Street SW., 5th Floor, Suite 5610 (Annex D), Washington, DC 20024. If possible, submit your paper comment to the Commission by courier or overnight service.

Visit the Commission Web site at *http://www.ftc.gov* to read this Notice and the news release describing it. The FTC Act and other laws that the Commission administers permit the collection of public comments to consider and use in this proceeding as appropriate. The Commission will consider all timely and responsive public comments that it receives on or before September 16, 2015. You can find more information, including routine uses permitted by the Privacy Act, in the Commission's privacy policy, at *http://www.ftc.gov/ftc/privacy.htm.*

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission (''FTC'' or ''Commission'') has accepted, subject to final approval, a consent agreement applicable to Jhayrmaine Daniels, d/b/a California Skate-Line (''California Skate-Line'').

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received, and will decide whether it should withdraw from the agreement and take appropriate action or make final the agreement's proposed order.

This matter concerns alleged false or misleading representations that California Skate-Line made to consumers concerning its participation in the Safe Harbor privacy framework agreed upon by the U.S. and the European Union (''EU'') (''U.S.-EU Safe Harbor Framework'' or ''Safe Harbor Framework''). The Safe Harbor Framework allows U.S. companies to transfer data outside the EU consistent with EU law. To join the Safe Harbor Framework, a company must self-certify to the U.S. Department of Commerce (''Commerce'') that it complies with a set of principles and related requirements that have been deemed by the European Commission as providing ''adequate'' privacy protection. These principles include notice, choice, onward transfer, security, data integrity, access, and enforcement. Commerce maintains a public Web site, *www.export.gov/safeharbor,* where it posts the names of companies that have self-certified to the Safe Harbor Framework. The listing of companies indicates whether their self-certification is ''current'' or ''not current.'' Companies are required to re-certify

[1] In particular, the written request for confidential treatment that accompanies the comment must include the factual and legal basis for the request, and must identify the specific portions of the comment to be withheld from the public record. *See* FTC Rule 4.9(c), 16 CFR 4.9(c).

every year in order to retain their status as ''current'' members of the Safe Harbor Framework.

California Skate-Line sells skating-related lessons and clothing, hosts events, and sponsors live performances. According to the Commission's complaint, since at least January 2015, California Skate-Line set forth on its Web site, *http://caliskateline.com/index.php?col=3&page=privacy,* privacy policies and statements about its practices, including statements related to its participation in the U.S.-EU Safe Harbor Framework.

The Commission's complaint alleges that California Skate-Line falsely represented that it was a participant in the U.S.-EU Safe Harbor Framework when, in fact, California Skate-Line was never a participant in the U.S.-EU Safe Harbor Framework. Commerce has never included the company on its public Web site.

Part I of the proposed order prohibits California Skate-Line from making misrepresentations about its membership in any privacy or security program sponsored by the government or any other self-regulatory or standard-setting organization, including, but not limited to, the U.S.-EU Safe Harbor Framework and U.S.-Swiss Safe Harbor Framework.

Parts II through VI of the proposed order are reporting and compliance provisions. Part II requires California Skate-Line to retain documents relating to its compliance with the Order for a five-year period. Part III requires dissemination of the order now and in the future to persons with responsibilities relating to the subject matter of the order. Part IV ensures the notification to the FTC of changes in corporate status. Part V mandates that California Skate-Line submit an initial compliance report to the FTC, and make available to the FTC subsequent reports. Part VI is a provision ''sunsetting'' the order after twenty (20) years, with certain exceptions.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the proposed complaint or order or to modify the order's terms in any way.

By direction of the Commission.

April J. Tabor,

Acting Secretary.

[FR Doc. 2015–20594 Filed 8–19–15; 8:45 am]

BILLING CODE 6750–01–P

GENERAL SERVICES ADMINISTRATION

[Notice–2015–PM–03; Docket No. 2015–0002; Sequence No. 18]

Notice of Public Meeting for the Supplemental Draft Environmental Impact Statement for the Federal Bureau of Investigation Central Records Complex in Winchester County, Virginia

AGENCY: General Services Administration (GSA).

ACTION: Meeting notice.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations, the GSA has prepared and filed with the Environmental Protection Agency (EPA), a Supplement to the Final Environmental Impact Statement (EIS), from May 2007, analyzing the environmental impacts of site acquisition and development of the Federal Bureau of Investigation (FBI), Central Records Complex (CRC), in Winchester County, Virginia.

DATES: *Effective Date:* August 21, 2015. The public may submit comments on the Supplemental Draft EIS during a 45-day public review and comment period beginning Friday, August 21, 2015, and ending on Monday, October 5, 2015. Instructions for submitting comments may be found under the heading **SUPPLEMENTAL INFORMATION** in this notice.

Public Meeting: A public information meeting is scheduled for Thursday, September 10, 2015 between 6:00 p.m. and 8:00 p.m., Eastern Standard Time (EST), at the War Memorial Building Social Hall at Jim Barnett Park, located at 1001 East Cork Street, Winchester, VA 22601.

FOR FURTHER INFORMATION CONTACT: Ms. Courtenay Hoernemann, Project Environmental Planner, 20 N 8th Street, Philadelphia PA 19107 at 215–446–4710.

ADDRESSES: Send written comments by email to *frederick.va.siteacquisition@gsa.gov,* or U.S. Postal Service to Courtenay Hoernemann, Project Environmental Planner, 20 N 8th Street, Philadelphia, PA 19107.

SUPPLEMENTARY INFORMATION:

Background: The proposed FBI facility would consolidate the FBI's records currently housed within the Washington DC area, in addition to field offices and information technology centers nationwide. The project requirements are for an overall square footage of 256,425 gross square feet, and will include the records storage building, support area, visitor's screening facility, service center, and guard booth. Parking is proposed at 427 spaces. A Notice of Intent to prepare a Supplemental Draft EIS was published in the **Federal Register** at 80 FR 8311 on February 17, 2015. A public scoping comment period was held for 30 days following publication of the Notice of Intent.

The alternatives fully evaluated in the Supplemental Draft EIS include the No Action Alternative, the Arcadia Route 50 property, and Whitehall Commerce Center.

The Supplemental Draft EIS incorporates by reference and builds upon the analyses presented in the 2007 Final EIS, and documents the Section 106 process under the National Historic Preservation Act of 1966, as amended (36 CFR part 800). The Supplemental Draft EIS addresses changes to the proposed action relevant to environmental concerns and assesses any new circumstances or information relevant to potential environmental impacts.

The Supplemental Draft EIS has been distributed to various federal, state, and local agencies. The Supplemental Draft EIS is available for review on the project Web site *http://www.fbicrc-seis.com.* A printed copy of the Supplemental Draft EIS is available for viewing at the following libraries:

- Handley Library, 100 West Piccadilly Street, P.O. Box 58, Winchester, VA 22604
- Bowman Library, 871 Tasker Road, P.O. Box 1300, Stephens City, VA 22655
- Smith Library, Shenandoah University, 718 Wade Miller Drive, Winchester, VA 22601

Federal, state, and local agencies, and other interested parties, are invited and encouraged to be present or represented at the public meeting on Thursday, September 10, 2015. All formal comments will become part of the public record and substantive comments will be responded to in the Final Supplemental EIS.

Public Comments: Comments on the Supplemental Draft EIS can be submitted three ways: (1) Submit comments via the project email address: *frederick.va.siteacquisition@gsa.gov,* (2) provide written comments during the public meeting, or (3) mail a comment form or letter to: Ms. Courtenay Hoernemann, Project Environmental Planner, 20 N. 8th Street, Philadelphia, PA 19107. Written comments postmarked by October 5, 2015 will become part of the official public record.

Public Meeting: The format will be open house with informational posters

on display, and representatives from GSA and FBI will be available to explain the proposed project, answer questions, and receive comments from the public. Comment forms will be available for the public to provide formal written comments.

Dated: August 14, 2015.

John Hofmann,

Division Director, Facilities Management & Services Programs Division, General Services Administration, Mid-Atlantic Region.

[FR Doc. 2015–20532 Filed 8–19–15; 8:45 am]

BILLING CODE 6820–89–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Agency for Healthcare Research and Quality, HHS.

ACTION: Notice.

SUMMARY: This notice announces the intention of the Agency for Healthcare Research and Quality (AHRQ) to request that the Office of Management and Budget (OMB) approve the proposed information collection project: ''*Online Application Order Form for Products from the Healthcare Cost and Utilization Project (HCUP).*''

In accordance with the Paperwork Reduction Act, 44 U.S.C. 3501–3521, AHRQ invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by October 19, 2015.

ADDRESSES: Written comments should be submitted to: Doris Lefkowitz, Reports Clearance Officer, AHRQ, by email at *doris.lefkowitz@AHRQ.hhs.gov.*

Copies of the proposed collection plans, data collection instruments, and specific details on the estimated burden can be obtained from the AHRQ Reports Clearance Officer.

FOR FURTHER INFORMATION CONTACT: Doris Lefkowitz, AHRQ Reports Clearance Officer, (301) 427–1477, or by email at *doris.lefkowitz@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Project

Online Application Order Form for Products From the Healthcare Cost and Utilization Project (HCUP)

The Healthcare Cost and Utilization Project (HCUP is a vital resource helping the Agency achieve its mission to produce evidence to make health care safer, higher quality, more accessible, equitable, and affordable. HCUP is a family of health care databases and related software tools and products developed through a Federal-State-Industry partnership and sponsored by AHRQ. HCUP includes the largest collection of longitudinal hospital care data in the United States, with all-payer, encounter-level information beginning in 1988. The HCUP databases are annual files that contain anonymous information from hospital discharge records for inpatient care and certain components of outpatient care, such as emergency care and ambulatory surgeries. The project currently releases seven types of databases created for research use on a broad range of health issues, including cost and quality of health services, medical practice patterns, access to health care programs, and outcomes of treatments at the national, State, and local market levels. HCUP also produces a large number of software tools to enhance the use of administrative health care data for research and public health use. Software tools use information available from a variety of sources to create new data elements, often through sophisticated algorithms, for use with the HCUP databases.

HCUP's objectives are to:

- Create and enhance a powerful source of national, state, and all-payer health care data.
- Produce a broad set of software tools and products to facilitate the use of HCUP and other administrative data.
- Enrich a collaborative partnership with statewide data organizations (that voluntarily participate in the project) aimed at increasing the quality and use of health care data.
- Conduct and translate research to inform decision making and improve health care delivery.

This project is being conducted by AHRQ through its primary contractor and subcontractor, Truven Health Analytics and Social & Scientific Systems, Inc., pursuant to AHRQ's statutory authority to conduct and support research on health care and on systems for the delivery of such care, including activities with respect to the outcomes, cost, cost-effectiveness, and use of health care services and access to such services. 42 U.S.C. 299a(a)(3).

Method of Collection

The HCUP releases seven types of databases for public research use:

(1) The National Inpatient Sample (NIS) is the largest all-payer inpatient care database in the United States, yielding national estimates of hospital inpatient stays. The NIS approximates 20 percent of the discharges from all U.S. community hospitals and contains data from approximately 8 million hospital stays each year. NIS data releases are available for purchase from the HCUP Central Distributor for data years beginning in 1988.

(2) The Kids' Inpatient Database (KID) is the only all-payer inpatient care database for children in the United States. The KID was specifically designed to permit researchers to study a broad range of conditions and procedures related to child health issues. The KID contains a sample of 2 to 3 million discharges for children age 20 and younger from more than 3,500 U.S. community hospitals. KID data releases are available every third year starting in 1997.

(3) The Nationwide Emergency Department Sample (NEDS) is the largest all-payer Emergency Department (ED) database in the United States. It is constructed to capture information both on ED visits that do not result in an admission and on ED visits that result in an admission to the same hospital. The NEDS contains more than 25 million unweighted records for ED visits at about 1,000 U.S. community hospitals and approximates a 20-percent stratified sample of U.S. hospital-based EDs. NEDS data releases are available beginning with data year 2006.

(4) The State Inpatient Databases (SID) contain the universe of inpatient discharge abstracts from data organizations in 46 States and the District of Columbia that currently participate in the SID. Together, the SID encompasse approximately 96 percent of all U.S. community hospital discharges. Most States that participate in the SID make their data available for purchase through the HCUP Central Distributor. Files are available beginning with data year 1990.

(5) The State Ambulatory Surgery and Services Databases (SASD) contain encounter-level data from ambulatory surgery and other outpatient services from hospital-owned facilities. In addition, some States provide data for ambulatory surgery and outpatient services from nonhospital-owned facilities. Currently, 34 States participate in the SASD. Files are available beginning with data year 1997.

(6) The State Emergency Department Databases (SEDD) contain data from hospital-owned EDs for visits that do not result in a hospitalization. Currently, 32 States participate in the SEDD. Files are available beginning with data year 1999.

(7) A new database called the Nationwide Readmissions Database (NRD) is planned for release in late

2015. The NRD is designed to support various types of analyses of national readmission rates. This database addresses a large gap in health care data—the lack of nationally representative information on hospital readmissions. The NRD is a calendar-year, discharge-level database constructed from the HCUP State Inpatient Databases (SID).

To support AHRQ's mission to improve health care through health services research, HCUP databases and software tools are disseminated to users outside of the Agency through the HCUP Central Distributor at *https://www.hcup-us.ahrq.gov/tech_assist/centdist.jsp.* The HCUP Central Distributor assists qualified researchers to access uniform research data across multiple states with the use of one application process. The HCUP databases disseminated through the Central distributor are referred to as ''restricted access public release files''; that is, they are publicly available, but only under restricted conditions.

This information collection request is for the activities associated with the HCUP database application process not the collection of health care data for HCUP databases. The activities associated with this application include:

(1) HCUP Application. All persons requesting access to the HCUP databases must complete an application at *https://distributor.hcup-us.ahrq.gov/.* Applications for HCUP State databases require a brief description of the planned research use to ensure that the intended use is consistent with HCUP policies and with the HCUP Data Use Agreement. Paper versions of all application packages are also available for downloading at *http://www.hcup-us.ahrq.gov/tech_assist/centdist.jsp.*

(2) HCUP Data Use Agreement Training. All persons wanting access to the HCUP databases must complete an online training course. The purpose of the training is to emphasize the importance of data protection, reduce the risk of inadvertent violations, and describe the individual's responsibility when using HCUP data. The training course can be accessed and completed online at *http://www.hcup-us.ahrq.gov/tech_assist/dua.jsp.*

(3) HCUP Data Use Agreement (DUA). All persons wanting access to the HCUP databases must sign a data use agreement. An example DUA for the Nationwide databases is available at *http://www.hcup-us.ahrq.gov/team/NationwideDUA.jsp.*

HCUP databases are released to researchers outside of AHRQ after the completion of required training and submission of an application that includes a signed HCUP DUA. In addition, before restricted access public release state-level databases are released, AHRQ must review and approve the applicant's statement of intended use to ensure that the planned use is consistent with HCUP policies and with the HCUP Data Use Agreement. Fees are set for databases released through the HCUP Central Distributor depending on the type of database. The fee for sale of state-level data is determined by each participating Statewide Data Organization and reimbursed to those organizations. Information collected in the HCUP Application process will be used for two purposes only:

1. Business Transaction: In order to deliver the HCUP databases and software, contact information is necessary for shipping the data on disk (or any other media used in the future).

2. Enforcement of the HCUP DUA: The HCUP DUA contains several restrictions on use of the data. Most of these restrictions have been put in place to safeguard the privacy of individuals and establishments represented in the data. For example, data users can only use the data for research, analysis, and aggregate statistical reporting and are prohibited from attempting to identify any persons in the data. Contact information on HCUP DUAsis retained in the event that a violation of the DUA takes place.

Estimated Annual Respondent Burden

Exhibit 1 shows the estimated annualized burden associated with the applicants' time to order any of the HCUP databases. An estimated 1,300 persons will order HCUP data annually. Each of these persons will complete an application (10 minutes), the DUA training (15 minutes) and a DUA (5 minutes). The total burden is estimated to be 650 hours annually.

Exhibit 2 shows the estimated annualized cost burden associated with the applicants' time to order HCUP data. The total cost burden is estimated to be $24,772 annually.

EXHIBIT 1—ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Number of respondents	Number of responses per respondent	Hours per response	Total burden hours
HCUP Application Form	1,300	1	10/60	217
HCUP DUA Training	1,300	1	15/60	325
HCUP DUA	1,300	1	5/60	108
Total	3,900	na	Na	650

EXHIBIT 2—ESTIMATED ANNUALIZED COST BURDEN

Form name	Number of respondents	Total burden hours	Average hourly wage rate *	Total cost burden
HCUP Application Form	1,300	217	$38.11	$8,270
HCUP DUA Training	1,300	325	38.11	12,386
HCUP DUA	1,300	108	38.11	4,116
Total	3,900	650	na	24,772

* Based upon the mean of the average wages for Life Scientists, All Other (19–1099), National Compensation Survey: Occupational Employment Statistics, May 2014 National Occupational Employment and Wage Estimates United States, U.S. Department of Labor, Bureau of Labor Statistics. *http://www.bls.gov/oes/current/oes_nat.htm#b29-;0000*

Request for Comments

In accordance with the Paperwork Reduction Act, comments on AHRQ's information collection are requested with regard to any of the following: (a) Whether the proposed collection of information is necessary for the proper performance of AHRQ health care research and health care information dissemination functions, including whether the information will have practical utility; (b) the accuracy of AHRQ's estimate of burden (including hours and costs) of the proposed collection(s) of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the Agency's subsequent request for OMB approval of the proposed information collection. All comments will become a matter of public record.

Sharon B. Arnold,

Deputy Director.

[FR Doc. 2015–20599 Filed 8–19–15; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From Schumacher Group Patient Safety Organization, Inc.

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of Delisting.

SUMMARY: The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to b–26, (Patient Safety Act) and the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008, (73 FR 70732–70814), provide for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety Rule authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ has accepted a notification of voluntary relinquishment from Schumacher Group Patient Safety Organization, Inc. of its status as a PSO, and has delisted the PSO accordingly.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on July 7, 2015.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/listed.*

FOR FURTHER INFORMATION CONTACT: Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ, 540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *PSO@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when the PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs.

AHRQ has accepted a notification from Schumacher Group Patient Safety Organization, Inc., a component entity of The Schumacher Group of Delaware, Inc., PSO, PSO number P0115, to voluntarily relinquish its status as a PSO. Accordingly, Schumacher Group Patient Safety Organization, Inc. was delisted effective at 12:00 Midnight ET (2400) on July 7, 2015.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Sharon B. Arnold,

Deputy Director.

[FR Doc. 2015–20598 Filed 8–19–15; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Patient Safety Organizations: Voluntary Relinquishment From Close Care Gap, PSO

AGENCY: Agency for Healthcare Research and Quality (AHRQ), Department of Health and Human Services (HHS).

ACTION: Notice of Delisting.

SUMMARY: The Patient Safety and Quality Improvement Act of 2005, 42 U.S.C. 299b–21 to b–26, (Patient Safety Act) and the related Patient Safety and Quality Improvement Final Rule, 42 CFR part 3 (Patient Safety Rule), published in the **Federal Register** on November 21, 2008, (73 FR 70732–70814), provide for the formation of Patient Safety Organizations (PSOs), which collect, aggregate, and analyze confidential information regarding the quality and safety of health care delivery. The Patient Safety Rule authorizes AHRQ, on behalf of the Secretary of HHS, to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' by the Secretary if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when a PSO's listing expires. AHRQ has accepted a notification of voluntary relinquishment from Close Care Gap, PSO of its status as a PSO, and has delisted the PSO accordingly.

DATES: The directories for both listed and delisted PSOs are ongoing and reviewed weekly by AHRQ. The delisting was effective at 12:00 Midnight ET (2400) on July 2, 2015.

ADDRESSES: Both directories can be accessed electronically at the following HHS Web site: *http://www.pso.AHRQ.gov/listed.*

FOR FURTHER INFORMATION CONTACT: Eileen Hogan, Center for Quality Improvement and Patient Safety, AHRQ,

540 Gaither Road, Rockville, MD 20850; Telephone (toll free): (866) 403–3697; Telephone (local): (301) 427–1111; TTY (toll free): (866) 438–7231; TTY (local): (301) 427–1130; Email: *PSO@AHRQ.hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Patient Safety Act authorizes the listing of PSOs, which are entities or component organizations whose mission and primary activity are to conduct activities to improve patient safety and the quality of health care delivery.

HHS issued the Patient Safety Rule to implement the Patient Safety Act. AHRQ administers the provisions of the Patient Safety Act and Patient Safety Rule relating to the listing and operation of PSOs. The Patient Safety Rule authorizes AHRQ to list as a PSO an entity that attests that it meets the statutory and regulatory requirements for listing. A PSO can be ''delisted'' if it is found to no longer meet the requirements of the Patient Safety Act and Patient Safety Rule, when a PSO chooses to voluntarily relinquish its status as a PSO for any reason, or when the PSO's listing expires. Section 3.108(d) of the Patient Safety Rule requires AHRQ to provide public notice when it removes an organization from the list of federally approved PSOs.

AHRQ has accepted a notification from Close Care Gap, PSO, a component entity of iCareQuality, Inc., PSO number P0145, to voluntarily relinquish its status as a PSO. Accordingly, Close Care Gap, PSO was delisted effective at 12:00 Midnight ET (2400) on July 2, 2015.

More information on PSOs can be obtained through AHRQ's PSO Web site at *http://www.pso.AHRQ.gov/index.html.*

Sharon B. Arnold,

Deputy Director.

[FR Doc. 2015–20597 Filed 8–19–15; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Board of Scientific Counselors, National Center for Health Statistics (BSC, NCHS)

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC), National Center for Health Statistics (NCHS) announces the following meeting of the aforementioned committee.

TIMES AND DATES:

11:00 a.m.–5:30 p.m., September 24, 2015.

8:30 a.m.–1:00 p.m., September 25, 2015.

PLACE: NCHS Headquarters, 3311 Toledo Road, Hyattsville, Maryland 20782.

STATUS: This meeting is open to the public; however, visitors must be processed in accordance with established federal policies and procedures. For foreign nationals or non-U.S. citizens, pre-approval is required (please contact Gwen Mustaf, 301–458–4500, *glm4@cdc.gov,* or Virginia Cain, *vcain@cdc.gov* at least 10 days in advance for requirements). All visitors are required to present a valid form of picture identification issued by a state, federal or international government. As required by the Federal Property Management Regulations, Title 41, Code of Federal Regulation, Subpart 101–20.301, all persons entering in or on Federal controlled property and their packages, briefcases, and other containers in their immediate possession are subject to being x-rayed and inspected. Federal law prohibits the knowing possession or the causing to be present of firearms, explosives and other dangerous weapons and illegal substances. The meeting room accommodates approximately 100 people.

PURPOSE: This committee is charged with providing advice and making recommendations to the Secretary, Department of Health and Human Services; the Director, CDC; and the Director, NCHS, regarding the scientific and technical program goals and objectives, strategies, and priorities of NCHS.

MATTERS FOR DISCUSSION: The agenda will include:

1. Welcome remarks by the Director, NCHS
2. An update on health insurance coverage data
3. A presentation on the National Health and Nutrition Examination Survey (NHANES) and the development of nutritional guidelines
4. A presentation on accessing NCHS data

Requests to make oral presentations should be submitted in writing to the contact person listed below. All requests must contain the name, address, telephone number, and organizational affiliation of the presenter.

Written comments should not exceed five single-spaced typed pages in length and must be received by September 11, 2015.

The agenda items are subject to change as priorities dictate.

CONTACT PERSON FOR MORE INFORMATION: Virginia S. Cain, Ph.D., Director of Extramural Research, NCHS/CDC, 3311 Toledo Road, Room 7208, Hyattsville, Maryland 20782, telephone (301) 458–4500, fax (301) 458–4024.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both CDC and the Agency for Toxic Substances and Disease Registry.

Elaine L. Baker,

Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 2015–20553 Filed 8–19–15; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Pediatric Advisory Committee; Notice of Meeting; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of August 12, 2015 (80 FR 48325). Phenylephrine Hydrochloride was incorrectly linked to DUREZOL (difluprednate ophthalmic emulsion) 0.05% because they were both listed as item number 1 in the numbered list of products to be discussed at the meeting. Phenylephrine Hydrochloride Ophthalmic Solution is a separate stand-alone drug that will be reviewed by the committee and should be listed as item number 2. The other drugs in the numbered list should be renumbered accordingly. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Lisa Granger, Office of Policy, Planning, Legislation, and Analysis, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3330, Silver Spring, MD 20993–0002, 301–796–9115.

SUPPLEMENTARY INFORMATION: In FR Doc. 2015–19729, appearing on page 48325, in the **Federal Register** of Wednesday, August 12, 2015, the following correction is made:

On page 48326, in the first column, the numbered list is corrected to read as follows:

1. DUREZOL (difluprednate ophthalmic emulsion) 0.05%,
2. Phenylephrine Hydrochloride Ophthalmic Solution,
3. ZYLET (loteprednol etabonate and tobramycin ophthalmic suspension),
4. BETHKIS (tobramycin Inhalation Solution),
5. INTELENCE (etravirine),
6. PREZISTA (darunavir),
7. VIRAMUNE XR (nevirapine),
8. EPIDUO (adapalene and benzoyl peroxide),
9. EXJADE (deferasirox),
10. DOTAREM (gadoterate meglumine),
11. FYCOMPA (perampanel),
12. RECOTHROM (thrombin, topical [recombinant]),
13. PREVNAR 13 (Pneumococcal 13-valent Conjugate Vaccine [Diphtheria CRM_{197} Protein]),
14. PLEXIMMUNE,
15. ELANA SURGICAL KIT (HUD),
16. BERLIN HEART EXCOR PEDIATRIC VENTRICULAR ASSIST DEVICE (VAD),
17. ENTERRA THERAPY SYSTEM, and
18. CONTEGRA Pulmonary Valved Conduit.

Dated: August 14, 2015.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2015–20541 Filed 8–19–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–2986]

Technical Document for Using the Inactive Ingredient Database; Establishment of a Public Docket

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA, or the Agency) is announcing the establishment of a public docket to receive comments from interested parties on enhancing the utility and usability of the Inactive Ingredient Database (IID) (also known as the Inactive Ingredient Guide). These comments will help FDA identify best practices to assist Agency staff in designing the IID and maintaining the information contained therein. We intend to identify and further develop these best practices in a technical guide or draft guidance to be issued at a later date.

DATES: Submit either electronic or written comments by October 19, 2015.

ADDRESSES: Submit electronic comments to *http://www.regulations.gov.* Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Elizabeth Giaquinto, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 75, Rm. 1670, Silver Spring, MD 20993–0002, 240–402–7930.

SUPPLEMENTARY INFORMATION:

I. Background

The IID provides information on inactive ingredients in FDA-approved drug products. An inactive ingredient, or excipient, is any component of a drug product other than an active ingredient (21 CFR 210.3(b)(8)). Generally, the IID identifies excipients that appear in approved drug products for a particular dosage form and route of administration.

In September 2011, FDA created the IID Working Group to develop a set of questions and answers to facilitate use of the IID. During the development of questions and answers, FDA has worked with the International Pharmaceutical Excipients Council (IPEC Americas).[1] FDA is opening a public docket to solicit comments from additional stakeholders on enhancing the utility and usability of the IID. FDA will then develop a comprehensive technical guide or draft guidance for industry and reviewers.

II. Establishment of a Public Docket and Request for Comments

To help FDA identify and ultimately establish best practices and issue a technical guide or draft guidance, FDA is requesting public comments regarding the enhancement of the IID.

FDA is requesting comments and supporting information, including proposed questions and proposed answers, on the following topics related to the IID:

1. How can we improve nomenclature in the IID (*e.g.,* use of preferred ingredient names and synonyms in the database)?
2. How should we identify excipient amounts listed in the IID?
3. How should we reflect updates to the current IID to ensure completeness and accuracy?
4. Should we restructure the IID, and if so, how?
5. Are there additional suggestions or comments for IID improvement?

FDA will consider all comments submitted. FDA generally will not respond directly to the person or organization submitting the comment.

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.*

Dated: August 14, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–20556 Filed 8–19–15; 8:45 am]

BILLING CODE 4164–01–P

[1] See Meetings between FDA and the International Pharmaceutical Excipients Council (IPEC), available at *http://www.fda.gov/aboutfda/centersoffices/officeofmedicalproductsandtobacco/cder/ucm380688.htm.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2014–N–2099]

Lisa Marie Coroniti: Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The U.S. Food and Drug Administration (FDA) is issuing an order under the Federal Food, Drug, and Cosmetic Act (the FD&C Act) permanently debarring Lisa Coroniti from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Ms. Coroniti was convicted of a felony under Federal law for conduct relating to the regulation of a drug product. Ms. Coroniti was given notice of the proposed permanent debarment and an opportunity to request a hearing within the timeframe prescribed by regulation. Ms. Coroniti failed to request a hearing.

Ms. Coroniti's failure to request a hearing constitutes a waiver of her right to a hearing concerning this action.

DATES: This order is effective August 20, 2015.

ADDRESSES: Submit applications for termination of debarment to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Kenny Shade, Division of Enforcement, Office of Enforcement and Import Operations, Office of Regulatory Affairs (ELEM–4144), Food and Drug Administration, 12420 Parklawn Drive, Element Bldg., Rm. 4144, Rockville, MD 20857, 301–796–4640.

SUPPLEMENTARY INFORMATION:

I. Background

Section 306(a)(2)(B) of the FD&C Act (21 U.S.C. 335a(a)(2)(B)) requires debarment of an individual if FDA finds that the individual has been convicted of a felony under Federal law for conduct relating to the regulation of any drug product under the FD&C Act.

On April 8, 2014, the U.S. District Court for the Eastern District of Virginia entered judgment against Ms. Coroniti for one count of introducing misbranded drugs into interstate commerce, in violation of sections 301(a) and 303(a)(2) of the FD&C Act (21 U.S.C. 331(a) and 333(a)(2)).

FDA's finding that debarment is appropriate is based on the felony conviction referenced herein. The factual basis for this conviction is as follows: Ms. Coroniti was a sales representative for Gallant Pharma International Inc. (Gallant Pharma) between June 2011 and August 2013, and was responsible for selling injectable cosmetic drugs and devices, and intravenous chemotherapy drugs, to doctors and hospitals in Philadelphia, Pennsylvania. Some of the drugs Ms. Coroniti facilitated the sale of were misbranded within the meaning of the FD&C Act.

Ms. Coroniti admitted that she sold drugs which were not approved by the FDA for use on patients in the United States. She further admitted that the drugs she sold on behalf of Gallant Pharma were misbranded in that they did not bear adequate directions for use and were not subject to an exemption from that requirement, and they were accompanied by non-FDA approved packaging and inserts.

Between June 2011 and August 2013, Ms. Coroniti admitted to selling misbranded drugs to 15 distinct doctors and medical practices in Pennsylvania and generated more than $1.1 million in illegal proceeds from these sales. She admitted that, as of April 26, 2013, she became willfully blind to the illegality of Gallant Pharma's business. Nonetheless, she continued her sales activity with Gallant Pharma until her arrest in August 2013.

Between April 26, 2013, and August 7, 2013, Ms. Coroniti personally sold more than $367,000 in misbranded drugs and devices to doctors and medical practices in the Philadelphia, Pennsylvania, area. On or about July 30, 2013, Ms. Coroniti sold five vials of misbranded BOTOX to a doctor in Philadelphia, Pennsylvania, in exchange for $1,900.00, thereby causing a misbranded drug to be introduced into interstate commerce. She further admitted that the loss amount attributable to her personal sales was between $200,000 and $400,000.

As a result of her conviction, on March 25, 2015, FDA sent Ms. Coroniti a notice by certified mail proposing to permanently debar her from providing services in any capacity to a person that has an approved or pending drug product application. The proposal was based on the finding, under section 306(a)(2)(B) of the FD&C Act, that Ms. Coroniti was convicted of a felony under Federal law for conduct related to the regulation of a drug product. FDA determined that Ms. Coroniti's felony conviction was related to the regulation of drug products because the conduct underlying her conviction, including intentionally introducing into interstate commerce misbranded drug products, undermined FDA's regulatory oversight over drug products marketed in the United States. The proposal also offered Ms. Coroniti an opportunity to request a hearing, providing her 30 days from the date of receipt of the letter in which to file the request, and advised her that failure to request a hearing constituted a waiver of the opportunity for a hearing and of any contentions concerning this action. The proposal was received on May 1, 2015. Ms. Coroniti failed to respond within the timeframe prescribed by regulation and has, therefore, waived her opportunity for a hearing and has waived any contentions concerning her debarment (21 CFR part 12).

II. Findings and Order

Therefore, the Director, Office of Enforcement and Import Operations, Office of Regulatory Affairs, under section 306(a)(2)(B) of the FD&C Act, under authority delegated to the Director (Staff Manual Guide 1410.35), finds that Lisa Marie Coroniti has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product. Section 306(c)(2)(A)(ii) of the FD&C Act (21 U.S.C. 335a(c)(2)(A)(ii)) requires that Ms.Coroniti's debarment be permanent.

As a result of the foregoing findings, Lisa Marie Coroniti is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 512, or 802 of the FD&C Act (21 U.S.C. 355, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective (see **DATES**) (see section 201(dd), 306(c)(1)(B), and 306(c)(2)(A)(ii) of the FD&C Act, (21 U.S.C. 321(dd), 335a(c)(1)(B), and 335a(c)(2)(A)(ii)). Any person with an approved or pending drug product application who knowingly employs or retains as a consultant or contractor, or otherwise uses the services of Lisa Marie Coroniti, in any capacity during her debarment, will be subject to civil money penalties (section 307(a)(6) of the FD&C Act (21 U.S.C. 335b(a)(6))). If Ms. Coroniti provides services in any capacity to a person with an approved or pending drug product application during her period of debarment she will be subject to civil money penalties (section 307(a)(7) of the FD&C Act (21 U.S.C. 335b(a)(7))). In addition, FDA will not accept or review any abbreviated new drug applications submitted by or with the assistance of Lisa Marie Coroniti during her period of debarment (section 306(c)(1)(A) of the FD&C Act (21 U.S.C. 335a(c)(1)(A))).

Any application by Ms. Coroniti for special termination of debarment under section 306(d)(4) of the FD&C Act (21 U.S.C. 335a(d)(4)) should be identified with Docket No. FDA–2014–N–2099 and sent to the Division of Dockets Management (see **ADDRESSES**). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20.

Publicly available submissions may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday.

Dated: August 14, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–20561 Filed 8–19–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–2768]

Collecting On-Farm Antimicrobial Use and Resistance Data; 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), in collaboration with the U.S. Department of Agriculture (USDA) and the Centers for Disease Control and Prevention (CDC), is announcing plans for a jointly sponsored public meeting to obtain public input on possible approaches for collecting additional on-farm antimicrobial drug use and resistance data. Such data are important for assessing the impact of measures being implemented to foster the judicious use of medically important antimicrobial drugs in food-producing animals.

Date and Time: The public meeting will be held September 30, 2015, from 8 a.m. to 4:30 p.m. Although you can comment on the interagency plan for collecting on-farm antimicrobial drug use and resistance data at any time, to ensure that the Agencies consider your comment before updating this plan, submit either electronic or written comments by November 30, 2015.

Location: The public meeting will be held in the USDA Jefferson Auditorium (South Building), 1400 Independence Avenue SW., Washington, DC 20250. Please arrive between 7 a.m. and 7:30 a.m. to provide time to get through security. Attendees must provide a valid government issued photo ID (Driver's License, Identification Card, or Passport) to enter the facility. Attendees should enter the building via Wing 5 on the Independence Avenue side of the building. The South Building is accessible by the Smithsonian Metro station (exit Metro station through the ''Independence Avenue Exit'' and walk toward 15th Street on Independence Avenue to reach Wing 5). For more information on directions and parking, visit *http://smithsonianassociates.org/ticketing/help/locations/jefferson.htm.*

Contact Person: Kelly Covington, Center for Veterinary Medicine (HFV–6), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–5661, FAX: 240–276–9020, email: *Kelly.Covington@fda.hhs.gov.*

Registration and Requests for Oral Presentations: Registration is required for this public meeting. Please send registration information (including name, title, organization, address, telephone and fax numbers) by email to *Kelly.Covington@fda.hhs.gov* by September 18, 2015. There is no fee to register for the public meeting, and registration will be on a first-come, first-served basis. If you need special accommodations due to a disability, please contact Kelly Covington (see *Contact Person*) at least 7 days in advance.

Oral presentations can be made by members of the public during the open public comment period of the public meeting. These presentations will be scheduled between approximately 3 p.m. and 4 p.m. on September 30, 2015. Those persons desiring to make an oral presentation should notify the contact person listed in this notice by September 16, 2015, and submit a brief statement of the general nature of information they wish to present. In an effort to accommodate all who desire to speak, time allotted for each presentation may be limited. The contact person will inform each speaker prior to the meeting of the time they are scheduled to speak.

Comments: Regardless of attendance at the public meeting, interested persons may submit either electronic comments 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, by (see *Date and Time*). 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.*

SUPPLEMENTARY INFORMATION:

I. Background

Antimicrobial drugs have been widely used in human and veterinary medicine for more than 50 years, with tremendous benefits to both human and animal health. The development of resistance to this important class of drugs, and the resulting loss of their effectiveness as antimicrobial therapies, poses a serious threat to public and animal health. Because antimicrobial drug use can contribute to the emergence of drug-resistant organisms, these important drugs must be used judiciously in both animal and human medicine to slow the development of resistance.

In December 2013, FDA published Guidance for Industry (GFI) #213 (*http://www.fda.gov/downloads/AnimalVeterinary/GuidanceComplianceEnforcement/GuidanceforIndustry/UCM299624.pdf*), which calls on animal drug sponsors of approved medically important antimicrobials administered through medicated feed or water to voluntarily remove production (growth promotion and feed efficiency) uses from their product labels, and bring the remaining therapeutic uses of these products (to treat, control, or prevent disease) under the oversight of a veterinarian by the end of December 2016. All 25 affected drug sponsors have committed to implementing the changes described in GFI #213 by the December 2016 target date. Once the changes are fully implemented, it will be illegal to use these medically important antibiotics for production purposes, and animal producers will need to obtain authorization from a licensed veterinarian to use them for prevention, control, or treatment of a specifically identified disease.

On March 27, 2015, the White House released the National Action Plan for Combating Antibiotic-resistant Bacteria (''National Action Plan'') (*https://www.whitehouse.gov/sites/default/files/docs/national_action_plan_for_combating_antibiotic-resistant_bacteria.pdf*). Developed in response to Executive Order 13676, which was issued by President Barack Obama on September 18, 2014, the National Action Plan is intended to guide the activities of the U.S. Government as well as the actions of public health, health care, and veterinary partners in a common effort to address the urgent and serious public health threat of drug-resistant bacterial infections. Objective 2.4 of the National Action Plan is to enhance monitoring of antibiotic resistance patterns, as well as antibiotic sales, usage, and management practices, at multiple points in the production chain for food animals and retail meat. The public meeting being announced in this **Federal Register** notice is consistent with Sub-Objective 2.4.3 of the National Action Plan, which calls for the USDA and FDA to seek public input on a plan for collecting drug use and resistance data on farms.

In April 2015, USDA's Animal and Plant Health Inspection Service published an Info Sheet entitled ''Proposed Initiatives From the USDA Antimicrobial Resistance Action Plan'' (*http://www.aphis.usda.gov/animal_health/nahms/amr/downloads/ProposedInitiatives.pdf*). The Info Sheet provides a brief synopsis of initiatives

proposed in the USDA Action plan, including a number of initiatives related to collecting on-farm antibiotic use and resistance data.

Gathering information on the way medically important antimicrobials are used in food-producing animals is essential to measuring the impact of the FDA's GFI #213. FDA is collaborating with USDA and CDC to develop a plan for collecting additional on-farm data on antimicrobial use and resistance. Such data are intended to supplement existing information, including data on the quantity of antimicrobials sold or distributed for use in food-producing animals (reported under section 105 of the Animal Drug User Fee Amendments of 2008) and data on antimicrobial resistance (*e.g.,* collected under the National Antimicrobial Resistance Monitoring System and the National Animal Health Monitoring System). Data from multiple sources are needed to provide a comprehensive and science-based picture of antimicrobial drug use and resistance in animal agriculture.

A data collection plan is needed to obtain additional information necessary to: (1) Assess the rate of adoption of changes outlined in the FDA's GFI #213; (2) help gauge the success of antibiotic stewardship efforts and guide their continued evolution and optimization; and (3) assess associations between antibiotic use practices and resistance. FDA is continuing to work with the USDA and CDC in developing this plan, and is holding this public meeting in order to obtain input from the public. This meeting is the first opportunity for public input as part of our ongoing effort to develop and implement plans for collecting additional on-farm antimicrobial drug use and resistance data.

II. Agenda

The public meeting will provide an opportunity for public comment on possible approaches for collecting additional antimicrobial drug use data. The final agenda for the public meeting will be made available on the Agency's Web site at

http://www.fda.gov/AnimalVeterinary/NewsEvents/WorkshopsConferencesMeetings/ucm456380.htm no later than 2 weeks prior to the meeting.

III. Transcript

FDA will prepare a meeting transcript and make it available on the Agency's Web site (see section II) after the meeting. FDA anticipates that the transcript will be available approximately 60 business days after the meeting. A copy of the transcript will be available for public examination at the Division of Dockets Management (see *Comments*) between 9 a.m. and 4 p.m., Monday through Friday. In addition, copies of the transcript will be available in either hardcopy or on CD–ROM after submission of a Freedom of Information request. The Freedom of Information office address is available on the Agency's Web site at *http://www.fda.gov.*

Dated: August 14, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–20557 Filed 8–19–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2015–N–0001]

Bone, Reproductive, and Urologic Drugs Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Bone, Reproductive, and Urologic Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the Agency on FDA's regulatory issues.

Date and Time: The meeting will be held on November 3, 2015, from 8:30 a.m. to 5 p.m.

Location: FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (rm. 1503), Silver Spring, MD 20993–0002. Answers to commonly asked questions including information regarding special accommodations due to a disability, visitor parking, and transportation may be accessed at: *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

Contact Person: Kalyani Bhatt, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, FAX: 301–847–8533, email: *BRUDAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the Agency's Web site at *http://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

Agenda: The committee will discuss new drug application (NDA) 207959, enclomiphene citrate 12.5 milligram (mg) and 25 mg capsules, submitted by Repros Therapeutics, Inc., for the proposed treatment of secondary hypogonadism in fertile men (men with more than 15 million sperm/milliliter (ml)), younger than 60 years of age with a Body Mass Index (BMI) over 25 kilograms (kg)/meters squared (m2).

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its Web site prior to the meeting, the background material will be made publicly available at the location of the advisory committee meeting and the background material will be posted on FDA's Web site after the meeting. Background material is available at *http://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person on or before October 20, 2015. Oral presentations from the public will be scheduled between approximately 1 p.m. and 2 p.m. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 9, 2015. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public

hearing session. The contact person will notify interested persons regarding their request to speak by October 13, 2015.

Persons attending FDA's advisory committee meetings are advised that the Agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Kalyani Bhatt at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our Web site at *http://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: August 14, 2015.

Jill Hartzler Warner,

Associate Commissioner for Special Medical Programs.

[FR Doc. 2015–20540 Filed 8–19–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2009–N–0232]

Agency Information Collection Activities; Proposed Collection; Comment Request; Comment Request; Interstate Shellfish Dealers Certificate

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA or we) is announcing an opportunity for public comment on our proposed collection of certain information by the Agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal Agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions of the Interstate Shellfish Dealers Certificate.

DATES: Submit either electronic or written comments on the collection of information by October 19, 2015.

ADDRESSES: Submit electronic comments on the collection of information to *http://www.regulations.gov.* Submit written comments on the collection of information to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: FDA PRA Staff, Office of Operations, Food and Drug Administration, 8455 Colesville Rd., COLE–14526, Silver Spring, MD 20993–0002, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal Agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes Agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal Agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, we are publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, we invite comments on these topics: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Interstate Shellfish Dealer's Certificate

OMB Control Number 0910–0021—Extension

Under 42 U.S.C. 243, we are required to cooperate with and aid State and local authorities in the enforcement of their health regulations and are authorized to assist States in the prevention and suppression of communicable diseases. Under this authority, we participate with State regulatory agencies, some foreign nations, and the molluscan shellfish industry in the National Shellfish Sanitation Program (NSSP).

NSSP is a voluntary, cooperative program to promote the safety of molluscan shellfish by providing for the classification and patrol of shellfish growing waters and for the inspection and certification of shellfish processors. Each participating State and foreign nation monitors its molluscan shellfish processors and issues certificates for those that meet the State or foreign shellfish control authority's criteria. Each participating State and nation provides a certificate of its certified shellfish processors to FDA on Form FDA 3038, ''Interstate Shellfish Dealer's Certificate.'' We use this information to publish the ''Interstate Certified Shellfish Shippers List,'' a monthly comprehensive listing of all molluscan shellfish processors certified under the cooperative program. If we did not collect the information necessary to compile this list, participating States would not be able to identify and keep out shellfish processed by uncertified processors in other States and foreign nations. Consequently, NSSP would not be able to control the distribution of uncertified and possibly unsafe shellfish in interstate commerce, and its effectiveness would be nullified.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity	FDA Form No.	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Submission of Interstate Shellfish Dealer's Certificate.	3038	40	57	2,280	0.10 ..... (6 minutes) ..	228

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

We estimate that 40 respondents will submit 2,280 Interstate Shellfish Dealer's Certificates annually, for a total burden of 228 hours (2,280 submissions × 0.10 hours = 228 hours). This estimate is based on our experience with this information collection and the number of certificates received in the past 3 years, which has remained constant.

Dated: August 14, 2015.

Leslie Kux,

Associate Commissioner for Policy.

[FR Doc. 2015–20562 Filed 8–19–15; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; Identifying Experts in Prevention Science Methods To Include on NIH Review Panels (OD)

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH), Office of Disease Prevention (ODP) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 7, 2015, page 18641 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The 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, Attn: 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: Paris Watson, Senior Advisor, NIH Office of Disease Prevention, 6100 Executive Blvd., Room 2B03, Bethesda, MD 20892 or call (301) 496–1508 or email your request, including your address to *prevention@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

Proposed Collection: Identifying Experts in Prevention Science Methods to Include on NIH Review Panels, 0925—New, Office of Disease Prevention (ODP), National Institutes of Health (NIH).

Need and Use of Information Collection: The Office of Disease Prevention (ODP) is the lead Office at the National Institutes of Health (NIH) responsible for assessing, facilitating, and stimulating research in disease prevention and health promotion, and disseminating the results of this research to improve public health. Prevention is preferable to treatment, and research on disease prevention is an important part of the NIH's mission. The knowledge gained from this research leads to stronger clinical practice, health policy, and community health programs. ODP collaborates with NIH, other Department of Health and Human Services (DHHS) agencies, and other public and private partners to achieve the Office's mission and goals. One of our priorities is to promote the use of the best available methods in prevention research and support the development of better methods. One of our strategies is to help NIH Scientific Review Officers (SROs) identify experts in prevention science methods to include on their review panels. This will strengthen the panels and improve the quality of the prevention research supported by NIH. To identify experts in prevention science methods, we worked with our contractor, IQ Solutions, Inc., to develop online software which will allow us to collect researchers' names, contact information, and resumes, as well as to have those researchers identify their level of expertise in a variety of prevention science methods and content areas. The data collected with this software will be used to support a web-based Electronic Directory that SROs can use to identify researchers with expertise in specific prevention science methods and content areas for invitation to serve on one of the NIH review panels. If the initial rollout with the Center for Scientific Review (CSR) is successful, this system will also be shared with review staff in the other Institutes and Centers at NIH, as well as other DHHS agencies, to use in a similar same way. Given our plans to create an automated system for reviewer information collection, we are now seeking OMB approval. This PRA clearance request is for the deployment of this new online software and the collection of data.

OMB approval is requested for 3 years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 1,040.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondents	Number of respondents	Number of responses per respondent	Average time per response (in hours)	Total annual burden hour
Investigators	3,120	1	20/60	1040

Dated: August 13, 2015.

Lawrence A. Tabak,

Deputy Director, National Institutes of Health.

[FR Doc. 2015–20591 Filed 8–19–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of a meeting of the Advisory Committee to the Director, National Institutes of Health.

This meeting is open to the public but is being held by teleconference only. No physical meeting location is provided for any interested individuals to listen to and/or participate in the meeting. Any individual interested in listening to the meeting discussions must call: 877–917–9486 and use Passcode: 8027865 for access to the meeting. Individuals needing special assistance should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Institutes of Health.

Date: September 17, 2015.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: Report of the Precision Medicine Initiative (PMI) Working Group.

Place: National Institutes of Health (Telephone Conference Call), Dial In Number 877–917–9486, Passcode: 8027865.

Contact Person: Gretchen Wood, Staff Assistant, National Institutes of Health, Office of the Director, One Center Drive, Building 1, Room 126, Bethesda, MD 20892, Telephone: 301–496–4272, Email: *woodgs@od.nih.gov.*

Any interested person may file written comments with the committee by forwarding their statement electronically to the Contact Person at *woodgs@od.nih.gov.* The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested of the interested person.

Information will also available on the committee's home page: *http://acd.od.nih.gov,* where any additional information for the meeting will be posted when available.

Dated: August 14, 2015.

Anna Snouffer,

Deputy Director, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–20516 Filed 8–19–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health & Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: September 15, 2015.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Sathasiva B. Kandasamy, Ph.D., Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6680, *skandasa@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS) imposed by the review and funding cycle.

Dated: August 14, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–20517 Filed 8–19–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; ''Understanding and Improving Reading Comprehension''.

Date: September 9, 2015.

Time: 11:30 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6100 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Marita R. Hopmann, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6100 Executive Boulevard, Room 5B01, Bethesda, MD 20892–9304, (301) 435–6911, *hopmannm@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: August 14, 2015.

Michelle Trout,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2015–20518 Filed 8–19–15; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–1243.

Project: Survey of State Underage Drinking Prevention Policies and Practices—(OMB No. 0930–0316)—Revision

The *Sober Truth on Preventing Underage Drinking Act* (the ''STOP Act'') [1] states that the ''Secretary [of Health and Human Services] shall . . . annually issue a report on each state's performance in enacting, enforcing, and creating laws, regulations, and programs to prevent or reduce underage drinking.'' The Secretary has delegated responsibility for this report to SAMHSA. Therefore, SAMHSA has developed a *Survey of State Underage Drinking Prevention Policies and Practices* (the ''*State Survey*'') to provide input for the state-by-state report on prevention and enforcement activities related to underage drinking component of the *Annual Report to Congress on the Prevention and Reduction of Underage Drinking* (''*Report to Congress*'').

The STOP Act also requires the Secretary to develop ''a set of measures to be used in preparing the report on best practices'' and to consider categories including but not limited to the following:

Category #1: Sixteen [2] specific underage drinking laws/regulations enacted at the state level (*e.g.,* laws prohibiting sales to minors; laws related to minors in possession of alcohol);

Category #2: Enforcement and educational programs to promote compliance with these laws/regulations;

Category #3: Programs targeted to youths, parents, and caregivers to deter underage drinking and the number of individuals served by these programs;

Category #4: The amount that each state invests, per youth capita, on the prevention of underage drinking broken into five categories: (a) Compliance check programs in retail outlets; (b) Checkpoints and saturation patrols that include the goal of reducing and deterring underage drinking; (c) Community-based, school-based, and higher-education-based programs to prevent underage drinking; (d) Underage drinking prevention programs that target youth within the juvenile justice and child welfare systems; and (e) Any other state efforts or programs that target underage drinking.

Congress' purpose in mandating the collection of data on state policies and programs through the *State Survey i*s to provide policymakers and the public with currently unavailable but much needed information regarding state underage drinking prevention policies and programs. SAMHSA and other Federal agencies that have underage drinking prevention as part of their mandate will use the results of the *State Survey* to inform federal programmatic priorities. The information gathered by the *State Survey* will also establish a resource for state agencies and the general public for assessing policies and programs in their own state and for becoming familiar with the programs, policies, and funding priorities of other states.

Because of the broad scope of data required by the STOP Act, SAMHSA relies on existing data sources where possible to minimize the survey burden on the states. SAMHSA uses data on state underage drinking policies from the National Institute of Alcohol Abuse and Alcoholism's Alcohol Policy Information System (APIS), an authoritative compendium of state alcohol-related laws. The APIS data is augmented by SAMHSA with original legal research on state laws and policies addressing underage drinking to include all of the STOP Act's requested laws and regulations (Category #1 of the four categories included in the STOP Act, as described above, page 2).

The STOP Act mandates that the *State Survey* assess ''best practices'' and emphasize the importance of building collaborations with federally recognized tribal governments (''tribal governments''). It also emphasizes the importance at the federal level of promoting interagency collaboration and to that end established the Interagency Coordinating Committee on the Prevention of Underage Drinking (ICCPUD). SAMHSA has determined that to fulfill the Congressional intent, it is critical that the *State Survey* gather information from the states regarding the best practices standards that they apply to their underage drinking programs, collaborations between states and tribal governments, and the development of state-level interagency collaborations similar to ICCPUD.

SAMHSA has determined that data on Categories #2, #3, and #4 mandated in the STOP Act (as listed on page 2) (enforcement and educational programs; programs targeting youth, parents, and caregivers; and state expenditures) as well as states' best practices standards, collaborations with tribal governments, and state-level interagency collaborations *are not available from secondary sources* and therefore must be collected from the states themselves. The *State Survey* is therefore necessary to fulfill the Congressional mandate found in the STOP Act.

The *State Survey* is a single document that is divided into four sections, as follows:

(1) Enforcement programs to promote compliance with underage drinking laws and regulations (as described in Category #2 above, page 2);

(2) Programs targeted to youth, parents, and caregivers to deter underage drinking (as described in Category #3 above, page 2);

(3) State interagency collaboration to implement prevention programs, state best-practice standards, and collaborations with tribal governments (as described above, page 4);

(4) The amount that each state invests on the prevention of underage drinking in the categories specified in the STOP Act (see description of Category #4, above, page 2) and descriptions of any dedicated fees, taxes, or fines used to raise these funds.

The number of questions in each section is as follows:

Section 1: *31 questions*
Section 2A: *30 questions* [3]
Section 2B: *7 questions*
Section 2C: *6 questions*
Section 2D: *15 questions*
TOTAL: *89 questions*

It is anticipated that respondents will actually respond to only a subset of this total. This is because the survey is designed with ''skip logic,'' which means that many questions will only be directed to a subset of respondents who report the existence of particular programs or activities.

This latest version of the survey has been revised slightly. There are no new questions, nor were any deleted. All revisions are for the purpose of clarifying the existing questions. The total number of questions remains the same, so no additional time burden should be placed on the respondents. All questions continue to ask only for readily available data.

The changes can be summarized as follows:

Some global changes have been made; for example, the current HHS and SAMHSA style guides are applied so that ''state'' and ''federal'' are not capitalized. In addition, some instruction sentences are put in bold font, in response to frequent questions

[1] Public Law 109–422. It is assumed Congress intended to include the District of Columbia as part of the *Report to Congress*.

[2] Nine additional policies have been added to the Report to Congress pursuant to Congressional appropriations language or the Secretary's authority granted by the STOP Act.

[3] Note that the number of questions in Section 2A is an estimate. This section asks states to identify their programs that are specific to underage drinking prevention. For each program identified there are six follow-up questions. Based on the average number of programs per state reported in the survey's four year history, it is anticipated that states will report an average of five programs for a total of 30 questions.

from respondents for clarification of these questions. These include questions about the time period for which they are asked to report specific data, or the type of prevention programs that should be included in responses.

In addition, the following specific changes are recommended as clarifications or improvements of existing questions:

Part 1, Enforcement:

A question requesting the total number of licensees in the state has been moved up to become the second question. It was previously located in the set of questions about state compliance checks, but was skipped if the respondent answered that the state does do not do compliance checks. The number of licensees is a general piece of information that could be very useful in analyzing survey response data, and therefore should be collected from all states, regardless of whether they conduct compliance checks.

The wording of the question asking for the number of random compliance checks conducted by the state has been changed, and a definition of random checks is included. The current wording is confusing,[4] and has often elicited an answer that reflects *all* licenses in the state, rather than the actual number of random checks. Respondents have also requested clarification of the definition of random checks.

Part 2A, Programs:

Two changes have been made to shorten the length of program descriptions, in which states describe their underage drinking prevention programs. The program descriptions are the lengthiest portion of the survey response and are significant contributors to the length of the *Report to Congress.* In addition, the length of the responses may pose a burden on state respondents. The two changes are:

(a) The instructions in the section have been modified to state: ''Please briefly describe the program, including primary purpose, population served, and methods used.''

(b) The number of programs reported on has been reduced from 15 to 10. In the 2014 survey, 43 states (84%) reported 10 or fewer programs. The burden on respondents from those eight states that report more than 10 programs could be reduced by limiting the responses to 10 programs.

Part 2D, Expenditures:

In response to the question about expenditures on school-based prevention programs, some respondents have reported *all* expenditures for K–12, which resulted in artificially inflated data. The following statement has been added to the instructions: ''If it is not possible to distinguish funds expended specifically for the prevention of underage drinking from a general fund targeted to an activity or program listed below, please check 'These data are not available in my state.' ''

To ensure that the *State Survey* obtains the necessary data while minimizing the burden on the states, SAMHSA has conducted a lengthy and comprehensive planning process. It has sought advice from key stakeholders (as mandated by the STOP Act) including hosting an all-day stakeholders meeting, conducting two field tests with state officials likely to be responsible for completing the *State Survey,* and investigating and testing various *State Survey* formats, online delivery systems, and data collection methodologies.

Based on these investigations, SAMHSA collects the required data using an online survey data collection platform (SurveyMonkey). Links to the four sections of the survey are distributed to states via email. The *State Survey* is sent to each state governor's office and the Office of the Mayor of the District of Columbia. Based on the experience from the last four years of administering the *State Survey,* it is anticipated that the state governors will designate staff from state agencies that have access to the requested data (typically state Alcohol Beverage Control [ABC] agencies and state Substance Abuse Program agencies). SAMHSA provides both telephone and electronic technical support to state agency staff and emphasizes that the states are only expected to provide data that is readily available and are not required to provide data that has not already been collected. The burden estimate below takes into account these assumptions.

The estimated annual response burden to collect this information is as follows:

Instrument	Number of respondents	Responses/ respondent	Burden/ response (hrs)	Annual burden (hrs)
State Questionnaire	51	1	17.7	902.7

Written comments and recommendations concerning the proposed information collection should be sent by September 21, 2015 to the SAMHSA Desk Officer at the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). To ensure timely receipt of comments, and to avoid potential delays in OMB's receipt and processing of mail sent through the U.S. Postal Service, commenters are encouraged to submit their comments to OMB via email to: *OIRA_Submission@omb.eop.gov.* Although commenters are encouraged to send their comments via email, commenters may also fax their comments to: 202–395–7285. Commenters may also mail them to: Office of Management and Budget, Office of Information and Regulatory Affairs, New Executive Office Building, Room 10102, Washington, DC 20503.

Summer King,

Statistician.

[FR Doc. 2015–20552 Filed 8–19–15; 8:45 am]

BILLING CODE 4162–20–P

[4] ''Please provide number of licensees subject to random compliance checks/decoy operations.''

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Automated Commercial Environment (ACE) Export Manifest for Vessel Cargo Test

AGENCY: U.S. Customs and Border Protection, DHS.

ACTION: General notice.

SUMMARY: This document announces that U.S. Customs and Border Protection (CBP) plans to conduct the Automated Commercial Environment (ACE) Export Manifest for Vessel Cargo Test, a National Customs Automation Program

(NCAP) test concerning ACE export manifest capability. The ACE Export Manifest for Vessel Cargo Test is a voluntary test in which participants agree to submit export manifest data to CBP electronically, at least 24 hours prior to loading of the cargo onto the vessel in preparation for departure from the United States. In most cases, CBP regulations require carriers to submit a paper manifest for export vessel shipments within 4 days after departure or for approved carriers to submit the outbound vessel manifest information electronically within 10 days after departure. This notice provides a description of the test, sets forth eligibility requirements for participation, and invites public comment on any aspect of the test.

DATES: The test will begin no earlier than September 21, 2015 and will run for approximately two years. CBP is accepting applications for participation in this planned test until CBP has received applications from nine parties that meet all test participant requirements. Comments concerning this notice and all aspects of the announced test may be submitted at any time during the test period.

ADDRESSES: Applications to participate in the ACE Export Manifest for Vessel Cargo Test must be submitted via email to CBP Export Manifest at *cbpvesselexportmanifest@cbp.dhs.gov*. In the subject line of the email, please use ''ACE Export Manifest for Vessel Cargo Test Application''. Written comments concerning program, policy, and technical issues may also be submitted via email to CBP Export Manifest at *cbpvesselexportmanifest@cbp.dhs.gov*. In the subject line of the email, please use ''Comment on ACE Export Manifest for Vessel Cargo Test''.

FOR FURTHER INFORMATION CONTACT: Vincent C. Huang, Cargo and Conveyance Security, Office of Field Operations, U.S. Customs & Border Protection, via email at *cbpvessel exportmanifest@cbp.dhs.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Customs Automation Program

The National Customs Automation Program (NCAP) was established in Subtitle B of Title VI—Customs Modernization, in the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057, Dec. 8, 1993) (Customs Modernization Act) (19 U.S.C. 1411–14). Through NCAP, the initial thrust of customs modernization was on trade compliance and the development of the Automated Commercial Environment (ACE), the planned successor to the Automated Commercial System (ACS). ACE is an automated and electronic system for commercial trade processing which is intended to streamline business processes, facilitate growth in trade, ensure cargo security, and foster participation in global commerce, while ensuring compliance with U.S. laws and regulations and reducing costs for CBP and all of its communities of interest. The ability to meet these objectives depends on successfully modernizing CBP's business functions and the information technology that supports those functions. CBP's modernization efforts are accomplished through phased releases of ACE component functionality designed to replace a specific legacy ACS or paper function. Each release begins with a test and ends with mandatory use of the new ACE feature, thus retiring the legacy ACS or paper function. Each release builds on previous releases and sets the foundation for subsequent releases.

Authorization for the Test

The Customs Modernization Act provides the Commissioner of CBP with the authority to conduct limited test programs or procedures designed to evaluate planned components of the NCAP. The test described in this notice is authorized pursuant to the Customs Modernization Act and section 101.9(b) of title 19 of the Code of Federal Regulations (19 CFR 101.9(b)) which provides for the testing of NCAP programs or procedures. As provided in 19 CFR 101.9(b), for purposes of conducting an NCAP test, the Commissioner of CBP may impose requirements different from those specified in the CBP regulations.

International Trade Data System (ITDS)

This test is also in furtherance of the International Trade Data System (ITDS) key initiatives, set forth in section 405 of the Security and Accountability for Every Port Act of 2006 (Pub. L. 109–347, 120 Stat. 1884, Oct. 13, 2006) (SAFE Port Act) (19 U.S.C. 1411(d)) and Executive Order 13659 of February 19, 2014, *Streamlining the Export/Import Process for America's Businesses.* The purpose of ITDS, as stated in section 405 of the SAFE Port Act, is to eliminate redundant information requirements, efficiently regulate the flow of commerce, and effectively enforce laws and regulations relating to international trade, by establishing a single portal system, operated by CBP, for the collection and distribution of standard electronic import and export data required by all participating Federal agencies. CBP is developing ACE as the ''single window'' for the trade community to comply with the ITDS requirement established by the SAFE Port Act.

Executive Order 13659 requires that by December 2016, ACE, as the ITDS single window, have the operational capabilities to serve as the primary means of receiving from users the standard set of data and other relevant documentation (exclusive of applications for permits, licenses, or certifications) required for the release of imported cargo and clearance of cargo for export, and to transition from paper-based requirements and procedures to faster and more cost-effective electronic submissions to, and communications with, U.S. government agencies.

Current Vessel Cargo Export Information Requirements

Under the CBP regulations (title 19 of the Code of Federal Regulations (CFR)), certain information must be submitted to CBP for vessels with export cargo leaving the United States for any foreign area, whether directly or by way of other domestic ports. Section 4.61 (19 CFR 4.61) requires the vessel master or other proper officer to execute a Vessel Entrance or Clearance Statement on CBP Form 1300 filed with CBP pertaining to the outbound vessel. Section 4.63 (19 CFR 4.63) requires the vessel master, or the vessel's agent on behalf of the master, to file a vessel cargo manifest on paper CBP Form 1302–A, Cargo Declaration Outward With Commercial Forms, with copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest attached in such manner as to constitute one document, with CBP at each port from which clearance is being sought.[1] Section 4.75 (19 CFR 4.75), requires the vessel master, or the vessel's agent on behalf of the master, to file the complete vessel cargo manifest generally within 4 business days after

[1] In addition to the filing of a vessel clearance statement and a vessel cargo declaration with manifest information and commercial documents, section 4.63 requires the filing of export declarations. The term ''export declarations'' refers to the Shipper's Export Declarations, the Department of Commerce paper forms used by the Bureau of the Census under the Foreign Trade Statistics Regulations to collect information from an entity exporting from the United States. These forms were used for compiling the official U.S. export statistics for the United States and for export control purposes. The Shipper's Export Declarations became obsolete on October 1, 2008, with the implementation of the Foreign Trade Regulations (FTR) and have been superseded by the Electronic Export Information (EEI) filed in the Automated Export System (AES) or through the AESDirect. See 15 CFR 30.1. See also 19 CFR 192.14, regarding required EEI.

clearance from each port in the vessel's itinerary. Section 4.76 (19 CFR 4.76) sets forth procedures and responsibilities of carriers filing outbound vessel manifest information via the Automated Export System (AES) in lieu of paper CBP Form 1302–A. Carriers that are approved to submit outbound vessel manifest information electronically in AES under 19 CFR 4.76 must, with limited exceptions, submit the complete manifest data within 10 calendar days after departure. Finally, section 192.14 (19 CFR 192.14) requires the U.S. Principal Party in Interest (USPPI) to file any required Electronic Export Information (EEI) for the cargo on the vessel.[2] More details regarding the manifest requirements, the subject of this test, are provided in the next section.

Current Vessel Cargo Manifest Requirements

As indicated in the previous section, the vessel commander or agent must file copies of the vessel cargo manifest on CBP Form 1302–A. CBP Form 1302–A consists of the following data elements:

(1) Name of Ship
(2) Port where report is made (not required by United States)
(3) Nationality of ship
(4) Name of master
(5) Port of loading
(6) Port of discharge
(7) Bill of Lading number
(8) Marks and Numbers, Container Numbers, Seal Numbers
(9) Number and kind of packages; Description of goods
(10) Gross Weight (lb. or kg.) or Measurements (per HTSUS)
(11) Internal Transaction Number (ITN) or AES Exemption Statement [3]

The vessel cargo manifest may be filed in complete form or incomplete form (pro forma). The complete manifest must be filed with CBP before the vessel will be cleared to depart to a foreign country listed in 19 CFR 4.75(c). Otherwise, for shipments to a foreign country, an incomplete manifest may be filed with CBP at the departure port when accompanied by the proper bond. As provided in 19 CFR 4.84(c)(2), for shipments from any State or the District of Columbia to Puerto Rico, a complete manifest or proper bond shall be filed with CBP within one business day of arrival in Puerto Rico. As provided in 19 CFR 4.84(c)(1), for shipments from any State or the District of Columbia to noncontiguous territories of the United States other than Puerto Rico, or from Puerto Rico to any State or the District of Columbia to any other noncontiguous territory, a complete manifest or proper bond must be filed with CBP before departure.

Under the terms of the bond, the complete manifest must be filed with CBP by the master, or the vessel's agent on behalf of the master, within the appropriate time period. For shipments to foreign countries, the complete manifest must be filed no later than 4 business days post-departure. For shipments from the United States to Puerto Rico, the complete manifest must be filed no later than 7 business days after arrival in Puerto Rico. For shipments between the United States or Puerto Rico and other U.S. territories, the complete manifest must be filed no later than 7 business days after departure.

As mentioned in the previous section, under 19 CFR 4.76, certain carriers are approved to submit outbound vessel manifest information electronically in AES in lieu of submitting a paper CBP Form 1302–A. In most cases, these carriers must submit the complete manifest data within 10 calendar days after departure of the vessel from each port. However, if the destination of the vessel is a foreign port listed in 19 CFR 4.75(c), the carrier must transmit complete manifest information before vessel departure. Also, the time requirements for electronic transmission of complete manifest information for carriers destined to Puerto Rico and U.S. possessions are the same as the requirements found in 19 CFR 4.84 and described above.

Trade Act and the Automated Export System (AES)

Section 343(a) of the Trade Act of 2002, as amended (Trade Act) (19 U.S.C. 2071 note), requires CBP to promulgate regulations providing for the mandatory transmission of electronic cargo information by way of a CBP-approved electronic data interchange (EDI) system before the cargo is brought into or departs the United States by any mode of commercial transportation (sea, air, rail, or truck). The required cargo information is that which is reasonably necessary to enable high-risk shipments to be identified for purposes of ensuring cargo safety and security and preventing smuggling pursuant to the laws enforced and administered by CBP. Section 192.14 of title 19 of the CFR (19 CFR 192.14) implements the requirements of the Trade Act with regard to cargo departing the United States.

While the vessel cargo manifest described in the previous section must be submitted by the vessel commander or agent, that is, by the vessel carrier, 19 CFR 192.14 specifies that any required EEI must be filed by the USPPI. The USPPI or its authorized agent must transmit any required EEI using a CBP-approved EDI system, and verify system acceptance of this EEI no later than 24 hours prior to departure from the U.S. port where the vessel cargo is to be laden. The vessel carrier may not load cargo without first receiving from the USPPI or its authorized agent either the related EEI filing citation, covering all cargo for which the EEI is required, or exemption legends, covering cargo for which EEI need not be filed. The outbound vessel carrier then must annotate the vessel cargo manifest, waybill, or other export documentation with the applicable AES proof of filing, post departure, downtime, exclusion or exemption citations, conforming to the approved data formats found in the Bureau of the Census Foreign Trade Regulations (FTR) (15 CFR part 30).

Description of the ACE Export Manifest for Vessel Cargo Test

Purpose

The ACE Export Manifest for Vessel Cargo Test will test the functionality regarding the filing of export manifest data for vessel cargo electronically to ACE in furtherance of the ITDS initiatives described above. CBP has re-engineered AES to move it to an ACE system platform. The re-engineering and incorporation of AES into ACE will result in the creation of a single automated export processing platform for certain export manifest, commodity, licensing, export control, and export targeting transactions. This will reduce costs for CBP, partner government agencies, and the trade community and improve facilitation of export shipments through the supply chain.

The ACE Export Manifest for Vessel Cargo Test will also test the feasibility of requiring the manifest information to be filed electronically in ACE within a specified time before the cargo is loaded on the vessel. (Under the current regulatory requirements, in most cases the complete manifest is not required to be submitted until after the departure of the vessel). As described in the

[2] The USPPI is defined in the FTR as the person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. Generally, that person or entity is the U.S. seller, manufacturer, or order party, or the foreign entity while in the United States when purchasing or obtaining the goods for export. 15 CFR 30.1.

[3] Though not a data element on CBP Form 1302–A itself, the carrier must include the ITN or AES Exemption Statement on the outward manifest pursuant to 19 CFR 192.14(c)(3). See also 19 CFR 4.63(b) requiring the number of the export declaration or exemption (replaced by the ITN or AES Exemption Statement as detailed in Note 1 above).

paragraph below, in the test, participants will submit export manifest data electronically to ACE at least 24 hours prior to loading of the cargo on the vessel. This will enable CBP to link the EEI submitted by the USPPI with the export manifest information earlier in the process. This capability will better enable CBP to assess risk and effectively target and inspect shipments prior to the loading of cargo to ensure compliance with all U.S. export laws.

Procedures

Participants in the ACE Export Manifest for Vessel Cargo Test agree to provide export manifest data to CBP electronically at least 24 hours prior to loading of the cargo onto the vessel in preparation for departure from the United States. If the vessel carrier files this ACE Export Manifest data, the filing is in lieu of the paper filing of CBP Form 1302–A and copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest. If a freight forwarder or non-vessel operating common carrier (NVOCC) files the ACE Export Manifest data, the carrier is still required to file one of the following: the paper CBP Form 1302–A with copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest attached in such manner as to constitute one document; the 19 CFR 4.76 electronic equivalent, if the vessel carrier is approved for this procedure; or the ACE Export Manifest data, if the vessel carrier is a test participant.

The ACE Export Manifest data submission will be used to target high-risk vessel cargo. The data should be available to test participants early in the planning stages of an export vessel cargo transaction. It is anticipated that data provided no later than 24 hours prior to loading will permit adequate time for proper risk assessment and identification of shipments to be inspected early enough in the supply chain to enhance security while minimizing disruption to the flow of goods.

Any vessel cargo identified as potentially high-risk will receive a hold until required additional information related to the shipment is submitted to clarify non-descriptive, inaccurate, or insufficient information, a physical inspection is performed, or some other appropriate action is taken, as specified by CBP. Once the cargo is cleared for loading, a release message will be generated and transmitted to the filer.

Data Elements

The ACE Export Manifest for Vessel Cargo Test data elements are similar, but not identical to the data elements required on CBP Form 1302–A. The data elements are mandatory unless otherwise indicated. Data elements that are indicated as ''conditional'' must be transmitted to CBP only if the particular information pertains to the cargo. The ACE Export Manifest for Vessel Cargo data elements are to be submitted at the lowest bill level. The data elements consist of:

(1) Mode of transportation (Vessel, containerized or Vessel, non-containerized)
(2) Name of ship or vessel
(3) Nationality of ship
(4) Name of master
(5) Port of loading
(6) Port of discharge
(7) Bill of Lading number (Master and House)
(8) Bill of Lading type (Master, House, Simple or Sub)
(9) Number of house Bills of Lading
(10) Marks and Numbers (conditional)
(11) Container Numbers (conditional)
(12) Seal Numbers (conditional)
(13) Number and kind of packages
(14) Description of goods
(15) Gross Weight (lb. or kg.) or Measurements (per HTSUS)
(16) Shipper name and address
(17) Consignee name and address
(18) Notify Party name and address (conditional)
(19) Country of Ultimate Destination
(20) In-bond number (conditional)
(21) Internal Transaction Number (ITN) or AES Exemption Statement (per shipment)
(22) Split Shipment Indicator (Yes/No)
(23) Portion of split shipment (*e.g.* 1 of 10, 4 of 10, 5 of 10—Final. etc.) (conditional)
(24) Hazmat Indicator (Yes/No)
(25) UN Number (conditional) (If the hazmat indicator is yes, the four-digit United Nations (UN) Number assigned to the hazardous material must be provided.)
(26) Chemical Abstract Service (CAS) Registry Number (conditional)
(27) Vehicle Identification Number (VIN) or Product Identification Number (conditional) (For shipments of used vehicles, the VIN must be reported, or for used vehicles that do not have a VIN, the Product Identification Number must be reported.)

There are currently no additional data elements identified for other participating U.S. Government Agencies (PGAs) for the ACE Export Manifest for Vessel Cargo Test. However, CBP may enhance the test in the future with additional data or processing capabilities to assist with facilitation of vessel shipment movements and to be consistent with Executive Order 13659. Any such enhancement will be announced in the **Federal Register**.

Eligibility Requirements

CBP is limiting this test to nine stakeholders in the vessel cargo environment. Specifically, CBP is seeking participation from:

- At least three, but no more than six, vessel carriers; and
- At least three, but no more than six, freight forwarders or NVOCCs.

There are no restrictions with regard to organization size, location, or commodity type. However, participation is limited to those parties able to electronically transmit export manifest data in the identified acceptable format. Prospective ACE Export Manifest for Vessel Cargo Test participants must have the technical capability to electronically submit data to CBP and receive response message sets via Cargo-IMP, AIR CAMIR, XML, or Unified XML, and must successfully complete certification testing with their client representative. (Unified XML may not be immediately available at the start of the test. However, parties wishing to utilize Unified XML may be accepted, pending its development and implementation). Once parties have applied to participate, they must complete a test phase to determine if the data transmission is in the required readable format. Applicants will be notified once they have successfully completed testing and are permitted to participate fully in the test. In selecting participants, CBP will take into consideration the order in which the applications are received.

Conditions of Participation

Test participants agree to submit export manifest data electronically to CBP via an approved EDI at least 24 hours prior to the loading of the cargo onto the vessel in preparation for departure from the United States. In addition, test participants agree to establish operational security protocols that correspond to CBP hold messages that mandate the participant to take responsive action and respond to CBP confirming that the requested action was taken to mitigate any threat identified, respond promptly with complete and accurate information when contacted by CBP with questions regarding the data submitted, and comply with any ''Do Not Load'' instructions.

Finally, test participants agree to participate in any teleconferences or meetings established by CBP, when necessary, to ensure any challenges, or operational or technical issues regarding the test are properly communicated and addressed.

Participation in the ACE Export Manifest for Vessel Cargo Test does not impose any legally binding obligations on either CBP or the participant, and CBP generally does not intend to enforce or levy punitive measures if test participants are non-compliant with these conditions of participation during the test.

Application Process and Acceptance

Those interested in participating in the ACE Export Manifest for Vessel Cargo Test should submit an email to CBP Export Manifest at *cbpvesselexportmanifest@cbp.dhs.gov*, stating their interest and their qualifications based on the above eligibility requirements. The email will serve as an electronic signature of intent to participate and must also include a point of contact name and telephone number. Applications will be accepted until CBP has received applications from nine parties that meet all test participant requirements. CBP will notify applicants whether they have been selected to participate in the test. Applicants will also be notified once they have successfully completed certification testing and are permitted to participate fully in the test. Test participants will receive technical, operational, and policy guidance through all stages of test participation, from planning to implementation, on the necessary steps for the transmission of electronic export manifest data.

Costs to ACE Export Manifest for Vessel Cargo Test Participants

ACE Export Manifest for Vessel Cargo Test participants are responsible for all costs incurred as a result of their participation in the test and such costs will vary, depending on their pre-existing infrastructures. Costs may be offset by a significant reduction in expenses associated with copying, storing, and courier services for presenting the paper manifest to CBP.

Benefits to ACE Export Manifest for Vessel Cargo Test Participants

While the benefits to ACE Export Manifest for Vessel Cargo Test participants will vary, several advantages of joining may include:

- Reduction in costs associated with generating copies, transportation, and storage of paper manifest documentation;
- Increases in security by leveraging CBP threat model and other data to employ a risk-based approach to improve vessel cargo security and to ensure compliance with U.S. export laws, rules and regulations through targeted screening;
- Gains in efficiencies by automating the identification of high-risk cargo for enhanced screening and earlier identification of low-risk shipments;
- The ability to provide input into CBP efforts to establish, test, and refine the interface between government and industry communication systems for the implementation of the electronic export manifest; and
- Facilitation of corporate preparedness for future mandatory implementation of electronic export manifest submission requirements.

Waiver of Certain Regulatory Requirements

For purposes of this test, the requirement to file a paper CBP Form 1302–A, as provided in 19 CFR 4.63, 4.75, 4.82, and 4.87–89, will be waived for vessel carrier test participants that submit the ACE Export Manifest for Vessel Cargo data elements electronically as described above. For purposes of this test, the requirement to file copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest attached in such manner as to constitute one document, as provided in 19 CFR 4.63(a)(1), will also be waived for vessel carrier test participants. If a freight forwarder or NVOCC submits the electronic ACE Export Manifest data, the vessel carrier is still required to file one of the following: The paper CBP Form 1302–A with copies of bills of lading or equivalent commercial documents relating to all cargo encompassed by the manifest attached in such manner as to constitute one document; the 19 CFR 4.76 electronic equivalent, if the carrier is approved for the electronic filing; or the electronic ACE Export Manifest data, if the vessel carrier is a test participant. The vessel carrier maintains responsibility for submitting the manifest data to CBP to cover all cargo on the vessel, even if the freight forwarder or NVOCC has also submitted manifest data.

Participation in the test does not alter the participant's obligations to comply with any other applicable statutory and regulatory requirements, including 19 CFR 4.63, 4.75, 4.82, and 4.87–89, and participants will still be subject to applicable penalties for non-compliance. In addition, submission of data under the test does not exempt the participant from any CBP or other U.S. Government agency program requirements or any statutory sanctions in the event that a violation of U.S. export laws or prohibited articles are discovered within a shipment/container presented for export destined from the United States on a vessel owned and/or operated by the participant.

Duration and Evaluation of the ACE Export Manifest for Vessel Cargo Test

The test will be activated on a case-by-case basis with each participant and may be limited to a single or small number of ports until any operational, training, or technical issues on either the trade or government side are established and/or resolved. The test will run for approximately two years from September 21, 2015. While the test is ongoing, CBP will evaluate the results and determine whether the test will be extended, expanded to include additional participants, or otherwise modified. CBP will announce any such modifications by notice in the **Federal Register**. When sufficient test analysis and evaluation has been conducted, CBP intends to begin rulemaking to require the submission of electronic export manifest data before the cargo is loaded onto the vessel for all international shipments destined from the United States. The results of the test will help determine the relevant data elements, the time frame within which data should be submitted to permit CBP to effectively target, identify, and mitigate any risk with the least impact practicable on trade operations, and any other related procedures and policies.

Confidentiality

All data submitted and entered into ACE is subject to the Trade Secrets Act (18 U.S.C. 1905) and is considered confidential, except to the extent as otherwise provided by law. However, participation in this or any ACE test is not confidential and upon a written Freedom of Information Act (FOIA) request, the name(s) of an approved participant(s) will be disclosed by CBP in accordance with 5 U.S.C. 552.

Misconduct Under the Test

If a test participant fails to abide by the rules, procedures, or terms and conditions of this and all other applicable **Federal Register** Notices, fails to exercise reasonable care in the execution of participant obligations, or otherwise fails to comply with all applicable laws and regulations, then the participant may be suspended from participation in this test and/or subjected to penalties, liquidated damages, and/or other administrative or judicial sanction. Additionally, CBP has

the right to suspend a test participant based on a determination that an unacceptable compliance risk exists.

If CBP determines that a suspension is warranted, CBP will notify the participant of this decision, the facts or conduct warranting suspension, and the date when the suspension will be effective. In the case of willful misconduct, or where public health interests or safety are concerned, the suspension may be effective immediately. This decision may be appealed in writing to the Assistant Commissioner, Office of Field Operations, within 15 days of notification. The appeal should address the facts or conduct charges contained in the notice and state how the participant has or will achieve compliance. CBP will notify the participant within 30 days of receipt of an appeal whether the appeal is granted. If the participant has already been suspended, CBP will notify the participant when their participation in the test will be reinstated.

Paperwork Reduction Act

As noted above, CBP will be accepting no more than nine participants in the ACE Export Manifest for Vessel Cargo Test. This means that fewer than ten persons will be subject to any information collections under this test. Accordingly, collections of information within this notice are exempted from the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3502 and 3507).

Dated: August 17, 2015.

Todd C. Owen,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 2015–20614 Filed 8–19–15; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2015–0028]

Gratuitous Services Agreement and Volunteer Release and Hold Harmless

AGENCY: National Protection and Programs Directorate, DHS.

ACTION: 60-Day Notice and request for comments; new information collection request: 1670–NEW.

SUMMARY: The Department of Homeland Security (DHS), National Protection and Programs Directorate (NPPD), Office of Infrastructure Protection (IP), Protective Security Coordination Division (PSCD), Office for Bombing Prevention (OBP), will submit the following Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Comments are encouraged and will be accepted until October 19, 2015. This process is conducted in accordance with 5 CFR 1320.1.

ADDRESSES: Written comments and questions about this Information Collection Request should be forwarded to DHS/NPPD/IP/PSCD/OBP, 245 Murray Lane SW., Mail Stop 0612, Washington, DC 20528–0612. Emailed requests should go to *OBP@dhs.gov.* Written comments should reach the contact person listed no later than October 19, 2015. Comments must be identified by ''DHS–2015–0028''and may be submitted by *one* of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov* .
- *Email:* Include the docket number in the subject line of the message.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided.

SUPPLEMENTARY INFORMATION: The Gratuitous Services Agreement and Volunteer Release and Hold Harmless form will be provided to participants of OBP trainings. The participants will be emergency response personnel training with DHS OBP personnel. The collection of this information is necessary in the case that an individual who acts as a volunteer role player in support of official OBP training sustains an injury or death during the performance of his or her supporting role. If legal action is taken, this information can serve as a ''hold harmless'' statement/agreement by the Government. The purpose of the Gratuitous Services Agreement is to establish that no monies, favors or other compensation will be given or received by either parties involved.

Analysis

Agency: Department of Homeland Security, National Protection and Programs Directorate, Office of Infrastructure Protection, Protective Security Coordination Division, Office for Bombing Prevention.

Title: Gratuitous Services Agreement and Volunteer Release and Hold Harmless form.

OMB Number: 1670–NEW.

Frequency: Varies.

Affected Public: Participants in OBP training, to include, but not limited to emergency response personnel, firefighters, police officers, emergency medical teams, and emergency management personnel.

Number of Respondents: 1500 respondents (estimate).

Estimated Time per Respondent: .2 hours.

Total Burden Hours: 150 annual burden hours.

Total Burden Cost (capital/startup): $0.

Total Recordkeeping Burden: $0.

Total Burden Cost (operating/maintaining): $6,831.00.

David Epperson,

Chief Information Officer, National Protection and Programs Directorate, Department of Homeland Security.

[FR Doc. 2015–20615 Filed 8–19–15; 8:45 am]

BILLING CODE 9110–9P–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLNMA00000 L12200000.DF0000 15X L1010BP]

Notice of Public Meeting, Albuquerque District Resource Advisory Council Meeting, New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act, the Bureau of Land Management (BLM), Albuquerque District Resource Advisory Council (RAC) will meet as indicated below.

DATES: The RAC will meet on Thursday, September 17, 2015, at the Albuquerque District Office, 100 Sun Avenue Northeast, Pan American Building, Suite 330, Albuquerque, New Mexico, from 9 a.m.–4 p.m. The public may send written comments to the RAC at the BLM Albuquerque District Office, 100 Sun Avenue Northeast, Pan American Building, Suite 330, Albuquerque, NM 87109.

FOR FURTHER INFORMATION CONTACT: Carlos Coontz, 575–838–1263, BLM Socorro Field Office, 901 South Highway 85, Socorro, NM 87101. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8229 to contact the above individual during normal business hours. The FIRS is available 24

hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The 10-member Albuquerque District RAC advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management in New Mexico's Albuquerque District.

Planned agenda items include updates on: Council term length, membership, and designation; the Rio Puerco Resource Management Plan; the Socorro Resource Management Plan five year evaluation; Kasha-Katuwe Tent Rocks National Monument; Datil Well Recreation Area; the Arizona Interconnection Project access roads permitting; and wilderness study areas. There will also be a discussion on the RAC's goals, field trip priorities, training, and future organizational preferences.

A half-hour comment period during which the public may address the RAC will begin at 11 a.m. All RAC meetings are open to the public. Depending on the number of individuals wishing to comment and time available, the time for individual oral comments may be limited.

Andrew Archuleta,

Acting Deputy State Director, Lands and Resources.

[FR Doc. 2015–20572 Filed 8–19–15; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

On August 17, 2015, the Department of Justice lodged a proposed Consent Decree with the United States District Court for the District of Maryland in the lawsuit entitled *United States and State of Maryland* v. *Arkema Inc., et al.,* Civil Action No.1:15–cv–02426.

Under the proposed Consent Decree, Defendants Arkema Inc.; Bayer Cropscience, LP; FMC Corporation; Honeywell International, Inc; Lebanon Seaboard Corporation; Montrose Chemical Corporation of California; Occidental Chemical Corporation; Olin Corpration; Rhone-Poulenc; Rohm and Haas Company; Shell Oil Company; Syngenta Crop Protection, LLC; The Chemours Company FC, LLC; Union Carbide Corporation; Wilmington Securities, Inc.; and 21st Century Fox America, Inc., will: (1) Pay past response costs of $945,117.64 to the United States, (2) agree to pay future response costs to the United States, and (3) implement injunctive relief to perform the remedy set forth in the Record of Decision for Operable Unit 1 (''OU–1'') of the Central Chemical Site (''Site'') in Hagerstown Maryland. The proposed Consent Decree resolves the United States' claim for cost recovery under Section 107 of CERCLA, 42 U.S.C. 9607, and the United States' and the State of Maryland's claims for injunctive relief under Section 106 of CERCLA, 42 U.S.C. 9606, and Maryland Environment Code § 7–222, with respect to OU–1 of the Site. The Site is a former agricultural pesticide and fertilizer blending facility; OU–1 of the Site addresses contaminated soils, and principal threat wastes at the Site, including a former waste lagoon.

Under the proposed Consent Decree, the United States and the State of Maryland covenant not to sue or take administrative action against Defendants pursuant to Sections 106 and 107(a) of CERCLA and Section 7003 of RCRA, for past and future costs paid, and injunctive relief performed, pursuant to the proposed Consent Decree.

The publication of this notice opens a period for public comment on the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States United States and State of Maryland* v. *Arkema Inc., et al.,* D.J. Ref. No. 90–11–2–1244/1. All comments must be submitted no later than thirty (30) days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	Send them to:
By email	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General U.S. DOJ—ENRD P.O. Box 7611 Washington, DC 20044–7611.

Under section 7003(d) of RCRA, a commenter may request an opportunity for a public meeting in the affected area.

During the public comment period, the Consent Decree may be examined and downloaded at this Justice Department Web site: *http://www.justice.gov/enrd/consent-decrees.* We will provide a paper copy of the Consent Decree upon written request and payment of reproduction costs. Please mail your request and payment to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

Please enclose a check or money order for $69.50 (25 cents per page reproduction cost) payable to the United States Treasury. For a paper copy without the exhibits and signature pages, the cost is $25.00.

Robert D. Brook,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2015–20580 Filed 8–19–15; 8:45 am]

BILLING CODE 4410–15–P

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 (''the Act'') and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 31, 2015.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than August 31, 2015.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, Room N–5428, 200 Constitution Avenue NW., Washington, DC 20210.

Signed at Washington, DC, this 27th day of July 2015.

Del Min Chen,

Certifying Officer, Office of Trade Adjustment Assistance.

APPENDIX

[66 TAA petitions instituted between 6/29/15 and 7/24/15]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
86135	Harrington Machine & Tool Co., Inc. (Company)	Franklin, PA	06/29/15	06/26/15
86136	Verizon (Workers)	Lake Mary, FL	06/29/15	06/26/15
86137	Dex Media (Union)	Williamsville, NY	06/29/15	06/26/15
86138	Verizon (Workers)	Richard, TX	06/29/15	06/25/15
86139	JMC Steel Group (Union)	Whertland, PA	06/29/15	06/29/15
90000	Genpact (Workers)	Wilkes Barre, PA	06/30/15	06/29/15
90001	Midland Credit Management (State/One-Stop)	San Diego, CA	06/30/15	06/29/15
90002	Caterpillar Inc. (State/One-Stop)	Peoria, IL	06/30/15	06/29/15
90003	QBE of the Americas (State/One-Stop)	New York, NY	07/01/15	06/30/15
90004	RBS Citizens, National Association (State/One-Stop)	Bridgeport, CT	07/01/15	06/29/15
90005	Genesis Healthcare (Workers)	Albuquerque, NM	07/02/15	07/01/15
90006	Kanzaki Specialty Papers (Workers)	Ware, MA	07/02/15	07/01/15
90007	Swiss International Airlines (State/One-Stop)	East Meadow, NY	07/06/15	07/03/15
90008	ATOS IT Solutions and Services, Inc. (State/One-Stop)	Purchase, NY	07/06/15	07/03/15
90009	Bechtel (State/One-Stop)	Glendale, AZ	07/06/15	07/02/15
90010	Honeywell, Software Development Center (State/One-Stop)	Lynnwood, WA	07/07/15	07/06/15
90011	Wilson Creek Energy LLC (Company)	Friedens, PA	07/07/15	07/07/15
90012	Medical Information Management Solutions (State/One-Stop)	Phoenix, AZ	07/08/15	07/07/15
90013	National Oilwell Vargo (Union)	Springfield, OH	07/08/15	07/07/15
90014	Kinedyne (State/One-Stop)	Lawrence, KS	07/08/15	07/07/15
90015	Startek USA, Inc. (Workers)	Greeley, CO	07/08/15	07/07/15
90016	GrafTech USA LLC (Company)	Saint Marys, PA	07/09/15	07/08/15
90017	Moneygram (State/One-Stop)	Brooklyn Center, MN	07/10/15	07/09/15
90018	Eaton Corporation—Watertown (Company)	Watertown, WI	07/10/15	06/23/15
90019	East Wind Code, Ltd. (Workers)	New York, NY	07/10/15	07/08/15
90020	AT&T Mobility (Workers)	Springfield, IL	07/10/15	07/07/15
90021	Digitec, Inc. (Company)	Milford, NE	07/13/15	07/09/15
90022	Chemtura (Formally Known as Bio-Lab) (State/One-Stop)	Adrian, MI	07/13/15	07/10/15
90023	WebCo (State/One-Stop)	Sandsprings, OK	07/13/15	07/10/15
90024	QBE Americas (State/One-Stop)	Irvine, CA	07/13/15	07/10/15
90025	Alorica (State/One-Stop)	Tulsa, OK	07/13/15	07/10/15
90026	Abbott Medical Optics (State/One-Stop)	Santa Ana, CA	07/13/15	07/10/15
90027	Kongsberg Power Products Systems Inc, Kongsberg Automotive (Company).	Swainsboro, GA	07/14/15	07/13/15
90028	Mondelez International Bakery (Company)	Philadelphia, PA	07/14/15	07/13/15
90029	Powerbar, Premier Nutrition (Workers)	Boise, ID	07/15/15	06/19/15
90030	SimplexGrinnell LP d/b/a Tyco Fire Protection Product (Company)	Westminister, MA	07/15/15	07/10/15
90031	CUDD Energy Services (Workers)	Canton, PA	07/15/15	07/14/15
90032	International Rectifier (State/One-Stop)	El Segundo, CA	07/15/15	07/14/15
90033	AT&T Telecommunications Relay Services (Workers)	New Castle, PA	07/15/15	07/14/15
90034	AGFA Corporation (State/One-Stop)	City of Industry, CA	07/16/15	07/15/15
90035	Airtex Products L.P. (Company)	Fairfield, IL	07/16/15	07/15/15
90036	Bush Industries, Inc. of PA (Company)	Erie, PA	07/16/15	07/15/15
90037	Bush Industries, Inc. (Company)	Jamestown, NY	07/16/15	07/15/15
90038	Cleveland Lease Service (State/One-Stop)	Cleveland, OK	07/16/15	07/15/15
90039	Compass Group/Flick at Mondelez (Workers)	Wilkes-Barre, PA	07/16/15	07/15/15
90040	Kinze Mfg, Inc. (Workers)	Williamsburg, IA	07/16/15	07/15/15
90041	Powerex, Inc. (Company)	Youngwood, PA	07/16/15	07/15/15
90042	SECO/Warwick Corporation (Company)	Meadville, PA	07/20/15	07/20/15
90043	Polyfusion Electronics Inc. (State/One-Stop)	Lancaster, NY	07/20/15	07/17/15
90044	First Manufacturing Company, Inc. (State/One-Stop)	Oceanside, NY	07/21/15	07/21/15
90045	Englobal (State/One-Stop)	Tulsa, OK	07/21/15	07/20/15
90046	ConMed (Company)	Centennial, CO	07/21/15	07/20/15
90047	AthenaHealth, Inc. (Company)	Birmingham, AL	07/21/15	07/20/15
90048	Atmel (State/One-Stop)	Colorado Springs, CO	07/21/15	07/20/15
90049	Muffett and Sons Fencing LLC (State/One-Stop)	Zillah, WA	07/21/15	07/21/15
90050	Aegis USA Inc. (Workers)	Fairmont, WV	07/21/15	07/17/15
90051	Worldwide Imports Inc. (State/One-Stop)	Kent, WA	07/21/15	07/08/15
90052	Dyno Nobel Inc. (Union)	Salt Lake City, UT	07/22/15	07/21/15
90053	Wheelock Manufacturing (Company)	Morocco, IN	07/22/15	07/21/15
90054	Parallel Energy LP (State/One-Stop)	Tulsa, OK	07/22/15	07/21/15
90055	Eastman Chemical/Solution Inc. (State/One-Stop)	Springfield, MA	07/22/15	07/21/15
90056	Parker Hannifin Corporation (Company)	Beaufort, SC	07/23/15	07/22/15
90057	Union Pacific Railroad (State/One-Stop)	St. Paul, MN	07/23/15	07/22/15

APPENDIX—Continued

[66 TAA petitions instituted between 6/29/15 and 7/24/15]

TA–W	Subject firm (petitioners)	Location	Date of institution	Date of petition
90058	ICON Health & Fitness Inc. (Company)	Ogden, UT	07/23/15	07/22/15
90059	Radiant Thermal Prods Inc. (Workers)	Roselle, NJ	07/23/15	07/21/15
90060	Lenovo (State/One-Stop)	Morrisville, NC	07/24/15	07/24/15

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2014–0011]

Impregilo Healy Parsons Joint Venture; Grant of a Permanent Variance

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA grants a permanent variance to Impregilo Healy Parsons Joint Venture from the provisions of OSHA standards that regulate work in compressed-air environments at 29 CFR 1926.803.

DATES: The permanent variance specified by this notice becomes effective on August 20, 2015, and shall remain in effect until the completion of the Anacostia River Tunnel Project, but no later than December 31, 2016.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3647, Washington, DC 20210; telephone: (202) 693–1999; email: *Meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–3655, Washington, DC 20210; phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION: Copies of this **Federal Register** notice. Electronic copies of this **Federal Register** notice are available at *http://www.regulations.gov.* This **Federal Register** notice and other relevant information are also available at OSHA's Web page at *http://www.osha.gov.*

I. Notice of Application

On April 3, 2014, Impregilo Healy Parsons Joint Venture, (''IHP JV'' or ''the applicant''), 2600 Independence Avenue SE., Washington, DC 20003, submitted an application for a permanent variance and interim order under Section 6(d) of the Occupational Safety and Health Act of 1970 (''OSH Act''; 29 U.S.C. 655) and 29 CFR 1905.11 (''Variances and other relief under section 6(d)'') from several provisions of the OSHA standard that regulates work in compressed air at 29 CFR 1926.803. IHP JV also requested an interim order pending OSHA's decision on the application for a variance (Exhibit OSHA–2014–0011–0001, Request for Variance). Specifically, the applicant seeks a variance from the provisions of the standard that: (1) Prohibit compressed-air worker exposure to pressures exceeding 50 pounds per square inch (p.s.i.) except in an emergency (29 CFR 1926.803(e)(5)); [1] (2) require the use of the decompression values specified in decompression tables in Appendix A of the compressed-air standard for construction (29 CFR 1926.803(f)(1)); and (3) require the use of automated operational controls and a special decompression chamber (29 CFR 1926.803(g)(1)(iii) and .803(g)(1)(xvii), respectively).

According to its application, IHP JV is currently the general contractor for the District of Columbia Water and Sewer Authority's (''DC Water'') project to construct the Anacostia River Tunnel. The Anacostia River Tunnel project design requires the ability to safely perform hyperbaric interventions in compressed air at pressures higher than allowed in the existing OSHA standard 29 CFR 1926.803(e)(5) which states: ''No employee shall be subjected to pressure exceeding 50 p.s.i.g. except in emergency'' (see footnote 1).

The applicant is a contractor that works on complex tunnel projects using recently developed equipment and procedures for soft-ground tunneling. The applicant's workers engage in the construction of subaqueous tunnels below the water table through soft soils consisting of clay, silt, and sand using advanced shielded mechanical excavation techniques in conjunction with an Earth Pressure Balanced Tunnel Boring Machine (EPBTBM).

IHP JV employs specially trained personnel for the construction of the tunnel, and states that this construction project uses shielded mechanical-excavation techniques. IHP JV asserts that its workers perform hyperbaric interventions at pressures greater than 50 p.s.i.g. in the excavation chamber of the EPBTBM. The hyperbaric interventions consist of conducting inspections and maintenance work on the cutter-head structure and cutting tools of the EPBTBM.

OSHA considered IHP JV's application for a permanent variance and interim order. On February 11, 2015, OSHA published a preliminary **Federal Register** notice announcing IHP JV's application for a permanent variance and interim order, grant of an interim order, and request for comments (80 FR 7636) for the Anacostia River Tunnel project.

II. The Variance Application

A. Background

IHP JV asserts that innovations in tunnel excavation, specifically with EPBTBMs, have, in most cases, eliminated the need to pressurize the entire tunnel. These advances in technology modified substantially the methods used by the construction industry to excavate subaqueous tunnels compared to the caisson work regulated by the current OSHA compressed-air standard for construction at 29 CFR 1926.803. Such advances reduce the number of workers exposed, and the total duration of exposure, to hyperbaric pressure during tunnel construction.

Using shielded mechanical-excavation techniques, in conjunction with precast concrete tunnel liners and backfill grout, EPBTBMs provide methods to achieve the face pressures required to maintain a stabilized tunnel

[1] The decompression tables in Appendix A of subpart S express the maximum working pressures as pounds per square inch gauge (p.s.i.g.), with a maximum working pressure of 50 p.s.i.g. Therefore, throughout this notice, OSHA expresses the 50 p.s.i. value specified by § 1926.803(e)(5) as 50 p.s.i.g., consistent with the terminology in Appendix A, Table 1 of subpart S.

face through various geologies, and isolate that pressure to the forward section (the working chamber) of the EPBTBM. Interventions in the working chamber take place only after halting tunnel excavation and preparing the machine and crew for an intervention. Interventions occur to inspect or maintain the mechanical-excavation components located in the working chamber. Maintenance conducted in the working chamber includes changing replaceable cutting tools and disposable wear bars, and, in rare cases, repairing structural damage to the cutter head.

In addition to innovations in tunnel-excavation methods, research conducted after OSHA published its compressed-air standard for construction in 1971, resulted in advances in hyperbaric medicine. In this regard, the applicant asserts that the use of decompression protocols incorporating oxygen is more efficient, effective, and safer for tunnel workers than compliance with the existing OSHA standard (29 CFR 1926, subpart S, Appendix A decompression tables). According to the applicant, contractors routinely and safely expose employees performing interventions in the working chamber of EPBTBMs to hyperbaric pressures up to 75 p.s.i.g., which is 50% higher than maximum pressure specified by the existing OSHA standard (see 29 CFR 1926.803(e)(5)). The applicant asserts that these hyperbaric exposures are possible because of advances in hyperbaric technology, a better understanding of hyperbaric medicine, and the development of a project-specific HOM (Hyperbaric Operations Manual) that requires specialized medical support and hyperbaric supervision to provide assistance to a team of specially trained man-lock attendants and hyperbaric workers.

The applicant contends that the alternative safety measures included in its application provide its workers with a place of employment that is at least as safe and healthful as they would obtain under the existing provisions of OSHA's compressed-air standard for construction. The applicant certifies that it provided employee representatives of affected workers with a copy of the variance application.[2] The applicant also certifies that it notified its workers of the variance application by posting, at prominent locations where it normally posts workplace notices, a summary of the application and information specifying where the workers can examine a copy of the application. In addition, the applicant informed its workers and their representatives of their rights to petition the Assistant Secretary of Labor for Occupational Safety and Health for a hearing on the variance application.

B. Variance From Paragraph (e)(5) of 29 CFR 1926.803, Prohibition of Exposure to Pressure Greater Than 50 p.s.i.g. (See Footnote 1)

The applicant states that it may perform hyperbaric interventions at pressures greater than 50 p.s.i.g. in the working chamber of the EPBTBM; this pressure exceeds the pressure limit of 50 p.s.i.g. specified for nonemergency purposes by 29 CFR 1926.803(e)(5). The EPBTBM has twin man locks, with each man lock having two compartments. This configuration allows workers to access the man locks for compression and decompression, and medical personnel to access the man locks if required in an emergency.

EPBTBMs are capable of maintaining pressure at the tunnel face, and stabilizing existing geological conditions, through the controlled use of propel cylinders, a mechanically driven cutter head, bulkheads within the shield, ground-treatment foam, and a screw conveyor that moves excavated material from the working chamber. As noted earlier, the forward-most portion of the EPBTBM is the working chamber, and this chamber is the only pressurized segment of the EPBTBM. Within the shield, the working chamber consists of two sections: The staging chamber and the forward working chamber. The staging chamber is the section of the working chamber between the man-lock door and the entry door to the forward working chamber. The forward working chamber is immediately behind the cutter head and tunnel face.

The applicant will pressurize the working chamber to the level required to maintain a stable tunnel face. Pressure in the staging chamber ranges from atmospheric (no increased pressure), to a maximum pressure equal to the pressure in the working chamber. The applicant asserts that most of the hyperbaric interventions will be at or near atmospheric pressure. However, the applicant maintains that they may have to perform interventions at pressures up to 52 p.s.i.g.

During interventions, workers enter the working chamber through one of the twin man locks that open into the staging chamber. To reach the forward part of the working chamber, workers pass through a door in a bulkhead that separates the staging chamber from the forward working chamber. The maximum crew size allowed in the forward working chamber is three. At certain hyperbaric pressures (*i.e.,* when decompression times are greater than work times), the twin man locks allow for crew rotation. During crew rotation, one crew can be compressing or decompressing while the second crew is working. Therefore, the working crew always has an unoccupied man lock at its disposal.

The applicant developed a project-specific HOM for the Anacostia River Tunnel project (Exhibit OSHA–2014–0011–0003, IHP JV Project-Specific HOM) that describes in detail the hyperbaric procedures and required medical examinations used during the tunnel-construction project. The HOM is project-specific, and discusses standard operating procedures and emergency and contingency procedures. The procedures include using experienced and knowledgeable man-lock attendants who have the training and experience necessary to recognize and treat decompression illnesses and injuries. The attendants are under the direct supervision of the hyperbaric supervisor and attending physician. In addition, procedures include medical screening and review of prospective compressed-air workers (CAWs). The purpose of this screening procedure is to vet prospective CAWs with medical conditions (*e.g.,* deep vein thrombosis, poor vascular circulation, and muscle cramping) that could be aggravated by sitting in a cramped space (*e.g.,* a man lock) for extended periods or by exposure to elevated pressures and compressed gas mixtures. A transportable recompression chamber (shuttle) is available to extract workers from the hyperbaric working chamber for emergency evacuation and medical treatment; the shuttle attaches to the topside medical lock, which is a large recompression chamber. The applicant believes that the procedures included in the HOM provide safe work conditions when interventions are necessary, including interventions above 50 p.s.i.g.

C. Variance From Paragraph (f)(1) of 29 CFR 1926.803, Requirement To Use OSHA Decompression Tables

OSHA's compressed-air standard for construction requires decompression in accordance with the decompression tables in Appendix A of 29 CFR part 1926, subpart S (see 29 CFR 1926.803(f)(1)). As an alternative to the OSHA decompression tables, the applicant proposes to use newer decompression schedules that supplement breathing air used during decompression with pure oxygen. The applicant asserts that these decompression protocols are safer for tunnel workers than the decompression

[2] See the definition of ''Affected employee or worker'' in section VI. D.

protocols specified in Appendix A of 29 CFR part 1926, subpart S. Accordingly, the applicant proposes to use the 1992 French Decompression Tables to decompress CAWs after they exit the hyperbaric conditions in the working chamber.

Depending on the maximum working pressure and exposure time*s,* the 1992 French Decompression Tables provide for air decompression with or without oxygen. IHP JV asserts that oxygen decompression has many benefits, including (1) keeping the partial pressure of nitrogen in the lungs as low as possible; (2) keeping external pressure as low as possible to reduce the formation of bubbles in the blood; (3) removing nitrogen from the lungs and arterial blood and increasing the rate of elimination of nitrogen; (4) improving the quality of breathing during decompression stops so that workers are less tired and to prevent bone necrosis; (5) reducing decompression time by about 33 percent as compared to air decompression; and (6) reducing inflammation.

In addition, the HOM requires a physician certified in hyperbaric medicine to manage the medical condition of CAWs during hyperbaric exposures and decompression. A trained and experienced man-lock attendant also will be present during hyperbaric exposures and decompression. This man-lock attendant will operate the hyperbaric system to ensure compliance with the specified decompression table. A hyperbaric supervisor (competent person), trained in hyperbaric operations, procedures, and safety, will directly oversee all hyperbaric interventions, and ensure that staff follow the procedures delineated in the HOM or by the attending physician.

The applicant asserts that at higher hyperbaric pressures, decompression times exceed 75 minutes. The HOM establishes protocols and procedures that provide the basis for alternate means of protection for CAWs under these conditions. Accordingly, based on these protocols and procedures, the applicant requests to use the 1992 French Decompression Tables for hyperbaric interventions up to 52 p.s.i.g. for the Anacostia River Tunnel project. The applicant is committed to follow the decompression procedures described in the project-specific HOM during these interventions.

D. Variance From Paragraph (g)(1)(iii) of 29 CFR 1926.803, Automatically Regulated Continuous Decompression

According to the applicant, breathing air under hyperbaric conditions increases the amount of nitrogen gas dissolved in a CAW's tissues. The greater the hyperbaric pressure under these conditions, and the more time spent under the increased pressure, the greater the amount of nitrogen gas dissolved in the tissues. When the pressure decreases during decompression, tissues release the dissolved nitrogen gas into the blood system, which then carries the nitrogen gas to the lungs for elimination through exhalation. Releasing hyperbaric pressure too rapidly during decompression can increase the size of the bubbles formed by nitrogen gas in the blood system, resulting in DCI, commonly referred to as ''the bends.'' This description of the etiology of DCI is consistent with current scientific theory and research on the issue (see footnote 12 in this notice discussing a 1985 NIOSH report on DCI).

The 1992 French Decompression Tables proposed for use by the applicant provide for stops during worker decompression (*i.e.,* staged decompression) to control the release of nitrogen gas from tissues into the blood system. Studies show that staged decompression, in combination with other features of the 1992 French Decompression Tables such as the use of oxygen, result in a lower incidence of DCI than the OSHA decompression requirements of 29 CFR 1926.803, which specify the use of automatically regulated continuous decompression (see footnotes 10 through 14 in this notice for references to these studies).[3] In addition, the applicant asserts that staged decompression is at least as effective as an automatic controller in regulating the decompression process because:

1. A hyperbaric supervisor (a competent person experienced and trained in hyperbaric operations, procedures, and safety) directly supervises all hyperbaric interventions and ensures that the man-lock attendant, who is a competent person in the manual control of hyperbaric systems, follows the schedule specified in the decompression tables, including stops; and

2. The use of the 1992 French Decompression Tables for staged decompression offers an equal or better level of management and control over the decompression process than an automatic controller and results in lower occurrences of DCI.

Accordingly, the applicant is applying for a permanent variance from the OSHA standard at 29 CFR 1926.803(g)(1)(iii), which requires automatic controls to regulate decompression. As noted above, the applicant is committed to conduct the staged decompression according to the 1992 French Decompression Tables under the direct control of the trained man-lock attendant and under the oversight of the hyperbaric supervisor.

E. Variance From Paragraph (g)(1)(xvii) of 29 CFR 1926.803, Requirement of Special Decompression Chamber

The OSHA compressed-air standard for construction requires employers to use a special decompression chamber when total decompression time exceeds 75 minutes (see 29 CFR 1926.803(g)(1)(xvii)). Use of the special decompression chamber enables CAWs to move about and flex their joints to prevent neuromuscular problems during decompression.

As an alternative to using a special decompression chamber, the applicant notes that since only the working chamber of the EPBTBM is under pressure, and only a few workers out of the entire crew are exposed to hyperbaric pressure, the man locks (which, as noted earlier, connect directly to the working chamber) and the staging chamber are of sufficient size to accommodate the exposed workers. In addition, available space in the EPBTBM does not allow for an additional special decompression lock. Again, the applicant uses the man locks, each of which adequately accommodates a three-member crew, for this purpose when decompression lasts up to 75 minutes. When decompression exceeds 75 minutes, crews can open the door connecting the two compartments in each man lock during decompression stops or exit the man lock and move into the staging chamber where additional space is available. This

[3] In the study cited in footnote 10 of this notice, starting at page 338, Dr. Eric Kindwall notes that the use of automatically regulated continuous decompression in the Washington State safety standards for compressed-air work (from which OSHA derived its decompression tables) was at the insistence of contractors and the union, and against the advice of the expert who calculated the decompression table and recommended using staged decompression. Dr. Kindwall then states, ''Continuous decompression is inefficient and wasteful. For example, if the last stage from 4 p.s.i.g. . . . to the surface took 1 h, at least half the time is spent at pressures less than 2 p.s.i.g. . . ., which provides less and less meaningful bubble suppression. . . .'' In addition, the report referenced in footnote 5 under the section titled, ''Background on the Need for Interim Decompression Tables'' addresses the continuous-decompression protocol in the OSHA compressed-air standard for construction, noting that ''[a]side from the tables for saturation diving to deep depths, no other widely used or officially approved diving decompression tables use straight line, continuous decompressions at varying rates. Stage decompression is usually the rule, since it is simpler to control.''

alternative enables CAWs to move about and flex their joints to prevent neuromuscular problems during decompression.

F. Previous Tunnel Construction Variances

OSHA notes that on May 23, 2014, it granted a sub-aqueous tunnel construction permanent variance to Tully/OHL USA Joint Venture (79 FR 29809) from the same provisions of the standard that regulate work in compressed air (at 29 CFR 1926.803(e)(5), (f)(1), (g)(1)(iii), and (g)(1)(xvii)) that are the subject of the present application. On March 27, 2015, OSHA also granted another sub-aqueous tunnel construction permanent variance to Traylor/Skanska/Jay Dee Joint Venture (80 FR 16440) from the same provisions of the standard that are the subject of the present application. Generally, the alternate conditions in this notice are based on and very similar to the alternate conditions of the previous permanent variances.

G. Multi-State Variance

As stated earlier in this notice, IHP JV applied for a permanent variance and interim order for its Anacostia River Tunnel project only. The Anacostia River Tunnel project is located entirely in the District of Columbia and thus under Federal OSHA's exclusive jurisdiction. Therefore, any variance OSHA grants IHP JV will have effect only in the District of Columbia.

Twenty-eight state safety and health plans have been approved by OSHA under section 18 of the (OSH) Act.[4] As part of the permanent variance process, the Directorate of Cooperative and State Programs will notify the State Plans of IHP JV's variance application and grant of the Anacostia River Tunnel project permanent variance.

Additionally, in considering IHP JV's application for a permanent variance and interim order, OSHA noted that four State Plans have previously granted sub-aqueous tunnel construction variances and imposed different or additional requirements and conditions (California, Nevada, Oregon, and Washington). California also promulgated new standards[5] for similar sub-aqueous tunnel construction work.

III. Description of the Conditions Specified for the Permanent Variance

This section describes the alternative means of compliance with 29 CFR 1926.803(e)(5), (f)(1), (g)(1)(iii), and (g)(1)(xvii) and provides additional detail regarding the conditions that form the basis of IHP JV's permanent variance.

Condition A: Scope

The scope of the permanent variance limits coverage to the work situations specified under this condition. Clearly defining the scope of the permanent variance provides IHP JV, IHP JV's employees, other stakeholders, the public, and OSHA with necessary information regarding the work situations in which the permanent variance applies.

According to 29 CFR 1905.11, an employer (or class or group of employers[6]) may request a permanent variance for a specific workplace or workplaces (multiple sites). If granted, the variance applies to the specific employer(s) that submitted the application. In this instance, the permanent variance applies to the applicant, IHP JV, for its Anacostia River Tunnel project, and does not apply to any other employers.

Condition B: Application

This condition specifies the circumstances under which the permanent variance is in effect, notably only for hyperbaric work performed during interventions. The condition places clear limits on the circumstances under which the applicant can expose its employees to hyperbaric pressure.

Condition C: List of Abbreviations

This condition defines a number of abbreviations used in the permanent variance. OSHA believes that defining these abbreviations serves to clarify and standardize their usage, thereby enhancing the applicant's and its employees' understanding of the conditions specified by the permanent variance.

Condition D: Definitions

The condition defines a series of terms, mostly technical terms, used in the permanent variance to standardize and clarify their meaning. Defining these terms serves to enhance the applicant's and its employees' understanding of the conditions specified by the permanent variance.

Condition E: Safety and Health Practices

This condition requires the applicant to develop and submit to OSHA an HOM specific to the Anacostia River Tunnel project at least six months before using the EPBTBM for tunneling operations. Additionally, the condition includes a series of related hazard prevention and control requirements and methods (*e.g.,* decompression tables, job hazard analysis (JHA), operations and inspections checklists, incident investigation, recording and notification to OSHA of recordable hyperbaric injuries and illnesses, etc.) designed to ensure the continued effective functioning of the hyperbaric equipment and operating system.

Review of the HOM enables OSHA to: (1) Determine that the safety and health instructions and measures it specifies are appropriate and do adequately protect the safety and health of the CAWs and that it conforms to the conditions of the variance; and (2) request the applicant to revise or modify the HOM if it finds that the hyperbaric safety and health procedures are not suitable for the specific project and do not adequately protect the safety and health of the CAWs. Once approved, the project-specific HOM becomes part of the variance, thus enabling OSHA to enforce its safety and health procedures and measures.[7]

Condition F: Communication

This condition requires the applicant to develop and implement an effective system of information sharing and communication. Effective information sharing and communication ensures that affected workers receive updated information regarding any safety-related hazards and incidents, and corrective actions taken, prior to the start of each shift. The condition also requires the applicant to ensure that reliable means of emergency communications are available and maintained for affected

[4] Six State Plans (Connecticut, Illinois, New Jersey, New York, Maine and the Virgin Islands) limit their occupational safety and health authority to state and local government employers only. State Plans that exercise their occupational safety and health authority over both public- and private-sector employers are: Alaska, Arizona, California, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Washington, and Wyoming.

[5] See California Code of Regulations, Title 8, Subchapter 7, Group 26, Article 154, available at *http://www.dir.ca.gov/title8/sb7g26a154.html.*

[6] A class or group of employers (such as members of a trade alliance or association) may apply jointly for a variance provided an authorized representative for each employer signs the application and the application identifies each employer's affected facilities.

[7] Publication of the preliminary **Federal Register** notice (80 FR 7636) announcing IHP JV's application for a permanent variance and grant of a project-specific interim order constituted acknowledgement by OSHA of the acceptability of the HOM provided by IHP JV for the Anacostia River Tunnel project. Further, publication of this **Federal Register** notice announcing grant of a project-specific permanent variance constitutes acknowledgement by OSHA of the acceptability of IHP JV's revised HOM (Rev 1) (Ex. OSHA–2014–0011–0009).

workers and support personnel during hyperbaric operations. Availability of such reliable means of communication enable affected workers and support personnel to respond quickly and effectively to hazardous conditions or emergencies that may develop during EPBTBM operations.

Condition G: Worker Qualification and Training

This condition requires the applicant to develop and implement an effective qualification and training program for affected workers. The condition specifies the factors that an affected worker must know to perform safely during hyperbaric operations, including how to enter, work in, and exit from hyperbaric conditions under both normal and emergency conditions. Having well-trained and qualified workers performing hyperbaric intervention work ensures that they recognize, and respond appropriately to, hyperbaric safety and health hazards. These qualification and training requirements enable affected workers to cope effectively with emergencies, as well as the discomfort and physiological effects of hyperbaric exposure, thereby preventing injury, illness, and fatalities among workers.

As part of the qualification and training program, paragraph (G)(2)(e) of this condition also requires the applicant to provide affected workers with information they can use to contact the appropriate healthcare professionals if they believe that they are developing hyperbaric-related health effects. This requirement provides for early intervention and treatment of DCI and other health effects resulting from hyperbaric exposure, thereby reducing the potential severity of these effects.

Condition H: Inspections, Tests, and Accident Prevention

This condition requires the applicant to develop, implement, and operate a program of frequent and regular inspections of the EPBTBM's hyperbaric equipment and support systems, and associated work areas. This condition helps to ensure the safe operation and physical integrity of the equipment and work areas necessary to conduct hyperbaric operations. The condition also enhances worker safety by reducing the risk of hyperbaric-related emergencies.

Paragraph (H)(3) of this condition requires the applicant to document tests, inspections, corrective actions, and repairs involving the EPBTBM, and maintain these documents at the job site for the duration of the job. This requirement provides the applicant with information needed to schedule tests and inspections to ensure the continued safe operation of the equipment and systems, and to determine that the actions taken to correct defects in hyperbaric equipment and systems were appropriate, prior to returning them to service.

Condition I: Compression and Decompression

This condition requires the applicant to consult with its designated medical advisor regarding special compression or decompression procedures appropriate for any unacclimated CAW. This provision ensures that the applicant consults with the medical advisor, and involves the medical advisor in the evaluation, development, and implementation of compression or decompression protocols appropriate for any CAW requiring acclimation to the hyperbaric conditions encountered during EPBTBM operations. Accordingly, CAWs requiring acclimation have an opportunity to acclimate prior to exposure to these hyperbaric conditions. OSHA believes this condition will prevent or reduce adverse reactions among CAWs to the effects of compression or decompression associated with the intervention work they perform in the EPBTBM.

Condition J: Recordkeeping

This condition requires the applicant to maintain records of specific factors associated with each hyperbaric intervention. The information gathered and recorded under this provision, in concert with the information provided under Condition K (using OSHA 301 Incident Report form to investigate and record hyperbaric recordable injuries as defined by 29 CFR 1904.4, 1904.7, 1904.8 through 1904.12), enables the applicant and OSHA to determine the effectiveness of the permanent variance in preventing decompression illness (DCI) and other hyperbaric-related effects.[8]

Condition K: Notifications

Under this condition, the applicant must, within specified periods: (1) Notify OSHA of any recordable injuries, illnesses, in-patient hospitalizations, amputations, loss of an eye, or fatality that occur as a result of hyperbaric exposures during EPBTBM operations; (2) provide OSHA with a copy of the incident investigation report (using OSHA 301 form) of these events; (3) include on the 301 form information on the hyperbaric conditions associated with the recordable injury or illness, the root-cause determination, and preventive and corrective actions identified and implemented by the applicant; and (4) its certification that it informed affected workers of the incident and the results of the incident investigation.

This condition also requires the applicant to: Notify the Office of Technical Programs and Coordination Activities (OTPCA) and the Baltimore/Washington DC Area Office within 15 working days should the applicant need to revise its HOM to accommodate changes in its compressed-air operations that affect its ability to comply with the conditions of the permanent variance; and provide OSHA's OTPCA and the Baltimore/Washington DC Area Office, at the end of the project, with a report evaluating the effectiveness of the decompression tables.

These notification requirements enable the applicant, its employees, and OSHA to determine the effectiveness of the permanent variance in providing the requisite level of safety to the applicant's workers and, based on this determination, whether to revise or revoke the conditions of the permanent variance. Timely notification permits OSHA to take whatever action may be necessary and appropriate to prevent further injuries and illnesses. Providing notification to employees informs them of the precautions taken by the applicant to prevent similar incidents in the future.

This condition also requires the applicant to notify OSHA if it ceases to do business, has a new address or location for its main office, or transfers the operations covered by the permanent variance to a successor company. In addition, the condition specifies that OSHA must approve the transfer of the permanent variance to a successor company. These requirements allow OSHA to communicate effectively with the applicant regarding the status of the permanent variance, and expedite the Agency's administration and enforcement of the permanent variance. Stipulating that an applicant must have OSHA's approval to transfer a variance to a successor company provides assurance that the successor company has knowledge of, and will comply with, the conditions specified by the permanent variance, thereby ensuring the safety of workers involved in

[8] See 29 CFR 1904 Recording and Reporting Occupational Injuries and Illnesses (*http://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=STANDARDS&p_id=9631*); recordkeeping forms and instructions (*http://www.osha.gov/recordkeeping/RKform300pkg-fillable-enabled.pdf*); OSHA Recordkeeping Handbook (*http://www.osha.gov/recordkeeping/handbook/index.html*); and updates to OSHA's recordkeeping rule Web page ((79 FR 56130); *http://www.osha.gov/recordkeeping2014/index.html*)).

performing the operations covered by the permanent variance.

IV. Comments on the Proposed Variance Application

OSHA received one public comment on the proposed variance application. Mr. Barry Cole (safety specialist) representing Cole-Preferred Safety Consulting, Inc., supported granting the permanent variance (Exhibit OSHA–2014–0011–0008). In his comment, Mr. Cole made two suggestions. First, he proposed that OSHA should allow the applicant substantially more room to work beyond the anticipated hyperbaric pressure of 52 p.s.i.g., by changing the upper hyperbaric pressure limit of the variance from 52 p.s.i.g. to ''the level necessary to maintain safety on the face, and/up to the design/rating limits of the machinery described.'' Second, he recommended that OSHA should issue a letter of interpretation (LOI) that allows all tunnel construction companies working under hyperbaric conditions ''to be allowed to use the stepped method of depressurization, as per engineering/medical data and schedules (such as but not limited to the French scale), as it is the best/safest practice, and the original standard should have included it, even if the preference was for some reason to use auto/straight line [decompression]. Either may be allowed, under my proposed letter of interpretation.''

The remainder of this section describes OSHA's response to Mr. Cole's comments.

First, OSHA finds that the recommendation to increase the upper hyperbaric pressure limit of the variance from 52 p.s.i.g. to the level necessary to maintain safety at the face of the EPBTBM (up to 75 p.s.i.g.), is well beyond the scope of the requested variance. Therefore, OSHA will not modify the permanent variance.

Initially, IHP JV sought a permanent variance for work in hyperbaric environments up to 50 p.s.i.g., as indicated in its Anacostia River Tunnel project-specific HOM. The HOM stated that in the unlikely event that working pressures exceeding the anticipated maximum of 50 p.s.i.g. are required during interventions, an amendment will be prepared and added to the HOM. Following discussions with the applicant, and in response to the applicant's request, OSHA is granting an increase in the upper hyperbaric pressure limit of the variance from 50 p.s.i.g. to 52 p.s.i.g. This increase will: (1) Provide greater flexibility and timeliness for responding to unanticipated conditions such as the need for increased face pressure (exceeding 50 p.s.i.g.) in the excavation chamber of the EPBTBM during interventions; and (2) maintain consistency with the upper hyperbaric pressure limit of 52 p.s.i.g. included in the variance OSHA granted to Traylor Skanska Jay Dee Joint Venture (80 FR 16440) for completing the Blue Plains Tunnel, another phase of the District of Columbia Water and Sewer Authority's (''DC Water'') Clean Rivers project. Subsequently, IHP JV submitted a revised Anacostia River Tunnel project-specific HOM (Rev. 1; see Ex. OSHA–2014–0011–0009) for work in hyperbaric environments up to 52 p.s.i.g.

Second, OSHA finds that the recommendation to publish a LOI on stepped decompression using the French or other tables is well beyond the scope of this variance. Therefore, OSHA will not undertake issuing an LOI that allows tunnel construction companies working under hyperbaric conditions to operate under the conditions of previously granted variances. Moreover, the grant of this variance is conditioned on OSHA's approval of the applicant's HOM, and such a procedure would not be possible under a LOI.

Further, broader, industry-wide issues such as the setting of hyperbaric exposure and decompression limits for all tunneling work would be more appropriately resolved through the rulemaking process. In recognition of this, on December 6, 2012, OSHA published a **Federal Register** notice (77 FR 72781) announcing a request for information (RFI) for its continuing regulatory reviews named standards improvement projects (SIPs). The Agency is currently working on SIP–Phase IV (SIP–IV). As part of SIP–IV, OSHA is considering updating the decompression tables in Appendix A (1926.803 (f)(1)). This proposed action would permit employers to use decompression procedures and updated decompression tables that take advantage of new hyperbaric technologies used widely in extreme hyperbaric exposures. If the planned SIP–IV revises Appendix A, IHP JV (and similar tunneling contractors previously granted a variance) will no longer need to obtain a variance from the use of decompression values specified in decompression tables in Appendix A of the compressed-air standard for construction (29 CFR 1926.803(f)(1)). However, they would still require hyperbaric tunneling variances to address portions of the standard not proposed to be covered by SIP–IV (*i.e.,* 29 CFR 1926.803(e)(5); .803(g)(1)(iii) and .803(g)(1)(xvii)).

If SIP–IV is completed (including the planned update of the decompression tables in Appendix A (1926.803 (f)(1)), OSHA will modify IHP JV's and similar variances granted to other employers to include the applicable SIP–IV provisions as appropriate.

V. Decision

As noted earlier, on February 11, 2015, OSHA published a preliminary **Federal Register** notice announcing IHP JV's application for a permanent variance and interim order, grant of an interim order, and request for comments (80 FR 7636).

During the period starting with the February 11, 2015, publication of the preliminary **Federal Register** notice announcing grant of the interim order, until completion of the Anacostia River Tunnel or the Agency modifies or revokes the interim order or makes a decision on its application for a permanent variance, the applicant was required to comply fully with the conditions of the interim order as an alternative to complying with the requirements of 29 CFR 1926.803 (hereafter, ''the standard'') that:

A. Prohibit employers using compressed air under hyperbaric conditions from subjecting workers to pressure exceeding 50 p.s.i.g., except in emergency (29 CFR 1926.803(e)(5));

B. Require the use of decompression values specified by the decompression tables in Appendix A of the compressed-air standard (29 CFR 1926.803(f)(1)); and

C. Require the use of automated operational controls and a special decompression chamber (29 CFR 1926.803(g)(1)(iii) and .803(g)(1)(xvii), respectively).

After reviewing the proposed alternative measures, OSHA determined that:

A. IHP JV developed, and proposed to implement, effective alternative measures to the prohibition of using compressed air under hyperbaric conditions exceeding 50 p.s.i.g. The alternative measures include use of engineering and administrative controls of the hazards associated with work performed in compressed-air conditions exceeding 50 p.s.i.g. while engaged in the construction of a subaqueous tunnel using advanced shielded mechanical-excavation techniques in conjunction with an EPBTBM. Prior to conducting interventions in the EPBTBM's pressurized working chamber, the applicant halts tunnel excavation and prepares the machine and crew to conduct the interventions. Interventions involve inspection, maintenance, or repair of the mechanical-excavation

components located in the working chamber.

B. IHP JV developed, and proposed to implement, safe hyperbaric work procedures, emergency and contingency procedures, and medical examinations for the project's CAWs. The applicant compiled these standard operating procedures into a project-specific HOM. The HOM discusses the procedures and personnel qualifications for performing work safely during the compression and decompression phases of interventions. The HOM also specifies the decompression tables the applicant proposes to use. Depending on the maximum working pressure and exposure times during the interventions, the tables provide for decompression using air, pure oxygen, or a combination of air and oxygen. The decompression tables also include delays or stops for various time intervals at different pressure levels during the transition to atmospheric pressure (*i.e.,* staged decompression). In all cases, a physician certified in hyperbaric medicine will manage the medical condition of CAWs during decompression. In addition, a trained and experienced man-lock attendant, experienced in recognizing decompression sickness or illnesses and injuries, will be present. Of key importance, a hyperbaric supervisor (competent person), trained in hyperbaric operations, procedures, and safety, will directly supervise all hyperbaric operations to ensure compliance with the procedures delineated in the project-specific HOM or by the attending physician.

C. IHP JV developed, and proposed to implement, a training program to instruct affected workers in the hazards associated with conducting hyperbaric operations.

D. IHP JV developed, and proposed to implement, an effective alternative to the use of automatic controllers that continuously decrease pressure to achieve decompression in accordance with the tables specified by the standard. The alternative includes using the 1992 French Decompression Tables for guiding staged decompression to achieve lower occurrences of DCI, using a trained and competent attendant for implementing appropriate hyperbaric entry and exit procedures, and providing a competent hyperbaric supervisor, and attending physician certified in hyperbaric medicine, to oversee all hyperbaric operations.

E. IHP JV developed, and proposed to implement, an effective alternative to the use of the special decompression chamber required by the standard. EPBTBM technology permits the tunnel's work areas to be at atmospheric pressure, with only the face of the EPBTBM (*i.e.,* the working chamber) at elevated pressure. The applicant limits interventions conducted in the working chamber to performing required inspection, maintenance, and repair of the cutting tools on the face of the EPBTBM. The EPBTBM's man lock and working chamber provide sufficient space for the maximum crew of three CAWs to stand up and move around, and safely accommodate decompression times up to 360 minutes. Therefore, OSHA preliminarily determined that the EPBTBM's man lock and working chamber function as effectively as the special decompression chamber required by the standard.

OSHA conducted a review of the scientific literature regarding decompression to determine whether the alternative decompression method (*i.e.,* the 1992 French Decompression Tables) proposed by the applicant provide a workplace as safe and healthful as that provided by the standard. Based on this review, OSHA preliminarily determined that decompressions conducted in tunneling operations performed with tables [9] result in a lower occurrence of DCI than the decompression tables specified by the standard.[10] [11] [12]

The review conducted by OSHA found several research studies supporting the determination that the 1992 French Decompression Tables result in a lower rate of DCI than the decompression tables specified by the standard. For example, H. L. Anderson studied the occurrence of DCI at maximum hyperbaric pressures ranging from 4 p.s.i.g. to 43 p.s.i.g. during construction of the Great Belt Tunnel in Denmark (1992–1996); [13] this project used the 1992 French Decompression Tables to decompress the workers during part of the construction. Anderson observed 6 DCI cases out of 7,220 decompression events, and reported that switching to the 1992 French Decompression tables reduced the DCI incidence to 0.08%. The DCI incidence in the study by H.L. Andersen is substantially less than the DCI incidence reported for the decompression tables specified in Appendix A. OSHA found no studies in which the DCI incidence reported for the 1992 French Decompression Tables were higher than the DCI incidence reported for the OSHA decompression tables, nor did OSHA find any studies indicating that the 1992 French Decompression Tables were more hazardous to employees than the OSHA decompression tables.[14] Therefore, OSHA concludes that use of the 1992 French Decompression Tables protect workers at least as effectively as the OSHA decompression tables.

Based on a review of available evidence, the experience of State Plans that either granted variances (Nevada, Oregon, and Washington) [15] or promulgated a new standard (California)[16] for hyperbaric exposures occurring during similar subaqueous tunnel-construction work, and the information provided in the applicant's variance application, OSHA is granting the permanent variance.

Under Section 6(d) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(d)), and based on the record discussed above, the Agency finds that when the employer complies

[9] In 1992, the French Ministry of Labour replaced the 1974 French Decompression Tables with the 1992 French Decompression Tables, which differ from OSHA's decompression tables in Appendix A by using: (1) Staged decompression as opposed to continuous (linear) decompression; (2) decompression tables based on air or both air and pure oxygen; and (3) emergency tables when unexpected exposure times occur (up to 30 minutes above the maximum allowed working time).

[10] Kindwall, EP (1997). Compressed-air tunneling and caisson work decompression procedures: Development, problems, and solutions. *Undersea and Hyperbaric Medicine,* 24(4), pp. 337–345. This article reported 60 treated cases of DCI among 4,168 exposures between 19 and 31 p.s.i.g. over a 51-week contract period, for a DCI incidence of 1.44% for the decompression tables specified by the OSHA standard.

[11] Sealey, JL (1969). Safe exit from the hyperbaric environment: Medical experience with pressurized tunnel operations. *Journal of Occupational Medicine,* 11(5), pp. 273–275. This article reported 210 treated cases of DCI among 38,600 hyperbaric exposures between 13 and 34 p.s.i.g. over a 32-month period, for an incidence of 0.54% for the decompression tables specified by the Washington State safety standards for compressed-air work, which are similar to the tables in the OSHA standard. Moreover, the article reported 51 treated cases of DCI for 3,000 exposures between 30 and 34 p.s.i.g., for an incidence of 1.7% for the Washington State tables.

[12] In 1985, the National Institute for Occupational Safety and Health (NIOSH) published a report entitled ''Criteria for Interim Decompression Tables for Caisson and Tunnel Workers;'' this report reviewed studies of DCI and other hyperbaric-related injuries resulting from use of OSHA's tables. This report is available on NIOSH's Web site: *http://www.cdc.gov/niosh/topics/decompression/default.html.*

[13] Anderson HL (2002). Decompression sickness during construction of the Great Belt tunnel, Denmark. *Undersea and Hyperbaric Medicine,* 29(3), pp. 172–188.

[14] Le Péchon JC, Barre P, Baud JP, Ollivier F (September 1996). Compressed-air work—French tables 1992—operational results. *JCLP Hyperbarie Paris, Centre Medical Subaquatique Interentreprise, Marseille: Communication a l'EUBS,* pp. 1–5 (see Ex. OSHA–2014–0011–0004).

[15] These state variances are available in the docket: Exs. OSHA–2014–0011–0005 (Nevada), OSHA–2014–0011–0006 (Oregon), and OSHA–2014–0011–0007 (Washington).

[16] See California Code of Regulations, Title 8, Subchapter 7, Group 26, Article 154, available at *http://www.dir.ca.gov/title8/sb7g26a154.html.*

with the conditions of the following order, the working conditions of the employer's workers are at least as safe and healthful as if the employer complied with the working conditions specified by paragraphs (e)(5), (f)(1), (g)(1)(iii), and (g)(1)(xvii) of 29 CFR 1926.803. Under the terms of this variance, IHP JV must: (1) Comply with the conditions listed below under ''Specific Conditions of the Permanent Variance'' for the period between the date of this notice and completion of the Anacostia River Tunnel project, but no later than December 31, 2016; (2) comply fully with all other applicable provisions of 29 CFR part 1926; and (3) provide a copy of this **Federal Register** notice to all employees affected by the conditions, including the affected employees of other employers, using the same means it used to inform these employees of its application for a permanent variance. This order will remain in effect until one of the following conditions occurs: (1) Completion of the IHP JV Anacostia River Tunnel project but no later than December 31, 2016; or (2) OSHA modifies or revokes this final order in accordance with 29 CFR 1905.13.

VI. Order

As of the effective date of this final order, OSHA is revoking the interim order granted to the employer on February 11, 2015 (80 FR 7636).

OSHA issues this final order authorizing Impregilo Healy Parsons Joint Venture, (''IHP JV'' or ''the applicant''), to comply with the following conditions instead of complying with the requirements of paragraphs 29 CFR 1926.803(e)(5), (f)(1), (g)(1)(iii), and (g)(1)(xvii). This final order applies to Impregilo Healy Parsons Joint Venture at the Anacostia River Tunnel project in Washington, DC. These conditions are:

A. Scope

The permanent variance applies only to work:

1. That occurs in conjunction with construction of the Anacostia River Tunnel project, a subaqueous tunnel constructed using advanced shielded mechanical-excavation techniques and involving operation of an EPBTBM;

2. Performed under compressed-air and hyperbaric conditions up to 52 p.s.i.g. at the Anacostia River Tunnel project;

3. In the EPBTBM's forward section (the working chamber) and associated hyperbaric chambers used to pressurize and decompress employees entering and exiting the working chamber;

4. Except for the requirements specified by 29 CFR 1926.803(e)(5), (f)(1), (g)(1)(iii), and (g)(1)(xvii), IHP JV must comply fully with all other applicable provisions of 29 CFR part 1926; and

5. This order will remain in effect until one of the following conditions occurs: (1) Completion of the Anacostia River Tunnel project, but no later than December 31, 2016; or (2) OSHA modifies or revokes this final order in accordance with 29 CFR 1905.13.

B. Application

The permanent variance applies only when IHP JV stops the tunnel-boring work, pressurizes the working chamber, and the CAWs either enter the working chamber to perform interventions (*i.e.,* inspect, maintain, or repair the mechanical-excavation components), or exit the working chamber after performing interventions.

C. List of Abbreviations

Abbreviations used throughout this permanent variance include the following:

1. CAW—Compressed-air worker
2. CFR—Code of Federal Regulations
3. DCI—Decompression Illness
4. EPBTBM—Earth Pressure Balanced Tunnel Boring Machine
5. HOM—Hyperbaric Operations and Safety Manual
6. JHA—Job hazard analysis
7. OSHA—Occupational Safety and Health Administration
8. OTPCA—Office of Technical Programs and Coordination Activities

D. Definitions

The following definitions apply to this permanent variance. These definitions supplement the definitions in IHP JV's project-specific HOM.

1. *Affected employee or worker*—an employee or worker who is affected by the conditions of this permanent variance, or any one of his or her authorized representatives. The term ''employee'' has the meaning defined and used under the Occupational Safety and Health Act of 1970 (29 U.S.C. 651 *et seq.*)

2. *Atmospheric pressure*—the pressure of air at sea-level, generally, 14.7 p.s.i.a., 1 atmosphere absolute, or 0 p.s.i.g.

3. *Compressed-air worker*—an individual who is specially trained and medically qualified to perform work in a pressurized environment while breathing air at pressures up to 52 p.s.i.g.

4. *Competent person*—an individual who is capable of identifying existing and predictable hazards in the surroundings or working conditions that are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them.[17]

5. *Decompression illness*—an illness (also called decompression sickness (DCS) or the bends) caused by gas bubbles appearing in body compartments due to a reduction in ambient pressure. Examples of symptoms of decompression illness include (but are not limited to): joint pain (also known as the 'bends' for agonizing pain or the 'niggles' for slight pain); areas of bone destruction (termed dysbaric osteonecrosis); skin disorders (such as cutis marmorata, which causes a pink marbling of the skin); spinal cord and brain disorders (such as stroke, paralysis, paresthesia, and bladder dysfunction); cardiopulmonary disorders, such as shortness of breath; and arterial gas embolism (gas bubbles in the arteries that block blood flow).[18]

Note: Health effects associated with hyperbaric intervention but not considered symptoms of DCI can include: barotrauma (direct damage to air-containing cavities in the body such as ears, sinuses and lungs); nitrogen narcosis (reversible alteration in consciousness that may occur in hyperbaric environments and is caused by the anesthetic effect of certain gases at high pressure); and oxygen toxicity (a central nervous system condition resulting from the harmful effects of breathing molecular oxygen (O_2) at elevated partial pressures).

6. *Earth Pressure Balanced Tunnel Boring Machine*—the machinery used to excavate the tunnel.

7. *Hot work*—any activity performed in a hazardous location that may introduce an ignition source into a potentially flammable atmosphere.[19]

8. *Hyperbaric*—at a higher pressure than atmospheric pressure.

9. *Hyperbaric intervention*—a term that describes the process of stopping the EPBTBM and preparing and executing work under hyperbaric pressure in the working chamber for the purpose of inspecting, replacing, or repairing cutting tools and/or the cutterhead structure.

10. *Hyperbaric Operations Manual*—a detailed, project-specific health and safety plan developed and implemented by IHP JV for working in compressed air

[17] Adapted from 29 CFR 1926.32(f).

[18] See Appendix 10 of ''A Guide to the Work in Compressed-Air Regulations 1996,'' published by the United Kingdom Health and Safety Executive available from NIOSH at *http://www.cdc.gov/niosh/docket/archive/pdfs/NIOSH–254/compReg1996.pdf.*

[19] Also see 29 CFR 1910.146(b).

during the construction of the Anacostia River Tunnel.

11. *Job hazard analysis*—an evaluation of tasks or operations to identify potential hazards and to determine the necessary controls.

12. *Man lock*—an enclosed space capable of pressurization, and used for compressing or decompressing any employee or material when either is passing into or out of a working chamber.

13. *Pressure*—a force acting on a unit area. Usually expressed as pounds per square inch (p.s.i.).

14. *p.s.i.*—pounds per square inch, a common unit of measurement of pressure; a pressure given in p.s.i. corresponds to absolute pressure.

15. *p.s.i.a*—pounds per square inch absolute, or absolute pressure, is the sum of the atmospheric pressure and gauge pressure. At sea-level, atmospheric pressure is approximately 14.7 p.s.i. Adding 14.7 to a pressure expressed in units of p.s.i.g. will yield the absolute pressure, expressed as p.s.i.a.

16. *p.s.i.g.*—pounds per square inch gauge, a common unit of pressure; pressure expressed as p.s.i.g. corresponds to pressure relative to atmospheric pressure. At sea-level, atmospheric pressure is approximately 14.7 p.s.i. Subtracting 14.7 from a pressure expressed in units of p.s.i.a. yields the gauge pressure, expressed as p.s.i.g.

17. *Qualified person*—an individual who, by possession of a recognized degree, certificate, or professional standing, or who, by extensive knowledge, training, and experience, successfully demonstrates an ability to solve or resolve problems relating to the subject matter, the work, or the project.[20]

18. *Working chamber*—an enclosed space in the EPBTBM in which CAWs perform interventions, and which is accessible only through a man lock.

E. Safety and Health Practices

1. IHP JV must develop and implement a project-specific HOM, and submit the HOM to OSHA for approval at least six months before using the EPBTBM. IHP JV must receive a written acknowledgement from OSHA regarding the acceptability of the HOM.[21] The HOM shall provide the governing safety and health requirements regarding hyperbaric exposures during the tunnel-construction project.

2. IHP JV must implement the safety and health instructions included in the manufacturer's operations manuals for the EPBTBM, and the safety and health instructions provided by the manufacturer for the operation of decompression equipment.

3. IHP JV must use air as the only breathing gas in the working chamber.

4. IHP JV must use the 1992 French Decompression Tables for air, air-oxygen, and oxygen decompression specified in the HOM, specifically, the tables titled, ''French Regulation Air Standard Tables.''

5. IHP JV must equip man locks used by its employees with an oxygen-delivery system as specified by the HOM. IHP JV must not store oxygen or other compressed gases used in conjunction with hyperbaric work in the tunnel.

6. Workers performing hot work under hyperbaric conditions must use flame-retardant personal protective equipment and clothing.

7. In hyperbaric work areas, IHP JV must maintain an adequate fire-suppression system approved for hyperbaric work areas.

8. IHP JV must develop and implement one or more JHAs for work in the hyperbaric work areas, and review, periodically, and as necessary (*e.g.,* after making changes to a planned intervention that affects its operation), the contents of the JHAs with affected employees. The JHAs must include all the job functions that the risk assessment[22] indicates are essential to prevent injury or illness.

9. IHP JV must develop a set of checklists to guide compressed-air work and ensure that employees follow the procedures required by this permanent variance (including all procedures required by the HOM, which this permanent variance incorporates by reference). The checklists must include all steps and equipment functions that the risk assessment indicates are essential to prevent injury or illness during compressed-air work.

10. IHP JV must ensure that the safety and health provisions of the HOM adequately protect the workers of all contractors and subcontractors involved in hyperbaric operations.[23]

F. Communication

1. Prior to beginning a shift, IHP JV must implement a system that informs workers exposed to hyperbaric conditions of any hazardous occurrences or conditions that might affect their safety, including hyperbaric incidents, gas releases, equipment failures, earth or rock slides, cave-ins, flooding, fires, or explosions.

2. IHP JV must provide a power-assisted means of communication among affected workers and support personnel in hyperbaric conditions where unassisted voice communication is inadequate.

(a) IHP JV must use an independent power supply for powered communication systems, and these systems must operate such that use or disruption of any one phone or signal location will not disrupt the operation of the system from any other location.

(b) IHP JV must test communication systems at the start of each shift and as necessary thereafter to ensure proper operation.

G. Worker Qualifications and Training

IHP JV must:

1. Ensure that each affected worker receives effective training on how to safely enter, work in, exit from, and undertake emergency evacuation or rescue from, hyperbaric conditions, and document this training.

2. Provide effective instruction, before beginning hyperbaric operations, to each worker who performs work, or controls the exposure of others, in hyperbaric conditions, and document this instruction. The instruction must include topics such as:

(a) The physics and physiology of hyperbaric work;

(b) Recognition of pressure-related injuries;

(c) Information on the causes and recognition of the signs and symptoms associated with decompression illness, and other hyperbaric intervention-related health effects (*e.g.,* barotrauma, nitrogen narcosis, and oxygen toxicity);

(d) How to avoid discomfort during compression and decompression; and

(e) Information the workers can use to contact the appropriate healthcare professionals should the workers have concerns that they may be experiencing adverse health effects from hyperbaric exposure.

3. Repeat the instruction specified in paragraph (2) of this condition periodically, and as necessary (*e.g.,* after making changes to its hyperbaric operations).

4. When conducting training for its hyperbaric workers, make this training available to OSHA personnel and notify the OTPCA at OSHA's national office and the Baltimore/Washington DC Area Office before the training takes place.

[20] Adapted from 29 CFR 1926.32(m).

[21] See footnote 7.

[22] See ANSI/AIHA Z10–2012, American National Standard for Occupational Health and Safety Management Systems, for reference.

[23] See ANSI/ASSE A10.33–2011, American National Standard for Construction and Demolition Operations—Safety and Health Program Requirements for Multi-Employer Projects, for reference.

H. Inspections, Tests, and Accident Prevention

1. IHP JV must initiate and maintain a program of frequent and regular inspections of the EPBTBM's hyperbaric equipment and support systems (such as temperature control, illumination, ventilation, and fire-prevention and fire-suppression systems), and hyperbaric work areas, as required under 29 CFR 1926.20(b)(2) by:

(a) Developing a set of checklists to be used by a competent person in conducting weekly inspections of hyperbaric equipment and work areas; and

(b) Ensuring that a competent person conducts daily visual checks and weekly inspections of the EPBTBM.

2. If the competent person determines that the equipment constitutes a safety hazard, IHP JV must remove the equipment from service until it corrects the hazardous condition and has the correction approved by a qualified person.

3. IHP JV must maintain records of all tests and inspections of the EPBTBM, as well as associated corrective actions and repairs, at the job site for the duration of the job.

I. Compression and Decompression

IHP JV must consult with its attending physician concerning the need for special compression or decompression exposures appropriate for CAWs not acclimated to hyperbaric exposure.

J. Recordkeeping

IHP JV must maintain a record of any recordable injuries, illnesses, in-patient hospitalizations, amputations, loss of an eye, or fatality (as defined by 29 CFR part 1904 Recording and Reporting Occupational Injuries and Illnesses), resulting from exposure of an employee to hyperbaric conditions by completing the OSHA 301 Incident Report form and OSHA 300 Log of Work Related Injuries and Illnesses.

Note: Examples of important information to include on the OSHA 301 Incident Report form (along with the corresponding question on the form) must address the following: the task performed (Question (Q) 14); an estimate of the CAW's workload (Q 14); the composition of the gas mixture (*e.g.,* air or oxygen); the pressure worked at (Q 14); temperature in the work and decompression environments (Q 14); did something unusual occur during the task or decompression (Q 14); time of symptom onset (Q 15); duration of time between decompression and onset of symptoms (Q 15); nature and duration of symptoms (Q 16); a medical summary of the illness or injury (Q 16); duration of the hyperbaric intervention (Q 17); any possible contributing factors (Q 17); the number of prior interventions completed by injured or ill CAW (Q 17); the number of prior interventions completed by injured or ill CAW at that pressure (Q 17); the contact information for the treating healthcare provider (Q 17); and the date and time of last hyperbaric exposure for this CAW.

In addition to completing the OSHA 301 Incident Report form and OSHA 300 Log of Work Related Injuries and Illnesses, IHP JV must maintain records of:

1. The date, times (*e.g.,* began compression, time spent compressing, time performing intervention, time spent decompressing), and pressure for each hyperbaric intervention.

2. The name of each individual worker exposed to hyperbaric pressure and the decompression protocols and results for each worker.

3. The total number of interventions and the amount of hyperbaric work time at each pressure.

4. The post-intervention physical assessment of each individual CAW for signs and symptoms of decompression illness, barotrauma, nitrogen narcosis, oxygen toxicity or other health effects associated with work in compressed air or mixed gasses for each hyperbaric intervention.

K. Notifications

1. To assist OSHA in administering the conditions specified herein, IHP JV must:

(a) Notify the OTPCA and the Baltimore/Washington DC Area Office of any recordable injuries, illnesses, in-patient hospitalizations, amputations, loss of an eye, or fatality (by submitting the completed OSHA 301 Incident Report form [24]) resulting from exposure of an employee to hyperbaric conditions including those that do not require recompression treatment (*e.g.,* nitrogen narcosis, oxygen toxicity, barotrauma), but still meet the recordable injury or illness criteria (of 29 CFR 1904). The employer shall provide the notification within 8 hours of the incident, or 8 hours after becoming aware of a recordable injury, illness, in-patient hospitalization, amputation, loss of an eye, or fatality, and submit a copy of the incident investigation (OSHA form 301) within 24 hours of the incident, or 24 hours after becoming aware of a recordable injury, illness, in-patient hospitalization, amputation, loss of an eye, or fatality. In addition to the information required by the OSHA form 301, the incident-investigation report must include a root-cause determination, and the preventive and corrective actions identified and implemented.

(b) Provide certification within 15 days of the incident that the employer informed affected workers of the incident and the results of the incident investigation (including the root-cause determination and preventive and corrective actions identified and implemented).

(c) Notify the OTPCA and the Baltimore/Washington DC Area Office within 15 working days in writing of any change in the compressed-air operations that affects IHP JV's ability to comply with the conditions specified herein.

(d) Upon completion of the Anacostia River Tunnel project, evaluate the effectiveness of the decompression tables used throughout the project, and provide a written report of this evaluation to the OTPCA and the Baltimore/Washington DC Area Office.

Note: The evaluation report is to contain summaries of: (1) The number, dates, durations, and pressures of the hyperbaric interventions completed; (2) decompression protocols implemented (including composition of gas mixtures (air and/or oxygen), and the results achieved; (3) the total number of interventions and the number of hyperbaric incidents (decompression illnesses and/or health effects associated with hyperbaric interventions as recorded on OSHA 301 and 300 forms, and relevant medical diagnoses and treating physicians' opinions); and (4) root-causes, and preventive and corrective actions identified and implemented.

(e) To assist OSHA in administering the conditions specified herein, inform the OTPCA and the Baltimore/Washington DC Area Office as soon as possible after it has knowledge that it will:

(i) Cease to do business;

(ii) Change the location and address of the main office for managing the tunneling operations specified by the project-specific HOM; or

(iii) Transfer the operations specified herein to a successor company.

(f) Notify all affected employees of this permanent variance by the same means required to inform them of its application for a variance.

2. OSHA must approve the transfer of this permanent variance to a successor company.

Authority and Signature

David Michaels, Ph.D., MPH, Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW., Washington, DC 20210, authorized the preparation of

[24] See footnote 8.

this notice. Accordingly, the Agency is issuing this notice pursuant to 29 U.S.C. 655(d), Secretary of Labor's Order No. 1–2012 (77 FR 3912, Jan. 25, 2012), and 29 CFR 1905.11.

Signed at Washington, DC, August 14, 2015.

David Michaels,

Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2015–20571 Filed 8–19–15; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice: (15–069)]

NASA Advisory Council; Science Committee; Heliophysics Subcommittee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration (NASA) announces a meeting of the Heliophysics Subcommittee of the NASA Advisory Council (NAC). This subcommittee reports to the Science Committee of the NAC. The meeting will be held for the purpose of soliciting, from the scientific community and other persons, scientific and technical information relevant to program planning.

DATES: Tuesday, September 29, 2015, 9:00 a.m.–5:00 p.m., and Wednesday, September 30, 2015, 9:00 a.m.–5:00 p.m., Local Time.

ADDRESSES: NASA Headquarters, Room 6H41, 300 E Street SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Ann Delo, Science Mission Directorate, NASA Headquarters, Washington, DC 20546, (202) 358–0750, fax (202) 358–2779, or *ann.b.delo@nasa.gov*.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. This meeting will also be available telephonically. Any interested person may call the USA toll free conference call number 888–769–8915, passcode 1573979, both days, to participate in this meeting by telephone. The agenda for the meeting includes the following topics:

—Heliophysics Division Overview and Program Status
—Flight Mission Status Report
—Heliophysics Science Performance Assessment

Attendees will be requested to sign a register and to comply with NASA security requirements, including the presentation of a valid picture ID to Security before access to NASA Headquarters.

Due to the Real ID Act, Public Law 109–13, any attendees with drivers licenses issued from non-compliant states/territories must present a second form of ID [Federal employee badge; passport; active military identification card; enhanced driver's license; U.S. Coast Guard Merchant Mariner card; Native American tribal document; school identification accompanied by an item from LIST C (documents that establish employment authorization) from the ''List of the Acceptable Documents'' on Form I–9]. Non-compliant states/territories are: American Samoa, Arizona, Idaho, Louisiana, Maine, Minnesota, New Hampshire, and New York. Foreign nationals attending this meeting will be required to provide a copy of their passport and visa in addition to providing the following information no less than 10 working days prior to the meeting: Full name; gender; date/place of birth; citizenship; visa information (number, type, expiration date); passport information (number, country, expiration date); employer/affiliation information (name of institution, address, country, telephone); title/position of attendee; and home address to Ann Delo via at *ann.b.delo@nasa.gov* or by fax at (202) 358–2779. U.S. citizens and Permanent Residents (green card holders) are requested to submit their name and affiliation 3 working days prior to the meeting to Ann Delo. It is imperative that the meeting be held on these dates to the scheduling priorities of the key participants.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2015–20606 Filed 8–19–15; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

Notice of Intent To Seek Approval To Renew an Information Collection

AGENCY: National Science Foundation.

ACTION: Notice and request for comments.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request approval of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), we are providing an opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting that OMB approve clearance of this collection for no longer than 3 years.

DATES: Interested persons are invited to send comments regarding the burden or any other aspect of this collection of information requirements by October 19, 2015.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 1265, Arlington, VA 22230, or by email to *splimpto@nsf.gov.*

Comments: Written 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 on respondents, including through the use of automated collection techniques or other forms of information technology; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 1265, Arlington, Virginia 22230; telephone (703) 292–7556; or send email to *splimpton@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including federal holidays).

SUPPLEMENTARY INFORMATION:

Title: Grantee Reporting Requirements for the Research Experiences for Undergraduates (REU) Program.

OMB Approval Number: 3145–0224.

Expiration Date: December 31, 2015.

Overview of this information collection

The Research Experiences for Undergraduates (REU) Reporting Module is a component of the NSF Project Reports System that is designed to gather information about students

participating in REU Sites and Supplements projects. All NSF Principal Investigators are required to submit annual and final project reports through Research.gov. If NSF cannot collect information about undergraduate participants in undergraduate research experiences, NSF will have no other means to consistently document the number and diversity of participants, types of participant involvement in the research, and types of institutions represented by the participants.

NSF is committed to providing program stakeholders with formation regarding the expenditure of taxpayer funds on these types of activities, which provide authentic research experiences and related training for postsecondary students in STEM fields.

Consult With Other Agencies & the Public

NSF has not consulted with other agencies but has gathered information from its grantee community through attendance at PI conferences. A request for public comments will be solicited through announcement of data collection in the **Federal Register**.

Background

All NSF Principal Investigators are required to use the project reporting functionality in Research.gov to report on progress, accomplishments, participants, and activities annually and at the conclusion of their project. Information from annual and final reports provides yearly updates on project inputs, activities, and outcomes for agency reporting purposes. If project participants include undergraduate students supported by the Research Experiences for Undergraduates (REU) Sites Program or by an REU Supplement, then the Principal Investigator and his or her students are required to complete the REU Reporting Module.

Respondents: Individuals (Principal Investigators and REU undergraduate student participants).

Number of Principal Investigator Respondents: 2,000.

Burden on the Public: 650 total hours.

Number of REU Student Participant Respondents: 7,250.

Burden on the Public: 1,810 total hours.

Dated: August 14, 2015.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2015–20536 Filed 8–19–15; 8:45 am]

BILLING CODE 7555–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2015–0194]

Biweekly Notice; Applications and Amendments to Facility Operating Licenses and Combined Licenses Involving No Significant Hazards Considerations

Correction

Due to a scheduling error, NRC notice document 2014–20138, 80 FR 48920, published August 14, 2015, four days earlier than the agency intended. Due to this error the **DATES:** section for this notice is corrected to read as follows:

DATES: Comments must be filed by September 14, 2015. A request for a hearing must be filed by October 13, 2015.

[FR Doc. 2015–20701 Filed 8–19–15; 8:45 am]

BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370; NRC–2015–0192]

Duke Energy Carolinas, LLC, McGuire Nuclear Station, Unit Nos. 1 and 2

AGENCY: Nuclear Regulatory Commission.

ACTION: License amendment application; opportunity to comment, request a hearing, and petition for leave to intervene; order.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License Nos. NPF–9 and NPF–17, issued to Duke Energy Carolinas, LLC, for operation of the McGuire Nuclear Station, Unit Nos. 1 and 2. The proposed amendment would allow a temporary extension of selected Technical Specification required Completion Times (CTs) to support repair activities associated with the Nuclear Service Water System (NSWS). In addition, the amendment request contains Sensitive Unclassified Non-Safeguards Information (SUNSI).

DATES: Submit comments by September 21, 2015. A request for a hearing or petition for leave to intervene must be filed by October 19, 2015. Any potential party as defined in § 2.4 of Title 10 of the *Code of Federal Regulations* (10 CFR), who believes access to SUNSI is necessary to respond to the notice must request document access by August 31, 2015.

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

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2015–0192. 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:* Cindy Bladey, Office of Administration, Mail Stop: OWFN–12–H08, 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: G. Edward Miller, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–2481, email: *Ed.Miller@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2015–0192 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–2015–0192.
- *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 license amendment request is available in ADAMS under Accession No. ML15191A025.
- *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–2015–0192 in 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 submissions into ADAMS.

II. Introduction

The NRC is considering issuance of an amendment to Facility Operating License Nos. NPF–9 and NPF–17, issued to Duke Energy Carolinas, LLC, for operation of the McGuire Nuclear Station, Unit Nos. 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendment would allow a one-time extension of selected Technical Specification required CTs to support repair activities associated with the NSWS.

Before any issuance of the proposed license amendment, the NRC will need to make the findings required by the Atomic Energy Act of 1954, as amended (the Act), and NRC's regulations.

The NRC has made a proposed determination that the license amendment request involves no significant hazards consideration. Under the NRC's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The 'B' Train NSWS and supported equipment will remain fully operable during the 14 day CT. The alignment of the 'A' Train NSWS will remain consistent with the NSWS normal and [engineered safety features actuation system (ESFAS)] alignment. Although not fully operable the 'A' Train NSWS and its supported equipment will be capable of performing their functions during the 14 day CT.

The 'A' NSWS and supported equipment function as accident mitigators. Removing 'A' Train [standby nuclear service water pond (SNSWP)] supply piping from service for a limited period of time does not affect any accident initiator and therefore cannot change the probability of an accident. The proposed changes and the 'A' Train NSWS repair evolution have been evaluated to assess their impact on the systems affected and ensure design basis safety functions are preserved.

The risk analysis for the proposed NSW system alignment during the 14 day CT shows no delta risk for any [engineered safety feature (ESF)] actuation event that does not involve an earthquake. The most significant risk contributor is a seismic event with a magnitude great enough to cause the failure of Cowan's Ford dam and subsequent loss of Lake Norman or [low level intake] during the 14 day CT. The estimated Incremental Conditional Core Damage Probability (ICCDP) due to the seismic event is much less than the limits associated with Regulatory Guide 1.177.

In addition, as previously stated, a Seismic Fragility Assessment of the McGuire Low Level Intake [(LLI)] Water Pipeline in December of 2011 indicates that the dam and water supply would withstand a [safe shutdown earthquake (SSE)]. Therefore for the short duration of this proposed alignment the increase in risk is deemed to be negligible.

Risk associated with tornado/high winds was assessed. The months of November through February have been the seasonal low for tornado frequency. This evolution is currently scheduled for the fall November 2015 time frame. The risk contribution from tornado and high wind events is negligible during the proposed NSWS configuration described in this LAR and therefore, the calculated Core Damage Frequency (CDF) or the Large Early Release Fraction (LERF) contribution due to high wind and tornado events is negligible with respect to overall risk. The activities covered by this LAR also include a defense-in-depth action to cease activities and close the personnel access openings in the event of a tornado warning. Weather patterns will be monitored and this activity will be modified if tornado/high wind conditions become imminent.

The overall increase in risk for the 14 day CT is solely due to the seismic event which results in a loss of Lake Norman or LLI. However, this risk is reduced by the defense in depth strategy described in the LAR that provides a contingency for the loss of a 'B' Train NSWS pump after the loss of the Lake Norman water supply. This defense in depth contingency effectively offsets the unavailability of the 'A' Train NSWS SNSWP supply.

In addition, pre-aligning the 'B' Train NSWS to the SNSWP water supply in advance of the proposed activities prevents the introduction of potential equipment failures during an ESFAS demanded transfer. This action also eliminates the time it would take operators to perform the transfer following a seismic event.

The quantified impact of defense in depth measures and compensatory actions on CDF/LERF cannot be precisely determined, yet it is agreed that the implementation of these actions would only serve to improve these risk parameters.

Not included in the overall risk evaluation is the additional margin identified by the Fragility Assessment discussed previously that concluded that the Lake Norman Dam and LLI would survive a SSE.

As stated in NRC Generic Letter 80–30, ''Clarification of the Term 'Operable' as it Applies to Single Failure Criterion for Safety Systems Required by TS,'' there is no requirement to assume a single failure while operating under a Technical Specification (TS) required action. Therefore, there will be no effect on the analysis of any accident or the progression of the accident since the operable NSW 'B' train is capable of serving 100 percent of all the required heat loads. As such, there is no impact on consequence mitigation for any transient or accident.

In light of the above discussion, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed amendment is the one time extension of the required CTs from 72 hours for the ECCS, CSS, NSWS, AFW, CCW and the EDG systems and from 168 hours for the CRAVS and ABFVES systems to 336 hours. The requested change does not involve the addition or removal of any plant system, structure, or component.

The proposed temporary TS changes do not affect the basic design, operation, or function of any of the systems associated with the TS impacted by the amendment. Implementation of the proposed amendment will not create the possibility of a new or different kind of accident from that previously evaluated.

McGuire intends to isolate and repair the 'A' Train NSWS supply from the SNSWP. This activity will require that 'A' Train NSW be aligned to Lake Norman until the system is ready for post maintenance testing. This action maintains the NSW 'A' Train's normal and automatic alignment to Lake Norman but will result in the inability to manually align the 'A' Train NSWS to the SNSWP subsequent to a seismic event that results in damage to the supply piping from Lake Norman or the highly improbable loss of Lake Norman.

Although considered inoperable, the 'A' Train NSWS and supported systems will be

technically capable of performing their intended functions. Throughout the repair project, compensatory measures will be in place to provide additional assurance that the affected systems will continue to be capable of performing their intended safety functions.

No new accident causal mechanisms are created as a result of the requested changes creating the possibility of a new or different kind of accident from any accident previously evaluated.

In conclusion, this proposed LAR does not impact any plant systems that are accident initiators and does not impact any safety analysis.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

Response: No.

Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following an accident situation. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of the fuel cladding, reactor coolant and containment systems will not be impacted by the proposed LAR.

Although not a fission product barrier, the Auxiliary Building Ventilation Boundary plays a role in minimizing the dose consequences from ECCS system leakage into the Auxiliary Building during a design basis accident. The Auxiliary Building Ventilation System in conjunction with ECCS equipment air handling units that automatically start on an ECCS demand draw potentially contaminated air from the ECCS equipment rooms and into the ABFVES. As stated in this LAR, the Auxiliary Building Ventilation Boundary will be breached when the 'A' Train NSWS piping is opened for access in the Auxiliary Building. The Validation: Personnel access opening will be controlled by using procedures developed or revised for this purpose to maintain positive control of the auxiliary building pressure boundary and prevent any unmonitored release.

Dedicated personnel with procedure guidance will be provided to close the pathway from the auxiliary building on the affected 'A' Train NSWS piping from the SNSWP in the event of any of the following:

- An Engineered Safety Feature (ESF) actuation
- Entry into RP/0/A/5700/006 Natural Disasters
- Entry into RP/0/A/5700/007 Earthquake

The pathway will be closed upon notification of an abnormal event as described above. TS 3.7.11 includes a note in the Limiting Condition for Operation (LCO) section: ''The Auxiliary Building pressure boundary may be opened intermittently under administrative controls.'' Based on these measures the performance of this barrier will not be affected by the proposed LAR.

Additionally, the proposed amendment does not involve a change in the design or operation of the plant. The activity only extends the amount of time the 'A' NSW system is allowed to be inoperable to correct the degraded condition on the 'A' NSWS supply piping from the SNSWP. As stated previously, the 'A' Train NSWS and supported equipment will remain in its Normal and ESFAS alignment during the extended CT and be functionally capable for all postulated events except a seismic event that results in loss of the Lake Norman water supply.

Defense-in-depth measures involving use of the Main Supply Crossover piping to supply suction to affected unit's 'A' Train NSWS pump from the 'B' train SNSWP suction piping and the ability to implement the FLEX strategy on both units provide additional safety margin for this event. Use of the Main Supply Crossover line is only needed in the unlikely event that one unit's 'B' Train NSWS pump fails after loss of 'A' Train NSWS due to an earthquake.

The estimated ICCDP during the 14 day CT extension is much less than the limits associated with Regulatory Guide 1.177. Therefore, it is concluded that the proposed changes do not involve a significant reduction in the margin of safety.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the license amendment request involves a No Significant Hazards Consideration.

The NRC is seeking public comments on this proposed determination that the license amendment request involves no significant hazards consideration. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of 60 days after the date of publication of this notice. The Commission may issue the license amendment before expiration of the 60-day notice period if the Commission concludes the amendment involves no significant hazards consideration. In addition, the Commission may issue the amendment prior to the expiration of the 30-day comment period should circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. Should the Commission take action prior to the expiration of either the comment period or the notice period, it will publish in the **Federal Register** a notice of issuance. Should the Commission make a final No Significant Hazards Consideration Determination, any hearing will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

III. Opportunity To Request a Hearing and Petition for Leave To Intervene

Within 60 days after the date of publication of this **Federal Register** notice, any person(s) whose interest may be affected by this proceeding and who desires to participate as a party in the proceeding must file a written request for hearing or a petition for leave to intervene specifying the contentions which the person seeks to have litigated in the hearing with respect to the license amendment request. Requests for hearing and petitions for leave to intervene shall be filed in accordance with the NRC's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested person(s) should consult a current copy of 10 CFR 2.309, which is available at the NRC's PDR. The NRC's regulations are accessible electronically from the NRC Library on the NRC's Web site at *http://www.nrc.gov/reading-rm/doc-collections/cfr/. http://www.nrc.gov/reading-rm/doc-collections/cfr/.* If a request for a hearing or petition for leave to intervene is filed within 60 days, the Commission or a presiding officer designated by the Commission or by the Chief Administrative Judge of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the Chief Administrative Judge of the Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.309, a request for hearing or petition for leave to intervene must set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The hearing request or petition must specifically explain the reasons why intervention should be permitted, with particular reference to the following general requirements: (1) The name, address, and telephone number of the requestor or petitioner; (2) the nature of the requestor's/petitioner's right under the Act to be made a party to the proceeding; (3) the nature and extent of the requestor's/petitioner's property, financial, or other interest in the proceeding; and (4) the possible effect of any decision or order which may be entered in the proceeding on the requestor's/petitioner's interest. The hearing request or petition must also include the specific contentions that the requestor/petitioner seeks to have litigated at the proceeding.

For each contention, the requestor/petitioner must provide a specific statement of the issue of law or fact to be raised or controverted, as well as a brief explanation of the basis for the contention. Additionally, the requestor/petitioner must demonstrate that the issue raised by each contention is within the scope of the proceeding and is material to the findings that the NRC must make to support the granting of a license amendment in response to the application. The hearing request or petition must also include a concise statement of the alleged facts or expert opinion that support the contention and on which the requestor/petitioner intends to rely at the hearing, together with references to those specific sources and documents. The hearing request or petition must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact, including references to specific portions of the application for amendment that the petitioner disputes and the supporting reasons for each dispute. If the requestor/petitioner believes that the application for amendment fails to contain information on a relevant matter as required by law, the requestor/petitioner must identify each failure and the supporting reasons for the requestor's/petitioner's belief. Each contention must be one which, if proven, would entitle the requestor/petitioner to relief. A requestor/petitioner who does not satisfy these requirements for at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing with respect to resolution of that person's admitted contentions, including the opportunity to present evidence and to submit a cross-examination plan for cross-examination of witnesses, consistent with NRC regulations, policies, and procedures. The Atomic Safety and Licensing Board will set the time and place for any prehearing conferences and evidentiary hearings, and the appropriate notices will be provided.

Hearing requests or petitions for leave to intervene must be filed no later than 60 days from the date of publication of this notice. Requests for hearing, petitions for leave to intervene, and motions for leave to file new or amended contentions that are filed after the 60-day deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i)–(iii).

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of any amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

IV. Electronic Submissions (E-Filing)

All documents filed in NRC adjudicatory proceedings, including a request for hearing, a petition for leave to intervene, any motion or other document filed in the proceeding prior to the submission of a request for hearing or petition to intervene, and documents filed by interested governmental entities participating under 10 CFR 2.315(c), must be filed in accordance with the NRC's E-Filing rule (72 FR 49139; August 28, 2007). The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases to mail copies on electronic storage media. Participants may not submit paper copies of their filings unless they seek an exemption in accordance with the procedures described below.

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *hearing.docket@nrc.gov,* or by telephone at 301–415–1677, to request (1) a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign documents and access the E-Submittal server for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a request or petition for hearing (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the hearing in this proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals/getting-started.html.* System requirements for accessing the E-Submittal server are detailed in the NRC's ''Guidance for Electronic Submission,'' which is available on the agency's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* Participants may attempt to use other software not listed on the Web site, but should note that the NRC's E-Filing system does not support unlisted software, and the NRC Meta System Help Desk will not be able to offer assistance in using unlisted software.

If a participant is electronically submitting a document to the NRC in accordance with the E-Filing rule, the participant must file the document using the NRC's online, Web-based submission form. In order to serve documents through the Electronic Information Exchange System, users will be required to install a Web browser plug-in from the NRC's Web site. Further information on the Web-based submission form, including the installation of the Web browser plug-in, is available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.*

Once a participant has obtained a digital ID certificate and a docket has been created, the participant can then submit a request for hearing or petition for leave to intervene. Submissions should be in Portable Document Format (PDF) in accordance with NRC guidance available on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html.* A filing is considered complete at the time the documents are submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. Eastern Time on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email notice confirming receipt of the document. The E-Filing system also distributes an email notice that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the documents on those participants separately. Therefore, applicants and other participants (or

their counsel or representative) must apply for and receive a digital ID certificate before a hearing request/petition to intervene is filed so that they can obtain access to the document via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC Meta System Help Desk through the ''Contact Us'' link located on the NRC's public Web site at *http://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Meta System Help Desk is available between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday, excluding government holidays.

Participants who believe that they have a good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing requesting authorization to continue to submit documents in paper format. Such filings must be submitted by: (1) First class mail addressed to the Office of the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff; or (2) courier, express mail, or expedited delivery service to the Office of the Secretary, Sixteenth Floor, One White Flint North, 11555 Rockville Pike, Rockville, Maryland, 20852, Attention: Rulemaking and Adjudications Staff. Participants filing a document in this manner are responsible for serving the document on all other participants. Filing is considered complete by first-class mail as of the time of deposit in the mail, or by courier, express mail, or expedited delivery service upon depositing the document with the provider of the service. A presiding officer, having granted an exemption request from using E-Filing, may require a participant or party to use E-Filing if the presiding officer subsequently determines that the reason for granting the exemption from use of E-Filing no longer exists.

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket which is available to the public at *http://ehd1.nrc.gov/ehd/,* unless excluded pursuant to an order of the Commission, or the presiding officer. Participants are requested not to include personal privacy information, such as social security numbers, home addresses, or home phone numbers in their filings, unless an NRC regulation or other law requires submission of such information. However, in some instances, a request to intervene will require including information on local residence in order to demonstrate a proximity assertion of interest in the proceeding. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants are requested not to include copyrighted materials in their submission.

For further details with respect to this action, see the application for license amendment dated June 30, 2015.

Attorney for licensee: Lara S. Nichols, Associate General Counsel, Duke Energy Corporation, 526 South Church Street—EC07H, Charlotte, NC 28202.

NRC Branch Chief: Robert J. Pascarelli.

Duke Energy Carolinas, LLC, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units Nos. 1 and 2, Mecklenburg County, North Carolina

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing SUNSI.

B. Within 10 days after publication of this notice of hearing and opportunity to petition for leave to intervene, any potential party who believes access to SUNSI is necessary to respond to this notice may request such access. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requester shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Associate General Counsel for Hearings, Enforcement and Administration, Office of the General Counsel, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email address for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *OGCmailcenter@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requester's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly-available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

D. Based on an evaluation of the information submitted under paragraph C.(3) the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2) above, the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order[2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after the requestor is granted access to that information.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

However, if more than 25 days remain between the date the petitioner is granted access to the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. This provision does not extend the time for filing a request for a hearing and petition to intervene, which must comply with the requirements of 10 CFR 2.309.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and need for access, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requester may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) The presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if he or she is unavailable, another administrative judge, or an administrative law judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) officer if that officer has been designated to rule on information access issues.

H. Review of Grants of Access. A party other than the requester may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed with the Chief Administrative Judge within 5 days of the notification by the NRC staff of its grant of access.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. Attachment 1 to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

It is so ordered.

Dated at Rockville, Maryland, this 13th day of August, 2015.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

Day	Event/activity
0	Publication of **Federal Register** notice of hearing and opportunity to petition for leave to intervene, including order with instructions for access requests.
10	Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: supporting the standing of a potential party identified by name and address; describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding.
60	Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply).
20	U.S. Nuclear Regulatory Commission (NRC) staff informs the requester of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents).
25	If NRC staff finds no "need" or no likelihood of standing, the deadline for petitioner/requester to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds "need" for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access.
30	Deadline for NRC staff reply to motions to reverse NRC staff determination(s).
40	(Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement for SUNSI.
A	If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff.
A + 3	Deadline for filing executed Non-Disclosure Affidavits. Access provided to SUNSI consistent with decision issuing the protective order.
A + 28	Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.
A + 53	(Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI.
A + 60	(Answer receipt +7) Petitioner/Intervenor reply to answers.
>A + 60	Decision on contention admission.

[3] Requesters should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

[FR Doc. 2015–20531 Filed 8–19–15; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2014–71; Order No. 2665]

New Postal Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning a modification to a Global Reseller Expedited Package Contracts 2 negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* August 21, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On August 13, 2015, the Postal Service filed notice that it has agreed to a Modification to the existing Global Reseller Expedited Package Contracts 2 negotiated service agreement approved in this docket.[1] In support of its Notice, the Postal Service includes a redacted copy of the Modification and a certification of compliance with 39 U.S.C. 3633(a), as required by 39 CFR 3015.5.

The Postal Service also filed the unredacted Modification and supporting financial information under seal. The Postal Service seeks to incorporate by reference the Application for Non-Public Treatment originally filed in this docket for the protection of information that it has filed under seal. Notice at 1.

The Modification would extend the prices and other terms of the original agreement to February 17, 2016.

[1] Notice of the United States Postal Service of Filing Modification to a Negotiated Service Agreement, August 13, 2015 (Notice).

II. Notice of Filings

The Commission invites comments on whether the changes presented in the Postal Service's Notice are consistent with the policies of 39 U.S.C. 3632, 3633, or 3642, 39 CFR 3015.5, and 39 CFR part 3020, subpart B. Comments are due no later than August 21, 2015. The public portions of these filings can be accessed via the Commission's Web site (*http://www.prc.gov*).

The Commission appoints Kenneth R. Moeller to represent the interests of the general public (Public Representative) in this docket.

III. Ordering Paragraphs

It is ordered:

1. The Commission reopens Docket No. CP2014–71 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, the Commission appoints Kenneth R. Moeller to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments are due no later than August 21, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015–20579 Filed 8–19–15; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. R2015–5; Order No. 2664]

International Mail Contract

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning a Type 2 rate adjustment and the filing of a related negotiated service agreement with Hongkong post. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* September 14, 2015.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

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I. Introduction

On August 13, 2015, the Postal Service filed a notice, pursuant to 39 CFR 3010.40 *et seq.,* announcing a Type 2 rate adjustment to improve default rates established under the Universal Postal Union Acts.[1] The Notice concerns a bilateral agreement with Hongkong Post (Agreement) that the Postal Service contends is similar to the prior Hongkong Post 2014–2015 Agreement that the Commission included within the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product in the market dominant product list of the Mail Classification Schedule.[2]

II. Contents of Filing

The Postal Service's filing consists of the Notice, two attachments, and redacted and unredacted versions of an Excel file with supporting financial workpapers. Notice at 1–2. Attachment 1 is an application for non-public treatment of material filed under seal with the Commission. *Id.* at 1. Attachment 2 is a redacted copy of the Agreement. *Id.* The Postal Service includes a redacted version of the financial workpapers with its filing as a separate public Excel file. *Id.* at 1–2.

The Postal Service states that the intended effective date of the Agreement is October 1, 2015; asserts that it is providing at least the 45 days advance notice required under 39 CFR 3010.41; and identifies the parties to the Agreement as the United States Postal Service and Hongkong Post, the postal operator for Hong Kong. *Id.* at 2–3.

Reporting requirements. 39 CFR 3010.43 requires the Postal Service to submit a detailed data collection plan. In lieu of a special data collection plan for the Agreement, the Postal Service proposes to report information on the Agreement through the Annual Compliance Report. *Id.* at 5–6. The

[1] Notice of United States Postal Service of Type 2 Rate Adjustment, and Notice of Filing Functionally Equivalent Agreement, August 13, 2015, at 1(Notice).

[2] *Id.* at 1, citing Docket No. R2014–4, Order No. 1981, Order Approving an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement (with Hongkong Post), January 29, 2014, at 8.

Postal Service also invokes, with respect to service performance measurement reporting under 39 CFR 3055.3(a)(3), the standing exception in Order No. 996 for all agreements filed in the Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 product grouping.[3]

Consistency with applicable statutory criteria. The Postal Service observes that Commission review of a negotiated service agreement addresses three statutory criteria under 39 U.S.C. 3622(c)(10), whether the agreement: (1) Improves the Postal Service's net financial position or enhances the performance of operational functions; (2) will not cause unreasonable harm to the marketplace; and (3) will be available on public and reasonable terms to similarly situated mailers. *Id.* The Postal Service asserts that it addresses the first two criteria in its Notice and that the third is inapplicable, as there are no entities similarly situated to Hongkong Post in terms of their ability to tender broad-based small packet flows from Hong Kong. *Id.*

Functional equivalence. The Postal Service addresses reasons why it considers the Agreement functionally equivalent to the China Post 2010 Agreement filed in Docket No. R2010–6.[4] The Postal Service asserts that it does not consider that the specified differences detract from the conclusion that the Agreement is functionally equivalent to the baseline China Post 2010 Agreement. Notice at 9.

III. Commission Action

The Commission, in conformance with rule 3010.44, establishes Docket No. R2015–5 to consider issues raised in the Notice. The Commission invites comments from interested persons on whether the Agreement is consistent with 39 U.S.C. 3622 and the requirements of 39 CFR part 3010. Comments are due no later than September 14, 2015. The public portions of this filing can be accessed via the Commission's Web site (*http://www.prc.gov*). Information on how to obtain access to non-public material appears in 39 CFR part 3007.

The Commission appoints James F. Callow to represent the interests of the general public (Public Representative) in this docket.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. R2015–5 for consideration of matters raised by the Postal Service's Notice.

2. Pursuant to 39 U.S.C. 505, James F. Callow is appointed to serve as an officer of the Commission (Public Representative) to represent the interests of the general public in this proceeding.

3. Comments by interested persons in this proceeding are due no later than September 14, 2015.

4. The Secretary shall arrange for publication of this order in the **Federal Register**.

By the Commission.

Ruth Ann Abrams,

Acting Secretary.

[FR Doc. 2015–20535 Filed 8–19–15; 8:45 am]

BILLING CODE 7710–FW–P

[3] *Id.* at 6, citing Docket No. R2012–2, Order Concerning an Additional Inbound Market Dominant Multi-Service Agreement with Foreign Postal Operators 1 Negotiated Service Agreement, November 23, 2011, at 7 (Order No. 996).

[4] *Id.* at 7; *see also* Docket Nos. MC2010–35, R2010–5, and R2010–6, Order No. 549, Order Adding Inbound Market Dominant Multi-Service Agreements with Foreign Postal Operators 1 to the Market Dominant Product List and Approving Included Agreements, September 30, 2010.

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Effective date:* August 20, 2015.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Reed, 202–268–3179.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 14, 2015, it filed with the Postal Regulatory Commission a *Request of the United States Postal Service to Add Priority Mail Contract 140 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2015–79, CP2015–126.

Stanley F. Mires,

Attorney, Federal Compliance.

[FR Doc. 2015–20533 Filed 8–19–15; 8:45 am]

BILLING CODE 7710–12–P

PRESIDIO TRUST

Notice of Public Meeting of Presidio Institute Advisory Council

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting of Presidio Institute Advisory Council.

SUMMARY: Pursuant to the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given that a public meeting of the Presidio Institute Advisory Council (Council) will be held from 12:30 p.m. to 2:00 p.m. on Monday, September 21, 2015. The meeting is open to the public, and oral public comment will be received at the meeting. The Council was formed to advise the Executive Director of the Presidio Trust (Trust) on matters pertaining to the rehabilitation and reuse of Fort Winfield Scott as a new national center focused on service and leadership development.

SUPPLEMENTARY INFORMATION: The Trust's Executive Director, in consultation with the Chair of the Board of Directors, has determined that the Council is in the public interest and supports the Trust in performing its duties and responsibilities under the Presidio Trust Act, 16 U.S.C. 460bb appendix.

The Council advises on the establishment of a new national center (Presidio Institute) focused on service and leadership development, with specific emphasis on: (a) Assessing the role and key opportunities of a national center dedicated to service and leadership at Fort Scott in the Presidio of San Francisco; (b) providing recommendations related to the Presidio Institute's programmatic goals, target audiences, content, implementation and evaluation; (c) providing guidance on a phased development approach that leverages a combination of funding sources including philanthropy; and (d) making recommendations on how to structure the Presidio Institute's business model to best achieve the Presidio Institute's mission and ensure long-term financial self-sufficiency.

Meeting Agenda: This meeting of the Council will include a discussion of the Presidio Institute's 2016 performance metrics and action plan. The period from 1:30 p.m. to 2:00 p.m. will be reserved for public comments.

Public Comment: Individuals who would like to offer comments are invited to sign-up at the meeting and speaking times will be assigned on a first-come, first-served basis. Written comments may be submitted on cards that will be provided at the meeting, via mail to Aimee Vincent, Presidio

Institute, 1201 Ralston Avenue, San Francisco, CA 94129–0052, or via email to *institute@presidiotrust.gov.* If individuals submitting written comments request that their address or other contact information be withheld from public disclosure, it will be honored to the extent allowable by law. Such requests must be stated prominently at the beginning of the comments. The Trust will make available for public inspection all submissions from organizations or businesses and from persons identifying themselves as representatives or officials of organizations and businesses.

Time: The meeting will be held from 12:30 p.m. to 2:00 p.m. on Monday, September 21, 2015.

Location: The meeting will be held at the Presidio Institute, Building 1202 Ralston Avenue, San Francisco, CA 94129.

FOR FURTHER INFORMATION CONTACT: Additional information is available online at *http://www.presidio.gov/explore/Pages/fort-scott-council.aspx.*

Dated: August 13, 2015.

Andrea Andersen,

Acting General Counsel.

[FR Doc. 2015–20560 Filed 8–19–15; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75709; File No. SR–BX–2015–047]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Regarding NASDAQ Last Sale Plus

August 14, 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, August 5, 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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend BX Rule 7039 (BX Last Sale Data Feeds) with language regarding NASDAQ Last Sale Plus (''NLS Plus''), a comprehensive data feed offered by NASDAQ OMX Information LLC.[3]

The text of the proposed rule change is 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 proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposal is to amend BX Rule 7039 by adding new section (b) regarding NLS Plus.

This proposal is based on the recent approval order regarding the codification of NLS Plus in NASDAQ Rule 7039,[4] in a manner similar to products of other markets.[5]

NLS Plus allows data distributors to access the three last sale products offered by each of NASDAQ OMX's three U.S. equity markets.[6] NLS Plus also reflects cumulative consolidated volume (''consolidated volume'') of real-time trading activity across all U.S. exchanges for Tape C securities and 15-minute delayed information for Tape A and Tape B securities.[7] In offering NLS Plus, NASDAQ OMX Information LLC is, as discussed below, acting as a redistributor of last sale products already offered by NASDAQ, BX, and PSX and volume information provided by the securities information processors (''SIPs'') for Tape A, B, and C.

NLS Plus, which is proposed to be codified in BX Rule 7039(b) in the same form as in NASDAQ Rule 7039(d), allows data distributors to access last sale products offered by each of NASDAQ OMX's three equity exchanges. Thus, NLS Plus includes all transactions from all of NASDAQ OMX's equity markets, as well as FINRA/NASDAQ TRF data that is included in the current NLS product. In addition, NLS Plus features total cross-market volume information at the issue level, thereby providing redistribution of consolidated volume information from SIPs for Tape A, B, and C securities. Thus, NLS Plus covers all securities listed on NASDAQ and New York Stock Exchange (''NYSE'') (now under the Intercontinental Exchange (''ICE'') umbrella), as well as U.S. ''regional'' exchanges such as NYSE MKT, NYSE Arca, and BATS (also

[3] NASDAQ OMX Information LLC is a subsidiary of The NASDAQ OMX Group, Inc. (''NASDAQ OMX'').

[4] *See* Securities Exchange Act Release No. 75257 (June 22, 2015), 80 FR 36862 (June 26, 2015) (SR–NASDAQ–2015–055) (order approving proposed rule change regarding NASDAQ Last Sale Plus in NASDAQ Rule 7039(d)) (the ''NLS Plus Approval Order''). *See also* Securities Exchange Act Release No. 74972 (May 15, 2015), 80 FR 29370 (May 21, 2015) (SR–NASDAQ–2015–055) (notice of filing of proposed rule change regarding NASDAQ Last Sale Plus) (the ''NLS Plus notice'').

[5] *See* Securities Exchange Act Release No. 73918 (December 23, 2014), 79 FR 78920 (December 31, 2014) (SR–BATS–2014–055; SR–BYX–2014–030; SR–EDGA–2014–25; SR–EDGX–2014–25) (order approving market data product called BATS One Feed being offered by four affiliated exchanges). *See also* Securities Exchange Act Release No. 73553 (November 6, 2014), 79 FR 67491 (November 13, 2014) (SR–NYSE–2014–40) (order granting approval to establish the NYSE Best Quote & Trades (''BQT'') Data Feed). These exchanges have likewise instituted fees for their products.

[6] The NASDAQ OMX U.S. equity markets include The NASDAQ Stock Market (''NASDAQ''), ''BX, and NASDAQ OMX PSX (''PSX'') (together known as the ''NASDAQ OMX equity markets''). PSX will shortly file a similar companion proposal regarding NLS Plus. NASDAQ's last sale product, NASDAQ Last Sale, includes last sale information from the FINRA/NASDAQ Trade Reporting Facility (''FINRA/NASDAQ TRF''), which is jointly operated by NASDAQ and the Financial Industry Regulatory Authority (''FINRA''). For proposed rule changes submitted with respect to NASDAQ Last Sale, BX Last Sale, and PSX Last Sale, *see, e.g.,* Securities Exchange Act Release Nos. 57965 (June 16, 2008), 73 FR 35178, (June 20, 2008) (SR–NASDAQ–2006–060) (order approving NASDAQ Last Sale data feeds pilot); 61112 (December 4, 2009), 74 FR 65569, (December 10, 2009) (SR–BX–2009–077) (notice of filing and immediate effectiveness regarding BX Last Sale data feeds); and 62876 (September 9, 2010), 75 FR 56624, (September 16, 2010) (SR–Phlx–2010–120) (notice of filing and immediate effectiveness regarding PSX Last Sale data feeds).

[7] Tape A and Tape B securities are disseminated pursuant to the Security Industry Automation Corporation's (''SIAC'') Consolidated Tape Association Plan/Consolidated Quotation System, or CTA/CQS (''CTA''). Tape C securities are disseminated pursuant to the NASDAQ Unlisted Trading Privileges (''UTP'') Plan.

known as BATS/Direct Edge).[8] The Exchange will, as discussed below, file a separate proposal regarding the NLS Plus fee structure.

NLS Plus has been offered since 2010 via NASDAQ OMX Information LLC.[9] NASDAQ OMX Information LLC is a subsidiary of NASDAQ OMX Group, Inc., separate and apart from The NASDAQ Stock Market LLC and the Exchange. As such, NASDAQ OMX Information LLC redistributes last sale data that has been the subject of a proposed rule change filed with the Commission at prices that also have been the subject of a proposed rule change filed with the Commission. As discussed below, NASDAQ OMX Information LLC distributes no data that is not equally available to all market data vendors.

The Proposal

The Exchange proposes to add NLS Plus to BX Rule 7039, which currently describes the BX Last Sale data feed offering, to fully reflect NLS Plus. NLS Plus as proposed to be codified in BX Rule 7039(b) is exactly the same as NLS Plus in NASDAQ Rule 7039(d).

Similar to NLS, NLS Plus offers data for all U.S. equities via two separate data channels: the first data channel reflects NASDAQ, BX, and PSX trades with real-time consolidated volume for NASDAQ-listed securities; and the second data channel reflects trades with delayed consolidated volume for NYSE, NYSE MKT, NYSE Arca and BATS-listed securities.[10] NLS Plus, like NLS, is used by industry professionals and retail investors looking for a cost effective, easy-to-administer, high quality market data product with the characteristics of NLS Plus. The provision of multiple options for investors to receive market data was a primary goal of the market data amendments adopted by Regulation NMS.[11] Finally, NLS Plus provides investors with options for receiving market data that parallel products currently offered by BATS and BATS Y, EDGA, and EDGX and NYSE equity exchanges.[12]

In addition to last sale information, NLS Plus also disseminates the following data elements: Trade Price, Trade Size, Sale Condition Modifiers, Cumulative Consolidated Market Volume, End of Day Trade Summary, Adjusted Closing Price, IPO Information, and Bloomberg ID (together the ''data elements''). NLS Plus also features and disseminates the following messages: Market Wide Circuit Breaker, Reg SHO Short Sale Price Test Restricted Indicator, Trading Action, Symbol Directory, Adjusted Closing Price, and End of Day Trade Summary (together the ''messages'').[13] The overwhelming majority of these data elements and messages are exactly the same as, and in fact are sourced from, NLS, BX Last Sale, and PSX Last Sale. Only two data elements (consolidated volume and Bloomberg ID) are, as discussed below, sourced from other publicly accessible or obtainable resources.

Consolidated volume reflects the consolidated volume at the time that the NLS Plus trade message is generated, and includes the volume for the issue symbol as reported on the consolidated market data feed. The consolidated volume is based on the real-time trades reported via the UTP Trade Data Feed (''UTDF'') and delayed trades reported via CTA. NASDAQ OMX calculates the real-time trading volume for its trading venues, and then adds the real-time trading volume for the other (non-NASDAQ OMX) trading venues as reported via the UTDF data feed. For non-NASDAQ-listed issues, the consolidated volume is based on trades reported via SIAC's Consolidated Tape System (''CTS'') for the issue symbol. The Exchange calculates the real-time trading volume for its trading venues, and then adds the 15-minute delayed trading volume for the other (non-NASDAQ OMX) trading venues as reported via the CTS data feed.[14] The second data point that is not sourced from NLS, BX Last Sale, and PSX Last Sale is Bloomberg ID. This composite ID is a component of Bloomberg's Open Symbology and acts as a global security identifier that Bloomberg assigns to securities, and is available free of charge.[15]

NLS Plus may be received by itself or in combination with NASDAQ Basic.[16] In the latter case, the subscriber receives all of the elements contained in NLS Plus as well as the best bid and best offer information provided by NASDAQ Basic.

The Exchange believes that market data distributors may use the NLS Plus data feed to feed stock tickers, portfolio trackers, trade alert programs, time and sale graphs, and other display systems.

The Exchange proposes one housekeeping change. The Exchange adds the phrase ''BX Last Sale'' in BX Rule 7039(a) to make it clear that section (a) refers to BX Last Sale (whereas proposed section (b) refers to NLS Plus). This change is non-substantive.

With respect to latency, the path for distribution of NLS Plus is not faster than the path for distribution that would be used by a market data vendor to distribute an independently created NLS Plus-like product. As such, the NLS Plus data feed is a data product that a competing market data vendor could create and sell without being in a disadvantaged position relative to the Exchange. In recognition that the Exchange is the source of its own market data and with NASDAQ and PSX being equity markets owned by NASDAQ OMX, the Exchange represents that the source of the market data it would use to create proposed NLS Plus is available to other vendors. In fact, the overwhelming majority of

[8] Registered U.S. exchanges are listed at *http://www.sec.gov/divisions/marketreg/mrexchanges.shtml.*

[9] While NLS Plus is described in the NLS Plus notice and NLS Plus Approval Order, NLS Plus is also described online at *http://nasdaqtrader.com/content/technicalsupport/specifications/dataproducts/NLSPlusSpecification.pdf. In addition, the annual administrative and other fees for NLS Plus are currently described in NASDAQ Rule 7039(d) and noted at http://nasdaqtrader.com/Trader.aspx?id=DPUSdata#ls.*

[10] These NLS Plus channels are each made up of a series of sequenced messages so that each message is variable in length based on the message type and is typically delivered using a higher level protocol.

[11] However, the Exchange notes that under Rule 603 of Regulation NMS, *see* 17 CFR 242.603(c), NLS Plus cannot be substituted for consolidated data in all instances in which consolidated data is used and certain subscribers are still required to purchase consolidated data for trading and order-routing purposes. *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, at 37503 (June 29, 2005) (Regulation NMS Adopting Release).

[12] *See supra* note 5.

[13] The Reg SHO Short Sale Price Test Restricted Indicator message is disseminated intra-day when a security has a price drop of 10% or more from the adjusted prior day's NASDAQ Official Closing Price. Trading Action indicates the current trading status of a security to the trading community, and indicates when a security is halted, paused, released for quotation, and released for trading. Symbol Directory is disseminated at the start of each trading day for all active NASDAQ and non-NASDAQ-listed security symbols. Adjusted Closing Price is disseminated at the start of each trading day for all active symbols in the NASDAQ system, and reflects the previous trading day's official closing price adjusted for any applicable corporate actions; if there were no corporate actions, however, the previous day's official closing price is used. End of Day Trade Summary is disseminated at the close of each trading day, as a summary for all active NASDAQ- and non-NASDAQ-listed securities. IPO Information reflects IPO general administrative messages from the UTP and CTA Level 1 feeds for Initial Public Offerings for all NASDAQ- and non-NASDAQ-listed securities.

[14] In order to distribute data derived from UTDF and CTA, NASDAQ OMX must pay monthly redistributor fees. However, because these fees are paid on an enterprise-wide basis and NASDAQ OMX includes such derived data in other data products, the use of the data in NLS Plus does not result in an additional incremental cost.

[15] *See http://bsym.bloomberg.com/sym/pages/bbgid-fact-sheet.pdf; http://bsym.bloomberg.com/sym/pages/NASDAQ_Adopts_BSYM.pdf.*

[16] As provided in NASDAQ Rule 7047, NASDAQ Basic provides the information contained in NLS, together with NASDAQ's best bid and best offer.

the data elements and messages [17] in NLS Plus are exactly the same as, and in fact are sourced from, NLS, BX Last Sale, and PSX Last Sale, each of which is available to other market data vendors.[18] The Exchange, NASDAQ, and PSX will continue to make available these individual underlying data elements, and thus, the source of the market data that would be used to create the proposed NLS Plus is the same as what is available to other market data vendors.

In order to create NLS Plus, the system creating and supporting NLS Plus receives the individual data feeds from each of the NASDAQ OMX equity markets and, in turn, aggregates and summarizes that data to create NLS Plus and then distribute it to end users. This is the same process that a competing market data vendor would undergo should it want to create a market data product similar to NLS Plus to distribute to its end users. A competing market data vendor could receive the individual data feeds from each of the NASDAQ OMX equity markets at the same time the system creating and supporting NLS Plus would for it to create NLS Plus. Therefore, a competing market data vendor could, as discussed, obtain the underlying data elements from the NASDAQ OMX equity markets on the same latency basis as the system that would be performing the aggregation and consolidation of proposed NLS Plus, and provide a similar product to its customers with the same latency they could achieve by purchasing NLS Plus from the Exchange. As such, the Exchange would not have any unfair advantage over competing market data vendors with respect to NLS Plus. Moreover, in terms of NLS itself, the Exchange would access the underlying feed from the same point as would a market data vendor; as discussed, the Exchange would not have a speed advantage. Likewise, NLS Plus would not have any speed advantage vis-à-vis competing market data vendors with respect to access to end user customers.

With regard to cost, the Exchange will file a separate proposal with the Commission regarding fees that will be similar in nature to NASDAQ Rule 7039(d). The proposal would be designed to ensure that vendors could compete with the Exchange by creating a similar product as NLS Plus. The Exchange expects that the pricing will reflect the incremental cost of the aggregation and consolidation function for NLS Plus, and would not be lower than the cost to a vendor creating a competing product, including the cost of receiving the underlying data feeds. The pricing the Exchange would charge clients for NLS Plus would enable a vendor to receive the underlying data feeds and offer a similar product on a competitive basis and with no greater cost than the Exchange. For these reasons, the Exchange believes that vendors could readily offer a product similar to NLS Plus on a competitive basis at a similar cost.

As described in more detail below, the Exchange believes that the NLS Plus data offering benefits the public and investors and that the proposal is consistent with the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[19] in general, and with Section 6(b)(5) of the Act,[20] in particular, in that the proposal is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposal is to add section (b) to BX Rule 7039 regarding the NLS Plus data offering. The Exchange believes that the proposal facilitates transactions in securities, removes impediments to and perfects the mechanism of a free and open market and a national market system, and, in general, protects investors and the public interest by making permanent the availability of an additional means by which investors may access information about securities transactions, thereby providing investors with additional options for accessing information that may help to inform their trading decisions. Given that Section 11A the Act [21] requires the dissemination of last sale reports in core data, the Exchange believes that the inclusion of the same data in NLS Plus is also consistent with the Act.

The Exchange notes that the Commission has determined that the inclusion of NLS Plus in NASDAQ Rule 7039(d), upon which proposed BX Rule 7039(b) is modelled, was consistent with the Act.[22] The Commission has also recently approved data products on several exchanges that are similar to NLS Plus, and specifically determined that the approved data products were consistent with the Act.[23] NLS Plus provides market participants with an additional option for receiving market data that has already been the subject of a proposed rule change and that is available from many market data vendors.

In adopting Regulation NMS, the Commission granted SROs and broker-dealers (''BDs'') increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data. The Exchange believes that the NLS Plus market data product is precisely the sort of market data product that the Commission envisioned when it adopted Regulation NMS. The Commission concluded that Regulation NMS—by deregulating the market in proprietary data—would itself further the Act's goals of facilitating efficiency and competition:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data. The Commission also believes that efficiency is promoted when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[24]

By removing unnecessary regulatory restrictions on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to BDs at all, it follows that the price at which such data is sold should be set by the market as well.

The Exchange will file a separate proposal regarding NLS Plus fees.[25] The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010) (''*NetCoalition I*''),

[17] *See* text related to notes 14 and 15 *supra.*

[18] Only two data elements are, as discussed above, sourced from other publicly accessible or obtainable resources.

[19] 15 U.S.C. 78f.

[20] 15 U.S.C. 78f(b)(5).

[21] 15 U.S.C. 78k–1.

[22] *See* Securities Exchange Act Release No. 75257 (June 22, 2015), 80 FR 36862 (June 26, 2015) (SR–NASDAQ–2015–055).

[23] *See supra* note 5.

[24] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

[25] The Exchange expects that the fee structure for NLS Plus will reflect an amount that is no less than the cost to a market data vendor to obtain all the underlying feeds, plus an amount to be determined that would reflect the value of the aggregation and consolidation function.

upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data. ''In fact, the legislative history indicates that the Congress intended that the market system 'evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed' and that the SEC wield its regulatory power 'in those situations where competition may not be sufficient,' such as in the creation of a 'consolidated transactional reporting system.' *NetCoalition I,* at 535 (quoting H.R. Rep. No. 94–229, at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 321, 323). The court agreed with the Commission's conclusion that ''Congress intended that 'competitive forces should dictate the services and practices that constitute the U.S. national market system for trading equity securities.' '' [26]

The Court in *NetCoalition I,* while upholding the Commission's conclusion that competitive forces may be relied upon to establish the fairness of prices, nevertheless concluded that the record *in that case* did not adequately support the Commission's conclusions as to the competitive nature of the market for NYSE Arca's data product at issue in that case. As explained below in the Exchange's Statement on Burden on Competition, however, the Exchange believes that there is substantial evidence of competition in the marketplace for data that was not in the record in the *NetCoalition I* case, and that the Commission is entitled to rely upon such evidence in concluding fees are the product of competition, and therefore in accordance with the relevant statutory standards.[27] Moreover, the Exchange further notes that the product at issue in this filing—a last sale data product that replicates a subset of the information available through ''core'' data products whose fees have been reviewed and approved by the SEC—is quite different from the NYSE Arca depth-of-book data product at issue in *NetCoalition I.* Accordingly, any findings of the court with respect to that product may not be relevant to the product at issue in this filing.

Moreover, data products such as NLS Plus are a means by which exchanges compete to attract order flow. To the extent that exchanges are successful in such competition, they earn trading revenues and also enhance the value of their data products by increasing the amount of data they are able to provide. Conversely, to the extent that exchanges are unsuccessful, the inputs needed to add value to data products are diminished. Accordingly, the need to compete for order flow places substantial pressure upon exchanges to keep their fees for both executions and data reasonable.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended. As is true of all NASDAQ's non-core data products, NASDAQ's ability to offer and price NLS Plus is constrained by: (1) Competition between exchanges and other trading platforms that compete with each other in a variety of dimensions; (2) the existence of inexpensive real-time consolidated data and market-specific data and free delayed consolidated data; and (3) the inherent contestability of the market for proprietary last sale data.

In addition, as described in detail above, NLS Plus competes directly with a myriad of similar products and potential products of market data vendors. NASDAQ OMX Information LLC was constructed specifically to establish a level playing field with market data vendors and to preserve fair competition between them. Therefore, NASDAQ OMX Information LLC receives NLS, BX Last Sale, and PSX Last Sale from each NASDAQ-operated exchange in the same manner, at the same speed, and reflecting the same fees as for all market data vendors. Therefore, NASDAQ Information LLC has no competitive advantage with respect to these last sale products and NASDAQ commits to maintaining this level playing field in the future. In other words, NASDAQ will continue to disseminate separately the underlying last sale products to avoid creating a latency differential between NASDAQ OMX Information LLC and other market data vendors, and to avoid creating a pricing advantage for NASDAQ OMX Information LLC.

NLS Plus joins the existing market for proprietary last sale data products that is currently competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market. Similarly, with respect to the FINRA/NASDAQ TRF data that is a component of NLS and NLS Plus, allowing exchanges to operate TRFs has permitted them to earn revenues by providing technology and data in support of the non-exchange segment of the market. This revenue opportunity has also resulted in fierce competition between the two current TRF operators, with both TRFs charging extremely low trade reporting fees and rebating the majority of the revenues they receive from core market data to the parties reporting trades.

Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price, and distribution of its data products. Without trade executions, exchange data products cannot exist. Moreover, data products are valuable to many end users only insofar as they provide information that end users expect will assist them or their customers in making trading decisions.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, the operation of the exchange is characterized by high fixed costs and low marginal costs. This cost structure is common in content and content distribution industries such as software, where developing new software typically requires a large initial investment (and continuing large investments to upgrade the software), but once the software is developed, the incremental cost of providing that software to an additional user is

[26] *NetCoalition I,* at 535.

[27] It should also be noted that Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act'') has amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make it clear that all exchange fees, including fees for market data, may be filed by exchanges on an immediately effective basis. *See also NetCoalition* v. *SEC,* 715 F.3d 342 (D.C. Cir. 2013) (''*NetCoalition II*'') (finding no jurisdiction to review Commission's non-suspension of immediately effective fee changes).

typically small, or even zero (*e.g.,* if the software can be downloaded over the internet after being purchased).[28] In the Exchange's case, it is costly to build and maintain a trading platform, but the incremental cost of trading each additional share on an existing platform, or distributing an additional instance of data, is very low. Market information and executions are each produced jointly (in the sense that the activities of trading and placing orders are the source of the information that is distributed) and are each subject to significant scale economies. In such cases, marginal cost pricing is not feasible because if all sales were priced at the margin, the Exchange would be unable to defray its platform costs of providing the joint products. Similarly, data products cannot make use of TRF trade reports without the raw material of the trade reports themselves, and therefore necessitate the costs of operating, regulating,[29] and maintaining a trade reporting system, costs that must be covered through the fees charged for use of the facility and sales of associated data.

An exchange's BD customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A BD will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the BD chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected value, the BD will choose not to buy it. Moreover, as a BD chooses to direct fewer orders to a particular exchange, the value of the product to that BD decreases, for two reasons. First, the product will contain less information, because executions of the BD's trading activity will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that BD because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the BD is directing orders will become correspondingly more valuable.

Similarly, in the case of products such as NLS Plus that are distributed through market data vendors, the vendors provide price discipline for proprietary data products because they control the primary means of access to end users. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end users will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail BDs, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. Exchanges, TRFs, and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully. Moreover, the Exchange believes that products such as NLS Plus can enhance order flow to the Exchange by providing more widespread distribution of information about transactions in real time, thereby encouraging wider participation in the market by investors with access to the internet or television. Conversely, the value of such products to distributors and investors decreases if order flow falls, because the products contain less content.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. The Exchange pays rebates for orders that access liquidity, charges relatively low prices for market information and charges relatively low prices for orders providing liquidity. Other platforms may choose a strategy of paying rebates to attract liquidity, and setting relatively higher prices for market information. Still others may provide most data free of charge and rely exclusively on transaction fees to recover their costs. Finally, some platforms may incentivize use by providing opportunities for equity ownership, which may allow them to charge lower direct fees for executions and data.

In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. Such regulation is unnecessary because an ''excessive'' price for one of the joint products will ultimately have to be reflected in lower prices for other products sold by the firm, or otherwise the firm will experience a loss in the volume of its sales that will be adverse to its overall profitability. In other words, an increase in the price of data will ultimately have to be accompanied by a decrease in the cost of executions, or the volume of both data and executions will fall.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including eleven SRO markets, as well as internalizing BDs and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Each SRO market competes to produce transaction reports via trade executions, and two FINRA-regulated TRFs compete to attract internalized transaction reports. It is common for BDs to further and exploit this competition by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products.

The large number of SROs, TRFs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, TRF, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including NASDAQ, NYSE, NYSE MKT, NYSE Arca, and BATS/Direct Edge.

Any ATS or BD can combine with any other ATS, BD, or multiple ATSs or BDs to produce joint proprietary data products. Additionally, order routers and market data vendors can facilitate single or multiple BDs' production of proprietary data products. The potential sources of proprietary products are virtually limitless. Notably, the potential sources of data include the BDs that submit trade reports to TRFs and that have the ability to consolidate and distribute their data without the involvement of FINRA or an exchange-operated TRF.

[28] *See* William J. Baumol and Daniel G. Swanson, ''The New Economy and Ubiquitous Competitive Price Discrimination: Identifying Defensible Criteria of Market Power,'' *Antitrust Law Journal,* Vol. 70, No. 3 (2003).

[29] It should be noted that the costs of operating the FINRA/NASDAQ TRF borne by NASDAQ include regulatory charges paid by NASDAQ to FINRA.

The fact that proprietary data from ATSs, BDs, and vendors can by-pass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products, as BATS and NYSE Arca did before registering as exchanges by publishing proprietary book data on the internet. Second, because a single order or transaction report can appear in a core data product, an SRO proprietary product, and/or a non-SRO proprietary product, the data available in proprietary products is exponentially greater than the actual number of orders and transaction reports that exist in the marketplace. Indeed, in the case of NLS Plus, the data provided through that product appears both in (i) real-time core data products offered by the SIPs for a fee, (ii) free SIP data products with a 15-minute time delay, and (iii) individual exchange data products, and finds a close substitute in last-sale products of competing venues.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, Bloomberg Tradebook, Island, RediBook, Attain, TracECN, BATS Trading and BATS/Direct Edge. A proliferation of dark pools and other ATSs operate profitably with fragmentary shares of consolidated market volume.

Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While BDs have previously published their proprietary data individually, Regulation NMS encourages market data vendors and BDs to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg and Thomson Reuters. In Europe, Cinnober aggregates and disseminates data from over 40 brokers and multilateral trading facilities.[30]

In the case of TRFs, the rapid entry of several exchanges into this space in 2006–2007 following the development and Commission approval of the TRF structure demonstrates the contestability of this aspect of the market.[31] Given the demand for trade reporting services that is itself a by-product of the fierce competition for transaction executions—characterized notably by a proliferation of ATSs and BDs offering internalization—any supra-competitive increase in the fees associated with trade reporting or TRF data would shift trade report volumes from one of the existing TRFs to the other[32] and create incentives for other TRF operators to enter the space. Alternatively, because BDs reporting to TRFs are themselves free to consolidate the market data that they report, the market for over-the-counter data itself, separate and apart from the markets for execution and trade reporting services—is fully contestable.

Moreover, consolidated data provides two additional measures of pricing discipline for proprietary data products that are a subset of the consolidated data stream. First, the consolidated data is widely available in real-time at $1 per month for non-professional users. Second, consolidated data is also available at no cost with a 15- or 20-minute delay. Because consolidated data contains marketwide information, it effectively places a cap on the fees assessed for proprietary data (such as last sale data) that is simply a subset of the consolidated data. The mere availability of low-cost or free consolidated data provides a powerful form of pricing discipline for proprietary data products that contain data elements that are a subset of the consolidated data, by highlighting the optional nature of proprietary products.

In this environment, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' *NetCoalition I* at 539. The existence of fierce competition for order flow implies a high degree of price sensitivity on the part of BDs with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A BD that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. If a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected BDs will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data. Similarly, increases in the cost of NLS Plus would impair the willingness of distributors to take a product for which there are numerous alternatives, impacting NLS Plus data revenues, the value of NLS Plus as a tool for attracting order flow, and ultimately, the volume of orders routed to the Exchange and the value of its other data products.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)[33] of the Act and subparagraph (f)(6) of Rule 19b–4 thereunder.[34]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) Necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or

[30] *See http://www.cinnober.com/boat-trade-reporting.*

[31] The low cost exit of two TRFs from the market is also evidence of a contestable market, because new entrants are reluctant to enter a market where exit may involve substantial shut-down costs.

[32] It should be noted that the FINRA/NYSE TRF has, in recent weeks, received reports for almost 10% of all over-the-counter volume in NMS stocks.

[33] 15 U.S.C. 78s(b)(3)(A).

[34] 17 CFR 240.19b–4(f)(6).

• Send an email to *rule-comments@sec.gov.* Please include File Number SR–BX–2015–047 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–2015–047. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–BX–2015–047 and should be submitted on or before September 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[35]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–20549 Filed 8–19–15; 8:45 am]

BILLING CODE 8011–01–P

[35] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75699; File No. SR–CBOE–2015–069]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay the Implementation Date of the Rule Change To Allow Market Orders To Sell in No-Bid Series To Be Entered Into the Electronic Order Book From a PAR Workstation

August 14, 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 August 3, 2015, Chicago Board Options Exchange, Incorporated (the ''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to delay the implementation date of the rule change to allow market orders to sell in no-bid series to be entered into the electronic book from a PAR workstation. There is no proposed change to the rule language. The text of the proposed rule change is available on the Exchange's Web site (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 22, 2014, rule change SR–CBOE–2014–067[5] became effective. The filing amended Rule 6.13(b)(vi) to increase the $0.30 parameter to $0.50. Although not contained in the amended rule text, the filing also amended Rule 6.13(b)(vi) to allow market orders to sell in no-bid series that get routed to a PAR workstation of a TPH User to be entered into the electronic order book at the minimum increment.[6] The filing indicated that the implementation date of the amendments would be no later than 180 days following the effective date of the filing (*i.e.,* no later than April 28, 2015). Although the parameter change from $0.30 to $0.50 was implemented,[7] the Exchange filed SR–CBOE–2015–034 in order to delay the implementation date of the change to allow market orders to sell in no-bid series to be entered into the electronic order book from a PAR workstation.[8] The Exchange is still in the process of making the necessary modifications to the CBOE Hybrid System (the ''System'') to allow market orders to sell in no-bid series that get routed to a PAR workstation to be entered into the electronic order book at the minimum increment.

The Exchange does not believe the modifications to the System will be completed prior to the current September deadline; therefore, the Exchange seeks to delay the implementation date deadline for the portion of SR–CBOE–2014–067 related to allowing market orders to sell in no-bid series that were routed to a PAR workstation to be entered into the electronic order book. The Exchange will announce the implementation date in a Regulatory Circular to be published at least 60 days prior to the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

[5] Securities Exchange Act Release No. 34–73487 (October 31, 2014), 79 FR 66016 (November 6, 2014) (SR–CBOE–2014–067).

[6] *Id.* at 66017.

[7] *See CBOE Regulatory Circular* RG15–002—Automatic Order Handling Process in No-bid Series (January 2, 2015).

[8] Securities Exchange Act Release No. 74654 (April 6, 2015), 80 FR 19388 (April 10, 2015) (SR–CBOE–2015–034).

implementation date. The implementation date will be no later than 365 days following the effective date of this filing.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In particular, the Exchange believes delaying the implementation deadline to allow the Exchange the necessary time to finish the modifications to the System, which will provide the functionality to route market orders to sell in no-bid series from a PAR workstation to an electronic order book, helps protect investors by ensuring the PAR workstation functions as intended.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. More specifically, the Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition because this filing simply seeks to delay the implementation deadline of SR–CBOE–2014–067.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule 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 [12] and Rule 19b–4(f)(6) thereunder.[13]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml);* or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2015–069 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.

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(6). 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.

All submissions should refer to File Number SR–CBOE–2015–069. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CBOE–2015–069 and should be submitted on or before September 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–20543 Filed 8–19–15; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75701; File No. SR–NASDAQ–2015–099]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Nasdaq Rules 7014 and 7018

August 14, 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 August 12, 2015, The NASDAQ Stock Market

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

LLC (''Nasdaq'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of the Substance of the Proposed Rule Change

Nasdaq is proposing changes to the national best bid or best offer (''NBBO'') program (''NBBO Program'') in Nasdaq Rule 7014, as well as proposed changes to amend Nasdaq Rule 7018, governing fees and credits assessed for execution and routing of securities.

The text of the proposed rule change is available at *nasdaq.cchwallstreet.com* at Nasdaq principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq proposes to amend a qualification to receive a certain credit for execution and routing of orders in Nasdaq Rule 7018. Specifically, the proposed rule change applies to qualification to receive a credit in Rule 7018(a)(1), (2) and (3) and, respectively, the securities listed on Nasdaq (''Tape C''), the securities listed on the New York Stock Exchange (''NYSE'') (''Tape A'') and on exchanges other than Nasdaq and NYSE (''Tape B'') (collectively, the ''Tapes'').

Currently, a $0.0029 per share executed credit is provided to member firms that add Customer,[3] Professional,[4] Firm,[5] Non-Nasdaq Options Market (''NOM'') market maker[6] and/or broker-dealer[7] liquidity in Penny Pilot Options[8] and/or Non-Penny Pilot Options[9] of 1.25% or more of total industry average daily volume (''ADV'') in the customer clearing range for equity and ETF option contracts per day, in a month on NOM. The Exchange proposes to adjust the criteria from 1.25% to 1.15% or more of total industry ADV. The Exchange believes the revised criteria to receive the credit will provide a greater incentive to Nasdaq market participants to also provide liquidity in NOM.

The Exchange also proposes to amend the NBBO Program under Nasdaq Rule 7014(g). The NBBO Program provides a per share executed rebate[10] with respect to all other displayed orders (other than Designated Retail Orders, as defined in Nasdaq Rule 7018) in securities priced at $1 or more per share that provide liquidity and establish the NBBO. Nasdaq is proposing to harmonize the qualification criteria a member firm must meet to receive a rebate under the program for all three Tapes. Currently, a member firm may qualify for a $0.0002 per share executed NBBO Program rebate in the securities of all three Tapes [sic]: (1) Executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represents 0.475% or more of Consolidated Volume during the month; or (2) Adds NOM Market Maker liquidity, as defined in Chapter XV, Section 2 of the Nasdaq Options Market rules, in Penny Pilot Options and/or Non-Penny Pilot Options above 0.90% of total industry customer equity and ETF option ADV contracts per day in a month. A member firm may qualify for a $0.0004 per share executed NBBO Program rebate in Tape A securities in lieu of the $0.0002 per share executed rebate if it executes shares of liquidity provided in all securities through one or more of its Nasdaq Market Center MPIDs that represents 0.50% or more of Consolidated Volume during the month. The Exchange proposes to increase the level of Consolidated Volume required to qualify for a $0.0002 per share executed rebate from 0.475% to 0.50%, which is the level of Consolidated Volume required to receive the $0.0004 per share executed rebate. As a consequence of increasing the required level of Consolidated Volume to receive the $0.0002 per share executed rebate to that of the current $0.0004 per share executed rebate in Tape A securities, member firms will no longer have an option to qualify for a $0.0002 per share executed rebate in Tape A securities. In addition, the Exchange is extending the optional NOM-based qualification criteria, currently only available for the $0.0002 NBBO program rebate, to rebates of $0.0004 in Tape A securities. As a consequence of these changes, the same qualification criteria will apply to all three Tapes, with only the amount of rebate provided differing. As such, the Exchange is proposing to integrate the current rule text under Rule 7014(g) that sets forth the qualification requirements for each NBBO Program rebate into a single requirement under the rule.

2. Statutory Basis

Nasdaq believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[11] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[12] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which Nasdaq operates or controls and is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

Nasdaq believes that the proposed changes to Nasdaq Rule 7018(a)(1), (2) and (3) to amend a qualification to receive the $0.0029 per share executed credit applied to securities of all three Tapes provided to member firms that add Customer, Professional, Firm, Non-NOM market maker and/or broker-dealer liquidity in Penny Pilot Options and/or Non-Penny Pilot Options of 1.15% (decreasing from current 1.25%)

[3] As defined by NASDAQ Options Rules, Chapter XV.

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] The Penny Pilot allows market participants to quote in penny increments in certains series of options classes and is designed to narrow the average quoted spreads in all classes in the Pilot, which may result in customers and other market participants to [sic] trade options at better prices. *See* NASDAQ Options Rules, Chapter XV, Sec. 2(1).

[9] *Id.*

[10] The rebate is provided in addition to any rebate or credit payable under Nasdaq Rule 7018(a) and the Investor Support Program and Qualified Market Maker Progam under Nasdaq Rule 7014.

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78f(b)(4) and (5).

or more of total industry ADV in the customer clearing range for equity and ETF option contracts per day, in a month on NOM is reasonable because the Exchange believes the revised criteria to receive the credit will provide a greater incentive to Nasdaq market participants to also provide liquidity in NOM. The Exchange also believes that the proposed rule changes [sic] is equitable and not unfairly discriminatory because the amended qualification to receive the credit is applied uniformly to securities of all three Tapes and it is immediately available to all market participants that qualify.

The Exchange believes the proposed changes that harmonize the criteria required to qualify for a rebate under the NBBO Program are reasonable because they will continue to provide incentives to market participants to improve the NBBO and increase their participation on the Exchange. In particular, increasing the Consolidated Volume required to qualify for a $0.0002 per share executed rebate under Rule 7014(g)(1) from 0.475% to 0.5% represents a modest increase to the requirement in return for the rebate, which the Exchange believes will continue to provide incentive to market participants with attainable criteria. Moreover, the Exchange believes that it is reasonable to apply a higher Consolidated Volume requirement to receive a rebate in Tape B and C securities notwithstanding that the amount of the rebate is lower than that of Tape A because the market in terms of setting the NBBO in Tape B and C securities is sufficiently robust to support higher requirements. As such, the Exchange believes that requiring member firms to provide more market-improving Consolidated Volume in return for the rebate is reasonable. The Exchange also believes that extending the NOM-based means by which a member firm may qualify for a rebate under Rule 7014(g)(2) to the $0.0004 rebate in Tape A securities under the program is reasonable because it will provide market participants another means by which they may qualify for a rebate, which is [sic] currently available as an option to qualify for the $0.0002 rebate.

Additionally, Nasdaq believes the proposed changes to Rule 7014(g) are equitable and not unfairly discriminatory because all members that qualify under the conditions described above are eligible to receive the rebate under the NBBO Program. The NBBO Program is intended to encourage members to add liquidity at prices that benefit all Nasdaq market participants and the Nasdaq market itself, and enhance price discovery. Also, the Exchange believes that increasing the level of Consolidated Volume required to receive a rebate in Tape B and C securities under the NBBO Program is equitable and not unfairly discriminatory because it is the same level of Consolidated Volume currently required to qualify for a $0.0004 per share executed rebate in Tape A securities. As such, all market participants will receive a rebate if they meet the same Consolidated Volume requirement. The Exchange believes that making the NOM-based qualifying criteria of Rule 7014(g)(2) available to member firms in Tape A securities is an [sic] equitable and not unfairly discriminatory because all member firms will have the option to qualify under this criteria. In sum, the Exchange believes that these proposed rule changes are equitable and not unfairly discriminatory because they apply uniform criteria to all member firms in return for a rebate from the Exchange, the rate at which is set by the Exchange based on the Tape of the security in which it seeks to incentivize market participants to improve the NBBO.

Finally, Nasdaq notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, Nasdaq must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Nasdaq believes that the proposed rule change reflects this competitive environment because it is designed, in part, to increase rebates for members that enhance the quality of Nasdaq's market.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule changes will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.[13] Nasdaq notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, Nasdaq must continually adjust its fees to remain competitive with other exchanges and with alternative trading systems that have been exempted from compliance with the statutory standards applicable to exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices [sic].

Nasdaq believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited or even non-existent. In this instance, the changes to Nasdaq Rules 7014 and 7018 do not impose a burden on competition because the NBBO Program, as amended, still offers economically advantageous credits and is reflective of the need for exchanges to offer and to let the financial incentives to attract order flow evolve, and the change to one of the qualifications to receive a credit in Nasdaq Rule 7018(a)(1), (2) and (3) does not impose a burden on competition because Nasdaq's execution services are completely voluntary and subject to extensive competition both from other exchanges and from off-exchange venues. While the Exchange does not believe that the proposed changes will result in any burden on competition, if the changes proposed herein are unattractive to market participants it is likely that Nasdaq will lose market share as a result.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[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:

[13] 15 U.S.C. 78f(b)(8).

[14] 15 U.S.C. 78s(b)(3)(A)(ii).

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2015–099 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2015–099. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2015–099, and should be submitted on or before September 10, 2015.[15]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–20545 Filed 8–19–15; 8:45 am]

BILLING CODE 8011–01–P

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 31761; File No. 812–14434]

Archstone Alternative Solutions Fund and A.P. Management Company, LLC; Notice of Application

August 14, 2015.

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 (the ''Act'') for an exemption from sections 18(c) and 18(i) of the Act and for an order pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY: *Summary of Application:* Applicants request an order to permit a registered closed-end management investment company to issue multiple classes of shares (''Classes'') with varying sales loads and to impose asset-based service and/or distribution fees.

Applicants: Archstone Alternative Solutions Fund (''Fund'') and A.P. Management Company, LLC (''Adviser'').

DATES: *Filing Dates:* The application was filed on March 19, 2015 and amended on July 14, 2015.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on September 9, 2015, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Pursuant to Rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reasons for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, U.S. Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090; Applicants: 360 Madison Avenue, 20th Floor, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Jaea F. Hahn, Senior Counsel, at (202) 551–6870, or David P. Bartels, Branch Chief, at (202) 551–6821 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained via the Commission's Web site by searching for the file number, or for an applicant using the Company name box, at *http://www.sec.gov/search/search.htm* or by calling (202) 551–8090.

Applicants' Representations

1. The Fund will be a continuously offered non-diversified, closed-end management investment company registered under the Act and organized as a Delaware statutory trust. The Adviser, a New York limited liability company, is registered as an investment adviser under the Investment Advisers Act of 1940 and serves as investment adviser to the Fund.

2. The Fund will continuously offer its shares pursuant to its currently effective registration statement under the Securities Act of 1933 (''Securities Act'').[1] The Fund's shares are not listed on any securities exchange and do not trade on an over-the-counter system such as Nasdaq. Applicants do not expect that any secondary market will develop for the Fund's shares.

3. The Fund currently intends to offer a Class of shares at net asset value per share (''NAV'') which will not be subject to any sales load or distribution and/or service fees. The Fund proposes to offer an additional Class of shares that will adopt a distribution and service plan in compliance with rules 12b-1 and 17d-3 under the Act as if such rules applied to closed-end management investment companies (''Distribution and Service Plan'') and which may be subject to a sales load, a distribution fee (''Distribution Fee''), and/or a service fee (''Service Fee'').[2]

4. In order to provide a limited degree of liquidity to shareholders, the Fund may from time to time offer to repurchase shares at their then-current NAV in accordance with rule 13e–4 under the 1934 Act pursuant to written

[1] Shares of the Fund will only be sold to ''accredited investors'' as defined in regulation D under the Securities Act.

[2] All Classes of shares will be subject to an ''early withdrawal charge'' (''Repurchase Fee'') if a shareholder has shares repurchased during the first eleven months following such shareholder's initial investment in the Fund. The Repurchase Fee will apply equally to all shareholders of a Fund, regardless of Class, consistent with section 18 of the Act and rule 18f-3 thereunder. With respect to any waiver of, scheduled variation in, or elimination of the Repurchase Fee, the Fund will comply with rule 22d-1 under the Act as if the Repurchase Fee were a contingent deferred sales charge (''CDSC'') and as if the Fund were an open-end investment company and the Fund's waiver of, scheduled variation in, or elimination of the Repurchase Fee will apply uniformly to all shareholders of the Fund regardless of Class.

tenders by shareholders. Repurchases of the Fund's shares are made at such times, in such amounts and on such terms as may be determined by the board of trustees of the Fund (''Board'') in its sole discretion. The Adviser anticipates recommending that the Board authorize the Fund to offer to repurchase shares from shareholders quarterly.

5. Applicants represent that any asset-based Distribution and Service Fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD Conduct Rule 2830'').[3] Applicants also represent that the Fund will disclose in its prospectus, the fees, expenses and other characteristics of each Class offered for sale by the prospectus, as is required for open-end, multiple class funds under Form N–1A. As if it were an open-end management investment company, the Fund will disclose fund expenses in shareholder reports, and disclose in its prospectus any arrangements that result in breakpoints in, or elimination of, sales loads.[4] Applicants will also comply with any requirements that may be adopted by the Commission or FINRA regarding disclosure at the point of sale and in transaction confirmations about the costs and conflicts of interest arising out of the distribution of open-end investment company shares, and regarding prospectus disclosure of sales loads and revenue sharing arrangements as if those requirements applied to the Fund and any distributor of shares of the Fund.[5]

6. The Fund will allocate all expenses incurred by it among the various Classes based on net assets of the Fund attributable to each such Class, except that the NAV and expenses of each Class will reflect the expenses associated with the Distribution and Service Plan of that Class (if any), and any other incremental expenses of that Class (including transfer agency fees, if any). Expenses of the Fund allocated to a particular Class of the Fund's shares will be borne on a pro rata basis by each outstanding share of that Class. Applicants state that the Fund will comply with the provisions of rule 18f–3 under the Act as if it were an open-end investment company.

7. In the event the Fund imposes a CDSC, applicants will comply with the provisions of rule 6c–10 under the Act, as if that rule applied to closed-end management investment companies. With respect to any waiver of, scheduled variation in, or elimination of the CDSC, the Fund will comply with the requirements of rule 22d–1 under the Act as if the Fund were an open-end investment company.

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple Classes of the Fund may be prohibited by section 18(c).

2. Section 18(i) of the Act provides that each share of stock issued by a registered management investment company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that permitting multiple Classes of the Fund may violate section 18(i) of the Act because each Class would be entitled to exclusive voting rights with respect to matters solely related to that Class.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security or transaction or any class or classes of persons, securities or transactions from any provision of the Act, or from any rule under the Act, if and to the extent such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) from sections 18(c) and 18(i) to permit the Fund to issue multiple Classes.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed system would permit the Fund to facilitate the distribution of Classes through diverse distribution channels and would provide investors with a broader choice of shareholder options. Applicants assert that the proposed closed-end investment company multiple class structure does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state the Fund will comply with the provisions of rule 18f–3 as if it were an open-end investment company. Applicants believe that the requested relief meets the standards of Section 6(c) of the 1940 Act.

CDSCs

5. Applicants believe that the requested relief meets the standards of section 6(c) of the Act. Rule 6c–10 under the Act permits open-end investment companies to impose CDSCs, subject to certain conditions. Applicants state that the Fund does not anticipate imposing CDSCs and would only do so in compliance with rule 6c–10 under the Act as if that rule were applied to closed-end investment companies. The Fund also will make all required disclosures in accordance with the requirements of Form N–1A concerning CDSCs. Applicants further state that, in the event the Fund imposes CDSCs, the Fund will apply the CDSCs (and any waivers or scheduled variations of the CDSCs) uniformly to all shareholders in a given class and consistently with the requirements of rule 22d–1 under the Act.

Asset-Based Service and/or Distribution Fees

6. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in or effecting any transaction in which such registered company is a joint or a joint and several participant unless the Commission issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the Commission considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies and purposes of the Act, and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

7. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end investment companies to enter into distribution arrangements pursuant to rule 12b–1 under the Act. Applicants request an order under section 17(d) and rule 17d–1 under the Act to permit the

[3] Any references to NASD Conduct Rule 2830 include any successor or replacement Financial Industry Regulatory Authority Rule to NASD Conduct Rule 2830.

[4] *See Shareholder Reports and Quarterly Portfolio Disclosure of Registered Management Investment Companies,* Investment Company Act Release No. 26372 (Feb. 27, 2004) (adopting release); and *Disclosure of Breakpoint Discounts by Mutual Funds,* Investment Company Act Release No. 26464 (June 7, 2004) (adopting release).

[5] *See Confirmation Requirements and Point of Sale Disclosure Requirements for Transactions in Certain Mutual Funds and Other Securities, and Other Confirmation Requirement Amendments, and Amendments to the Registration Form for Mutual Funds,* Investment Company Act Release No. 26341 (Jan. 29, 2004) (proposing release).

Fund to impose Distribution Fees and/or Service Fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c–10, 12b–1, 17d–3, 18f–3 and 22d–1 under the Act, as amended from time to time or replaced, as if those rules applied to closed-end management investment companies, and will comply with the NASD Conduct Rule 2830, as amended from time to time, as if that rule applied to all closed-end management investment companies.

For the Commission, by the Division of Investment Management, under delegated authority.

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–20550 Filed 8–19–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75704; File No. SR–NYSEArca-2015–71]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Amending the NYSE Arca Options Fee Schedule

August 14, 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 August 6, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE Arca Options Fee Schedule (''Fee Schedule''). The Exchange proposes to implement the fee change effective August 6, 2015. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to modify the rates that Lead Market Makers and Market Makers are charged for Manual Executions, and to establish tiers for the Firm and Broker Dealer Monthly Firm Cap. The Exchange proposes to implement fee changes effective on August 6, 2015.

First, the Exchange is proposing to increase the rates that Lead Market Makers and Market Makers are charged for Manual Executions. Currently, Lead Market Makers are assessed a fee of $0.09 per contract, and Market Makers a fee of $0.16 per contract, for Manual Executions. The Exchange proposes to raise each fee $0.09 per contract, to $0.18 for Lead Market Makers, and $0.25 for Market Makers. With this proposed change, the fee for Market Makers would be the same as the fee charged to Firm and Broker Dealer executions. The Lead Market Maker rate would be increased by the same amount, while maintaining a lower rate for Lead Market Makers because Lead Market Makers pay a monthly Rights Fee and have greater quoting obligations.

Second, the Exchange is proposing to establish tiers for the Firm and Broker Dealer Monthly Firm Cap that are tied to Customer and Professional Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues [4] (''Customer and Professional Customer Posting Tiers''). At present, the Exchange places a limit, or cap, of $100,000 per month on combined Firm Proprietary Fees and Broker Dealer Fees, for transactions clearing in the customer range, if executed in open outcry (Manual Transactions), including fees for QCC transactions executed by a Floor Broker. The Firm Cap excludes Strategy Executions, Royalty Fees, and firm trades executed via a Joint Back Office agreement, and Mini option contracts.

The Exchange proposes to introduce tiered caps, with $100,000 being the maximum Monthly Firm Cap, which would decrease based on the Firm or Broker Dealer achieving Tier 2 or higher on the Customer and Professional Customer Posting Tiers (''Tiered Firm Caps''). Specifically, the higher Customer and Professional Customer Monthly Posting Credit Tier that a Firm or Broker Dealer achieves, the lower the Tiered Firm Cap, with the Cap getting progressively lower upon achieving higher tiers.

The proposed Tiered Firm Caps and the corresponding Customer and Professional Customer Monthly Posting Credit Tiers are set forth in the table below:

FIRM AND BROKER DEALER MONTHLY FIRM CAP TIERS

Customer and professional customer monthly posting credit tier achieved	Firm cap
Base or Tier 1	*$100,000*
Tier 2	*85,000*
Tier 3	*80,000*
Tier 4	*75,000*
Tier 5	*70,000*
Tier 6	*65,000*

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[6] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that increasing the fees for Lead Market Maker and Market Maker Manual executions is

[1] 15 U.S.C.78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b-4.

[4] *See* Fee Schedule, NYSE Arca Options: Trade-Related Charges for Standard Options, Customer and Professional Customer Monthly Posting Credit Tiers and Qualifications for Executions in Penny Pilot Issues (setting forth the monthly volume requirements and credits applied for each tier achieved).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

reasonable and not unfairly discriminatory as it brings Market Maker fees in line with the fees paid by Firms and Broker Dealers that engage in trading activity similar to Market Makers. The Exchange also notes that the proposed rate for Market Makers is still lower than the rate charged by competing options exchanges.[7] The Exchange also notes that other competing options exchanges likewise similarly charge Market Makers the same transaction fees for manual transactions as Broker Dealers and Firms.[8] The Exchange also notes that Market Makers have alternative avenues to reduce transaction fees not available to Firms and Broker Dealers.[9] The Exchange also believes that is not unfairly discriminatory to assess a lower rate for Lead Market Makers because Lead Market Makers pay Rights Fees and have more burdensome quoting obligations.

The Exchange also believes that the proposal to institute Tiered Firm Caps is reasonable equitable, and not unfairly discriminatory, as the Tiered Firm Caps would not be meaningful to Customers or Professional Customers that are not charged any transaction charges [sic] Manual Executions. The proposed Tiered Firm Caps are also reasonable, equitable and not unfairly discriminatory towards Market Makers, as Market Makers have alternative avenues to reduce transaction fees not available to Firms and Broker Dealers.[10] In addition, the Exchange believes that linking the Tiered Firm Caps to the Customer and Professional Customer Posting Credit Tiers would benefit all market participants because it renders the Caps more achievable, which, in turn encourages additional open outcry order flow, with which Market Makers may interact, once fees are capped. Further, the proposed change likewise encourages Firms and Broker Dealers to achieve higher monthly Customer and Professional Customer Posting Tiers, which increases liquidity and provides greater opportunities for all market participants to interact with electronic order flow. This additional volume and liquidity would benefit all Exchange participants through increased opportunities to trade as well as enhancing price discovery and price improvement.

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,[11] 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. Instead, the Exchange believes that the proposed change would continue to encourage competition, including by attracting a wider variety of business to the Exchange, which would continue to make the Exchange a more competitive venue for, among other things, order execution and price discovery.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other 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

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A)[12] of the Act and subparagraph (f)(2) of Rule 19b–4[13] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B)[14] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca-2015–71 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-2015–71. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–

[7] *See, e.g.,* NASDAQ OMX PHLX, *available here, http://www.nasdaqtrader.com/Micro.aspx?id=phlxpricing* (charging market makers $0.30 per contract for manual executions).

[8] *See, e.g.,* NYSE Amex Options, *available here, https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf* (charging both non-Amex options market makers and broker deals alike $0.25 per contract for manual executions).

[9] *See* Fee Schedule (various credits available to Market Makers for posted monthly volume, including for executions in Penny Pilot Issues and SPY and Market Maker Incentive).

[10] *See id.*

[11] 15 U.S.C. 78f(b)(8).

[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4(f)(2).

[14] 15 U.S.C. 78s(b)(2)(B).

NYSEArca-2015–71, and should be submitted on or before September 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–20548 Filed 8–19–15; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75702; File No. SR–Phlx–2015–68]

Self-Regulatory Organizations; NASDAQ OMX PHLX LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Customer Rebate Program

August 14, 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 August 3, 2015, NASDAQ OMX PHLX LLC (''Phlx'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend pricing in section B, entitled ''Customer Rebate Program,''[3] of the Pricing Schedule. In particular, the Exchange proposes to: (i) Indicate that Category A rebates for certain Customer Simple Orders in Penny Pilot[4] and non-Penny Pilot Options will increase specifically for Tiers 3, 4, and 5; (ii) establish new Category B for rebates for certain electronic Customer PIXL℠[5] Orders; (iii) rename Category B to Category C regarding certain electronic Complex[6] and Complex PIXL[7] Orders; and (iv) update and clarify the explanatory notes applicable to Categories A, B, and C to match the proposed changes.

The text of the proposed rule change is available on the Exchange's Web site at *http://nasdaqomxphlx.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 proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend pricing in section B, entitled ''Customer Rebate Program,'' of the Pricing Schedule. In particular, the Exchange proposes to: (i) Indicate that Category A rebates for certain Customer Simple Orders in Penny Pilot and non-Penny Pilot Options will increase specifically for Tiers 3, 4, and 5; (ii) establish new Category B for rebates for certain electronic Customer PIXL Orders; (iii) rename Category B to Category C regarding certain electronic Complex and Complex PIXL Orders; and (iv) update and clarify the explanatory notes applicable to Categories A, B, and C to match the proposed changes. The Exchange proposes these amendments in order to more clearly delineate how rebates apply to different types of Customer orders: Customer Simple Orders (Category A), Customer PIXL Orders (Category B), and Customer Complex Orders and Customer Complex PIXL Orders (Category C).

Section B—Customer Rebate Program

Currently, the Exchange has a Customer Rebate Program consisting of five Tiers of Customer Rebates on two categories, A and B, of transactions. A Phlx member qualifies for a certain rebate Tier based on the percentage of total national customer volume in Multiply Listed equity and ETF options classes, excluding SPY[8] options that it transacts monthly on Phlx. The Exchange calculates Customer volume in Multiply Listed Options (including SPY options) by totaling electronically-delivered and executed volume, excluding volume associated with electronic Qualified Contingent Cross (''QCC'') Orders,[9] as defined in Exchange Rule 1080(o).[10]

The Exchange now has rebate categories Category A and Category B to cover all rebates pursuant to the

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Customer'' applies to any transaction that is identified by a member or member organization for clearing in the Customer range at The Options Clearing Corporation (''OCC'') which is not for the account of broker or dealer or for the account of a ''Professional'' (as that term is defined in Rule 1000(b)(14).

[4] The Penny Pilot was established in January 2007 and was last extended in 2015. *See* Securities Exchange Act Release Nos. 55153 (January 23, 2007), 72 FR 4553 (January 31, 2007) (SR–Phlx–2006–74) (notice of filing and approval order establishing Penny Pilot); and 75286 (June 24, 2015) (SR–Phlx–2015–54) (notice of filing and immediate effectiveness extending the Penny Pilot through June 30, 2016). Non-Penny Pilot Options are options other than Penny Pilot Options listed on the Exchange (*e.g.* AAPL, BAC, EEM, FB, FXI, IWM, QQQ, TWTR, VXX and XLF), which can be found at *http://www.nasdaqtrader.com/Micro.aspx?id=phlx.*

[5] PIXL is the Exchange's price improvement mechanism known as Price Improvement XL or PIXL. *See* Rule 1080(n).

[6] A Complex Order is any order involving the simultaneous purchase and/or sale of two or more different options series in the same underlying security, priced at a net debit or credit based on the relative prices of the individual components, for the same account, for the purpose of executing a particular investment strategy. Furthermore, a Complex Order can also be a stock-option order, which is an order to buy or sell a stated number of units of an underlying stock or Exchange Traded Fund (''ETF'') coupled with the purchase or sale of options contract(s). *See* Exchange Rule 1080, Commentary .07(a)(i).

[7] A transaction resulting from an order that was electronically delivered utilizes Phlx XL. *See* Exchange Rules 1014 and 1080. Electronically delivered orders do not include orders transacted on the Exchange floor. A transaction resulting from an order that is non-electronically-delivered is represented on the trading floor by a floor broker. *See* Exchange Rule 1063. All orders are either electronically or non-electronically delivered.

[8] SPY is the SPDR® S&P 500® ETF Trust. S&P®, S&P 500®, SPDR®, and Standard & Poor's® are registered trademarks of Standard & Poor's® Financial Services LLC.

[9] A QCC Order is comprised of an order to buy or sell at least 1000 contracts that is identified as being part of a qualified contingent trade, as that term is defined in Rule 1080(o)(3), coupled with a contra-side order to buy or sell an equal number of contracts. The QCC Order must be executed at a price at or between the National Best Bid and Offer and be rejected if a Customer order is resting on the Exchange book at the same price. A QCC Order shall only be submitted electronically from off the floor to the PHLX XL II System. *See* Rule 1080(o). *See also* Securities Exchange Act Release No. 64249 (April 7, 2011), 76 FR 20773 (April 13, 2011) (SR–Phlx–2011–47) (a rule change to establish a QCC Order to facilitate the execution of stock/option Qualified Contingent Trades (''QCTs'') that satisfy the requirements of the trade through exemption in connection with Rule 611(d) of the Regulation NMS).

[10] Members and member organizations under common ownership may aggregate their Customer volume for purposes of calculating the Customer Rebate Tiers and receiving rebates. Common ownership means members or member organizations under 75% common ownership or control. *See* Preface to Pricing Schedule.

Customer Rebate Program. The Exchange proposes to add new Category B. This allows the Exchange to more clearly delineate how rebates apply to three types of orders: Customer Simple Orders, which will be covered in Category A; Customer PIXL Orders, which will be covered in Category B; and Customer Complex Orders and Customer Complex PIXL Orders, which will be covered in Category C.

Currently, a Category A rebate is paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in non-Penny Pilot Options in Section II symbols.[11] Rebates are paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order are paid a rebate of $0.14 per contract. Rebates on Customer PIXL Orders are currently capped at 4,000 contracts per order for Simple PIXL Orders.

Currently, a Category B rebate is paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and non-Penny Pilot Options in section II symbols. Rebates are paid on Customer PIXL Complex Orders in section II symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will not be paid a rebate under any circumstances. The Category B rebate will not be paid when an electronically-delivered Customer Complex Order, including a Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order. Rebates on Customer PIXL Orders are capped at 4,000 contracts per order leg for Complex PIXL Orders. Moreover, the Exchange will pay a $0.02 per contract Category A rebate and a $0.03 per contract Category B rebate in addition to the applicable Tier 2 and 3 rebate to a Specialist[12] or Market Maker[13] or its member or member organization affiliate under Common Ownership provided the Specialist or Market Maker has reached the Monthly Market Maker Cap, as defined in section II.

Now, the rebates in all Tiers (Category A and Category B) are as follows:

Customer rebate tiers	Percentage thresholds of national customer volume in multiply-listed equity and ETF options classes, excluding SPY options (monthly)	Category A	Category B
Tier 1	0.00%–0.60%	$0.00	$0.00
Tier 2	Above 0.60%–1.10%	*0.10	*0.17
Tier 3	Above 1.10%–1.60%	*0.12	*0.17
Tier 4	Above 1.60%–2.50%	0.16	0.22
Tier 5	Above 2.50%	0.17	0.22

Several notes now explain the rebate schedule. Currently, there is an explanatory note regarding Category A,[14] an explanatory note regarding Category B,[15] and also an asterisked note that applies to certain sections of Category A and Category B.[16] These are discussed below.

As proposed, the rebates in all Tiers (Category A, Category B, and Category C) are as follows:

Customer rebate tiers	Percentage thresholds of national customer volume in multiply-listed equity and ETF options classes, excluding SPY options (monthly)	Category A	Category B	Category C
Tier 1	0.00%–0.60%	$0.00	$0.00	$0.00
Tier 2	Above 0.60%–1.10%	*0.10	*0.10	*0.17
Tier 3	Above 1.10%–1.60%	0.15	*0.12	*0.17
Tier 4	Above 1.60%–2.50%	0.20	0.16	0.22
Tier 5	Above 2.50%	0.21	0.17	0.22

The Exchange proposes in Category A to change the Tier 3 Customer Rebate from $0.12 to $0.15.[17] The Exchange also proposes to change the Tier 4 Customer Rebate from $0.16 to $0.20, and the Tier 5 Customer Rebate from $0.17 to $0.21. The Exchange believes that the proposed increased Category A rebates will continue to encourage members to send Customer liquidity to Phlx. The Exchange believes that the proposed three or four cent rebate increase in Tiers 3, 4, and 5 is reasonable and fair, and retains the existing structure of increasingly higher rebates in increasingly higher Tiers to encourage members to send greater liquidity while giving members an

[11] This refers to section II of the Pricing Schedule.

[12] A ''Specialist'' is an Exchange member who is registered as an options specialist pursuant to Rule 1020(a).

[13] A ''Market Maker'' includes Registered Options Traders (Rule 1014(b)(i) and (ii)), which includes Streaming Quote Traders (*see* Rule 1014(b)(ii)(A)) and Remote Streaming Quote Traders (*see* Rule 1014(b)(ii)(B)).

[14] Category A: Rebate will be paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in Section II symbols. Rebate will be paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order will be paid a rebate of $0.14 per contract. Rebates on Customer PIXL Orders will be capped at 4,000 contracts per order for Simple PIXL Orders.

[15] Category B: Rebate will be paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. Rebate will be paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will not be paid a rebate under any circumstances. The Category B Rebate will not be paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order. Rebates on Customer PIXL Orders will be capped at 4,000 contracts per order leg for Complex PIXL Orders.

[16] *The Exchange will pay a $0.02 per contract Category A rebate and a $0.03 per contract Category B rebate in addition to the applicable Tier 2 and 3 rebate to a Specialist or Market Maker or its member or member organization affiliate under Common Ownership provided the Specialist or Market Maker has reached the Monthly Market Maker Cap, as defined in section II.

[17] The Exchange notes that the asterisked note will continue to apply to Tier 2, but not to Tier 3, of Category A. It will also continue to apply to Tiers 2 and 3 of Categories B and C.

opportunity to receive higher Customer rebates. Moreover, as stated in the explanatory note to Category A, rebates will continue to be paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in section II symbols. The remaining provisions in the Category A explanatory note regarding Customer PIXL Orders (Customer PIXL Orders that execute against a PIXL Initiating Order are paid a rebate of $0.14 per contract, and rebates on Customer PIXL Orders are capped at 4,000 contracts per order for Simple PIXL Orders) are simply moved to proposed Category B.

The Exchange proposes new Category B regarding Customer PIXL orders that are not complex orders (these are covered in Category C). The proposed Tiers in Category B are exactly like the current Tiers in Category A. Thus, the proposed Category B Tiers include Tier 1 at $0.00, Tier 2 at $0.10, Tier 3 at $0.12, Tier 4 at $0.16, and Tier 5 at $0.17. In addition, as noted the Exchange is re-numbering the last two sentences of the explanatory note now applicable to Category A so that it becomes the new note applicable to Category B. This new note will state that a rebate will be paid on Customer PIXL Orders in Section II symbols that execute against non-Initiating Order interest. In the instance where member organizations qualify for Tier 4 or higher in the Customer Rebate Program, Customer PIXL Orders that execute against a PIXL Initiating Order will be paid a rebate of $0.14 per contract. Rebates on Customer PIXL Orders will be capped at 4,000 contracts per order for Simple PIXL Orders. The addition of Category B establishes three different Categories for three different types of orders. This allows the Exchange to more clearly delineate how rebates apply to three types of orders: Customer Simple Orders that will be dealt with in Category A, Customer PIXL Orders that will be dealt with in Category B, and Customer Complex Orders and Customer Complex PIXL Orders that will be dealt with in Category C. Moreover, the Tiers in Category B, as also the explanatory note, are not new but rather are simply taken directly from current Category A. And, as discussed below, the current explanatory note regarding Category B, which now discusses Complex Orders, is moved to Category C.

Proposed Category C is simply current Category B that is re-named Category C. There are no changes as Category B becomes Category C. Thus, the Category C proposed Tiers include Tier 1 at $0.00, Tier 2 at $0.17, Tier 3 at $0.17, Tier 4 at $0.22, and Tier 5 at $0.22. As discussed, all of the Tiers in Category C apply to Customer Complex Orders and Customer Complex PIXL Orders only. In addition, the current Category B explanatory note is re-named to Category C so that as proposed it reads as follows: Rebate will be paid to members executing electronically-delivered Customer Complex Orders in Penny Pilot Options and Non-Penny Pilot Options in Section II symbols. Rebate will be paid on Customer PIXL Complex Orders in Section II symbols that execute against non-Initiating Order interest. Customer Complex PIXL Orders that execute against a Complex PIXL Initiating Order will not be paid a rebate under any circumstances. The Category C Rebate will not be paid when an electronically-delivered Customer Complex Order, including Customer Complex PIXL Order, executes against another electronically-delivered Customer Complex Order. Rebates on Customer PIXL Orders will be capped at 4,000 contracts per order leg for Complex PIXL Orders.

Finally, the asterisked explanatory note, which currently applies to Categories A and B but does not apply to category C as it currently does not exist, will be amended to properly reflect all three Categories. This note discusses certain rebates in addition to the applicable Tier 2 and Tier 3 rebate to a Specialist or Market Maker or its member or member organization affiliate under Common Ownership. The portion of the note that now applies to Category A only will be expanded to Category A and B; and the portion of the note that now applies to Category B will apply to new Category C. Thus, the asterisked note would read as follows: The Exchange will pay a $0.02 per contract Category A and B rebate and a $0.03 per contract Category C rebate in addition to the applicable Tier 2 and 3 rebate to a Specialist or Market Maker or its member or member organization affiliate under Common Ownership provided the Specialist or Market Maker has reached the Monthly Market Maker Cap, as defined in section II. The Exchange believes that, similarly to the other proposed changes, this adds clarity to the proposed new three-Category rebate structure where each Category applies to a different type of Customer Order.[18]

The Exchange believes that by making the proposed changes, clarifying the rebate structure, and increasing certain rebates, the Exchange will continue to encourage market participants to direct a greater number of Customer orders to the Exchange.

2. Statutory Basis

The Exchange believes that its proposal to amend the Pricing Schedule is consistent with section 6(b) of the Act[19] in general, and furthers the objectives of section 6(b)(4) and (b)(5) of the Act[20] 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 Phlx operates or controls, and is not designed to permit unfair discrimination between market participants to whom the Exchange's fees and rebates are applicable.

Section B—Customer Rebates

The Exchange believes that its proposal in Category A to change the Tier 3 Customer Rebate from $0.12 to $0.15, the Tier 4 Customer Rebate from $0.16 to $0.20, and the Tier 5 Customer Rebate from $0.17 to $0.21 is reasonable. These proposed changes will allow the Exchange to continue to attract Customer liquidity to the Exchange. Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that the proposed increased Category A rebates will continue to encourage members to send Customer liquidity to Phlx despite moving to Category B the cap on PIXL Complex Order rebates at the proposed 4,000 contracts per order leg. The Exchange believes that the proposed increase of three or four cents is reasonable. Additionally, the CBOE has similar [sic] rebates.[21] Similarly, the Exchange believes that moving the cap regarding Customer PIXL Orders from Category A to proposed Category B, which deals with Customer PIXL Orders, is likewise reasonable under the three-Category structure according to

[18] *Id.*

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4), (5).

[21] CBOE's VIP credit for certain orders in Tier 3 is $0.22 per contract. *See* CBOE's Fees Schedule. *See also* Securities Exchange Act Release No. 371588 (June 17, 2015), 80 FR 36021 (June 23, 2015) (SR–CBOE–2015–058) (rule change increasing VIP credit for certain orders in Tier 3 from $0.16 per contract to $0.22 per contract, also in Tier 2 from $0.16 per contract to $0.21 per contract and in Tier 4 from $0.17 per contract to $0.23 per contract).

Customer order type. Category A rebates will continue to be paid to members executing electronically-delivered Customer Simple Orders in Penny Pilot Options and Customer Simple Orders in Non-Penny Pilot Options in section II symbols.

The Exchange believes that its proposal to amend Category A is equitable and not unfairly discriminatory because these proposed amendments to Category A apply uniformly to all market participants to whom Category A applies. Moreover, the Exchange believes that the proposed modest Tiers increases (to $0.15, $0.20, and $0.21) retain the existing structure of increasingly higher rebates in increasingly higher Tiers to encourage members to send greater liquidity while giving members an opportunity to receive higher Customer rebates.

The Exchange believes that its proposal to establish new Category B is reasonable. The Exchange proposes new Category B regarding Customer PIXL orders that are not complex orders (these are covered in Category C), and the proposed Tiers in Category B are exactly like the current Category A Tiers. In addition, the Exchange believes that it is reasonable to re-number the last two sentences of the explanatory note now applicable to Category A, which discusses Customer PIXL Orders, so that it becomes the new note applicable to Category B, which deals with Customer PIXL Orders. The Exchange believes that its proposal to add new Category B, which is applicable to Complex PIXL orders only, adds clarity to the rebate structure. The addition of Category B establishes three different Categories for three different types of orders. This allows the Exchange to more clearly delineate how rebates apply to three types of orders: Customer Simple Orders that will be dealt with in Category A, Customer PIXL Orders that will be dealt with in Category B, and Customer Complex Orders and Customer Complex PIXL Orders that will be dealt with in Category C. Moreover, the Tiers in Category B, as also the explanatory note, are not new but rather are simply taken directly from current Category A. The Exchange believes that it is reasonable to move the current explanatory note regarding Category B, which discusses Complex Orders, to Category C, which discusses Customer Complex Orders and Customer Complex PIXL Orders.

The Exchange believes that its proposal to amend Category B is equitable and not unfairly discriminatory because these proposed amendments to Category B apply uniformly to all market participants to whom Category B applies.

The Exchange believes that its proposal to re-name Category B as Category C, which as proposed deals with Customer Complex Orders and Customer Complex PIXL Orders, and to ensure that the explanatory note to Category B is properly applicable to Category C, is reasonable under the three-Category structure according to Customer order type. These proposed changes will allow the Exchange to continue to attract Customer liquidity to the Exchange. Customer orders bring valuable liquidity to the market, which liquidity benefits other market participants. Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. The Exchange believes that it is reasonable to move the cap on PIXL Complex Order rebates at the proposed 4,000 contracts per order leg from Category B to Category C, which applies to Complex Orders.

The Exchange believes that its proposal to amend Category C is equitable and not unfairly discriminatory because these proposed amendments to Category C apply uniformly to all market participants to whom Category C applies.

The Exchange also believes that amending the asterisked explanatory note, which currently applies to Categories A and B, to reflect all three Categories is reasonable under the three-Category system as discussed. The portion of the note that now applies to Category A only will be expanded to Category A and B; and the portion of the note that now applies to Category B will apply to new Category C. The Exchange believes that, similarly to the other proposed changes, this adds clarity to the proposed new three-Category rebate structure (Customer Simple Orders in Category A, Customer PIXL Orders in Category B, and Customer Complex Orders and Customer Complex PIXL Orders in Category C). In addition, The Exchange believes that it is reasonable to give Specialists and Market Maker or its member of member organization affiliate under Common Ownership to earn an additional rebate under certain circumstances. An increase in the activity of these market participants may facilitate tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Moreover, Specialists and Market Makers have obligations to the market and regulatory requirements, which normally do not apply to other market participants.[22] They have obligations to make continuous markets, engage in a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and not make bids or offers or enter into transactions that are inconsistent with a course of dealings. The differentiation as between Specialists and Market Makers and other market participants (*e.g.,* Professionals, Broker-Dealers, and Firms) recognizes the differing contributions made to the liquidity and trading environment on the Exchange by these market participants.

The Exchange believes that these last-discussed amendments are equitable and not unfairly discriminatory because they would apply uniformly to all market participants.

The Exchange believes that the proposed amendments to the rebate structure in the Pricing Structure enables the Exchange to continue to incentivize members to send order flow to the Exchange to the benefit market participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

The Customer Rebate Program amendments in section B of the Pricing Schedule, for example, do not create an undue burden on competition and, like all of the amendments proposed by the Exchange, will apply uniformly to all market participants. Moreover, the section B amendments will enable the Exchange to continue to attract liquidity, which benefits all market participants by providing more trading opportunities, which attracts Specialists and Market Makers. The Exchange's proposal will allow it to continue to incentivize market participants to bring liquidity to the Exchange, as described herein.

The Exchange operates in a highly competitive market, comprised of twelve exchanges, in which market participants can easily and readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or rebates to be inadequate. Accordingly, the fees that are assessed and the rebates paid by the

[22] *See* Rule 1014 titled ''Obligations and Restrictions Applicable to Specialists and Registered Options Traders.''

Exchange, as described in the proposal, are influenced by these robust market forces and therefore must remain competitive with fees charged and rebates paid by other venues and therefore must continue to be reasonable and equitably allocated to those members that opt to direct orders to the Exchange rather than competing venues.

The Exchange believes that its changes are pro-competitive. The proposed rebate changes, which are part of the Exchange's overall fee structure, are designed to ensure a fair and reasonable use of Exchange resources by allowing the Exchange to recoup costs while continuing to attract liquidity and offer connectivity at competitive rates to Exchange members and member organizations.

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 rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act.[23] 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–Phlx–2015–68 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–Phlx–2015–68. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*).

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.

All submissions should refer to File Number SR–Phlx–2015–68 and should be submitted on or before September 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–20546 Filed 8–19–15; 8:45 am]

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[23] 15 U.S.C. 78s(b)(3)(A)(ii).

[24] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75700; File No. SR–EDGA–2015–33]

Self-Regulatory Organizations; EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Rule 11.6, Definitions; Rule 11.8, Order Types; Rule 11.9, Priority of Orders; Rule 11.10, Order Execution; and Rule 11.11, Routing to Away Trading Centers

August 14, 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 August 11, 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 and II below, which Items have been prepared by the Exchange. The Exchange has designated this proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b-4(f)(6)(iii) thereunder,[4] which renders it 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 align certain rules with similar rules of BATS Exchange, Inc. (''BZX''), BATS Y-Exchange, Inc., (''BYX''), and EDGX Exchange, Inc. (''EDGX''). These changes are described in detail below and include amending: (i) Rule 11.6, Definitions; (ii) Rule 11.8, Order Types; (iii) Rule 11.9, Priority of Orders; (iv) Rule 11.10, Order Execution; and (v) Rule 11.11, Routing to Away Trading Centers. The Exchange does not propose to implement new or unique functionality that has not been previously filed with the Commission or is not available on BZX, BYX, or EDGX. The Exchange notes that the proposed rule text is based on BZX, BYX, and EDGX rules and is different only to the extent necessary to conform to the Exchange's current rules.

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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6)(iii).

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

On June 5, 2014, Chair Mary Jo White asked all national securities exchanges to conduct a comprehensive review of each order type offered to members and how it operates.[5] The Exchange notes that a comprehensive rule filing clarifying and updating Exchange rules was approved by the Commission in November 2014.[6] However, based on the request from Chair White, the Exchange did indeed conduct further review of each order types and its operation. The proposals set forth below are based on this comprehensive review and are intended to clarify and to include additional specificity regarding the current functionality of the Exchange's System,[7] including the operation of its order types and order instructions. The proposals set forth below are intended to supplement the approved filing based on further review conducted by the Exchange and are intended to clarify and enhance the understandability of the Exchange's rules related to the ranking and execution of orders.

The proposed amendments are also intended to better align certain Exchange rules and system functionality with that currently offered by BZX, BYX, and EDGX in order to provide a consistent rule set across the exchanges. In early 2014, the Exchange and its affiliate, EDGA received approval to effect a merger (the ''Merger'') of the Exchange's parent company, Direct Edge Holdings LLC, with BATS Global Markets, Inc., the parent of BZX and BYX (together with BZX, EDGA and EDGX, the ''BGM Affiliated Exchanges'').[8] In order to provide consistent rules and system functionality amongst the Exchange, BZX, BYX, and EDGX, the Exchange proposes to amend: (i) Rule 11.6, Definitions; (ii) Rule 11.8, Order Types; (iii) Rule 11.9, Priority of Orders; (iv) Rule 11.10, Order Execution; and (v) Rule 11.11, Routing to Away Trading Centers.

Unless otherwise noted, the proposed rule text is based on BZX, BYX, or EDGX rules and is different only to the extent necessary to conform to the Exchange's current rules.[9] The proposed amendments do not propose to implement new or unique functionality that has not been previously filed with the Commission or is not available on BZX, BYX, or EDGX.[10]

Rule 11.6, Definitions

Rule 11.6, Definitions, sets forth in one rule current defined terms and order instructions that are utilized in Chapter XI. Rule 11.6 also includes additional defined terms and instructions to aid in describing System[11] functionality and the operation of the Exchange's order types. The Exchange proposes to amend Rule 11.6 to align certain sections with the rules of BZX, BYX, and EDGX, including additional specificity regarding the operation of Exchange functionality. These changes are described below and include: (i) Amending paragraph (d) regarding Discretionary Range; (ii) amending subparagraph (l)(1)(A) regarding the Price Adjust Re-Pricing instruction; (iii) amending subparagraph (l)(1)(B) regarding the Display-Price Sliding instruction; (iv) amending subparagraph (l)(2) regarding the Short Sale re-pricing instruction; (v) amending subparagraph (l)(3) regarding the re-pricing of non-displayed orders; (vi) amending subparagraph (n)(1), (2) and (4) regarding the Aggressive, Super Aggressive, and Post Only instructions; and (vii) amending subparagraph (q) regarding Immediate-or-Cancel and Fill-or-Kill Time-In-Force instructions. As stated above, the proposed amendments to Rule 11.6 do not propose to implement new or unique functionality that has not been previously filed with the Commission or is not available on BZX, BYX, or EDGX. Each of these amendments are described in more detail below.

Discretionary Range (Rule 11.6(d))

Current Functionality. Pursuant to current Rule 11.6(d), Discretionary Range is an instruction the User[12] may attach to an order to buy (sell) a stated amount of a security at a specified, displayed price with discretion to execute up (down) to a specified, non-displayed price. An order with a Discretionary Range instruction resting on the EDGA Book[13] will execute at its least aggressive price when matched for execution against an incoming order that also contains a Discretionary Range instruction, as permitted by the terms of both the incoming and resting order.

Proposed Functionality. The Exchange proposes to amend the Discretionary Range instruction under Rule 11.6(d) to align with BZX Rule

[5] *See* Mary Jo White, Chair, Commission, Speech at the Sandler O'Neill & Partners, L.P. Global Exchange and Brokerage Conference, (June 5, 2014) (*available at http://www.sec.gov/News/Speech/Detail/Speech/1370542004312#.VD2HW610w6Y*).

[6] Securities Exchange Act Release No. 73592 (November 13, 2014), 79 FR 68937 (November 19, 2014) (SR–EDGA–2014–20).

[7] The term ''System'' is defined as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(cc).

[8] *See* Securities Exchange Act Release No. 71449 (January 30, 2014), 79 FR 6961 (February 5, 2014) (SR–EDGX–2013–43; SR–EDGA–2013–34).

[9] To the extent a proposed rule change is based on an existing BZX or BYX rule, the language of the BZX, BYX, and Exchange rules may differ to extent necessary to conform with existing Exchange rule text or to account for details or descriptions included in the Exchange Rules but not currently included in BZX or BYX rules based on the current structure of such rules.

[10] The Exchange's affiliate, EDGX, recently filed a proposal making many of the same changes to clarify and enhance EDGX Rules that are proposed in this filing with respect to EDGA Rules. *See infra,* note 14. In contrast to that filing, however, which also proposed functional changes to the EDGX system so that such system operates more like BZX, this proposal does not propose any changes that would modify the operation of the EDGA System. Rather, all changes proposed herein are intended to clarify and enhance the Exchange's Rules or to align such Rules with the Exchange's affiliates. The Exchange notes that certain of the proposed changes would modify Exchange functionality if all orders with a Post Only instruction, as defined below, did not remove contra-side liquidity on entry based on the Exchange's fee structure. *See infra,* notes 18 and 19. Because orders with a Post Only instruction do, however, remove liquidity on entry pursuant to the Exchange's fee structure, the Exchange is proposing these changes to maintain rules that are consistent with the other BGM Affiliated Exchanges and in the event the Exchange's fee structure changes in the future.

[11] The term ''System'' is defined as ''the electronic communications and trading facility designated by the Board through which securities orders of Users are consolidated for ranking, execution and, when applicable, routing away.'' *See* Exchange Rule 1.5(cc).

[12] The term ''User'' is defined as ''and Member or Sponsored Participant who is authorized to obtain access to the System pursuant to Rule 11.3.'' *See* Exchange Rule 1.5(ee).

[13] The ''EDGA Book'' is defined as ''System's electronic file of orders.'' *See* Exchange Rule 1.5(d).

11.9(c)(10) [14] and EDGX Rule 11.6(d).[15] As proposed, amended Rule 11.6(d) is substantially similar to BZX and BYX Rule 11.9(c)(10) and identical to EDGX Rule 11.6(d).

First, the Exchange proposes to add specificity to the Exchange's rule based on BZX and BYX Rule 11.9(c)(10) to make clear that although an order with a Discretionary Range instruction may be accompanied by a Displayed [16] instruction, an order with a Discretionary Range instruction may also be accompanied by a Non-Displayed [17] instruction, and if so, will have a non-displayed ranked price as well as a discretionary price. The Exchange further proposes to adopt language from BZX and Rule 11.9(c)(10) to specifically state that resting orders with a Discretionary Range instruction will be executed at a price that uses the minimum amount of discretion necessary to execute the order against an incoming order. Neither of these proposed changes represent changes to functionality, but rather, additional specificity in Exchange Rules based on BZX and BYX Rule 11.9(c)(10). The Exchange notes that the same changes were recently made to EDGX Rule 11.6(d).[18]

Second, the Exchange also proposes to amend its current Rule by adding language to 11.6(d) discussing how an order with a Discretionary Range instruction would interact with an order with a Post Only instruction. Specifically, when an order with a Post Only instruction that is entered at the displayed or non-displayed ranked price of an order with a Discretionary Range instruction that does not remove liquidity on entry pursuant to Rule 11.6(n)(4),[19] the order with a Discretionary Range instruction would be converted to an executable order and will remove liquidity against such incoming order.[20] Similar to the proposed amendments to the Aggressive and Super Aggressive instructions described below, due to the fact that an order with a Discretionary Range instruction contains a more aggressive price at which it is willing to execute, the Exchange proposes to treat orders with a Discretionary Range instruction as aggressive orders that would prefer to execute at their displayed or non-displayed ranked price than to forgo an execution due to applicable fees or rebates. Accordingly, in order to facilitate transactions consistent with the instructions of its Users, the Exchange proposes to execute resting orders with a Discretionary Range instruction (and certain orders with an Aggressive or Super Aggressive instruction, as described below) against incoming orders, when such incoming orders would otherwise forego an execution. The Exchange notes that the determination of whether an order should execute on entry against resting interest, including against a resting order with a Discretionary Range instruction, is made prior to determining whether the price of such an incoming order should be adjusted pursuant to the Exchange's price sliding functionality pursuant to Rule 11.6(l). In other words, an execution would have already occurred as set forth above before the Exchange would consider whether an order could be displayed and/or posted to the EDGA Book, and if so, at what price.

Examples—Order With a Discretionary Range Instruction Executes Against an Order With a Post Only Instruction

Assume that the National Best Bid or Offer (''NBBO'') is $10.00 by $10.05, and the Exchange's BBO is $9.99 by $10.06. Assume that the Exchange receives a non-routable order to buy 100 shares at $10.00 per share designated with discretion to pay up to an additional $0.05 per share. Assume further that an order would not remove any liquidity upon entry pursuant to the Exchange's economic best interest functionality.

- Assume that the next order received by the Exchange is an order with a Post Only instruction to sell 100 shares of the security priced at $10.03 per share. The order with a Post Only instruction would not remove any liquidity upon entry, and would post to the EDGA Book at $10.03. This would, in turn, trigger the discretion of the resting buy order with a Discretionary Range instruction and an execution would occur at $10.03. The order with a Post Only instruction to sell would be treated as the adder of liquidity and the buy order with discretion would be treated as the remover of liquidity.
- Assume the same facts as above, but that the incoming order with a Post Only instruction is priced at $10.00 instead of $10.03. As is true in the example above, the order with a Post Only instruction would not remove any liquidity upon entry. Rather than cancelling the incoming order with a Post Only instruction to sell back to the User, particularly when the resting order with a Discretionary Range instruction is willing to buy the security for up to $10.05 per share, the Exchange proposes to execute at $10.00 the order with a Post Only instruction against the resting buy order with a Discretionary Range instruction. As is also true in the example above, the order with a Post Only instruction to sell would be treated as the liquidity adder and the buy order with discretion would be treated as the liquidity remover. As set forth in more detail below, if the incoming order was not an order with a Post Only instruction to sell, the incoming order could be executed at the ranked price of the order with a Discretionary Range instruction without restriction and would therefore be treated as the liquidity remover.

Third, the Exchange proposes to modify the description of the process by which it handles incoming orders that interact with Discretionary Orders. The Exchange proposes to specify in Rule 11.6(d) its proposed handling of a contra-side order that executes against a resting Discretionary Order at its displayed or non-displayed ranked price or that contains a time-in-force of IOC or FOK and a price in the discretionary range by stating that such an incoming order will remove liquidity against the Discretionary Order. The Exchange also proposes to specify in Rule 11.6(d) its handling of orders that are intended to post to the EDGA Book at a price within the discretionary range of an order with a Discretionary Range instruction. This includes, but is not limited to, an order with a Post Only instruction. Specifically, the Exchange proposes to specify in Rule 11.6(d) that any contra-side order with a time-in-force other than IOC or FOK and a price within the discretionary range but not at the

[14] *See* Securities Exchange Act Release No. 74738 (April 16, 2015), 80 FR 22600 (April 22, 2015) (SR–BATS–2015–09) (Order Granting Approval of a Proposed Rule Change to Amend Rules 11.9, 11.12, and 11.13).

[15] *See* Securities Exchange No. 75479 (July 17, 2015), 80 FR 43810 (July 23, 2015) (SR–EDGX–2015–33).

[16] *See* Exchange Rule 11.6(e)(1).

[17] *See* Exchange Rule 11.6(e)(2).

[18] See *supra* note 15.

[19] Under Rule 11.6(n)(4), an order with a Post Only instruction or Price Adjust instruction will remove contra-side liquidity from the EDGA Book if the order is an order to buy or sell a security priced below $1.00 or if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGA Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. To determine at the time of a potential execution whether the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGA Book and subsequently provided liquidity, the Exchange will use the highest possible rebate paid and highest possible fee charged for such executions on the Exchange.

[20] The Exchange notes that under its current fee structure all orders with a Post Only instruction remove liquidity on entry. As such, the proposal will not modify the operation of the Exchange at this time. However, if, in the future, the Exchange modifies its fees such that all orders with a Post Only instruction do not remove liquidity then such changes do represent a functional change to the System.

displayed or non-displayed ranked price of an order with a Discretionary Range instruction will be posted to the EDGA Book and then the order with a Discretionary Range instruction would remove liquidity against such posted order.

Examples—Order With a Discretionary Instruction Executes Against an Order Without a Post Only Instruction

Assume that the NBBO is $10.00 by $10.05, and the Exchange's BBO is $9.99 by $10.06. Assume that the Exchange receives an order to buy 100 shares of a security at $10.00 per share designated with discretion to pay up to an additional $0.05 per share.

- Assume that the next order received by the Exchange is an order with a Book Only instruction [21] to sell 100 shares of the security with a TIF other than IOC or FOK priced at $10.03 per share. The order with a Book Only instruction would not remove any liquidity upon entry and would post to the EDGA Book at $10.03. This would, in turn, trigger the discretion of the resting buy order and an execution would occur at $10.03. The order with a Book Only instruction to sell would be treated as the adder of liquidity and the buy order with discretion would be treated as the remover of liquidity.
- Assume the same facts as above, but that the incoming order with a Book Only instruction is priced at $10.00 instead of $10.03. The order with a Book Only instruction would remove liquidity upon entry at $10.00 per share pursuant to the Exchange's order execution rule.[22] Contrary to the examples set forth above, the order with a Book Only instruction to sell would be treated as the liquidity remover and the resting buy order with discretion would be treated as the liquidity adder. The Exchange notes that this example operates the same whether an order contains a TIF of IOC, FOK or any other TIF.

Finally, because orders with a Discretionary Range instruction have both a price at which they will be ranked and an additional discretionary price, the Exchange proposes to expressly state how the Exchange handles a routable order with a Discretionary Range instruction by stating that such an order will be routed away from the Exchange at its full discretionary price. As an example, assume the NBBO is $10.00 by $10.05 and the Exchange's BBO is $9.99 by $10.06. If the Exchange receives a routable order with a Discretionary Range instruction to buy at $10.00 with discretion to pay up to an additional $0.05 per share, the Exchange would route the order as a limit order to buy at $10.05. Any unexecuted portion of the order would be posted to the EDGA Book with a ranked price of $10.00 and discretion to pay up to $10.05.

The Exchange notes that it has historically treated orders with a Discretionary Range instruction as relatively passive orders and as orders that, once posted to the EDGA Book, would in all cases be treated as the liquidity provider. The changes proposed above will change the handling of orders with a Discretionary Range instruction such that such orders are more aggressive and, thus, such orders will execute on the Exchange in additional circumstances than they do currently without regard to such orders' status as resting orders. In turn, orders with a Discretionary Range instruction resting on the EDGA Book may be treated as liquidity removers under certain circumstances, as outlined above.

Re-Pricing (Rule 11.6(l))

The Exchange currently offers re-pricing instructions which, in all cases, result in the ranking and/or display of an order at a price other than its limit price in order to comply with applicable securities laws and Exchange Rules. Specifically, the Exchange currently offers re-pricing instructions to ensure compliance with Regulation NMS and Regulation SHO. The re-pricing instructions currently offered by the Exchange re-price and display an order upon entry and in certain cases again re-price and re-display an order at a more aggressive price based on changes in the NBBO. Rule 11.6(l) sets forth the re-pricing instructions currently available to Users with regard to Regulation NMS compliance—Price Adjust, and Display-Price Sliding, as well as a separate re-pricing process with regard to Regulation SHO compliance. As described below, the Exchange now proposes to amend its re-pricing instructions to align and streamline Exchange rules with those of BZX, BYX, and EDGX. As above, the Exchange notes that the proposed changes are intended to clarify and enhance Exchange Rules or to align such Rules with the other BGM Affiliated Exchanges but will not modify the current operation of the System because of the Exchange's current fee structure and because all orders with a Post Only instruction currently will remove liquidity from the Exchange if they interact with contra-side liquidity.

Re-Pricing Instructions To Comply With Rule 610(d) of Regulation NMS

The Exchange proposes to amend its re-pricing instructions to comply with Rule 610(d) of Regulation NMS as follows: (i) Amend the Price Adjust instruction under Rule 11.6(l)(1)(A) to: (A) Divide the rule into subparagraphs (i), (ii), and (iii); (B) clarify the order must be a Locking Quotation [23] or Crossing Quotation [24] of an external market; and (C) propose new subparagraph (iv) described below; and (ii) amend the Displayed Price Sliding instruction under Rule 11.6(l)(1)(B) to: (A) Change references from ''Displayed Price Sliding'' to ''Display-Price Sliding''; (B) replace the text of Rule 11.6(l)(1)(B) with text that is substantially similar to BZX and BYX Rules 11.19(g)(1) and identical to EDGX Rule 11.6(l)(1)(B).

Price Adjust Re-Pricing (Rule 11.6(l)(1)(A))

Under the Price Adjust instruction, where a buy (sell) order would be a Locking Quotation or Crossing Quotation if displayed by the System on the EDGA Book at the time of entry, the order will be displayed and ranked [25] at a price that is one Minimum Price Variation lower (higher) than the Locking Price.[26] The Exchange proposes to modify the operation of the Price Adjust instruction such that an order must be a Locking Quotation or Crossing Quotation of an external market, not the EDGA Book, in order be eligible for the re-pricing. This change will provide additional specificity within the Exchange's rules regarding the applicability of the Price Adjust

[21] The term ''Book Only'' is defined as an ''order instruction stating that an order will be matched against an order on the EDGA Book or posted to the EDGA Book, but will not route to an away Trading Center.'' *See* Exchange Rule 11.6(n)(3).

[22] *See* Exchange Rule 11.10.

[23] The term ''Locking Quotation'' is defined as ''[t]he display of a bid for an NMS stock at a price that equals the price of an offer for such NMS stock previously disseminated pursuant to an effective national market system plan, or the display of an offer for an NMS stock at a price that equals the price of a bid for such NMS stock previously disseminated pursuant to an effective national market system plan in violation of Rule 610(d) of Regulation NMS.'' *See* Exchange Rule 11.6(g).

[24] The term ''Crossing Quotation'' is defined as ''[t]he display of a bid (offer) for an NMS stock at a price that is higher (lower) than the price of an offer (bid) for such NMS stock previously disseminated pursuant to an effective national market system plan in violation of Rule 610(d) of Regulation NMS.'' *See* Exchange Rule 11.6(c).

[25] For purposes of the description of the re-pricing instructions under proposed Rule 11.6(l), the terms ''ranked'' and ''priced'' are synonymous and used interchangeably.

[26] The term ''Locking Price'' is defined as ''[t]he price at which an order to buy (sell), that if displayed by the System on the EDGA Book, either upon entry into the System, or upon return to the System after being routed away, would be a Locking Quotation.'' *See* Exchange Rule 11.6(f).

instruction as well as align the description with the Price Adjust process described under BZX and BYX Rules 11.9(g)(2),[27] and EDGX Rule 11.6(l)(1)(A). This change is also consistent with display-price sliding on BZX and Display-Price Sliding discussed below, under which orders are only re-priced where they are a Locking Quotation or Crossing Quotation of an external market, and not the BZX order book or EDGA Book, as applicable. Other than as described above, these provisions will remain unchanged and be set forth under subparagraph (i), so that the Exchange may renumber the following provisions of Rule 11.6(l)(1)(A) as set forth below.

The Exchange proposes to restructure the provisions of the current rule by separating rule text and adopting additional subparagraph references, subparagraph (ii) and (iii).

The Exchange also proposes to add new subparagraph (iv) to Rule 11.6(l)(1)(A) which would cover where an order with a Price Adjust instruction and a Post Only instruction would be a Locking Quotation or Crossing Quotation of the Exchange. The proposed amendments to Rule 11.6(l)(1)(A) are based on BZX and BYX Rules 11.9(g)(2)(D) and are identical to EDGX Rule 11.6(l)(1)(A)(iv). To the extent the amended text of Exchange Rule 11.6(l)(1)(A) differs from BZX and BYX Rules 11.9(g)(2)(D), such differences are necessary to conform the rule with existing rule text.

As noted above, an order subject to the Price Adjust instruction will only be re-priced where it would be a Locking Quotation of Crossing Quotation of an external market, and not the Exchange. In such case, any display-eligible order with a Price Adjust instruction and a Post Only instruction that would be a Locking Quotation or Crossing Quotation of the Exchange upon entry will be executed as set forth in Rule 11.6(n)(4)[28] or cancelled. For example, assume the NBBO is $10.00 by $10.01 and an order to sell at $10.01 is resting on the EDGA Book. Further assume that no other Trading Center[29] is displaying an order to sell at $10.01. Assume that the Exchange receives an order to buy with a Post Only instruction and Price Adjust instruction at $10.01. The incoming order to buy will be cancelled unless, pursuant to Rule 11.6(n)(4), the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGA Book and subsequently provided liquidity. The incoming order to buy will not be posted to the EDGA Book and re-priced pursuant to the Price Adjust instruction.

Displayed Price Sliding (Rule 11.6(l)(1)(B))

The Exchange proposes to amend the Displayed Price Sliding instruction under Rule 11.6(l)(1)(B) to: (A) change the name from ''Displayed Price Sliding'' to ''Display-Price Sliding''; and (B) replace the text of Rule 11.6(l)(1)(B) with text that is identical to BZX Rule 11.19(g)(1), BYX Rule 11.9(g)(1), and EDGX Rule 11.6(l)(1)(B). The Exchange does not propose to modify the operation of Display-Price Sliding. It simply seeks to replace the rule text with of Rule 11.6(l)(1)(B) with text that is substantially similar to BZX and BYX Rules 11.9(g)(1) and identical to EDGX Rule 11.6(l)(1)(B). The Display-Price Sliding instruction operates in an identical manner as the Display-Price Sliding instruction on EDGX and the display price sliding process on BZX and BYX. To the extent the amended text of Exchange Rule 11.6(l)(1)(B) differs from BZX and BYX Rules 11.9(g)(1), such differences are necessary to conform the rule to existing rule text. The Exchange does not propose to modify the operation of the re-pricing of orders with a Non-Displayed instruction. Replacing the rule text would enable the Exchange to include substantially similar or identical rule text describing processes that operate in the same manner across each of the BGM Affiliated Exchanges, thus avoiding potential confusion.

In sum, Display-Price Sliding is an order instruction requiring that where an order would be a Locking Quotation or Crossing Quotation of an external market if displayed by the System on the EDGA Book at the time of entry, such order will be ranked at the Locking Price and displayed by the System at one Minimum Price Variation lower (higher) than the Locking Price for orders to buy (sell). A User may elect for the Display-Price Sliding instruction to only apply where their display-eligible order would be a Locking Quotation of an external market upon entry (''Lock Only''). In such cases, the User's display-eligible order will be cancelled if the order would be a Crossing Quotation of an external market upon entry.

For example, assume the Exchange has a posted and displayed bid to buy at $10.10 and a posted and displayed offer to sell $10.13. Assume the NBBO is $10.10 by $10.12. If the Exchange receives an order with a Book Only instruction to buy at $10.12, the Exchange will rank the order to buy at $10.12 and display the order at $10.11 because displaying the bid at $10.12 would cause it to be a Locking Quotation of an external market's Protected Offer to sell for $10.12. If the NBO then moved to $10.13, the Exchange would un-slide the bid to buy and display it at its ranked price (and limit price) of $10.12.

As an example of the Lock-Only option for Display-Price Sliding, assume the Exchange has a posted and displayed bid to buy at $10.10 and a posted and displayed offer to sell at $10.14. Assume the NBBO is $10.10 by $10.12. If the Exchange receives an order with a Book Only instruction to buy 100 shares at $10.13 and the User has elected the Lock-Only option for Display-Price Sliding, the Exchange will cancel the order back to the User. To reiterate a basic example of Display-Price Sliding, if instead the User applied Display-Price Sliding (and not the Lock-Only option for Display-Price Sliding), the Exchange would rank the order to buy at $10.12 and display the order at $10.11 because displaying the bid at $10.13 would cause it to be a Crossing Quotation of an external market's Protected Offer to sell for $10.12. If the NBO then moved to $10.13, the Exchange would un-slide the bid to buy and display it at $10.12.

An order subject to the Display-Price Sliding instruction retains its original limit price irrespective of the prices at which such order is ranked and displayed. An order subject to the Display-Price Sliding instruction is displayed at the most aggressive price possible and receives a new time stamp should the NBBO change such that the order would no longer be a Locking Quotation or Crossing Quotation of an external market. All orders that are re-ranked and re-displayed pursuant to the Display-Price Sliding instruction retain their priority as compared to other

[27] The description of the Price Adjust process under BATS Rule 11.9(g)(2), states that ''[a]n order eligible for display by the Exchange that, at the time of entry, would create a violation of Rule 610(d) of Regulation NMS by locking or crossing a Protected Quotation *of an external market* will be ranked and displayed by the System at one minimum price variation below the current NBO (for bids) or to one minimum price variation above the current NBB (for offers) . . .'' (*emphasis added*). Thus, an order will only be re-priced pursuant to its Price Adjust process where it locks or crosses a Protected Quotation of an external market, and not BATS. The Exchange notes that this reflects a recent change to BATS Rule 11.9(g)(2). *See* Securities Exchange Act Release No. 75324 (June 29, 2015) (SR–BATS–2015–47) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Amend Rule 11.9 of BATS Exchange, Inc., to Modify its Price Adjust Functionality).

[28] *See supra* notes 19 and 20.

[29] The term ''Trading Center'' is defined as ''[o]ther securities exchanges, facilities of securities exchanges, automated trading systems, electronic communications networks or other broker dealers.'' *See* Exchange Rule 11.6(r).

orders subject to the Display-Price Sliding instruction based upon the time such orders were initially received by the Exchange. Following the initial ranking and display of an order subject to the Display-Price Sliding instruction, an order will only be re-ranked and re-displayed to the extent it achieves a more aggressive price, provided, however, that the Exchange will re-rank an order at its displayed price in the event such order's displayed price would be a Locking Quotation or Crossing Quotation. Such event will not result in a change in priority for the order at its displayed price. This will avoid the potential of a ranked price that crosses the Protected Quotation displayed by such external market, which could, in turn, lead to a trade through of such Protected Quotation at such ranked price. The Exchange notes that, as described below, when an external market crosses the Exchange's Protected Quotation and the Exchange's Protected Quotation is a displayed order subject to Display-Price Sliding, the Exchange re-ranks such order at the displayed price. Thus, the order displayed by the Exchange will still be ranked and permitted to execute at a price that is consistent with Rule 611(b)(4) of Regulation NMS.[30]

The ranked and displayed prices of an order subject to the Display-Price Sliding instruction may be adjusted once or multiple times depending upon the instructions of a User and changes to the prevailing NBBO. Multiple re-pricing is optional and must be explicitly selected by a User before it will be applied. The Exchange's default Display-Price Sliding instruction will only adjust the ranked and displayed prices of an order upon entry and then the displayed price one time following a change to the prevailing NBBO, provided however, that if such an order's displayed price becomes a Locking Quotation or Crossing Quotation then the Exchange will adjust the ranked price of such order and it will not be further re-ranked or re-displayed at any other price. Orders subject to the optional multiple price sliding process will be further re-ranked and re-displayed as permissible based on changes to the prevailing NBBO.

As an example of the multiple re-pricing option for Display-Price Sliding, assume the Exchange has a posted and displayed bid to buy at $10.10 and a posted and displayed offer to sell at $10.14. Assume the NBBO is $10.10 by $10.12. If the Exchange receives an order with a Book Only instruction to buy at $10.13, the Exchange would rank the order to buy at $10.12 and display the order at $10.11 because displaying the bid at $10.13 would cause it to be a Crossing Quotation of an external market's Protected Offer to sell for $10.12. If the NBO then moved to $10.13, the Exchange would un-slide the bid to buy, rank it at $10.13 and display it at $10.12. Where the User did not elect the multiple re-pricing option for Display-Price Sliding, the Exchange would not further adjust the ranked or displayed price following this un-slide. However, under the multiple re-pricing option, if the NBO then moved to $10.14, the Exchange would un-slide the bid to buy and display it at its full limit price of $10.13.

Pursuant to proposed Rule 11.6(l)(1)(B)(iv), any display-eligible order with a Post Only instruction that would be a Locking Quotation or Crossing Quotation of the Exchange upon entry will be executed as set forth in Rule 11.6(n)(4) or cancelled. Consistent with the principle of not re-pricing orders to avoid executions, in the event the NBBO changes such that an order with a Post Only instruction subject to Display-Price Sliding instruction would be ranked at a price at which it could remove displayed liquidity from the EDGA Book, the order will be executed as set forth in Rule 11.6(n)(4) or cancelled.[31]

Pursuant to proposed Rule 11.6(l)(1)(B)(v), an order with a Post Only instruction will be permitted to post and be displayed opposite the ranked price of orders subject to Display-Price Sliding instruction. In the event an order subject to the Display-Price Sliding instruction is ranked on the EDGA Book with a price equal to an opposite side order displayed by the Exchange, it will be subject to processing as set forth in Rule 11.10(a)(4), which is described in greater detail below.

For example, assume the Exchange has a posted and displayed bid to buy at $10.10 and a posted and displayed offer to sell at $10.12. Assume the NBBO (including Protected Quotations of other external markets) is also $10.10 by $10.12. If the Exchange receives an order with a Post Only instruction to buy at $10.12 per share, unless executed pursuant to Rule 11.6(n)(4),[32] the Exchange would cancel the order back to the User because absent the order with a Post Only instruction, the order to buy at $10.12 would be able to remove the order to sell $10.12, and, as explained above, the Exchange would no longer offer re-pricing to avoid executions against orders displayed by the Exchange.

If the Exchange did not have a displayed offer to sell at $10.12 in the example above, but instead the best offer on the EDGA Book was $10.13, the Exchange would apply Display-Price Sliding to the incoming order to buy by ranking such order at $10.12 and displaying the order at $10.11. The EDGA Book would now be displayed as $10.11 by $10.13. Assume, however, that after price sliding the incoming order to buy from $10.12 to a display price of $10.11, the Exchange received an order with a Post Only instruction to sell at $10.12, thus joining the NBO. The order with a Post Only instruction would be permitted to post and be displayed opposite the ranked price of orders subject to display-price sliding. Accordingly, the Exchange would allow such incoming order with a Post Only instruction to sell at $10.12 to post and display on the EDGA Book, as described above, with an opposite side order subject to Display-Price Sliding displayed at $10.11. Assume that the next Protected Offer displayed by all external markets other than the Exchange moved to $10.13. In this situation the Exchange would un-slide but then cancel the bid at $10.12 because, as proposed, in the event the NBBO changes such that an order with a Post Only instruction subject to Display-Price Sliding would un-slide and would be ranked at a price at which it could remove displayed liquidity from the EDGA Book (*i.e.,* when the Exchange is at the NBB or NBO) the Exchange proposes to execute[33] or cancel such order.

Re-Pricing Instructions To Comply With Rule 201 of Regulation SHO

Under Rule 11.6(l)(2), an order to sell with a Short Sale instruction that, at the time of entry, could not be executed or displayed in compliance with Rule 201 of Regulation SHO will be re-priced by the System at the Permitted Price.[34] The

[30] 17 CFR 242.611(b)(4). *See also See also* Securities Exchange Act Release Nos. 64475 (May 12, 2011), 76 FR 28830, 28832 (May 18, 2011) (SR–BATS–2011–015); 67657 (August 14, 2012), 77 FR 50199 (August 20, 2012) (SR–BATS–2012–035); 68791 (January 31, 2013), 78 FR 8617 (February 6, 2013) (SR–BATS–2013–007) (''BATS Display-Price Sliding Releases'').

[31] As noted above, the Exchange will execute an order with a Post Only instruction in certain circumstances where the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGA Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. *See supra* notes 19 and 20.

[32] *Id.*

[33] *Id.*

[34] The term ''Permitted Price'' is defined as ''[t]he price at which a sell order will be displayed at one Minimum Price Variation above the NBB.'' *See* Exchange Rule 11.6(k).

default short sale re-pricing process will only re-price an order upon entry and one additional time to reflect a decline in the NBB. Depending upon the instructions of a User, to reflect declines in the NBB the System will continue to re-price and re-display a short sale order at the Permitted Price down to the order's limit price. In the event the NBB changes such that the price of an order with a Non-Displayed instruction subject to Rule 201 of Regulation SHO would be a Locking Quotation or Crossing Quotation, the order will receive a new time stamp, and will be re-priced by the System to the mid-point of the NBBO.

Rule 11.6(l)(2) states that: (i) When a Short Sale Circuit Breaker is in effect, the System will execute a sell order with a Displayed and Short Sale instruction at the price of the NBB if, at the time of initial display of the sell order with a Short Sale instruction, the order was at a price above the then current NBB; (ii) orders with a Short Exempt instruction will not be subject to re-pricing under amended Rule 11.6(l)(2); and (iii) the re-pricing instructions to comply with Rule 610(d) of Regulation NMS will continue to be ignored for an order to sell with a Short Sale instruction when a Short Sale Circuit Breaker is in effect and the re-pricing instructions to comply with Rule 201 of Regulation SHO under this Rule will apply.

The Exchange proposes to make the below changes to align the description of the Exchange's short sale re-pricing process under Rule 11.6(l)(2) with BZX and BYX Rules 11.9(g)(5) and EDGX Rule 11.6(l)(2). Specifically, the Exchange proposed to amend Rule 11.6(l)(2)(A) to remove the last sentence which states that, ''[a]n order to sell with a Short Sale instruction that is re-priced pursuant to this paragraph will be ranked at the Permitted Price.'' No such phrase is included in the BZX and BYX Rules 11.9(g)(5)(A) or EDGX Rule 11.6(l)(2). The Exchange also believes this sentence is superfluous, as the description of the short sale re-pricing process currently references to which prices such orders are to be re-priced and the price of such orders is the equivalent to the price at which the order is to be ranked on the EDGA Book for purposes of Exchange Rule 11.9. The Exchange also proposes to amend Rule 11.6(l)(2)(D) to align with BZX and BYX Rules 11.9(g)(6) and EDGX Rule 11.6(l)(2)(D) to state that where an order is subject to either a Display-Price Sliding instruction or a Price Adjust instruction and also contains a Short Sale instruction when a Short Sale Circuit Breaker is in effect, the re-pricing instructions to comply with Rule 201 of Regulation SHO will apply. The Exchange does not propose this change to alter the meaning of Rule 11.6(l)(2)(D), but rather, to align the language with BZX and BYX Rule 11.9(g) and EDGX Rule 11.6(l)(2)(D) in order to provide consistent rules across the Exchange and BZX.

Re-Pricing of Orders With a Non-Displayed Instruction (Rule 11.6(l)(3))

The Exchange proposes to amend Rule 11.6(l)(3) to align with BZX and BYX Rules 11.9(g)(4) and to be identical to EDGX Rule 11.6(l)(3). To the extent the amended text of Exchange Rule 11.6(l)(3) differs from BZX and BYX Rules 11.9(g)(4), such differences are necessary to conform the rule to existing rule text. The Exchange does not propose to modify the operation of the re-pricing of orders with a Non-Displayed instruction. It simply seeks to replace the rule text with of Rule 11.6(l)(3) with text that is substantially similar to BZX and BYX Rules 11.9(g)(4) and identical to EDGX Rule 11.6(l)(3). The re-re-pricing of orders with a Non-Displayed instruction operates in an identical manner as the repricing of non-displayed orders on BZX, BYX, and EDGX. Replacing the rule text would enable the Exchange to include substantially similar or identical rule text describing processes that operate in the same manner across each of the BGM Affiliated Exchanges.

In sum, Rule 11.6(l)(2) would state that in order to avoid potentially trading through Protected Quotations of external markets, any order with a Non-Displayed instruction that is subject to the Display-Price Sliding or Price Adjust instruction would be ranked at the Locking Price on entry. In the event the NBBO changes such that an order with a Non-Displayed instruction subject to the Display-Price Sliding or Price Adjust instruction would cross a Protected Quotation of an external market, the order will receive a new time stamp, and will be ranked by the System at the Locking Price. In the event an order with a Non-Displayed instruction has been re-priced by the System, such order with a Non-Displayed instruction is not re-priced by the System unless it again would cross a Protected Quotation of an external market. This functionality is equivalent to the handling of displayable orders pursuant to the Display-Price Sliding instruction except that such orders will not have a displayed price.

Aggressive (Rule 11.6(n)(1))

Aggressive is an order instruction that directs the System to route the order if an away Trading Center crosses the limit price of the order resting on the EDGA Book. Based on BZX Rule 11.13(a)(4)(A), the Exchange proposes to also amend Rule 11.6(n)(1) to state that any routable order with a Non-Displayed instruction that is resting on the EDGA Book and is crossed by an away Trading Center will be automatically routed to the Trading Center displaying the Crossing Quotation. To the extent the amended text of Exchange Rule 11.6(n)(1) differs from BZX Rule 11.13(a)(4)(A), such differences are necessary to conform the rule with existing rule text. Lastly, the proposed rule text is identical to EDGX Rule 11.6(l)(1).

Super Aggressive (Rule 11.6(n)(2))

Super Aggressive is an order instruction that directs the System to route an order when an away Trading Center locks or crosses the limit price of the order resting on the EDGA Book. A User may designate an order as Super Aggressive solely to routable orders posted to the EDGA Book with remaining size of an Odd Lot. Based on BZX Rule 11.13(b)(4)(C),[35] the Exchange proposes to amend Rule 11.6(n)(2) to state that when any order with a Super Aggressive instruction is locked by an incoming order with a Post Only instruction that does not remove liquidity pursuant to Rule 11.6(n)(4),[36] the order with a Super Aggressive instruction would be converted to an executable order and will remove liquidity against such incoming order. Rule 11.6(n)(2) would further state that notwithstanding the foregoing, if an order that does not contain a Super Aggressive instruction maintains higher priority than one or more Super Aggressive eligible orders, the Super Aggressive eligible order(s) with lower priority will not be converted, as described above, and the incoming order with a Post Only instruction will be posted or cancelled in accordance with Rule 11.6(n)(4). To the extent the amended text of Exchange Rule 11.6(n)(2) differs from BZX Rule 11.13(b)(4)(C), such differences are necessary to conform the rule with existing rule text. Lastly, the proposed

[35] *See supra* note 14.

[36] As noted above, the Exchange will execute an order with a Post Only instruction where the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGA Book and subsequently provided liquidity, including the applicable fees charged or rebates provided. *See supra* note 19. As is also noted above, based on the Exchange's current fee structure, currently all orders with a Post Only instruction remove liquidity on entry if there is available contra-side liquidity. *See supra* note 20.

rule text is identical to EDGX Rule 11.6(l)(2).

The Exchange proposes to apply this logic in order to facilitate executions that would otherwise not occur due to the Post Only instruction requirement to not remove liquidity. Because a Super Aggressive Re-Route eligible order is willing to route to an away Trading Center and remove liquidity (*i.e.,* pay a fee at such Trading Center) when it becomes either a Locking Quotation or Crossing Quotation, the Exchange believes it is reasonable and consistent with the instruction to force an execution between an incoming order with a Post Only instruction and an order that has been posted to the EDGA Book with the Super Aggressive instruction. The Exchange notes that the determination of whether an order should execute on entry against resting interest, including against resting orders with a Super Aggressive instruction, is made prior to determining whether the price of such an incoming order should be adjusted pursuant to the Exchange's re-pricing instructions under Rule 11.6(l). Like BZX Rule 11.13(b)(4)(C), the Exchange has limited the proposed language to orders with a Post Only instruction that would lock the price of an order with a Super Aggressive instruction because orders with a Post Only instruction that cross resting orders will always remove liquidity because it is in their economic best interest to do so.[37] Also like BZX Rule 11.13(b)(4)(C), the Exchange proposes to make clear that although it will execute an order with a Super Aggressive instruction against an order with a Post Only instruction that would create a Locking Quotation, if an order that does not contain a Super Aggressive instruction maintains higher priority than one or more Super Aggressive eligible orders, the Super Aggressive eligible order(s) with lower priority will not be converted, as described above, and the incoming order with a Post Only instruction will be posted or cancelled in accordance with Rule 11.6(n)(4). The Exchange believes it is necessary to avoid applying the Super Aggressive functionality to routable orders that are resting behind orders that are not eligible for routing to avoid violating the Exchange's priority rule, Rule 11.9.

Example—Super Aggressive Re-Route and Orders With a Post Only Instruction

Assume that the Exchange receives an order to buy 300 shares of a security at $10.10 per share designated with a Super Aggressive instruction. Assume further that the NBBO is $10.09 by $10.10 when the order is received, and the Exchange's lowest offer is priced at $10.11. The Exchange will route the order away from the Exchange as a bid to buy 300 shares at $10.10. Assume that the order obtains one 100 share execution through the routing process and then returns to the Exchange. The Exchange will post the order as a bid to buy 200 shares at $10.10. If the Exchange subsequently receives an order with a Post Only instruction to sell priced at $10.09 per share, such order will execute against the posted order to buy with an execution price of $10.10. The posted buy order will be treated as the liquidity provider and the incoming order with a Post Only instruction to sell will be treated as the liquidity remover, based on Exchange Rule 11.6(n)(4) that executes orders with a Post Only instruction upon entry if such execution is in their economic interest.

However, assuming the same facts as above, if the incoming order with a Post Only instruction to sell is priced at $10.10 and thus does not remove liquidity pursuant to the economic best interest functionality, the posted order with a Super Aggressive instruction will execute against such order at $10.10. In this scenario, the posted order to buy will be treated as the liquidity remover and the incoming order with a Post Only instruction to sell will be treated as the liquidity provider.

Finally, assume that the NBBO is $10.10 by $10.11 and that the Exchange has a displayed bid to buy 100 shares of a security at $10.10 and a displayed offer to sell 100 shares of a security at $10.11. Assume that the displayed bid has not been designated with the Super Aggressive instruction. Assume next that the Exchange receives a second displayable bid to buy 100 shares of the same security at $10.10 that has been designated as routable and subject to the Super Aggressive instruction. Because there is no liquidity to which the Exchange can route the order, the second order will post to the EDGA Book as a bid to buy at $10.10 behind the original displayed bid to buy at $10.10. If the Exchange then received an order with a Post Only instruction to sell 100 shares at $10.10 then no execution would occur because the incoming order with a Post Only instruction cannot remove liquidity at $10.10 based on the economic best interest analysis, the first order with priority to buy at $10.10 was not designated with the Super Aggressive instruction and the second booked order to buy at $10.10 is not permitted to bypass the first order as this would result in a violation of the Exchange's priority rule, Rule 11.9.

Post Only (Rule 11.6(n)(4))

The Exchange proposes to amend the definition of Post Only under Rule 11.6(n)(4) to replace an erroneous reference to the Hide Not Slide instruction with Display-Price Sliding. In sum, Post Only is an instruction that may be attached to an order that is to be ranked and executed on the Exchange pursuant to Rule 11.9 and Rule 11.10(a)(4) or cancelled, as appropriate, without routing away to another trading center except that the order will not remove liquidity from the EDGA Book, except as described below. As amended, an order with a Post Only instruction and a Display-Price Sliding, rather than Hide Not Slide, or Price Adjust instruction will remove contra-side liquidity from the EDGA Book if the order is an order to buy or sell a security priced below $1.00 or if the value of such execution when removing liquidity equals or exceeds the value of such execution if the order instead posted to the EDGA Book and subsequently provided liquidity, including the applicable fees charged or rebates provided.

Time-In-Force (''TIF'') (Rule 11.6(q))

The Exchange proposes to amend its TIF instructions to align with BZX Rule 11.9(b) and EDGX Rule 11.6(q). To the extent the amended text of Exchange Rule 11.6(q) differs from BZX Rule 11.9(b), such differences are necessary to conform the rule with existing Exchange rule text. The amended text is identical to EDGX Rule 11.6(q).

First, the Exchange proposes to align the definition of Immediate-or-Cancel (''IOC'') under Rule 11.6(q)(1) with BZX Rule 11.9(b)(1) and EDGX Rule 11.6(q)(1) to make clear that an order with an IOC instruction that does not include a Book Only instruction and that cannot be executed in accordance with Rule 11.10(a)(4) on the System when reaching the Exchange will be eligible for routing away pursuant to Rule 11.11.[38] Under current rules, the TIF of IOC indicates that an order is to be executed in whole or in part as soon as such order is received and the portion not executed is to be cancelled. Based on BZX Rule 11.9(b)(1) and EDGX Rule 11.6(q)(1), the Exchange proposes to expand upon the description of IOC to specify that an order with such TIF may be routed away from the Exchange but that in no event will an order with such TIF be posted to the EDGA Book. Also like BZX and EDGX, the Exchange

[37] *See supra* note 19.

[38] *See supra* note 14.

notes that an order with an IOC instruction routed away from the Exchange are in turn routed with an IOC instruction.

Second, the Exchange proposes to amend the definition of the Fill-or-Kill (''FOK'') under Rule 11.6(q)(3) to align with BZX Rule 11.9(b)(6) and EDGX Rule 11.6(q)(3) to make clear that an order with a TIF instruction of FOK is not eligible for routing away pursuant to Rule 11.11.[39] Although orders with a TIF of FOK are generally treated the same as order with a TIF of IOC, the Exchange does not permit routing of orders with an order with a TIF of FOK because the Exchange is unable to ensure the instruction of FOK (*i.e.,* execution of an order in its entirety) through the routing process.

Rule 11.8, Order Types

The Exchange proposes to amend the description of Limit Orders under Rule 11.8(b) to align such Rule with existing EDGX and BZX Rules. Each of these changes are described in more detail below.

Limit Orders (Rule 11.8(b)). The Exchange proposes to amend Rule 11.8(b) to: (i) Remove language from subparagraph (4) stating a Limit Order that includes both a Post Only instruction and Non-Displayed instruction will be rejected by the System; (ii) update the description of the inclusion of a Discretionary Range instruction on a Limit Order; (iii) amend subparagraph (10) to replace a reference to ''Displayed Price Sliding'' with ''Display-Price Sliding''; and (iv) amend subparagraph (12) to update the description of the re-pricing of orders with a Non-Displayed instruction.

First, the Exchange proposes to remove from Rule 11.8(b)(4) language stating a Limit Order that includes both a Post Only instruction and Non-Displayed instruction will be rejected by the System. A similar prohibition against coupling a Post Only instruction and Non-Displayed instruction is not included in EDGX Rule 11.8(b)(4). Removing such language would enable the Exchange to further align its treatment of Limit Orders under Rule 11.8(b) with that of EDGX Rule 11.8(b). Such change also updates Rule 11.8(b)(4) to reflect current system functionality. As proposed, Rule 11.8(b)(4) would no longer prohibit User from including both a Post Only instruction and Non-Displayed instruction on their Limit Orders.

Second, the Exchange proposes to re-locate within Rule 11.8(b) and re-word the statement regarding the inclusion of a Discretionary Range on a Limit Order. Current Rule 11.8(b)(8) currently states that a ''User may include a Discretionary Range instruction.'' This ability to include a Discretionary Range instruction on a Limit Order is currently grouped with other functionality that can be elected for Limit Orders that also include a Post Only or Book Only instruction as well as specified time-in-force instructions for orders that can be entered into the System and post to the EDGA Book. However, the System does not allow the combination of a Discretionary Range and a Post Only instruction. Accordingly, the Exchange proposes to re-locate the reference to the Discretionary Range instruction within Rule 11.8(b) so that it is no longer grouped with other orders that can be combined with a Post Only instruction. The Exchange also proposes to state in Rule 11.8(b) that: (i) A Limit Order with a Discretionary Range instruction may also include a Book Only instruction; and (ii) a Limit Order with a Discretionary Range instruction and a Post Only instruction will be rejected. Further, the Exchange proposes to refer to the ability of a Limit Order to include a Discretionary Range instruction, rather than a ''User'' that may include a Discretionary Range instruction.

Third, the Exchange proposes to replace a reference to ''Displayed Price Sliding'' with ''Display-Price Sliding''. This proposed rule change is designed to update Rule 11.8(b)(10) to reflect the proposed changes of references from ''Displayed Price Sliding'' to ''Display-Price Sliding'' discussed above.

Fourth, the Exchange proposes to amend Rule 11.8(b)(12) regarding the re-pricing of orders with a Non-Displayed instruction to align with to be identical to EDGX Rule 11.8(b)(12). The Exchange does not propose to modify the operation of the re-pricing of Limit Orders with a Non-Displayed instruction. It simply seeks to replace the rule text with of Rule 11.8(b)(12) with text that is identical to EDGX Rule 11.8(b)(12). The re-pricing of Limit Orders with a Non-Displayed instruction operates in an identical manner as the re-pricing of non-displayed limit orders on EDGX. Replacing the rule text would enable the Exchange to include identical rule text describing processes that operate in an identical manner across EDGA and EDGX.

MidPoint Peg Order Type (Rule 11.8(d)). The Exchange proposes amend Rule 11.8(d)(4) to correct a reference to the Pre-Opening Session. Currently, Rule 11.8(d)(4) states that MidPoint Peg Orders may be executed during Pre-Opening Sessions, Regular Trading Hours, Regular Session, and the Post-Closing Session. The Exchange proposes to amend Rule 11.8(d)(4) to state ''Pre-Opening Session'' rather than ''Pre-Opening Sessions''.

Rule 11.9, Priority of Orders

With respect to the Exchange's priority and execution algorithm, the Exchange is proposing various minor and structural to changes based on BZX Rule 11.12 and EDGX Rule 11.9 that are intended to emphasize the processes by which orders are accepted, priced, ranked, displayed and executed, as well as a new provision related to the ability of orders to rest at the Locking Price and the Exchange's handling of orders in such a circumstance. In addition to the changes proposed with respect to Rule 11.9, discussed immediately below, these changes also relate to Rules 11.10 and 11.11.

The Exchange proposes modifications to Rule 11.9, Priority of Orders, to make clear that the ranking of orders described in such rule is in turn dependent on Exchange rules related to the execution of orders, primarily Rule 11.10. The Exchange believes that this has always been the case under Exchange rules but there was not previously a description of the cross-reference to Rule 11.10 within such rules. Accordingly, the Exchange proposes to add reference to the execution process in addition to the numeric cross-reference to Rule 11.10. The Exchange also proposes to change certain references within Rule 11.9 to refer to ranking rather than executing equally priced trading interest, as the Rule as a whole is intended to describe the manner in which resting orders are ranked and maintained, specifically in price and time priority, while awaiting execution against incoming orders. The Exchange does not believe that the proposed modifications substantively modify the operation of the rules but the Exchange believes that it is important to make clear that the ranking of orders is a separate process from the execution of orders. The Exchange also proposes changes to Rule 11.9(a)(4) and (a)(5) to specify that orders retain and lose ''time'' priority under certain circumstances as opposed to priority generally because retaining or losing price priority does not require the same descriptions, as price priority will always be retained unless the price of an order changes. Each change proposed above was recently approved with respect to analogous rules of BZX and

[39] *Id.*

BYX, specifically amendments to Rule 11.12.[40]

Lastly, the Exchange proposes to amend Rule 11.9(a)(2)(B)(ii) to replace a reference to ''Displayed Price Sliding'' with ''Display-Price Sliding''. This proposed rule change is designed to update Rule 11.9(a)(2)(B)(ii) to reflect the proposed change of references from ''Displayed Price Sliding'' to ''Display-Price Sliding'' discussed above.

Rule 11.10, Order Execution

The Exchange proposes to adopt paragraph (C) of Rule 11.10(a)(4), which would be identical to BZX Rule 11.13(a)(4)(C)[41] and EDGX Rule 11.10(a)(4). Proposed paragraph (C) would provide further clarity regarding the situations where orders are not executable, which although covered in other rules proposed above and in current rules,[42] would focus on the incoming order on the same side of an order displayed on the EDGA Book rather than the resting order that is rendered not executable at a specified price because it is opposite such order displayed on the EDGA Book. Proposed paragraph (C) would state that, subject to proposed paragraph (D), described below, if an incoming order is on the same side of the market as an order displayed on the EDGA Book and upon entry would execute against contra-side interest at the same price as such displayed order, such incoming order will be cancelled or posted to the EDGA Book and ranked in accordance with Rule 11.9. The Exchange will suspend the ability of any order to execute at the price of a contra-side order with a Displayed instruction, as described above. The Exchange suspends this the ability of any order to execute in such situations to avoid an apparent priority issue. In particular, in such a situation the Exchange believes a User representing an order that is displayed on the Exchange might believe that an incoming order was received by the Exchange and then bypassed such displayed order, removing some other non-displayed liquidity on the same side of the market as such displayed order.

The Exchange also proposes to adopt Rule 11.10(a)(4)(D), which would be identical to BZX Rule 11.13(a)(4)(D).[43] Proposed Rule 11.10(a)(4)(D) would govern the price at which an order is executable when it is not displayed on the Exchange and there is a contra-side displayed order at such price. Specifically, for bids or offers equal to or greater than $1.00 per share, in the event that an incoming order is a Market Order or is a Limit Order priced more aggressively than an order displayed on the Exchange, the Exchange will execute the incoming order at, in the case of an incoming sell order, one-half minimum price variation less than the price of the displayed order, and, in the case of an incoming buy order, at one-half minimum price variation more than the price of the displayed order. As is true under existing functionality, this order handling is inapplicable for bids or offers under $1.00 per share.

To demonstrate the operation of this provision, again assume the NBBO is $10.10 by $10.11. Assume the Exchange has a posted and displayed bid to buy 100 shares of a security priced at $10.10 per share and a resting non-displayed bid to buy 100 shares of a security priced at $10.11 per share.

- Assume that the next order received by the Exchange is an order with a Post Only instruction to sell 100 shares of the security priced at $10.11 per share. The order with a Post Only instruction would not remove any liquidity upon entry pursuant to the Exchange's economic best interest functionality, would post to the EDGA Book and would be displayed at $10.11. The display of this order would, in turn, make the resting non-displayed bid not executable at $10.11.
- If an incoming offer to sell 100 shares at $10.10 is entered into the EDGA Book, the resting non-displayed bid originally priced at $10.11 will be executed at $10.105 per share, thus providing a half-penny of price improvement as compared to the order's limit price of $10.11. The execution at $10.105 per share also provides the incoming offer with a half-penny of price improvement as compared to its limit price of $10.10. The result would be the same for an incoming market order to sell or any other incoming limit order offer priced at $10.10 or below, which would execute against the non-displayed bid at a price of $10.105 per share. As above, an offer at the full price of the resting and displayed $10.11 offer would not execute against the resting non-displayed bid, but would instead either cancel or post to the EDGA Book behind the original $10.11 offer in priority.

The Exchange notes that, in addition to the changes described above, it is proposing to add descriptive titles to paragraphs (A) and (B) of Rule 11.10(a)(4), which describe the process by which executable orders are matched within the System. Specifically, so long as it is otherwise executable, an incoming order to buy will be automatically executed to the extent that it is priced at an amount that equals or exceeds any order to sell in the EDGA Book and an incoming order to sell will be automatically executed to the extent that it is priced at an amount that equals or is less than any other order to buy in the EDGA Book. These rules further state that an order to buy shall be executed at the price(s) of the lowest order(s) to sell having priority in the EDGA Book and an order to sell shall be executed at the price(s) of the highest order(s) to buy having priority in the EDGA Book. The Exchange emphasizes these current rules only insofar as to highlight the interconnected nature of the priority rule. The Exchange also proposes to move language contained within Rule 11.10(a)(2) to paragraph (a) of the rule such that the language is more generally applicable to the rules governing execution contained in Rule 11.10(a)(1) through (5). Specifically, the Exchange proposes to relocate language stating that any order falling within the parameters of the paragraph shall be referred to as ''executable'' and that an order will be cancelled back to the User, if based on market conditions, User instructions, applicable Exchange Rules and/or the Act and the rules and regulations thereunder, such order is not executable, cannot be routed to another Trading Center pursuant to Rule 11.11 or cannot be posted to the EDGA Book. Each change proposed above was recently approved with respect to analogous rules of BZX, specifically amendments to Rule 11.13.[44]

Rule 11.11, Routing to Away Trading Centers

The Exchange also proposes to modify paragraph (h) of Rule 11.11 to clarify the Exchange's rule regarding the priority of routed orders. Paragraph (h) currently sets forth the proposition that a routed order does not retain priority on the Exchange while it is being routed to other markets. The Exchange believes that its proposed clarification to paragraph (h) is appropriate because it more clearly states that a routed order is not ranked and maintained in the EDGA Book pursuant to Rule 11.9(a), and therefore is not available to execute against incoming orders pursuant to

[40] *Id.*

[41] *Id.*

[42] The Exchange notes that consistent with the proposed changes to Rules 11.6 and 11.8 described above, based on User instructions certain orders are permitted to post and rest on the EDGA Book at prices that lock contra-side liquidity, provided, however, that the System will never display a Locking Quotation. Similar behavior is also in place with respect to the Display-Price Sliding instruction under current rules.

[43] *See supra* note 14.

[44] *Id.*

Rule 11.10. The change proposed above was recently approved with respect to the analogous rule of BZX, specifically Rule 11.13, as amended.[45]

Implementation Date

The Exchange intends to implement the proposed rule change immediately.[46]

2. Statutory Basis

The Exchange believes that the proposed rule changes are consistent with Section 6(b) of the Act[47] and further the objectives of Section 6(b)(5) of the Act[48] because they are 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, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and, in general, to protect investors and the public interest. The proposed rule change also is designed to support the principles of Section 11A(a)(1)[49] of the Act in that it seeks to assure fair competition among brokers and dealers and among exchange markets.

The proposed rule changes are generally intended to better align certain Exchange rules with those currently in place on EDGX, BZX, and BYX in order to provide a consistent rule set and functionality across the BGM Affiliated Exchanges. As noted above, the proposed changes will not result in any changes to the way the System operates due to the Exchange's current fee structure. However, by making the rule change, the Exchange will be in position to support such functionality immediately in the event the Exchange's fee structure changes in the future. Consistent functionality across the BGM Affiliated Exchanges will reduce complexity and streamline duplicative functionality, thereby resulting in simpler technology implementation, changes and maintenance by Users of the Exchange that are also participants on EDGX, BZX, and BYX. The proposed rule changes do not propose to implement new or unique functionality that has not been previously filed with the Commission or is not available on EDGX, BZX or BYX. The Exchange notes that the proposed rule text is based on applicable BZX and BYX rules and substantially similar to applicable EDGX rules; the proposed language of the Exchange's Rules differs from EDGX rules only to extent necessary to conform to existing Exchange rule text. Where possible, the Exchange has mirrored EDGX, BYX, or BZX rules, because consistent rules will simplify the regulatory requirements and increase the understanding of the Exchange's operations for Members of the Exchange that are also participants on EDGX, BZX, and BYX. As such, the proposed rule change would foster cooperation and coordination with persons engaged in facilitating transactions in securities and would remove impediments to and perfect the mechanism of a free and open market and a national market system.

In addition to the specific rules discussed below, the Exchange also believes that the proposed amendments to clarify and re-structure the Exchange's priority, execution and routing rules will contribute to the protection of investors and the public interest by making the Exchange's rules easier to understand.

Definitions (Rule 11.6). The modifications related to Discretionary Range, Pegged instructions, Re-Pricing, Aggressive, Super Aggressive, Post Only, as well as TIFs of IOC and FOK, are each designed to better align certain Exchange rules and system functionality with that currently offered by EDGX, BYX and BZX in order to provide a consistent functionality across the BGM Affiliated Exchanges. Specifically, the Exchange believes that the proposed rule changes will provide additional clarity and specificity regarding the functionality of the System and provide Users with consistent rules across the BGM Affiliated Exchanges, and thus would promote just and equitable principles of trade and remove impediments to a free and open market.

In particular, the Exchange believes it is consistent with the Act to execute orders with a Discretionary Range instruction and orders with a Super Aggressive instruction against marketable liquidity (*i.e.,* order with a Post Only instruction) when an execution would not otherwise occur is consistent with both: (i) The Act, by facilitating executions, removing impediments and perfecting the mechanism of a free and open market and national market system; and (ii) a User's instructions, which have evidenced a willingness by the User to pay applicable execution fees and/or execute at more aggressive prices than they are currently ranked in favor of an execution.

The Exchange also believes that the proposed changes to Rule 11.6(l) are consistent with Section 6(b)(5) of the Act,[50] as well as Rule 610 of Regulation NMS[51] and Rule 201 of Regulation SHO.[52] Rule 610(d) requires exchanges to establish, maintain, and enforce rules that require members reasonably to avoid ''[d]isplaying quotations that lock or cross any protected quotation in an NMS stock.''[53] Such rules must be ''reasonably designed to assure the reconciliation of locked or crossed quotations in an NMS stock,'' and must ''prohibit . . . members from engaging in a pattern or practice of displaying quotations that lock or cross any quotation in an NMS stock.''[54] These changes will provide additional specificity within the Exchange's rules regarding the operation of the Exchange's re-pricing options The proposed rule change will also align the descriptions of the Exchange's re-repricing options under Rule 11.6(l) with EDGX's re-pricing options under EDGX Rule 11.6(l) and BZX's price sliding processes described under BZX Rule 11.9(g).

Order Types (Rule 11.8). The Exchange believes that the proposed changes to its order types under Rule 11.8 are consistent with Section 6(b)(5) of the Act,[55] because they are intended to align their operation with the operation of identical order types on EDGX and BZX, thereby fostering cooperation and coordination with persons engaged in facilitating transactions in securities and removing impediments to and perfecting the mechanism of a free and open market and a national market system.

The Exchange believes its proposed amendments to the description of Limit Orders under Rule 11.8(b) is reasonable because it aligns their operation with existing EDGX and BZX rules and functionality as well as to reflect the relevant proposed changes discussed above. Therefore, the proposed rule change promotes just and equitable principles of trade because it will avoid investor confusion by providing the identical default behavior across the Exchange, EDGA and BZX.

Priority (Rule 11.9). The Exchange believes its proposed amendments to Rule 11.9 regarding the priority of orders promotes just and equitable principles of trade, remove impediments to, and perfect the mechanism of, a free and open market and a national market system by providing Members, Users, and the

[45] *Id.*

[46] *Id.*

[47] 15 U.S.C. 78f(b).

[48] 15 U.S.C. 78f(b)(5).

[49] 15 U.S.C. 78k–1(a)(1).

[50] 15 U.S.C. 78f(b)(5).

[51] 17 CFR 242.610.

[52] 17 CFR 242.201.

[53] 17 CFR 242.610(d).

[54] *Id.*

[55] 15 U.S.C. 78f(b)(5).

investing public with greater transparency regarding how the System operates. The Exchange believes that the proposed rule changes regarding order priority will continue to provide greater transparency and further clarity on how the various order types will be assigned priority under various scenarios, thereby assisting Members, Users and the investing public in understanding the manner in which the System may execute their orders.

Order Execution (Rule 11.10). Proposed Rule 11.10(a)(4)(C), which would be identical to EDGX Rule 11.10(a)(4)(C) and BZX Rule 11.13(a)(4)(C),[56] is consistent with Rules 11.6 and 11.8, as proposed to be amended, and reflects the fact that the Exchange will suspend the ability of an order to execute at the Locking Price when there is a contra-side order with a Displayed instruction in order to avoid an apparent priority issue. In turn, the Exchange believes that adopting Rule 11.10(a)(4)(C) promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in facilitating transactions in securities, and removes impediments to, and perfects the mechanism of, a free and open market and a national market system, both with respect to the functionality that prevents executions in such a circumstance and with respect to the addition of the rule text, because it makes clear to Users the operation of the Exchange in conjunction with the proposed changes to the System. The Exchange also believes its proposal to adopt Rule 11.10(a)(4)(D), which would be identical to EDGX Rule 11.10(a)(4)(D) and BZX Rule 11.13(a)(4)(D),[57] promotes just and equitable principles of trade, fosters cooperation and coordination with persons engaged in facilitating transactions in securities, and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The proposed change is based on EDGX Rule 11.10(a)(4)(D) and BZX Rule 11.13(a)(4)(D) and sets forth how marketable orders that would otherwise not be executed under specific scenarios will be executed, thereby improving execution quality for participants sending orders to the Exchange. Further, the proposed change will help to provide price improvement to market participants, again, in scenarios that at times, such participants would potentially not receive executions on the Exchange. Thus, the Exchange believes that its proposed order handling process in the scenario described in this filing will benefit market participants and their customers by allowing them greater flexibility in their efforts to fill orders and minimize trading costs. The proposed rule change will also provide consistent handling for orders in such scenarios across the Exchange, EDGX, and BZX, thereby avoiding investor confusion and promoting just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange notes that the proposal will provide consistent functionality across the BGM Affiliated Exchanges, thereby reducing complexity and streamlining duplicative functionality, resulting in simpler technology implementation, changes and maintenance by Users of the Exchange that are also participants on EDGX, BYX and BZX. Thus, the Exchange believes this proposed rule change is necessary to permit fair competition among national securities exchanges. In addition, the Exchange believes the proposed rule change will benefit Exchange participants in that it is designed to achieve a consistent technology offering by the BGM Affiliated Exchanges.

Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

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, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder.[58]

A proposed rule change filed pursuant to Rule 19b–4(f)(6) under the Act normally does not become operative for 30 days after the date of its filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Waiver of the 30-day operative delay would allow the Exchange to harmonize its rules across BGM Affiliated Exchanges in a timely manner, thereby simplifying the rules available to Members of the Exchange that are also participants on EDGX, BZX and BYX. Based on the foregoing, the Commission believes the waiver of the operative delay is consistent with the protection of investors and the public interest.[59] The Commission hereby grants the waiver and designates the proposal operative upon filing.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. 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–EDGA–2015–33 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.

[56] *See supra* note 14.

[57] *Id.*

[58] In addition, Rule 19b–4(f)(6)(iii) requires the Exchange to give the Commission written notice of the Exchange's intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[59] 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).

All submissions should refer to File Number SR–EDGA–2015–33. 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–2015–33 and should be submitted on or before September 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[60]

Robert W. Errett,

Deputy Secretary.

[FR Doc. 2015–20544 Filed 8–19–15; 8:45 am]

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[60] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75698; File No. SR–NYSEArca–2015–68]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change Relating to Implementation of a Fee on Securities Lending and Repurchase Transactions With Respect to Shares of the CurrencyShares® Euro Trust and the CurrencyShares® Japanese Yen Trust

August 14, 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 July 30, 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, II.A, II.B, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 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 a rule change relating to implementation of a fee on securities lending and repurchase transactions with respect to shares of the CurrencyShares® Euro Trust and the CurrencyShares® Japanese Yen Trust, which are currently listed and traded on the Exchange under NYSE Arca Equities Rule 8.202. 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 lists and trades shares of the CurrencyShares® Euro Trust (the ''Euro Trust'' or ''FXE'') and the CurrencyShares® Japanese Yen Trust (the ''Yen Trust'' or ''FXY'' and together with the Euro Trust, the ''Trusts'') under NYSE Arca Equities Rule 8.202.[4]

The FXE and FXY hold euros and Japanese yen, respectively, and issue shares in baskets of 50,000 shares (''Baskets of Shares'') in exchange for deposits of euros or yen, respectively. Each Trust redeems Baskets of Shares and distributes euros or yen, respectively. The shares of FXE and FXY (''Shares'') represent units of fractional undivided beneficial interests in the assets held by the relevant Trust. The investment objective of each Trust is for a Trust's Shares to reflect the price (in U.S. dollars (''USD'')) of the foreign currency held by a Trust, plus accrued interest and less the expenses and liabilities of such Trust. The Shares are intended to provide institutional and retail investors with a simple, cost-effective means of including in their investment portfolio economic exposure to a particular foreign currency to, for example, hedge foreign currency risk in other portfolio assets or against U.S. dollar fluctuations more generally.

As Sponsor of the Trusts, Guggenheim receives a management fee, which is intended to compensate Guggenheim for its service as Sponsor and to cover certain Trust expenses. The management fee is paid monthly out of a Trust's assets and calculated as a percentage of the currency held by each Trust. With regard to the Euro Trust and Yen Trust, Guggenheim's fee accrues daily at an annual nominal rate of 0.40% of the euros and yen in each Trust, respectively. As described below, the management fee directly impacts the net asset value (''NAV'') of the Shares.

To calculate NAV, the trustee adds to the amount of euros or yen in a Trust at the end of the preceding business day:

- Accrued but unpaid interest;
- euros or yen receivable under pending purchase orders; and
- the value of other Trust assets.

From this sum, the trustee then subtracts:

- The accrued but unpaid management fee,
- euros or yen payable under pending redemption orders; and
- any other Trust expenses and liabilities.

The value of a Trust's Shares is determined by dividing a Trust's NAV by the number of Shares outstanding. Because the accrued but unpaid management fee is subtracted from the assets in calculating NAV on a daily basis,[5] the value of the Shares decreases

[4] Shares of the Trusts initially were approved for listing and trading on the New York Stock Exchange, Inc. See Securities Exchange Act Release Nos. 52843 (November 28, 2005), 70 FR 72486 (December 5, 2005) (SR–NYSE–2005–65) (order approving listing and trading of Shares of the CurrencyShares® Euro Trust); 55268 (February 9, 2007), 72 FR 7793 (February 20, 2007) (SR–NYSE–2007–03) (order approving listing and trading of Shares of the CurrencyShares® Japanese Yen Trust).

[5] To calculate NAV, the Trustee adds to the amount of euros/yen in the Trusts at the end of the

Continued

at a predictable rate independent of the value of the currency held by each Trust. This predictable rate at which the value of a Trust falls as a result of the management fee is referred to as the ''Management Fee Decay''.

Like other equity securities, Shares of each Trust may be lent by shareholders to other market participants. This securities lending activity can facilitate short selling of Shares, as well as other investment strategies.[6] Once loaned, such Shares may be (i) redeemed by the borrower for underlying Trust assets or (ii) sold.

The Sponsor has represented to the Exchange that it has identified a strategy (''Strategy'') that permits market participants (''Traders'') to profit from the reduction in the NAV of the Shares over time associated with Management Fee Decay to the detriment of the value of the Shares held by shareholders who do not engage in the Strategy.

Pursuant to the Strategy, a Trader borrows Shares and then either (1) sells the borrowed Shares, taking a short position in the Shares,[7] or (2) redeems the borrowed Shares for euros or yen, as applicable.

Because of the Management Fee Decay, the number of units of foreign currency underlying the Shares the Trader has sold short is reduced over time. Therefore, when the Trader unwinds its short position in the Shares by creating Shares through delivery of the currency it held as a hedge, or when the Trader purchases Shares and sells the currency held as a hedge, it will do so at lower cost than when it sold (or purchased) the Shares.

The Trader's profit from this Strategy is equal to the Management Fee Decay attributable to the Shares sold short, plus or minus the net cost of borrowing the Shares[8] and other transaction costs. The following two examples explain how this operates—one where the Trader sells the borrowed Shares short, the other where the Trader redeems the borrowed Shares.

Example 1—Selling Short FXE

Before the trade, there are 100 euros in the Trust for each outstanding Share. Assuming a USD/euro exchange rate of $1.10, FXE would be trading at $110 per Share. A Trader borrows 50,000 Shares of FXE and sells them for $5.5 million to obtain a short position of 50,000 Shares. At the same time, to hedge the short exposure to euros, the Trader obtains a long position in euros by entering into a forward contract to purchase in one year 4.98 million euros for $5.478 million. The Trader holds these positions for a year, by which time the FXE has predictably decayed by the 40 basis point management fee, regardless of the change in the USD/euro exchange rate.

Payment of the management fee by the Trust results in the sale of euros, causing the number of euros per Share to fall from 100 euros for each Share to 99.6 euros for each Share. As a result, the Trader can now create 50,000 Shares by depositing only 4.98 million euros, which the Trader can purchase for $5.478 million, and return the borrowed Shares. The $20,000 difference in cost to create 50,000 Shares one year after selling short 50,000 Shares for $5.5 million is profit. The Trader's transaction costs would be the cost of the forward contract, commissions, and any fees charged by the lender.

Example 2—Redeeming FXE

Before the trade, there are 100 euros in the Trust for each outstanding Share. Assuming a USD/euro exchange rate of $1.10, FXE would be trading at $110 per Share. A Trader borrows 50,000 Shares of FXE and redeems them in exchange for 5 million euros. The Trader uses the proceeds of the redemption as collateral for the stock borrow. The Trader holds this position for a year. Regardless of whether the USD/euro exchange rate rises or falls, the amount of euros per Share held by the Trust will fall because of the Management Fee Decay.

When the Trader redeemed the Shares, there were one hundred euros in the Euro Trust for each outstanding Share. During the year, the Euro Trust has had to sell euros to pay management fees, and therefore there are now only 99.6 euros per outstanding Share in the Euro Trust. As a result, the Trader will only have to deposit 4.98 million euros to create 50,000 Shares of FXE. The 20,000 euros difference between the 5 million euros received from redeeming 50,000 Shares and the 4.98 million euros cost to create 50,000 Shares one year later is the Trader's profit. The Trader's transaction costs would be commissions and any fees charged by the lender.

Shareholders who do not lend their Shares to Traders subsidize the Strategy employed by the lenders and Traders. The long holder of Shares agrees to pay a management fee for exposure to the underlying currency. When a shareholder lends its Shares, it retains the benefit of exposure to the euros or yen in a Trust. However, a Trader that borrows the Shares and redeems or sells its borrowed Shares deprives a Trust of the assets against which the management fee is assessed. The lender retains a long position in the Shares even though the assets reflecting its long position are no longer in a Trust and thus do not bear a proportional cost of managing the assets in a Trust. In this way, lenders and Traders that engage in the Strategy are subsidized by long holders of the Shares that do not lend their Shares.

The Sponsors continue to bear the cost of providing shareholder services to shareholders that lend Shares to Traders, even though, because Traders sell these borrowed Shares or redeem them with a Trust, there are no assets associated with these borrowed Shares against which a management fee is assessed to support these services. Long holders of Shares that do not lend to Traders are bearing the costs associated with lenders' long positions in Shares that Traders redeem or sell. Through the

preceding business day, accrued but unpaid interest, euros/yen receivable under pending purchase orders and the value of other Trust assets, and subtracts the accrued but unpaid management fee, euros/yen payable under pending redemption orders and other Trust expenses and liabilities, if any.

[6] A short sale is any sale of a security which the seller does not own or any sale which is consummated by the delivery of a security borrowed by, or for the account of, the seller. Short sales are normally settled by the delivery of a security borrowed by or on behalf of the investor. The investor later closes out the position by returning the borrowed security to the stock lender, typically by purchasing securities on the open market.

[7] To fully hedge the risk of changes in the value of the currency underlying the Shares in the Trader's short position, the Trader, simultaneously would acquire a long position in an amount of the underlying currency in the Trader's short position or buy a derivative that provides a comparable long exposure to the underlying currency. This long position would also serve as collateral for the borrowed Shares. For example, if a Trader borrows Shares of FXE and redeems them from the Euro Trust, the Trader would receive euros (good collateral) to finance the borrow. If the Trader is required to post 105% of the value of the collateral, then 100% of the value of the collateral would consist of the redeemed euros and 5% would be other collateral in the Trader's account (of which the 5% amount would have a 6 basis points haircut at current rates). The Trader's profit would be 40 basis points (the amount of the management fee) on 100% of the value of euros, less the 6 basis points haircut on 5% of the collateral. (A haircut is the percentage by which an asset's market value is reduced for the purpose of calculating capital requirement, margin and collateral levels. When they are used as collateral, securities will generally be devalued since a cushion is required by the lending parties in case the market value falls.)

[8] Collateral provided by a Trader to a lender of Shares will be invested by the lender. The agreement between the lender and Trader as to how income from invested collateral is shared will impact the cost of the lending arrangement. Specifically, the lender may assess the Trader a charge in addition to retaining any investment income, the lender may retain the investment income but not charge anything additional to the Trader, or the lender and Trader may split any resulting income from the investment of collateral.

loan arrangement, the lender and Trader share the economics of the predictable fall in the value of the Shares due to the Management Fee Decay. Long holders of Shares that do not lend their Shares are subsidizing this Strategy through their assets against which the management fee is assessed.

This Strategy is not available with asset classes other than exchange-traded products because shares of operating companies do not charge management fees or provide investors with the ability to redeem their shares in exchange for the underlying assets. Thus, shares of a company do not have a decay that is extrinsic to the value of the company or a structure that provides the ability for the holder of a short interest to perfectly hedge its short position.

The Sponsor further represents that the Strategy discussed above is detrimental to liquidity in the Shares. Because of the large outstanding short positions in the Shares, the Sponsor represents that it is difficult to borrow Shares, particularly for market participants that are not Authorized Participants [9] that are seeking to engage in short selling for trading strategies other than the Strategy. The availability of the Strategy provides an incentive for third parties to short the Shares of the Trusts, thereby depleting the pool of Shares potentially available to be borrowed by market participants that are not Authorized Participants. Such activity impedes the ability of market makers that are not Authorized Participants to provide liquidity by taking short positions in the Shares, potentially resulting in market makers' public quotes being wider than would be the case if Shares were more readily borrowable. A lack of liquidity and wider spreads harms all investors through higher costs to buy and sell Shares.

As described in an April 8, 2013, amendment to the depositary trust agreement (''Trust Agreement'') governing the administration of each Trust,[10] the Sponsor has determined and advised the Trustee that Traders have been borrowing substantial numbers of Shares and either selling them short or redeeming them with a Trust. The amendment to the depositary trust agreement states that the impact on Beneficial Owners (as defined in each Trust Agreement) is that they may be subsidizing short positions to their disadvantage.[11]

For this reason, the Exchange is filing this proposed rule change relating to a fee (the ''ETF Loan Fee'') on securities lending and repurchase transactions with respect to the Shares, which are currently listed and traded on the Exchange. Guggenheim Specialized Products, LLC (''Guggenheim'' or the ''Sponsor''), the sponsor of the Trusts,[12] would receive the proceeds of the ETF Loan Fee, less an amount equal to 20 percent of such fee, which would be paid to Precidian Investments, LLC (''Precidian''), the Loan Fee Administrator. Precidian has in turn engaged BNY Mellon to act as Loan Fee Collection Agent on its behalf. The Loan Collection Agent would be paid by Precidian and would not further reduce the proceeds paid to the Sponsor. Guggenheim would use the net proceeds from the ETF Loan Fee to offset management fees otherwise payable to it by the Trusts or to pay other Trust-related expenses.[13]

The Sponsor believes and has advised the Trustee that it is in the best interest of the Beneficial Owners to impose an ''ETF Loan Fee'' [14] on such transactions. The Sponsor believes the ETF Loan Fee would benefit the Trusts and Beneficial Owners because ETF Loan Fee proceeds received (net of amounts retained by the Loan Fee Administrator) would be used to offset management fees.[15] The Exchange believes that the ETF Loan Fee would compensate for the loss of a management fee against long positions held by lenders of Shares to Traders. Because Traders redeem or sell such Shares, no assets remain in a Trust against which a management fee is assessed. Nevertheless, the lender retains a long position in the Shares. Thus the ETF Loan Fee is intended to fairly reflect the cost to a Trust and Beneficial Owners of the Strategy.

The procedures proposed by the Trusts would prohibit any shareholder from lending any Shares to another person (a ''Loan Transaction''), or selling any Shares to another person subject to an agreement to repurchase Shares (a ''Repurchase Transaction'' and, collectively with a Loan Transaction, a ''Permissible Stock Loan''), unless such shareholder notifies the custodian or its designee of such transaction on or prior to the inception of the Permissible Stock Loan. A shareholder engaging in a Permissible Stock Loan (a ''Loaning Shareholder'') also would be required to notify the custodian or its designee of the termination of the Permissible Stock Loan on or prior to the termination of such transaction. For the pendency of the Permissible Stock Loan, the Loaning Shareholder would be obligated to pay the custodian the ETF Loan Fee with respect to that transaction. The ETF Loan Fee would be applicable to Loan Transactions occurring following Commission approval of this proposed rule change and after sixty days' notice

[9] An Authorized Participant is a Depository Trust Company (''DTC'') Participant that is a registered broker-dealer or other securities market participant such as a bank or other financial institution that is not required to register as a broker-dealer to engage in securities transactions and has entered into a Participant Agreement with the Trustee. Only Authorized Participants may place orders to create or redeem Baskets.

[10] *See* Global Amendments to Certain Depositary Trust Agreements filed as Exhibit 10.1 to Current Reports on Form 8–K filed by the Trusts and incorporated by reference into the Registration Statements: *http://www.sec.gov/Archives/edgar/data/1353613/000119312513147214/d518785d8k.htm (Form 8-K filed April 8, 2013 by the Japanese Yen Trust); http://www.sec.gov/Archives/edgar/data/1353613/000119312513147214/d518785dex101.htm* (Exhibit 10.1, Global Amendment to Certain Depositary Trust Agreements); *http://www.sec.gov/Archives/edgar/data/1328598/000119312513147205/d518761d8k.htm (Form 8–K filed April 8, 2013 by the Euro Trust*); and *http://www.sec.gov/Archives/edgar/data/1328598/000119312513147205/d518761dex101.htm* (Exhibit 10.1, Global Amendment to Certain Depositary Trust Agreements).

[11] The Trust Agreement defines ''Beneficial Owner'' consistent with Article 8 of the Uniform Commercial Code as ''any Person owning, through DTC, a DTC Participant, or an Indirect Participant, a Share.'' The lender of Shares would be the Beneficial Owner and would be required to pay the ''ETF Loan Fee'', as described below. If the borrower sells the Shares, the buyer would be a Beneficial Owner under this definition. Because the loan would also be recorded on the books of DTC, the borrower also is a Beneficial Owner when the Beneficial Owner takes delivery of the Shares.

[12] *See* the registration statement for the Euro Trust on Form S–3 under the Securities Act of 1933 (the ''Euro Registration Statement'') dated February 4, 2013 (File No. 333–186440) and the Yen Trust on Form S–3 under the Securities Act of 1933 dated January 1, 2014 (File No. 333–193514) (the ''Yen Registration Statement'' and, together with the Euro Registration Statement, the ''Registration Statements'').

[13] *See* Global Amendments to Certain Depositary Trust Agreements cited at note 10, *supra.*

[14] The term ''ETF Loan Fee'' means that amount, accrued daily and payable monthly, equal to the annual management fee, which is an annual nominal rate of 0.40% (or such lower annual nominal rate as may be determined by the Sponsor from time to time) of the aggregate market value of the Shares involved in the ''Permissible Stock Loan'' (as defined below) based on the closing price each day from the inception date of such transaction through the termination of such transaction. Based on current market valuations, the ETF Loan Fee for Shares of the Euro Trust would be approximately ⅛ cent per Share per day and for Shares of the Yen Trust would be approximately 1/11 cent per Share per day as of March 27, 2015. The ETF Loan Fee would be implemented upon effectiveness of amendments to the depository trust agreements and approval of this Rule 19b–4 filing by the Commission and after sixty days' notice to shareholders. The ETF Loan Fee will apply to any Shares loaned or sold subject to an agreement to repurchase after the sixty day notification period.

[15] The Exchange has relied on materials and information provided by Guggenheim and Precidian, including amendments to the Registration Statements, for the description of the proposed ETF Loan Fee and its justification contained herein.

to shareholders.[16] For these Loan Transactions, the ETF Loan Fee would accrue from the effective date of the ETF Loan Fee until the Loan Transaction is terminated.

Upon effectiveness of amendments to the Trusts' depository trust agreements and Commission approval of this proposed rule change, and after sixty days' notice to shareholders (the ''ETF Loan Fee Effective Date''), holders of Shares would be prohibited from lending Shares or selling Shares subject to an agreement to repurchase, without notifying BNY Mellon, as the ETF Loan Fee collection agent of the Trusts (the ''Loan Fee Collection Agent''),[17] and agreeing to pay the ETF Loan Fee. Self-reporting to the Loan Fee Collection Agent would be made by a shareholder's custodian, broker-dealer or lending agent via a web portal and would not require identification of the individual shareholder.

The ETF Loan Fee is expected to equal Guggenheim's management fee on a per Share basis.[18] Guggenheim has asserted that it is not permitted to contribute revenue collected via the ETF Loan Fee to the Trusts, but has stated that it intends to offset all fees received against management fees otherwise owed to it by the Trusts.

To facilitate administration and collection of the ETF Loan Fee, Guggenheim intends to engage Precidian to serve as Administrator of the ETF Loan Fee. Once the ETF Loan Fee Collection Agent is notified of a transaction subject to the ETF Loan Fee, it would convey such information to Precidian, which would accrue the ETF Loan Fee on a daily basis and report it to each Trust. On a monthly basis, Precidian or its agent would bill Depository Trust & Clearing Corporation (''DTCC'') participants based on their loan transactions or the loan transactions of their clients and distribute the net ETF Loan Fee to Guggenheim.[19]

Given that the proposed ETF Loan Fee is equal to the annual management fee, the proposed ETF Loan Fee should not affect the market in the Shares, including market makers' ability to arbitrage. If, for example, FXE Shares are trading at a premium to euros, an arbitrageur, in an attempt to profit from the difference between the price of a euro and a Share of FXE, could sell FXE short, simultaneously buy euros, exchange euros for one or more Baskets of 50,000 FXE Shares, and then close out the short position with the Basket or Baskets of FXE Shares. To minimize market risk, an arbitrageur typically would not carry a position in to the next trading day. Thus, because the short position was closed out the same day, the arbitrageur would not incur the ETF Loan Fee. If FXE Shares are trading at a discount to euros, an arbitrageur could buy one or more Baskets of FXE Shares and simultaneously sell euros short, redeem the FXE Shares for euros at the end-of-day NAV, and close out the euro short position with the euros received on redemption. In this case, because the arbitrageur did not acquire a short position in FXE Shares, no ETF Loan Fee would be incurred.

The Exchange also notes that market makers can create new Shares and redeem Shares if needed to facilitate market making activity.

The Exchange believes that the Strategy has had a negative impact on shareholders who do not lend their Shares because lenders of Shares maintain a long exposure to the Trust while profiting from a Strategy that eliminates the assets in trust against which a management fee is assessed. These lenders are freeriding on the management fee paid by those shareholders that do not lend Shares.

As a consequence of the Strategy, the issuer cannot achieve economies of scale necessary to reduce management fees charged to shareholders, which are being paid only by those shareholders who do not lend their Shares. Assessing the ETF Loan Fee would have a positive impact on shareholders that do not lend their Shares because the ETF Loan Fees collected would be used to offset Trust expenses, bringing down the management fee.

The ETF Loan Fee would eliminate the economic incentive for market participants to engage in the Strategy. Market participants could still sell FXE and FXY short, but the Traders who borrow those Shares would not be subsidized by those shareholders who do not lend their Shares. Eliminating the economic distortion created by the Strategy, would facilitate pricing of FXE and FXY on parity with the underlying asset (*i.e.,* euros or yen).

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)[20] that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Sponsor has represented that short interest in Shares of the Euro Trust exceeded the number of outstanding Shares by a ratio of 2.6 to 1 as of March 27, 2015. Short interest in the Shares of the Yen Trust was 1.6 to 1 as of March 27, 2015. Because of this large short interest, Guggenheim asserts that it is difficult to borrow Shares and, thus, the cost of borrowing Shares increases. The ETF Loan Fee would make the Strategy less economically desirable and, therefore, would be expected to reduce costs associated with borrowing of Shares by market participants engaged in short selling.[21]

In addition, the Sponsor has stated an intention to credit ETF Loan Fees that it receives against management fees otherwise owed to it by the Trusts and other Trust-related expenses, which will inure to the benefit of Beneficial Owners of Shares.

The Exchange notes that the ETF Loan Fee, as described above, would be imposed on Loaning Shareholders at an annual rate of 0.40% (or such lower annual nominal rate as may be determined by the Sponsor from time to time). The imposition of the ETF Loan Fee is not expected to have a significant impact on the market for the Shares.

The Exchange believes that the proposed rule change is designed to prevent abusive and manipulative acts and practices in that the ETF Loan Fee is not expected to have a disparate impact on the arbitrage mechanics as they relate to the Shares and should not impact market makers' ability to arbitrage. As noted above, to minimize market risk, an arbitrageur, in connection with an arbitrage transaction, typically would not carry a position in to the next trading day, and, because a short position would be

[16] *See* note 14, *supra.*

[17] Holders will be required to notify the Loan Fee Collection Agent at the inception and termination of all Share lending and repurchase transactions. Each Trust's Web site will specify the form and manner of delivery for notices to the Loan Fee Collection Agent.

[18] Guggenheim has informed the Exchange that it expects the ETF Loan Fee to be 40 basis points per annum.

[19] As a fee of the Trusts, the administration and collection of the ETF Loan Fee would be the responsibility of the Sponsor, the Loan Fee Administrator and the Loan Fee Collection Agent. The Exchange would have no role in such administration or collection and would not monitor the billing, collection or payment of the ETF Loan Fee with respect to any market participant.

[20] 15 U.S.C. 78f(b)(5).

[21] The Sponsor has represented that, because of the large number of short positions in Shares, FXE and FXY are consistently hard to borrow securities. The cost of borrowing hard to borrow securities is generally higher than the cost to borrow easy to borrow securities. The Sponsor believes that imposition of the Loan Fee will cause a large reduction in the outstanding short positions, thereby potentially reducing the cost of borrowing even after payment of the Loan Fee.

closed out the same day, the arbitrageur would not incur the ETF Loan Fee. If an arbitrageur did not acquire a short position in the Shares in connection with an arbitrage transaction, no ETF Loan Fee would be incurred. In addition, market makers can create and redeem Shares if needed to facilitate market making activity.

The ETF Loan Fee is intended to eliminate the economic incentive for market participants to short sell FXE and FXY that the Management Fee Decay creates. The ETF Loan Fee would be imposed only on market participants that have made the business decision to assume and maintain a short position in the Shares. The Exchange notes that short positions can be closed out by creating new Shares pursuant to applicable FXE and FXY creation procedures. Market participants could avoid imposition of the ETF Loan Fee by creating new Shares to cover short positions.

The Exchange believes that imposition of the ETF Loan Fee would not materially impact trading of the Shares. The 40 basis point management fee currently is assessed against assets in the Trust. Like fees of other pooled investments, the accrued management fee is deducted from the NAV calculated daily. A long position in the CurrencyShares Euro Trust, for example, represents a long exposure to euros and a simultaneous short exposure to U.S. dollars. Conversely, a short position in the CurrencyShares Euro Trust represents a short exposure to euros and a simultaneous long exposure in U.S. dollars. As a given currency must be priced in terms of a different currency (that is, if priced in its own currency, the currency will always equal itself whether it appreciates or declines), for a Trust, entering a long position is economically similar to entering a short position in so far as both positions effectively constitute a simultaneous long and a short position of one of the applicable currencies in the cross rate. One side (*i.e.,* the long side) of these mirrored positions already imposes a 40 basis point management fee. Because the long and short positions would be symmetrical after imposition of the ETF Loan Fee, the imposition of a 40 basis points fee on short positions would not be expected to have a different market impact from that resulting from the current management fee.

The proposed rule change is designed to promote just and equitable principles of trade and to perfect the mechanism of a free and open market and to protect investors and the public interest. According to the Sponsor, the ETF Loan Fee is not expected to negatively affect short selling generally, but rather only affect certain types of short selling activities conducted by certain market participants (namely the Strategy) at the expense of long investors. As a result of imposing the ETF Loan Fee, the Sponsor anticipates that more Shares will be available for lending which is expected to reduce the overall cost of lending and borrowing the Shares and positively affect liquidity to the benefit of investors and the public interest. As noted above, the Sponsor believes the ETF Loan Fee would benefit the Trusts and Beneficial Owners because ETF Loan Fee proceeds received (net of amounts retained by the Loan Fee Administrator and Loan Fee Collection Agent) would be used to offset management fees. The Exchange believes that the ETF Loan Fee promotes just and equitable principles of trade because it is intended to reflect the cost to the Trusts and Beneficial Owners of the Strategy. Because the Sponsor will reduce management fees owed to it by the Trusts in amounts equal to the net ETF Loan Fees collected, investors and the public should be positively affected.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The purpose of the ETF Loan Fee is to reduce borrowing costs by reducing short interest in the Shares, which currently far exceeds the number of Shares outstanding. In addition, the Exchange notes that ETF Loan Fee proceeds received (net of amounts retained by the Loan Fee Administrator and Loan Fee Collection Agent) would be used to offset management fees. The ETF Loan Fee will be imposed only on market participants that have made the business decision to assume and maintain a short position in the Shares, which short positions can be closed out by creating new Shares pursuant to applicable FXE and FXY creation procedures.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others [22]

On August 21, 2013, NYSE Regulation, Inc. issued a Regulatory Bulletin (RB–13–72 or ''Regulatory Bulletin'') requesting comment on the proposed ETF Loan Fee.[23] Comment was requested on the following issues, as discussed further below: (1) Regulation SHO and short selling; (2) impact on arbitrage of the ETF Loan Fee and impact on administration of the Trusts; (3) fair application of the ETF Loan Fee; (4) logistical matters; and (5) general matters regarding application and implementation of the ETF Loan Fee.

1. *Regulation SHO and Short Selling.* NYSE Regulation requested comment as to whether the proposed ETF Loan Fee is consistent with, and in furtherance of, the purposes of Regulation SHO,[24] and, specifically, whether the proposed ETF Loan Fee would serve as a disincentive to short selling; whether the proposed ETF Loan Fee would make it more difficult for market participants to satisfy the ''locate'' requirement of Regulation SHO or increase the likelihood of failed deliveries; and, given that Shares can be created on any day and liquidity is therefore not dependent upon borrowing Shares, whether the proposed ETF Loan Fee would negatively impact trading in the securities or impede market making.

The Exchange received two comment letters in response to RB–13–72. In a letter dated September 23, 2013, the Securities Industry and Financial Markets Association (''SIFMA'') stated its belief that imposition of the ETF Loan Fee would raise significant legal, regulatory, logistical and trading issues.[25]

In a letter dated September 20, 2013, Precidian stated that, notwithstanding that shares of exchange-traded funds can be created at will, thereby eliminating the need to fail on settlement, ETFs have substantially larger short interest than traditional corporate issuers because of the

[22] *See* Form 19b–4, sections 5 and 11; *see also* Exhibits 2a (Regulatory Bulletin RB–13–17) and 2b (Precidian Letter and SIFMA Letter, each as defined herein) to the proposed rule change. Although the Exchange failed to transcribe this Item II.C in its Exhibit 1, the following summary of the comments it received on the proposed rule change is as prepared and submitted by the Exchange on its Form 19b–4.

[23] *See* Regulatory Bulletin RB–13–72, dated August 21, 2013, from NYSE Regulation, Inc. to all NYSE Arca, Inc. Equity Trading Permit Holders and Issuers with Securities Listed on NYSE Arca, Inc.

[24] Rule 203(b)(1) of Regulation SHO, 17 CFR 242.203(b)(1), requires broker-dealers, prior to accepting a short sale order in an equity security from another person, or effecting a short-sale in an equity security for their own account, to borrow the security, enter into a bona-fide arrangement to borrow the security, or have reasonable grounds to believe that the security can be borrowed so that such security can be delivered on the date delivery is due.

[25] *See* letter dated September 23, 2013 from Theodore R. Lazo, Managing Director and Associate General Counsel, SIFMA, and Kyle Brandon, Managing Director, Director of Research, SIFMA, to John Carey, Vice President—Legal, NYSE Regulation, Inc. (''SIFMA Letter'').

Management Fee Decay described in RB–13–72.[26] Precidian stated that this decay meant that persons short selling ETF shares have an economic advantage over persons short selling shares of other issuers. Precidian stated that the inherent decay in the price of ETF shares in relation to the underlying basket of securities is unique and that, as Precidian understands the ETF Loan Fee proposal, the ETF Loan Fee is designed to put short sellers of ETF shares on equal footing with short sellers of other types of securities, and, as such, would not seem to be in conflict with the purposes of Regulation SHO. Moreover, the ability of market participants to create shares at will provides an unlimited number of shares that can be located and borrowed. Precidian stated that market making would not be impacted by the ETF Loan Fee since market makers are not required to locate securities before short selling and can create or redeem shares at will, and therefore are capable of limiting their risk.

2. *Impact on arbitrage/administration of the Trusts.* The Regulatory Bulletin requested comment on any perceived impact that application of the ETF Loan Fee will have upon arbitrage or administration of the Trusts; any possible impact on creation/redemption or arbitrage mechanisms; whether the ETF Loan Fee would impact any relief granted by the Commission's 2006 Commodity-Based Investment Vehicle Class Letter[27] or the 2005 Euro Trust Letter,[28] including with respect to Regulation M under the Act; and, given that the proposed ETF Loan Fee is approximately 1/7 per Share per day[29] and the current creation/redemption fee for Shares of the Trusts is 1 cent per Share for the first 250,000 Shares, whether the proposed ETF Loan Fee would have a disparate impact on the market compared to the creation/redemption fee.

In the Precidian Letter, Precidian stated that the proposed ETF Loan Fee is only a fraction of the amount of the creation and redemption fee, and, therefore, would presumably have far less impact on arbitrage than the creation and redemption fee itself. Any market participant seeing that Shares are trading above indicative intraday value will immediately sell shares, which will move the price back to its normal value, at which point the market participant will buy the shares back. Precidian stated that such a trade does not involve any type of arbitrage.

3. *Fair application of the ETF Loan Fee.* The Regulatory Bulletin stated that successful implementation and collection of the ETF Loan Fee requires shareholders to self-report Share lending and repurchase activity to the Loan Fee Collection Agent. The Regulatory Bulletin requested comment as to whether reliance upon a self-reporting process is appropriate to ensure that the ETF Loan Fee is collected fairly and appropriately. Additionally, the Regulatory Bulletin requested comment as to whether a fee based upon self-reporting compliance (and where the only recourse for non-compliance is the collections process) is consistent with section 6(b)(5) of the Act.

The Precidian Letter states that, as Precidian understands the issue Guggenheim is trying to address, sophisticated market participants are taking advantage of the decay inherent in ETF shares to the disadvantage of fund managers, service providers and shareholders. Precidian believes the lack of a procedure permitting an ETF Loan Fee is inconsistent with the objectives of section 6(b)(5) of the Act in that the current situation (whereby certain market participants are implementing the Strategy, as described above) is inconsistent with the public interest and permits discrimination between sophisticated investors (who can take advantage of the situation) and the general public.

4. *Logistical Matters.* The Regulatory Bulletin requested comment on any identifiable logistical issues with respect to the implementation and collection of the ETF Loan Fee, including additional burdens, if any, that imposition of the ETF Loan Fee would impose upon market participants (including, for example, implementation of procedures relating to systems, reporting, data collection and record keeping).

In the Precidian Letter, Precidian stated that it did not see any meaningful additional burden that imposition of the ETF Loan Fee would impose on shareholders.

5. *General Matters.* The Regulatory Bulletin requested comment on whether market participants agree that the Strategy enables Traders to profit from Management Fee Decay, and, specifically, whether Traders have the ability to profit from the reduction in value of the Shares resulting from the Management Fee Decay while maintaining a riskless, fully hedged position. The Regulatory Bulletin also requested comment on whether certain types of exchange-traded products are particularly susceptible to the Strategy and, if so, whether the proposed ETF Loan Fee would be appropriate only for such securities; whether it would impact the Strategy; whether and how the Strategy is beneficial or detrimental to the market for the Shares, including with respect to any impact on asset growth and on short selling generally; whether the proposed ETF Loan Fee would be effective in discouraging the Strategy; and how the proposed ETF Loan Fee could or could not be viewed as a burden on competition not necessary in furtherance of the Act and is consistent with section 6(b) of the Act.

In the SIFMA Letter, SIFMA stated its belief that the ETF Loan Fee is potentially inconsistent with the requirements of section 6(b)(5) of the Act. SIFMA also questioned the description of the underlying strategy cited by Guggenheim as the basis for its request, as well as the assertion that the Strategy is only available to professional investors. For example, it said, the description of the Strategy does not seem to account for the cost associated with the borrowing of the ETF.

In the Precidian Letter, Precidian stated that the existence of large short positions that exceed the number of shares outstanding negatively affects the market by making it far more expensive for legitimate short sellers to borrow shares. The proposed ETF Loan Fee should actually reduce the cost of borrowing ETF shares by eliminating the artificial demand to borrow shares. The proposed ETF Loan Fee should eliminate the profit in the Strategy and therefore will eliminate the practice for the Trusts. The Strategy negatively impacts the ability of market participants that want to maintain a net short position, as opposed to a fully-hedged position, by making it more expensive to borrow Shares. Precidian stated that the ability of market participants to implement the Strategy and the current inability of fund sponsors to protect themselves from the negative impact of the Strategy is a burden on competition that is inconsistent with the Act.

[26] *See* letter dated September 20, 2013 from Daniel J. McCabe, President, Precidian Funds, LLC, to John Carey, Vice President—Legal, NYSE Regulation, Inc. (''Precidian Letter'').

[27] *http://www.sec.gov/divisions/marketreg/mr-noaction/currencyshares062106-10a1.pdf.*

[28] *http://www.sec.gov/divisions/marketreg/mr-noaction/eurocurrency120505.htm.*

[29] The representation regarding the proposed Loan Fee being approximately 1/7 per Share per day was as of the August 21, 2013 date of the Regulatory Bulletin. As noted above, the ETF Loan Fee for Shares of the Euro Trust would be approximately 1/8 cent per Share per day and for Shares of the Yen Trust would be approximately 1/11 cent per Share per day as of March 27, 2015.

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 up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve or disapprove the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEArca–2015–68 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–2015–68. 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 Section, 100 F Street NE., Washington, DC 20549 on official business days between 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEArca–2015–68 and should be submitted on or before September 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Robert W. Errett,

Deputy Secretary.

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[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–75703; File No. SR–NYSEMKT–2015–63]

Self-Regulatory Organizations; NYSE MKT LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Modifying the NYSE Amex Options Fee Schedule

August 14, 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 August 6, 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, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to modify the NYSE Amex Options Fee Schedule (''Fee Schedule''). The Exchange proposes to implement the fee change effective August 6, 2015. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this filing is to amend the Firm Monthly Fee Cap to establish tiers, effective on August 6, 2015.

The Exchange is proposing to modify Section I.I. of the Fee Schedule to establish tiers for the Firm Monthly Fee Cap that are tied to tiers achieved in the Exchange's Amex Customer Engagement (''ACE'') Program.[4] Currently, the Exchange places a limit, or cap, of $100,000 per month on fees incurred by Firms trading though a Floor Broker in open outcry or QCC (''Manual Transactions'').[5] The Exchange is proposing to add tiered caps which correspond to tiers achieved in the ACE Program. Specifically, the higher the ACE Tier attained, the lower the cap on fees for applicable Manual Transactions.

The proposed Firm Monthly Fee Cap tiers are set forth in the table below:

ACE Tier	Firm fee cap
1	$100,000
2	85,000
3	75,000
4	70,000
5	65,000

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with

[4] *See* Fee Schedule, section I.E. (describing ACE Program), *available at, https://www.nyse.com/publicdocs/nyse/markets/amex-options/NYSE_Amex_Options_Fee_Schedule.pdf.*

[5] Fees or volumes associated with a Strategy Execution described in section I.J., (*e.g.,* reversal and conversion, box spread, short stock interest spread, merger spread and jelly roll) are not counted toward the $100,000 cap. Royalty Fees are charged at the rates described in section I.K., and do not count toward the $100,000 fee cap. Firm Facilitation Manual trades are executed at the rate of $0.00 per contract regardless of whether a Firm has reached the $100,000 cap or not. *See* Fee Schedule, section I.I.

section 6(b) of the Act,[6] in general, and furthers the objectives of sections 6(b)(4) and (5) of the Act,[7] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange believes that the proposed change to institute tiered caps to the Firm Monthly Fee Cap is reasonable, equitable and not unfairly discriminatory because the tiers are based on the amount of business transacted on the Exchange. In addition, the Exchange believes that the proposed amendment is reasonable, equitable and not unfairly discriminatory because it would enhance the incentives for ACE Program participants who use Manual Transactions to execute those transactions on the Exchange, which would benefit all ATP Holders. Additionally, the Exchange believes the proposed changes are consistent with the Act because the proposal could incentivize additional ATP Holders to participate in the ACE Program, and (for those that already do) to achieve higher ACE tiers which may attract greater volume and liquidity to the Exchange, which would benefit all market participants by providing tighter quoting and better prices, all of which perfects the mechanism for a free and open market and national market system.

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,[8] the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed amendments to the Firm Monthly Fee Cap are pro-competitive as the fees are to incentivize increases in volume and liquidity to the Exchange which would benefit all of [*sic*] Exchange participants through increased opportunities to trade as well as enhancing price discovery.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other 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

The foregoing rule change is effective upon filing pursuant to section 19(b)(3)(A)[9] of the Act and subparagraph (f)(2) of Rule 19b–4[10] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under section 19(b)(2)(B)[11] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSEMKT–2015–63 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–2015–63. This file number should be included on the subject line if email is used.

To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing will also be available for inspection and copying at the NYSE's principal office and on its Internet Web site at *www.nyse.com.* All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NYSEMKT–2015–63, and should be submitted on or before September 10, 2015.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Robert W. Errett,

Deputy Secretary.

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[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] 15 U.S.C. 78f(b)(8).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] 15 U.S.C. 78s(b)(2)(B).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

In the Matter of Internal Fixation Systems, Inc., File No. 500–1; Order of Suspension of Trading

August 18, 2015.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Internal Fixation Systems, Inc. (CIK No. 1501732) (''IFIXQ''[1]), a dissolved Florida corporation with its principal place of business listed as South Miami, Florida, with stock quoted on OTC Link

[1] The short form of the issuer's name is also its ticker symbol.

(previously, ''Pink Sheets'') operated by OTC Markets Group Inc., because it has not filed any periodic reports since the period ended June 30, 2012. On April 28, 2015, a delinquency letter was sent by the Division of Corporation Finance to IFIXQ at the address shown in its then-most recent Commission filing requesting compliance with its periodic reporting obligations, but it did not receive the delinquency letter due to its failure to maintain a valid address on file with the Commission as required by Commission rules (Rule 301 of Regulation S–T, 17 CFR 232.301 and Section 5.4 of the EDGAR Filer Manual).

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-named company. Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of the above-named company is suspended for the period from 9:30 a.m. EDT on August 18, 2015, through 11:59 p.m. EDT on August 31, 2015.

By the Commission.

Robert Errett,

Deputy Secretary.

[FR Doc. 2015–20684 Filed 8–18–15; 4:15 pm]

BILLING CODE 8011–01–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting Notice

Meeting No. 15–03

The TVA Board of Directors will hold a public meeting on August 21, 2015, in the TVA West Tower Auditorium, 400 West Summit Hill Drive, Knoxville, Tennessee. The public may comment on any agenda item or subject at a *public listening session* which begins at 8:30 a.m. (ET). Following the end of the public listening session, the meeting will be called to order to consider the agenda items listed below. On-site registration will be available until 15 minutes before the public listening session begins at 8:30 a.m. (ET). Preregistered speakers will address the Board first. TVA management will answer questions from the news media following the Board meeting.

Status: Open.

Agenda

Chair's Welcome

Old Business

Approval of minutes of the May 7, 2015, Board Meeting

New Business

1. Report from President and CEO
2. Report of the External Relations Committee
   A. Integrated Resource Plan
3. Report of the Finance, Rates, and Portfolio Committee
   A. FY 2016 financial plan and budget
   B. Financing authority
   C. Rate adjustment/fuel cost adjustment
   D. Rate and product changes
4. Report of the Audit, Risk, and Regulation Committee
   A. FY 2016 external auditor selection
   B. Billing adjustment policy
   C. Local rate adjustment process
5. Report of the People and Performance Committee
   A. Corporate goals
6. Report of the Nuclear Oversight Committee
7. Chair Report
   A. Committee assignments
8. Information Items
   A. Raccoon Mountain insurance settlement
   B. Power supply and related arrangements with an industrial customer
   C. Power supply and related arrangements with an industrial customer

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: August 14, 2015.

Clifford L. Beach,

Associate General Counsel.

[FR Doc. 2015–20558 Filed 8–18–15; 4:15 pm]

BILLING CODE 8120–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2015–52]

Petition for Exemption; Summary of Petition Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Title 14, Code of Federal Regulations (14 CFR). The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of the FAA's regulatory activities. 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 involved and must be received on or before September 9, 2015.

ADDRESSES: You may send comments identified by docket number FAA–2015–3086 using any of the following methods:

- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments digitally.
- *Mail:* Send comments to the Docket Management Facility; U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building Ground Floor, Room W12–140, Washington, DC 20590.
- *Fax:* Fax comments to the Docket Management Facility at 202–493–2251.
- *Hand Delivery:* Bring comments to the Docket Management Facility 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.

Privacy: We will post all comments we receive, without change, to *http://www.regulations.gov,* including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78).

Docket: To read background documents or comments received, go to *http://www.regulations.gov* at any time or to the Docket Management Facility 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: Deana Stedman, ANM–113, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, email *deana.stedman@faa.gov,* phone (425) 227–2148; or Sandra Long, ARM–200, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, email *sandra.long@faa.gov,* phone (202) 493–

5245. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on August 14, 2015.

Lirio Liu,

Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2015–3086.

Petitioner: The Boeing Company.

Section of 14 CFR Affected: §§ 25.901(c) and 25.981(a)(3).

Description of Relief Sought: Petitioner seeks an exemption from the requirements of 14 CFR 25.901(c) Amendment 25–126 and 25.981(a)(3) Amendment 25–125 to allow planned type design changes to the center wing tank Fuel Quantity Indication System (FQIS) fuselage wiring installation on Model 767–300F and 767–200/300BCF airplanes.

[FR Doc. 2015–20612 Filed 8–19–15; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice of Final Federal Agency Actions on Proposed Highway in California

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of limitation on claims for judicial review of actions by the California Department of Transportation (Caltrans), pursuant to 23 U.S.C. 327 and other Federal agencies.

SUMMARY: The FHWA, on behalf of Caltrans, is issuing this notice to announce actions taken by Caltrans, that are final within the meaning of 23 U.S.C. 139(*l*)(1). The actions relate to a proposed highway project on northbound Interstate 680 from south of State Route (SR) 237 (Calaveras Boulevard) to north of SR 84 (Vallecitos Road) in or near the cities of Milpitas, Fremont, and Pleasanton, and the community of Sunol in Santa Clara and Alameda Counties in the State of California. Those actions grant licenses, permits, and approvals for the project.

DATES: By this notice, the FHWA, on behalf of Caltrans, is advising the public of final agency actions subject to 23 U.S.C. 139(*l*)(1). A claim seeking judicial review of the Federal agency actions on the highway project will be barred unless the claim is filed on or before January 19, 2016. If the Federal law that authorizes judicial review of a claim provides a time period of less than 150 days for filing such claim, then that shorter time period still applies.

FOR FURTHER INFORMATION CONTACT: For Caltrans: Wahida Rashid, Branch Chief, Office of Environmental Analysis, Ill Grand Avenue, Oakland, CA 94612, during normal business hours from 9 a.m. to 4 p.m., telephone (510) 286–5935, or email *wahida.rashid@dot.ca.gov.* For USFWS: John Cleckler, Caltrans Liaison, U.S. Fish and Wildlife Service, 2800 Cottage Way, Suite W–2605, Sacramento, CA 95825–1846, (916) 414–6600, email *john cleckler@fws.gov.*

SUPPLEMENTARY INFORMATION: Effective July 1, 2007, the Federal Highway Administration (FHWA) assigned, and the California Department of Transportation (Caltrans) assumed, environmental responsibilities for this project pursuant to 23 U.S.C. 327. Notice is hereby given that Caltrans has taken final agency actions subject to 23 U.S.C. 139(*l*)(1) by issuing licenses, permits, and approvals for the 1–680 Northbound HOV/Express Lane project in the State of California: The project proposes an approximately 15-mile HOV/express lane from south of SR 237 (post mile 6.5) in Santa Clara County to north of SR 84 (post mile 12.4) in Alameda County. The HOV/express lane would be a specially-designated freeway lane that is free for carpools and other eligible users, but also gives single-occupancy-vehicles the option to pay tolls to use the HOV/express lane. The actions by the Federal agencies, and the laws under which such actions were taken, are described in the Final Environmental Assessment (EA)/Finding of No Significant Impact (FONSI) for the project, approved on July 28, 2015. The EAIFONSI, and other project records are available by contacting Caltrans at the address provided above. The Caltrans EA and FONSI can be viewed and downloaded from the project Web site at *http://www.dot.ca.gov/dist4/envdocs.htm.*

The USFWS decision and Biological Opinion are available by contacting USFWS at the address provided above. This notice applies to all Federal agency decisions as of the issuance date of this notice and all laws under which such actions were taken, including but not limited to

1. Council on Environmental Quality Regulations
2. National Environmental Policy Act of 1969, as amended, 42 U.S.C. 4321 *et seq.*
3. Executive Order 12898, Federal Actions to Address Environmental Justice and Low-Income Populations
4. Title VI of the Civil Rights Act of 1964, as amended
5. National Historic Preservation Act (NHPA) of 1966, as amended
6. Executive Order 11988, Floodplain Management
7. Clean Water Act of 1977 and 1987
8. Federal Clean Air Act
9. Federal-Aid Highway Act of 1970 (23 CFR 772)
10. Federal Endangered Species Act
11. Migratory Bird Treaty Act
12. Executive Order 13112, Invasive Species

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Authority: 23 U.S.C. 139(*l*)(1)

Matthew Schmitz,

Director, Project Delivery, Federal Highway Administration, Sacramento, California.

[FR Doc. 2015–20559 Filed 8–19–15; 8:45 am]

BILLING CODE 4910–RY–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Notice To Rescind Notice of Intent To Prepare Environmental Impact Statement, Interstate 64 Hampton Roads Bridge-Tunnel Corridor, Virginia

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice to rescind Notice of Intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Highway Administration is issuing this notice to advise the public that FHWA is rescinding its Notice of Intent to prepare an Environmental Impact Statement for Interstate 64 Hampton Roads Bridge-Tunnel Corridor proposal in Virginia.

FOR FURTHER INFORMATION CONTACT: Edward Sundra, Director of Program Development, Federal Highway Administration, 400 North 8th Street, Suite 750, Richmond, VA 23219; email: *Ed.Sundra@dot.gov*; (804) 775–3357.

SUPPLEMENTARY INFORMATION: A Notice of Intent to prepare an Environmental Impact Statement for the Interstate 64 Hampton Roads Bridge-Tunnel Corridor proposal was published in the **Federal Register** in 2011 (76 FR 29290, May 20, 2011). The Draft Environmental Impact Statement was issued in December 2012, and public hearings were held shortly thereafter. Public and agency comments and concerns over the magnitude of potential environmental impacts to a variety of resources, such as impacts to historic resources as well

as communities and neighborhoods, led to a preferred alternative not being identified and work was not conducted to advance the study further. Accordingly, FHWA is rescinding the Notice of Intent to prepare an Environmental Impact Statement for the Interstate 64 Hampton Roads Bridge-Tunnel Corridor proposal in Virginia. The Interstate 64 crossing of Hampton Roads is one alternative being studied as part of the Hampton Roads Crossing Study Supplemental Environmental Impact Statement, which is looking at alternatives over a much larger study area. A Notice of Intent to prepare that Supplemental Environmental Impact Statement was published in the **Federal Register** in June (80 FR 36038, June 23, 2015).

Authority: 23 U.S.C. 315; 23 CFR 771.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Edward Sundra,

Director of Program Development, Federal Highway Administration, Richmond, Virginia.

[FR Doc. 2015–20515 Filed 8–19–15; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0262]

Hours of Service of Drivers; National Star Route Mail Contractors Association; Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from the National Star Route Mail Contractors Association (NSRMCA) on behalf of its member motor carriers that transport mail under contract for the United States Postal Service (USPS). NSRMCA requests that its contract carriers be exempt from the ''14-hour rule'' of the Agency's hours-of-service regulations found in section 395.3(a)(2). NSRMCA specifically requests that a U.S. mail-carrying driver may elect to drive a U.S. mail-carrying commercial motor vehicle (CMV) no more than 10 hours following 8 consecutive hours off duty; and not drive after having been on duty 15 hours following 8 consecutive hours off duty. NSRMCA believes the exemption would positively impact safety, while reducing operating costs for USPS and contractors that provide Highway Contract Route services to the USPS. FMCSA requests public comment on the NSRMCA application for exemption.

DATES: Comments must be received on or before September 21, 2015.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2015–0262 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m. E.T., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the *Public Participation* heading below. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided. Please also see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Public participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Clemente, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations (FMCSRs). Before doing so, the Agency must provide an opportunity for public comment. The Agency is required to publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)), providing the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted, and to comment on the request. FMCSA must review the safety analyses and public comments submitted and determine whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The Agency must publish its decision in the **Federal Register** (49 CFR 381.315(b)) and state the reasons for denying or granting the application. If the exemption is granted, the notice must include the name of the person or entity, or class of persons, receiving the exemption, and the regulation from which the exemption is granted. The notice must also specify the effective period of the exemption and state the terms and conditions of the exemption, if any. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

NSRMCA is a national trade association representing contractors transporting mail for the United States Postal Service (USPS). The NSRMCA represents contractors in all 50 States as well as U.S. territories. The NSRMCA's interest is in the safe and efficient delivery of U.S. mail. NSRMCA members employ drivers who are regulated by the FMCSA hours-of-service (HOS) regulations, and they submitted their request for exemption on behalf of all motor carriers that meet the terms specified within the request.

NSRMCA is seeking an exemption from the ''14-hour rule'' in 49 CFR 395.3(a)(2), which prohibits a property-

carrying CMV driver from driving a CMV after the 14th hour after coming on duty following 10 consecutive hours off duty. Under NSRMCA's proposal, they request that a U.S. mail-carrying driver may elect to drive a U.S. mail-carrying CMV no more than 10 hours following 8 consecutive hours off duty; and not drive after having been on duty 15 hours following 8 consecutive hours off duty.

Many of NSRMCA's member carriers and drivers work in ''split-shift'' operations. Their Highway Contract Routes involve the distribution of mail from a central processing facility to U.S. Post Offices in the morning. In the afternoon, U.S. mail collected by these same U.S. Post Offices is picked up and delivered to a central USPS processing facility. A typical day for a NSRMCA driver involved in the distribution of mail from a central processing facility starts early morning and ends 4 hours later at the last U.S. Post Office on the route. The return route typically starts 9 hours later at this same U.S. Post Office, collecting received mail at each U.S. Post Office on the route and delivering to the USPS central processing facility 4 hours later. A typical driver will have worked 8 hours, with a 9-hour break during the day between outbound and inbound routes, and a 7-hour break overnight. Neither of these breaks meets the required 10 consecutive hours break (*i.e.,* off-duty or sleeper-berth time) as required in section 393.3(a)(1) in the FMCSRs. Their drivers typically spend a great part of their 14-hour ''driving window'' not driving; however, their schedules as detailed above necessitate NSRMCA's request for this exemption.

The NSRMCA conducted a survey of its membership to determine who would be interested in using the proposed exemption. Twenty-two member motor carriers—who employ 1,834 drivers—replied that they would be interested in utilizing the proposed exemption. These motor carriers operate a total of 1,175 vehicles, 507 of which are used in ''split-shift'' operations.

NSRMCA believes the exemption would achieve a level of safety equivalent to, or greater than, the level of safety obtained under the current ''14-hour rule'', which prohibits operators of property-carrying CMVs from driving after the 14th hour of coming on duty. They believe that this exemption—if granted—would positively impact safety, while reducing operating costs for the USPS and contractors that provide Highway Contract Route services to the USPS. To qualify for this exemption, NSRMCA proposes the following four conditions: (1) A driver must have a rest opportunity; (2) motor carriers operating under this exemption must have a ''Satisfactory'' safety rating, or be unrated; (3) motor carriers operating under this exemption must have Safety Management System (SMS) scores below FMCSA's intervention thresholds; and (4) motor carrier representatives must participate in annual education, focusing on safety rating and regulatory compliance within the mail contracting environment.

According to NSRMCA, operating under the proposed exemption would be safer than operating under the current FMCSRs, as drivers will spend less total time performing all tasks related to their employment. Furthermore, drivers and vehicles will travel less distance performing the same volume of work, thereby improving safety performance. A copy of the application for exemption is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on NRSMCA's application for an exemption from the ''14-hour rule'' requirement of 49 CFR 395.3(a)(2). The Agency will consider all comments received by close of business on September 21, 2015. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice.

Issued on: August 13, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–20568 Filed 8–19–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2015–0261

Hours of Service of Drivers: CRST Expedited Inc., Application for Exemption

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: FMCSA announces that it has received an application from CRST Expedited, Inc. (CRST) for an exemption from certain provisions of the Agency's hours-of-service (HOS) regulations. CRST proposes that its team drivers be granted an exemption from the HOS rules pertaining to use of a sleeper berth (SB). Current HOS rules require that all SB rest regimens include, in part, the regular use of a SB period for at least 8 hours—combined with a separate period of at least 2 hours, either in the SB, off-duty or some combination of both—to gain the equivalent of at least 10 consecutive hours off duty. CRST proposes that its team drivers be allowed to take the equivalent of 10 consecutive hours off duty by splitting SB time into two periods totaling 10 hours, provided neither of the two periods is less than 3 hours. FMCSA requests public comment on CRST's application for exemption.

DATES: Comments must be received on or before September 21, 2015.

ADDRESSES: You may submit comments identified by Federal Docket Management System Number FMCSA–2015–0261 by any of the following methods:

- *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments and additional information on the exemption process, see the *Public Participation* heading below. Note that all comments received will be posted without change to *www.regulations.gov,* including any personal information provided. Please see the *Privacy Act* heading below.

Docket: For access to the docket to read background documents or comments received, go to *www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Public participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''help'' section of the Federal

eRulemaking Portal Web site. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online.

FOR FURTHER INFORMATION CONTACT: Ms. Pearlie Robinson, FMCSA Driver and Carrier Operations Division; Office of Carrier, Driver and Vehicle Safety Standards; Telephone: 202–366–4325. Email: *MCPSD@dot.gov.* If you have questions on viewing or submitting material to the docket, contact Docket Services, telephone (202) 366–9826.

SUPPLEMENTARY INFORMATION:

Background

FMCSA has authority under 49 U.S.C. 31136(e) and 31315 to grant exemptions from certain parts of the Federal Motor Carrier Safety Regulations. FMCSA must publish a notice of each exemption request in the **Federal Register** (49 CFR 381.315(a)). The Agency must provide the public an opportunity to inspect the information relevant to the application, including any safety analyses that have been conducted. The Agency must also provide an opportunity for public comment on the request.

The Agency reviews safety analyses and public comments submitted, and determines whether granting the exemption would likely achieve a level of safety equivalent to, or greater than, the level that would be achieved by the current regulation (49 CFR 381.305). The decision of the Agency must be published in the **Federal Register** (49 CFR 381.315(b)) with the reasons for denying or granting the application and, if granted, the name of the person or class of persons receiving the exemption, and the regulatory provision from which the exemption is granted. The notice must also specify the effective period and explain the terms and conditions of the exemption. The exemption may be renewed (49 CFR 381.300(b)).

Request for Exemption

CRST states that it operates one of industry's largest fleet of team drivers with 4,000 drivers and 1,931 vehicles. CRST delivers products to 48 states from a wide variety of customer locations. The company operates 24 hours a day, seven days a week. Drivers are on duty an average of 48–52 hours per week. Drivers average between 42 and 44 hours of driving time. Work normally consists of picking up loaded trailers at a customer location, driving to the destination and delivering the loaded trailer.

According to CRST, the average driver team typically travels approximately 3,500 miles per week. CRST estimates that 75% of drivers obtain at least 34 consecutive hours off-duty while on the road each week. CRST operates on two- to three-week work cycles. Drivers report for work and are on the road typically 2 to 3 weeks and then return home for 4 to 5 days.

CRST's tractors are equipped with double-bunk sleepers in the event both drivers need or want to rest at the same time. Drivers are allowed to make their own decisions about when and where to take short rest breaks based on their personal needs and preferences in conformance with regulatory requirements. CRST asserts that it takes safety, health and wellness seriously, and hires well-qualified drivers who go through a comprehensive orientation/new-hire training program. CRST's trucks are equipped with electronic on-board recorders (EOBRs) that include electronic logs.

CRST requests an exemption from the current regulations for its delivery shipment operations to eliminate the requirement that SB time include a period of at least 8 but less than 10 consecutive hours in the SB and a separate period of at least 2 but less than 10 consecutive hours either in the SB or off duty, or any combination thereof (49 CFR 395.1(g)(1)(ii)(A)(1)). CRST proposes that its team drivers be allowed to split SB time into two periods totaling at least 10 hours, provided neither of the two periods is less than 3 hours in length. The request would be limited to drivers in team operations. CRST operates on an average day, 1,500 trucks and 3,000 drivers in team operations—two drivers taking turns operating the same truck. If granted the exemption would apply to this number of trucks and drivers.

CRST states that many of their team drivers are newcomers to the trucking industry. Drivers have told CRST that driving an entire 10–11 hour driving shift is too long and that they want the opportunity to switch with a partner more frequently. According to CRST, having the flexibility to switch with a partner allows each driver to take advantage of shorter time periods when they may feel fatigued. Further, splitting the SB time for both team drivers would allow each driver to obtain sleep during critical nighttime hours, which would provide more restorative sleep.

CRST states that it is committed to maintaining its safety record by focusing on continuous improvement, promoting technologies to enhance safety, and having well-communicated policies in place to address both safety and compliance-related topics. CRST identified some countermeasures it would take to maintain safe operations if the exemption is granted. The safeguards would include, but not be limited to:

- Drive time would be reduced from 11 hours to 10 hours. Team drivers would be limited to 10 hours of driving prior to completing their required 10 hours total SB.
- Drivers use EOBRs to track their duty time and HOS compliance;
- All tractors are equipped with speed limiters; Company-owned trucks are governed at 65 MPH; and
- Trucks brought into service in 2015 are equipped with collision-avoidance technology.

CRST believes that by allowing its team drivers to exercise flexibility in their SB requirements, the drivers would experience more quality rest. To support its request for the exemption, CRST cited the results of an FMCSA-sponsored study entitled ''Investigation of the Effects of Split Sleep Schedules on Commercial Vehicle Driver Safety and Health'' by Belenky (2012). The report noted ''. . . that when consolidated nighttime sleep is not possible, split sleep is preferable to consolidated daytime sleep.'' (*http://ntl.bts.gov/lib/51000/51200/51254/12-003-Split-Sleep_Investigation-of-the-Effects-of-Split-Sleep-Schedules-on-Commercial-Vehicle-Driver-Safety-and-Health-508.pdf*)

A copy of CRST's application for exemption is available for review in the docket for this notice.

Request for Comments

In accordance with 49 U.S.C. 31136(e) and 31315(b)(4), FMCSA requests public comment on CRST's application for an exemption from certain provisions of the driver's HOS rules in 49 CFR part 395. The Agency will consider all comments received by close of business on September 21, 2015. Comments will be available for examination in the docket at the location listed under the **ADDRESSES** section of this notice.

Issued on: August 13, 2015.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2015–20569 Filed 8–19–15; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

30-day Notice and Request for Comments: Continuation of Six Collections

AGENCY: Surface Transportation Board, DOT.

ACTION: 30-day notice and request for comments: Continuation of six collections.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, and as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3519 (PRA), the Surface Transportation Board (Board) gives notice that it is requesting from the Office of Management and Budget (OMB) approval without change of the six existing collections described below. The Board previously published a notice about this collection in the **Federal Register** on June 5, 2015, at 80 FR 32,201. That notice allowed for a 60-day public review and comment period. No comments were received.

Comments may now be submitted to OMB concerning whether the particular collection of information is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; the accuracy of the Board's burden estimates; ways to enhance the quality, utility, and clarity of the information collected; and ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Submitted comments will be included and/or summarized in the Board's request for OMB approval.

DATES: Written comments are due on September 16, 2015.

ADDRESSES: Written comments should be identified as ''Paperwork Reduction Act Comments, Surface Transportation Board, and should identify the collection(s) discussed in the comment. These comments should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Chandana L. Achanta, Surface Transportation Board Desk Officer, by email at *OIRA_SUBMISSION@OMB.EOP.GOV;* by fax at (202) 395–6974; or by mail to Room 10235, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s) contact Pedro Ramirez at (202) 245–0333 or *ramirezp@stb.dot.gov.* [Federal Information Relay Service (FIRS) for the hearing impaired: (800) 877–8339.]

SUBJECTS: In this notice the Board is requesting comments on the following information collections:

Collection Number 1

Title: Quarterly Report of Revenues, Expenses, and Income–Railroads (Form RE&I).

OMB Control Number: 2140–0013.

Form Number: None.

Type of Review: Extension without change.

Respondents: Class I railroads.

Number of Respondents: Seven.

Estimated Time per Response: 6 hours.

Frequency of Response: Quarterly.

Total Annual Hour Burden: 168 hours annually.

Total Annual ''Non Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection is a report of railroad operating revenues, operating expenses and income items; it is a profit and loss statement, disclosing net railway operating income on a quarterly and year-to-date basis for the current and prior years. *See* 49 CFR 1243.1. The Board uses the information in this report to ensure competitive, efficient, and safe transportation through general oversight programs that monitor and forecast the financial and operating condition of railroads, and through regulation of railroad rate and service issues and rail restructuring proposals, including railroad mergers, consolidations, acquisitions of control, and abandonments. Information from these reports is used by the Board, other Federal agencies, and industry groups to monitor and assess industry growth and operations, detect changes in carrier financial stability, and identify trends that may affect the national transportation system. Some of the information from these reports is compiled by the Board in our quarterly Selected Earnings Data Report, which is published on the Board's Web site, *http://www.stb.dot.gov/stb/industry/econ_reports.html.* The information contained in these reports is not available from any other source.

Collection Number 2

Title: Quarterly Condensed Balance Sheet—Railroads (Form CBS).

OMB Control Number: 2140–0014.

Form Number: None.

Type of Review: Extension without change.

Respondents: Class I railroads.

Number of Respondents: Seven.

Estimated Time per Response: Six hours.

Frequency of Response: Quarterly.

Total Annual Hour Burden: 168 hours annually.

Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection shows the balance, quarterly and cumulative, for the current and prior year of the carrier's assets and liabilities, gross capital expenditures, and revenue tons carried. *See* 49 CFR 1243.2. The Board uses the information in this report to ensure competitive, efficient, and safe transportation through general oversight programs that monitor and forecast the financial and operating condition of railroads, and through specific regulation of railroad rate and service issues and rail restructuring proposals, including railroad mergers, consolidations, acquisitions of control, and abandonments. Information from these reports is used by the Board, other Federal agencies, and industry groups to assess industry growth and operations, detect changes in carrier financial stability, and identify trends that may affect the national transportation system. Revenue ton-miles, which are reported in these reports, are compiled and published by the Board in its quarterly Selected Earnings Data Report, which is published on the Board's Web site, *http://www.stb.dot.gov/stb/industry/econ_reports.html.* The information contained in these reports is not available from any other source.

Collection Number 3

OMB Control Number: 2140–0004.

Title: Report of Railroad Employees, Service and Compensation (Wage Forms A and B).

Form Number: None.

Type of Review: Extension without change.

Respondents: Class I railroads and the Association of American Railroads.

Number of Respondents: Eight.

Estimated Time per Response: No more than 30 hours per quarterly report and 40 hours per annual summation.

Frequency of Response: Quarterly, with an annual summation.

Total Annual Hour Burden: No more than 1,280 hours annually.

Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection shows the number of employees, service hours, and compensation, by employee group (*e.g.,* executive, professional, maintenance-of-way and equipment, and transportation), of the reporting railroads. *See* 49 CFR part 1245. The

information is used by the Board to forecast labor costs and measure the efficiency of the reporting railroads. The information is also used by the Board to evaluate proposed regulated transactions that may impact rail employees, including mergers and consolidations, acquisitions of control, purchases, and abandonments. Other Federal agencies and industry groups, including the Railroad Retirement Board, Bureau of Labor Statistics, and Association of American Railroads, use the information contained in the reports to monitor railroad operations. Certain information from these reports is compiled and published on the Board's Web site, *http://www.stb.dot.gov/stb/industry/econ_reports.html.* The information contained in these reports is not available from any other source.

Collection Number 4

Title: Monthly Report of Number of Employees of Class I Railroads (Wage Form C).

OMB Control Number: 2140–0007.

Form Number: STB Form 350.

Type of Review: Extension without change.

Respondents: Class I railroads and the Association of American Railroads.

Number of Respondents: Eight.

Estimated Time per Response: 1.25 hours.

Frequency of Response: Monthly.

Total Annual Hour Burden: 120 hours annually.

Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection shows, for each reporting carrier, the average number of employees at mid-month in the six job-classification groups that encompass all railroad employees. *See* 49 CFR part 1246. The information is used by the Board to forecast labor costs and measure the efficiency of the reporting railroads. The information is also used by the Board to evaluate the impact on rail employees of proposed regulated transactions, including mergers and consolidations, acquisitions of control, purchases, and abandonments. Other Federal agencies and industry groups, including the Railroad Retirement Board, Bureau of Labor Statistics, and Association of American Railroads, use the information contained in these reports to monitor railroad operations. Certain information from these reports is compiled and published on the Board's Web site, *www.stb.dot.gov/stb/industry/urcs.html.* The information contained in these reports is not available from any other source.

Collection Number 5

Title: Annual Report of Cars Loaded and Cars Terminated.

OMB Control Number: 2140–0011.

Form Number: Form STB–54.

Type of Review: Extension without change.

Number of Respondents: Seven.

Estimated Time per Response: Four hours.

Frequency of Response: Annual.

Total Annual Hour Burden: 28 hours annually.

Total Annual ''Non Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection reports the number of cars loaded and cars terminated on the reporting carrier's line. *See* 49 CFR part 1247. Information in this report is entered into the Board's Uniform Rail Costing System (URCS), which is a cost measurement methodology. URCS, which was developed by the Board pursuant to 49 U.S.C. 11161, is used as a tool in rail rate proceedings, in accordance with 49 U.S.C. 10707(d), to calculate the variable costs associated with providing a particular service. The Board also uses URCS to carry out more effectively other of its regulatory responsibilities, including: Acting on railroad requests for authority to engage in Board-regulated financial transactions such as mergers, acquisitions of control, and consolidations, *see* 49 U.S.C. 11323–11324; analyzing the information that the Board obtains through the annual railroad industry waybill sample, *see* 49 CFR part 1244; measuring off-branch costs in railroad abandonment proceedings, in accordance with 49 CFR 1152.32(n); developing the ''rail cost adjustment factors,'' in accordance with 49 U.S.C. 10708; and conducting investigations and rulemakings. This collection is compiled and published on the Board's Web site, *http://www.stb.dot.gov/stb/industry/econ_reports.html.* There is no other source for the information contained in this report.

Collection Number 6

OMB Control Number: 2140–0001.

Title: Quarterly Report of Freight Commodity Statistics (Form QCS).

Form Number: None.

Type of Review: Extension without change.

Respondents: Class I railroads.

Number of Respondents: Seven.

Estimated Time per Response: 217 hours.

Frequency of Response: Quarterly, with an annual summation.

Total Annual Hour Burden: 7,595 hours annually.

Total Annual ''Non-Hour Burden'' Cost: No ''non-hour cost'' burdens associated with this collection have been identified.

Needs and Uses: This collection, which is based on information contained in carload waybills used by railroads in the ordinary course of business, reports car loadings and total revenues by commodity code for each commodity that moved on the railroad during the reporting period. *See* 49 CFR part 1248. Information in this report is entered into the Board's URCS, the uses of which are explained under Collection Number 5. This collection is compiled and published on the Board's Web site, *http://www.stb.dot.gov/stb/industry/econ_reports.html.* There is no other source for the information contained in this report.

SUPPLEMENTARY INFORMATION: Under the PRA, a Federal agency conducting or sponsoring a collection of information must display a currently valid OMB control number. A collection of information, which is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c), includes agency requirements that persons submit reports, keep records, or provide information to the agency, third parties, or the public. Under § 3506(c)(2)(A) of the PRA, Federal agencies are required, prior to submitting a collection to OMB for approval, to provide a 60-day notice and comment period through publication in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information.

Dated: August 14, 2015.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2015–20530 Filed 8–19–15; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Application of Harris Aircraft Services, Inc. for Certificate Authority

Correction

In notice document 2015–19910 appearing on page 48622 in the issue of August 13, 2015, make the following correction:

On page 48622, in the first column, under the **DATES** heading, in the third line, ''August 27, 2015'' should read ''August 21, 2015''.

[FR Doc. C1–2015–19910 Filed 8–19–15; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, CO–30–92 (TD 8560), Consolidated Returns—Stock Basis and Excess Loss Accounts, earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless Stock Loss, Nonapplicability of Section 357(c), (§§ 1.1502–31, 1.1502–32, 1.1502–33, 1.1502–76).

DATES: Written comments should be received on or before October 19, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of this regulation should be directed to LaNita Van Dyke, Internal Revenue Service, Room 6517, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Consolidated Returns-Stock Basis and Excess Loss Accounts, Earnings and Profits, Absorption of Deductions and Losses, Joining and Leaving Consolidated Groups, Worthless Stock Loss, Non applicability of Section 357(c).

OMB Number: 1545–1344.

Regulation Project Number: CO–30–92, (TD 8560)(final).

Abstract: These regulations amend the consolidated return investment adjustment system, including the rules for earnings and profits and excess loss accounts. In addition, the regulations provide special rules for allocating consolidated income tax liability among members and modify the method for allocating income when a corporation enters or leaves a consolidated group.

Current Actions: There is no change to the total burden of these final regulations.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 52,049.

Estimated Time per Respondent: 22 minutes.

Estimated Total Annual Burden Hours: 18,600.

The following paragraph applies to all of the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 12, 2015.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. 2015–20565 Filed 8–19–15; 8:45 am]

BILLING CODE 4830–01P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning information collection requirements related to Clear Reflection of Income in the Case of Hedging.

DATES: Written comments should be received on or before October 19, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to LaNita Van Dyke, Internal Revenue Service, Room 6517, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet at *LaNita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Section 108 Reduction of Tax Attributes for S Corporations.

OMB Number: 1545–2155.

Regulation Project Number: REG–102822–08 (TD 9469).

Abstract: This final regulation provides guidance on the manner in which an S corporation reduce its tax attributes under section 108(b) for taxable years in which the S corporation has discharge of indebtedness income that is excluded from gross income under section 108(a). In particular, the regulations address situations in which the aggregate amount of the shareholders' disallowed section 1366(d) losses and deductions that are treated as a net operating loss tax attribute of the S corporation exceeds the amount of the S corporation's excluded discharge of indebtedness income. The regulations affect S corporations and their shareholders.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 1,000.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 1,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 12, 2015.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. 2015–20566 Filed 8–19–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 2006–47

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Notice 2006–47, Elections Created of Effected by the American Jobs Creation Act of 2004.

DATES: Written comments should be received on or before October 19, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of notice should be directed to LaNita Van Dyke, or at Internal Revenue Service, Room 6517, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Elections Created or Effected by the American Jobs Creation Act of 2004.

OMB Number: 1545–1986.

Notice Number: Notice 2006–47.

Abstract: The American Jobs Creation Act of 2004, Pub. L. 108–357, 118 Stat. 1418 (the Act), created various elections and permits taxpayers to revoke certain elections that are currently in effect in light of changes made by the Act. The collection of information is necessary to inform the Internal Revenue Service that an election is being made or revoked. This notice will enable the Internal Revenue Service to ensure that the eligibility requirements for the various elections or revocations have been satisfied; verify that the requisite computations, allocations, etc. have been made correctly; and appropriately monitor whether any required collateral actions relating to the elections or revocations have been complied with. Current Actions: There are no changes being made to the notice at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and not-for-profit institutions.

Estimated Number of Respondents: 150,000.

Estimated Average Time per Respondent: 5 min.

Estimated Total Annual Burden Hours: 12,765.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 12, 2015.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. 2015–20567 Filed 8–19–15; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W–8CE

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–8CE, Notice of Expatriation and Waiver of Treaty Benefits.

DATES: Written comments should be received on or before October 19, 2015 to be assured of consideration.

ADDRESSES: Direct all written comments to Christie Preston, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

copies of the form and instructions should be directed to LaNita Van Dyke, or at Internal Revenue Service, Room 6517, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Lanita.VanDyke@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Notice of Expatriation and Waiver of Treaty Benefits.

OMB Number: 1545–2138.

Form Number: Form W–8CE.

Abstract: Information used by taxpayers to notify payer of expatriation so that proper tax treatments is applied by payer. The taxpayer is required to file this form to obtain any benefit accorded by the status.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a previously approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 500.

Estimated Time per Respondent: 5 hour 41 minutes.

Estimated Total Annual Burden Hours: 2,840 hours.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request For Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: August 12, 2015.

Allan Hopkins,

IRS Reports Clearance Officer.

[FR Doc. 2015–20564 Filed 8–19–15; 8:45 am]

BILLING CODE 4830–01–P

FEDERAL REGISTER

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Part II

Department of Commerce

United States Patent and Trademark Office

37 CFR Part 42

Amendments to the Rules of Practice for Trials Before the Patent Trial and Appeal Board; Proposed Rules

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 42

[Docket No. PT0–P–2015–0053]

RIN 0651–AD01

Amendments to the Rules of Practice for Trials Before the Patent Trial and Appeal Board

AGENCY: Patent Trial and Appeal Board, United States Patent and Trademark Office, U.S. Department of Commerce.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the existing consolidated set of rules relating to the United States Patent and Trademark Office (Office or USPTO) trial practice for *inter partes* review (''IPR''), post-grant review (''PGR''), the transitional program for covered business method patents (''CBM''), and derivation proceedings that implemented provisions of the Leahy-Smith America Invents Act (''AIA'') providing for trials before the Office.

DATES: *Comment date:* The Office solicits comments from the public on this proposed rulemaking. Written comments must be received on or before October 19, 2015 to ensure consideration.

Roadshow Dates: The Office, in concert with the American Intellectual Property Association (''AIPLA''), will have a Road Show Series in August 2015 where the proposed rules will be discussed. This AIPLA/USPTO Road Show Series, entitled ''Enhancing Patent Quality and Conducting AIA Trials,'' will be held on August 24, 2015 in Santa Clara, California, August 26, 2015 in Dallas, Texas, and August 28, 2015 in Alexandria, Virginia.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *trialrules2015@uspto.gov.* Comments may also be submitted by postal mail addressed to: Mail Stop Patent Board, Director of the United States Patent and Trademark Office, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of ''Lead Judge Susan Mitchell, Patent Trial Proposed Rules.''

Comments may also be sent by electronic mail message over the Internet via the Federal eRulemaking Portal. *See* the Federal eRulemaking Portal Web site (*http://www.regulations.gov*) for additional instructions on providing comments via the Federal e-Rulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message to be able to more easily share all comments with the public. The Office prefers the comments to be submitted in plain text, but also accepts comments submitted in ADOBE® portable document format or MICROSOFT WORD® FORMAT. Comments not submitted electronically should be submitted on paper in a format that accommodates digital scanning into ADOBE® portable document format.

The comments will be available for public inspection at the Patent Trial and Appeal Board, currently located in Madison East, Ninth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site *http://www.uspto.gov/patents/law/comments/index.jsp.* Because comments will be made available for public inspection, information that the submitter does not desire to be made public, such as address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Susan L. C. Mitchell, Lead Administrative Patent Judge by telephone at (571) 272–9797.

SUPPLEMENTARY INFORMATION:

Executive Summary: Purpose: This proposed rule would amend the existing consolidated set of rules relating to the United States Patent and Trademark Office (Office or USPTO) trial practice for *inter partes* review, post-grant review, the transitional program for covered business method patents, and derivation proceedings that implemented provisions of the Leahy-Smith America Invents Act (''AIA'') providing for trials before the Office.

Summary of Major Provisions

In an effort to gauge the effectiveness of the rules governing AIA trials, the Office conducted a nationwide listening tour in April and May of 2014, and in June 2014, published a Federal Register Notice asking for public feedback about the AIA trial proceedings. The Office has carefully reviewed the comments and, in response to public input, already has issued a first, final rule, which was published on May 19, 2015. That final rule addressed issues concerning the patent owner's motion to amend and the petitioner's reply brief that involved ministerial changes. For instance, the final rules provided ten additional pages for a patent owner's motion to amend, allowed a claims appendix for a motion to amend, and provided ten additional pages for a petitioner's reply brief, in addition to other ministerial changes to conform the rules to the Office's established practices in handling AIA proceedings.

This second, proposed rule (the subject of this Federal Register document) addresses more involved proposed changes to the rules and proposed revisions to the Office Patent Trial Practice Guide. The Office presents the following proposed rules to address issues and public comments that were raised concerning the claim construction standard for AIA trials, new testimonial evidence submitted with a patent owner's preliminary response, Rule 11-type certification, and word count for major briefing. The Office will also later amend its Office Patent Trial Practice Guide to reflect developments in practice before the Office concerning how the Office handles additional discovery, live testimony, and confidential information. In response to the USPTO's roundtable on attorney-client privilege issues held in February 2015, the Office also requests input on recognizing privilege for communications between a patent applicant or owner and its U.S. patent agent or foreign patent practitioner in a possible future rulemaking.

The Office anticipates that it will continue to refine the rules governing AIA trials to continue to ensure fairness and efficiency while meeting the congressional mandate. Therefore, the Office continues to encourage comments concerning how the rules may be refined to achieve this goal.

Costs and Benefits: This rulemaking is not economically significant, and is not significant, under Executive Order 12866 (Sept. 30, 1993), as amended by Executive Order 13258 (Feb. 26, 2002) and Executive Order 13422 (Jan. 18, 2007).

Background

Development of These Proposed Rules

On September 16, 2011, the AIA was enacted into law (Pub. L. 112–29, 125 Stat. 284 (2011)), and shortly thereafter in 2012, the Office implemented rules to govern Office trial practice for AIA trials, including *inter partes* review, post-grant review, the transitional program for covered business method patents, and derivation proceedings pursuant to 35 U.S.C. 135, 316 and 326 and AIA 18(d)(2). *See* Rules of Practice for Trials Before the Patent Trial and Appeal Board and Judicial Review of Patent Trial and Appeal Board Decisions, 77 FR 48612 (Aug. 14, 2012); Changes to Implement *Inter Partes* Review Proceedings, Post-Grant Review Proceedings, and Transitional Program

for Covered Business Method Patents, 77 FR 48680 (Aug. 14, 2012); Transitional Program for Covered Business Method Patents—Definitions of Covered Business Method Patent and Technological Invention, 77 FR 48734 (Aug. 14, 2012). Additionally, the Office published a Patent Trial Practice Guide for the rules to advise the public on the general framework of the regulations, including the structure and times for taking action in each of the new proceedings. *See* Office Patent Trial Practice Guide, 77 FR 48756 (Aug. 14, 2012).

In an effort to gauge the effectiveness of these rules governing AIA trials, the Office conducted a nationwide listening tour in April and May of 2014. During the listening tour, the Office solicited feedback on how to make the trial proceedings more transparent and effective by adjusting the rules and guidance where necessary. To elicit even more input, in June of 2014, the Office published a Request for Comments in the **Federal Register** and, at stakeholder request, extended the period for receiving comments to October 16, 2014. *See* Request for Comments on Trial Proceedings Under the America Invents Act Before the Patent Trial and Appeal Board, 79 FR 36474 (June 27, 2014).

The Request for Comments asked seventeen questions on ten broad topics, including a general catchall question, to gather stakeholder feedback on any changes to the AIA trial proceedings that might be beneficial. *See* Request for Comments, 79 FR at 36476–77. The Office received thirty-seven comments from bar associations, corporations, law firms, and individuals encompassing a wide range of issues. The Office expresses its gratitude for the thoughtful and comprehensive comments provided by the public, which are available on the USPTO Web site: *http://www.uspto.gov/page/comments-trial-proceedings-under-america-invents-act-patent-trial-and-appeal-board.*

Several commenters expressed satisfaction with the current rules governing AIA trial proceedings, and several commenters offered suggestions on how to strengthen the AIA trial proceeding rules. For example, some suggestions concerned the claim construction standard used by the PTAB, motions to amend, discovery procedures, and handling of multiple proceedings. The Office addressed all public comments that involved changes to the page limitations for a patent owner's motion to amend or a petitioner's reply brief in the first, final rulemaking. The Office will address the remaining comments in this second, proposed rulemaking.

Differences Between the Proposed Rules and the Current Rules

The Office will address the differences between the proposed rules and the current rules in relation to the seventeen questions that the Office asked in the June 27, 2014 Notice concerning the following ten topics: (1) Claim construction standard; (2) a patent owner's motions to amend; (3) a patent owner's preliminary response; (4) additional discovery; (5) obviousness; (6) real party in interest; (7) multiple proceedings; (8) extension of one year period to issue a final determination; (9) oral hearing; and (10) general topics. *See* 79 FR at 36476. The comments provided support for, opposition to, and diverse recommendations on the current rules. The Office appreciates the thoughtful comments, and has considered and analyzed the comments thoroughly. In this discussion, the Office will respond to the comments submitted in response to the seventeen questions (besides those which involved suggestions for page limitation changes for a patent owner's motion to amend or petitioner's reply brief) and set forth proposed changes to the rules and the Office Patent Trial Practice Guide. In addition, in order to further attempt to prevent any misuse of the AIA proceedings, the Office proposes to amend 37 CFR 42.11 (which prescribes the duty of candor owed to the Office in these proceedings) to include a Federal Rule of Civil Procedure Rule 11-type certification for all papers filed with the Board in these proceedings, including a provision for sanctions for misconduct in connection with such papers. If appropriate, such misconduct in the course of AIA proceedings might also be reported to the Office of Enrollment and Discipline.

Claim Construction Standard

The Office asked, ''Under what circumstances, if any, should the Board decline to construe a claim in an unexpired patent in accordance with its broadest reasonable construction in light of the specification of the patent in which it appears?'' 79 FR at 36476. The Office received comments advocating various positions, including that it should continue to apply the broadest reasonable interpretation standard in construing terms of an unexpired patent, that it should use a *Phillips*-type construction standard for all patents at issue in AIA proceedings, and that it use the claim construction standard set forth in *Phillips* v. *AWH Corp.,* 415 F.3d 130 (Fed. Cir. 2005 (en banc), under certain circumstances. The Office will address each of these suggestions in turn.

Comment 1: Multiple commenters recommended that the Office continue to apply the broadest reasonable interpretation standard in construing terms of an unexpired patent at issue in an *inter partes* review proceeding, post-grant review proceeding, or covered business method review proceeding. These commenters stressed that ''the broadest reasonable construction standard used during traditional *ex parte* prosecution, reissue, and reexamination practice is a reasonable standard to use in PTAB proceedings.'' These same commenters noted that the ''PTO has a long-standing practice of giving patent claims their broadest reasonable interpretation during examination and during other post-issuance proceedings such as reexamination, reissue and interference for good reason,'' which ''serves the public interest by reducing the possibility that claims, finally allowed, will be given broader scope than is justified.''

Conversely, the Office received a comment suggesting the use of a *Phillips*-type construction standard for all patents, stating that ''claims in AIA trials should be construed as they have been or would be construed in a civil action to invalidate a patent under Patent Act section 282, including construing each claim of the patent in accordance with the ordinary and customary meaning of such claim as understood by one of ordinary skill in the art, the prosecution history pertaining to the patent, and prior judicial determinations and stipulations relating to the patent.'' The commenter also stated that ''the PTAB should apply the Phillips construction during AIA trials because they are adjudicative proceedings like litigation,'' and not examination proceedings like *inter partes* reexamination.

Response: The comments favoring retention of the BRI approach are adopted. The Office appreciates the suggestions and will continue to apply the broadest reasonable interpretation standard to claims in an unexpired patent at issue in an AIA proceeding. The United States Court of Appeals for the Federal Circuit (''Federal Circuit'') has held recently that the Office is authorized to employ the broadest reasonable construction approach to construing terms of an unexpired patent at issue in an *inter partes* review proceeding—the Federal Circuit found that the BRI approach is consistent with legislative intent and reasonable under the Office's rulemaking authority. *In re Cuozzo Speed Techs., LLC,* No. 2014–

1301, 2015 WL 4097949, at *7–8 (Fed. Cir. July 8, 2015). In making this determination, the Federal Circuit observed that ''[t]here is no indication that the AIA was designed to change the claim construction standard that the PTO has applied for more than 100 years. Congress is presumed to legislate against the background of the kind of longstanding, consistent existing law that is present here. Moreover, Congress in enacting the AIA was well aware that the broadest reasonable interpretation standard was the prevailing rule.'' *Id.* at *6. The Federal Circuit recognized that because an *inter partes* review proceeding provides the patent owner the opportunity to amend its claims, use of the broadest reasonable interpretation approach is appropriate, regardless of ''the fact that IPR may be said to be adjudicatory rather than an examination.'' *Id.* at *16. The Federal Circuit also stated, ''[a]lthough the opportunity to amend is cabined in the IPR setting, it is thus nonetheless available,'' and specifically addressed the prohibition on post-issuance broadening at issue in the case, further stating that at least this restriction on motions to amend ''does not distinguish pre-IPR processes or undermine the inferred congressional authorization of the broadest reasonable interpretation standard in IPRs.'' *Cuozzo,* 2015 WL 4097949, at 7.

Comment 3: The Office received multiple comments recommending changing the claim construction standard in certain circumstances. These commenters advocated for the use of the claim construction standard set forth in *Phillips* v. *AWH Corp.,* 415 F.3d 1303 (Fed. Cir. 2005) (en banc) for some or all of the following circumstances: (a) Unexpired patents where the ability to amend claims is no longer present in the trial, such as when a patent owner has elected to forego the opportunity to amend; (b) unexpired patents where the patent will expire prior to the final decision; (c) unexpired patents subject to a terminal disclaimer prior to final decision; and/or (d) unexpired patents when the parties to the trial have each filed claim construction briefings in another tribunal on terms at issue in the trial.

Response: These comments are adopted in part. The Office agrees that the application of a *Phillips*-type claim construction for claims of a patent that will expire prior to the issuance of a final decision is appropriate. Such patents essentially lack any viable opportunity to amend the claims in an AIA proceeding. Therefore, for patents that will expire prior to issuance of any final written decision by the Office, the Office proposes to apply a *Phillips*-type standard during the proceeding.

A scenario where it is clear that a patent will expire before a final decision is issued by the Office is a definitive circumstance where a petitioner can determine which claim construction will be applied with guidance from the Office. Specifically, the Office proposes to amend 37 CFR 42.100(b), 42.200(b), and 42.300(b) to reflect this change in the claim construction standard for claims in patents that will expire before a final written decision is issued in an AIA proceeding. The Office also intends to issue specific guidelines in the Office Patent Trial Practice Guide. The Office invites comments on how to structure guidelines to implement this change. For instance, the Office welcomes comments on the following questions: Should the Office set forth guidelines where a petitioner may determine, before filing a petition, which claim construction approach will be applied by the Office based on the relevant facts? Should the petitioner, who believes that the subject patent will expire prior to issuance of a final written decision, be required to submit claim interpretation analysis under both a *Phillips*-type and broadest reasonable interpretation approaches or state that either approach yields the same result? Should the Office entertain briefing after a petition if filed, but before a patent owner preliminary response is filed, concerning what standard should be applied?

As to the remaining scenarios set forth by commenters, the Office will continue to apply a broadest reasonable interpretation standard because at the time that a petition is filed in each of those scenarios, the patent owner's ability to amend remains available. To allow the patent owner unilaterally to decide to forego any opportunity to amend after a petition has been filed, and thereby opt-in to a *Phillips*-type construction, appears to be unworkable, given the timeline applicable to AIA proceedings. In particular, the timeline would not allow a petitioner adequate time to amend the petition to reflect a different claim construction standard. The Office invites comments suggesting any workable and efficient solutions for scenarios where the patent owner chooses to forego the right to amend claims in an AIA proceeding, including any suggested revisions to the rules or the Office Patent Trial Practice Guide.

Patent Owner's Motions To Amend

The Office asked, ''What modifications, if any, should be made to the Board's practice regarding motions to amend?'' 79 FR at 36476. The Office received a spectrum of comments that ranged from seeking no change in amendment practice to proposals for liberal grant of amendments in AIA proceedings. The Office addresses these comments below.

Since receipt of these comments, the Office has clarified its statement made in *Idle Free System, Inc.* v. *Bergstrom, Inc.,* Case IPR2012–00027 (PTAB June 11, 2013) (Paper 26) (informative), that ''[t]he burden is not on the petitioner to show unpatentability, but on the patent owner to show patentable distinction over the *prior art of record* and also *prior art known to the patent owner.*'' *Id.* at 7 (emphasis added). Specifically, the Office addressed what the references to ''prior art of record'' and ''prior art known to the patent owner'' mean, and how the burden of production shifts to the petitioner once the patent owner has made its *prima facie* case for patentability of the amendment. *See MasterImage 3D, Inc.* v. *RealD Inc.,* Case IPR2015–00040, slip op. at 1–3 (PTAB July 15, 2015) (Paper 42). This decision clarifies that a patent owner must argue for the patentability of the proposed substitute claims over the prior art of record, including any art provided in light of a patent owner's duty of candor, and any other prior art or arguments supplied by the petitioner, in conjunction with the requirement that the proposed substitute claims be narrower than the claims that are being replaced.

Comment 1: A number of commenters expressed satisfaction with the Board's current rules and practices for motions to amend. One commenter identified *Idle Free Systems, Inc.* v. *Bergstrom, Inc.,* Case IPR2014–00027 (PTAB June 11, 2013) (Paper 26) (informative), as outlining practices consistent with congressional intent and ''striking an appropriate balance between the public's interest in challenging the patentability of questionable patents and a patent owner's interest in maintaining patent protection for a legitimate invention.'' Another commenter stated that although the Board's current requirements for motions to amend provide patent owners with a fair opportunity to narrow claims in response to a petitioner's arguments and provide petitioners with fair notice regarding the type of amendment they need to rebut, the Office should consider providing consistent guidance through a precedential opinion or other means.

Response: These comments are adopted. The Office is committed to improving its rules and practices for motions to amend and AIA trial practice in general. Accordingly, the Office will

continue to make improvements and clarifications via the rule-making process, by updating the Office Patent Trial Practice Guide, and by designating opinions as precedential or informative, as warranted. For example, as discussed above, the Office has issued an opinion that clarifies what is meant by ''prior art of record'' and ''prior art known to the patent owner'' in the context of a patent owner's *prima facie* case of patentability in a motion to amend. *See MasterImage,* slip op. at 1–3.

Comment 2: One commenter advocated eliminating the opportunity to amend claims in AIA trial proceedings based on the premise that AIA trial proceedings are better designed to be expedited proceedings for determining claim patentability, not an examination.

Response: As the commenter recognizes, a patent owner's right to file a motion to amend is statutorily mandated (35 U.S.C. 316(d), 326(d)), as is the duty of the Director to provide standards and procedures for allowing such amendment (35 U.S.C. 316(a)(9), 326(a)(9)). Absent a change in statutory authority, the Office cannot withdraw the opportunity to amend claims in AIA trial proceedings.

Comment 3: Several commenters stated that the burden of proving the patentability of any proposed substitute claim should remain with the patent owner. Other commenters stated the contrary—that the burden should be shifted to the patent challenger to prove a proposed substitute claim unpatentable. Other commenters suggested intermediate positions targeted to reducing the burden on the patent owner, who submits a motion to amend, by requiring that the patent owner only bear the burden of proving patentability over the cited art in the petition or asserted grounds of unpatentability. Another commenter suggested that, similar to practice before the European Patent Office, motions to amend in AIA trials could include the participation of a USPTO Examiner from the technology center, preferably the examiner who originally granted the subject patent, and be limited to reviewing the broadest claim of a substitute claim set to allow patent owners to present multiple narrowing claim sets as fallback positions.

Response: These comments are adopted in part. The Board currently does not contemplate a change in rules or practice to shift the ultimate burden of persuasion on patentability of proposed substitute claims from the patent owner to the petitioner. Depending on the amendment, a petitioner may not have an interest in challenging patentability of any substitute claims. Therefore, the ultimate burden of persuasion on patent owner's motion to amend remains best situated with the patent owner, to ensure that there is a clear representation on the record that the proposed substitute claims are patentable, given that there is no opportunity for separate examination of these newly proposed substitute claims in these adjudicatory-style AIA proceedings. *See Microsoft Corp.* v. *Proxyconn, Inc.,* Nos. 2014–1542, 2014–1543, 2015 WL 3747257, at *12 (Fed. Cir. June 16, 2015) (stating ultimate burden of persuasion remains with the patent owner, the movant, to demonstrate the patentability of the substitute claims).

The Board's decision in *MasterImage* clarifies the meaning of the terms ''prior art of record'' and ''prior art known to the patent owner'' as set forth in *Idle Free,* which stated that the burden is on the patent owner ''to show patentable distinction over the prior art of record and also prior art known to the patent owner.'' *Idle Free,* slip op. at 7. The Office stated in *MasterImage that,* ''[t]he reference to 'prior art of record' in the above-quoted text, as well as everywhere else in *Idle Free,* should be understood as referring to: a. any material art in the prosecution history of the patent; b. any material art of record in the current proceeding, including art asserted in grounds on which the Board did not institute review; and c. any material art of record in any other proceeding before the Office involving the patent.'' *MasterImage,* slip op. at 2. The Office also stated that the term ''prior art known to the patent owner,'' as used in *Idle Free,* ''should be understood as no more than the material prior art that Patent Owner makes of record in the current proceeding pursuant to its duty of candor and good faith to the Office under 37 CFR 42.11, in light of a Motion to Amend.'' *Id.*

At this time, the Office does not contemplate seeking assistance from the Examining Corps for review of motions to amend.

In addition, the Office has clarified how the burden of production shifts between the parties with regard to a motion to amend. ''With respect to a motion to amend, once Patent Owner has set forth a *prima facie* case of patentability of narrower substitute claims over the prior art of record, the burden of production shifts to the petitioner. In its opposition, the petitioner may explain why the patent owner did not make out a *prima facie* case of patentability, or attempt to rebut that *prima facie* case, by addressing Patent Owner's evidence and arguments and/or by identifying and applying additional prior art against proposed substitute claims. Patent Owner has an opportunity to respond in its reply. The ultimate burden of persuasion remains with Patent Owner, the movant, to demonstrate the patentability of the amended claims.'' *MasterImage,* slip op. at 2 (citing *Microsoft,* 2015 WL 3747257, at *12).

Comment 4: Several commenters suggested that patent owners should not be required to cancel a challenged claim in order to submit a substitute claim and/or should be permitted to propose more than one substitute claim per challenged claim.

Response: Rule 42.221(a)(3) provides that a motion to amend may ''cancel a challenged claim or propose a reasonable number of substitute claims,'' and for efficiency, sets forth the rebuttable presumption ''that only one substitute claim would be needed to replace each challenged claim.'' As 37 CFR 42.121(a)(3) and 42.221(a)(3) provides, this presumption ''may be rebutted by a demonstration of need.'' This strikes a reasonable balance between maintaining the efficiency of the proceedings and allowing a patent owner to present additional substitute claims when need is shown. Although patent owners are encouraged to submit a single substitute claim for each canceled claim, the Rules do not prohibit a motion to amend that proposes more than one replacement claim for each cancelled claim. Patent owners are encouraged to confer with the Board where an appropriate showing of need can be made. The Board does not, however, contemplate a change in rules or practice at this time.

Comment 5: Several commenters suggested that motions to amend should be liberally allowed. One commenter suggested the Office should evaluate a motion to amend in the same way that the entry of a supplemental response in prosecution is evaluated, as under 37 CFR 1.111(a)(2).

Response: These suggestions are not adopted. Under 35 U.S.C. 316(a)(9) and 326(a)(9), the Office has the authority to set forth standards and procedures for allowing a patent owner to move to amend the patent under 35 U.S.C. 316(d) and 326(d). And 35 U.S.C. 316(d) and 326(d) sets forth certain statutory limitations for amendments for a patent in an AIA proceeding, including limiting the number of proposed claims to a ''reasonable number of substitute claims'' (35 U.S.C. 316(d)(1)(B)) and prohibiting amendments that ''enlarge the scope of the claims of the patent or introduce new matter'' (35 U.S.C.

316(d)(3)). Thus, by statute, motions to amend cannot be entered in the same way as amendments that are entered during prosecution, which are not bound by such restrictions.

Moreover, AIA proceedings are neither *ex parte* patent prosecution nor patent reexamination or reissue. The Board does not conduct a prior art search to evaluate the patentability of the proposed substitute claims, and any such requirement would be impractical given the statutory structure of AIA proceedings. If a motion to amend is granted, the substitute claims become part of an issued patent, without any further examination by the Office. Because of this constraint, the Office has set forth rules for motions to amend that account for the absence of an independent examination by the Office where a prior art search is performed as would be done during prosecution, reexamination, or reissue.

As set forth above, however, the Office does recognize a clarification of amendment practice that affirmatively states that a patent owner must argue for the patentability of the proposed substitute claims over the prior art of record, including art provided in light of a patent owner's duty of candor and any other prior art or arguments supplied by the petitioner, in conjunction with the statutory requirement that the proposed substitute claims be narrower than the claims that are being replaced. In light of these requirements, the Office has explained how the burden of production shifts to the petitioner once the patent owner has set forth a *prima facie* case of patentability of narrower substitute claims. *MasterImage,* slip op. at 3.

Comment 6: Several commenters suggested that the Office provide additional guidance in conferences regarding motion to amend practice, including guidance on what prior art the patent owner needs to distinguish in a motion to amend. One commenter stated that the Office could confirm for a patent owner whether a new prior art search is required and whether providing information similar to the accelerated examination support documents (ESD) would be sufficient for a patent owner to carry its burden. Another commenter suggested making clear in the Rules and the Trial Practice Guide that a reissue application can be utilized after a final written decision as an examination mechanism for amending claims and that the burden of persuasion for permitting the Board to consider a motion to amend is not the same as the burden of proof as to the patentability of any claims that are the subject to a motion to amend.

Response: These comments are adopted in part as set forth above. The Office has explained how the burden of production shifts to the petitioner once the patent owner has set forth a *prima facie* case of patentability of narrower substitute claims. *MasterImage,* slip op. at 3. Also, 37 CFR 42.121(a) and 42.122(a) require the patent owner to hold a conference call with the Office before the patent owner files a motion to amend. During that call, the judges provide technical guidance to the patent owner and the petitioner regarding the motion. If the parties have questions regarding the proper scope of a motion to amend, the parties may discuss those issues with the judges during the conference call. In addition, the Board notes the following Board decisions on motions to amend as further guidance: *MasterImage,* slip op. at 1–3); *Idle Free Systems, Inc.* v. *Bergstrom, Inc.,* Case IPR2012–00027 (PTAB June 11, 2013) (Paper 26) (informative); *Int'l Flavors & Fragrances Inc.* v. *United States of America,* Case IPR2013–00124 (PTAB May 20, 2014) (Paper 12) (informative); *Corning Optical Comms. RF, LLC* v. *PPC Broadband, Inc.,* Case IPR2014–00441 (PTAB Oct. 30, 2014) (Paper 19); *Riverbed Tech., Inc.* v. *Silver Peak Systems, Inc.,* Case IPR2013–00403 (PTAB Dec. 30, 2014) (Paper 33); *Reg Synthetic Fuels LLC* v. *Neste Oil OYJ,* Case IPR2014–00192 (PTAB June 5, 2015) (Paper 48).

As for whether to revise the Rules and the Trial Practice Guide to state that a reissue application can be utilized as a mechanism for amending the claims after final written decision, the Office declines to propose a blanket rule applicable to all reissues, which have additional requirements governing those proceedings.

As for distinguishing between the burden of persuasion for permitting the Board to consider a motion to amend and the burden of proof as to patentability, the patent owner has a statutory right to file a motion to amend under 35 U.S.C. 316(d) and 326(d). Thus, there is no burden of persuasion for permitting the Board to consider a motion to amend, as the Board must consider a motion to amend that is filed in a proceeding.

Comment 7: One commenter suggested that the Office should allow patent owners to cure minor defects in motions to amend, such as the failure to construe a claim term that the Board deems necessary or failure to provide written description support for the substitute claim language. The commenter further suggested that the petitioner should be allowed to respond to these further comments by the patent owner.

Response: If the Board deems it appropriate, the Board may allow a patent owner to cure minor defects in a motion to amend upon request. Given the time constraints of these proceedings, however, the suggested further exchange of briefing may be incompatible with the case schedule. To the extent a patent owner is aware of any such defects, the Office recommends that the patent owner seek authorization from the Board to revise its motion to amend as soon as possible.

Comment 8: Several commenters suggested that the Office should rescind the patent owner estoppel provision of 37 CFR 42.73(d)(3) because the commenters believed the Rule ''precludes a patent owner from obtaining from the Office in another proceeding a patent claim that could have been filed in response to any properly raised ground of unpatentability for a finally refused or cancelled claim.''

Response: This suggestion is not adopted. Under 37 CFR 42.73(d)(3), a patent applicant or owner is precluded from taking action inconsistent with the adverse judgment, including obtaining in any patent (1) A claim that is not patentably distinct from a finally refused or canceled claim; or (2) An amendment of a specification or of a drawing that was denied during the trial proceeding, but this provision does not apply to an application or patent that has a different written description. Thus, 37 CFR 42.73(d)(3) does not expressly preclude a patent owner from obtaining, in another proceeding, all patent claims that could have been filed in response to any properly raised ground of unpatentability for a finally refused or cancelled claim, as the commenters suggest. By its terms, this rule precludes a patent applicant or owner from obtaining, in another proceeding, claims that are not patentably distinct from a finally refused or canceled claim.

Comment 9: One commenter suggested that the rules are unfair because the patent owner must file its motion to amend at the same time that it files its patent owner response. The commenter states, ''[t]herefore, the patent owner must put forward all its arguments for patentability without knowing whether the original or amended claims will be reviewed by the PTAB.''

Response: When the patent owner files its patent owner response, the Board will have issued its decision on institution, which identifies the grounds and claims on which the *inter partes* or

post-grant review is instituted. Moreover, AIA proceedings before the Office are required, by statute, to be completed no later than one year from the date on which the Director notices the institution of a review, except where good cause is shown to extend the one-year period, which extension may be no more than six months. 35 U.S.C. 316(a)(11); 37 CFR 42.100(c). Due to the time constraints imposed on these proceedings, the Office deemed it most efficient for patent owners to file their motions to amend no later than the filing of the patent owner response. *See* 37 CFR 42.121, 42.221. The patent owner, however, may file a motion to amend at an earlier stage of the proceeding.

Comment 10: One commenter suggested that when a patent owner concedes the unpatentability of an existing claim and files a non-contingent motion to amend, claim cancellation should take place immediately. The commenter stated that, under current practice, the conceded claim remains in effect until the Board issues its final written decision, which allows the patent owner to assert the conceded claim in parallel proceedings. Accordingly, the commenter suggested that a patent owner should not be permitted to concede a claim's patentability before the Board while continuing to assert it in litigation.

Response: This suggestion is not adopted. The defendant in such litigation may seek relief before the district court. The Board typically considers all papers at once for purposes of rendering the final written decision. That practice is generally most efficient, in light of the large number of cases pending before the Board. Also, a patent owner who asserts a claim in a parallel proceeding that was conceded to be unpatentable may face potential sanctions, and registered practitioners who assert such a claim may face disciplinary investigation by the Office of Enrollment and Discipline. In the event, however, that a patent owner concedes unpatentability and requests cancellation of any claims, the parties may request a conference call with the panel to request cancellation of those claims before issuing the final written decision.

Comment 11: One commenter suggested that if a motion to amend is denied, the patent owner should be allowed to convert the denied motion to amend into an *ex parte* reexamination of the substitute claims. Accordingly, any prior art raised in either the motion or the opposition should be applied as the substantial new question of patentability in reexamination.

Response: This suggestion is not adopted. The rules for a request for *ex parte* reexamination apply different parameters than the rules for motions to amend in AIA proceedings. *Compare* 37 CFR 1.510(b) *with* 37 CFR 42.121, 42.221. Thus, the Office cannot convert a denied motion to amend into an *ex parte* reexamination of the proposed substitute claims that does not address the requirements of a request for *ex parte* reexamination.

Patent Owner's Preliminary Response

The Office asked, ''Should new testimonial evidence be permitted in a Patent Owner Preliminary Response? If new testimonial evidence is permitted, how can the Board meet the statutory deadline to determine whether to institute a proceeding while ensuring fair treatment of all parties?'' 79 FR at 36476. The Office received comments that range from advocating preserving the current prohibition on the patent owner's ability to assert new testimonial evidence at the preliminary response stage, an intermediate position of allowing new testimonial evidence on issues for which the patent owner bears the burden of proof or in response to petitioner's declarant, to allowance of new testimonial evidence by patent owner at the preliminary response stage with no restriction on scope. Commenters did express an overall concern with the ability of parties to conduct adequate discovery relating to testimonial evidence and adhering to the statutory timeline for instituting proceedings.

The Office proposes amending the rules to allow the patent owner to file new testimonial evidence with its preliminary response. In order to be able to meet the three-month statutory deadline for issuing a decision on institution, the rules will provide expressly that no right of cross-examination of a declarant exists before institution. Because the time frame for the preliminary phase of an AIA proceeding does not allow for such cross-examination as of right, nor for the petitioner to file a reply brief as of right, the Office proposes amending the rules to provide that any factual dispute that is material to the institution decision will be resolved in favor of the petitioner solely for purposes of making a determination about whether to institute. This is proposed, among other reasons, to preserve petitioner's right to challenge statements made by the patent owner's declarant.

Comment 1: Several commenters suggested that the patent owner should be allowed to rely on new testimonial evidence in its preliminary response to the petition given that the petitioner may rely upon such evidence in its petition, and that the current practice of not allowing a patent owner to rely on such evidence is unfair. Within these comments were examples of testimonial evidence that should be allowed in a preliminary response, such as testimony related to claim construction, issues regarding obviousness, and issues for which the patent owner has the burden of proof. Certain comments suggested that early development of the record would increase efficiency by leading to fewer institutions or institution on fewer grounds. Other comments said that the current rule should not be changed because the time period prior to institution does not allow a petitioner to evaluate fully the new evidence, the petitioner would not have an opportunity to cross-examine the witness, and the patent owner has a full opportunity to submit evidence post-institution.

Response: The Office proposes to amend the rules for the patent owner preliminary response (37 CFR 42.107, 42.207) to allow new testimonial evidence, thereby adopting the suggestions that the patent owner be allowed to rely upon supporting testimonial evidence in response to the petition. Sections 313 and 323 of Title 35 state that the patent owner may file a preliminary response that sets forth reasons why no institution should be granted. Therefore, the Office believes that it would be fair and equitable to consider supporting evidence submitted with a preliminary response.

If supporting evidence is submitted by a patent owner, cross-examination of the witness providing the testimony is likely to be permitted only after the institution of the proceeding, given the time constraints surrounding the institution decision. Section 316(a)(5)(A) of Title 35 states that the Director shall prescribe regulations setting forth standards and procedures for discovery of relevant evidence including the depositions of witnesses submitting affidavits or declarations. Allowing for cross-examination as of right prior to the institution of a proceeding would negatively impact the ability of the Office to meet the statutory requirements set out in 35 U.S.C. 314(b) and 324(c), and would result in more cost to the parties before a review is instituted.

In order for the Board to act consistently when confronted with material factual disputes in the institution decision briefing and evidence, the Office proposes that any

such factual disputes will be resolved in favor of the petitioner solely for purposes of deciding whether to institute. The petitioner also will be afforded an opportunity to seek permission to file a reply brief to respond to a preliminary response that presents testimonial evidence, though it will not be able to file such a reply as of right.

Comment 2: The Office received several comments suggesting that the Board provide for the submission of a petitioner reply to the patent owner preliminary response, particularly if the Board were to amend the rule for the patent owner preliminary response to allow new testimonial evidence. Many of these commenters stated that the petition itself is limited because the petitioner cannot anticipate all arguments that the patent owner may make (*e.g.,* the patent owner preliminary response may present additional claim constructions), and that a petitioner's rehearing request does not provide a timely opportunity for the petitioner to reply to the patent owner preliminary response. However, one commenter opposed this suggestion, stating that ''in all fairness the only way to reasonably address such a drastic change were it implemented would be by the inventor/[patent owner] being allowed to then file a sur-reply to Petitioner's reply . . . .'' Many of the commenters noted the short statutory timeframe for the pre-institution phase as a factor that limits the number of briefs that may be allowed.

Response: Because the Office proposes to amend the rules for the patent owner preliminary response (37 CFR 42.107, 42.207) to allow new testimonial evidence, the Office proposes to change the rules to provide for a petitioner to seek leave to file a reply to the patent owner preliminary response. In particular, each of 35 U.S.C. 316(a)(13) and 326(a)(12) states that the Director shall prescribe regulations providing the petitioner with ''at least 1 opportunity to file written comments.'' The Office proposes to change the rules to provide expressly that a petitioner may seek leave to file a reply to a preliminary response including new testimonial evidence, so that the Office may allow a reply when the circumstances so warrant.

Comment 3: Several commenters requested clarification of ''new testimonial evidence'' as used in 37 CFR 42.107(c). These comments indicated that the current rules, procedures, and cases do not provide adequate guidance as to what testimonial evidence is permitted in a preliminary response.

Response: Because the Office proposes to amend the rules for the patent owner preliminary response (37 CFR 42.107, 42.207) to allow new testimonial evidence, additional clarification is not necessary.

Additional Discovery

The Office asked, ''Are the factors enumerated in the Board's decision in *Garmin* v. *Cuozzo,* IPR2012–00001, appropriate to consider in deciding whether to grant a request for additional discovery? What additional factors, if any, should be considered?'' 79 FR at 36476. The Office provides guidance on its Web site, *see, e.g., http://www.uspto.gov/blog/aia/entry/message_from_administrative_patent_judges,* in response to comments generated from these questions, and plans to revise the Office Patent Trial Practice Guide to reflect this guidance.

Comment 1: A number of comments indicated that the *Garmin* factors are appropriate. Some of the comments further noted that the *Garmin* factors help the Office to strike the right balance for AIA trial proceedings, permitting parties to obtain meaningful discovery while preventing expensive, broad discovery. The comments also urged the Office to continue applying those factors. Several comments also expressed the view that the first, third, and fifth *Garmin* factors provide an important safeguard to minimize costs and limit distractions, ensuring fast and efficient resolution on the merits.

Response: These comments are adopted. The Office appreciates the suggestions and will continue to apply the *Garmin* factors on a case-by-case basis when considering whether additional discovery in an *inter partes* review is necessary in the interest of justice, as follows:

1. More Than A Possibility And Mere Allegation. The mere possibility of finding something useful, and mere allegation that something useful will be found, are insufficient. Thus, the party requesting discovery already should be in possession of a threshold amount of evidence or reasoning tending to show beyond speculation that something useful will be uncovered. ''Useful'' does not mean merely ''relevant'' or ''admissible,'' but rather means favorable in substantive value to a contention of the party moving for discovery.

2. Litigation Positions And Underlying Basis. Asking for the other party's litigation positions and the underlying basis for those positions is not necessarily in the interest of justice.

3. Ability To Generate Equivalent Information By Other Means. Discovery of information a party reasonably can figure out, generate, obtain, or assemble without a discovery request would not be in the interest of justice.

4. Easily Understandable Instructions. The requests themselves should be easily understandable. For example, ten pages of complex instructions are prima facie unclear.

5. Requests Not Overly Burdensome To Answer. The Board considers financial burden, burden on human resources, and burden on meeting the time schedule of the review. Requests should be sensible and responsibly tailored according to a genuine need.

Garmin Int'l, Inc. v. *Cuozzo Speed Techs. LLC,* Case IPR2012–00001, slip op. at 6–7 (PTAB Mar. 5, 2013) (Paper 26) (informative). The Office also applies similar factors in post-grant reviews and covered business method patent reviews when deciding whether the requested additional discovery is supported by a good cause showing and ''limited to evidence directly related to factual assertions advanced'' by a party. *See* 37 CFR 42.224; *Bloomberg Inc.* v. *Markets-Alert Pty Ltd,* Case CBM2013–00005, slip op. at 3–5 (PTAB May 29, 2013) (Paper 32).

Comment 2: A comment suggested that the Office should provide rule-based guidance on the ''interest of justice'' standard.

Response: As discovery disputes are highly fact dependent, the Office has found that the flexible approach as set forth in *Garmin* provides helpful guidance to the parties and assists the Office in achieving the appropriate balance, permitting meaningful discovery, while securing the just, speedy, and inexpensive resolution of every proceeding.

Comment 3: One comment suggested that the Office should continue to place emphasis on maintaining the one-year trial schedule by encouraging parties to raise discovery issues early in the proceeding, even during the pre-institution stage.

Response: This comment is adopted. As explained in *Garmin* regarding Factor 5—discovery requests must not be overly burdensome to answer—the Office will consider the burden on meeting the schedule of the proceeding. *Garmin,* Case IPR2012–00001, slip op. at 7. For example, as discussed below, the Office has granted reasonable, narrowly tailored discovery requests prior to institution when the patent owner raises sufficient concerns regarding the petitioner's identification of real parties-in-interest. Moreover, the Scheduling Order of each trial utilizes sequenced discovery, whereby parties can conduct meaningful discovery

before they are required to submit their respective motions and oppositions, taking into account the complexity of the proceeding, while ensuring that the trial is completed within one year of institution. Parties are encouraged to raise discovery issues, and confer with each other regarding such issues, as soon as they arise in a proceeding.

Comment 4: One comment suggested that Factor 2 should not be applied as a *per se* rule.

Response: Garmin sets forth a flexible approach in which the *Garmin* factors are not *per se* rules. As explained in *Garmin* regarding Factor 2, the Board has established rules and practices for the presentation of arguments and evidence, and there is a proper time and place for each party to make its presentation. *Garmin,* Case IPR2012–00001, slip op. at 13. For instance, under 37 CFR 42.51(b)(1) for routine discovery, a party has the opportunity to cross-examine the opposing party's declarant with regard to the basis of his or her testimony. Moreover, as discovery disputes are highly fact dependent, the Office decides each issue on a case-by-case basis, taking account of the specific facts of the proceeding. *See, e.g., Bloomberg Inc.* v. *Markets-Alert Pty Ltd.,* Case CBM2013–00005, slip op. at 6–7 (PTAB May 29, 2013) (Paper 32) (granting a specific and narrowly tailored request seeking information considered by an expert witness in connection with the preparation of his declaration filed in the proceeding).

Comment 5: One comment recommended that the Office expressly consider the specificity of the request, require parties to identify requested documents with the greatest possible specificity, and reject broad, amorphous requests that do not reasonably identify responsive documents. Other comments urged the Office to add the following additional factors, ensuring that the *Garmin* factors would be applied correctly and permitting additional discovery when it is actually warranted: (1) Whether the information is solely within the possession of the other party; (2) whether the information already has been produced in a related matter; and (3) whether the discovery sought relates to jurisdictional issues under 35 U.S.C. 315 and 325.

Response: Garmin sets forth a flexible and representative framework for providing helpful guidance to the parties, and assisting the Office to decide whether additional discovery requested in an *inter partes* review is necessary in the interest of justice, consistent with 35 U.S.C. 316(a)(5), or whether additional discovery in a post-grant review is supported by a good cause showing, consistent with 35 U.S.C. 326(a)(5). The list of factors set forth in *Garmin* is not exhaustive. The Office applies the factors on a case-by-case basis, considering the particular facts of each discovery request, including the particular arguments raised by a party seeking additional discovery. Under this flexible approach, parties are permitted to present their arguments using different factors including those suggested in the comments. In fact, the suggested additional factors are subsumed effectively already under the *Garmin* factors, and have been considered by the Office in deciding whether to grant additional discovery requests. *See, e.g., Int'l Sec. Exch., LLC* v. *Chi. Bd. Options Exch., Inc.,* Case IPR2014–00097 (PTAB July 14, 2014) (Paper 20) (granting a specific, narrowly tailored, and reasonable request for additional discovery of information that Patent Owner could not have obtained reasonably without a discovery request). As noted below, the Office frequently has granted reasonable discovery requests that are specific, narrowly tailored, and not overly burdensome in cases where a patent owner timely raises a real party-in-interest or privity challenge. *See, e.g., Nestle USA, Inc.* v. *Steuben Foods,* Case IPR2015–00195 (PTAB Feb. 27, 2015) (Paper 21) (granting Patent Owner's request for a sales agreement between Petitioner and another entity that allegedly contains indemnity, control, and cooperation provisions).

Comment 6: One comment suggested combining Factor 4 and Factor 5.

Response: Factor 4 and Factor 5 address different concerns. In particular, Factor 4 promotes the use of easily understandable instructions and, thereby, guards against the use of long and complex instructions that could unduly burden the producing party. Factor 5, by contrast, focuses on burdens and time constraints associated with complying with a request for additional discovery and, thereby, assists the Office in limiting discovery to requests that can be satisfied without disrupting the schedule, and which do not impose undue financial or human resource burdens on the producing party. As discussed above, parties have the flexibility under the *Garmin* framework to adopt a different combination of factors to present their arguments, including combining their analyses regarding Factor 4 and Factor 5.

Comment 7: Several comments indicated that, although the *Garmin* factors are appropriate, they sometimes are being applied incorrectly to require the moving party to have the actual evidence being sought.

Response: As explained in *Garmin,* the moving party, who is seeking additional discovery, should present a threshold amount of evidence or reasoning tending to show beyond speculation that something useful will be uncovered. *Garmin,* Case IPR2012–00001, slip op. at 7–8. This factor ensures that the opposing party is not overly burdened, and the proceeding not unnecessarily delayed, by speculative requests where discovery is not warranted. The Office, however, does not require the moving party to have any actual evidence of the type being sought, for example, where reasoning is presented that tends to show beyond speculation that something useful will be uncovered. Furthermore, a party who is dissatisfied with a decision and believes the Office misapprehended or overlooked a matter in denying additional discovery may file a request for rehearing, without prior authorization. *See* 37 CFR 42.71(d).

Obviousness

The Office asked, ''Under what circumstances should the Board permit the discovery of evidence of non-obviousness held by the Petitioner, for example, evidence of commercial success for a product of the Petitioner? What limits should be placed on such discovery to ensure that the trial is completed by the statutory deadline?'' 79 FR at 36476. The Office provides guidance on its Web site, *see, e.g., http://www.uspto.gov/blog/aia/entry/message_from_administrative_patent_judges,* in response to comments generated from these questions, and will revise the Office Patent Trial Practice Guide to reflect this guidance.

Comment 1: Several comments suggested that the Office should permit discovery of evidence of non-obviousness held by the petitioner in all cases. Another comment indicated that, if a request is narrowly tailored, this may be one situation where additional discovery may be permissible. In contrast, several other comments recommended that the Office should very rarely, if ever, permit discovery of the petitioner's product, as it would require a mini-trial on whether the petitioner's product infringes the patent, overwhelming the AIA trial process, undermining the efficient, focused procedure, making it impossible to conclude the AIA trial proceedings within the statutory deadline, and imposing a significant burden on the petitioner. Several comments further suggested that the Office should

continue to apply the *Garmin* factors (*see Garmin Int'l Inc.* v. *Cuozzo Speed Techs. LLC,* IPR2012–00001 (PTAB Mar. 5, 2013) (Paper 26) (informative)), allowing discovery only when the patent owner establishes that the additional discovery is in the interest of justice.

Response: The Office appreciates the varying points of view. The Office has considered these comments and believes that the *Garmin* factors currently provide appropriate and sufficient guidance for how to handle requests for additional discovery, which the Office will continue to decide on a case-by-case basis. The Office will continue to seek feedback as the case law develops as to whether a more specific rule for this type of discovery is warranted or needed. The Office encourages parties to confer and reach an agreement on the information to exchange early in the proceeding, resolving discovery issues promptly and efficiently. *See* 37 CFR 42.51(a). As explained in the Office Patent Trial Practice Guide, the parties may agree to certain initial disclosures, including information regarding secondary indicia of non-obviousness from the petitioner. Office Patent Trial Practice Guide, 77 FR at 48762. In situations in which there is a disagreement among the parties, the Office will decide on a case-by-case basis whether additional discovery in an *inter partes* review is necessary in the interest of justice, or whether additional discovery in a post-grant review is supported by a good cause showing, based on the particular facts of each request, consistent with 35 U.S.C. 316(a)(5) and 326(a)(5). As discussed above, the *Garmin* factors provide helpful guidance to the parties and assist the Office to achieve the appropriate balance, permitting meaningful discovery, while securing the just, speedy, and inexpensive resolution of every proceeding. The Office plans to add further discussion as to how the *Garmin* factors have been applied in the Office Patent Trial Practice Guide.

Comment 2: Several comments indicated that a patent owner seeking additional discovery regarding the petitioner's product in support of a commercial success non-obviousness argument should have to show that the challenged patent claims read on the petitioner's product, that the product was commercially successful, and that the alleged success resulted from the patented feature. Several other comments, however, suggested that requiring a patent owner to prove such a nexus between the evidence being sought and the claims places too high a burden on the patent owner. One comment urged the Office to allow a patent owner to obtain secondary consideration evidence from the petitioner when the patent owner presents a good-faith argument that there is a nexus between such evidence and the claims, such as by infringement contentions offered in the related district court litigation. Several comments recommended that a patent owner should be permitted to obtain additional discovery from a petitioner when the patent owner demonstrates that the petitioner is reasonably likely to possess evidence of secondary considerations, relaxing the first *Garmin* Factor. A few other comments suggested that the Office should permit limited discovery of the petitioner's evidence of secondary considerations when the patent owner has presented a sufficient showing of a nexus.

Response: The Office recognizes that it is important to provide a patent owner a full and fair opportunity to develop arguments regarding secondary considerations. The Office, therefore, agrees that a conclusive showing of nexus between the claimed invention and the information being sought through discovery is not required at the time the patent owner requests additional discovery. Nonetheless, some showing of nexus is required to ensure that additional discovery is necessary in the interest of justice, in an *inter partes* review, or is supported by a good cause showing, in a post-grant review. *See* 35 U.S.C. 316(a)(5) and 326(a)(5); 37 CFR 42.51(b)(2) and 42.224. Notably, as explained in *Garmin* concerning Factor 1, the mere possibility of finding something useful, and mere allegation that something useful will be found, are insufficient to demonstrate that the requested discovery is necessary in the interest of justice. *Garmin,* slip op. at 6. A patent owner seeking secondary consideration evidence from a petitioner should present a threshold amount of evidence *or reasoning* tending to show beyond speculation that something useful will be uncovered. A mere infringement contention or allegation that the claims reasonably could be read to cover the petitioner's product is generally insufficient, because such a contention or allegation, for example, does not show necessarily that the alleged commercial success derives from the claimed feature. Nor does it account for other desirable features of the petitioner's product or market position that could have contributed to the alleged commercial success. *See e.g., John's Lone Star Distrib., Inc.* v. *Thermolife Int'l, LLC,* IPR2014–01201 (PTAB May 13, 2015) (Paper 30). The Office plans to add further discussion on this issue to the Office Patent Trial Practice Guide.

Comment 3: One comment recommended that the Office permit the patent owner to serve a limited number of focused interrogatories and requests for production related to secondary considerations, and provide a schedule for the discovery.

Response: The Office declines to adopt a mandatory rule regarding additional discovery of secondary considerations, but will continue to entertain the need for such discovery on a case-by-case basis. Moreover, as provided in 37 CFR 42.51(a)(1) and (b)(2), parties may agree to additional discovery, including answering focused interrogatories and production of documents, even prior to institution. The Office also encourages and facilitates such cooperation between parties. *See, e.g., Square, Inc.* v. *REM Holdings 3, LLC,* Case IPR2014–00312, slip op. at 2–4 (PTAB Sep. 15, 2014) (Paper 23) (In response to the Board's request, the parties conferred and reached an agreement as to the Patent Owner's focused and narrowly tailored interrogatories and document request.). Balancing fairness concerns with the need to meet statutory deadlines, the Office, at this time, declines to make additional discovery on secondary considerations available as a matter of right, given that all other types of additional discovery may be obtained only upon a showing based on the *Garmin* factors.

Real Party in Interest

The Office asked, ''Should a Patent Owner be able to raise a challenge regarding a real party in interest at any time during a trial?'' 79 FR at 36476. The Office provides guidance below in response to comments generated from these questions, and will revise the Office Patent Trial Practice Guide to reflect this guidance.

Comment 1: A number of comments indicated that a patent owner should be able to raise a challenge regarding a real party-in-interest or privity at any time during a trial proceeding. A few comments also suggested that the Office should encourage or require the patent owner to raise this challenge in its preliminary response, so that the Office could consider this issue when determining whether or not to institute a review and resolve it promptly. Several comments further recommended that a patent owner may raise this challenge after institution if it provides a reasonable explanation as to why it could not have raised such a challenge

earlier in the proceeding. One comment, however, opposed any change that would allow a patent owner to challenge the identity of a real party-in-interest at any time during a trial. Another comment also opposed allowing patent owners to make a belated challenge under 35 U.S.C. 312(a) for a petitioner's failure to name all real parties-in-interest.

Response: The Office recognizes that it is important to resolve real party-in-interest and privity issues as early as possible, preferably in the preliminary stage of the proceeding prior to institution, to avoid unnecessary delays and to minimize cost and burden on the parties and the resources of the Office. In most cases, the patent owner also recognizes the benefit of raising a real party-in-interest or privity challenge early in the proceeding, before or with the filing of its preliminary response, to avoid the cost and burden of a trial if the challenge is successful.

To balance efficiency with fairness, the Office, in general, will permit a patent owner to raise a challenge regarding a real party-in-interest or privity at any time during a trial proceeding. Such a position is consistent with the final rule notice. *See* Changes to Implement *Inter Partes* Review Proceedings, Post-Grant Review Proceedings, and Transitional Program for Covered Business Method Patents; Final Rule, 77 FR 48680, 48695 (Aug. 14, 2012) (''After institution, standing issues may still be raised during trial. A patent owner may seek authority from the Board to take pertinent discovery or to file a motion to challenge the petitioner's standing.''). With respect to a late challenge that reasonably could have been raised earlier in the proceeding, the Office will consider the impact of such a delay on a case-by-case basis, including whether the delay is unwarranted or prejudicial. The Office also will consider that impact when deciding whether to grant a motion for additional discovery based on a real party-in-interest or privity issue. The Office plans to add further discussion on this issue to the Office Patent Trial Practice Guide.

Comment 2: A few comments suggested that the rules should be revised to require both parties to provide certain documents associated with the real party-in-interest or privity of the parties. In particular, the comments recommended requiring the parties to provide the following information: (1) Joint defense group agreements, (2) indemnity agreements, (3) identification of counsel representing a defendant in related litigations, (4) identification of parties participating in the preparation of the petition or in the review, and (5) identification of all parties funding the expenses associated with the review. In contrast, another comment urged the Office not to impose such burdensome mandatory disclosure requirements and indicated that the Office's current practice is appropriate for resolving real party-in-interest and privity issues in a low-cost and efficient manner.

Response: As many cases do not involve real party-in-interest or privity disputes, the Office, at this time, does not believe that any benefit resulting from requiring the parties to provide these highly sensitive, and possibly privileged, documents in every case would outweigh the additional cost and burden on the parties and the Office. When a patent owner timely raises real party-in-interest or privity challenges, which are highly fact dependent, the Office will continue to consider the need for additional discovery on a case-by-case basis, taking into account the specific facts in the proceeding to determine whether additional discovery is necessary in the interest of justice, in an *inter partes* review, or supported by a good cause showing, in a post-grant review. *See, e.g.,* 37 CFR 42.51(b)(2); *Garmin, Case* IPR2012–00001, slip op. at 7; Office Patent Trial Practice Guide, 77 FR at 48760; *Unified Patents, Inc.* v. *Dragon Intellectual Prop., LLC,* Case IPR2014–01252 (PTAB Feb. 12, 2015) (Paper 37) (A non-party does not become a real party-in-interest or privy solely because it is a member of a trade association or joint defense group.). The Office also encourages the parties to confer on the issue of additional discovery early in the proceeding, and attempt to reach an agreement on a reasonable amount of information to exchange, so that the issue may be resolved promptly and efficiently. *See* 37 CFR 42.51(b)(2) (''The parties may agree to additional discovery between themselves.'').

Comment 3: A few comments suggested that patent owners should be able to discover information concerning a real party-in-interest freely at any time. In contrast, several other comments urged the Office to limit discovery to that which is truly necessary, by applying the statutory standards for additional discovery.

Response: As discussed above, the Office generally will permit a patent owner to raise a challenge regarding a real party-in-interest or privity at any time during a proceeding. The scope of discovery in AIA proceedings, however, differs significantly from the scope of discovery available under the Federal Rules of Civil Procedure in district court proceedings. Because Congress intended AIA proceedings to be a quick and cost-effective alternative to litigation, the statute provides only limited discovery in trial proceedings before the Office. *See* 35 U.S.C. 316(a)(5) and 326(a)(5); 37 CFR 42.51(b)(2) and 42.224. Under the current practice—applying these statutory standards—the Office frequently has granted discovery requests directed to real-party-in-interest or privity information, where the requests were specific, narrowly tailored, and not unduly burdensome. *See, e.g., Arris Group, Inc.* v. *C-Cation Techs., LLC,* Case IPR2015–00635 (PTAB May 1, 2015) (Paper 10) (informative); *Zerto, Inc.* v. *EMC Corp.,* Case IPR2014–01254 (PTAB Nov. 25, 2014) (Paper 15); *Gen. Elec. Co.* v. *Transdata, Inc.,* Case IPR2014–01380 (PTAB Nov. 12, 2014); *Medtronic, Inc.* v. *Robert Bosch Healthcare Sys., Inc.,* Case IPR2014–00488 (PTAB Nov. 5, 2014); *Samsung Elects. Co.* v. *Black Hills Media, LLC,* Case IPR2014–00717 (PTAB Oct. 2, 2014); *Atlanta Gas Light Co.* v. *Bennett Regulator Guards, Inc.,* Case IPR2013–00453 (PTAB Apr. 23, 2014) (Paper 40); *RPX Corp.* v. *VirnetX Inc.,* Case IPR2014–00171 (PTAB Feb. 20, 2014) (Paper 33).

Comment 4: One comment urged the Office to provide additional guidance regarding issues concerning real party-in-interest or privity, including specific questions and factors that petitioners should consider in determining what entities to identify, which would allow petitioners and patent owners to evaluate these issues early and in a more efficient manner.

Response: The Office appreciates the interest in additional guidance on these complex issues. As the Supreme Court has instructed, however, whether an entity is a real party-in-interest is a highly fact dependent question that is not amenable to any bright-line test. *Taylor* v. *Sturgell,* 553 U.S. 880, 893–895 (2008). Whether a non-party is a real party-in-interest or privy for a trial proceeding before the Office is a highly fact dependent question that takes into account how courts generally have used the term to ''describe relationships and considerations sufficient to justify applying conventional principles of estoppel and preclusion.'' Office Patent Trial Practice Guide, 77 FR at 48759. The Office Patent Trial Practice Guide sets forth a detailed discussion on the relevant common law principles and Federal case law. Further helpful guidance is provided in recent Board decisions. *See, e.g., Askeladden LLC* v. *Sean I. McGhie and Brian Buchheit,* Case IPR2015–00122, slip op. at 3–16 (PTAB Mar. 6, 2015) (Paper 30); *Zerto,*

Inc. v. *EMC Corp.,* Case IPR2014–01254, slip op. at 6–15 (PTAB Mar. 3, 2015) (Paper 35); *Aruze Gaming Macau, Ltd.* v. *MGT Gaming, Inc.,* Case IPR2014–01288, slip op. at 6–20 (PTAB Feb. 20, 2015); *Unified Patents, Inc.* v. *Dragon Intellectual Prop., LLC,* Case IPR2014–01252, slip op. at 8–13 (PTAB Feb. 12, 2015) (Paper 37); *GEA Process Eng'g, Inc.* v. *Steuben Foods, Inc.,* Case IPR2014–00041, slip op. at 3–26 (PTAB Dec. 23, 2014) (Paper 140); *Samsung Elecs. Co.* v. *Black Hills Media, LLC,* Case IPR2014–00737, slip op. at 3–4 (PTAB Nov. 4, 2014) (Paper 7); *First Data Corp.* v. *Cardsoft LLC,* Case IPR2014–00715 (PTAB Oct. 17, 2014); *RPX Corp.* v. *VirnetX Inc.,* Case IPR2014–00171, slip op. at 6–10 (PTAB July 14, 2014) (Paper 49); *Alcon Research, Ltd.* v. *Dr. Joseph Neev,* Case IPR2014–00217, slip op. at 6–7 (PTAB May 9, 2014) (Paper 21); *Zoll Lifecor Corp.* v. *Philips Elecs. N. Am. Corp.,* Case IPR2013–00606, slip op. at 3–12 (PTAB Mar. 20, 2014) (Paper 13). The Office plans to add further discussion on this issue to the Office Patent Trial Practice Guide.

Comment 5: A few comments recommended that the Office establish a rule or precedential opinion stating that the existence of a real party-in-interest and privity are determined based on the facts in existence at the time of petition filing.

Response: Limiting the inquiry to the time of petition filing would undercut the core functions underlying the requirement to name all real parties-in-interest and privies. Those core functions include resolution of conflicts of interest and ensuring the proper application of statutory estoppel provisions—concerns that persist throughout the course of an AIA trial proceeding. *See* 35 U.S.C. 315(e)(1) (real party-in-interest or privy of the petition may not ''request or maintain'' a proceeding); 35 U.S.C. 325(e)(1) (same). As real party-in-interest and privity issues are highly fact dependent, in certain situations the issue may involve supporting evidence that comes into existence after the filing of a petition. *See, e.g., GEA Process Eng'g, Inc.* v. *Steuben Foods, Inc.,* Case IPR2014–00041 (PTAB Dec. 23, 2014) (Paper 140, Public Version) (finding that a non-party who paid the Petitioner's legal fees for the *inter partes* review is a real party-in-interest, and rejecting the argument that post-filing funds cannot retroactively change the facts as of the filing date, because ''[t]ypically, legal bills are billed and paid for after the services have been rendered''). Therefore, such bright-line rules as suggested by the comments would not be in the interest of justice and are not adopted.

Comment 6: A comment urged the Office to permit petitioners to correct the identification of real parties-in-interest without affecting the filing date if a ''good faith attempt'' was made to satisfy 35 U.S.C. 312(a).

Response: The statute requires a petition to identify all real parties-in-interest without qualification. *See* 35 U.S.C. 312(a); *see* 37 CFR 42.8 and 42.104. In the situation where the failure to identify a real party-in-interest was a mere clerical error, the petitioner may correct the petition without affecting the filing date. *See, e.g.,* 37 CFR 42.104(c); *Coleman Cable, LLC* v. *Simon Nicholas Richmond,* Case IPR2014–00935 (PTAB Aug. 28, 2014) (Paper 12). The Office is unable, however, to allow for the correction of any other such errors without changing the filing date because of the statutory requirement.

Comment 7: A comment urged the Office to confirm that the petitioner bears the burden of producing evidence that it has standing, as well as the burden of persuasion on the issue.

Response: As discussed previously, additional discovery may be authorized where patent owner raises sufficient concerns regarding the petitioner's identification of real parties-in-interest. Several recent decisions have acknowledged that the ultimate burden of proof on the issue lies with the petitioner. *See, e.g., Askeladden,* slip op. at 8 (Paper 30); *Zerto,* slip op. at 6–7 (Paper 35); *Atlanta Gas Light Co.* v. *Bennett Regulator Guards, Inc.,* Case IPR2013–00453, slip op. at 6–8 (PTAB Jan. 6, 2015) (Paper 88); *Atlanta Gas Light Co.* v. *Bennett Regulator Guards, Inc.,* Case IPR2013–00453, slip op. at 2–7 (PTAB Feb. 23, 2015) (Paper 91). This allocation of the burden acknowledges that a petitioner is more likely than a patent owner to be in possession of, or have access to, evidence relevant to the issue. *Zerto,* slip op. at 6–7. The Office plans to add further discussion on this issue to the Office Patent Trial Practice Guide.

Multiple Proceedings

The Office asked a series of questions relating to how multiple proceedings, such as an AIA trial, reexamination, or reissue proceeding, before the Office involving the same patent should be coordinated, including whether one proceeding should be stayed, transferred, consolidated, or terminated in favor of another. The questions are replicated below, followed by the comments responsive to those questions and the Office's responses to the comments.

Question 7: How should multiple proceedings before the USPTO involving the same patent be coordinated? Multiple proceedings before the USPTO include, for example: (i) Two or more separate AIA trials; (ii) an AIA trial and a reexamination proceeding; or (iii) an AIA trial and a reissue proceeding? 79 FR at 36476.

Comments: Multiple commenters recommended that the Board continue to exercise its discretion, on a case-by-case basis, to stay, transfer, consolidate, or terminate multiple proceedings involving the same patent claims. Several commenters urged the Board to consolidate multiple proceedings involving the same or related patents.

Commenters urged the Board to manage multiple AIA proceedings by manipulating the dates for the patent owner's preliminary response. Several commenters suggested that the Board should delay the time period for filing the patent owner's preliminary response to a second petition, ''so as to effectively stay the filing of'' that response, until after the first-filed petition is resolved by termination or a final written decision. One commenter remarked that this effective stay of the time for filing the patent owner's preliminary response in a second proceeding is especially appropriate where the proceeding, instituted on the first-filed petition, is near completion.

Another commenter proposed that, where a second petition is filed before the date on which the patent owner's preliminary response is filed in the first proceeding, the patent owner's preliminary response in the first proceeding should be reset to three months from the notice of filing date accorded the second petition. The commenter also urged that, under those circumstances, scheduling and briefing should be consolidated in the two proceedings. The same commenter proposed that the Board should stay all activity on a second petition that is filed after trial is instituted on a first petition.

Several commenters proposed requiring petitioners, who file a petition challenging the same patent claims at issue in an earlier-filed petition, to identify what issues were previously raised. Commenters also advocated requiring such petitioners to state whether they are amenable to joinder with the earlier proceeding. On that point, one commenter urged that duplicative petitions, filed after the deadline for joinder, ''should be terminated at an early stage to conserve Patent Owner costs and [Board] resources.'' Another commenter stated

that, ''[f]or consolidated AIA trials involving the same patent with at least one challenged claim in common, the current rules that the Board uses for joinder seem to be working well.'' Some commenters urged that duplicative petitions, filed outside the permissible period for joinder, should not be granted.

Response: The current rules afford the Board broad discretion to manage multiple proceedings by tailoring the solution to the unique circumstances of each case and, thereby, optimizing efficiencies and promoting fair results in each case. *See Prism Pharma Co.* v. *Choongwae Pharma Corp.,* IPR2014–00315 (PTAB July 8, 2014) (Paper 14) (informative) (denying institution of *inter partes* review based on second-filed petition that was based on the same prior art and same arguments previously considered by the Office during prosecution of the patent being challenged); *Medtronic, Inc.* v. *Nuvasive, Inc.,* Case IPR2014–00487 (PTAB Sept. 11 2014) (Paper 8); *Unified Patents, Inc.* v. *PersonalWeb Techs., LLC,* Case IPR2014–00702 (PTAB July 24, 2014) (Paper 13); *Unilever, Inc.* v. *Procter & Gamble Co.,* Case IPR2014–00506 (PTAB July 7, 2014) (Paper 17); *Medtronic, Inc.* v. *Robert Bosch Healthcare Systems*, Inc., Case IPR2014–00436 (PTAB June 19, 2014) (Paper 17); *Intelligent Bio-Systems, Inc.* v. *Illumina Cambridge Ltd.,* Case IPR2013–00324 (PTAB Nov. 21, 2013); *ZTE Corp.* v. *ContentGuard Holdings, Inc.,* Case IPR2013–00454 (PTAB Sept. 25, 2013) (Paper 12). The Board will continue to take into account the interests of justice and fairness to both petitioners and patent owners where multiple proceedings involving the same patent claims are before the Office.

The Board also must consider its ability to meet the statutory deadlines imposed by Congress on AIA trials. The Board agrees with the commenters that the timing of the patent owner's preliminary response may be altered, when helpful and fair in an appropriate case. No rule change is needed to accomplish that goal.

The Board has considered the comment that second petitioners should self-identify repetitive challenges, and state their amenability to joinder. As a practical matter, the Board is well-positioned to determine whether a second petition raises the same or substantially the same challenges presented in a first petition that is identified as a related matter. The Board is also adept at determining whether a grant of the second petition, with joinder, serves the interests of fairness, efficiency, and economy of process. In addition, pursuant to 37 CFR 42.8(b)(2), petitioners are required to identify other proceedings involving the same challenged patent, and petitioners are encouraged to identify any substantive similarities with other proceedings in the petition. No rule change requiring petitioners to self-identify repetitive challenges is warranted at this time.

The Board agrees with the commenters that a factor which may be relevant in appropriate cases is whether the petitioner in a later-filed proceeding is amenable to joinder with an earlier-filed proceeding involving the same patent claims. *See, e.g., Motorola Mobility LLC* v. *Softview LLC,* IPR2013–00257 (PTAB June 20, 2013) (Paper 10) (order granting joinder where a second petitioner neither introduced new grounds of unpatentability nor raised procedural issues that would delay the schedule set for the first proceeding). The Board will continue to take account of all factors, bearing on the propriety and feasibility of joinder, based on the particular facts of the involved proceedings.

Based on the comments, the Office determines that the current rules provide a workable framework for the Board to manage multiple proceedings that involve the same patent claims. No revision of the rules for managing such proceedings is necessary at this time.

Question 8: What factors should be considered in deciding whether to stay, transfer, consolidate, or terminate an additional proceeding involving the same patent after a petition for AIA trial has been filed? 79 FR at 36,476.

Comments: Some commenters suggested that the Office promulgate new rules that define the factors that the Office will take into account when considering multiple petitions directed to the same patent claims. Commenters advocated for the application of a variety of factors, which fall into three main categories: (1) The impact on scheduling and the Office's ability to meet the deadlines imposed by Congress in AIA proceedings; (2) prejudice to the patent owner; and (3) prejudice to the petitioner.

Response: The issues raised by Question 8 are closely related to the issues raised by Question 7. The interests of fairness, speed, efficiency, and economy are served by retaining the Office's ability to balance the competing interests of the petitioner and patent owner, where multiple petitions are filed that challenge the same patent claims. Managing multiple petitions demands highly fact-specific inquiries, and the Office requires broad discretion to craft results that are tailored to the particular circumstances presented in each case. The Office agrees with the comments that recognize the issues raised by multiple petitions are best resolved on a case-by-case basis.

The Office recognizes that approaching each case on its own facts raises consistency concerns that could be ameliorated by identifying a set of factors that apply in all cases. The Office agrees with the comments, however, suggesting that the interests, which bear on the propriety of a stay, transfer, consolidation, or termination where multiple proceedings are directed to the same patent claims, are best served by allowing the constellation of relevant factors to evolve gradually, tethered to the facts of individual cases. A restrained evolution, on a case-by-case basis, promotes fair and rational results in each case, and equips the Office with necessary flexibility to customize resolutions suitable for each particular case. The Office will develop relevant factors, tethered to specific facts raised in particular cases, through its body of case law. Given the still-evolving nature of AIA proceedings, the Office believes that this gradual approach is prudent and preferred over a premature attempt to establish a rule or factors divorced from particular facts raised in a particular case, which may not address the relevant concerns in every case. The Office plans to add further discussion on this issue to the Office Patent Trial Practice Guide.

Question 9: Under what circumstances, if any, should a copending reexamination proceeding or reissue proceeding be stayed in favor of an AIA trial? If a stay is entered, under what circumstances should the stay be lifted? 79 FR at 36476.

Comments: The Office received comments in favor of staying a copending reissue or reexamination. Commenters proposed that a stay for copending proceedings be determined on a case-by-case basis, with other commenters proposing that the stay be imposed upon institution of trial on the same patent. Another commenter proposed that a copending reissue or reexamination be stayed automatically, unless there was a showing of ''good cause,'' which includes factors such as avoiding: (a) Inconsistent decisions by the Office; (b) duplicative work for the Board; and (c) disruption to the trial schedule. Other factors to consider in granting a stay, according to another commenter, include the statutory deadlines of the proceeding, the issues raised in the multiple proceedings, the parties involved, the likelihood of a reissue application being granted, and whether the decision adversely affects a party's ability to reach a timely

conclusion on a patentability issue. Another commenter provided additional factors to consider in granting a stay, such as the stage where amendments are possible, whether claim construction is inconsistent with the claim construction applied during trial, and agreement of the parties regarding a stay.

For those commenters favoring a stay, the circumstances regarding when a stay should be lifted ranged from the rendering of a final written decision to when appeal to the Federal Circuit has been exhausted. Other commenters have requested that the Office clarify that it will not terminate the reexamination or reissue once the final written decision issues, so that a patent owner may pursue claim amendments in those proceedings.

In the circumstances when a copending reexamination or reissue is not stayed and when there is no overlap of claims involved in the copending proceedings and the instituted trial, a commenter stated that the Office should preclude the presentation of new amended claims in the copending proceedings involving the same patent because a ''sequential,'' rather than a ''simultaneous,'' evaluation of the claims is consistent with the legislative history of the AIA.

Other commenters proposed that the Office consider allowing the reexamination and reissue to continue in parallel with or before the instituted trial. One commenter stressed that the purpose of a reissue is to correct errors, and therefore the remedial nature of the proceeding counsels against waiting for a trial to conclude. The same commenter offered that staying a reexamination is unjust to the patent owner because reexaminations are given ''special dispatch'' under 35 U.S.C. 305, a statutory requirement that remained unchanged with the passage of the AIA. Because in an instituted trial only one amendment is allowed by motion, the same commenter stated that a stay would preclude examination of claims amended in a reexamination or reissue to address the newly cited prior art or correct an error that was not present or addressed during the original examination of the patent. In particular, one commenter stressed that a reexamination should be allowed to run its course, and in any event, because an AIA proceeding would replace reexamination, copending AIA and reexamination would not be a problem much longer.

In the event a reexamination is not stayed, one commenter suggested that the Board's claim construction should be applied in the reexamination, or briefing on claim construction for the reexamination should be allowed in light of the claim construction involved in the trial.

Response: The Office has been determining whether to stay a reexamination or reissue on a case-by-case basis, and agrees with the commenters advocating that various factors should be considered, including the overlap of issues presented in the copending proceeding and the stage of the copending proceeding to avoid duplicative work for the Office. *See, e.g., Kaiser Aluminum* v. *Constellium Rolled Prods. Ravenswood, LLC,* IPR2014–01002 (PTAB Feb. 19, 2015) (Paper 25) (denying request to stay a reexamination on the same patent and some of the same references because the proceeding involved evidence different from the evidence presented in the *inter partes* review (IPR) and the reexamination was not sufficiently underway such that it would conclude before a final decision would issue in the IPR); *Chicago Mercantile Exch., Inc.* v. *5th Market, Inc.,* CBM2014–00114 (PTAB Jan. 9, 2015) (Paper 20) (denying request to stay copending reexamination because claims amended in reexamination were not at issue in the instituted covered business method review, where Patent Owner did not file a motion to amend, and finding that parallel proceedings would not result in duplication of efforts at the Office because the instant proceedings did not involve a complete overlap of claims); *Geortek, Inc.* v. *Knowles Elecs.,* LLC, IPR2013–00614 (PTAB Nov. 13, 2013) (Paper 11) (granting Patent Owner's motion to stay copending reexamination that had been ongoing for three years where Patent Owner argued that stay would prevent inconsistent results with regard to potential amendments of the same claims challenged in the *inter partes* review); *Google, Inc.* v. *Grandeye, Ltd.,* IPR2013–00548 (PTAB Sept. 30, 2013) (Paper 7) (granting unopposed motion to stay copending reexamination by Patent Owner because concurrent proceedings would duplicate efforts within the Office and could potentially result in inconsistencies among the proceedings, especially in light of amendments of the challenged claims in the reexamination).

The Office is not proposing changes at this time to the Rules or to the Office Patent Trial Practice Guide to give guidance regarding the timing on lifting a stay or how to proceed in a copending reexamination or reissue that is not stayed. These determinations have been proceeding appropriately on a case-by-case basis, noting, among many factors, the impact of the concurrent reexamination on the trial and whether the trial has concluded. *See, e.g., GEA Process Eng'g, Inc.* v. *Steuben Foods, Inc.,* IPR2014–00043 (PTAB Feb. 19, 2015) (Paper 121) (ordering lift of stay of a copending reexamination after the trial was terminated and timing for filing a request for rehearing had expired, and ordering that Patent Owner provide a copy of the Decision on Institution to the Central Reexamination Unit for consideration in light of alleged inconsistencies); *Gnosis S.p.A.* v. *Merck & CIE,* IPR2014–00117 (PTAB Feb. 5, 2015) (Paper 74) (ordering lift of stay of a copending reexamination after issue of a final written decision, and in consideration of the following: (1) The reexamination involved overlapping claims; (2) Patent Owner did not amend claims involved in *inter partes* review; (3) added claims were alleged to be narrower in scope; and (3) Examiner in the reexamination had issued a final rejection); *Avaya Inc.* v. *Network-1 Sec. Solutions, Inc.,* IPR2013–00071, slip op. at 31–32 (PTAB May 22, 2014) (Paper 103) (lifting stay, sua sponte and after final written decision issued, of a reexamination involving a non-asserted claim and different prior art presented in the *inter partes* review).

The Office will continue to determine, on the facts of each case in which there is a copending reexamination or reissue, whether a stay is warranted or a stay should be lifted under the circumstances of each case.

Question 10: Under what circumstances, if any, should an AIA trial be stayed in favor of a copending reexamination proceeding or reissue proceeding? If a stay is entered, under what circumstances should the stay be lifted? 79 FR at 36476.

Comments: The Office received comments in favor of not staying AIA trials in favor of a copending reexamination or reissue. One reason provided for not staying the trial is that statutory deadlines apply to the trials. One commenter observed an exception that may warrant a stay of AIA proceedings, *i.e.,* to account for when the copending reexamination or reissue was not stayed and a new claim is about to issue. In that circumstance, the commenter suggested that a limited stay should be granted to allow a petitioner to raise the new claim in the pending trial. Another commenter also stated that limited circumstances may warrant a stay, such as when the copending reexamination is in the late stages of appeal and there is significant overlap in claims between the trial and the copending proceeding. This same commenter stressed that if the parties agree that patentability should be

determined first in the reexamination, a stay of the trial may be warranted.

Other comments favored the request for and grant of a stay of the trial in favor of the copending reexamination or reissue. One commenter noted that such a stay should be granted when the copending reexamination or reissue is near completion, and another commenter stressed that the stay may be implemented before the trial is instituted such that the statutory deadlines are not impacted.

Another commenter provided that denial of institution should result for grounds with claims that are at issue in a copending reexamination or reissue, where amended claims were filed in the copending proceeding before the deadline for the Board to determine institution. To clarify whether the Board would have jurisdiction over such a trial, the same commenter advocated revising the Office Patent Trial Practice Guide to include clarification regarding the timing on when a notice of intent to issue a reexamination certificate or notice of allowance of a reissue would be effective.

Response: The Office will continue to proceed with the determination whether to institute trial on a case-by-case basis with no delay of the proceedings unless warranted by the facts or circumstances of the case. *See, e.g., Intromedic Co., Ltd.* v. *Given Imaging Ltd.,* Case IPR2015–00579 (PTAB Aug. 5, 2015) (Paper 9) (denying institution of review because the only claim being challenged by Petitioner has been amended in the copending reexamination, and the advanced stage of the reexamination involving the same parties); *Juniper Networks, Inc.* v. *Linex Techs., Inc.,* IPR2014–00595 (PTAB Sept. 26, 2014) (Paper 19) (denying institution of *inter partes* review because a Reexamination Certificate in a copending reexamination had issued and reexamination had concluded with all original claims amended and new claims issued). The Office agrees with the commenters that stress that a statutory deadline does not favor staying trials in favor of a copending reexamination or reissue, which have no statutory deadlines. *See, e.g., Mercedes-Benz USA, LLC* v. *Velocity Patent, LLC,* IPR2015–00290 (PTAB Jan. 21, 2015) (Paper 9) (denying authorization for motion to stay *inter partes* review in favor of a copending reexamination because the argument that new claims would issue there first and *inter partes* review would be amended to include those claims were not sufficient reasons to lengthen the pendency of the *inter partes* review, which is designed to secure the just, speedy, and inexpensive resolution of the dispute); *see also American Simmental Assn.* v. *Leachman Cattle of Co.,* LLC, PGR2015–00003 (PTAB Dec. 14, 2014) (Paper 4) (denying request to stay institution of post-grant review (PGR) in favor of pending reissue because of the status of the PGR, Patent Owner had not sought amendment or cancellation of the claims challenged in the PGR, and the Office had not taken any substantive action on the reissue application).

At this time, the Office does not propose changes to the Rules or the Trial Practice Guide to list specific circumstances under which a party may show that a stay of either a decision on institution or a trial may be appropriate. The Office will continue to decide motions to stay proceedings according to the facts and circumstances of each case.

Question 11: Under what circumstances, if any, should a copending reexamination proceeding or reissue proceeding be consolidated with an AIA trial? 79 FR at 36477.

Comments: The Board received several comments concerning the circumstances under which a copending reexamination or reissue should be consolidated with an AIA trial. Those circumstances fall roughly into two categories. The first category of comments indicated that consolidation of an AIA trial with copending reexaminations or reissues was impractical and that rules requiring such consolidation could, in some cases, prejudice patent owners. The second category of comments provided several factors that should be considered and weighed by the Board in determining whether to consolidate such proceedings. Those factors included: (1) Type of additional proceeding; (2) time between filing date of initial proceeding and additional proceeding; (3) stage of initial proceeding; (4) duration of additional proceeding; (5) scope of each proceeding; (6) third party filers (same, different); (7) relation between third party filer of additional proceeding and filer of initial proceeding; (8) number of total proceedings filed against the patent; (9) whether the additional proceeding is a reexamination: *ex parte* reexamination should not be transferred to PTAB because patent owner would lose certain procedural mechanisms such as ability to interview case; (10) whether pending district court litigation has been stayed pending resolution of the reexamination; (11) whether validity of claims at issue in AIA trial is currently on appeal to the Federal Circuit; (12) express interests of the parties in the proceedings; (13) issues raised in the different proceedings; (14) ability of Board to reach a timely conclusion of a patentability issue in any proceeding; and (15) saving of costs and resources gained by the parties and the Board by consolidation, for example, by coordination of procedures common to the proceedings.

Response: The Office appreciates the comments and has been considering the above factors, among others, in deciding requests to consolidate a copending reexamination or reissue with AIA trials. *See, e.g., Mercedes-Benz USA, LLC et al.* v. *Velocity Patent LLC,* Case IPR2014–01247 (PTAB Dec. 15, 2014) (Paper 12) (denying Petitioner's request to file a motion to consolidate AIA trial proceeding with a related reexamination, where the only claims at issue in the AIA trial proceeding were added in the reexamination, and Patent Owner cancelled those claims in the reexamination); *GEA Process Engineering, Inc.* v. *Steuben Food, Inc.,* Case IPR2014–00041, slip. op. at 3–5 (PTAB Dec. 6, 2013) (Paper 13) (denying Petitioner's motion to consolidate AIA trial proceeding with a related reexamination, where Patent Owner stipulated to not amend claims in the related reexamination); *GEA Process Engineering, Inc.* v. *Steuben Food, Inc.,* Case IPR2014–00051, slip. op. at 2–3 (PTAB Dec. 6, 2013) (Paper 12) (denying as moot Petitioner's motion to consolidate AIA trial proceeding with a related reexamination, where the reexamination had terminated and the reexamination certificate had issued). The Office agrees with the commenters who noted that there are many difficulties in consolidating copending reexaminations or reissues with AIA trials, and that all relevant factors, including but not limited to those set forth above, should be taken into consideration. The Office has performed similar analyses weighing a myriad of factors in analogous contexts, for example, in determining whether to stay a copending reexamination or reissue in favor of an AIA trial, or vice versa. *See, e.g.,* Responses to Questions 9 and 10 set forth above.

The Office does not propose to change the Rules or the portion of the Office Patent Trial Practice Guide pertaining to consolidation of a copending reexamination or reissue with AIA trials at this time. The Office will continue to determine on the facts of each case, in which consolidation is requested, whether a particular request sets forth facts sufficient to warrant consolidation of a copending reexamination or reissue with AIA trials.

Question 12: How should consolidated proceedings be handled

before the USPTO? Consolidated proceedings include, for example: (i) Consolidated AIA trials; (ii) an AIA trial consolidated with a reexamination proceeding; or (iii) an AIA trial consolidated with a reissue proceeding? 79 FR at 36477.

Comments: The Office received comments suggesting ways in which consolidated proceedings should be conducted. Suggestions included: (1) Multiple AIA trials concerning the same (or related) patents (or parties) should be consolidated or handled by the same panel; (2) consolidated proceedings should follow the district court model with the same schedule applying to the proceedings; (3) a petitioner should be required to select a single lead and backup counsel, but taking into consideration the interests of the parties, in some circumstances the Board may determine coordination should not be required; and (4) panels should consider adjusting page limits in cases where different parties may be asserting different positions.

Response: The Office agrees with the commenters that conducting consolidated proceedings in the manner set forth in the comments above may be appropriate. The Board has consolidated *inter partes* reviews involving the same parties and the same patent into a single proceeding where appropriate. *See Ford Motor Co.* v. *TMC Fuels Injection System, LLC,* Case IPR2014–00272 (PTAB Jun 26, 2014) (Paper 12) (consolidating IPR2014–00272, which was instituted on challenges under 35 U.S.C. 103, with IPR2014–00273, which was instituted on different challenges to the same claims under 35 U.S.C. 102 and 103 in which some of the applied references were common to both proceedings). In some cases where different parties have been joined to a proceeding, the panel has provided opportunities for limited additional briefing on issues where the petitioners may take different positions. *See, e.g., Motorola Mobility LLC* v. *Softview LLC,* Case IPR2013–00257 (PTAB June 20, 2013) (Paper 10) (joining proceeding to IPR2013–00004 and providing for consolidated filings and limited separate filings by Petitioners on points of disagreement only).

The Office received a further comment that claim amendments should be allowed if an AIA trial is consolidated with a copending reexamination or reissue. The Office notes that claim amendments are available currently in all of these proceedings. Insofar as the commenter may be suggesting that all claim amendments be entered as a matter of right in a consolidated proceeding, the Office disagrees, and instead leaves entry of claim amendments to be determined by the panel conducting the consolidated proceeding in accordance with the statutory and regulatory framework applicable to each of the proceedings.

Some commenters suggested that the Board has coordinated and should continue coordinating schedules of multiple related proceedings without formally consolidating the proceedings, for example, so as to allow different petitioners flexibility to pursue different arguments and to allow patent owner all of its allotted pages to respond to those different arguments. The Office has been coordinating schedules of multiple related proceedings without formally consolidating the proceedings, on a case-by-case basis, and agrees with the commenters that such practices should be continued, as appropriate. *See, e.g., Taiwan Semiconductor Mfg. Co., Ltd.* v. *Zond, LLC,* Case IPR2014–001089, slip. op. at 2–3 (PTAB Feb. 2, 2015) (Paper 17) (setting forth procedure for consolidated trial schedule, filings, and discovery in multiple related proceedings). The Board has also coordinated hearings in related cases and has scheduled hearings in related cases to occur on consecutive days in related cases. *See Samsung Electronics Co., Ltd.* v. *Black Hills Media, LLC,* Case IPR2014–00709 (PTAB Dec. 10, 2014) (summary of initial conference during which it was decided that IPR2014–00709, –00711, and –00718 would be heard together, IPR2014–00737 and –00740 would be heard together, IPR2014–00718 and –00721 would be heard together, and IPR2014–00717 and –00735 would be heard together, on consecutive days). *See, e.g.,* Responses to Question 7 set forth above.

The Office does not propose to change the Rules or the portion of the Office Patent Trial Practice Guide pertaining to handling of consolidated proceedings. The Office will continue to determine based on a case-by-case basis the proper manner in which such consolidated proceedings should be handled.

Question 13: Under what circumstances, if any, should a petition for an AIA trial be rejected because the same or substantially the same prior art or arguments previously were presented to the USPTO in a different petition for an AIA trial, in a reexamination proceeding or in a reissue proceeding? 79 FR at 36477.

Comments: The Board received many comments in favor of denying AIA petitions that raise the same or substantially the same prior art or arguments that were raised in an earlier-filed petition, whether raised by the same or a different petitioner. One commenter stated that the Board ''should aggressively exercise'' its discretion to deny cumulative or overlapping grounds in multiple proceedings, ''even when different parties file petitions.'' Some commenters advocated denial of serial petitions filed by the same real party-in-interest. Other commenters stated that the Board should consolidate multiple petitions where feasible.

Several commenters suggested a general policy of ''one and done'' to duplicative petitions, to prevent harassment of patent owners, minimize costs, and ensure quiet title of patent rights. Those same commenters also recommended that the citation of new art in a subsequent petition should create a rebuttable presumption that substantially the same prior art or arguments are not raised in that petition. Commenters also urged the Board to apply principles of redundancy, across different petitions, to deny duplicative grounds raised in later-filed petitions.

Other commenters stated that ''[t]he Board should treat each petition independently,'' and that a different petitioner, not in privity with the first petitioner, should be permitted to raise the same prior art in a subsequent petition. Some commenters proposed that duplicative petitions should not be denied where arguments in a later-filed petition differ in scope from those presented in an earlier-filed petition. Another commenter, by contrast, proposed a rule of ''horizontal stare decisis'' that would require treating a first decision on patentability as ''binding law of the case'' in subsequent proceedings, challenging the same patent claims, based on the same or substantially the same prior art or arguments.

Response: The Office has and will continue to balance the interests of petitioners, who seek to present new prior art and arguments in a later-filed petition, against patent owners' interest in preventing harassment that takes the form of repetitive, serial petitions that challenge the same patent claims. The Office is best able to balance those competing interests by approaching multiple petitions, which may raise the same or substantially the same prior art or arguments against the same patent claims, on a case-by-case basis, taking into account the unique facts and relative equities raised in each particular proceeding.

The comments do not suggest a need for a rule change at this time. The current rules provide the Board with broad discretion adequate to take all

relevant factors into account, when deciding whether to proceed on a petition that challenges the same patent claims at issue in an earlier-filed petition. Nor is a rule change necessary to enumerate the factors that the Board may take into account when making case-specific determinations, regarding the degree of overlap between the prior art and arguments raised in multiple petitions. The Office believes that the Board's current practice should continue to allow those factors to develop in its growing body of case law, tethered to the facts of particular proceedings, with such decisions of the Board providing guidance to practitioners.

Issued decisions already provide useful guidance in that regard. The Board has considered many factors, including, for example: (1) The degree of overlap between the prior art and arguments raised in the multiple petitions; (2) the identity of the petitioner in the later-filed proceeding; (3) whether the petitioner in the later-filed proceeding uses a prior decision on institution as a roadmap to refine and recycle arguments presented in an earlier-filed petition; (4) whether the circumstances surrounding the later-filed petition raises the specter of patent owner harassment; and (5) whether granting the later-filed petition is in the interests of justice. *See, e.g., ZTE Corp.* v. *ContentGuard Holdings Inc.,* IPR2013–00454 (PTAB Sept. 25, 2013) (Paper 12) (informative) (denying institution of *inter partes* review of a patent based on substantially the same prior art and same arguments presented previously in an earlier-filed petition filed by the same Petitioner for which institution was in-part denied, and citing 35 U.S.C. 325(d), to determine that ''[a] decision to institute review on some claims should not act as an entry ticket, and a how-to guide, for the same Petitioner who filed an unsuccessful joinder motion, and is outside of the one-year statutory period, for filing a second petition to challenge those claims which it unsuccessfully challenged in the first petition''); *Medtronic, Inc. v Robert Bosch Healthcare Systems, Inc.,* IPR2014–00436 (PTAB June 19, 2014) (Paper 17) (informative) (denying institution of *inter partes* review where petition was based on redundant prior art and substantially the same arguments that were presented previously in an earlier-filed petition challenging the same patent and filed by a different Petitioner, but where the Petitioner in the later-filed case acknowledged that it was a real party-in-interest in the earlier-filed proceeding, due to its acquisition of the Petitioner in the earlier-filed proceeding); *Unilever* v. *Procter & Gamble Co.,* IPR2014–00506 (PTAB July 7, 2014) (Paper 17) (informative) (denying institution of *inter partes* review based on a later-filed petition, filed by same Petitioner and on same patent as an earlier-filed petition, where the later-filed petition attempted to correct deficiencies in the earlier-filed petition for claims for which earlier trial was not instituted); *Dell Inc.* v. *Electronics and Telecomms. Res. Inst.,* Case IPR2015–00549 (PTAB March 26, 2015) (Paper 10); *Zimmer Holdings, Inc.* v. *Bonutti Skeletal Innovations LLC,* Case IPR2014–01080 (PTAB Oct. 31, 2014) (Paper 17); *Prism Pharma Co., Ltd.* v. *Choongwae Pharma Corp.,* Case IPR2014–00315 (PTAB July 8, 2014) (Paper 14).

The Office recognizes that a ''one and done'' approach to multiple petitions may favor patent owners by diminishing the opportunity for harassment and ensuring some certainty for patent rights. In that regard, the Board already has applied its broad discretion to curtail multiple challenges against a patent as described above.

The competing interests of fairness to petitioners and the public interest, however, favor retaining the Office's discretion to grant or deny multiple petitions, rather than imposing a rigid rule that would require denial and, in effect, bind all potential challengers to the outcome of a first-filed petition, regardless of the facts and equities that surround the filing of the subsequent petitions.

The Office also acknowledges that petitioners may benefit from a ''rebuttable presumption'' that would render inapplicable the provisions of section 325(d), where a subsequent petition raises even one prior art reference that was not raised in the first-filed petition. Such an approach, however, unfairly would provide petitioners a fail-safe mechanism for avoiding the provisions of the statute, by filing serial petitions that add a single new reference to support the same grounds raised in an earlier petition. Such an approach fails to take into account the unfairness, including the potential for harassment, to patent owners when ''substantially the same'' prior art is raised sequentially against the same patent claims. The Office's discretion to grant or deny subsequent petitions, by viewing all relevant circumstances as a whole, on a case-by-case basis, is preferable to setting down a rigid rule.

Within the existing framework of the statute and rules, the Office has discretion to consider the relative scope of the challenges raised in multiple petitions. If a petition raises challenges that are based on the same or substantially the same prior art as a prior petition, but advances arguments of different scope, the Office has discretion to deny or grant the second petition based on the totality of facts presented in the case. A rule of ''horizontal stare decisis'' would, therefore, abolish the Board's discretion, especially where two cases do not present the same facts or identical considerations.

The Office will to continue to apply the existing framework, based on discretion to customize a result based on the facts and equities of each case. No rule changes are indicated at this time.

Extension of One Year Period To Issue a Final Determination

The Office asked, ''What circumstances should constitute a finding of good cause to extend the 1-year period for the Board to issue a final determination in an AIA trial?'' 79 FR at 36477.

Comments: The Office received comments in favor of the current strict adherence to the one-year statutory period and advocating that the granting of extensions should be rare. Many of these commenters stated that the Office should ''continue to strive for completion of each trial in one year,'' the ''good cause'' bar should be very high, and extensions of the deadline should be ''rare'' and used only ''in the most extreme circumstances'' such as ''where unforeseen circumstances make it impossible to complete proceedings in a fair manner.'' These same commenters stressed that ''one of the most important benefits of [these proceedings]'' and ''a major driver in the widespread adoption of the AIA procedures'' is that the Office renders a decision within one year. The commenters warned about eviscerating these benefits by a ''systematic extension of the one-year period.''

The Office also received comments advocating that the Office make more generous use of the option to extend the one-year statutory period under certain circumstances. For example, commenters proposed that an extension of the one-year deadline would be appropriate under the following circumstances: (1) ''where a comparative test(s) are deemed necessary;'' (2) where there is ''delay by the party not seeking the extension;'' (3) ''if there is a later-filed AIA proceeding on the same patent that will not reach a final decision until after the first proceeding is concluded;'' (4) ''where

additional discovery is sought . . . in regard to secondary considerations or real party in interest;'' (5) ''in situations in which more time is needed to consider amended claims;'' and (6) ''where an irreplaceable, key participant becomes unexpectedly unavailable.''

Many commenters also suggested that an extension would be appropriate in complex cases ''in the interests of justness, fairness to the parties'' and ''to conduct a full and fair review of the record.'' The commenters described examples of complex cases as including: (1) ''where there is a complex situation with multiple proceedings;'' (2) when ''the [Patent] Owner is involved in multiple proceedings simultaneously;'' (3) ''when an invention is particularly complex;'' (3) ''where multiple AIA trials are consolidated or joined;'' (4) ''where there are a large number of parties involved;'' and (5) ''where the trial involves complicated discovery issues.''

Response: The Office will continue to strive to meet the one-year statutory time period for trial. By striving to meet the one-year statutory time period in most cases, the Office safeguards a core function of the administrative process as a speedy alternative to district court litigation. The Office does not propose to change the rules pertaining to the one-year pendency from institution-to-decision to provide for specific circumstances under which ''good cause'' may be shown. The Board will continue to determine on the facts of each case, in which an extension is requested, whether a particular request sets forth facts sufficient to meet the ''good cause'' standard to extend the one-year statutory deadline to complete a trial. The Office proposes, however, to revise the Office Patent Trial Practice Guide to provide examples of instances in which an extension of the one-year statutory period may be warranted. These examples will not be an exclusive list.

Oral Hearing

The Office asked, ''Under what circumstances, if any, should live testimony be permitted at the oral hearing? What changes, if any, should be made to the format of the oral hearing?'' 79 FR at 36477.

Comment 1: Several commenters asked the Board to be more willing to permit live testimony of declarants. Some suggested that live testimony be considered when requested or when the issues turn on conflicting expert testimony. Others commented that live testimony is rarely needed in AIA trials and the format of oral hearings should not change. One party suggested establishing a reasonable time limit when live testimony is permitted.

Response: The Office will continue its present practice of considering requests for oral hearings on a case-by-case basis. Thus far, the Office has authorized and granted one such motion requesting oral testimony. *See K–40 Electronics, LLC* v. *Escort, Inc.,* Case IPR2013–00203 (PTAB May 21, 2014) (Paper 34). The Office does not expect that oral testimony will be required in every case where there is conflicting testimony. When requested by the parties, however, and where the panel believes oral testimony will be helpful in making a determination, the Office will permit oral testimony. The format for presenting live testimony is left to the discretion of the panel.

Comment 2: Two commenters suggested that the Office should revise the definition of ''hearing'' or ''trial'' to clarify that live testimony at the final hearing is part of an AIA trial.

Response: The current definition of what constitutes a trial is intended to establish an endpoint for the receipt of evidence. Thus, unless otherwise authorized, no new evidence can be presented at the final oral hearing, as that would create surprise and be unfair to the party against whom the evidence is being offered. However, in the case of oral testimony at the final hearing, it is understood, and the Board will make clear at the hearing, that the testimony is evidence that becomes part of the record.

Comment 3: Several commenters suggested that the Office should alter its format for final oral hearings to allow each party to reserve time for a main and rebuttal argument.

Response: The comment is not adopted. The current format of oral hearings and the availability of rebuttal arguments are dictated by burdens of proof. Consequently, the petitioner, who has the burden of proving the challenged claims unpatentable, is permitted to rebut the patent owner's opposing argument on that issue. Likewise, a patent owner who presents argument on a motion to amend at final hearing is permitted to rebut petitioner's opposing argument on that issue. Providing a rebuttal to patent owner, as a matter of right, on unpatentablilty would disadvantage the party with the burden of proof. The Board, however, has broad discretion to conduct final oral hearings in a manner that is in the interests of justice.

Comment 4: A commenter requested that the Office clarify whether the parties are limited to presenting argument on issues specified in the oral hearing request.

Response: The comment is adopted. The Office will provide guidance on this issue in the FAQs on the PTAB Trials Web site and in the Office Patent Trial Practice Guide.

Comment 5: A commenter requested that the Office provide the parties with additional days to permit exchange and conference on demonstratives.

Response: The comment is adopted. The Office's rules for oral hearings are proposed to be modified to require the exchange of demonstratives seven business days before the final hearing date.

Comment 6: A commenter requested that the Office revise its guidelines on the nature of demonstrative exhibits at oral argument to make them more ''relaxed.''

Response: The comment is not adopted. The guidelines on demonstrative exhibits are intended to prevent a party from supplementing the record with additional evidence and arguments after the period for presenting evidence has ended.

Comment 7: One commenter suggested upgrading technology resources so that hearings can be held in regional offices.

Response: Currently, the Office is planning to upgrade its ability to hold hearings in regional offices.

Comment 8: One commenter suggested that hearing rooms be open at least 30 minutes before the scheduled hearing time to allow the parties to organize themselves and connect any equipment to be used during the hearing.

Response: The current Office practice is to open PTAB hearing rooms to the parties and public 30 minutes before the hearing is scheduled to start. The Office will continue this practice.

Comment 9: A commenter advocated allowing a recess during oral argument to confer with an expert when there is a question of specific claim construction.

Response: The panel hearing a final argument will evaluate a party's request for a recess on a case-by-case basis.

Comment 10: A commenter suggested that all judges of a proceeding be available for multiple session final arguments.

Response: This comment is adopted in part. Sometimes several related cases having different assigned panels are heard at the same time in a multi-session hearing. The Office ensures that, absent extenuating circumstances, the panel members assigned to a particular case are present at the session when that case is heard. The Office also encourages the panel members assigned to the related cases to be present for all

the sessions. Occasionally a scheduling conflict prevents a panel member from attending a session in a related case.

General Topics

The Office asked, ''What other changes can and should be made in AIA trial proceedings? For example, should changes be made to the Board's approach to instituting petitions, page limits, or request for rehearing practice?'' 79 FR at 36477.

Comment 1: Several comments suggested reduced filing fees for smaller businesses such as micro-entities and technology start-ups, especially those involved in litigation.

Response: The Office does not adopt this proposal. The Office was not given authority to provide for small entity and micro-entity filing fee reduction for reviews under AIA. The current filing fee schedule, available at *http://www.uspto.gov/learning-and-resources/fees-and-payment/uspto-fee-schedule,* takes into account the costs and expenses for maintaining the operation of the Office, and in particular, the operation of the Board in conducting AIA proceedings.

Comment 2: The Office received comments regarding the use of party confidential information produced under a protective order in parallel district court proceedings. Commenters expressed concern that such party confidential information may be submitted in an AIA proceeding by the opposing party where there is ''little incentive to . . . either limit the evidence to that which has a nexus to the challenged claims or to provide sufficient argument to maintain'' confidentiality. Commenters further suggested procedural safeguards whereby, prior to filing an opponent's confidential information, a party is required to: (1) Initiate a conference call with the Board; (2) identify the materials to be used; and (3) explain why there is a nexus between the evidence and the challenged claims. The same commenters recommended that, once the Board authorizes the filing of this evidence, the opponent be afforded an opportunity to explain why the evidence be maintained under seal.

Additionally, some commenters suggested that Section 4(A)(i) and (ii) of the default protective order should be modified to place the burden on the party designating the information confidential to show good cause for maintaining the information under seal. Other commenters recommended that the default protective order be entered automatically, and that the parties request authorization to file a motion to modify the default protective order.

Response: In promulgating the rules for the treatment of confidential information in an AIA proceeding, the Office attempted to strike the proper balance between protecting the discloser's confidential information and the rights of others to use that information. There is a strong public policy in favor of making information filed in an AIA proceeding open to the public, especially because the proceeding determines the patentability of claims in an issued patent and, therefore, affects the rights of the public. Nonetheless, if a party wishes the Board to consider truly sensitive information in making a patentability determination, the current rules provide a mechanism for the party to seek protection of that information from public disclosure by providing for motions to seal and the filing of a proposed protective order. 37 CFR 42.54.

With respect to the specific situation identified by the commenters regarding the filing of an opponent's confidential information, the current rules provide mechanisms to maintain confidentiality of such information. For example, under Rule 42.14, information subject to a motion to seal is ''provisionally sealed on receipt of the motion and remain[s] so pending the outcome of the decision on the motion.'' Following the filing of the motion to seal, an opponent may contact the Board and raise concerns regarding the other party's motion and the confidentiality of the opponent's information while the information is provisionally sealed. Further, under Rule 42.54, if applicable, the Board may issue an order to protect a party or person from disclosing confidential information, including ''[f]orbidding the disclosure or discovery.'' Moreover, to the extent that confidential information may have been improperly filed, Rule 42.56 provides for the expungement of this information from the record.

Additionally, a party need not wait for the filing of a motion to seal or proposed protective order to bring issues of confidentiality to the Board's attention. Parties are encouraged to discuss discovery matters, including the discovery of confidential information, early in proceedings to resolve potential disputes before these occur. These discovery matters include whether a protective order is necessary for the proceeding. The automatic entry of a protective order in every proceeding is not necessary, especially as the majority of evidence in these contested proceedings is non-confidential. Nevertheless, should the parties desire more or less protection than that provided by the default order in the Office Trial Practice Guide (Appendix B), the parties are always free to propose a stipulated protective order for consideration by the Board. The purpose of the default order is to encourage the parties to reach such agreements promptly, as lengthy disputes over complex protective order provisions are inconsistent with the legislative goal of providing a more efficient, less costly alternative to litigation. As always, if the parties are unable to come to agreement on any issue, the Board is available to provide guidance.

In light of the above, the Office does not propose any rule change in response to these comments. However, the Office appreciates the comments directed to affording the ''opponent'' an opportunity to explain why the evidence is confidential and placing the burden on the designating party to show good cause in sealing the information. The Office agrees it is reasonable that the party designating information as confidential is in the better position of explaining that designation and bearing the burden of maintaining confidentiality. Accordingly, the Office will revise the protective order in the Office Trial Practice Guide to include language addressing this concern.

Comment 3: Several commenters recommended the use of word count instead of page limits.

Response: This comment is adopted for the petition, preliminary response, patent owner response, and petitioner's reply brief. For all other briefing, a page limitation will be maintained. This change will allow the Office to gain administrative efficiencies. For example, with the use of word counts for the main briefing for AIA proceedings, petitions will no longer be reviewed to determine if any claim charts contain argument. This will streamline administrative review of petitions and reduce the number of non-compliant petitions that require correction.

Comment 4: One comment suggested that a petition page limit should be determined by the number of claims challenged to avoid the filing of multiple petitions on a single patent. Another comment has favored an alternative approach that provides automatic page extension tied to excess claim fees.

Response: This comment is not adopted. Based on the Board's experience, considering solely the number of claims at issue to determine a page limit for a petition does not provide sufficient flexibility in a petition to present ''the precise relief requested'' and ''the reasons for the relief requested, including a detailed

explanation of the significance of the evidence including material facts, and the governing law, rules, and precedent'' as required under Rule 42.22(a). Although, the number of claims at issue may affect the length of a petition, more often, the page length is governed by the discussion of the substantive unpatentability issues presented. In the Board's experience, the substantive issues for multiple claims in the same patent involve similar discussions of technology, claim construction, and prior art references. The Office expects that the word limits for *inter partes* review petitions, covered business method patent review petitions, and post-grant review petitions will be sufficient in all but exceptional cases. Furthermore, petitioners may seek waiver of the word limits in appropriate circumstances. 37 CFR 42.24(a)(2).

Comment 5: The Office received several comments regarding the use of claim charts. One commenter suggested claim charts should be attached separately from a petition and should not count toward the page limit. Other commenters requested clarification on the permitted contents in claim charts. For example, one commenter suggests that claim charts only include quotations from and citations to the prior art. Another commenter suggested allowing citations to declarations in the claim chart to support arguments as long as the declaration does not ''bootstrap arguments not also presented in the briefing.''

Response: In considering the use of claim charts, the Office has always been mindful of the concerns that claim charts may be used improperly by parties to circumvent page limits. Indeed, claim charts have been improperly used by parties to present attorney arguments and the incorporation by reference of evidence and arguments (*e.g.,* copious citations to declarations) that would otherwise exceed the page limits if provided elsewhere in briefing. As explained in the Board's frequently asked questions, D12, ''[p]lacing one's argument and claim construction in a claim chart to circumvent the double spacing requirement is not permitted, and any such argument or claim construction may not be considered by the Board.'' Further, D12 explains the ''Board previously accepted a few petitions with claim charts that included claim constructions, arguments, and explanations as to how the claim is unpatentable because the procedure for filing AIA petitions was new. However, correction is now required when a petition includes improper usage of claim charts.'' With the advent of the change from page limits to word count for the petition, patent owner preliminary response, patent owner response, and reply brief, however, a party could present its case by including argument in claim charts.

Comment 6: Several comments proposed allowing petitioners to file a reply brief responsive to the patent owner's preliminary response. Commenters suggest that the ability to file a reply brief will provide a more complete record, reduce the burden on the Office, and reduce the number of requests for rehearing filed by petitioners. Another comment, however, contends this proposed practice at the preliminary stage of the review would afford petitioners an unfair advantage in including arguments in the reply not addressed in the petition.

Response: The Office does not adopt the proposal of a petitioner's reply as of right in the pre-institution phase of an AIA review. Adding a reply as of right to the record at the preliminary stage would increase the burden on Office review by introducing additional arguments into the record not presented in the petition, which is the focus of the institution decision. Further, under Rule 42.5 the Office exercises discretion in administering the proceedings to balance the ideal of precise rules against the need for flexibility to achieve reasonably fast, inexpensive, and fair proceedings. Accordingly, the Board will continue to consider a petitioners' requests for filing reply briefs on a case-by-case basis, such as in response to testimonial evidence submitted by a patent owner in its preliminary response.

Comment 7: Several comments proposed increased page limits for the petitioner's reply to patent owner's response. Other comments suggested allowing patent owners to file a surreply to the petitioner's reply to patent owner's response addressing new issues that appear in replies. Another comment proposed replacing the motion for observations with a surreply.

Response: The Office has recently issued rules that adopt the proposed change for increasing the page limit of the petitioner's reply to twenty-five (25) pages. The Office does not adopt the other proposed changes regarding surreplies. The Office Patent Trial Practice Guide provides that ''a reply that raises a new issue or belatedly presents evidence will not be considered and may be returned.'' Thus, a surreply is not required to address new issues raised in a petitioner's reply because such new issues are not considered by the Board.

Comment 8: Several comments advised against implementing mandatory settlement discussions that impact the statutory timeline for AIA proceedings. Other comments agreed with the Board's approach of encouraging but not requiring settlement discussions. Further comments advised that additional Board resources should not be expended on promoting settlement. Additionally, other commenters disagreed on whether a proceeding should be terminated following settlement.

Response: The Office agrees with comments recommending the encouragement of settlement and often includes a meet-and-confer requirement in a Scheduling Order. Additionally, the Office notes that the extent of the Board's involvement in settlement discussions, if any, will be determined on a case-by-case basis, especially where the parties request such involvement.

With respect to the issue of termination following settlement, current Rule 42.74 provides the Board with discretion to determine issues of unpatentability after a settlement in a proceeding. In the Board's experience, this rule allows the Board greater flexibility to balance the public interest in resolving issues of unpatentability with the need to efficiently allocate Board resources. Thus, the Office does not adopt any rule change.

Comment 9: The Office received a number of comments suggesting that the Board designate more decisions as precedential or informative to improve consistency of Board decisions, although one commenter suggested that the Office should not announce policy changes inferentially, for example, by selectively publishing decisions as informative. One commenter suggested the assignment of an assistant chief judge to identify precedential and informative decisions, and the promulgation of a rule-based designation process. Another commenter advocated revising SOP 2 to streamline the designation process.

Response: The Office does not adopt these changes. Standard Operating Procedure 2 (rev. 9) (''SOP 2'') provides that any member of the Board may recommend to the Chief Judge that an opinion be designated as precedential or informative. This procedure ensures that all members of the Board, and not just an assigned member, have the opportunity to nominate a case of which others may not be aware. Further, SOP 2 provides that parties to a proceeding or a third party member of the public may, within 60 days of issuance of an opinion, request that the opinion be

made precedential. This procedure further engages stakeholders in the process of maintaining consistency at the Board by bringing cases of interest to stakeholders to the Board's attention. Additionally, the Office does not adopt a rule-based approach given that SOP 2 provides clear and sufficient guidance on the procedures taken at the Board for the designation of cases as informative or precedential.

Also, in addition to the informative and precedential decisions, the Board further provides a list of representative orders and decisions at *http://www.uspto.gov/patents-application-process/appealing-patent-decisions/decisions-and-opinions/representative-orders.* Although not informative or precedential, representative orders and decisions provide guidance on the Board's treatment of recurring issues in AIA proceedings. *See* Standard Operating Procedure 2 (Rev. 9) (explaining distinction between routine, representative, informative, and precedential), *http://www.uspto.gov/sites/default/files/documents/sop2-revision-9-dated-9-22-2014.pdf.*

Comment 10: One commenter suggested that the Office Patent Trial Practice Guide should be updated periodically.

Response: The Office is currently working on a revised Office Patent Trial Practice Guide that will be published with the final rulemaking for these proposed rules. The Office further expects revisions to the Office Patent Trial Practice Guide will be issued as needed in the future.

Comment 11: Several commenters advocated improvements to the Board's Web site and docketing case system. Suggestions included the integration of the PTAB docketing system with Patent Application Information Retrieval (''PAIR''), improvements to Patent Review Processing System (''PRPS'') searching capabilities and user interface, and increased availability of statistics concerning AIA proceedings. One commenter suggested that all final written decisions should be uploaded into PAIR.

Response: The Office has considered the commenters' suggestions and is working with vendors to improve PRPS and provide additional functionality such as searching in the case docketing system. With respect to integration with PAIR, after the issuance of a final written decision in an AIA proceeding, the final written decision also is uploaded into PAIR. In the Office's experience, this provides sufficient continuity of information between PRPS and PAIR. Additionally, the Office posts all final Board decisions to the Office's eFOIA site at *http://e-foia.uspto.gov/Foia/PTABReadingRoom.jsp*, and has endeavored to maintain up-to-date and archived statistics on AIA proceedings, available at *http://www.uspto.gov/patents-application-process/patent-trial-and-appeal-board/statistics.* Thus, at this time no changes to the availability of statistics or the underlying data are adopted.

Comment 12: Several commenters expressed concern about the Office's practice of allowing institution based on some, but not all, of the grounds presented in a Petition. Commenters are concerned that because the decision on institution is not appealable, and any ground on a challenged claim that is not instituted is not reflected in the final, appealable decision, a petitioner has no redress for grounds on which the Office chooses to not institute. Also, one commenter suggested, allowing claim amendments for any ''challenged'' patent claim as contemplated by the AIA would be at odds with a practice where all challenged claims may not be in a trial. A commenter suggested shifting the redundancy determination to the final written decision, so that such a decision is appealable. One commenter stated that redundancy should not be applied where grounds are in different statutory classes, or when a reference can be sworn behind. Another commenter suggested requiring patent owner to submit a claim construction at the preliminary stage so that the Office could render a definitive construction in its decision on institution, subject to broadening in view of claim construction opinions in concurrent litigation, and avoid redundancy determinations between grounds under sections 102 and 103, that may prove during trial to be unduly constraining.

Response: The Office appreciates the concerns expressed by the comments, but must balance these concerns with the workload in AIA proceedings and the statutory time constraints under which AIA review proceeding must be decided. In order to ensure a fair and efficient process to resolve reviews in a timely fashion, the Office uses partial institution as one tool to manage effectively AIA reviews. The Office is cognizant of the ramifications of partial institution where the grounds are in different statutory classes, or when a reference may be overcome by swearing behind it, and strives to strike an appropriate balance between what can be accomplished during the finite time frame for a trial and fairness to the parties in fully vetting patentability issues on challenged claims. The Office will continue to assess whether such balance is appropriately struck.

Comment 13: One commenter suggested that the scope of estoppel under 37 CFR 42.73(d)(3) is too broad because it encompasses a finally refused or cancelled claim of a patent owner in an AIA review as prior art to be used against the patent owner, and may not allow a patent owner to pursue narrower, patentably distinct claims in a separate reissue, reexamination, or continuing application. Another commenter requested that the Office should maintain its rules regarding patentee estoppel to prevent a patentee from seeking new, but patentably indistinct claims in another proceeding before the Office. Commenters also requested clarification of the estoppel rule to make clear that an estoppel does not arise where an amendment is proposed, but not granted.

Response: The Office appreciates the comments, but does not propose any rule change in response. The rule that the comment addresses, 37 CFR 42.73(d)(3), appropriately precludes an applicant or owner from obtaining a claim that is not patentably distinct from a finally refused or canceled claim.

Comment 14: Several commenters were concerned with a panel's perceived reluctance to revisit a decision, whether on rehearing or on final written decision after institution. One commenter suggested that the Office should consider designating one Administrative Patent Judge (''APJ'') for the decision on institution and a panel of three APJs for the corresponding AIA trial because of a real or perceived challenge for panel members to remain impartial in conducting an AIA trial on the merits when they participated in the decision to institute the trial. The commenter further stated that having the same three APJs consider an incomplete, preliminary record to decide institution, and subsequently issuing a final written decision based on the complete trial record, creates an actual or perceived bias against the patent owner. Another commenter suggested that the panel that institutes should be different from the panel that makes a final decision on the merits because it would increase due process protections, reduce any bias or perception of bias, and more fully meet AIA requirements by avoiding any blurring of the distinction between the threshold standard for institution and the higher standard for a determination on the merits of patentability. Several commenters suggested that requests for rehearing should be freely allowed and an expanded panel of APJs should be used to have ''another set of eyes'' to

ensure that rehearing requests will be duly considered, with another commenter suggesting that a completely different panel of APJs should consider requests for rehearing. Another commenter suggested that the Office should clarify what types of decisions are appropriate for an expanded panel review. One commenter asked for a requirement that a party requesting rehearing should file a statement specifically identifying conflicting Board or court decisions. Another commenter suggested that a reply brief for a petitioner should be allowed before a decision on institution is made, rather than relying on the availability of a request for rehearing that has a deferential standard, because the panel that decided the original decision may be reluctant to revisit it.

Response: The Office believes that the panel deciding whether to institute an AIA proceeding is not predisposed to rule in favor of any party, whether the petitioner or patent owner, and that each panel applies the appropriate legal standard to make a fair and unbiased decision based upon the evidence and arguments of record. In response to these comments and to explore gaining further efficiencies in AIA proceedings, however, the Office may seek, in a separate Request for Comments, comments on a proposed pilot program under which the determination of whether to institute an IPR will be made by a single APJ, with two additional APJs being assigned to the IPR if a trial is instituted. In that separate Request for Comments, the Office also may seek comments on any other issues relevant to fair and efficient decision making.

The Office recently has revised SOP1 to describe situations in which an expanded panel may be utilized, where the decision to expand a panel is made on a case-by-case basis. In SOP1, the Office has included reasons that may warrant expansion of a panel. This guidance may be found on the Office's Web site at: *http://www.uspto.gov/sites/default/files/documents/SOP1%20-%20Rev.%2014%202015-05-08.pdf.* Also, a petitioner always has the ability to request that a panel authorize the filing of a reply brief at the preliminary stage. Although a petitioner is not afforded a reply brief as of right before institution, the Office has provided in these proposed rules an explicit provision affording an opportunity to seek permission to file a reply brief to respond to a preliminary response that presents testimonial evidence.

A request for rehearing is an opportunity to address whether a panel misapprehended or overlooked a matter in rendering its opinion, which may include identification of conflicting Board or court decisions, but does not necessitate such a statement. *See* 37 CFR 42.71(d). Requiring a moving party to identify all matters the party believes the Board misapprehended or overlooked, and the place where each matter was previously addressed in a motion, an opposition, or a reply is appropriate for a rehearing request. *See id.*

Comment 15: Two commenters sought a more generous schedule for parties to conduct the trial and advocated a more proactive management of the trial by earlier rulings on interlocutory motions, such as motions to amend, claim construction disputes, and motions to exclude, to narrow the issues for trial.

Response: Although there is discretion in how to schedule due dates for an AIA trial, the Office is cognizant of the constraints on parties to engage in and complete discovery in a timely manner. To that end, the standard Scheduling Order generally entered in each case allows the parties to stipulate to adjustment of deadlines for the filing of patent owner's response, petitioner's reply, briefing for any motion to amend, and briefing on any motions for observations and any motion to exclude except for the reply briefs for the motion to exclude (due dates 1 through 5). If a problem arises in meeting the schedule set forth by the Office on dates for which the parties may not stipulate to a change or on which the parties do not agree to a new date, the parties are encouraged to contact the Office to resolve the issue. The Office continues to review the AIA proceedings to assess where efficiencies may be gained for both the Office and the parties, but does not contemplate at this time requiring resolution of interlocutory motions at certain points in the trial timeline. As always, should any party believe that a particular motion in a case warrants early attention to resolve an issue that will truncate the proceeding, such party is invited to bring that issue to the attention of the Office in that case.

Comment 16: One commenter suggested changing 37 CFR 42.20(c) to refer to both the burden of proof and persuasion, and to refer to the burden being placed on the ''petitioning or moving'' party, as opposed to ''moving party'' only.

Response: The Office appreciates the comment, but declines to amend the rule.

Comment 17: One commenter suggests that further training of APJs in the payments industry may be necessary for those working on covered business method patent reviews. Another commenter suggests that 37 CFR 42.301(b) should be amended to reflect that both factors for determining a technological invention must not exist for a claim to be found to fail to define a ''technological invention.''

Response: The Office appreciates these comments and continues to assess the training needs for employees. The Office declines to amend 37 CFR 42.301(b) as it reflects properly the standard for determining whether a patent is for a technological invention.

Comment 18: One commenter advocates application of an issue preclusion analysis in deciding whether to adopt a prior claim construction in another proceeding.

Response: Although the Office considers prior claim constructions rendered in another proceeding, the Office is mindful that the Board follows a different claim construction approach than that of district courts, and the evidentiary record in the later AIA proceeding may be different than the one in the prior proceeding. Therefore, a strict issue preclusion analysis would not be appropriate for every case. The Office will determine the claim construction on a case-by-case basis depending on the facts presented in the particular proceeding.

Comment 19: Several commenters had suggestions for deposition practice before the Office in AIA trials. One commenter suggested that 37 CFR 42.53(d)(4) is too restrictive by requiring a notice of deposition to be filed at least 10 days before a deposition takes place, because in practice, parties often do not agree on the place and time of a deposition within this time frame. Another commenter asked for clarification concerning when counsel may object to a line of questioning in a deposition as beyond the scope of the witness's direct testimony. Two commenters requested clarification of 37 CFR 42.53(g) governing which party should bear the costs associated with the testimony of a witness. Another commenter seeks a blanket prohibition on a party's ability to confer with a witness during the deposition, especially between cross-examination and re-direct, which the commenter asserts encourages rehearsal of testimony for re-direct.

Response: The Office appreciates these comments. The Office invites further comment on how to amend section 42.53(d)(4). For instance, should the rule be amended to reduce the amount of lead time for filing a notice of deposition before the deposition, allow the parties to stipulate to the timing for filing, or allow both options? Determining when a party's line of questioning in a deposition is beyond

the scope of the deposition is best handled on a case-by-case basis, and the Office is amenable to handling timely these issues as they arise in a deposition. The Office has provided guidance on which party should bear the costs associated with the testimony of a witness in the Office Patent Trial Practice Guide in discussing witness expenses associated with discovery. *See* 77 FR at 48761. The Office invites further comment on any additional clarification that is needed. The Office appreciates the comment concerning when a party may confer with its witness during a deposition, but believes that the guidance in the Office Patent Trial Practice Guide strikes the correct balance concerning when a party may confer with its witness.

Comment 20: One commenter suggested that a patent owner be required to serve any evidence regarding authentication or public availability of a prior art reference on which trial has been instituted, concurrent with any objections the patent owner is making to the petitioner's evidence.

Response: The Office appreciates the comment. The rules currently provide that unless previously served, a party must serve relevant information that is inconsistent with a position advanced by the party during the proceeding concurrent with the filing of the documents or things that contains the inconsistency. *See* 37 CFR 42.51(b)(1)(iii). Therefore, a patent owner advancing the position that evidence is not authentic or was not available publicly has an obligation to serve this information on the petitioner.

Comment 21: To facilitate electronic filing, one commenter suggested that backup counsel's login credentials should be able to be used for filing documents and that service may be made to electronic mail addresses specified in the mandatory notices without requiring agreement of the parties.

Response: The Office appreciates the suggestions and is working to improve its electronic filing and case management system. Parties are now permitted to identify one backup counsel who will have the same permissions as lead counsel and be permitted to file documents in the system. Parties may identify additional backup counsel, but only the lead counsel and first backup counsel may file documents. With respect to service under § 42.6(e), the Office believes that the ability to serve electronically should remain optional upon agreement of the parties, rather than mandatory, to accommodate users who do not use electronic mail regularly or who prefer service by mail.

Comment 22: Two commenters questioned how experts are utilized in AIA proceedings. One commenter favors significant sanctions for counsel to author a report that an expert signs without authorship. A second commenter seeks amendment of 37 CFR 42.65(a) to require that an unsupported expert report be entitled to ''no weight.''

Response: The authority of the Office to sanction a party for misconduct, *see* 37 CFR 42.12, including abuse of process or any other improper use of the proceeding, is robust, and the Office proposes adding a Rule 11-type certification for all papers filed with the Board with a provision for sanctions for noncompliance that would apply to practitioners as well as parties. Therefore, the Office has the ability to sanction inappropriate conduct that is brought to its attention. The Office declines to amend 37 CFR 42.65(a) to require that an unsupported expert report must be entitled to ''no weight.''

Comment 23: One commenter stated that an Office decision nullifying the claims of a patent or an affirmance of such a decision should operate to trigger the failure-to-market forfeiture provisions under 21 U.S.C. 355(j)(5)(D)(i)(I).

Response: The Office appreciates the comment, but as the commenter recognizes, such a request is beyond the Office's jurisdiction to accomplish.

Comment 24: Several commenters expressed concern about the perception of overall fairness of AIA proceedings to both the petitioner and patent owner. For instance, several commenters expressed concern that the Office is more concerned with the speed and efficiency with which it handles AIA proceedings than with the perception of fairness of the proceedings to all involved parties. Several commenters expressed a perception that AIA proceedings are skewed in favor of petitioner.

Response: The Office appreciates these comments and continues to actively engage with the public and practitioners who utilize AIA proceedings, as the Office has done with this notice of proposed rulemaking, to continually monitor the fairness of the proceedings for all involved parties, as well as examining ways to ensure that the process is as efficient and fair as possible under the congressional mandate. For instance, in the Office's ''Quick-Fix'' rulemaking, the Office provided for additional pages for briefing for motions to amend and the petitioner's reply brief and provided for a claims appendix. The Office has also issued further guidance on motions to amend through decisions, such as *MasterImage 3D, Inc.* v. *RealD Inc.*, Case IPR2015–00040 (PTAB July 15, 2015) (Paper 42), and currently proposes allowing Patent Owners to present new testimonial evidence at the preliminary stage of the proceeding. The Office also is proposing a word count for major briefing to allow the parties to present arguments and evidence to the Office in a way that the party deems is most effective, and is proposing a Rule-11 type certification be applied to police the actions of counsel, as well as parties, in AIA proceedings. Based upon input from the public and experience with the proceedings, the Office will continue its efforts to make the proceedings as fair and effective as possible under congressional mandate.

Comment 25: One commenter expressed concern over use of AIA proceedings by a second petitioner that uses prior art or arguments from a previously filed petition and expressed concerns about consistency in the joinder process. This commenter suggested assigning the second petitioner the role of junior party, who should not be allowed to continue the proceeding if the original petitioner and patent owner successfully settle the AIA proceeding.

Response: The Office appreciates these comments, and notes that the Office has the discretion concerning whether to institute an AIA review and the authority to decline to institute where the same or substantially the same prior art or arguments were previously presented to the Office. *See* 35 U.S.C. 314(a), 315(d), 324(a), 325(d). Although the Office strives for consistency in the treatment of parties before the Office, the Office declines to adopt the suggestion to assign a second petitioner, asserting similar argument or prior art as a first petitioner, the role of ''junior party'' and to discontinue a proceeding if the original petitioner and the patent owner settle their dispute. The Office will not terminate a proceeding that has not been settled as to all parties because each party is entitled to assert its interest in the proceeding.

Comment 26: Commenters suggested eliminating the proposed statement of material facts option in 37 CFR 42.22 and 42.23 because it is not used often and panels have differed as to whether such statements are counted in the page limits.

Response: The Office appreciates this comment, but declines to adopt it in order to maintain the option of a party to choose to file a proposed statement of material facts. *See* 37 CFR 42.24

(including any statement of material facts to be admitted or denied in support of a petition or motion in the page limits).

Comment 27: Several commenters expressed concern over the use of demonstrative exhibits. For instance, one commenter wanted the timing for exchanging demonstratives that allows parties to address objections and achieve resolution before the oral hearing. Another commenter seeks to be able to use argument in demonstratives with proper citation, and another commenter states that striking of demonstratives should be very rare and that problems with demonstratives should go to the weight to be accorded.

Response: The Office appreciates the comments and understands the difficulty in resolving disputes concerning demonstrative exhibits. The Office believes, however, that the most efficient way to handle such disputes is on a case-by-case basis with the panel for the case.

Comment 28: One commenter encourages the Office to continue outreach by roundtables and webinars.

Response: This comment is adopted. The Office continues to host Board-side chats, road shows, and lunch-and-learn programs that will begin in the fall of 2015. The Office considers these interactive programs to provide valuable input into how to improve the fairness and effectiveness of the AIA proceedings.

Comment 29: Two commenters ask that the patent owner's preliminary response be made mandatory for certain disclosures such as claim construction and antedating of references, which will merely shift the timeframe in which a patent owner must present such information and argument.

Response: The Office appreciates this comment. In this proposed rulemaking, the Office proposes allowing a patent owner to present new testimonial evidence with the patent owner preliminary response, which may encourage patent owners to participate in the preliminary phase by filing such a response and addressing issues raised in the petition with argument and supporting evidence. The Office declines, however, to make a patent owner preliminary response mandatory in light of the statutory framework of AIA, which provides a patent owner a right to file a preliminary response. *See* 35 U.S.C. 313.

Comment 30: One commenter requested that guidance in the Office Patent Trial Practice Guide that is not reflected in any rule, be incorporated into a rule, and that criteria for *pro hac* vice motions that are reflected in current case law be incorporated into a revised rule.

Response: The Office appreciates these comments. The Federal Circuit recognizes that ''the choice between rulemaking and adjudication lies in the first instance within the agency's discretion.'' *Microsoft Corp.* v. *Proxyconn, Inc.*, 789 F.3d 1291 (Fed. Cir. 2015) (citing *NLRB* v. *Bell Aerospace Co. Div. of Textron*, 416 U.S. 267, 294 (1974)) (internal quotation marks omitted). At this time, an effective and efficient way to provide guidance to practitioners is through the Office Patent Trial Practice Guide and through adjudication—the development of case law that resolves specific issues in light of specific facts before the Office. The Office will continue to develop guidance through these avenues, as well as through rulemaking, where appropriate.

Comment 31: Several comments addressed formatting for briefing in AIA proceedings. For instance, one commenter asks that the requirement that each page of an exhibit be uniquely numbered in sequence be amended to apply only if such page numbering does not exist already on the document to avoid confusion as to which numbering scheme is referenced in a brief. Another commenter asked that block quotes be single spaced, and that incorporation by reference be allowed at a panel's discretion when the same argument from another proceeding is applicable.

Response: The Office appreciates the comments, but declines to adopt them. Rule 42.63(d)(2)(i) requires that each page of an exhibit must be uniquely numbered in sequence, but does not require a new set of unique numbers be applied to an exhibit for which unique numbers exist. The Office proposes using a word count for major briefing, which would negate any advantage for using single spacing for a block quote, and the Office requires 1.5 spaced block quotations for readability. *See* 37 CFR 42.6(a)(2)(iii). The Office declines to allow incorporation by reference at the panel's discretion because such incorporation may subvert the page or word limit and each proceeding should be self-contained within the docket for that proceeding for efficiency and completeness.

Comment 32: Another commenter suggested that the Office allow the parties to file papers, such as claim construction orders or other statements from co-pending litigation, as supplemental information.

Response: The Office appreciates that claim construction orders and other papers from co-pending litigation could be helpful to resolve the parties' disputes in the proceeding before the Office in certain situations. From the Office's experience, petitioners had submitted such papers with their petitions to support their proposed claim constructions. Similarly, patent owners proffered district court's claim construction determinations with their preliminary responses or patent owner responses in support of their position on patentability. In fact, parties may file co-pending litigation papers to support their motions, oppositions, or replies. Parties also may seek leave to file a motion to submit supplemental information pursuant to § 42.123, but such papers must be relevant to a claim for which the trial has been instituted.

Comment 33: One commenter suggested a clarification in 37 CFR 42.121(b)(1) to change the ''support in the original disclosure of the patent'' to the ''support in the original disclosure of the application from which the patent issued.''

Response: The Office appreciates this comment, but does not adopt it as the rule, as applied, is clear.

Comment 34: Several comments were directed to the treatment of sole inventors and small entities. One commenter asked for more guidance for independent inventors or small business who may want to utilize the AIA proceedings *pro se.* For instance, the commenter stated that AIA proceedings should be no more onerous than prosecution before the Office, should be affordable, fair, and accessible for smaller companies, and should be preferential to small entities and sole inventors, who spend a greater percentage of time and capital securing patents than larger entities.

Response: The Office does not adopt these proposals. The Office was not given authority to provide for small entity and micro-entity filing fee reduction for reviews under AIA. The current filing fee schedule, available at *http://www.uspto.gov/learning-and-resources/fees-and-payment/uspto-fee-schedule,* takes into account the costs and expenses for maintaining the operation of the Office, and in particular, the operation of the Board in conducting AIA proceedings. The Office also provides guidance for AIA proceedings through its Office Patent Trial Practice Guide and on its Web site.

Comment 35: One commenter suggested that the Office should encourage Congress to expand the scope of AIA proceedings by advocating that Congress include section 101 challenges in *inter partes* reviews, make covered business method patent reviews permanent, and expand covered

business method patent reviews to include a broader variety of patents.

Response: The Office remains open to all ways of strengthening our patent system and appreciates the comment, and notes that these issues were considered by Congress during the legislative process for AIA.

Comment 36: One commenter proposed that the Office amend Rule 42.52(d)(2) to state that cross-examination should ordinarily take place after any supplemental evidence relating to the direct testimony has been *served*, as opposed to *filed*, because supplemental evidence is *served* under Rule 42.64(b)(2), and not *filed* until after a motion to exclude has been filed, which occurs well after most depositions have taken place. Another commenter suggests requiring filing of supplemental evidence as exhibits versus just serving.

Response: The Office will adopt these comments and resolve the issue presented, but seeks further comment on the best way to resolve the issue. For instance, should the Office amend Rule 42.52(d)(2) as suggested or amend Rule 42.64(b)(2) to require that supplemental evidence be filed as opposed to served?

Comment 37: Several commenters expressed views concerning the types of arguments to be made in AIA proceedings. For instance, one commenter suggested that the Office should distinguish between appropriate analysis and inappropriate ''argument'' in claim charts. A second commenter sought a limitation on the number of invalidity arguments. Another commenter wanted clarification of the rules that a patent owner is also under a burden to support affirmative factual statements with evidence.

Response: The Office appreciates the comments. In the current proposed rule, the Office proposes to use a word count for major briefing, such as the petition, patent owner preliminary response, patent owner response, and petitioner's reply. A change from page limits to word count for major briefing allows the parties to structure arguments in briefing in any way that the party deems best for presenting its case to the Office, including presenting analysis and arguments in claim charts. Because the Office has the discretion under 35 U.S.C. 314(a) and 324(a) whether to institute an AIA trial and takes the opportunity at institution to focus the trial on grounds which meet the threshold standards in 35 U.S.C. 314(a) and 324(a) and which reasonably may be decided within the statutory imposed time-frame for the trial, the Office declines to place a limitation on the number of grounds that a petitioner may present. Also, if patent owner does not support affirmative factual statements with evidence, such statements will be given little or no weight.

Rule 11-Type Certification

To further attempt to prevent any misuse of the AIA proceedings, the Office proposes to amend § 42.11, which prescribes the duty of candor owed to the Office, to include a Rule 11-type certification for all papers filed with the Board with a provision for sanctions for noncompliance. The Board also may refer possible misconduct in the course of AIA proceedings to the Office of Enrollment and Discipline for investigation and, if warranted, further proceedings under 37 CFR 11.19–11.61.

Recognizing Privilege for Communications With Domestic Patent Agents and Foreign Patent Practitioners

In 2015, the Office launched an outreach initiative to explore various issues associated with confidential communications with patent agents or foreign patent practitioners. The Office published a notice convening a roundtable in February 2015 and requesting public comments. *See* Domestic and International Issues Related to Privileged Communications Between Patent Practitioners and Their Clients, 80 FR 3953 (Jan. 26, 2015). Nineteen parties submitted written comments in response to the **Federal Register** notice, which are available on the USPTO Web site at: *http://www.uspto.gov/learning-and-resources/ip-policy/roundtable-domestic-and-international-issues-related-privileged.* Some of these comments raised the issue of unclear or inconsistent privilege rules for agents and foreign practitioners during discovery in PTAB proceedings.

Consistent with that earlier outreach initiative, the Office here seeks comments on the subject of attorney-client privilege or other limitations on discovery in PTAB proceedings, including on whether rules regarding privilege should be issued in connection with PTAB proceedings. Such rules could, for example, explicitly recognize privilege for communications between patent applicants or owners and their domestic patent agents or foreign patent practitioners, under the same circumstances as such privilege is recognized for communications between applicants or owners and U.S. attorneys. The Office invites the public to provide any comments on language, scope, or other considerations for creating such a privilege, including possible amendments to any of 37 CFR 42.51, 42.52, 42.55, 42.62, or 42.64 to accomplish this purpose.

Discussion of Specific Rules

Subpart A—Trial Practice and Procedure

Claim Construction Standard

The Office proposes to amend 37 CFR 42.100(b), 42.200(b), and 42.300(b) as follows:

- Amend 37 CFR 42.100(b) to add the phrase ''that will not expire before a final written decision is issued'' after ''an unexpired patent.''
- Amend 37 CFR 42.200(b) to add the phrase ''that will not expire before a final written decision is issued'' after ''an unexpired patent.''
- Amend 37 CFR 42.300(b) to add the phrase ''that will not expire before a final written decision is issued'' after ''an unexpired patent.''

The Office will add further clarifying instructions in the Office Patent Trial Practice Guide concerning how a petitioner may determine which standard to apply in the petition.

Patent Owner Preliminary Response

The Office proposes to amend 37 CFR 42.107(a) to provide that the patent owner is not prohibited from including new testimonial evidence with a preliminary response and that the patent owner's preliminary response to the petition is subject to the word count under 37 CFR 42.24. See the proposed text in the amendatory instructions below.

The Office proposes to amend 37 CFR 42.107 to delete paragraph (c) so that the patent owner is not prohibited from including new testimonial evidence with a patent owner preliminary response.

The Office proposes to revise 37 CFR 42.108(c) provide that the Board's decision whether to institute an *inter partes* review will take into account a patent owner preliminary response where such a response is filed, but supporting evidence concerning disputed material facts will be viewed in the light most favorable to the petitioner for purposes of deciding whether to institute an *inter partes* review, and that the petitioner may seek leave to file a reply to the preliminary response. See the proposed text in the amendatory instructions below.

The Office proposes to revise 37 CFR 42.207(a) to provide that the patent owner is not prohibited from including new testimonial evidence with a preliminary response and that the patent owner's preliminary response to the petition is subject to the word count under 37 CFR 42.24. See the proposed text in the amendatory instructions below.

The Office proposes to amend 37 CFR 42.207 to delete paragraph (c) so that the patent owner is not prohibited from including new testimonial evidence with a patent owner preliminary response.

The Office proposes to revise 37 CFR 42.208(c) provide that the Board's decision whether to institute a post-grant review will take into account a patent owner preliminary response where such a response is filed, but supporting evidence concerning disputed material facts will be viewed in the light most favorable to the petitioner for purposes of deciding whether to institute a post-grant review, and that the petitioner may seek leave to file a reply to the preliminary response. See the proposed text in the amendatory instructions below.

Oral Hearing

The Office proposes to amend 37 CFR 42.70(b) to require at least seven, not just five, days before oral argument for exchange of exhibits to provide additional time for the parties to resolve disputes concerning demonstrative exhibits.

Word Count

The Office proposes to amend 37 CFR 42.24 to implement a word count limitation for petitions, patent owner preliminary responses, patent owner responses, and petitioner's replies, by:

- Adding ''Type-volume or'' to the title;
- adding ''word counts or'' before the words ''page limits'' or ''page limit'' and adding ''or word count'' after ''a certificate of service'' in paragraph (a)(1);
- substituting ''14,000 words'' for ''60 pages'' in paragraphs (a)(1)(i) and (a)(1)(iv);
- substituting ''18,700 words'' for ''80 pages'' in paragraphs (a)(1)(ii) and (a)(1)(iii);
- substituting ''word counts'' for ''page limits'' and ''word count'' for ''page limit'' in paragraph (a)(2) except for the last sentence in which ''word counts or'' is added before ''page limits;''
- adding ''word counts or'' before the ''page limits'' in paragraph (b);
- substituting ''word counts'' for the two instances of ''page limits'' in paragraph (b)(1);
- substituting ''word counts'' for the two instances of ''page limits'' in paragraph (b)(2);
- adding ''word counts or'' before the two instances of ''page limits'' and adding ''or word count'' after ''a certificate of service'' in paragraph (c);
- substituting ''5,600 words'' for ''25 pages'' in paragraph (c)(1);
- adding paragraph (d) concerning word count certification. See the proposed text in the amendatory instructions below.

Rule 11-Type Certification

The Office proposes to amend 37 CFR 42.11 to add ''signing papers; representations to the Board; sanctions'' to the title of the section, to designate existing text as paragraph (a), and to add paragraphs (b) through (d) to include a Rule 11-type certification for all papers filed with the Board with a provision for sanctions for noncompliance. See the proposed text in the amendatory instructions below.

Rulemaking Considerations

A. Administrative Procedure Act (APA)

This proposed rule would revise the consolidated set of rules relating to Office trial practice for *inter partes* review, post-grant review, the transitional program for covered business method patents, and derivation proceedings. The changes proposed in this notice do not change the substantive criteria of patentability. These changes involve rules of agency practice. *See, e.g.,* 35 U.S.C. 316(a)(5), as amended. These rules are procedural and/or interpretive rules. *See Bachow Commc'ns Inc.* v. *F.C.C.,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals were procedural where they did not change the substantive requirements for reviewing claims); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive); *JEM Broad. Co.* v. *F.C.C.,* 22 F.3d 320, 328 (D.C. Cir. 1994) (rules are not legislative because they do not ''foreclose effective opportunity to make one's case on the merits'').

Accordingly, prior notice and opportunity for public comment are not required pursuant to 5 U.S.C. 553(b) or (c) (or any other law), and thirty-day advance publication is not required pursuant to 5 U.S.C. 553(d) (or any other law). *See Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice and comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'') (quoting 5 U.S.C. 553(b)(A)); *U.S.* v. *Gould,* 568 F.3d 459, 476 (4th Cir. 2009) (''The APA also requires publication of any substantive rule at least 30 days before its effective date, 5 U.S.C. 553(d), except where the rule is interpretive * * *.''). The Office, however, is providing a sixty day comment period in order to seek the benefit of the public's views.

B. Regulatory Flexibility Act

For the reasons set forth herein, the Deputy General Counsel for General Law of the United States Patent and Trademark Office has certified to the Chief Counsel for Advocacy of the Small Business Administration that changes proposed in this notice will not have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b). The changes proposed in this document are to revise certain trial practice procedures before the Board. Any requirements resulting from these proposed changes are of minimal or no additional burden to those practicing before the Board. Specifically, proposed changes pertaining to representation would not present any additional burden as the duty of candor and good faith are already requirements under existing Board trial practice (37 CFR 42.11), USPTO rules of professional conduct, and, for those who are attorneys, applicable State bars. Second, changes imposed by converting certain page limits to word counts for petitions and motions are not expected to result in any material change to filings, other than the addition of a certification that the filing is compliant. Finally, the proposed changes pertaining to the inclusion of supporting evidence in a patent owner preliminary response to petition are not required to be filed, but merely available to parties should they choose. Moreover, the Office anticipates that the vast majority of those that will provide such supporting evidence during the petition review stage would have provided such information later anyway, if and when, a trial were instituted. For the foregoing reasons, the changes proposed in this notice will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12866 (Regulatory Planning and Review)

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review)

The Office has complied with Executive Order 13563. Specifically, the Office has, to the extent feasible and applicable: (1) Made a reasoned

determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector and the public as a whole, and provided on-line access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism)

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation)

This rulemaking will not: (1) Have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under Executive Order 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects)

This rulemaking is not a significant energy action under Executive Order 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under Executive Order 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform)

This rulemaking meets applicable standards to minimize litigation, eliminate ambiguity, and reduce burden as set forth in sections 3(a) and 3(b)(2) of Executive Order 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children)

This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under Executive Order 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property)

This rulemaking will not affect a taking of private property or otherwise have taking implications under Executive Order 12630 (Mar. 15, 1988).

K. Congressional Review Act

Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the United States Patent and Trademark Office will submit a report containing the rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this final rule are not expected to result in an annual effect on the economy of 100 million dollars or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this final rule is not a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995

The changes set forth in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of 100 million dollars (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of 100 million dollars (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act

This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act

The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions which involve the use of technical standards.

O. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This final rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3549). This rulemaking does not add any additional information requirements or fees for parties before the Board. Therefore, the Office is not resubmitting information collection packages to OMB for its review and approval because the revisions in this rulemaking do not materially change the information collections approved under OMB control number 0651–0069.

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

List of Subjects in 37 CFR Part 42

Administrative practice and procedure, Inventions and patents.

For the reasons set forth in the preamble, the Office proposes to amend 37 CFR part 42 as follows:

PART 42—TRIAL PRACTICE BEFORE THE PATENT TRIAL AND APPEAL BOARD

■ 1. The authority citation for 37 CFR part 42 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2), 6, 21, 23, 41, 135, 311, 312, 316, 321–326 and Public Law 112–29.

Subpart A—Trial Practice and Procedure

■ 2. Section 42.11 is revised to read as follows:

§ 42.11 Duty of candor; signing papers; representations to the Board; sanctions.

(a) *Duty of candor.* Parties and individuals involved in the proceeding have a duty of candor and good faith to the Office during the course of a proceeding.

(b) *Signature.* Every petition, response, written motion, and other paper filed in a proceeding must be signed by at least lead counsel or designated backup counsel under

§ 42.10 in the attorney's or registered practitioner's name—or by a party personally if the party is unrepresented. The Board may expunge any unsigned submission unless the omission is promptly corrected after being called to the counsel's or party's attention.

(c) *Representations to the Board.* By presenting to the Board a petition, response, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney, registered practitioner, or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) It is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of the proceeding;

(2) The claims, defenses, and other legal contentions are warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) The factual contentions have evidentiary support; and

(4) The denials of factual contentions are warranted on the evidence.

(d) *Sanctions*—(1) *In general.* If, after notice and a reasonable opportunity to respond, the Board determines that paragraph (c) of this section has been violated, the Board may impose an appropriate sanction on any attorney, registered practitioner, law firm, patent agent, or party that violated the rule or is responsible for the violation. Absent exceptional circumstances, a law firm must be held jointly responsible for a violation committed by its partner, associate, or employee.

(2) *Motion for sanctions.* A motion for sanctions must be made separately from any other motion and must describe the specific conduct that allegedly violates paragraph (c) of this section. The motion must be authorized by the Board under § 42.20. Prior to seeking authorization to file a motion for sanctions, the moving party must provide written notice to the other party of the basis for the proposed motion. A motion for sanctions must not be filed or be presented to the Board if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service of such notice or within another time the Board sets. If warranted, the Board may award to the prevailing party the reasonable expenses, including attorney's fees, incurred for the motion.

(3) *On the Board's initiative.* On its own, the Board may order an attorney, registered practitioner, law firm, or party to show cause why conduct specifically described in the order has not violated paragraph (c) of this section.

(4) *Nature of a sanction.* A sanction imposed under this rule must be limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated and should be consistent with § 42.12.

(5) *Requirements for an order.* An order imposing a sanction must describe the sanctioned conduct and explain the basis for the sanction.

(e) *Inapplicability to discovery.* This rule does not apply to disclosures and discovery requests, responses, and objections.

■ 3. Section 42.24 is revised to read as follows:

§ 42.24 Type-Volume and page-limits for petitions, motions, oppositions, and replies.

(a) *Petitions and motions.* (1) The following word counts or page limits for petitions and motions apply and include any statement of material facts to be admitted or denied in support of the petition or motion. The word count or page limit does not include a table of contents, a table of authorities, a certificate of service or word count, exhibits, appendix, or claim listing.

(i) Petition requesting *inter partes* review: 14,000 words.

(ii) Petition requesting post-grant review: 18,700 words.

(iii) Petition requesting covered business method patent review: 18,700 words.

(iv) Petition requesting derivation proceeding: 14,000 words.

(v) Motions (excluding motions to amend): 15 pages.

(vi) Motions to Amend: 25 pages.

(2) Petitions to institute a trial must comply with the stated word counts but may be accompanied by a motion to waive the word counts. The petitioner must show in the motion how a waiver of the word counts is in the interests of justice and must append a copy of proposed petition exceeding the word count to the motion. If the motion is not granted, the proposed petition exceeding the word count may be expunged or returned. Any other motion to waive word counts or page limits must be granted in advance of filing a motion, opposition, or reply for which the waiver is necessary.

(b) *Patent owner responses and oppositions.* The word counts or page limits set forth in this paragraph do not include a listing of facts which are admitted, denied, or cannot be admitted or denied.

(1) The word counts for a patent owner preliminary response to petition are the same as the word counts for the petition.

(2) The word counts for a patent owner response to petition are the same as the word counts for the petition.

(3) The page limits for oppositions are the same as those for corresponding motions.

(c) *Replies.* The following word counts or page limits for replies apply and include any statement of facts in support of the reply. The word counts or page limits do not include a table of contents, a table of authorities, a listing of facts which are admitted, denied, or cannot be admitted or denied, a certificate of service or word count, or appendix of exhibits.

(1) Replies to patent owner responses to petitions: 5,600 words.

(2) Replies to oppositions (excluding replies to oppositions to motions to amend): 5 pages.

(3) Replies to oppositions to motions to amend: 12 pages.

(d) *Certification.* Any petition, preliminary response, patent owner response, or reply whose length is specified by type-volume limits must include a certification stating the number of words in the petition, motion, opposition, or reply. A party may rely on the word count of the word-processing system used to prepare the petition, preliminary response, patent owner response, or reply.

■ 4. Section 42.70 is amended by revising paragraph (b) to read as follows:

§ 42.70 Oral argument.

* * * * *

(b) Demonstrative exhibits must be served at least seven business days before oral argument and filed no later than the time of the oral argument.

Subpart B—Inter Partes Review

■ 5. Section 42.100 is amended by revising paragraph (b) to read as follows:

§ 42.100 Procedure; pendency.

* * * * *

(b) A claim in an unexpired patent that will not expire before a final written decision is issued shall be given its broadest reasonable construction in light of the specification of the patent in which it appears.

* * * * *

■ 6. Section 42.107 is amended by revising paragraph (a) and removing and reserving paragraph (c) to read as follows:

§ 42.107 Preliminary response to petition.

(a) The patent owner may file a preliminary response to the petition. The response may set forth the reasons why no *inter partes* review should be

instituted under 35 U.S.C. 314 and can include supporting evidence. The preliminary response is subject to the word count under § 42.24.

* * * * *

(c) [Reserved]

* * * * *

■ 7. Section 42.108 is amended by revising paragraph (c) to read as follows:

§ 42.108 Institution of inter partes review.

* * * * *

(c) *Sufficient grounds. Inter partes* review shall not be instituted for a ground of unpatentability unless the Board decides that the petition supporting the ground would demonstrate that there is a reasonable likelihood that at least one of the claims challenged in the petition is unpatentable. The Board's decision will take into account a patent owner preliminary response where such a response is filed, but supporting evidence concerning disputed material facts will be viewed in the light most favorable to the petitioner for purposes of deciding whether to institute an *inter partes* review. If the patent owner submits supporting evidence with its preliminary response, the petitioner may seek leave to file a reply to the preliminary response in accordance with § 42.24(c).

Subpart C—Post-Grant Review

■ 8. Section 42.200 is amended by revising paragraph (b) to read as follows:

§ 42.200 Procedure; pendency.

* * * * *

(b) A claim in an unexpired patent that will not expire before a final written decision is issued shall be given its broadest reasonable construction in light of the specification of the patent in which it appears.

* * * * *

■ 9. Section 42.207 is amended by revising paragraph (a) and removing and reserving paragraph (c) to read as follows:

§ 42.207 Preliminary response to petition.

(a) The patent owner may file a preliminary response to the petition. The response may set forth the reasons why no post-grant review should be instituted under 35 U.S.C. 324 and can include supporting evidence. The preliminary response is subject to the word count under § 42.24.

* * * * *

(c) [Reserved]

* * * * *

■ 10. Section 42.208 is amended by revising paragraph (c) to read as follows:

§ 42.208 Institution of post-grant review.

* * * * *

(c) *Sufficient grounds.* Post-grant review shall not be instituted for a ground of unpatentability unless the Board decides that the petition supporting the ground would, if unrebutted, demonstrate that it is more likely than not that at least one of the claims challenged in the petition is unpatentable. The Board's decision will take into account a patent owner preliminary response where such a response is filed, but supporting evidence concerning disputed material facts will be viewed in the light most favorable to the petitioner for purposes of deciding whether to institute a post-grant review. If the patent owner submits supporting evidence with its preliminary response, the petitioner may seek leave to file a reply to the preliminary response in accordance with § 42.24(c).

* * * * *

Subpart D—Transitional Program for Covered Business Method Patents

■ 11. Section 42.300 is amended by revising paragraph (b) to read as follows:

§ 42.300 Procedure; pendency.

* * * * *

(b) A claim in an unexpired patent that will not expire before a final written decision is issued shall be given its broadest reasonable construction in light of the specification of the patent in which it appears.

* * * * *

Dated: August 12, 2015.

Michelle K. Lee,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2015–20227 Filed 8–19–15; 8:45 am]

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FEDERAL REGISTER

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No. 161 August 20, 2015

Part III

The President

Executive Order 13704—Presidential Innovation Fellows Program

Federal Register
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Presidential Documents

Title 3—

The President

Executive Order 13704 of August 17, 2015

Presidential Innovation Fellows Program

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy.* It is in the national interest for the Federal Government to attract the brightest minds skilled in technology or innovative practices to serve in the Federal Government to work on some of the Nation's biggest and most pressing challenges. This order establishes a program to encourage successful entrepreneurs, executives, and innovators to join the Federal Government and work in close cooperation with Federal Government leaders, to create meaningful solutions that can help save lives and taxpayer money, fuel job creation, and significantly improve how the Federal Government serves the American people.

Sec. 2. *Establishment and Administration.* (a) The Administrator of General Services (Administrator) shall establish the Presidential Innovation Fellows Program (Program) to enable exceptional individuals with proven track records to serve time-limited appointments in executive branch departments and agencies (agencies) to address some of the Nation's most significant challenges and improve existing Government efforts that would particularly benefit from expertise using innovative techniques and technology. Individuals selected for the Program shall be known as Presidential Innovation Fellows (Fellows).

(b) The Program shall be administered by a Director, appointed by the Administrator under authorities of the General Services Administration (GSA). GSA shall provide necessary staff, resources and administrative support for the Program to the extent permitted by law and within existing appropriations.

(c) GSA shall appoint the Fellows and, in cooperation with agencies, shall facilitate placement of the Fellows to participate in projects that have the potential for significant positive effects and are consistent with the President's goals.

Sec. 3. *Advisory Board.* (a) The Administrator shall establish an Advisory Board to advise the Director by recommending such priorities and standards as may be beneficial to fulfill the mission of the Program and assist in identifying potential projects and placements for Fellows. The Advisory Board will not participate in the Fellows' selection process.

(b) The Administrator will designate a representative to serve as the Chair of the Advisory Board. In addition to the Chair, the membership of the Advisory Board shall include the Deputy Director for Management of the Office of Management and Budget, the Director of the Office of Personnel Management, the Office of Management and Budget's Administrator of the Office of Electronic Government, and the Assistant to the President and Chief Technology Officer, or their designees and such other persons as may be designated by the Administrator. Consistent with law, the Advisory Board may consult with industry, academia, or non-profits to ensure the Program is continually identifying opportunities to apply advanced skillsets and innovative practices in effective ways to address the Nation's most significant challenges.

Sec. 4. *Application Process.* (a) The Director, in accordance with applicable law, shall prescribe the process for applications and nominations of individuals to the Program.

(b) Following publication of these processes, the Director may accept for consideration applications from individuals. The Director shall establish, administer, review, and revise, if appropriate, a Government-wide cap on the number of Fellows.

The Director shall establish and publish salary ranges, benefits, and standards for the Program.

Sec. 5. *Selection, Appointment, and Assignment of Fellows.* (a) The Director, in accordance with applicable law, shall prescribe appropriate procedures for the selection, appointment, and assignment of Fellows.

(b) Prior to the selection of Fellows, the Director will consult with agencies and executive branch departments, regarding potential projects and how best to meet those needs. Following such consultation, the Director shall select and appoint individuals to serve as Fellows.

(c) The Fellows shall serve under short-term, time-limited appointments. As a general matter, they shall be appointed for no less than 6 months and no longer than 2 years in the Program. The Director shall facilitate the process of placing Fellows at requesting agencies and executive branch departments.

Sec. 6. *Responsibilities of Agencies.* Each executive branch department or agency, as defined in section 105 of title 5, United States Code, is encouraged to work with the Director and Advisory Board to attempt to maximize the Program's benefits to the department or agency and the Federal Government, including by identifying initiatives that will have a meaningful effect on the people served and that will benefit from involvement by one or more Fellows. Departments and agencies also are encouraged to ensure that each Fellow will work closely with responsible senior officials for the duration of the assignment.

Sec. 7. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to a department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
August 17, 2015.

[FR Doc. 2015–20801
Filed 8–19–15; 11:15 am]
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