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WHEN: Tuesday, May 14, 2013
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Contents

Federal Register

Vol. 78, No. 70

Thursday, April 11, 2013

Agricultural Marketing Service
RULES
Decreased Assessment Rates:
Apricots Grown in Designated Counties in Washington, 21518–21519
Pears Grown in Oregon and Washington; Processed Pears, 21521–21522
Sweet Cherries Grown in Designated Counties in Washington, 21520–21521

Agriculture Department
See Agricultural Marketing Service
See Forest Service

Air Force Department
NOTICES
Privacy Act; Systems of Records, 21601

Centers for Disease Control and Prevention
NOTICES
Partnership Opportunity on a Research Project to Evaluate the Performance of Isolation Gowns, 21607–21608

Centers for Medicare & Medicaid Services
NOTICES
Meetings:
Reconsideration of Disapproval of Maine State Plan Amendments 12–010; Hearing, 21608–21610

Coast Guard
RULES
Drawbridge Operations:
Upper Mississippi River, Rock Island, IL, 21537

Commerce Department
See Industry and Security Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Commodity Futures Trading Commission
RULES
Clearing Exemption for Swaps Between Certain Affiliated Entities, 21750–21785
Delegations of Authority:
Disclosure of Confidential Information to a Contract Market, Registered Futures Association or Self-Regulatory Organization, 21522–21523

Community Living Administration
NOTICES
Expansion Funds for the Support of the Senior Medicare Patrol Program, 21610–21611

Defense Department
See Air Force Department
RULES
Sexual Assault Prevention and Response Program Procedures, 21716–21747
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 21598–21599
Meetings:
Defense Acquisition University Board of Visitors, 21599
Privacy Act; Systems of Records, 21599–21601

Education Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Services and Support Programs for Military Service Members and Veterans 2012–2013, 21601–21602

Employment and Training Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Youthful Offender Grants Management Information System, 21630–21631

Energy Department
See Energy Efficiency and Renewable Energy Office

Energy Efficiency and Renewable Energy Office
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 21602

Environmental Protection Agency
RULES
Air Quality Implementation Plans; Approvals and Promulgations:
Oregon: Eugene–Springfield PM10 Nonattainment Area Limited Maintenance Plan and Redesignation Request, 21547–21555
Revisions to State Implementation Plans:
California; Santa Barbara and San Diego County Air Pollution Control Districts, 21537–21539
Revisions to the California State Implementation Plan:
Antelope Valley Air Quality Management District and Monterey Bay Unified and Santa Barbara County Air Pollution Control Districts, 21545–21547
Butte County Air Quality Management District and Sacramento Metropolitan Air Quality Management District, 21540–21542
Santa Barbara County Air Pollution Control District and South Coast Air Quality Management District, 21542–21545
PROPOSED RULES
Air Quality Implementation Plans; Approvals and Promulgations:
Oregon; Eugene–Springfield PM10 Nonattainment Area Limited Maintenance Plan and Redesignation Request, 21583
Revisions to State Implementation Plans:
California; Santa Barbara and San Diego County Air Pollution Control Districts, 21580–21581
Revisions to the California State Implementation Plan:
Antelope Valley Air Quality Management District and Monterey Bay Unified and Santa Barbara County Air Pollution Control Districts, 21581–21582
Butte County Air Quality Management District and Sacramento Metropolitan Air Quality Management District, 21582–21583

Santa Barbara County Air Pollution Control District and South Coast Air Quality Management District, 21581
NOTICES
Meetings:
Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel, 21603

Executive Office of the President
See Management and Budget Office
See Presidential Documents

Federal Accounting Standards Advisory Board
NOTICES
Proposed Reporting Entity, 21603

Federal Aviation Administration
PROPOSED RULES
Airworthiness Directives:
Bombardier, Inc. Airplanes, 21573–21576
General Electric Company Turbofan Engines, 21578–21580
The Boeing Company Airplanes, 21569–21573, 21576–21578
NOTICES
Meetings:
Aviation Rulemaking Advisory Committee on Transport Airplane and Engine Issues, 21700–21701
Petitions for Exemption; Summaries, 21701–21703

Federal Communications Commission
RULES
Signal Booster Rules, 21555–21565
Television Broadcasting Services:
Jackson, WY to Wilmington, DE, 21565–21566

Federal Highway Administration
NOTICES
Environmental Impact Statements; Availability, etc.:
Cherokee and Forsyth Counties, GA, 21703–21704
Way and McCarran Boulevard Intersection Improvement Project, 21703

Federal Motor Carrier Safety Administration
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Commercial Motor Vehicle Marking Requirements, 21704–21705

Federal Railroad Administration
NOTICES
Petitions for Waivers of Compliance, 21705–21706

Federal Reserve System
NOTICES
Change in Bank Control Notices:
Acquisitions of Shares of a Bank or Bank Holding Company, 21603–21604

Federal Trade Commission
NOTICES
Request for Early Termination of the Waiting Period under the Premerger Notification Rules, 21604–21606

Fish and Wildlife Service
NOTICES
Endangered Species Permit Applications, 21627–21628

Food and Drug Administration
NOTICES
Guidance for Industry; Availability:
Self-Selection Studies for Nonprescription Drug Products, 21611
Guidances for Industry and Staff; Availability:
Medical Device Classification Product Codes, 21612–21613
Prescription Drug User Fee Act Patient-Focused Drug Development:
Disease Areas for Meetings Conducted in Fiscal Years 2013–2015, 21613–21614

Forest Service
NOTICES
Environmental Impact Statements; Availability, etc.:
Flagstaff Watershed Protection Project, Coconino National Forest, AZ, 21590–21592

Health and Human Services Department
See Centers for Disease Control and Prevention
See Centers for Medicare & Medicaid Services
See Community Living Administration
See Food and Drug Administration
See National Institutes of Health
NOTICES
Delegations of Authority, 21606
Meetings:
Office of Global Affairs Stakeholder Listening Session for 66th World Health Assembly, 21607
President's Council on Fitness, Sports, and Nutrition, 21606–21607

Homeland Security Department
See Coast Guard

Housing and Urban Development Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Final Endorsement of Credit Instrument, 21617
Multifamily Project Construction Contract, Building Loan Agreement, and Construction Change Request, 21617–21618
Mortgagee Review Board; Administrative Actions, 21618–21623
Public Housing Assessment System:
Capital Fund Final Scoring Notice, 21623–21627

Industry and Security Bureau
NOTICES
Reporting Requirements, Calendar Year 2012:
Offsets Agreements Related to Sales of Defense Articles or Defense Services to Foreign Countries or Foreign Firms, 21592

Interior Department
See Fish and Wildlife Service
See Land Management Bureau

Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 21707–21709
Requests for Nominations:
Internal Revenue Service Advisory Council, 21709–21710

International Trade Administration
NOTICES
Antidumping Duty Administrative Orders; Results, Extensions, Amendments, etc.:
Drawn Stainless Steel Sinks from the People's Republic of China, 21592–21594
Countervailing Duty Administrative Reviews; Results, Extensions, Amendments, etc.:
Certain Kitchen Appliance Shelving and Racks from the People's Republic of China, 21594–21595
Countervailing Duty Orders; Results, Extensions, Amendments, etc.:
Drawn Stainless Steel Sinks from the People's Republic of China, 21596–21597

International Trade Commission
NOTICES
Investigations; Terminations, Modifications and Rulings:
Certain Two-Way Global Satellite Communication Devices, System and Components Thereof, 21629

Justice Department
NOTICES
Proposed Consent Decrees, 21629–21630

Labor Department
See Employment and Training Administration

Land Management Bureau
NOTICES
Meetings:
Dominguez–Escalante National Conservation Area Advisory Council; Cancellation, 21628–21629

Management and Budget Office
NOTICES
Cost of Hospital and Medical Care Treatment Furnished by DoD Medical Treatment Facilities:
Certain Rates Regarding Recovery from Tortiously Liable Third Persons, 21631

Merit Systems Protection Board
RULES
Practices and Procedures, 21517–21518

National Aeronautics and Space Administration
NOTICES
Meetings:
Finance and Analysis Committee; Correction, 21631

National Institutes of Health
NOTICES
Government-Owned Inventions; Availability for Licensing, 21614–21615
Meetings:
Center for Scientific Review, 21616–21617
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 21617
National Institute of Neurological Disorders and Stroke, 21615
National Institute on Alcohol Abuse and Alcoholism, 21615–21616

National Oceanic and Atmospheric Administration
PROPOSED RULES
Atlantic Highly Migratory Species:
2013 Atlantic Bluefin Tuna Quota Specifications, 21584–21589
NOTICES
Meetings:
Marine Mammals; Alaska Harbor Seal Habitats; Workshops, 21597–21598
National Climate Assessment and Development Advisory Committee, 21598

National Science Foundation
NOTICES
Meetings; Sunshine Act, 21631–21632

National Transportation Safety Board
NOTICES
Investigative Hearings:
Boeing 787 Battery and Battery Charger System, 21632

Nuclear Regulatory Commission
PROPOSED RULES
Installation of Radiation Alarms for Rooms Housing Neutron Sources, 21567–21569

Office of Management and Budget
See Management and Budget Office

Patent and Trademark Office
PROPOSED RULES
Changes to Implement the Patent Law Treaty, 21788–21809

Personnel Management Office
RULES
Prevailing Rate Systems; Redefinition of the Appropriated Fund Federal Wage System Wage Areas:
St. Louis, MO; Southern Missouri; Cleveland, OH; and Pittsburgh, PA, 21515–21517

Postal Regulatory Commission
NOTICES
International Mail Products, 21632–21634

Presidential Documents
PROCLAMATIONS
Special Observances:
National Equal Pay Day (Proc. 8955), 21811–21814
National Former Prisoner of War Recognition Day (Proc. 8956), 21815–21816
EXECUTIVE ORDERS
Government Agencies and Employees:
Rates of Pay; Adjustments (EO 13641), 21503–21514

Securities and Exchange Commission
NOTICES
Orders of Suspension of Trading:
Integrity Bancshares, Inc., 21634
Self-Regulatory Organizations; Proposed Rule Changes:
BATS Y-Exchange, Inc., 21651–21653
Chicago Board Options Exchange, 21642–21648
Chicago Stock Exchange, Inc., 21634–21641
Consolidated Tape Association, 21648–21650
EDGX Exchange, Inc., 21666–21668
International Securities Exchange LLC, 21657–21661
Miami International Securities Exchange LLC, 21661–21663, 21677–21681
NASDAQ OMX BX, Inc., 21653–21655
NASDAQ Stock Market LLC, 21655–21657, 21663–21665, 21675–21677, 21691–21699
NYSE Arca, Inc., 21650–21651, 21668–21675, 21681–21691

State Department
RULES
Defense Trade Cooperation Treaty Between the United States and Australia, 21523–21537
NOTICES
Meetings:
CAFTA–DR Environmental Affairs Council, 21699–21700

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Federal Railroad Administration

Treasury Department
See Internal Revenue Service
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals, 21706–21707

Veterans Affairs Department
NOTICES
Agency Information Collection Activities; Proposals, Submissions, and Approvals:
Brand Name or Equal, 21711–21712
Caution to Bidders – Bid Envelopes, 21710–21711
Reconsideration of Denied Claims, 21711
Compensation Cost-of-Living Adjustments for Service-Connected Benefits, 21712–21713
Privacy Act; Computer Matching Program, 21713–21714

Separate Parts In This Issue

Part II
Defense Department, 21716–21747

Part III
Commodity Futures Trading Commission, 21750–21785

Part IV
Commerce Department, Patent and Trademark Office, 21788–21809

Part V
Presidential Documents, 21811–21816

Reader Aids

Consult the Reader Aids section at the end of this page for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:

8955 21813
8956 21815

Executive Orders:

13635 (superseded by 13641) 21503
13641 21503

5 CFR

532 21515
1201 21517

7 CFR

922 21518
923 21520
927 21521

10 CFR

Proposed Rules:

73 21567

14 CFR

Proposed Rules:

39 (5 documents) 21569, 21571, 21573, 21576, 21578

17 CFR

50 21750
140 21522

22 CFR

120 21523
126 21523

32 CFR

105 21716

33 CFR

117 21537

37 CFR

Proposed Rules:

1 21788
3 21788

40 CFR

52 (5 documents) 21537, 21540, 21542, 21545, 21547
81 21547

Proposed Rules:

52 (5 documents) 21580, 21581, 21582, 21583
81 21583

47 CFR

1 21555
2 21555
20 21555
22 21555
24 21555
27 21555
73 21565
90 21555

50 CFR

Proposed Rules:

635 21584

Federal Register
Vol. 78, No. 70
Thursday, April 11, 2013

Presidential Documents

Title 3—

The President

Executive Order 13641 of April 5, 2013

Adjustments of Certain Rates of Pay

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Continuing Appropriations and Surface Transportation Extensions Act, 2011 (Public Law 111–322), as extended by the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113–6), which requires certain pay schedules for civilian Federal employees to remain at 2010 levels through 2013, it is hereby ordered as follows:

Section 1. *Statutory Pay Systems.* Pursuant to the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113–6), the rates of basic pay or salaries of the statutory pay systems (as defined in 5 U.S.C. 5302(1)) are set forth on the schedules attached hereto and made a part hereof:

(a) The General Schedule (5 U.S.C. 5332(a)) at Schedule 1;

(b) The Foreign Service Schedule (22 U.S.C. 3963) at Schedule 2; and

(c) The schedules for the Veterans Health Administration of the Department of Veterans Affairs (38 U.S.C. 7306, 7404; section 301(a) of Public Law 102–40) at Schedule 3.

Sec. 2. *Senior Executive Service.* The ranges of rates of basic pay for senior executives in the Senior Executive Service, as established pursuant to 5 U.S.C. 5382, are set forth on Schedule 4 attached hereto and made a part hereof.

Sec. 3. *Certain Executive, Legislative, and Judicial Salaries.* The rates of basic pay or salaries for the following offices and positions are set forth on the schedules attached hereto and made a part hereof:

(a) The Executive Schedule (5 U.S.C. 5312–5318) at Schedule 5;

(b) The Vice President (3 U.S.C. 104) and the Congress (2 U.S.C. 31) at Schedule 6; and

(c) Justices and judges (28 U.S.C. 5, 44(d), 135, 252, and 461(a), and section 140 of Public Law 97–92) at Schedule 7.

Sec. 4. *Uniformed Services.* The rates of monthly basic pay (37 U.S.C. 203(a)) for members of the uniformed services, as adjusted under 37 U.S.C. 1009, and the rate of monthly cadet or midshipman pay (37 U.S.C. 203(c)) are set forth on Schedule 8 attached hereto and made a part hereof.

Sec. 5. *Locality-Based Comparability Payments.* (a) Pursuant to sections 5304 and 5304a of title 5, United States Code, and the Continuing Appropriations and Surface Transportation Extensions Act, 2011 (Public Law 111–322), as extended by the Consolidated and Further Continuing Appropriations Act, 2013 (Public Law 113–6), locality-based comparability payments shall be paid in accordance with Schedule 9 attached hereto and made a part hereof.

(b) The Director of the Office of Personnel Management shall take such actions as may be necessary to implement these payments and to publish appropriate notice of such payments in the *Federal Register.*

Sec. 6. *Administrative Law Judges.* Pursuant to section 5372 of title 5, United States Code, the rates of basic pay for administrative law judges are set forth on Schedule 10 attached hereto and made a part hereof.

Sec. 7. *Effective Dates.* Schedule 8 is effective January 1, 2013. The other schedules contained herein are effective on the first day of the first applicable pay period beginning on or after January 1, 2013.

Sec. 8. *Prior Order Superseded.* Executive Order 13635 of December 27, 2012, is superseded as of the effective dates specified in section 7 of this order.

THE WHITE HOUSE,

April 5, 2013.

Billing code 3295–F3–P

SCHEDULE 1--GENERAL SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2013)

	1	2	3	4	5	6	7	8	9	10
GS-1	$17,803	$18,398	$18,990	$19,579	$20,171	$20,519	$21,104	$21,694	$21,717	$22,269
GS-2	20,017	20,493	21,155	21,717	21,961	22,607	23,253	23,899	24,545	25,191
GS-3	21,840	22,568	23,296	24,024	24,752	25,480	26,208	26,936	27,664	28,392
GS-4	24,518	25,335	26,152	26,969	27,786	28,603	29,420	30,237	31,054	31,871
GS-5	27,431	28,345	29,259	30,173	31,087	32,001	32,915	33,829	34,743	35,657
GS-6	30,577	31,596	32,615	33,634	34,653	35,672	36,691	37,710	38,729	39,748
GS-7	33,979	35,112	36,245	37,378	38,511	39,644	40,777	41,910	43,043	44,176
GS-8	37,631	38,885	40,139	41,393	42,647	43,901	45,155	46,409	47,663	48,917
GS-9	41,563	42,948	44,333	45,718	47,103	48,488	49,873	51,258	52,643	54,028
GS-10	45,771	47,297	48,823	50,349	51,875	53,401	54,927	56,453	57,979	59,505
GS-11	50,287	51,963	53,639	55,315	56,991	58,667	60,343	62,019	63,695	65,371
GS-12	60,274	62,283	64,292	66,301	68,310	70,319	72,328	74,337	76,346	78,355
GS-13	71,674	74,063	76,452	78,841	81,230	83,619	86,008	88,397	90,786	93,175
GS-14	84,697	87,520	90,343	93,166	95,989	98,812	101,635	104,458	107,281	110,104
GS-15	99,628	102,949	106,270	109,591	112,912	116,233	119,554	122,875	126,196	129,517

SCHEDULE 2--FOREIGN SERVICE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2013)

Step	Class 1	Class 2	Class 3	Class 4	Class 5	Class 6	Class 7	Class 8	Class 9
1	$99,628	$80,728	$65,413	$53,003	$42,948	$38,394	$34,324	$30,684	$27,431
2	102,617	83,150	67,375	54,593	44,236	39,546	35,354	31,605	28,254
3	105,695	85,644	69,397	56,231	45,564	40,732	36,414	32,553	29,102
4	108,866	88,214	71,479	57,918	46,930	41,954	37,507	33,529	29,975
5	112,132	90,860	73,623	59,655	48,338	43,213	38,632	34,535	30,874
6	115,496	93,586	75,832	61,445	49,789	44,509	39,791	35,571	31,800
7	118,961	96,393	78,107	63,288	51,282	45,844	40,985	36,638	32,754
8	122,530	99,285	80,450	65,187	52,821	47,220	42,214	37,737	33,737
9	126,206	102,264	82,863	67,143	54,405	48,636	43,481	38,870	34,749
10	129,517	105,332	85,349	69,157	56,037	50,095	44,785	40,036	35,791
11	129,517	108,492	87,910	71,232	57,719	51,598	46,129	41,237	36,865
12	129,517	111,746	90,547	73,369	59,450	53,146	47,512	42,474	37,971
13	129,517	115,099	93,263	75,570	61,234	54,741	48,938	43,748	39,110
14	129,517	118,552	96,061	77,837	63,071	56,383	50,406	45,060	40,283

SCHEDULE 3--VETERANS HEALTH ADMINISTRATION SCHEDULES
DEPARTMENT OF VETERANS AFFAIRS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2013)

Schedule for the Office of the Under Secretary for Health (38 U.S.C. 7306)*

Assistant Under Secretaries for Health (Only applies to incumbents who are not physicians or dentists)		$157,279**
	Minimum	Maximum
Service Directors	$116,844	$145,113
Director, National Center for Preventive Health	99,628	145,113

Physician and Dentist Base and Longevity Schedule***

Physician Grade	$97,987	$143,725
Dentist Grade	97,987	143,725

Clinical Podiatrist, Chiropractor, and Optometrist Schedule

Chief Grade	$99,628	$129,517
Senior Grade	84,697	110,104
Intermediate Grade	71,674	93,175
Full Grade	60,274	78,355
Associate Grade	50,287	65,371

Physician Assistant and Expanded-Function Dental Auxiliary Schedule****

Director Grade	$99,628	$129,517
Assistant Director Grade	84,697	110,104
Chief Grade	71,674	93,175
Senior Grade	60,274	78,355
Intermediate Grade	50,287	65,371
Full Grade	41,563	54,028
Associate Grade	35,766	46,494
Junior Grade	30,577	39,748

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* This schedule does not apply to the Deputy Under Secretary for Health, the Associate Deputy Under Secretary for Health, Assistant Under Secretaries for Health who are physicians or dentists, Medical Directors, the Assistant Under Secretary for Nursing Programs, or the Director of Nursing Services.

** Pursuant to 38 U.S.C. 7404(d), the rate of basic pay payable to these employees is limited to the rate for level V of the Executive Schedule, which is $145,700.

*** Pursuant to section 3 of Public Law 108-445 and 38 U.S.C. 7431, Veterans Health Administration physicians and dentists may also be paid market pay and performance pay.

**** Pursuant to section 301(a) of Public Law 102-40, these positions are paid according to the Nurse Schedule in 38 U.S.C. 4107(b), as in effect on August 14, 1990, with subsequent adjustments.

SCHEDULE 4--SENIOR EXECUTIVE SERVICE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2013)

	Minimum	Maximum
Agencies with a Certified SES Performance Appraisal System	$119,554	$179,700
Agencies without a Certified SES Performance Appraisal System	$119,554	$165,300

SCHEDULE 5--EXECUTIVE SCHEDULE

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2013)

Level I	$199,700
Level II	179,700
Level III	165,300
Level IV	155,500
Level V	145,700

SCHEDULE 6--VICE PRESIDENT AND MEMBERS OF CONGRESS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2013)

Vice President	$230,700
Senators	174,000
Members of the House of Representatives	174,000
Delegates to the House of Representatives	174,000
Resident Commissioner from Puerto Rico	174,000
President pro tempore of the Senate	193,400
Majority leader and minority leader of the Senate	193,400
Majority leader and minority leader of the House of Representatives	193,400
Speaker of the House of Representatives	223,500

SCHEDULE 7--JUDICIAL SALARIES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2013)

Chief Justice of the United States	$223,500
Associate Justices of the Supreme Court	213,900
Circuit Judges	184,500
District Judges	174,000
Judges of the Court of International Trade	174,000

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES
(Effective January 1, 2013)

Part I--MONTHLY BASIC PAY
YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
COMMISSIONED OFFICERS											
O-10**	-	-	-	-	-	-	-	-	-	-	-
O-9	-	-	-	-	-	-	-	-	-	-	-
O-8	$9,847.80	$10,170.30	$10,384.50	$10,444.20	$10,711.50	$11,157.60	$11,261.40	$11,685.00	$11,806.50	$12,171.60	$12,700.20
O-7	8,182.50	8,562.90	8,738.70	8,878.50	9,131.70	9,381.90	9,671.10	9,959.40	10,248.60	11,157.60	11,924.70
O-6	6,064.80	6,663.00	7,100.10	7,100.10	7,127.10	7,432.80	7,473.00	7,473.00	7,897.80	8,648.70	9,089.40
O-5	5,055.90	5,695.50	6,089.70	6,164.10	6,410.10	6,557.10	6,880.80	7,118.40	7,425.30	7,895.10	8,118.00
O-4	4,362.30	5,049.90	5,386.80	5,461.80	5,774.70	6,109.80	6,527.70	6,852.90	7,078.80	7,208.70	7,283.70
O-3***	3,835.50	4,347.90	4,692.90	5,116.50	5,361.60	5,630.70	5,804.70	6,090.60	6,240.00	6,240.00	6,240.00
O-2***	3,314.10	3,774.30	4,347.00	4,493.70	4,586.40	4,586.40	4,586.40	4,586.40	4,586.40	4,586.40	4,586.40
O-1***	2,876.40	2,994.00	3,619.20	3,619.20	3,619.20	3,619.20	3,619.20	3,619.20	3,619.20	3,619.20	3,619.20
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****											
O-3E	-	-	-	$5,116.50	$5,361.60	$5,630.70	$5,804.70	$6,090.60	$6,332.10	$6,470.70	$6,659.40
O-2E	-	-	-	4,493.70	4,586.40	4,732.50	4,978.80	5,169.30	5,311.20	5,311.20	5,311.20
O-1E	-	-	-	3,619.20	3,864.60	4,007.70	4,153.80	4,297.20	4,493.70	4,493.70	4,493.70
WARRANT OFFICERS											
W-5	-	-	-	-	-	-	-	-	-	-	-
W-4	$3,963.90	$4,263.90	$4,386.00	$4,506.60	$4,713.90	$4,919.10	$5,126.70	$5,439.60	$5,713.50	$5,974.20	$6,187.50
W-3	3,619.50	3,770.40	3,925.20	3,975.90	4,138.20	4,457.10	4,789.20	4,945.50	5,126.40	5,313.00	5,648.10
W-2	3,202.80	3,505.80	3,599.40	3,663.30	3,871.20	4,194.00	4,353.90	4,511.40	4,704.00	4,854.30	4,990.80
W-1	2,811.60	3,114.00	3,195.30	3,367.50	3,570.90	3,870.60	4,010.40	4,205.70	4,398.30	4,549.80	4,689.00

* For officers at pay grades O-7 through O-10, basic pay is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,975.10 per month. For officers at O-6 and below, basic pay is limited to the rate of basic pay for level V of the Executive Schedule, which is $12,141.60 per month.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)), basic pay for this grade is calculated to be $20,937.90 per month, regardless of cumulative years of service computed under 37 U.S.C. 205. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,975.10 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member and/or warrant officer which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 2)
(Effective January 1, 2013)

Part I--MONTHLY BASIC PAY
YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
COMMISSIONED OFFICERS											
O-10**	$15,913.20*	$15,990.60*	$16,323.60*	$16,902.60*	$16,902.60*	$17,747.70*	$17,747.70*	$18,634.80*	$18,634.80*	$19,566.90*	$19,566.90*
O-9	13,917.60	14,118.60	14,408.10	14,913.30	14,913.30	15,659.40*	15,659.40*	16,442.40*	16,442.40*	17,264.40*	17,264.40*
O-8	13,187.10	13,512.30	13,512.30	13,512.30	13,512.30	13,850.40	13,850.40	14,196.60	14,196.60	14,196.60	14,196.60
O-7	11,924.70	11,924.70	11,924.70	11,985.60	11,985.60	12,225.30	12,225.30	12,225.30	12,225.30	12,225.30	12,225.30
O-6	9,529.80	9,780.60	10,034.40	10,526.70	10,526.70	10,736.70	10,736.70	10,736.70	10,736.70	10,736.70	10,736.70
O-5	8,338.80	8,589.90	8,589.90	8,589.90	8,589.90	8,589.90	8,589.90	8,589.90	8,589.90	8,589.90	8,589.90
O-4	7,283.70	7,283.70	7,283.70	7,283.70	7,283.70	7,283.70	7,283.70	7,283.70	7,283.70	7,283.70	7,283.70
O-3***	6,240.00	6,240.00	6,240.00	6,240.00	6,240.00	6,240.00	6,240.00	6,240.00	6,240.00	6,240.00	6,240.00
O-2***	4,586.40	4,586.40	4,586.40	4,586.40	4,586.40	4,586.40	4,586.40	4,586.40	4,586.40	4,586.40	4,586.40
O-1***	3,619.20	3,619.20	3,619.20	3,619.20	3,619.20	3,619.20	3,619.20	3,619.20	3,619.20	3,619.20	3,619.20
COMMISSIONED OFFICERS WITH OVER 4 YEARS ACTIVE DUTY SERVICE AS AN ENLISTED MEMBER OR WARRANT OFFICER****											
O-3E	$6,659.40	$6,659.40	$6,659.40	$6,659.40	$6,659.40	$6,659.40	$6,659.40	$6,659.40	$6,659.40	$6,659.40	$6,659.40
O-2E	5,311.20	5,311.20	5,311.20	5,311.20	5,311.20	5,311.20	5,311.20	5,311.20	5,311.20	5,311.20	5,311.20
O-1E	4,493.70	4,493.70	4,493.70	4,493.70	4,493.70	4,493.70	4,493.70	4,493.70	4,493.70	4,493.70	4,493.70
WARRANT OFFICERS											
W-5	$7,047.90	$7,405.50	$7,671.60	$7,966.50	$7,966.50	$8,365.20	$8,365.20	$8,783.10	$8,783.10	$9,222.90	$9,222.90
W-4	6,395.40	6,701.10	6,952.20	7,238.70	7,238.70	7,383.30	7,383.30	7,383.30	7,383.30	7,383.30	7,383.30
W-3	5,874.30	6,009.90	6,153.90	6,349.50	6,349.50	6,349.50	6,349.50	6,349.50	6,349.50	6,349.50	6,349.50
W-2	5,153.70	5,261.10	5,346.30	5,346.30	5,346.30	5,346.30	5,346.30	5,346.30	5,346.30	5,346.30	5,346.30
W-1	4,858.20	4,858.20	4,858.20	4,858.20	4,858.20	4,858.20	4,858.20	4,858.20	4,858.20	4,858.20	4,858.20

* For officers at pay grades O-7 through O-10, basic pay is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,975.10 per month. For officers at O-6 and below, basic pay is limited to the rate of basic pay for level V of the Executive Schedule, which is $12,141.60 per month.

** For officers serving as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, Commandant of the Coast Guard, or commander of a unified or specified combatant command (as defined in 10 U.S.C. 161(c)), basic pay for this grade is calculated to be $20,937.90 per month, regardless of cumulative years of service computed under 37 U.S.C. 205. Nevertheless, actual basic pay for these officers is limited to the rate of basic pay for level II of the Executive Schedule, which is $14,975.10 per month.

*** Does not apply to commissioned officers who have been credited with over 4 years of active duty service as an enlisted member or warrant officer.

**** Reservists with at least 1,460 points as an enlisted member and/or warrant officer which are creditable toward reserve retirement also qualify for these rates.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 3)
(Effective January 1, 2013)

Part I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	2 or less	Over 2	Over 3	Over 4	Over 6	Over 8	Over 10	Over 12	Over 14	Over 16	Over 18
ENLISTED MEMBERS											
E-9*	-	-	-	-	-	-	$4,788.90	$4,897.50	$5,034.30	$5,194.80	$5,357.40
E-8	-	-	-	-	-	$3,920.10	4,093.50	4,200.90	4,329.60	4,469.10	4,720.50
E-7	$2,725.20	$2,974.50	$3,088.20	$3,239.10	$3,357.00	3,559.20	3,673.20	3,875.70	4,043.70	4,158.60	4,281.00
E-6	2,357.10	2,593.80	2,708.10	2,819.40	2,935.50	3,196.50	3,298.50	3,495.30	3,555.60	3,599.70	3,650.70
E-5	2,159.40	2,304.30	2,415.90	2,529.90	2,707.50	2,893.50	3,045.60	3,064.20	3,064.20	3,064.20	3,064.20
E-4	1,979.70	2,081.10	2,193.90	2,304.90	2,403.30	2,403.30	2,403.30	2,403.30	2,403.30	2,403.30	2,403.30
E-3	1,787.40	1,899.90	2,014.80	2,014.80	2,014.80	2,014.80	2,014.80	2,014.80	2,014.80	2,014.80	2,014.80
E-2	1,699.80	1,699.80	1,699.80	1,699.80	1,699.80	1,699.80	1,699.80	1,699.80	1,699.80	1,699.80	1,699.80
E-1**	1,516.20	1,516.20	1,516.20	1,516.20	1,516.20	1,516.20	1,516.20	1,516.20	1,516.20	1,516.20	1,516.20
E-1***	1,402.20	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, or Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, basic pay for this grade is $7,738.80 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 4)
(Effective January 1, 2013)

Part I--MONTHLY BASIC PAY

YEARS OF SERVICE (COMPUTED UNDER 37 U.S.C. 205)

Pay Grade	Over 20	Over 22	Over 24	Over 26	Over 28	Over 30	Over 32	Over 34	Over 36	Over 38	Over 40
ENLISTED MEMBERS											
E-9*	$5,617.50	$5,837.10	$6,068.70	$6,422.70	$6,422.70	$6,743.40	$6,743.40	$7,080.90	$7,080.90	$7,435.20	$7,435.20
E-8	4,847.70	5,064.60	5,184.90	5,481.00	5,481.00	5,591.40	5,591.40	5,591.40	5,591.40	5,591.40	5,591.40
E-7	4,328.40	4,487.40	4,572.90	4,897.80	4,897.80	4,897.80	4,897.80	4,897.80	4,897.80	4,897.80	4,897.80
E-6	3,650.70	3,650.70	3,650.70	3,650.70	3,650.70	3,650.70	3,650.70	3,650.70	3,650.70	3,650.70	3,650.70
E-5	3,064.20	3,064.20	3,064.20	3,064.20	3,064.20	3,064.20	3,064.20	3,064.20	3,064.20	3,064.20	3,064.20
E-4	2,403.30	2,403.30	2,403.30	2,403.30	2,403.30	2,403.30	2,403.30	2,403.30	2,403.30	2,403.30	2,403.30
E-3	2,014.80	2,014.80	2,014.80	2,014.80	2,014.80	2,014.80	2,014.80	2,014.80	2,014.80	2,014.80	2,014.80
E-2	1,699.80	1,699.80	1,699.80	1,699.80	1,699.80	1,699.80	1,699.80	1,699.80	1,699.80	1,699.80	1,699.80
E-1**	1,516.20	1,516.20	1,516.20	1,516.20	1,516.20	1,516.20	1,516.20	1,516.20	1,516.20	1,516.20	1,516.20
E-1***	-	-	-	-	-	-	-	-	-	-	-

* For noncommissioned officers serving as Sergeant Major of the Army, Master Chief Petty Officer of the Navy or Coast Guard, Chief Master Sergeant of the Air Force, Sergeant Major of the Marine Corps, or Senior Enlisted Advisor to the Chairman of the Joint Chiefs of Staff, basic pay for this grade is $7,738.80 per month, regardless of cumulative years of service under 37 U.S.C. 205.

** Applies to personnel who have served 4 months or more on active duty.

*** Applies to personnel who have served less than 4 months on active duty.

SCHEDULE 8--PAY OF THE UNIFORMED SERVICES (PAGE 5)

Part II--RATE OF MONTHLY CADET OR MIDSHIPMAN PAY

The rate of monthly cadet or midshipman pay authorized by 37 U.S.C. 203(c) is $1,006.80.00.

Note: As a result of the enactment of sections 602-604 of Public Law 105-85, the National Defense Authorization Act for Fiscal Year 1998, the Secretary of Defense now has the authority to adjust the rates of basic allowances for subsistence and housing. Therefore, these allowances are no longer adjusted by the President in conjunction with the adjustment of basic pay for members of the uniformed services. Accordingly, the tables of allowances included in previous orders are not included here.

SCHEDULE 9--LOCALITY-BASED COMPARABILITY PAYMENTS

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2013)

Locality Pay Area*	Rate
Alaska	24.69%
Atlanta-Sandy Springs-Gainesville, GA-AL	19.29%
Boston-Worcester-Manchester, MA-NH-RI-ME	24.80%
Buffalo-Niagara-Cattaraugus, NY	16.98%
Chicago-Naperville-Michigan City, IL-IN-WI	25.10%
Cincinnati-Middletown-Wilmington, OH-KY-IN	18.55%
Cleveland-Akron-Elyria, OH	18.68%
Columbus-Marion-Chillicothe, OH	17.16%
Dallas-Fort Worth, TX	20.67%
Dayton-Springfield-Greenville, OH	16.24%
Denver-Aurora-Boulder, CO	22.52%
Detroit-Warren-Flint, MI	24.09%
Hartford-West Hartford-Willimantic, CT-MA	25.82%
Hawaii	16.51%
Houston-Baytown-Huntsville, TX	28.71%
Huntsville-Decatur, AL	16.02%
Indianapolis-Anderson-Columbus, IN	14.68%
Los Angeles-Long Beach-Riverside, CA	27.16%
Miami-Fort Lauderdale-Pompano Beach, FL	20.79%
Milwaukee-Racine-Waukesha, WI	18.10%
Minneapolis-St. Paul-St. Cloud, MN-WI	20.96%
New York-Newark-Bridgeport, NY-NJ-CT-PA	28.72%
Philadelphia-Camden-Vineland, PA-NJ-DE-MD	21.79%
Phoenix-Mesa-Scottsdale, AZ	16.76%
Pittsburgh-New Castle, PA	16.37%
Portland-Vancouver-Beaverton, OR-WA	20.35%
Raleigh-Durham-Cary, NC	17.64%
Richmond, VA	16.47%
Sacramento—Arden-Arcade—Yuba City, CA-NV	22.20%
San Diego-Carlsbad-San Marcos, CA	24.19%
San Jose-San Francisco-Oakland, CA	35.15%
Seattle-Tacoma-Olympia, WA	21.81%
Washington-Baltimore-Northern Virginia, DC-MD-VA-WV-PA	24.22%
Rest of U.S	14.16%

* Locality Pay Areas are defined in 5 CFR 531.603.

SCHEDULE 10--ADMINISTRATIVE LAW JUDGES

(Effective on the first day of the first applicable pay period beginning on or after January 1, 2013)

AL-3/A	$103,900
AL-3/B	111,800
AL-3/C	119,900
AL-3/D	127,800
AL-3/E	135,900
AL-3/F	143,700
AL-2	151,800
AL-1	155,500

[FR Doc. 2013–08626

Filed 4–10–13; 8:45 am]

Billing code 6325–01–C

Rules and Regulations

Federal Register
Vol. 78, No. 70
Thursday, April 11, 2013

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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AM70

Prevailing Rate Systems; Redefinition of the St. Louis, MO; Southern Missouri; Cleveland, OH; and Pittsburgh, PA, Appropriated Fund Federal Wage System Wage Areas

AGENCY: U.S. Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The U.S. Office of Personnel Management is issuing a final rule to redefine the geographic boundaries of the St. Louis, MO; Southern Missouri; Cleveland, OH; and Pittsburgh, PA, appropriated fund Federal Wage System (FWS) wage areas. The final rule redefines Bollinger, Cape Girardeau, and Perry Counties, MO, from the Southern Missouri wage area to the St. Louis wage area and Mercer County, PA, from the Pittsburgh wage area to the Cleveland wage area. These changes are based on recent consensus recommendations of the Federal Prevailing Rate Advisory Committee to best match the counties proposed for redefinition to a nearby FWS survey area. This final rule makes two additional corrections. It renames the Champaign-Urbana, IL, wage area as the Central Illinois wage area and updates the name of the White Sands Proving Ground in the Albuquerque, NM, and El Paso, TX, wage areas to White Sands Missile Range.

DATES: This regulation is effective on May 13, 2013.

SUPPLEMENTARY INFORMATION: On November 15, 2012, the U.S. Office of Personnel Management (OPM) issued a proposed rule (77 FR 68073) to redefine Bollinger, Cape Girardeau, and Perry Counties, MO, from the Southern Missouri wage area to the St. Louis wage area and Mercer County, PA, from the Pittsburgh wage area to the Cleveland wage area. These changes are based on recent consensus recommendations of the Federal Prevailing Rate Advisory Committee to best match the above counties to a nearby FWS survey area.

This final rule makes two additional corrections. It renames the Champaign-Urbana, IL, wage area as the Central Illinois wage area and updates the name of the White Sands Proving Ground in the Albuquerque, NM, and El Paso, TX, wage areas to White Sands Missile Range. These corrections do not affect the pay of any FWS employees.

The proposed rule had a 30-day comment period during which OPM received no comments.

Regulatory Flexibility Act

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

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

John Berry,

Director.

Accordingly, the U.S. Office of Personnel Management amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix A to Subpart B of Part 532—[Amended]

■ 2. In appendix A to subpart B of part 532, under the State of Illinois, revise ''Champaign-Urbana'' wage area to read ''Central Illinois''.

■ 3. In appendix C to subpart B of part 532, under the State of Illinois, revise ''Champaign-Urbana'' wage area to read ''Central Illinois'', and revise the wage area listings for the St. Louis, MO; Southern Missouri; Albuquerque, NM; Cleveland, OH; Pittsburgh, PA, and El Paso, TX, wage areas to read as follows:

Appendix C to Subpart B of Part 532—Appropriated Fund Wage and Survey Areas

* * * * *

MISSOURI

* * * * *

St. Louis
Survey Area

Illinois:
- Clinton
- Madison
- Monroe
- St. Clair

Missouri: (city)
- St. Louis

Missouri: (counties)
- Franklin
- Jefferson
- St. Charles
- St. Louis

Area of Application. Survey area plus:

Illinois:
- Alexander
- Bond
- Calhoun
- Clay
- Effingham
- Fayette
- Franklin
- Greene
- Hamilton
- Jackson
- Jefferson
- Jersey
- Johnson
- Macoupin
- Marion
- Massac
- Montgomery
- Morgan
- Perry
- Pike
- Pope
- Pulaski
- Randolph
- Saline
- Scott
- Union
- Washington
- Wayne
- Williamson

Missouri:
- Audrain
- Bollinger
- Boone
- Callaway
- Cape Girardeau
- Clark
- Cole
- Crawford
- Gasconade
- Knox

Lewis
Lincoln
Marion
Moniteau
Monroe
Montgomery
Osage
Perry
Pike
Ralls
Randolph
St. Francois
Ste. Genevieve
Scotland
Shelby
Warren
Washington

Southern Missouri
Survey Area

Missouri:
Christian
Greene
Laclede
Phelps
Pulaski
Webster

Area of Application. Survey area plus:

Kansas:
Cherokee
Crawford
Missouri:
Barry
Barton
Benton
Butler
Camden
Carter
Cedar
Dade
Dallas
Dent
Douglas
Hickory
Howell
Iron
Jasper
Lawrence
Madison
Maries
Miller
Mississippi
Morgan
New Madrid
Newton
Oregon
Ozark
Polk
Reynolds
Ripley
St. Clair
Scott
Shannon
Stoddard
Stone
Taney
Texas
Vernon
Wayne
Wright

* * * * *

NEW MEXICO

Albuquerque

Survey Area

New Mexico:
Bernalillo
Sandoval

Area of Application. Survey area plus:

New Mexico:
Catron
Cibola
Colfax
Curry
De Baca
Guadalupe
Harding
Lincoln (Does not include White Sands Missile Range portion)
Los Alamos
Mora
Quay
Rio Arriba
Roosevelt
San Miguel
Santa Fe
Socorro (Does not include White Sands Missile Range portion)
Taos
Torrance
Union
Valencia

* * * * *

OHIO

* * * * *

Cleveland

Survey Area

Ohio:
Cuyahoga
Geauga
Lake
Medina

Area of Application. Survey area plus:

Ohio:
Ashland
Ashtabula
Carroll
Columbiana
Erie
Huron
Lorain
Mahoning
Ottawa
Portage
Sandusky
Seneca
Stark
Summit
Trumbull
Wayne
Pennsylvania:
Mercer

* * * * *

PENNSYLVANIA

* * * * *

Pittsburgh

Survey Area

Ohio:Pennsylvania:
Allegheny
Beaver
Butler
Washington
Westmoreland

Area of Application. Survey area plus:

Ohio:
Belmont
Harrison
Jefferson
Tuscarawas
Pennsylvania:
Armstrong
Bedford
Blair
Cambria
Cameron
Centre
Clarion
Clearfield
Clinton
Crawford
Elk (Does not include the Allegheny National Forest portion)
Erie
Fayette
Forest (Does not include the Allegheny National Forest portion)
Greene
Huntingdon
Indiana
Jefferson
Lawrence
Potter
Somerset
Venango
West Virginia:
Brooke
Hancock
Marshall
Ohio

* * * * *

TEXAS

* * * * *

El Paso

Survey Area

New Mexico:
Dona Ana
Otero
Texas:
El Paso

Area of Application. Survey area plus:

New Mexico:
Chaves
Eddy
Grant
Hidalgo
Lincoln (Only White Sands Missile Range portion)
Luna
Sierra
Socorro (Only White Sands Missile Range portion)
Texas:
Culberson

Hudspeth

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[FR Doc. 2013–08518 Filed 4–10–13; 8:45 am]

BILLING CODE 6325–39–P

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1201

Practices and Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Interim final rule.

SUMMARY: The Merit Systems Protection Board (MSPB or Board) hereby amends its rules of practice and procedure to allow federal agencies, when issuing a decision notice to an employee on a matter that is appealable to MSPB, to satisfy the obligation to provide a copy of the MSPB appeal form (MSPB Form 185) to an employee by providing the employee with access to a copy of the appeal form, i.e., in paper or electronic form.

DATES: This interim final rule is effective on April 11, 2013. Submit written comments concerning this interim final rule on or before May 13, 2013.

ADDRESSES: Submit your comments concerning this interim final rule by one of the following methods and in accordance with the relevant instructions:

Email: Comments submitted by email should be addressed to *mspb@mspb.gov* and can be contained in the body of the email or as an attachment in any common electronic format, including word processing applications, HTML or PDF. Commenters are asked to use a text format and not an image format for attachments. The email should contain a subject line indicating that the submission contains comments on MSPB's interim final rule. The MSPB asks that parties use email to submit comments if possible;

Fax: Comments submitted by fax should be sent to (202) 653–7130. Faxes should be addressed to William D. Spencer and contain a subject line indicating that the submission contains comments concerning MSPB's interim final rule;

Mail or other commercial delivery: Mailed submissions should be addressed to William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419;

Hand delivery or courier: Hand-delivered submissions should be addressed to William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC 20419, and delivered to the 5th floor reception window at this street address. Such deliveries are only accepted Monday through Friday, 9:00 a.m. to 4:30 p.m., excluding federal holidays.

Instructions: As noted above, MSPB requests that commenters use email to submit comments, if possible. All comments received will be included in the public docket without change and will be made available online at the Board's Web site (*http://www.mspb.gov*), including any personal information provided, unless the comment includes information claimed to be Confidential Business Information or other information whose disclosure is restricted by law. Those desiring to submit anonymous comments must submit comments in a manner that does not reveal the commenter's identity, include a statement that the comment is being submitted anonymously, and include no personally-identifiable information. The email address of a commenter who chooses to submit comments using email will not be disclosed unless it appears in comments attached to an email or in the body a comment.

FOR FURTHER INFORMATION CONTACT: William D. Spencer, Clerk of the Board, Merit Systems Protection Board, 1615 M Street NW., Washington, DC, 20419; phone: (202) 653–7200; fax: (202) 653–7130; or email: *mspb@mspb.gov.*

SUPPLEMENTARY INFORMATION: This interim final rule amends 5 CFR 1201.21(c). Currently, this regulation requires that, when a federal agency issues a decision notice to an employee on a matter that is appealable to MSPB, the federal agency must provide the employee with ''[a] copy of the MSPB appeal form * * *'' The amendment set forth herein will allow federal agencies to provide employees ''[a] copy, or access to a copy, of the MSPB appeal form * * * '' This amendment will make paragraph (c) similar to paragraph (b), which requires a federal agency to provide the employee with ''[a] copy, or access to a copy, of the Board's regulations'' under the same circumstances.

The initial impetus to amend this regulation arose when MSPB realized that, under our current regulations, federal agencies that furlough their employees as a result of the implementation of government-wide ''sequestration'' on March 1, 2013, would be required to distribute potentially hundreds of thousands of copies of the 9-page MSPB appeal form to employees along with the furlough notifications. The existing MSPB regulations were not drafted with such a situation in mind. Moreover, widespread access by federal employees to the Internet, electronic mail, and MSPB's electronic filing system, e-Appeal Online (*https://e-appeal.mspb.gov*), ensure, in the vast majority of cases, that the distribution of thousands of paper copies of the MSPB appeal form by federal agencies is unnecessary.

This interim final rule is intended to avoid the costly duplication of hundreds of thousands of paper copies of the MSPB appeal form and to allow federal agencies to make better use of electronic means of making documents available to employees.

The Board is further convinced that this minor amendment to its regulations will not impose any hardship or disadvantage upon employees who receive a decision notice regarding a matter that is appealable to MSPB. A federal agency's obligation under 1201.21(b) and (c) to provide access to MSPB's regulations and the MSPB appeal form must be effective under the circumstances. For example, if a federal agency attempts to satisfy to 1201.21(b) and (c) by providing an employee access to MSPB's regulations and appeal form via the Internet or electronic mail and the employee informs the agency that he or she lacks Internet access, the agency would be required to take other steps to ensure that the employee has actual access to these documents, including providing the employee with a copy of these documents upon the employee's request. Thus, the regulation, as amended, continues to ensure that all employees subject to a final decision appealable to MSPB will have effective access to the MSPB appeal form.

The rulemaking process must normally observe notice-and-comment procedures outlined in the Administrative Procedure Act (APA). However, an exemption from notice and comment rulemaking requirements exists under 5 U.S.C. 553(b)(3)(B) where an ''agency for good cause finds (and incorporates the finding and a brief statement of reasons therefor in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.'' The good cause exception ''is to be narrowly construed and only reluctantly countenanced.'' *Mack Trucks, Inc.* v. *Environmental Protection Agency,* 682 F.3d 87, 93 (D.C. Cir. 2012) (citations omitted).

Regarding the ''impracticable'' prong, the United States Court of Appeals for the District of Columbia has held that agency action could be sustained on this basis if it addresses an ''imminent hazard'' to persons or property of the United States, *Jifry* v. *FAA,* 370 F.3d 1174, 1179 (D.C. Cir. 2004), or if the rule in question is of ''life-saving importance.'' *Council of the S. Mountains, Inc.* v. *Donovan,* 653 F.2d 573, 581 (D.C. Cir. 1981). The Board does not believe that the circumstances surrounding the publication of this interim final rule render the use of APA notice and comment procedures impracticable.

The ''unnecessary'' prong of the agency's good cause inquiry is ''confined to those situations in which the administrative rule is a routine determination, insignificant in nature and impact, and inconsequential to the industry and to the public.'' *Mack Trucks, Inc.* v. *Environmental Protection Agency,* 682 F.3d 87, 94 (D.C. Cir. 2012) (citation omitted). As is noted above, the amendment set forth herein will not relieve federal agencies of the responsibility to ensure that employees who receive notice of an action appealable to MSPB have actual and effective access to the MSPB appeal form. Rather, the amendment simply recognizes that a document such as the MSPB appeal form can reliably be made available to employees via the Internet or other means. Moreover, if a federal employee requests that he or she be provided a copy of the document, the agency would be required to provide it. The MSPB therefore finds that the amendment set forth herein is sufficiently routine, insignificant in nature and inconsequential to warrant a finding of good cause to exempt this amendment from the normal APA notice-and-comment procedures.

The public interest prong of the good cause exception is met only in the rare circumstance when ordinary procedures—generally presumed to serve the public interest—would in fact harm that interest. *Mack Trucks,* 682 F.3d at 95. This exception is therefore invoked when the timing and disclosure requirements of the usual procedures would defeat the purpose of the proposal. *Id.* Here, the reproduction costs this amendment seeks to avert are significant. If, for example, 800,000 Department of Defense employees are issued furlough notices, we estimate that the cost of giving each employee a paper copy of the MSPB appeal form could be on the order of $720,000 (800,000 employees x 9-page MSPB appeal form x $0.10 per page reproduction costs). Additional costs would be imposed upon other federal agencies. Given that an unprecedented and sizeable number of furlough notices could be issued in the days and weeks to follow, MSPB finds that the purpose of this amendment—saving significant needless expense in a time of severe budgetary constraints—would be defeated if normal notice and comment procedures were utilized. Therefore, the Board concluded that the public interest is served by a determination to exempt this interim final rule from the normal APA notice-and-comment procedures.

Finally, MSPB also elected to make the amendment set forth herein effective immediately upon publication of this interim final rule. Under 5 U.S.C. 553(d)(3), ''the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except * * * as otherwise provided by the agency for good cause found and published with the rule.'' For the reasons identified above, MSPB further finds that good cause exists under 5 U.S.C. 553(d)(3) to waive the 30-day publication requirement and implement this amendment immediately.

List of Subjects in 5 CFR Part 1201

Administrative practice and procedure.

Accordingly, for the reasons set forth in the preamble, the Board amends 5 CFR part 1201 as follows:

PART 1201—PRACTICES AND PROCEDURES

■ 1. The authority citation for 5 CFR part 1201 continues to read as follows:

Authority: 5 U.S.C. 1204, 1305, and 7701, and 38 U.S.C. 4331, unless otherwise noted.

■ 2. Revise paragraph (c) of § 1201.21 to read as follows:

§ 1201.21 Notice of appeal rights.

* * * * *

(c) A copy, or access to a copy, of the MSPB appeal form available at the Board's Web site (*http://www.mspb.gov*), and

* * * * *

William D. Spencer,

Clerk of the Board.

[FR Doc. 2013–08503 Filed 4–10–13; 8:45 am]

BILLING CODE 7400–01–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS–FV–12–0027; FV12–922–1 FIR]

Apricots Grown in Designated Counties in Washington; Decreased Assessment Rate

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 that decreased the assessment rate established for the Washington Apricot Marketing Committee (Committee) for the 2012–13 and subsequent fiscal periods from $1.50 to $0.50 per ton of Washington apricots handled. The Committee locally administers the marketing order that regulates the handling of apricots grown in designated counties in Washington. The interim rule decreased the assessment rate to reflect a reduction in the manager's salary and the Committee's operating expenditures.

DATES: Effective April 12, 2013.

FOR FURTHER INFORMATION CONTACT: Manuel Michel, Marketing Specialist, or Gary Olson, Regional Director, Northwest Marketing Field Office, Marketing Order and Agreement Division, Fruit and Vegetable Program, AMS, USDA, 805 SW Broadway, Suite 930, Portland, OR 97205; Telephone: (503) 326–2724; Fax: (503) 326–7440; or Email: *Manuel.Michel@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 Agreement and Order No. 922 (7 CFR part 922), as amended, regulating the handling of apricots grown in designated counties in Washington, 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.''

USDA is issuing this rule in conformance with Executive Order 12866.

Under the order, Washington apricot handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable Washington apricots for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins April 1, and ends on March 31.

In an interim rule published in the **Federal Register** on December 6, 2012, and effective on December 7, 2012, (77 FR 72861, Doc. No. AMS–FV–12–0027, FV12–922–1 IR), § 922.235 was amended by decreasing the assessment rate established for the Committee for the 2012–13 and subsequent fiscal periods from $1.50 to $0.50 per ton of Washington apricots handled under the order. The decrease in the assessment rate reflects a reduction in the manager's salary and the Committee's operating expenditures, and will help reduce industry costs while still providing adequate funding to meet program expenses.

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 rule 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 business 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 approximately 94 producers of apricots in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those having annual receipts of less than $7,000,000. (13 CFR 121.201)

The National Agricultural Statistics Service reported that in 2011 the Washington apricot total utilization (including both fresh and processed markets) of 3,900 tons sold for an average of $1,830 per ton. Accordingly, the total farm-gate value in 2011 was approximately $7,132,000. Based on the number of producers in the production area (94), the 2011 average revenue from the sale of apricots is estimated at approximately $75,925 per producer. In addition, based on information from the USDA's Market News Service, 2011 f.o.b. prices for WA No. 1 apricots ranged from $20.00 to $26.00 per 24-pound loose-pack container, and from $22.00 to $30.00 for 2-layer tray-pack containers. Using average price and shipment information provided by the Committee, it is determined that each of the Washington apricot handlers currently ship less than $7,000,000 worth of apricots on an annual basis. Therefore, the majority of producers and handlers of Washington apricots may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2012–13 and subsequent fiscal periods from $1.50 to $0.50 per ton of Washington apricots handled under the order. The Committee unanimously recommended 2012–13 expenditures of $4,695 and an assessment rate of $0.50 per ton of Washington apricots. The assessment rate of $0.50 is $1.00 lower than the rate previously in effect. Applying the assessment rate of $0.50 per ton of Washington apricots to the Committee's crop estimate of 6,600 tons should provide approximately $3,300 in assessment income. Thus, income derived from handler assessments, along with funds from the Committee's monetary reserve, will be adequate to cover the budgeted expenses, while maintaining a financial reserve within the limit authorized by the order.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the Washington apricot industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 24, 2012, meeting was a public meeting, and all entities, both large and small, were able to express views on this issue.

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. 0581–0189. 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 Washington apricot 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.

Comments on the interim rule were required to be received on or before February 4, 2013. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-12-0027-0001.*

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, 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** (77 FR 72681, December 6, 2012) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Accordingly, the interim rule amending 7 CFR part 922, published at 77 FR 72681 on December 6, 2012, is adopted as a final rule, without change.

Dated: April 5, 2013.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2013–08476 Filed 4–10–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 923

[Doc. No. AMS–FV–12–0026; FV12–923–1 FIR]

Sweet Cherries Grown in Designated Counties in Washington; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the Washington Cherry Marketing Committee (Committee) for the 2012–2013 and subsequent fiscal periods from $0.40 to $0.18 per ton of sweet cherries handled. The Committee locally administers the marketing order for sweet cherries grown in designated counties in Washington. The interim rule was necessary to allow the Committee to reduce its monetary reserve.

DATES: Effective April 12, 2013.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, 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: *Teresa.Hutchinson@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.Smutney@ams.usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 923, as amended (7 CFR part 923), regulating the handling of sweet cherries grown in designated counties in Washington, 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 Order 12866.

Under the order, Washington sweet cherry handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable Washington sweet cherries for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on April 1, and ends on March 31.

In an interim rule published in the **Federal Register** on December 6, 2012, and effective on December 7, 2012 (77 FR 72683, Doc. No. AMS–FV–12–0026, FV12–923–1 IR), § 923.236 was amended by decreasing the assessment rate established for Washington sweet cherries for the 2012–2013 and subsequent fiscal periods from $0.40 to $0.18 per ton of sweet cherries handled. The decrease in the per ton assessment rate allows the Committee to reduce its monetary reserve.

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 rule 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 business 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 53 handlers of Washington sweet cherries subject to regulation under the order and approximately 1,500 producers in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.201) 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.

The National Agricultural Statistics Service prepared a preliminary report for the 2011 shipping season showing that the sweet cherry fresh market utilization of 165,000 tons sold for an average of $2,300 per ton. Based on the number of producers in the production area (1,500), the average producer revenue from the sale of sweet cherries in 2011 can therefore be estimated at approximately $253,000 per year. In addition, the Committee reports that most of the industry's 53 handlers would have each averaged gross receipts of less than $7,500,000 from the sale of fresh sweet cherries last season. Thus, the majority of producers and handlers of Washington sweet cherries may be classified as small entities.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2012–2013 and subsequent fiscal periods from $0.40 to $0.18 per ton of sweet cherries. The Committee also unanimously recommended 2012–2013 expenditures of $64,400. The assessment rate of $0.18 is $0.22 lower than the rate previously in effect. The quantity of assessable sweet cherries for the 2012–2013 fiscal period is estimated at 120,000 tons. Thus, the $0.18 rate should provide $21,600 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, will be adequate to cover budgeted expenses. This action will allow the Committee to reduce its monetary reserve.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers, and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers, and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the Washington sweet cherry industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 15, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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. 0581–0189, Generic Fruit Crops. No changes in those requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Washington sweet cherry 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Comments on the interim rule were required to be received on or before February 4, 2013. No comments were received. Therefore, for reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!documentDetail;D=AMS-FV-12-0026-0001*.

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, 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** (77 FR 72683, December 6, 2012) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 923

Cherries, Marketing agreements, Reporting and recordkeeping requirements.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

Accordingly, the interim rule amending 7 CFR part 923, which was published at 77 FR 72683 on December 6, 2012, is adopted as a final rule, without change.

Dated: April 5, 2013.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2013–08463 Filed 4–10–13; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 927

[Doc. No. AMS–FV–12–0031; FV12–927–2 FIR]

Pears Grown in Oregon and Washington; Assessment Rate Decrease for Processed Pears

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: The Department of Agriculture is adopting, as a final rule, without change, an interim rule that decreased the assessment rate established for the Processed Pear Committee (Committee) for the 2012–2013 and subsequent fiscal periods from $7.73 to $7.00 per ton of summer/fall processed pears. The Committee locally administers the marketing order that regulates the handling of processed pears grown in Oregon and Washington. The Committee recommended the assessment rate decrease because the summer/fall processed pear promotion budget for the 2012–2013 fiscal period was reduced.

DATES: Effective April 12, 2013.

FOR FURTHER INFORMATION CONTACT: Teresa Hutchinson or Gary Olson, 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: *Teresa.Hutchinson@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. 927, as amended (7 CFR part 927), regulating the handling of pears grown in Oregon and Washington, 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 Order 12866.

Under the order, processed pear handlers are subject to assessments, which provide funds to administer the order. Assessment rates issued under the order are intended to be applicable to all assessable processed pears for the entire fiscal period, and continue indefinitely until amended, suspended, or terminated. The Committee's fiscal period begins on July 1, and ends on June 30.

In an interim rule published in the **Federal Register** on December 5, 2012, and effective on December 6, 2012 (77 FR 72197, Doc. No. AMS–FV–12–0031, FV12–927–2 IR), § 927.237 was amended by decreasing the assessment rate established for Oregon-Washington processed pears for the 2012–2013 and subsequent fiscal periods from $7.73 to $7.00 per ton of summer/fall processed pears handled. The Committee recommended the assessment rate decrease because the 2012–2013 summer/fall processed pear promotion budget was reduced.

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 rule 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 business 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 approximately 1,500 producers of processed pears in the regulated production area and approximately 50 handlers of processed pears subject to regulation under the order. Small agricultural producers are defined by the Small Business Administration (SBA) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $7,000,000. (13 CFR 121.201)

According to the Noncitrus Fruits and Nuts 2011 Preliminary Summary issued in March 2012 by the National Agricultural Statistics Service, the total farm-gate value of summer/fall processed pears grown in Oregon and Washington for 2011 was $35,315,000. Based on the number of processed pear producers in Oregon and Washington, the average gross revenue for each producer can be estimated at approximately $23,543. Furthermore, based on Committee records, the Committee has estimated that each of the Oregon-Washington pear handlers currently ship less than $7,000,000 worth of processed pears all on an annual basis. From this information, it is concluded that the majority of producers and handlers of Oregon and Washington processed pears may be classified as small entities.

There are three pear processing plants in the production area, all located in Washington. All three pear processors would be considered large entities under the SBA's definition of small businesses.

This rule continues in effect the action that decreased the assessment rate established for the Committee and collected from handlers for the 2012–2013 and subsequent fiscal periods from $7.73 to $7.00 per ton of processed pears handled. The Committee also unanimously recommended 2012–2013 expenditures of $842,137. The assessment rate of $7.00 is $0.73 lower than the rate previously in effect.

The quantity of assessable summer/fall processed pears for the 2012–2013 fiscal period is estimated at 120,000 tons. Thus, the $7.00 rate should provide $840,000 in assessment income. Income derived from summer/fall processed pear handler assessments, monetary reserve, interest, and other income will be adequate to cover the budgeted expenses. The Committee recommended the assessment rate decrease because the 2012–2013 summer/fall processed pear promotion budget was reduced.

This rule continues in effect the action that decreased the assessment obligation imposed on handlers. Assessments are applied uniformly on all handlers and some of the costs may be passed on to producers. However, decreasing the assessment rate reduces the burden on handlers and may reduce the burden on producers.

In addition, the Committee's meeting was widely publicized throughout the Oregon-Washington pear industry. All interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the May 30, 2012, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

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. 0581–0189, Generic Fruit Crops. No changes in those requirements as a result of this action are anticipated. Should any changes become necessary, they would be submitted to OMB for approval.

This action imposes no additional reporting or recordkeeping requirements on either small or large Oregon-Washington processed pear 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.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Comments on the interim rule were required to be received on or before February 4, 2013. No comments were received. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule, without change.

To view the interim rule, go to: *http://www.regulations.gov/#!docketDetail;D=AMS-FV-12-0031*

This action also affirms information contained in the interim rule concerning Executive Orders 12866 and 12988, 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** (77 FR 72197, December 5, 2012) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 927

Marketing agreements, Pears, Reporting and recordkeeping requirements.

PART 927—PEARS GROWN IN OREGON AND WASHINGTON

Accordingly, the interim rule amending 7 CFR part 927, which was published at 77 FR 72197 on December 5, 2012, is adopted as a final rule, without change.

Dated: April 5, 2013.

David R. Shipman,

Administrator, Agricultural Marketing Service.

[FR Doc. 2013–08475 Filed 4–10–13; 8:45 am]

BILLING CODE 3410–02–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 140

RIN 3038–AE04

Delegation of Authority To Disclose Confidential Information to a Contract Market, Registered Futures Association or Self-Regulatory Organization

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising its regulations to add to its delegation of authority to staff respecting the disclosure of information to self-regulatory organizations newly established in the Wall Street Reform and Consumer Protection Act (the ''Dodd-Frank Act'') and not previously enumerated in the relevant regulations.

DATES: This rulemaking is effective on April 11, 2013.

FOR FURTHER INFORMATION CONTACT: Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581; David Van Wagner, Chief Counsel, Division of Market Oversight, telephone (202) 418–5481 and email *dvanwagner@cftc.gov*; and Robert Wasserman, Chief Counsel, Division of Clearing and Risk, telephone (202) 418–5092 and email *rwasserman@cftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

Section 8a(6) of the Commodity Exchange Act (''CEA''), 7 U.S.C. 12a(6), authorizes the Commission to communicate to the proper committee of any registered entity the ''full facts concerning any transaction or market operation, including the names of parties thereto, which in the judgment of the Commission disrupts or tends to disrupt any market or is otherwise harmful or against the best interests of producers, consumers, or investors, or which is necessary or appropriate to effectuate the purposes of [the CEA].'' The term ''registered entity'' has been defined to include boards of trade designated as contract markets, derivatives clearing organizations, swap execution facilities, swap data repositories, and certain electronic facilities on which a contract determined by the Commission to be a significant price discovery contract is executed or traded.[1]

The definition of ''registered entity'' in the CEA was amended by the Dodd-Frank Act, which was enacted on July 21, 2010.[2] Two new categories of registered entity were established: Swap execution facilities (''SEFs'') and swap data repositories (''SDRs''), which have self-regulatory roles in the swaps markets established in the CEA and its implementing regulations. Additionally, the core principles for derivatives clearing organizations (''DCOs'') were revised to expand the scope of a DCO's self-regulatory responsibilities, in particular with respect to risk management. Commission regulations implementing the core principles require, for example, monitoring by the DCO of the large trader reports of its

[1] 7 U.S.C. 1a(40).

[2] *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111–203, 124 Stat. 1376 (2010).

members,[3] which may necessitate the sharing of information by the Commission to a DCO on a periodic basis.

In order to mitigate market disruptions, ensure the best interests of market participants, and to effectuate any purpose of the CEA as amended, the Commission is revising regulation 140.72 to permit the provision of critical information to all of these registered entities. Presently, the delegation of authority in regulation 140.72 provides certain employees of the Commission with the authority to disclose confidential information only to any contract market, registered futures association, or certain self-regulatory organizations.[4] With this revision of regulation 140.72, the present delegation of authority will be expanded to include all registered entities as defined in the CEA and as permitted by section 8a(6) of the CEA.

II. Related Matters

A. Administrative Procedure Act

The revisions to the Commission's regulations in this rulemaking do not establish any new substantive or legislative rules, but rather relate solely to rules of agency organization, practice, or procedure. Therefore, this rulemaking is excepted from the public notice and comment provisions of the Administrative Procedure Act.[5] Additionally, as the revisions to the Commission's regulations in this rulemaking will not cause any party to undertake efforts to comply with the regulations as revised, the Commission has determined to make this rulemaking effective upon publication in the **Federal Register**.[6]

B. Regulatory Flexibility Act

The Regulatory Flexibility Act requires the Commission to consider whether the regulations it adopts will have a significant economic impact on a substantial number of small entities.[7] The Commission is obligated to conduct a regulatory flexibility analysis for any rule for which the agency publishes a general notice of proposed rulemaking pursuant to section 553(b) of the Administrative Procedure Act.[8] This rulemaking is excepted from the public rulemaking provisions of the Administrative Procedure Act. Accordingly, the Commission is not obligated to conduct a regulatory flexibility analysis for this rulemaking.

C. Paperwork Reduction Act

The Commission may not conduct or sponsor, and a respondent is not required to respond to, a collection of information contained in a rulemaking unless the information collection displays a currently valid control number issued by the Office of Management and Budget (''OMB'') pursuant to the Paperwork Reduction Act.[9] This rulemaking contains no collection of information that obligates the Commission to obtain a control number from OMB.

List of Subjects in 17 CFR Part 140

Authority delegations (Government agencies), Organization and functions (Government agencies).

For the reasons stated in the preamble, the Commission hereby amends chapter I of title 17 of the Code of Federal Regulations as follows:

PART 140—ORGANIZATION, FUNCTIONS, AND PROCEDURES OF THE COMMISSION

■ 1. The authority citation for part 140 is revised to read as follows:

Authority: 7 U.S.C. 2(a)(12) and 12(b).

§ 140.72 [Amended]

■ 2. Amend § 140.72 in the section heading and paragraphs (a), (b), (d), and (f) by removing the words ''contract market'' wherever they appear and adding in their place the words ''registered entity.''

Issued in Washington, DC, on April 5, 2013, by the Commission.

Christopher J. Kirkpatrick,

Deputy Secretary of the Commission.

[FR Doc. 2013–08440 Filed 4–10–13; 8:45 am]

BILLING CODE 6351–01–P

[3] *See* 17 CFR 39.13(h)(2).

[4] 17 CFR 140.72.

[5] 5 U.S.C. 553(b).

[6] *See* 5 U.S.C. 553(d).

[7] *See* 5 U.S.C. 601 et seq.

[8] 5 U.S.C. 601(2).

[9] *See* 44 U.S.C. 3501 et seq.

DEPARTMENT OF STATE

22 CFR Parts 120 and 126

RIN 1400–AD38

[Public Notice 8270]

Implementation of the Defense Trade Cooperation Treaty Between the United States and Australia

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending the International Traffic in Arms Regulations (ITAR) to implement the Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, identify via a supplement to the ITAR the defense articles and defense services that cannot be exported pursuant to the licensing exemption created by the Treaty, and make certain other corrections to the supplement.

DATES: This rule is effective upon the entry into force of the Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation. The Department will publish a final rule in the **Federal Register** providing the effective date of this rule.

FOR FURTHER INFORMATION CONTACT: Sarah Heidema, Office of Defense Trade Controls Policy, Department of State, telephone (202) 663–2809 or email *DDTCResponseTeam@state.gov.* ATTN: Regulatory Change—Treaties.

SUPPLEMENTARY INFORMATION: The Department of State is amending the International Traffic in Arms Regulations (ITAR) pursuant to the Security Cooperation Act of 2010 (Pub. L. 111–266), with the inclusion of other changes. Title I of the Security Cooperation Act, the Defense Trade Cooperation Treaties Implementation Act of 2010, implements the Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation (Treaty Doc. 110–10), and the Treaty Between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland Concerning Defense Trade Cooperation (Treaty Doc. 110–7). The U.S.-UK treaty entered into force on April 13, 2012. (*See* ''Implementation of the Defense Trade Cooperation Treaty Between the United States and the United Kingdom,'' 77 FR 16592, and ''Announcement of Entry Into Force of the Defense Trade Cooperation Treaty Between the United States and the United Kingdom,'' 77 FR 33089.) This rule amends the ITAR with regard to the U.S.-Australia treaty (the ''Treaty'').

ITAR § 120.1 is amended to provide updated authorities and editorial changes. ITAR § 120.33 is added to provide a definition of ''Defense Trade Cooperation Treaty between the United States and Australia.'' New ITAR § 120.35 defines the Implementing Arrangement pursuant to the Treaty. ITAR § 126.16 is added to create the licensing exemption and provide guidance on its use. Supplement No. 1 to part 126 is amended to identify

defense articles that may not be exported and defense services that may not be furnished through the exemption.

In addition, the supplement is amended to make the following corrections and clarifications: the phrase, ''defense articles and services related to'' is removed from the row regarding USML Category I articles, and the USML citation for armored plates is changed from USML Category XIII(c) to XIII(e).

On November 22, 2011 (76 FR 72246, RIN 1400–AC95), the Department published for public comment a proposed rule to amend the ITAR to implement the Defense Trade Cooperation Treaty between the United States and the United Kingdom and the Defense Trade Cooperation Treaty between the United States and Australia, and to identify, via a supplement, the defense articles that may not be exported and the defense services that may not be furnished through use of the licensing exemptions created by the treaties. The comment period ended December 22, 2011. Fifteen parties filed comments that applied to the Treaty. The Department's evaluation of the comments and recommendations follows.

The majority of commenting parties expressed support for the Treaty's intention of facilitating defense exports with one of the United States' closest allies. However, the commenting parties expressed concern that the exemption is overly complicated and its requirements too burdensome to be truly workable. The Department appreciates these comments and believes the clarifying edits made in this final rule make application of the exemption clearer.

Several commenting parties requested additional guidance for various aspects of the exemption described in ITAR § 126.16. As part of Treaty implementation, the Department's Directorate of Defense Trade Controls (DDTC) has posted Frequently Asked Questions (FAQs) on its Web site (*www.pmddtc.state.gov*). These FAQs address these requests for guidance.

Two commenting parties recommended that the Department add a definition for defense articles to ITAR § 126.16(a)(1) to clarify that ''defense articles'' also includes technical data for purposes of the exemption. The Department does not believe this change is necessary as the definition for ''defense articles'' in ITAR § 120.6 clearly identifies technical data as within its scope. Unless specifically indicated otherwise, the use of the term ''defense article'' includes technical data.

One commenting party requested clarification of the term ''access'' as used in ITAR § 126.16(a)(1)(iv), indicating that it is common for U.S. Customs and Border Protection (CBP) to authorize a physical manipulation of a container, which would seemingly result in an intermediate consignee having ''access'' to an item in the shipment. The Department believes the meaning of ''access'' is plain, and does not include situations such as this, where there is a directive from a CBP official to open a container for the purpose as stated. Another party requested that the Department place in this section a reference to ITAR § 126.16(k), which discusses intermediate consignees. The Department accepted this recommendation and has revised the section accordingly.

One commenting party expressed concern that the process by which the U.S. Government would obtain records, as provided in ITAR § 126.16(l) and other sections of the exemption, is unclear. These sections are not intended to identify the process by which record requests are made, and therefore were not revised to provide this information. (The records-request process would be the same for ITAR § 126.16(l) as for requests made pursuant to any other section of the ITAR.)

One commenting party noted that ITAR § 126.16(a)(4) seemed to limit transfers just to exports to the United States. The Department has revised this section to clarify that it applies to transfers within the Approved Community.

Two commenting parties requested that the Department change the word ''required'' to ''pursuant to'' in ITAR § 126.16(a)(4)(iii). This change was not accepted because the word ''required'' is a requirement of the Treaty.

In response to the recommendation of two commenting parties, the Department revised ITAR § 126.16(a)(5) regarding the applicability of this exemption to defense articles delivered via the Foreign Military Sales program.

Three commenting parties recommended that the Department include an explanation of the vetting process for the Australian Community in ITAR § 126.16(d). The Department did not accept this recommendation for the rule itself, but notes that the vetting requirements are identified in the Treaty and Implementing Arrangement, which are available on DDTC's Web site.

Three commenting parties requested that the Department provide additional guidance on requesting confirmation of Treaty eligibility for operations, programs, and projects that cannot be publicly identified (*i.e.,* are classified). For this information, the Department refers inquiries by members of the approved community to both the DDTC Web site and the appropriate defense authority.

One commenting party inquired whether the Department will publish a complete list of U.S. Government contracts that are Treaty eligible. The Department will not do so. The U.S. Department of Defense has updated the Defense Federal Acquisition Regulation Supplement (DFARS) and certain contract clauses, which will identify Treaty eligibility when incorporated into a contract.

Three commenting parties requested that ITAR § 126.16(g)(1) be clarified to indicate whether it applies to marketing to members of the Approved Community, or requested its removal. This provision is part of the Treaty's Exempted Technology List, and therefore cannot be removed. However, the Department revised ITAR § 126.16(g)(1) to indicate that marketing to members of the Australian Community is covered so long as it is for an approved Treaty end-use and meets the other requirements of this section.

One commenting party recommended removal of ITAR § 126.16(g)(4) or, in the alternative, adding the parenthetical ''(or foreign equivalent)'' after ''Milestone B.'' The Department cannot remove this paragraph as it is part of the Treaty's Exempted Technology List. The Department also cannot add the parenthetical as there is no equivalent in Australia to ''Milestone B.''

One commenting party requested changes to ITAR § 126.16(g)(5) to allow for the export of embedded exempted technologies in certain circumstances. The Department is not, at this time, prepared to broaden this provision to include embedded exempted technologies.

Two commenting parties commented on the complexity of using ITAR § 126.16(h) with a diverse supply chain and requested clarification on the applicability of ITAR § 123.9(e) to this exemption. The Department appreciates the diverse nature of global supply chains, but believes the mechanisms provided in ITAR § 126.16(h) are no more onerous than current retransfer or reexport requirements. Further, as indicated in ITAR § 126.16(h)(5), any retransfer, reexport, or change in end-use under ITAR § 126.16(h) shall be made in accordance with ITAR § 123.9.

In response to the recommendation of two commenting parties, the Department has deleted ''any citizen of

such countries'' from ITAR § 126.16(h)(8).

Ten commenting parties commented on the marking requirements provided in ITAR § 126.16(j). Of most concern was a perception that the requirements of this section made using the exemption overly burdensome and costly. Various suggestions were provided, ranging from removal of the requirement to rewording of certain sections. The majority of these commenting parties requested removal of the requirement in paragraph (j)(2) for exporters to remove Treaty markings. The Department appreciates these comments; however, apart from minor clarifying changes, the marking requirements have not been removed or revised because they are made pursuant to the Treaty and its Implementing Arrangement.

One commenting party requested that the Department revise the text of the statement required by ITAR § 126.16(j)(5) to indicate that the items being exported are USML items and authorized only for export to Australia under the Treaty. The Department accepted this suggestion and revised the text accordingly.

One commenting party requested that registered brokers be included in ITAR § 126.16(k)(1)(ii). Australian intermediate consignees must meet the requirements of this section. If a registered broker meets these requirements, then it may be an intermediate consignee for purposes of this exemption. However, simply being a registered broker does not automatically qualify an entity as an Australian intermediate consignee.

One commenting party recommended changing ''all exports'' in ITAR § 126.16(l)(1) to ''their exports'' to acknowledge that the U.S. exporter may not be aware or have record of a reexport/retransfer request submitted by an Australian Community member. The Department accepted this recommendation and has revised the section accordingly.

One commenting party requested clarification of whether ITAR § 126.16(l)(1)(x) referred to the USML category or security classification. The Department revised this section to make clear that it refers to security classification.

The Department accepted the recommendation of one commenting party to remove reference to ''defense services'' in ITAR § 126.16(l)(2).

Two commenting parties requested that the Department clarify whether ITAR § 126.16(m) required exporters to submit negative reports. Reporting requirements under this section are contingent on meeting the requirements of ITAR § 130.9.

Two commenting parties requested clarification on whether the congressional notification requirement under the Treaty is identical to that required under normal license authorization processes. The Department confirms that the requirement is the same.

Ten commenting parties submitted comments regarding the scope and text of Supplement No. 1 to part 126. In particular, comments indicated concern that the supplement was too broad and possibly excluded too much to make the exemption useful. The Department appreciates these comments, and has made clarifying edits to Supplement No. 1 to the extent possible within the confines of the Treaty, the Implementing Arrangement, and the Exempted Technology List.

For clarification, the Department has added, ''prior to movement,'' to the text of ITAR § 126.16(j)(1), which is in conformance with the requirements of the Treaty's Implementing Arrangement.

Having thoroughly reviewed and evaluated the written comments and recommended changes, the Department has determined that it will accept, and hereby adopt with the noted changes, the proposed rule, as it pertained to the Treaty, as a final rule, to be effective when the Treaty enters into force.

Regulatory Analysis and Notices

Administrative Procedure Act

The Department of State is of the opinion that controlling the import and export of defense articles and services is a foreign affairs function of the United States government and that rules implementing this function are exempt from sections 553 (rulemaking) and 554 (adjudications) of the Administrative Procedure Act (APA). In addition, this rulemaking is implementing the provisions of a treaty between the United States and Australia and related amendments to the Arms Export Control Act. Although the Department is of the opinion that this rule is exempt from the rulemaking provisions of the APA, the Department published this rule with a 30-day provision for public comment and without prejudice to its determination that controlling the import and export of defense services is a foreign affairs function (RIN 1400–AC95). This rule is effective upon the entry into force of the Treaty Between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation (Treaty Doc. 110–10). Once the Treaty is in force, exporters must be able to utilize the Treaty for qualifying exports of defense articles.

Regulatory Flexibility Act

Since the Department is of the opinion that this rule is exempt from the provisions of 5 U.S.C. 553, there is no requirement for an analysis under the Regulatory Flexibility Act.

Unfunded Mandates Reform Act of 1995

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

Executive Order 13175

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

Small Business Regulatory Enforcement Fairness Act of 1996

This rulemaking is not a major rule within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996.

Executive Orders 12372 and 13132

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

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic,

environmental, public health and safety effects, distributed impacts, and equity). These executive orders stress the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. The Department has reviewed this regulation to ensure its consistency with the regulatory philosophy and principles set forth in these executive orders. The Department also has determined that this rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866.

Executive Order 12988

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

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

List of Subjects in 22 CFR Parts 120 and 126

Arms and Munitions, Exports.

Accordingly, for the reasons set forth above, Title 22, Chapter I, Subchapter M, parts 120 and 126 are amended as follows:

PART 120—PURPOSE AND DEFINITIONS

■ 1. The authority citation for part 120 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); 22 U.S.C. 2794; 22 U.S.C. 2651a; Pub. L. 105–261, 112 Stat. 1920; Pub. L. 111–266; Section 1261, Pub. L. 112–239; E.O. 13637, 78 FR 16129.

■ 2. Section 120.1 is amended by revising paragraph (a) to read as follows:

§ 120.1 General authorities and eligibility.

(a) Section 38 of the Arms Export Control Act (22 U.S.C. 2778), as amended, authorizes the President to control the export and import of defense articles and defense services. The statutory authority of the President to promulgate regulations with respect to exports of defense articles and defense services was delegated to the Secretary of State by Executive Order 13637. This subchapter implements that authority. By virtue of delegations of authority by the Secretary of State, these regulations are primarily administered by the Deputy Assistant Secretary of State for Defense Trade and Regional Security and the Managing Director of the Directorate of Defense Trade Controls, Bureau of Political-Military Affairs.

* * * * *

■ 3. Section 120.33 is added to read as follows:

§ 120.33 Defense Trade Cooperation Treaty between the United States and Australia.

Defense Trade Cooperation Treaty between the United States and Australia means the Treaty between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, done at Sydney, September 5, 2007. For additional information on making exports pursuant to this treaty, *see* § 126.16 of this subchapter.

■ 4. Section 120.35 is added to read as follows:

§ 120.35 Australia Implementing Arrangement.

Australia Implementing Arrangement means the Implementing Arrangement Pursuant to the Treaty between the Government of the United States of America and the Government of Australia Concerning Defense Trade Cooperation, done at Washington, March 14, 2008, as it may be amended.

PART 126—GENERAL POLICIES AND PROVISIONS

■ 5. The authority citation for part 126 is revised to read as follows:

Authority: Secs. 2, 38, 40, 42, and 71, Pub. L. 90–629, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2780, 2791, and 2797); 22 U.S.C. 2651a; 22 U.S.C. 287c; E.O. 12918, 59 FR 28205; 3 CFR, 1994 Comp., p. 899; Sec. 1225, Pub. L. 108–375; Sec. 7089, Pub. L. 111–117; Pub. L. 111–266; Section 7045, Pub. L. 112–74; Section 7046, Pub. L. 112–74; E.O. 13637, 78 FR 16129.

■ 6. Section 126.16 is added to read as follows:

§ 126.16 Exemption pursuant to the Defense Trade Cooperation Treaty between the United States and Australia.

(a) *Scope of exemption and required conditions.* (1) *Definitions.* (i) An *export* means, for purposes of this section only, the initial movement of defense articles or defense services from the United States Community to the Australian Community.

(ii) A *transfer* means, for purposes of this section only, the movement of a previously exported defense article or defense service by a member of the Australian Community within the Australian Community, or between a member of the United States Community and a member of the Australian Community.

(iii) *Retransfer and reexport* have the meaning provided in § 120.19 of this subchapter.

(iv) *Intermediate consignee* means, for purposes of this section, an entity or person who receives, but does not have access to, defense articles, including technical data, for the sole purpose of effecting onward movement to members of the Approved Community (*see* paragraph (k) of this section).

(2) Persons or entities exporting or transferring defense articles or defense services are exempt from the otherwise applicable licensing requirements if such persons or entities comply with the regulations set forth in this section. Except as provided in Supplement No. 1 to part 126 of this subchapter, Port Directors of U.S. Customs and Border Protection and postmasters shall permit the permanent and temporary export without a license from members of the United States Community to members of the Australian Community (*see* paragraph (d) of this section regarding the identification of members of the Australian Community) of defense articles and defense services not listed in Supplement No. 1 to part 126 of this subchapter, for the end-uses specifically identified pursuant to paragraphs (e) and (f) of this section. The purpose of this section is to specify the requirements to export, transfer, reexport, retransfer, or otherwise dispose of a defense article or defense service pursuant to the Defense Trade Cooperation Treaty between the United States and Australia. All persons must continue to comply with statutory and regulatory requirements outside of this subchapter concerning the import of defense articles and defense services or the possession or transfer of defense articles, including, but not limited to, regulations issued by the Bureau of Alcohol, Tobacco, Firearms and Explosives found at 27 CFR parts 447, 478, and 479, which are unaffected by the Defense Trade Cooperation Treaty between the United States and Australia.

(3) *Export.* In order for an exporter to export a defense article or defense service pursuant to the Defense Trade Cooperation Treaty between the United States and Australia, all of the following conditions must be met:

(i) The exporter must be registered with the Directorate of Defense Trade Controls (DDTC) and must be eligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to obtain an export license (or other forms of authorization to export) from any agency of the U.S. Government without

restriction (*see* paragraphs (b) and (c) of this section for specific requirements);

(ii) The recipient of the export must be a member of the Australian Community (*see* paragraph (d) of this section regarding the identification of members of the Australian Community). Australian non-governmental entities and facilities that become ineligible for such membership will be removed from the Australian Community;

(iii) Intermediate consignees involved in the export must not be ineligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to handle or receive a defense article or defense service without restriction (*see* paragraph (k) of this section for specific requirements);

(iv) The export must be for an end-use specified in the Defense Trade Cooperation Treaty between the United States and Australia and mutually agreed to by the U.S. Government and the Government of Australia pursuant to the Defense Trade Cooperation Treaty between the United States and Australia and the Implementing Arrangement thereto (the Australia Implementing Arrangement) (*see* paragraphs (e) and (f) of this section regarding authorized end-uses);

(v) The defense article or defense service is not excluded from the scope of the Defense Trade Cooperation Treaty between the United States and Australia (*see* paragraph (g) of this section and Supplement No. 1 to part 126 of this subchapter for specific information on the scope of items excluded from export under this exemption) and is marked or identified, at a minimum, as ''Restricted USML'' (*see* paragraph (j) of this section for specific requirements on marking exports);

(vi) All required documentation of such export is maintained by the exporter and recipient and is available upon the request of the U.S. Government (*see* paragraph (l) of this section for specific requirements); and

(vii) The Department of State has provided advance notification to the Congress, as required, in accordance with this section (*see* paragraph (o) of this section for specific requirements).

(4) *Transfers.* In order for a member of the Approved Community (*i.e.,* the United States Community and Australian Community) to transfer a defense article or defense service under the Defense Trade Cooperation Treaty within the Approved Community, all of the following conditions must be met:

(i) The defense article or defense service must have been previously exported in accordance with paragraph (a)(3) of this section or transitioned from a license or other approval in accordance with paragraph (i) of this section;

(ii) The transferor and transferee of the defense article or defense service are members of the Australian Community (*see* paragraph (d) of this section regarding the identification of members of the Australian Community) or the United States Community (*see* paragraph (b) of this section for information on the United States Community/approved exporters);

(iii) The transfer is required for an end-use specified in the Defense Trade Cooperation Treaty between the United States and Australia and mutually agreed to by the Government of the United States and the Government of Australia pursuant to the terms of the Defense Trade Cooperation Treaty between the United States and Australia and the Australia Implementing Arrangement (*see* paragraphs (e) and (f) of this section regarding authorized end-uses);

(iv) The defense article or defense service is not identified in paragraph (g) of this section and Supplement No. 1 to part 126 of this subchapter as ineligible for export under this exemption, and is marked or otherwise identified, at a minimum, as ''Restricted USML'' (*see* paragraph (j) of this section for specific requirements on marking exports);

(v) All required documentation of such transfer is maintained by the transferor and transferee and is available upon the request of the U.S. Government (*see* paragraph (l) of this section for specific requirements); and

(vi) The Department of State has provided advance notification to the Congress in accordance with this section (*see* paragraph (o) of this section for specific requirements).

(5) This section does not apply to the export of defense articles or defense services from the United States pursuant to the Foreign Military Sales program. Once such items are delivered to the Australian Government, they may be treated as if they were exported pursuant to the Treaty and then must be marked, identified, transmitted, stored and handled in accordance with the Treaty, the Australia Implementing Arrangement, and the provisions of this section.

(b) *United States Community.* The following persons compose the United States Community and may export or transfer defense articles and defense services pursuant to the Defense Trade Cooperation Treaty between the United States and Australia:

(1) Departments and agencies of the U.S. Government, including their personnel acting in their official capacity, with, as appropriate, a security clearance and a need-to-know; and

(2) Non-governmental U.S. persons registered with DDTC and eligible, according to the requirements and prohibitions of the Arms Export Control Act, this subchapter, and other provisions of United States law, to obtain an export license (or other forms of authorization to export) from any agency of the U.S. Government without restriction, including their employees acting in their official capacity with, as appropriate, a security clearance and a need-to-know.

(c) An exporter that is otherwise an authorized exporter pursuant to paragraph (b) of this section may not export or transfer pursuant to the Defense Trade Cooperation Treaty between the United States and Australia if the exporter's president, chief executive officer, any vice-president, any other senior officer or official (*e.g.,* comptroller, treasurer, general counsel); any member of the board of directors of the exporter; any party to the export; or any source or manufacturer is ineligible to receive export licenses (or other forms of authorization to export) from any agency of the U.S. Government.

(d) *Australian Community.* For purposes of the exemption provided by this section, the Australian Community consists of:

(1) Government of Australia authorities with entities identified as members of the Approved Community through the DDTC Web site at the time of a transaction under this section; and

(2) The non-governmental Australian entities and facilities identified as members of the Approved Community through the DDTC Web site at the time of a transaction under this section; non-governmental Australian entities and facilities that become ineligible for such membership will be removed from the Australian Community.

(e) *Authorized End-uses.* The following end-uses, subject to paragraph (f) of this section, are specified in the Defense Trade Cooperation Treaty between the United States and Australia:

(1) United States and Australian combined military or counter-terrorism operations;

(2) United States and Australian cooperative security and defense research, development, production, and support programs;

(3) Mutually determined specific security and defense projects where the Government of Australia is the end-user; or

(4) U.S. Government end-use.

(f) Procedures for identifying authorized end-uses pursuant to paragraph (e) of this section:

(1) Operations, programs, and projects that can be publicly identified will be posted on the DDTC Web site;

(2) Operations, programs, and projects that cannot be publicly identified will be confirmed in written correspondence from DDTC; or

(3) U.S. Government end-use will be identified specifically in a U.S. Government contract or solicitation as being eligible under the Treaty.

(4) No other operations, programs, projects, or end-uses qualify for this exemption.

(g) *Items eligible under this section.* With the exception of items listed in Supplement No. 1 to part 126 of this subchapter, defense articles and defense services may be exported under this section subject to the following:

(1) An exporter authorized pursuant to paragraph (b)(2) of this section may market a defense article to members of the Australian Community if that exporter has been licensed by DDTC to export (as defined by § 120.17 of this subchapter) the identical type of defense article to any foreign person and end-use of the article is for an end-use identified in paragraph (e) of this section.

(2) The export of any defense article specific to the existence of (*e.g.,* reveals the existence of or details of) anti-tamper measures made at U.S. Government direction always requires prior written approval from DDTC.

(3) U.S.-origin classified defense articles or defense services may be exported only pursuant to a written request, directive, or contract from the U.S. Department of Defense that provides for the export of the classified defense article(s) or defense service(s).

(4) U.S.-origin defense articles specific to developmental systems that have not obtained written Milestone B approval from the U.S. Department of Defense milestone approval authority are not eligible for export unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified pursuant to paragraph (e)(1), (2), or (4) of this section.

(5) Defense articles excluded by paragraph (g) of this section or Supplement No. 1 to part 126 of this subchapter (*e.g.,* USML Category XI (a)(3) electronically scanned array radar excluded by Note 2) that are embedded in a larger system that is eligible to ship under this section (*e.g.,* a ship, an aircraft) must separately comply with any restrictions placed on that embedded defense article under this subchapter. The exporter must obtain a license or other authorization from DDTC for the export of such embedded defense articles (for example, USML Category XI (a)(3) electronically scanned array radar systems that are exempt from this section that are incorporated in an aircraft that is eligible to ship under this section continue to require separate authorization from DDTC for their export, transfer, reexport, or retransfer).

(6) No liability shall be incurred by or attributed to the U.S. Government in connection with any possible infringement of privately owned patent or proprietary rights, either domestic or foreign, by reason of an export conducted pursuant to this section.

(7) Sales by exporters made through the U.S. Government shall not include either charges for patent rights in which the U.S. Government holds a royalty-free license, or charges for information which the U.S. Government has a right to use and disclose to others, which is in the public domain, or which the U.S. Government has acquired or is entitled to acquire without restrictions upon its use and disclosure to others.

(h) *Transfers, retransfers, and reexports.* (1) Any transfer of a defense article or defense service not exempted in Supplement No. 1 to part 126 of this subchapter by a member of the Australian Community (*see* paragraph (d) of this section for specific information on the identification of the Community) to another member of the Australian Community or the United States Community for an end-use that is authorized by this exemption (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) is authorized under this exemption.

(2) Any transfer or other provision of a defense article or defense service for an end-use that is not authorized by the exemption provided by this section is prohibited without a license or the prior written approval of DDTC (*see* paragraphs (e) and (f) of this section regarding authorized end-uses).

(3) Any retransfer or reexport, or other provision of a defense article or defense service by a member of the Australian Community to a foreign person that is not a member of the Australian Community, or to a U.S. person that is not a member of the United States Community, is prohibited without a license or the prior written approval of DDTC (*see* paragraph (d) of this section for specific information on the identification of the Australian Community).

(4) Any change in the use of a defense article or defense service previously exported, transferred, or obtained under this exemption by any foreign person, including a member of the Australian Community, to an end-use that is not authorized by this exemption is prohibited without a license or other written approval of DDTC (*see* paragraphs (e) and (f) of this section regarding authorized end-uses).

(5) Any retransfer, reexport, or change in end-use requiring such approval of the U.S. Government shall be made in accordance with § 123.9 of this subchapter.

(6) Defense articles excluded by paragraph (g) of this section or Supplement No. 1 to part 126 of this subchapter (*e.g.,* USML Category XI (a)(3) electronically scanned array radar systems) that are embedded in a larger system that is eligible to ship under this section (*e.g.,* a ship, an aircraft) must separately comply with any restrictions placed on that embedded defense article unless otherwise specified. A license or other authorization must be obtained from DDTC for the export, transfer, reexport, retransfer, or change in end-use of any such embedded defense article (for example, USML Category XI(a)(3) electronically scanned array radar systems that are excluded from this section by Supplement No. 1 to part 126 of this subchapter, Note 2 that are incorporated in an aircraft that is eligible to ship under this section continue to require separate authorization from DDTC for their export, transfer, reexport, or retransfer).

(7) A license or prior approval from DDTC is not required for a transfer, retransfer, or reexport of an exported defense article or defense service under this section, if:

(i) The transfer of defense articles or defense services is made by a member of the United States Community to Australian Department of Defence (ADOD) elements deployed outside the Territory of Australia and engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using ADOD transmission channels or the provisions of this section (Note: For purposes of paragraph (h)(7)(i) through (iv) of this section, per Section 9(9) of the Australia Implementing Arrangement, ''ADOD Transmission channels'' includes electronic transmission of a defense article and transmission of a defense article by an ADOD contracted carrier or freight forwarder that merely transports or arranges transport for the defense article in this instance.);

(ii) The transfer of defense articles or defense services is made by a member of the United States Community to an Approved Community member (either

United States or Australian) that is operating in direct support of ADOD elements deployed outside the Territory of Australia and engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using ADOD transmission channels or the provisions of this section;

(iii) The reexport is made by a member of the Australian Community to ADOD elements deployed outside the Territory of Australia engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using ADOD transmission channels or the provisions of this section;

(iv) The reexport is made by a member of the Australian Community to an Approved Community member (either United States or Australian) that is operating in direct support of ADOD elements deployed outside the Territory of Australia engaged in an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses) using ADOD transmission channels or the provisions of this section; or

(v) The defense article or defense service will be delivered to the ADOD for an authorized end-use (*see* paragraphs (e) and (f) of this section regarding authorized end-uses); the ADOD may deploy the item as necessary when conducting official business within or outside the Territory of Australia. The item must remain under the effective control of the ADOD while deployed and access may not be provided to unauthorized third parties.

(8) U.S. persons registered, or required to be registered, pursuant to part 122 of this subchapter and members of the Australian Community must immediately notify DDTC of any actual or proposed sale, retransfer, or reexport of a defense article or defense service on the U.S. Munitions List originally exported under this exemption to any of the countries listed in § 126.1 of this subchapter or any person acting on behalf of such countries, whether within or outside the United States. Any person knowing or having reason to know of such a proposed or actual sale, reexport, or retransfer shall submit such information in writing to the Office of Defense Trade Controls Compliance, Directorate of Defense Trade Controls.

(i) *Transitions.* (1) Any previous export of a defense article under a license or other approval of the U.S. Department of State remains subject to the conditions and limitations of the original license or authorization unless DDTC has approved in writing a transition to this section.

(2) If a U.S. exporter desires to transition from an existing license or other approval to the use of the provisions of this section, the following is required:

(i) The U.S. exporter must submit a written request to DDTC, which identifies the defense articles or defense services to be transitioned, the existing license(s) or other authorizations under which the defense articles or defense services were originally exported, and the Treaty-eligible end-use for which the defense articles or defense services will be used. Any license(s) filed with U.S. Customs and Border Protection should remain on file until the exporter has received approval from DDTC to retire the license(s) and transition to this section. When this approval is conveyed to U.S. Customs and Border Protection by DDTC, the license(s) will be returned to DDTC by U.S. Customs and Border Protection in accord with existing procedures for the return of expired licenses in § 123.22(c) of this subchapter.

(ii) Any license(s) not filed with U.S. Customs and Border Protection must be returned to DDTC with a letter citing approval by DDTC to transition to this section as the reason for returning the license(s).

(3) If a member of the Australian Community desires to transition defense articles received under an existing license or other approval to the processes established under the Treaty, the Australian Community member must submit a written request to the Government of Australia. The Government of Australia will submit the request to DDTC for review and approval. The defense article or defense service shall remain subject to the conditions and limitations of the existing license or other approval until the Australian Community member has received via the Government of Australia the approval from DDTC.

(4) Authorized exporters identified in paragraph (b)(2) of this section who have exported a defense article or defense service that has subsequently been placed on the list of exempted items in Supplement No. 1 to part 126 of this subchapter must review and adhere to the requirements in the relevant **Federal Register** notice announcing such removal. Once removed, the defense article or defense service will no longer be subject to this section, and such defense article or defense service previously exported shall remain on the U.S. Munitions List and be subject to the requirements of this subchapter unless the applicable **Federal Register** notice states otherwise. Subsequent reexport or retransfer must be made pursuant to § 123.9 of this subchapter.

(5) Any defense article or defense service transitioned from a license or other approval to treatment under this section must be marked in accordance with the requirements of paragraph (j) of this section.

(j) *Marking of exports.* (1) All defense articles and defense services exported or transitioned pursuant to the Defense Trade Cooperation Treaty between the United States and Australia and this section shall be marked or identified prior to movement as follows:

(i) For classified defense articles and defense services the standard marking or identification shall read ''//CLASSIFICATION LEVEL USML// REL AUS and USA Treaty Community//.'' For example, for defense articles classified SECRET, the marking or identification shall be ''//SECRET USML//REL AUS and USA Treaty Community//.''

(ii) Unclassified defense articles and defense services exported under or transitioned pursuant to this section shall be handled while in Australia as ''Restricted USML'' and the standard marking or identification shall read ''//RESTRICTED USML//REL AUS and USA Treaty Community//.''

(2) Where U.S.-origin defense articles are returned to a member of the United States Community identified in paragraph (b) of this section, any defense articles marked or identified pursuant to paragraph (j)(1)(ii) of this section as ''//RESTRICTED USML//REL AUS and USA Treaty Community//'' will be considered unclassified and the marking or identification shall be removed; and

(3) The standard marking and identification requirements are as follows:

(i) Defense articles (other than technical data) shall be individually labeled with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section; or, where such labeling is impracticable (*e.g.,* propellants, chemicals), shall be accompanied by documentation (such as contracts or invoices) clearly associating the defense articles with the appropriate markings as detailed in paragraphs (j)(1)(i) and (j)(1)(ii) of this section;

(ii) Technical data (including data packages, technical papers, manuals, presentations, specifications, guides and reports), regardless of media or means of transmission (physical, oral, or electronic), shall be individually labeled with the appropriate identification

detailed in paragraphs (j)(1) and (j)(2) of this section; or, where such labeling is impractical shall be accompanied by documentation (such as contracts or invoices) or verbal notification clearly associating the technical data with the appropriate markings as detailed in paragraphs (j)(1)(i) and (j)(1)(ii) of this section; and

(4) Defense services shall be accompanied by documentation (contracts, invoices, shipping bills, or bills of lading) clearly labeled with the appropriate identification detailed in paragraphs (j)(1) and (j)(2) of this section.

(5) The exporter shall incorporate the following statement as an integral part of the bill of lading and the invoice whenever defense articles are to be exported: ''These U.S. Munitions List commodities are authorized by the U.S. Government under the U.S.-Australia Defense Trade Cooperation Treaty for export only to Australia for use in approved projects, programs or operations by members of the Australian Community. They may not be retransferred or reexported or used outside of an approved project, program, or operation, either in their original form or after being incorporated into other end-items, without the prior written approval of the U.S. Department of State.''

(k) *Intermediate consignees.* (1) Unclassified exports under this section may only be handled by:

(i) U.S. intermediate consignees who are:

(A) Exporters registered with DDTC and eligible;

(B) Licensed customs brokers who are subject to background investigation and have passed a comprehensive examination administered by U.S. Customs and Border Protection; or

(C) Commercial air freight and surface shipment carriers, freight forwarders, or other parties not exempt from registration under § 129.3(b)(3) of this subchapter, that are identified at the time of export as being on the U.S. Department of Defense Civil Reserve Air Fleet (CRAF) list of approved air carriers, a link to which is available on the DDTC Web site; or

(ii) Australian intermediate consignees who are:

(A) Members of the Australian Community; or

(B) Freight forwarders, customs brokers, commercial air freight and surface shipment carriers, or other Australian parties that are identified at the time of export as being on the list of Authorized Australian Intermediate Consignees, which is available on the DDTC Web site.

(2) Classified exports must comply with the security requirements of the National Industrial Security Program Operating Manual (DoD 5220.22–M and supplements or successors).

(l) *Records.* (1) All exporters authorized pursuant to paragraph (b)(2) of this section who export defense articles or defense services pursuant to the Defense Trade Cooperation Treaty between the United States and Australia and this section shall maintain detailed records of their exports, imports, and transfers. Exporters shall also maintain detailed records of any reexports and retransfers approved or otherwise authorized by DDTC of defense articles or defense services subject to the Defense Trade Cooperation Treaty between the United States and Australia and this section. These records shall be maintained for a minimum of five years from the date of export, import, transfer, reexport, or retransfer and shall be made available upon request to DDTC or a person designated by DDTC (*e.g.,* the Diplomatic Security Service) or U.S. Immigration and Customs Enforcement, or U.S. Customs and Border Protection. Records in an electronic format must be maintained using a process or system capable of reproducing all records on paper. Such records when displayed on a viewer, monitor, or reproduced on paper, must exhibit a high degree of legibility and readability. (For the purpose of this section, ''legible'' and ''legibility'' mean the quality of a letter or numeral that enables the observer to identify it positively and quickly to the exclusion of all other letters or numerals. ''Readable'' and ''readability'' means the quality of a group of letters or numerals being recognized as complete words or numbers.). These records shall consist of the following:

(i) Port of entry/exit;

(ii) Date of export/import;

(iii) Method of export/import;

(iv) Commodity code and description of the commodity, including technical data;

(v) Value of export;

(vi) Reference to this section and justification for export under the Treaty;

(vii) End-user/end-use;

(viii) Identification of all U.S. and foreign parties to the transaction;

(ix) How the export was marked;

(x) Security classification of the export;

(xi) All written correspondence with the U.S. Government on the export;

(xii) All information relating to political contributions, fees, or commissions furnished or obtained, offered, solicited, or agreed upon as outlined in paragraph (m) of this section;

(xiii) Purchase order or contract;

(xiv) Technical data actually exported;

(xv) The Internal Transaction Number for the Electronic Export Information filing in the Automated Export System;

(xvi) All shipping documentation (including, but not limited to the airway bill, bill of lading, packing list, delivery verification, and invoice); and

(xvii) Statement of Registration (Form DS–2032).

(2) *Filing of export information.* All exporters of defense articles under the Defense Trade Cooperation Treaty between the United States and Australia and this section must electronically file Electronic Export Information (EEI) using the Automated Export System citing one of the four below referenced codes in the appropriate field in the EEI for each shipment:

(i) For exports in support of United States and Australian combined military or counter-terrorism operations identify § 126.16(e)(1) (the name or an appropriate description of the operation shall be placed in the appropriate field in the EEI, as well);

(ii) For exports in support of United States and Australian cooperative security and defense research, development, production, and support programs identify § 126.16(e)(2) (the name or an appropriate description of the program shall be placed in the appropriate field in the EEI, as well);

(iii) For exports in support of mutually determined specific security and defense projects where the Government of Australia is the end-user identify § 126.16(e)(3) (the name or an appropriate description of the project shall be placed in the appropriate field in the EEI, as well); or

(iv) For exports that will have a U.S. Government end-use identify § 126.16(e)(4) (the U.S. Government contract number or solicitation number (*e.g.,* ''U.S. Government contract number XXXXX'') shall be placed in the appropriate field in the EEI, as well). Such exports must meet the required export documentation and filing guidelines, including for defense services, of § 123.22(a), (b)(1), and (b)(2) of this subchapter.

(m) *Fees and commissions.* All exporters authorized pursuant to paragraph (b)(2) of this section shall, with respect to each export, transfer, reexport, or retransfer, pursuant to the Defense Trade Cooperation Treaty between the United States and Australia and this section, submit a statement to DDTC containing the information identified in § 130.10 of this subchapter relating to fees, commissions, and political contributions on contracts or

other instruments valued in an amount of $500,000 or more.

(n) *Violations and enforcement.* (1) Exports, transfers, reexports, and retransfers that do not comply with the conditions prescribed in this section will constitute violations of the Arms Export Control Act and this subchapter, and are subject to all relevant criminal, civil, and administrative penalties (*see* § 127.1 of this subchapter), and may also be subject to penalty under other statutes or regulations.

(2) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers may take appropriate action to ensure compliance with this section as to the export or the attempted export of any defense article or technical data, including the inspection of loading or unloading of any vessel, vehicle, or aircraft.

(3) U.S. Immigration and Customs Enforcement and U.S. Customs and Border Protection officers have the authority to investigate, detain, or seize any export or attempted export of defense articles or technical data that does not comply with this section or that is otherwise unlawful.

(4) DDTC or a person designated by DDTC (*e.g.,* the Diplomatic Security Service), U.S. Immigration and Customs Enforcement, or U.S. Customs and Border Protection may require the production of documents and information relating to any actual or attempted export, transfer, reexport, or retransfer pursuant to this section. Any foreign person refusing to provide such records within a reasonable period of time shall be suspended from the Australian Community and ineligible to receive defense articles or defense services pursuant to the exemption under this section or otherwise.

(o) *Procedures for legislative notification.* (1) Exports pursuant to the Defense Trade Cooperation Treaty between the United States and Australia and this section by any person identified in paragraph (b)(2) of this section shall not take place until 30 days after DDTC has acknowledged receipt of a written notification from the exporter notifying the Department of State if the export involves one or more of the following:

(i) A contract or other instrument for the export of major defense equipment in the amount of $25,000,000 or more, or for defense articles and defense services in the amount of $100,000,000 or more;

(ii) A contract for the export of firearms controlled under Category I of the U.S. Munitions List of the International Traffic in Arms Regulations in an amount of $1,000,000 or more;

(iii) A contract, regardless of value, for the manufacturing abroad of any item of significant military equipment (*see* § 120.7 of this subchapter); or

(iv) An amended contract that meets the requirements of paragraphs (o)(1)(i) through (o)(1)(iii) of this section.

(2) The written notification required in paragraph (o)(1) of this section shall indicate the item/model number, general item description, U.S. Munitions List category, value, and quantity of items to be exported pursuant to the Defense Trade Cooperation Treaty between the United States and Australia and this section, and shall be accompanied by the following additional information:

(i) The information identified in § 130.10 and § 130.11 of this subchapter;

(ii) A statement regarding whether any offset agreement is final to be entered into in connection with the export and a description of any such offset agreement;

(iii) A copy of the signed contract; and

(iv) If the notification is for paragraph (o)(1)(ii) of this section, a statement of what will happen to the weapons in their inventory (for example, whether the current inventory will be sold, reassigned to another service branch, destroyed, etc.).

(3) The Department of State will notify the Congress of exports that meet the requirements of paragraph (o)(1) of this section.

■ 7. Supplement No. 1 to part 126 is revised to read as follows:

SUPPLEMENT NO. 1 TO PART 126*

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
I–XXI	Classified defense articles and services. *See* Note 1	X	X	X
I–XXI	Defense articles listed in the Missile Technology Control Regime (MTCR) Annex	X	X	X
I–XXI	U.S. origin defense articles and services used for marketing purposes and not previously licensed for export in accordance with this subchapter.		X	X
I–XXI	Defense services for or technical data related to defense articles identified in this supplement as excluded from the Canadian exemption.	X		
I–XXI	Any transaction involving the export of defense articles and services for which congressional notification is required in accordance with § 123.15 and § 124.11 of this subchapter.	X		
I–XXI	U.S. origin defense articles and services specific to developmental systems that have not obtained written Milestone B approval from the U.S. Department of Defense milestone approval authority, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.		X	X
I–XXI	Nuclear weapons strategic delivery systems and all components, parts, accessories, and attachments specifically designed for such systems and associated equipment.	X		
I–XXI	Defense articles and services specific to the existence or method of compliance with anti-tamper measures, where such measures are readily identifiable, made at originating Government direction.		X	X
I–XXI	Defense articles and services specific to reduced observables or counter low observables in any part of the spectrum. *See* Note 2.		X	X
I–XXI	Defense articles and services specific to sensor fusion beyond that required for display or identification correlation. *See* Note 3.		X	X
I–XXI	Defense articles and services specific to the automatic target acquisition or recognition and cueing of multiple autonomous unmanned systems.		X	X

SUPPLEMENT NO. 1 TO PART 126*—Continued

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
I–XXI	Nuclear power generating equipment or propulsion equipment (*e.g.,* nuclear reactors), specifically designed for military use and components therefore, specifically designed for military use. *See* also § 123.20 of this subchapter.			X
I–XXI	Libraries (parametric technical databases) specially designed for military use with equipment controlled on the USML. *See* Note 13.			X
I–XXI	Defense services or technical data specific to applied research as defined in § 125.4(c)(3) of this subchapter, design methodology as defined in § 125.4(c)(4) of this subchapter, engineering analysis as defined in § 125.4(c)(5) of this subchapter, or manufacturing know-how as defined in § 125.4(c)(6) of this subchapter. *See* Note 12.	X		
I–XXI	Defense services other than those required to prepare a quote or bid proposal in response to a written request from a department or agency of the United States Federal Government or from a Canadian Federal, Provincial, or Territorial Government; or defense services other than those required to produce, design, assemble, maintain or service a defense article for use by a registered U.S. company, or a U.S. Federal Government Program, or for end-use in a Canadian Federal, Provincial, or Territorial Government Program. *See* Note 14.	X		
I	Firearms, close assault weapons, and combat shotguns	X		
II(k)	Software source code related to USML Categories II(c), II(d), or II(i). *See* Note 4		X	X
II(k)	Manufacturing know-how related to USML Category II(d). *See* Note 5	X	X	X
III	Ammunition for firearms, close assault weapons, and combat shotguns listed in USML Category I.	X		
III	Defense articles and services specific to ammunition and fuse setting devices for guns and armament controlled in USML Category II.			X
III(e)	Manufacturing know-how related to USML Categories III(d)(1) or III(d)(2) and their specially designed components. *See* Note 5.	X	X	X
III(e)	Software source code related to USML Categories III(d)(1) or III(d)(2). *See* Note 4.		X	X
IV	Defense articles and services specific to man-portable air defense systems (MANPADS). *See* Note 6.	X	X	X
IV	Defense articles and services specific to rockets, designed or modified for non-military applications that do not have a range of 300 km (*i.e.,* not controlled on the MTCR Annex).			X
IV	Defense articles and services specific to torpedoes		X	X
IV	Defense articles and services specific to anti-personnel landmines. *See* Note 15	X	X	X
IV	Defense articles and services specific to cluster munitions. *See* Note 16	X	X	X
IV(i)	Software source code related to USML Categories IV(a), IV(b), IV(c), or IV(g). *See* Note 4.		X	X
IV(i)	Manufacturing know-how related to USML Categories IV(a), IV(b), IV(d), or IV(g) and their specially designed components. *See* Note 5.	X	X	X
V	The following energetic materials and related substances: a. TATB (triaminotrinitrobenzene) (CAS 3058–38–6); b. Explosives controlled in USML Category V(a)(32) or V(a)(33); c. Iron powder (CAS 7439–89–6) with particle size of 3 micrometers or less produced by reduction of iron oxide with hydrogen; d. BOBBA–8 (bis(2-methylaziridinyl)2-(2-hydroxypropanoxy) propylamino phosphine oxide), and other MAPO derivatives; e. N-methyl-p-nitroaniline (CAS 100–15–2); or Trinitrophenylmethylnitramine (tetryl) (CAS 479–45–8).			X
V(c)(7)	Pyrotechnics and pyrophorics specifically formulated for military purposes to enhance or control radiated energy in any part of the IR spectrum.			X
V(d)(3)	Bis-2, 2-dinitropropylnitrate (BDNPN)			X
VI	Defense articles specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (− 170°C).			X
VI	Defense Articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
VI	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. *See* Note 10.		X	X
VI(a)	Nuclear powered vessels	X	X	X
VI(c)	Defense articles and services specific to submarine combat control systems		X	X
VI(d)	Harbor entrance detection devices			X
VI(e)	Defense articles and services specific to naval nuclear propulsion equipment. *See* Note 7.	X	X	X

SUPPLEMENT NO. 1 TO PART 126*—Continued

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
VI(g)	Technical data and defense services for gas turbine engine hot sections related to USML Category VI(f). *See* Note 8.	X	X	X
VI(g)	Software source code related to USML Categories VI(a) or VI(c). *See* Note 4		X	X
VII	Defense articles specific to cryogenic equipment, and specially designed components or accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (−170°C).			X
VII	Defense articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
VII	Armored all wheel drive vehicles fitted with, or designed or modified to be fitted with, a plough or flail for the purpose of land mine clearance, other than vehicles specifically designed or modified for military use.			X
VII(e)	Amphibious vehicles			X
VII(f)	Technical data and defense services for gas turbine engine hot sections. *See* Note 8.	X	X	X
VIII	Defense articles specific to cryogenic equipment, and specially designed components and accessories therefor, specially designed or configured to be installed in a vehicle for military ground, marine, airborne or space applications, capable of operating while in motion and of producing or maintaining temperatures below 103 K (−170°C).			X
VIII	Defense articles specific to superconductive electrical equipment (rotating machinery and transformers) specially designed or configured to be installed in a vehicle for military ground, marine, airborne, or space applications and capable of operating while in motion. This, however, does not include direct current hybrid homopolar generators that have single-pole normal metal armatures which rotate in a magnetic field produced by superconducting windings, provided those windings are the only superconducting component in the generator.			X
VIII(a)	All USML Category VIII(a) items.	X		
VIII(b)	Defense articles and services specific to gas turbine engine hot section components and digital engine controls. *See* Note 8.		X	X
VIII(f)	Developmental aircraft, engines and components identified in USML Category VIII(f).	X		
VIII(g)	Ground Effect Machines (GEMS).			X
VIII(i)	Technical data and defense services for gas turbine engine hot sections and digital engine controls related to USML Category VIII(b). *See* Note 8.	X	X	X
VIII(i)	Manufacturing know-how related to USML Categories VIII(a), VIII(b), or VIII(e) and their specially designed components. *See* Note 5.	X	X	X
VIII(i)	Software source code related to USML Categories VIII(a) or VIII(e). *See* Note 4		X	X
IX	Training or simulation equipment for Man Portable Air Defense Systems (MANPADS). *See* Note 6.		X	X
IX(e)	Software source code related to USML Categories IX(a) or IX(b). *See* Note 4		X	X
IX(e)	Software that is both specifically designed or modified for military use and specifically designed or modified for modeling or simulating military operational scenarios.			X
X(e)	Manufacturing know-how related to USML Categories X(a)(1) or X(a)(2) and their specially designed components. *See* Note 5.	X	X	X
XI(a)	Defense articles and services specific to countermeasures and counter- countermeasures *See* Note 9.		X	X
XI(a)	High Frequency and Phased Array Microwave Radar systems, with capabilities such as search, acquisition, tracking, moving target indication, and imaging radar systems. *See* Note 17.		X	
XI	Defense articles and services specific to naval technology and systems relating to acoustic spectrum control and awareness. *See* Note 10.		X	X
XI(b), XI(c), XI(d).	Defense articles and services specific to USML Category XI (b) (*e.g.,* communications security (COMSEC) and TEMPEST).		X	X
XI(d)	Software source code related to USML Category XI(a). *See* Note 4		X	X
XI(d)	Manufacturing know-how related to USML Categories XI(a)(3) or XI(a)(4) and their specially designed components. *See* Note 5.	X	X	X
XII	Defense articles and services specific to countermeasures and counter- countermeasures. *See* Note 9.		X	X

SUPPLEMENT NO. 1 TO PART 126*—Continued

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
XII	Defense articles and services specific to USML Category XII(c) articles, except any 1st- and 2nd-generation image intensification tubes and 1st- and 2nd-generation image intensification night sighting equipment. End items in XII(c) and related technical data limited to basic operations, maintenance, and training information as authorized under the exemption in § 125.4(b)(5) of this subchapter may be exported directly to a Canadian Government entity (*i.e.,* federal, provincial, territorial, or municipal) consistent with § 126.5, other exclusions, and the provisions of this subchapter.	X		
XII	Technical data or defense services for night vision equipment beyond basic operations, maintenance, and training data. However, the AS and UK Treaty exemptions apply when such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.	X	X	X
XII(f)	Manufacturing know-how related to USML Category XII(d) and their specially designed components. *See* Note 5.	X	X	X
XII(f)	Software source code related to USML Categories XII(a), XII(b), XII(c), or XII(d). *See* Note 4.		X	X
XIII(b)	Defense articles and services specific to USML Category XIII(b) (Military Information Security Assurance Systems).		X	X
XIII(d)	Carbon/carbon billets and preforms which are reinforced in three or more dimensional planes, specifically designed, developed, modified, configured or adapted for defense articles.			X
XIII(e)	Defense articles and services specific to armored plate manufactured to comply with a military standard or specification or suitable for military use. *See* Note 11.			X
XIII(f)	Structural materials specifically designed, developed, modified, configured or adapted for defense articles.			X
XIII(g)	Defense articles and services related to concealment and deception equipment and materials.			X
XIII(h)	Energy conversion devices other than fuel cells			X
XIII(i)	Metal embrittling agents			X
XIII(j)	Defense articles and services related to hardware associated with the measurement or modification of system signatures for detection of defense articles as described in Note 2.		X	X
XIII(k)	Defense articles and services related to tooling and equipment specifically designed or modified for the production of defense articles identified in USML Category XIII(b).		X	X
XIII(l)	Software source code related to USML Category XIII(a). *See* Note 4		X	X
XIV	Defense articles and services related to toxicological agents, including chemical agents, biological agents, and associated equipment.		X	X
XIV(a), XIV(b), XIV(d). XIV(e) XIV(f)	Chemical agents listed in USML Category XIV(a), (d) and (e), biological agents and biologically derived substances in USML Category XIV(b), and equipment listed in USML Category XIV(f) for dissemination of the chemical agents and biological agents listed in USML Category XIV(a), (b), (d), and (e).	X		
XV(a)	Defense articles and services specific to spacecraft/satellites. However, the Canadian exemption may be used for commercial communications satellites that have no other type of payload.	X	X	X
XV(b)	Defense articles and services specific to ground control stations for spacecraft telemetry, tracking, and control. Defense articles and services are not excluded under this entry if they do not control the spacecraft. Receivers for receiving satellite transmissions are also not excluded under this entry.		X	X
XV(c)	Defense articles and services specific to GPS/PPS security modules		X	X
XV(c)	Defense articles controlled in USML Category XV(c) except end items for end-use by the Federal Government of Canada exported directly or indirectly through a Canadian-registered person.	X		
XV(d)	Defense articles and services specific to radiation-hardened microelectronic circuits.	X	X	X
XV(e)	Anti-jam systems with the ability to respond to incoming interference by adaptively reducing antenna gain (nulling) in the direction of the interference.	X		
XV(e)	Antennas having any of the following: a. Aperture (overall dimension of the radiating portions of the antenna) greater than 30 feet; b. All sidelobes less than or equal to -35 dB relative to the peak of the main beam; or c. Designed, modified, or configured to provide coverage area on the surface of the earth less than 200 nautical miles in diameter, where "coverage area" is defined as that area on the surface of the earth that is illuminated by the main beam width of the antenna (which is the angular distance between half power points of the beam).	X		
XV(e)	Optical intersatellite data links (cross links) and optical ground satellite terminals.	X		

SUPPLEMENT NO. 1 TO PART 126*—Continued

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17
XV(e)	Spaceborne regenerative baseband processing (direct up and down conversion to and from baseband) equipment.	X		
XV(e)	Propulsion systems which permit acceleration of the satellite on-orbit (*i.e.,* after mission orbit injection) at rates greater than 0.1 g.	X		
XV(e)	Attitude control and determination systems designed to provide spacecraft pointing determination and control or payload pointing system control better than 0.02 degrees per axis.	X		
XV(e)	All specifically designed or modified systems, components, parts, accessories, attachments, and associated equipment for all USML Category XV(a) items, except when specifically designed or modified for use in commercial communications satellites.	X		
XV(e)	Defense articles and services specific to spacecraft and ground control station systems (only for telemetry, tracking and control as controlled in USML Category XV(b)), subsystems, components, parts, accessories, attachments, and associated equipment.		X	X
XV(f)	Technical data and defense services directly related to the other defense articles excluded from the exemptions for USML Category XV.	X	X	X
XVI	Defense articles and services specific to design and testing of nuclear weapons.	X	X	X
XVI(c)	Nuclear radiation measuring devices manufactured to military specifications	X		
XVI(e)	Software source code related to USML Category XVI(c). *See* Note 4		X	X
XVII	Classified articles and defense services not elsewhere enumerated. *See* Note 1.	X	X	X
XVIII	Defense articles and services specific to directed energy weapon systems		X	X
XX	Defense articles and services related to submersible vessels, oceanographic, and associated equipment.	X	X	X
XXI	Miscellaneous defense articles and services	X	X	X

Note 1: Classified defense articles and services are not eligible for export under the Canadian exemptions. U.S. origin defense articles and services controlled in USML Category XVII are not eligible for export under the UK Treaty exemption. U.S. origin classified defense articles and services are not eligible for export under either the UK or AS Treaty exemptions except when being released pursuant to a U.S. Department of Defense written request, directive, or contract that provides for the export of the defense article or service.

Note 2: The phrase ''any part of the spectrum'' includes radio frequency (RF), infrared (IR), electro-optical, visual, ultraviolet (UV), acoustic, and magnetic. Defense articles related to reduced observables or counter reduced observables are defined as:

a. Signature reduction (radio frequency (RF), infrared (IR), Electro-Optical, visual, ultraviolet (UV), acoustic, magnetic, RF emissions) of defense platforms, including systems, subsystems, components, materials (including dual-purpose materials used for Electromagnetic Interference (EM) reduction), technologies, and signature prediction, test and measurement equipment and software and material transmissivity/reflectivity prediction codes and optimization software.

b. Electronically scanned array radar, high power radars, radar processing algorithms, periscope-mounted radar systems (PATRIOT), LADAR, multistatic and IR focal plane array-based sensors, to include systems, subsystems, components, materials, and technologies.

Note 3: Defense Articles related to sensor fusion beyond that required for display or identification correlation is defined as techniques designed to automatically combine information from two or more sensors/sources for the purpose of target identification, tracking, designation, or passing of data in support of surveillance or weapons engagement. Sensor fusion involves sensors such as acoustic, infrared, electro optical, frequency, etc. Display or identification correlation refers to the combination of target detections from multiple sources for assignment of common target track designation.

Note 4: Software source code beyond that source code required for basic operation, maintenance, and training for programs, systems, and/or subsystems is not eligible for use of the UK or AS Treaty exemptions, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.

Note 5: Manufacturing know-how, as defined in § 125.4(c)(6) of this subchapter, is not eligible for use of the UK or AS Treaty exemptions, unless such export is pursuant to a written solicitation or contract issued or awarded by the U.S. Department of Defense for an end-use identified in paragraph (e)(1), (e)(2), or (e)(4) of § 126.16 or § 126.17 of this subchapter and is consistent with other exclusions of this supplement.

Note 6: Defense Articles specific to Man Portable Air Defense Systems (MANPADS) includes missiles which can be used without modification in other applications. It also includes production and test equipment and components specifically designed or modified for MANPAD systems, as well as training equipment specifically designed or modified for MANPAD systems.

Note 7: Naval nuclear propulsion plants includes all of USML Category VI(e). Naval nuclear propulsion information is technical data that concerns the design, arrangement, development, manufacture, testing, operation, administration, training, maintenance, and repair of the propulsion plants of naval nuclear-powered ships and prototypes, including the associated shipboard and shore-based nuclear support facilities. Examples of defense articles covered by this exclusion include nuclear propulsion plants and nuclear submarine technologies or systems; nuclear powered vessels (*see* USML Categories VI and XX).

Note 8: A complete gas turbine engine with embedded hot section components or digital engine controls is eligible for export or transfer under the Treaties. Technical data, other than required for routine external maintenance and operation, related to the hot section or digital engine controls, as well as individual hot section components are not eligible for the Treaty exemption whether shipped separately or accompanying a complete engine. Examples of gas turbine engine hot section exempted defense article components and technology are combustion chambers/liners; high pressure turbine blades, vanes, disks and related cooled structure; cooled low pressure turbine blades, vanes, disks and related cooled structure; advanced cooled augmenters; and advanced cooled nozzles. Examples of gas turbine engine hot section developmental technologies are Integrated High Performance Turbine Engine Technology (IHPTET), Versatile, Affordable Advanced Turbine Engine (VAATE), Ultra-Efficient Engine Technology (UEET).

Note 9: Examples of countermeasures and counter-countermeasures related to defense articles not exportable under the AS or UK Treaty exemptions are:

a. IR countermeasures;

b. Classified techniques and capabilities;

SUPPLEMENT NO. 1 TO PART 126*—Continued

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17

c. Exports for precision radio frequency location that directly or indirectly supports fire control and is used for situation awareness, target identification, target acquisition, and weapons targeting and Radio Direction Finding (RDF) capabilities. Precision RF location is defined as angle of arrival accuracy of less than five degrees (RMS) and RF emitter location of less than ten percent range error;

d. Providing the capability to reprogram; and

e. Acoustics (including underwater), active and passive countermeasures, and counter-countermeasures.

Note 10: Examples of defense articles covered by this exclusion include underwater acoustic vector sensors; acoustic reduction; off-board, underwater, active and passive sensing, propeller/propulsor technologies; fixed mobile/floating/powered detection systems which include in-buoy signal processing for target detection and classification; autonomous underwater vehicles capable of long endurance in ocean environments (manned submarines excluded); automated control algorithms embedded in on-board autonomous platforms which enable (a) group behaviors for target detection and classification, (b) adaptation to the environment or tactical situation for enhancing target detection and classification; ''intelligent autonomy'' algorithms which define the status, group (greater than 2) behaviors, and responses to detection stimuli by autonomous, underwater vehicles; and low frequency, broad-band ''acoustic color,'' active acoustic ''fingerprint'' sensing for the purpose of long range, single pass identification of ocean bottom objects, buried or otherwise (controlled under Category USML XI(a)(1), (a)(2), (b), (c), and (d)).

Note 11: This exclusion does not apply to the platforms (*e.g.,* vehicles) for which the armored plates are applied. For exclusions related to the platforms, reference should be made to the other exclusions in this list, particularly for the category in which the platform is controlled.

The excluded defense articles include constructions of metallic or non-metallic materials or combinations thereof specially designed to provide protection for military systems. The phrase ''suitable for military use'' applies to any articles or materials which have been tested to level IIIA or above IAW NIJ standard 0108.01 or comparable national standard. This exclusion does not include military helmets, body armor, or other protective garments which may be exported IAW the terms of the AS or UK Treaty.

Note 12: Defense services or technical data specific to applied research (§ 125.4(c)(3) of this subchapter), design methodology (§ 125.4(c)(4) of this subchapter), engineering analysis (§ 125.4(c)(5) of this subchapter), or manufacturing know-how (§ 125.4(c)(6) of this subchapter) are not eligible for export under the Canadian exemptions. However, this exclusion does not include defense services or technical data specific to build-to-print as defined in § 125.4(c)(1) of this subchapter, build/design-to-specification as defined in § 125.4(c)(2) of this subchapter, or basic research as defined in § 125.4(c)(3) of this subchapter, or maintenance (*i.e.,* inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items parts or components, but excluding any modification, enhancement, upgrade or other form of alteration or improvement that changes the basic performance of the item) of non-excluded defense articles which may be exported subject to other exclusions or terms of the Canadian exemptions.

Note 13: The term ''libraries'' (parametric technical databases) means a collection of technical information of a military nature, reference to which may enhance the performance of military equipment or systems.

Note 14: In order to utilize the authorized defense services under the Canadian exemption, the following must be complied with:

(a) The Canadian contractor and subcontractor must certify, in writing, to the U.S. exporter that the technical data and defense services being exported will be used only for an activity identified in Supplement No. 1 to part 126 of this subchapter and in accordance with § 126.5 of this subchapter; and

(b) A written arrangement between the U.S. exporter and the Canadian recipient must:

1. Limit delivery of the defense articles being produced directly to an identified manufacturer in the United States registered in accordance with part 122 of this subchapter; a department or agency of the United States Federal Government; a Canadian-registered person authorized in writing to manufacture defense articles by and for the Government of Canada; a Canadian Federal, Provincial, or Territorial Government;
2. Prohibit the disclosure of the technical data to any other contractor or subcontractor who is not a Canadian-registered person;
3. Provide that any subcontract contain all the limitations of § 126.5 of this subchapter;
4. Require that the Canadian contractor, including subcontractors, destroy or return to the U.S. exporter in the United States all of the technical data exported pursuant to the contract or purchase order upon fulfillment of the contract, unless for use by a Canadian or United States Government entity that requires in writing the technical data be maintained. The U.S. exporter must be provided written certification that the technical data is being retained or destroyed; and
5. Include a clause requiring that all documentation created from U.S. origin technical data contain the statement that, ''This document contains technical data, the use of which is restricted by the U.S. Arms Export Control Act. This data has been provided in accordance with, and is subject to, the limitations specified in § 126.5 of the International Traffic in Arms Regulations (ITAR). By accepting this data, the consignee agrees to honor the requirements of the ITAR.''

(c) The U.S. exporter must provide the Directorate of Defense Trade Controls a semi-annual report of all their on-going activities authorized under § 126.5 of this subchapter. The report shall include the article(s) being produced; the end-user(s); the end item into which the product is to be incorporated; the intended end-use of the product; the name and address of all the Canadian contractors and subcontractors.

Note 15: This exclusion does not apply to demining equipment in support of the clearance of landmines and unexploded ordnance for humanitarian purposes. As used in this exclusion, ''anti-personnel landmine'' means any mine placed under, on, or near the ground or other surface area, or delivered by artillery, rocket, mortar, or similar means or dropped from an aircraft and which is designed to be detonated or exploded by the presence, proximity, or contact of a person; any device or material which is designed, constructed, or adapted to kill or injure and which functions unexpectedly when a person disturbs or approaches an apparently harmless object or performs an apparently safe act; any manually-emplaced munition or device designed to kill, injure, or damage and which is actuated by remote control or automatically after a lapse of time.

Note 16: The cluster munitions that are subject to this exclusion are set forth below:

The Convention on Cluster Munitions, signed December 3, 2008, and entered into force on August 1, 2010, defines a ''cluster munition'' as:

A conventional munition that is designed to disperse or release explosive submunitions each weighing less than 20 kilograms, and includes those explosive submunitions. Under the Convention, a ''cluster munition'' does not include the following munitions:

(a) A munition or submunition designed to dispense flares, smoke, pyrotechnics or chaff; or a munition designed exclusively for an air defense role;

(b) A munition or submunition designed to produce electrical or electronic effects;

(c) A munition that, in order to avoid indiscriminate area effects and the risks posed by unexploded submunitions, has all of the following characteristics:

1. Each munition contains fewer than ten explosive submunitions;
2. Each explosive submunition weighs more than four kilograms;
3. Each explosive submunition is designed to detect and engage a single target object;

SUPPLEMENT NO. 1 TO PART 126*—Continued

USML Category	Exclusion	(CA) § 126.5	(AS) § 126.16	(UK) § 126.17

4. Each explosive submunition is equipped with an electronic self-destruction mechanism; and
5. Each explosive submunition is equipped with an electronic self-deactivating feature.

Pursuant to U.S. law (Pub. L. 111–117, section 7055(b)), no military assistance shall be furnished for cluster munitions, no defense export license for cluster munitions may be issued, and no cluster munitions or cluster munitions technology shall be sold or transferred, unless:

(a) The submunitions of the cluster munitions, after arming, do not result in more than 1 percent unexploded ordnance across the range of intended operational environments; and

(b) The agreement applicable to the assistance, transfer or sale of such cluster munitions or cluster munitions technology specifies that the cluster munitions will only be used against clearly defined military targets and will not be used where civilians are known to be present or in areas normally inhabited by civilians.

Note 17: The radar systems described are controlled in USML Category XI(a)(3)(i) through (v). As used in this entry, the term ''systems'' includes equipment, devices, software, assemblies, modules, components, practices, processes, methods, approaches, schema, frameworks, and models.

* An ''X'' in the chart indicates that the item is excluded from use under the exemption referenced in the top of the column. An item excluded in any one row is excluded regardless of whether other rows may contain a description that would include the item.

Dated: April 5, 2013.

Rose E. Gottemoeller,

Acting Under Secretary, Arms Control and International Security, Department of State.

[FR Doc. 2013–08506 Filed 4–10–13; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG–2013–0183]

Drawbridge Operation Regulations; Upper Mississippi River, Rock Island, IL

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 Rock Island Railroad and Highway Drawbridge across the Upper Mississippi River, mile 482.9, at Rock Island, Illinois. The deviation is necessary to allow the Front Street 5K Run to cross the bridge. This deviation allows the bridge to be maintained in the closed-to-navigation position for one hour.

DATES: This deviation is effective from 7 p.m. to 8 p.m. on June 15, 2013.

ADDRESSES: The docket for this deviation, [USCG–2013–0183] is available at *http://www.regulations.gov.* Type the docket number in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this deviation. You may also visit the Docket Management Facility in Room W12–140 on the ground floor of the Department of Transportation West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this temporary deviation, call or email Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314–269–2378, email *Eric.Washburn@uscg.mil.* If you have questions on viewing the docket, call Barbara Hairston, Program Manager, Docket Operations, telephone 202–366–9826.

SUPPLEMENTARY INFORMATION: The U.S. Army Rock Island Arsenal requested a temporary deviation for the Rock Island Railroad and Highway Drawbridge, across the Upper Mississippi River, mile 482.9, at Rock Island, Illinois to remain in the closed-to-navigation position for a one hour period from 7 p.m. to 8 p.m., June 15, 2013, while a 5K run is held between the cities of Davenport, IA and Rock Island, IL. The Rock Island Railroad and Highway Drawbridge currently operates in accordance with 33 CFR 117.5, which states the general requirement that drawbridges shall open promptly and fully for the passage of vessels when a request to open is given in accordance with the subpart.

There are no alternate routes for vessels transiting this section of the Upper Mississippi River.

The Rock Island Railroad and Highway Drawbridge, in the closed-to-navigation position, provides a vertical clearance of 23.8 feet above normal pool. Navigation on the waterway consists primarily of commercial tows and recreational watercraft. This temporary deviation has been coordinated with waterway users. No objections were received.

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: March 21, 2013.

Eric A. Washburn,

Bridge Administrator, Western Rivers.

[FR Doc. 2013–08404 Filed 4–10–13; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0103; FRL–9794–4]

Revisions to the California State Implementation Plan, Santa Barbara and San Diego County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Santa Barbara County Air Pollution Control District (SBCAPCD) and San Diego County Air Pollution Control District (SDCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from surface coating of aerospace vehicles and components and from wood products coating operations. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on June 10, 2013 without further notice, unless EPA receives adverse comments by May 13, 2013. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public

that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2013–0103, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov*. Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Adrianne Borgia, EPA Region IX, (415) 972–3576, *borgia.adrianne@epa.gov.*

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rules?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
C. EPA Recommendations To Further Improve the Rules
D. Public Comment and Final Action
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Revised	Submitted
SBCAPCD	337	Surface Coating of Aerospace Vehicles and Components	6/21/12	09/21/12

Local agency	Rule No.	Rule title	Adopted and effective	Submitted
SDCAPCD	67.11	Wood Products Coating Operations	6/27/12, 6/27/13	9/21/12

B. Are there other versions of these rules?

We approved an earlier version of SBCAPCD Rule 337 into the SIP on February 12, 1997 (61 FR 5288). There are no approved earlier versions of SDCAPCD Rule 67.11.

C. What is the purpose of the submitted rules?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC emissions by limiting VOC content in coatings and solvents. EPA's technical support documents (TSDs) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), and must not relax existing requirements (see sections 110(1) and 193). In addition, SIP rules must implement Reasonably Available Control Measures (RACM), including Reasonably Available Control Technology (RACT), in moderate and above ozone nonattainment areas. Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations'' EPA, May 25, 1988 (the Bluebook),
2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies'' EPA, Region 9, August 21, 2001 (the Little Bluebook),
3. ''Control Techniques Guidelines for Control of Volatile Organic Compound Emissions from Coating Operations at Aerospace Manufacturing and Rework Operations'' EPA, December 1977(EPA–453/R–97–004),
4. ''Control Techniques Guidelines for Control of Volatile Organic Emissions from Solvent Metal Cleaning'' EPA, November 1977 (EPA–450/2–77–022),
5. ''Control Techniques Guidelines for Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations,'' EPA, April 1996 (EPA–453/R–96–007), and
6. ''Control Techniques Guidelines for Control of Volatile Organic Compound Emissions from Industrial Cleaning Solvents,'' EPA, September 2006 (EPA–453/R–06–001)

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule revisions that we recommend for the next time the local agency modifies the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by May 13, 2013, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on June 10, 2013. This will incorporate these rules into the federally enforceable SIP.

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.

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 10, 2013. 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, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 13, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

■ 2. Section 52.220 is amended by adding paragraphs (c)(214)(i)(C)(*3*) and (c)(307)(i)(C)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(214) * * *

(i) * * *

(C) * * *

(*3*) Rule 337, ''Surface Coating of Aerospace Vehicles and Components,'' revised on June 21, 2012.

* * * * *

(307) * * *

(i) * * *

(C) * * *

(*3*) Rule 67.11, ''Wood Products Coating Operations,'' adopted on June 27, 2012 and effective on June 27, 2013.

* * * * *

[FR Doc. 2013–08259 Filed 4–10–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0914; FRL–9776–8]

Revisions to the California State Implementation Plan, Butte County Air Quality Management District and Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct Final Rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Butte County Air Quality Management District (BCAQMD) and Sacramento Metropolitan Air Quality Management District (SMAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC), oxides of nitrogen (NO_X), and particulate matter (PM) emissions from residential wood burning devices. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: These rules are effective on June 10, 2013 without further notice, unless EPA receives adverse comments by May 13, 2013. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by EPA–R09–OAR–2012–0914, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *E-Mail: steckel.andrew@epa.gov.*
3. *Mail or Deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov*, some information may be publicly available only at the hard copy location (*e.g.,* copyrighted material, large maps), and some may not be publicly available in either location (*e.g.,* CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Rynda Kay, EPA Region IX, (415) 947–4118, *Kay.Rynda@epa.gov.*

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

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rules?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
C. EPA Recommendations To Further Improve the Rules
D. Public Comment and Final Action.
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board.

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted/ amended	Submitted
BCAQMD	207	Wood Burning Devices	12/11/08	04/25/12
SMAQMD	417	Wood Burning Appliances	10/26/06	09/21/12

On June 7, 2012 and October 11, 2012, EPA determined that the submittals for BCAQMD Rule 207 and SMAQMD Rule 417 respectively, met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

There are no previous versions of Rules 207 and 417 in the SIP.

C. What is the purpose of the submitted rules?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. PM contributes to effects that are harmful to human health and the environment, including premature mortality, aggravation of respiratory and cardiovascular disease, decreased lung function, visibility impairment, and damage to vegetation and ecosystems. Section 110(a) of the CAA requires States to submit regulations that control VOC, NO_X, and PM emissions. Rules 207 and 417 are designed to minimize the impacts of smoke and other air pollutants generated during the use of wood burning devices.

BCAQMD Rule 207 includes requirements that (a) Retailers of wood burning devices provide public awareness materials with each wood burning device sold, (b) newly installed wood burning devices be District-approved and inspected upon installation, (c) all newly installed outdoor wood-fired boilers meet certain EPA or equivalent emission standards, (d) no person shall advertise, sell, supply, or transfer ownership of a used wood burning device, unless it has been deemed permanently inoperable or is a District-approved device, and (e) fuel

used in wood burning devices include only firewood or other wood/plant-based products. The rule also outlines the criteria for District-approval of wood burning devices and exempts devices deemed of historical significance or those transferred via property sale. EPA's technical support document (TSD) has more information about this rule, including identification of several additional control options that are generally reasonably available.

SMAQMD Rule 417 includes requirements that (a) No person sell, offer for sale, supply, install or transfer a wood burning appliance unless it is a U.S. EPA Phase II wood burning heater, a pellet fueled or masonry heater, or an appliance or fireplace that meets the emission standard set forth in 40 CFR Part 60 Subpart AAA and is approved by the Air Pollution Control Officer (APCO), (b) retailers of wood burning devices provide public awareness materials with each wood burning device sold, (c) no person advertise, sell, supply, or transfer ownership of a used wood burning device, unless it has been deemed permanently inoperable or is an approved device, (d) the burning of materials not intended for use in a fireplace/heater is prohibited, and (e) wood sold within the District as ''seasoned'' or ''dry'' must have a moisture content of 20 percent or less by weight. The TSD has more information about this rule, including the basis and conclusion that the rule requires all control measures that are reasonably available.

II. EPA's Evaluation and Action

A. How is EPA evaluating these rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193).

Guidance and policy documents that we use to evaluate enforceability requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** Notice,'' (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

2. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

Effective December 14, 2009, EPA designated portions of Chico (Butte County), California and Sacramento, California as nonattainment for the 2006 24-Hour $PM_{2.5}$ National Ambient Air Quality Standard (NAAQS). 40 CFR 81.305 (2010); 74 FR 58688, 58705–58706 (November 13, 2009). For nonattainment areas, a State Implementation Plan (SIP) submittal addressing implementation of all Reasonably Available Control Measures (RACM) as expeditiously as practicable, including Reasonably Available Control Technology (RACT) for existing sources was due by December 14, 2012. CAA § 172(b) & (c)(1), 74 FR 58689, September 21, 2012. On October 26, 2012 and October 30, 2012 EPA published proposed determinations that the Sacramento and Chico nonattainment areas had attained the 2006 24-hour $PM_{2.5}$ NAAQS based upon complete, quality-assured, and certified ambient air monitoring data showing that these areas had monitored attainment of the 2006 24-hour $PM_{2.5}$ NAAQS based on the 2009–2011 monitoring period. See 77 FR 65346 and 77 FR 65651. If EPA finalizes the determinations of attainment, the requirements for these areas to submit an attainment demonstration, together with RACM, a reasonable further progress (RFP) plan, and contingency measures for failure to meet RFP and attainment deadlines would be suspended for so long as the areas continues to attain the 2006 24-hour $PM_{2.5}$ NAAQS. For purposes of implementing the 2006 $PM_{2.5}$ NAAQS, EPA recommends that states evaluate potential RACM/RACT control measures for sources of direct $PM_{2.5}$ (including condensable PM), SO_2, and NOx in specific nonattainment areas, consistent with the approach to evaluating RACM/RACT provided in EPA's implementing regulations for the 1997 $PM_{2.5}$ NAAQS at 40 CFR part 51, subpart Z. See Memorandum from Stephen D. Page, Director, EPA Office of Air Quality Planning and Standards to Regional Air Directors, Regions I–X, ''Implementation Guidance for the 2006 24-Hour Fine Particle ($PM_{2.5}$) National Ambient Air Quality Standards (NAAQS).'' If EPA does not finalize the determinations of attainment for the Chico and Sacramento nonattainment areas, the BCAQMD and SMAQMD will need to adopt as RACM/RACT any potential $PM_{2.5}$, SO_2, or NOx control measures that are reasonably available considering technological and economic feasibility and that would, considered collectively, advance the attainment date by one year or more in the Chico or Sacramento nonattainment area. *Id.* Because Rules 207 and 417 regulate direct $PM_{2.5}$ emissions from residential wood-burning devices, the BCAQMD and SMAQMD should consider whether reasonably available control measures for these emission sources could, in combination with other reasonably available control measures, advance attainment of the 2006 $PM_{2.5}$ NAAQS in the area by at least one year. If necessary, in separate rulemakings, EPA will act on the State's RACM demonstration for the 2006 $PM_{2.5}$ standard based on an evaluation of the control measures submitted as a whole and their overall potential to advance the applicable attainment date in Chico, California and Sacramento, California. For additional control options for BCAQMD that are generally reasonably available see the Rule 207's TSD's ''Additional Recommendations for the Next Rule Revision''.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, and SIP revisions. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve The Rule

The TSDs describe additional rule revisions that we recommend for the next time the local agencies modify these rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by May 13, 2013, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on June 10, 2013. This will incorporate the rule into the federally enforceable SIP.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of the rules and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rules that are not the subject of an adverse comment.

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 10, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: January 14, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(419)(i)(C) and (c)(423)(i)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(419) * * *

(i) * * *

(C) Butte County Air Quality Management District.

(*1*) Rule 207, ''Wood Burning Devices,'' amended on December 11, 2008.

* * * * *

(423) * * *

(i) * * *

(B) Sacramento Metropolitan Air Quality Management District.

(*1*) Rule 417, ''Wood Burning Appliances,'' adopted on October 26, 2006.

[FR Doc. 2013–08246 Filed 4–10–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0828; FRL–9776–6]

Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Santa Barbara County Air Pollution Control District (SBCAPCD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) and oxides of nitrogen (NO_X) emissions from gas-fired fan-type central furnaces, small water heaters, and the transfer and dispensing of gasoline. We are approving local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: This rule is effective on June 10, 2013 without further notice, unless EPA receives adverse comments by May 13, 2013. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0828, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at www.regulations.gov, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4126, *law.nicole@epa.gov*.

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

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rule revisions?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rules?
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C. EPA recommendations To Further Improve the Rules.
D. Public Comment and Final Action.
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving with the dates that they were amended by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Amended/ revised	Submitted
SBCAPCD	352	Natural Gas-Fire Fan-Type Central Furnaces and Small Water Heaters.	10/20/11	02/23/12
SCAQMD	461	Gasoline Transfer and Dispensing	04/06/12	09/21/12

On March 13, 2012 and October 11, 2012, EPA determined that the submittal for SBCAPCD Rule 352 and SCAQMD Rule 461 met the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review.

B. Are there other versions of these rules?

We approved an earlier version of SBCAPCD Rule 352 into the SIP on December 20, 2000 (65 FR 79752). We approved an earlier version of SCAQMD Rule 461 into the SIP on April 11, 2006 (71 FR 18216). The SCAQMD adopted revisions to the SIP-approved version on March 7, 2008 but the revision was not submitted to EPA. While we can act on only the most recently submitted version, we have reviewed materials from previous rule revisions.

C. What is the purpose of the submitted rule revisions?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires States to submit regulations that control VOC and NO_X emissions. SBCAPCD Rule 352 limits emissions from gas-fired fan-type central furnaces and small water heaters and SCAQMD Rule 461 controls emissions from the transfer and dispensing of gasoline. EPA's technical support documents (TSD) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for each category of sources covered by a Control Techniques Guidelines (CTG) document as well as each major source in nonattainment areas (see sections 182(a)(2) and (b)(2)), and must not relax existing requirements (see sections 110(l) and 193). The SCAQMD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 461 must fulfill RACT. SBCAPCD is designated as unclassifiable/attainment for all National Ambient Air Quality Standards (NAAQS) so that submitted Rule 352 does not have to fulfill RACT requirements.

Guidance and policy documents that we use to evaluate enforceability and RACT requirements consistently include the following:

1. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook).

2. ''Guidance Document for Correcting Common VOC & Other Rule

Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).

3. ''*Gasoline Vapor Recovery Guidelines*'', EPA Region IX, April 24, 2000.

4. ''Technical Guidance—Stage II vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities.'' (EPA–450/3–91–022a) November 1991.

5. ''EPA's Draft *Model Rule, Gasoline Dispensing Facility—Stage II Vapor Recovery,*'' August 17, 1992.

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules

The TSDs describe additional rule revisions that we recommend for the next time the local agencies modify the rules.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by May 13, 2013, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on June 10, 2013. This will incorporate these rules into the federally enforceable SIP.

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.

III. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 10, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the Proposed Rules section of today's **Federal Register**, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged later in proceedings to enforce its requirements (see section 307(b)(2)).

List of Subjects in 40 CFR Part 52

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

Dated: January 23, 2013.

Jared Blumenfeld

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220, is amended by adding paragraphs (c)(411)(i)(G) and (c)(423)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(411) * * *

(i) * * *

(G) Santa Barbara County Air Pollution Control District.

(*1*) Rule 352, ''Natural Gas-Fired Fan-Type Central Furnaces and Small Water Heaters,'' revised on October 20, 2011.

* * * * *

(423) * * *

(i) * * *

(C) South Coast Air Quality Management District.

(*1*) Rule 461, ''Gasoline Transfer and Dispensing,'' amended on April 6, 2012.

[FR Doc. 2013–08261 Filed 4–10–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0886; FRL–9778–4]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District and Monterey Bay Unified and Santa Barbara County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD) and Monterey Bay Unified Air Pollution Control District (MBUAPCD) and Santa Barbara County Air Pollution Control District (SBCAPCD) portions of the California State Implementation Plan (SIP). Under authority of the Clean Air Act as amended in 1990 (CAA or the Act), we are approving local rules that address emission statements for AVAQMD, rule rescissions that addresses public records for MBUAPCD, and define terms for SBCAPCD.

DATES: This rule is effective on June 10, 2013 without further notice, unless EPA receives adverse comments by May 13, 2013. If we receive such comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this direct final rule will not take effect.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0886, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov*.

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

Table of Contents

I. The State's Submittal
A. What rules did the State submit?
B. Are there other versions of these rules?
C. What is the purpose of the submitted rule revisions?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rules?
B. Do the rules meet the evaluation criteria?
C. Public Comment and Final Action.
III. Statutory and Executive Order Reviews

I. The State's Submittal

A. What rules did the State submit?

Table 1 lists the rules we are approving and the rules we are rescinding with the dates that they were adopted by the local air agencies and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED RULES

Local agency	Rule No.	Rule title	Adopted	Submitted
AVAQMD	107	Certification of Submissions and Emission Statements	05/15/12	09/21/12
MBUAPCD	900	Inspection of Public Records—Disclosure Policy (rescinded)	04/20/05	07/15/05
MBUAPCD	901	Public Records—Definitions (rescinded)	04/20/05	07/15/05
MBUAPCD	902	Districts Request for Information (rescinded)	04/20/05	07/15/05
MBUAPCD	903	Inspection of Public Records—Disclosure Procedure (rescinded)	04/20/05	07/15/05
MBUAPCD	904	Trade Secrets—Procedure When Inspection is Requested (rescinded).	04/20/05	07/15/05
SBCAPCD	102	Definitions	06/21/12	09/21/12

On August 18, 2005, EPA determined that the submittal for MBUAPCD Rules 900, 901, 902, 903, and 904 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal EPA review.

On October 11, 2012, EPA determined that the submittal for AVAQMD Rule 107 and SBCAPCD Rule 102 met the completeness criteria in 40 CFR Part 51 Appendix V, which must be met before formal review.

B. Are there other versions of these rules?

There is no previous version of AVAQMD Rule 107 in the SIP. We approved an earlier version of MBUAPCD Rules 900, 901, 902, 903, and 904 into the SIP on July 13, 1987 (52 FR 26148) and SBCAPCD Rule 102 into the SIP on May 4, 2012 (77 FR 26448).

C. What is the purpose of the submitted rule revisions?

Section 110(a) of the CAA requires states to submit regulations that control volatile organic compounds, oxides of nitrogen, particulate matter, and other air pollutants which harm human health and the environment. These rules were developed as part of the local agency's program to control these pollutants.

Antelope Valley AQMD Rule 107, Certification of Submissions and Emission Statements, requires the owner or operator of a stationary sources emitting VOC or NO_X to provide AVAQMD with an annual statement of actual emissions. The emission statement must contain the information described in the California Air Resources Board (CARB) Emission Inventory Guidelines. The statement must also contain a certification signed and dated by a responsible official of the company, which attests that the information contained in the submitted documents are accurate to the best knowledge of the individual certifying the submission. The APCO may waive the emission statement requirement for sources which emit less than 25 tpy if AVAQMD provides CARB with an emission inventory of sources emitting greater than 10 tpy of VOC or NO_X using emission factors acceptable to CARB and EPA.

Monterey Bay Unified APCD Rule 900, Inspection of Public Records—Disclosure, Rule 901, Public records—Definitions, Rule 902, Districts Request for Information, Rule 903, Inspection of Public Records—Disclosure Procedure and Rule 904, Trade Secrets—Procedure When Inspection is Requested, are being repealed. These rules are being repealed because the District has updated their Public Records Request Procedures pursuant to changes made to the California Public Records Act.

Santa Barbara County APCD Rule 102, Definitions, is being amended by adding new definitions to terms common to the proposed amended rules and to improve rule clarity. The District added and modified several solvent-related and surface-coating definitions that are used in various parts of the rulebook. The definition of reactive organic compound was updated to include most of the exempt compounds listed in 40 CFR 50.100(s) and an exempt compound definition was added.

EPA's technical support documents (TSD) have more information about these rules.

II. EPA's Evaluation and Action

A. How is EPA evaluating the rules?

These rules describe administrative provisions and definitions that support emission controls found in other local agency requirements. In combination with the other requirements, these rules must be enforceable (see section 110(a) of the Act) and must not relax existing requirements (see sections 110(l) and 193). EPA policy that we used to evaluate enforceability requirements consistently includes the Bluebook (''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988) and the Little Bluebook (''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001).

B. Do the rules meet the evaluation criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSDs have more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by May 13, 2013, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on June 10, 2013. This will incorporate these rules into the federally enforceable SIP.

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.

III. Statutory and Executive Order Reviews

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

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

• does not provide EPA with the discretionary authority to address disproportionate human health or environmental effects with practical, appropriate, and legally permissible methods under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 10, 2013. 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, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: January 25, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart F—California

■ 2. Section 52.220 is amended by adding paragraphs (c)(159)(iii)(H), (c)(423)(i)(D), and (c)(423)(i)(E) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(159) * * *

(iii) * * *

(H) Previously approved on July 13, 1987 in (c)(159)(iii)(A) of this section and now deleted without replacement Rules 900, 901, 902, 903, and 904.

* * * * *

(423) * * *

(i) * * *

(D) Antelope Valley Air Quality Management District.

(*1*) Rule 107, ''Certification of Submission and Emission Statements,'' adopted on May 15, 2012.

(E) Santa Barbara County Air Pollution Control District.

(*1*) Rule 102, ''Definitions'' amended on June 21, 2012.

[FR Doc. 2013–08255 Filed 4–10–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket #: EPA–R10–OAR–2012–0193; FRL 9738–5]

Approval and Promulgation of Air Quality Implementation Plans; Oregon: Eugene-Springfield PM_{10} Nonattainment Area Limited Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve the Limited Maintenance Plan (LMP) submitted by the State of Oregon on January 13, 2012, for the Eugene-Springfield nonattainment area (Eugene-Springfield NAA) and the State's request to redesignate the area to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). EPA is approving the State's request because it meets Clean Air Act (CAA) requirements for redesignation. EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA views this as a noncontroversial SIP revision and anticipates no adverse comments.

DATES: This direct final rule will be effective June 10, 2013, without further notice, unless EPA receives adverse comments by May 13, 2013. 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–R10–OAR–2012–0193, by any of the following methods:

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

• *Email: R10-Public_Comments@epa.gov*

• *Mail:* Kristin Hall, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle WA, 98101

• *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle WA, 98101. Attention: Kristin Hall, Office of Air, Waste and Toxics, AWT—107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2012–0193. 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, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle WA, 98101.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at telephone number: (206) 553–6357, email address: *hall.kristin@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: Throughout this document wherever ''we'', ''us'' or ''our'' are used, we mean EPA.

Table of Contents

I. This Action
II. Background
A. PM_{10} NAAQS
B. Eugene-Springfield NAA and Planning Background
III. Public and Stakeholder Involvement in Rulemaking Process
IV. Requirements for Redesignation
A. CAA Requirements for Redesignation of Nonattainment Areas
B. The LMP Option for PM_{10} Nonattainment Areas
C. Conformity Under the LMP Option
V. Review of the Oregon Submittal Addressing the Requirements for Redesignation and LMPs
A. Has the Eugene-Springfield NAA attained the applicable NAAQS?
B. Does the Eugene-Springfield NAA have a fully approved SIP under section 110(k) of the CAA?
C. Has the State met all applicable requirements under section 110 and part D of the CAA?
D. Has the State demonstrated that the Air Quality Improvement is due to permanent and enforceable reductions?
E. Does the area have a fully approved maintenance plan pursuant to section 175A of the CAA?
F. Has the State demonstrated that the Eugene-Springfield NAA qualifies for the LMP Option?
G. Does the State have an approved Attainment Emissions Inventory which can be used to demonstrate attainment of the NAAQS?
H. Does the LMP include an assurance of continued operation of an appropriate EPA-approved Air Quality Monitoring Network, in accordance with 40 CFR part 58?
I. Does the plan meet the Clean Air Act requirements for contingency provisions?
J. Has the State met conformity requirements?
VI. Revisions to SIP Rules to Reflect Redesignation
VII. Final Action
VIII. Oregon Notice Provision
IX. Statutory and Executive Order Reviews

I. This Action

EPA is taking direct final action to approve the LMP submitted by the State of Oregon on January 13, 2012, for the Eugene-Springfield nonattainment area (Eugene-Springfield NAA) and concurrently to redesignate the area to attainment for the PM_{10} NAAQS. EPA has reviewed air quality data for the area and determined that the Eugene-Springfield NAA attained the PM_{10} NAAQS by the required attainment date, and that monitoring data continue to show attainment. Also in this action, EPA is approving revisions to the State Implementation Plan (SIP) to reflect the redesignation.

II. Background

A. PM_{10} NAAQS

''Particulate matter,'' also known as particle pollution or PM, is a complex mixture of extremely small particles and liquid droplets. The size of particles is directly linked to their potential for causing health problems. EPA is concerned about particles that are 10 micrometers in diameter or smaller because those are the particles that generally pass through the throat and nose and enter the lungs. Once inhaled, these particles can affect the heart and lungs and cause serious adverse health effects. People with heart or lung diseases, children and older adults are the most likely to be affected by particle pollution exposure. However, even healthy individuals may experience temporary symptoms from exposure to elevated levels of particle pollution.

On July 1, 1987, EPA promulgated a NAAQS for PM_{10} (52 FR 24634). EPA established a 24-hour standard of 150 $\mu g/m^3$ and an annual standard of 50 $\mu g/m^3$, expressed as an annual arithmetic mean. EPA also promulgated secondary PM_{10} standards that were identical to the primary standards. In a rulemaking action dated October 17, 2006, EPA retained the 24-hour PM_{10} standard but revoked the annual PM_{10} standard (71 FR 61144, effective December 18, 2006).

B. Eugene-Springfield NAA and Planning Background

On August 7, 1987, EPA designated the Eugene-Springfield area as a PM_{10} nonattainment area due to measured violations of the 24-hour PM_{10} standard (52 FR 29383). The notice announcing the designation, upon enactment of the 1990 CAA Amendments, was published on March 15, 1991, 56 FR 11101. On November 6, 1991, the Eugene-Springfield NAA was subsequently classified as moderate under sections 107(d)(4)(B) and 188(a) of the CAA (56 FR 56694).

After the Eugene-Springfield NAA was designated nonattainment for PM_{10}, the Oregon Department of Environmental Quality (ODEQ) and Lane Regional Air Protection Agency (LRAPA) worked with the communities of Eugene and Springfield to develop a plan to bring the area into attainment no later than December 31, 1994. The State submitted the plan to EPA on November 15, 1991, as a moderate PM_{10} SIP under section 189(a) of the CAA. The primary control measure submitted by the State was a comprehensive wood burning curtailment program. EPA took final action to approve the State's moderate PM_{10} SIP on August 24, 1994, 59 FR 43483.

On January 13, 2012, the State submitted to EPA for approval the Eugene-Springfield PM_{10} LMP and requested that EPA redesignate the Eugene-Springfield NAA to attainment for the PM_{10} NAAQS. Oregon also submitted revisions to rules in the State's Federally-approved SIP to reflect the redesignation.

III. Public and Stakeholder Involvement in Rulemaking Process

Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to EPA. The State of Oregon provided notice and an opportunity for public comment from August 26, 2011 through September 26, 2011. A notice of public hearing was

published in *The Eugene Register-Guard* on August 26, 2011 and the *Oregon Bulletin, Volume 50, No. 9* on September 1, 2011. The State held a public hearing on September 27, 2011, in Springfield, Oregon. This SIP revision became State effective on December 21, 2011, and was submitted by the Governor's designee to the EPA on January 13, 2012. EPA has evaluated the State's submittal and determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

IV. Requirements for Redesignation

A. CAA Requirements for Redesignation of Nonattainment Area

Nonattainment areas can be redesignated to attainment after the area has measured air quality data showing it has attained the NAAQS and when certain planning requirements are met. Section 107(d)(3)(E) of the CAA, and the General Preamble to Title I provide the criteria for redesignation (57 FR 13498, April 16, 1992). These criteria are further clarified in a policy and guidance memorandum from John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards dated September 4, 1992, ''Procedures for Processing Requests to Redesignate Areas to Attainment'' (Calcagni memo). The criteria for redesignation are:

1. The Administrator has determined that the area has attained the applicable NAAQS;
2. The Administrator has fully approved the applicable SIP for the area under section 110(k) of the CAA;
3. The state containing the area has met all requirements applicable to the area under section 110 and part D of the CAA;
4. The Administrator has determined that the improvement in air quality is due to permanent and enforceable reductions in emissions; and
5. The Administrator has fully approved a maintenance plan for the area as meeting the requirements of section 175A of the CAA.

B. The LMP Option for PM_{10} Nonattainment Areas

On August 9, 2001, EPA issued guidance on streamlined maintenance plan provisions for certain moderate PM_{10} nonattainment areas seeking redesignation to attainment (Memo from Lydia Wegman, Director, Air Quality Standards and Strategies Division, entitled ''Limited Maintenance Plan Option for Moderate PM_{10} Nonattainment Areas'' (LMP Option memo)). The LMP Option memo contains a statistical demonstration that areas meeting certain air quality criteria will, with a high degree of probability, maintain the standard 10 years into the future. Thus, EPA has already provided the maintenance demonstration for areas meeting the criteria outlined in the LMP Option memo. It follows that future year emission inventories for these areas, and some of the standard analyses to determine transportation conformity with the SIP are no longer necessary.

To qualify for the LMP Option, the area should have attained the PM_{10} NAAQS and, based upon the most recent 5 years of air quality data at all monitors in the area, the 24-hour design value should be at or below 98 μg/m³. If an area cannot meet this test, it may still be able to qualify for the LMP Option if the average design value (ADV) for the site is less than the site-specific critical design value (CDV). In addition, the area should expect only limited growth in on-road motor vehicle PM_{10} emissions (including fugitive dust) and should have passed a motor vehicle regional emissions analysis test. The LMP Option memo also identifies core provisions that must be included the LMP. These provisions include an attainment year emissions inventory, assurance of continued operation of an EPA-approved air quality monitoring network, and contingency provisions.

C. Conformity Under the LMP Option

The transportation conformity rule and the general conformity rule (40 CFR parts 51 and 93) apply to nonattainment areas and maintenance areas covered by an approved maintenance plan. Under either conformity rule, an acceptable method of demonstrating that a Federal action conforms to the applicable SIP is to demonstrate that expected emissions from the planned action are consistent with the emissions budget for the area.

While EPA's LMP Option does not exempt an area from the need to affirm conformity, it explains that the area may demonstrate conformity without submitting an emissions budget. Under the LMP Option, emissions budgets are treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that the qualifying areas would experience so much growth in that period that a violation of the PM_{10} NAAQS would result. For transportation conformity purposes, EPA would conclude that emissions in these areas need not be capped for the maintenance period and therefore a regional emissions analysis would not be required. Similarly, Federal actions subject to the general conformity rule could be considered to satisfy the ''budget test'' specified in 40 CFR 93.158 (a)(5)(i)(A) for the same reasons that the budgets are essentially considered to be unlimited.

V. Review of the Oregon Submittal Addressing the Requirements for Redesignation and LMPs

A. Has the Eugene-Springfield NAA Attained the Applicable NAAQS?

States must demonstrate that an area has attained the PM_{10} NAAQS through analysis of ambient air quality data from an ambient air monitoring network representing peak PM_{10} concentrations. The data should be quality-assured and stored in the EPA Air Quality System database. EPA has reviewed air quality data for the area and has determined that the Eugene-Springfield NAA attained the PM_{10} NAAQS [1] by the applicable attainment date of December 31, 1994, and continues to attain the PM_{10} NAAQS. EPA's analysis is described below.

The 24-hour PM_{10} NAAQS is 150 μg/m³. An area has attained this 24-hour standard when the average number of expected exceedances per year is less than or equal to one, when averaged over a three-year period (40 CFR 50.6). To make this determination, three consecutive years of complete ambient air quality data must be collected in accordance with Federal requirements (40 CFR part 58 including appendices).

A comprehensive air quality monitoring plan, meeting the requirements of 40 CFR part 58, was submitted by Oregon to EPA on December 27, 1979 (40 CFR 52.1970), and approved by EPA on March 4, 1981 (46 FR 15136). This monitoring plan has been subsequently updated, with the most recent submittal dated July 1, 2011, and approved by EPA on January 6, 2012 (Oregon Air Monitoring Plan Approval Letter, dated January 6, 2012). The monitoring plan describes the PM_{10} monitoring network throughout the State, which includes site #41–039–0058–81102–1 (commonly referred to as the ''Highway 99 Site'' or ''Key Bank Site'' (Highway 99/Key Bank Site)) in the Eugene-Springfield area. In the submittal, LRAPA states that the Highway 99/Key Bank Site historically measures the highest PM_{10} concentrations, and that a review of data from 2000 through 2008 shows that PM_{10} concentrations recorded at this site remain well below the 24-hour PM_{10} NAAQS. In addition, LRAPA states that the Highway 99/Key Bank Site is

[1] Because the annual PM_{10} standard was revoked effective December 18, 2006, see 71 FR 61144 (October 17, 2006), this notice discusses only attainment of the 24-hour PM_{10} standard.

operated in compliance with EPA monitoring guidelines set forth in 40 CFR part 58, Ambient Air Quality Surveillance.

Data from the Highway 99/Key Bank Site has been quality assured by ODEQ and submitted to EPA's Air Quality System (AQS), accessible through EPA's AirData Web site at *http://www.epa.gov/airdata/*. Based on EPA's review of data in AQS, there have been no exceedances of the 24-hour PM_{10} NAAQS in the Eugene-Springfield NAA since 1987. Accordingly, during the three-year period ending with the December 31, 1994, attainment date, no exceedances occurred in the Eugene-Springfield NAA, and the expected exceedance rate for the Eugene-Springfield NAA for 1992–1994 is 0. Therefore, Eugene-Springfield NAA attained the 24-hour PM_{10} NAAQS by the required attainment date of December 31, 1994 (PM_{10} Design Value Report for Lane County, Oregon, dated April 30, 2012). EPA has also reviewed more recent ambient air quality data for the 24-hour PM_{10} NAAQS, and has determined that the Eugene-Springfield area continues to attain the 24-hour PM_{10} NAAQS. A summary of EPA's data review and analysis can be found in the docket for this action (Eugene-Springfield PM_{10} NAAQS and LMP Determination Memo, dated July 23, 2012).

B. Does the Eugene-Springfield NAA have a fully approved SIP under section 110(k) of the CAA?

In order to qualify for redesignation, the SIP for the area must be fully approved under section 110(k) of the CAA, and must satisfy all requirements that apply to the area. As discussed in Section II. B. above, Oregon submitted a moderate PM_{10} SIP for the Eugene-Springfield NAA on November 15, 1991. EPA took final action to fully approve the State's moderate PM_{10} SIP on August 24, 1994 (59 FR 43483), as satisfying all requirements that apply to the area. Thus the area has a fully approved nonattainment area SIP under section 110(k) of CAA.

C. Has the State met all applicable requirements under Section 110 and Part D of the CAA?

Section 107(d)(3)(E) of the CAA requires that a state containing a nonattainment area must meet all applicable requirements under section 110 and Part D of the CAA for an area to be redesignated to attainment. EPA interprets this to mean that the state must meet all requirements that applied to the area prior to, and at the time of, the submission of a complete redesignation request. The following is a summary of how Oregon meets these requirements.

1. Clean Air Act Section 110 Requirements

Section 110(a)(2) of the CAA contains general requirements for nonattainment plans. These requirements include, but are not limited to, submittal of a SIP that has been adopted by the state after reasonable notice and public hearing; provisions for establishment and operation of appropriate apparatus, methods, systems and procedures necessary to monitor ambient air quality; implementation of a permit program; provisions for Part C—Prevention of Significant Deterioration (PSD) and Part D—New Source Review (NSR) permit programs; criteria for stationary source emission control measures, monitoring and reporting, provisions for modeling; and provisions for public and local agency participation. See the General Preamble for further explanation of these requirements (57 FR 13498, April 16, 1992). For purposes of redesignation of the Eugene-Springfield PM_{10} NAA, EPA has reviewed the Oregon SIP and finds that the State has satisfied all applicable requirements under CAA section 110(a)(2) for the PM_{10} NAAQS. EPA's approval of Oregon's SIP for attainment and maintenance of the PM_{10} NAAQS under CAA section 110 can be found at 40 CFR 52.1972.

2. Part D Requirements

Part D of the CAA contains general requirements applicable to all areas designated nonattainment. The general requirements are followed by a series of subparts specific to each pollutant. All PM_{10} nonattainment areas must meet the general provisions of Subpart 1 and the specific PM_{10} provisions in Subpart 4, ''Additional Provisions for Particulate Matter Nonattainment Areas.'' The following paragraphs discuss these requirements as they apply to the Eugene-Springfield NAA.

(2)(a) Part D, section 172(c)(2)—Reasonable Further Progress

Section 172(c) contains general requirements for nonattainment area plans. A thorough discussion of these requirements may be found in the General Preamble (57 FR 13538, April 16, 1992). CAA section 172(c)(2) requires nonattainment plans to provide for reasonable further progress (RFP). Section 171(1) of the CAA defines RFP as ''such annual incremental reductions in emissions of the relevant air pollutant as are required by this part (part D of title I) or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable national ambient air quality standard by the applicable date.'' The requirements for reasonable further progress, identification of certain emissions increases and other measures needed for attainment were satisfied with the approved Eugene-Springfield PM_{10} SIP (59 FR 43483). In this action, EPA has determined that the Eugene-Springfield NAA attained the 24-hour PM_{10} NAAQS by the December 31, 1994, attainment date. Therefore, EPA believes no further showing of RFP or quantitative milestones is necessary.

(2)(b) Part D, section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of CAA requires a comprehensive, accurate, current inventory of actual emissions from all sources in the Eugene-Springfield PM_{10} NAA. Oregon included an emissions inventory for the Eugene-Springfield area for the year 2008 in the submittal. The inventory estimated annual and winter day emissions from point sources, residential wood combustion, road dust, and motor vehicle exhaust, brake and tire wear. The emissions inventory includes an inventory of point sources of PM_{10} greater than or equal to 10 tons/year to estimate emissions for 2008. Residential wood combustion emission estimates were developed from a 2009 survey of households in the Eugene-Springfield area, included in the State's submittal. Emissions estimates for road dust and motor vehicle exhaust, brake wear, and tire wear were developed using EPA-approved methods, and vehicle miles traveled estimates were obtained from the local metropolitan planning organization, Lane Council of Governments. EPA reviewed the inventory and associated calculations submitted by Oregon and believes that the 2008 Eugene-Springfield emissions inventory is current, accurate and comprehensive and therefore meets the requirements of section 172(c)(3) of the CAA.

(2)(c) Part D, section 172(c)(5)—New Source Review (NSR)

The CAA requires all nonattainment areas to meet several requirements regarding NSR. The State must have an approved major NSR program that meets the requirements of section 172(c)(5). EPA evaluated and initially approved the Oregon major NSR program on August 13, 1982 (47 FR 35191), as being equivalent or more stringent than EPA's regulations on a program basis. EPA subsequently approved revisions to Oregon's major NSR program on January 22, 2003 (68 FR 2891), and most recently approved revisions to the major

NSR rules on December 27, 2011 (76 FR 80747). In the Eugene-Springfield NAA, the requirements of the Part D NSR program will be replaced by the State's Maintenance Area NSR requirements upon the effective date of redesignation.

(2)(d) Part D, section 172(c)(7)—Compliance With CAA section 110(a)(2): Air Quality Monitoring Requirements

Once an area is redesignated, the state must continue to operate an appropriate air monitoring network in accordance with 40 CFR part 58 to verify attainment status of the area. Oregon submitted a comprehensive air quality monitoring plan, meeting the requirements of 40 CFR part 58 to EPA on December 27, 1979 (40 CFR 52.1970), and EPA approved the plan on March 4, 1981 (46 FR 15136). This monitoring plan has been subsequently updated, with the most recent submittal dated July 1, 2011, and approved by EPA on January 6, 2012 (Oregon Air Monitoring Plan Approval Letter, dated January 6, 2012). As stated in the submittal, ODEQ and LRAPA operate a PM_{10} monitoring network which includes site # 41–039–0058–81102–1 (Highway 99/Key Bank Site) in the Eugene-Springfield area. The Highway 99/Key Bank Site is operated in compliance with EPA monitoring guidelines set forth in 40 CFR part 58, Ambient Air Quality Surveillance. In addition, the submittal provides a commitment to continued operation of the PM_{10} monitoring network and the Highway 99/Key Bank Site in the Eugene-Springfield area.

(2)(e) Part D, section 172(c)(9)—Contingency Measures

The CAA requires that contingency measures take effect if an area fails to meet RFP requirements or fails to attain the NAAQS by the applicable attainment date. Since, as part of this action, EPA has determined the Eugene-Springfield NAA attained the PM_{10} NAAQS by the applicable attainment date of December 31, 1994, contingency measures are no longer required under section 172(c)(9) of the CAA. However, contingency provisions are required for maintenance plans under Section 175A. Please see section V. I. for a description of Oregon's maintenance plan contingency provisions.

(2)(f) Part D, section 189(a), (c) and (e)—Additional Provisions for Particulate Matter Nonattainment Areas

Section 189(a), (c) and (e) requirements apply to moderate PM_{10} nonattainment areas. Any of these requirements which were applicable and due prior to the submission of the redesignation request must be fully approved into the SIP before redesignating the area to attainment. With respect to the Eugene-Springfield NAA, these requirements include:

(a) Provisions to assure that reasonably available control measures were implemented by December 10, 1993 (section 189(a)(1)(C));

(b) either a demonstration that the plan provided for attainment as expeditiously as practicable, but not later than December 31, 1994, or a demonstration that attainment by that date was impracticable (section 189(a)(1)(B));

(c) quantitative milestones which were achieved every 3 years and which demonstrate RFP toward attainment by December 31, 1994 (section 189(c)(1)); and

(d) provisions to assure that the control requirements applicable to major stationary sources of PM_{10} also apply to major stationary sources of PM_{10} precursors except where the Administrator determined that such sources do not contribute significantly to PM_{10} levels which exceed the NAAQS in the area (section 189(e)).

Provisions for reasonably available control measures, attainment demonstration, and RFP milestones were fully approved into the SIP upon EPA approval of the moderate PM_{10} SIP for the Eugene-Springfield NAA on August 24, 1994 (59 FR 43483). EPA most recently approved revisions to Oregon's major NSR rules on December 27, 2011 (76 FR 80747). Oregon's major NSR rules include control requirements that apply to major stationary sources of PM_{10} and PM_{10} precursors in nonattainment areas, maintenance areas, and attainment/unclassifiable areas. For the Eugene-Springfield area, EPA determined that major stationary sources do not contribute significantly to PM_{10} levels in excess of the NAAQS. Therefore, in EPA's action to approve the moderate PM_{10} SIP for Eugene-Springfield, EPA granted the exclusion from control requirements authorized under section 189(e) for major stationary sources of PM_{10} precursors (59 FR 43483).

D. Has the State demonstrated that the Air Quality Improvement is due to permanent and enforceable reductions?

Section 107(d)(3)(E)(iii) of the CAA provides that a nonattainment area may not be redesignated unless EPA determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the SIP. Therefore, a state must be able to reasonably attribute the improvement in air quality to permanent and enforceable emission reductions by demonstrating that air quality improvements are the result of actual enforceable emission reductions. This showing should consider emission rates, production capacities, and other related information. The analysis should assume that sources are operating at permitted levels (or historic peak levels) unless evidence is presented that such an assumption is unrealistic.

Permanent and enforceable control measures in the Eugene-Springfield moderate PM_{10} SIP include a mandatory home wood heating curtailment program, and existing controls on local industrial sources. These controls were approved by EPA into the Eugene-Springfield PM_{10} SIP, and they are both permanent and Federally enforceable (59 FR 43483). As described in the submittal, the primary control measure relied on is the mandatory home wood heating curtailment program which was fully implemented on November 1, 1991. The program consists of a daily multi-stage advisory issued each winter from November through the end of February. The daily advisory, which is based upon forecast meteorology and air quality, provides a color-coded stage based on air quality conditions. During good air quality conditions, a Green advisory allowing residential wood combustion is issued. If air quality conditions are deteriorating, a Yellow advisory requesting voluntary curtailment of residential wood burning is issued. If PM_{10} levels are forecast to be near or exceeding the standard, a Red advisory prohibiting residential wood burning is issued (with an exemption for economic need). Each of the three jurisdictions in the Eugene-Springfield NAA—Lane County, the City of Eugene, and the City of Springfield—enacted ordinances that prohibit the use of solid-fuel space heating devices based on the advisories. The enforcement of these ordinances has been delegated to LRAPA.

EPA believes that areas that qualify for the LMP Option will meet the NAAQS, even under worst case meteorological conditions. Therefore, under the LMP Option, the maintenance demonstration is presumed to be satisfied if an area meets the qualifying criteria. A description of the LMP qualifying criteria and how the Eugene-Springfield area meets these criteria is provided below. By qualifying for the LMP Option, Oregon presumptively demonstrates that the air quality improvements in the Eugene-Springfield area are the result of permanent emission reductions and not a result of either economic trends or meteorology.

E. Does the area have a fully approved maintenance plan pursuant to Section 175A of the CAA?

In this action, we are approving the LMP in accordance with the principles outlined in the LMP Option memo. Upon the effective date of this action, the area will have a fully approved maintenance plan.

F. Has the state demonstrated that the Eugene-Springfield NAA Qualifies for the LMP Option?

The LMP Option memo outlines the requirements for an area to qualify for the LMP Option. First, the area should be attaining the NAAQS. In this action, EPA has determined that the Eugene-Springfield NAA attained the PM_{10} NAAQS by the required attainment date, and continues to be in attainment with the PM_{10} NAAQS. Please see section V. A. for a detailed discussion.

Second, the average design value (ADV) for the past 5 years of monitoring data must be at or below the critical design value (CDV). The CDV is a margin of safety value and is the value at which an area has been determined to have a 1 in 10 probability of exceeding the NAAQS. The LMP Option memo provides two methods for review of monitoring data for the purpose of qualifying for the LMP Option. The first method is a comparison of a site's ADV with the CDV of 98 $\mu g/m^3$ for the 24 hour PM_{10} NAAQS and 40 $\mu g/m^3$ for the annual PM_{10} NAAQS. A second method that applies to the 24-hour PM_{10} NAAQS is the calculation of a site-specific CDV and a comparison of the site-specific CDV with the ADV for the past 5 years of monitoring data. The State's submittal provides a comparison of 5-year ADVs compared to the 24-hour and annual CDVs, as described in the first method for review of monitoring data to qualify for the LMP Option. Oregon's analysis demonstrates that the Eugene-Springfield NAA meets the LMP design value criteria for the period 2004–2008. Using EPA-recommended methodology, Oregon calculated the 24-hour ADV for the area to be 66 $\mu g/m^3$, which is well below the CDV of 98 $\mu g/m^3$. Oregon calculated the annual ADV to be 17 $\mu g/m^3$, which is well below the CDV of 40 $\mu g/m^3$. EPA has reviewed the Oregon calculations and concurs with the State's findings. EPA also calculated average design values using more recent data and found that the Eugene-Springfield area meets the LMP design value criteria for the period 2007–2011. EPA's design value calculations and analysis can be found in the docket for this action (Eugene-Springfield PM_{10} NAAQS and LMP Determination Memo, dated July 23, 2012). Therefore, EPA finds that Eugene-Springfield meets the design value criteria outlined in the LMP Option memo.

Third, the area must meet the motor vehicle regional emissions analysis test in attachment B of the LMP Option memo. Using the methodology outlined in attachment B, Oregon submitted an analysis of whether increased emissions from on-road mobile sources would increase PM_{10} concentrations in the Eugene-Springfield NAA to levels that would threaten the assumption of maintenance that underlies the LMP policy. Based on monitoring data for the period 2004–2008, Oregon has determined that the Eugene-Springfield NAA passes the motor vehicle regional emissions analysis test. EPA has reviewed the calculations in the State's submittal and concurs with this conclusion.

As described above, the Eugene-Springfield NAA meets the qualification criteria set forth in the LMP Option memo and therefore qualifies for the LMP Option. The LMP Option memo also indicates that once a state selects the LMP Option and it is in effect, the state will be expected to determine, on an annual basis, that the LMP criteria are still being met. If the state determines that the LMP criteria are not being met, it should take action to reduce PM_{10} concentrations enough to requalify for the LMP Option. One possible approach the state could take is to implement contingency provisions. Please see Section V. I. for a description of contingency provisions submitted as part of the State's submittal.

As a result of the above analysis, EPA is approving the LMP for the Eugene-Springfield area and the State's request to redesignate the Eugene-Springfield NAA to attainment for PM_{10}.

G. Does the State have an approved attainment emissions inventory which can be used to demonstrate attainment of the NAAQS?

Pursuant to the LMP Option memo, the state's approved attainment plan should include an emissions inventory which can be used to demonstrate attainment of the NAAQS. The inventory should represent emissions during the same five-year period associated with air quality data used to determine whether the area meets the applicability requirements of the LMP Option. The state should review its inventory every three years to ensure emissions growth is incorporated in the inventory if necessary.

Oregon's submittal includes an emissions inventory for the year 2008. After reviewing the 2008 emissions inventory and determining that it is current, accurate and complete, as well as reviewing monitoring data for the years 2004–2008, EPA has determined that the 2008 emissions inventory is representative of the attainment year inventory since the NAAQS was not violated during 2008. In addition, the year 2008 is representative of the level of emissions during the time period used to calculate the average design value since 2008 is one of the years during the five year period used to calculate the design value (2004–2008). The submittal meets EPA guidance, as described above, for purposes of an attainment emissions inventory.

H. Does the LMP include an assurance of continued operation of an appropriate EPA-approved air quality monitoring network, in accordance with 40 CFR part 58?

PM_{10} monitoring was established in the Eugene-Springfield area in 1984. LRAPA currently maintains a PM_{10} monitoring network which includes the Highway 99/Key Bank Site within the Eugene-Springfield area. Oregon and LRAPA's monitoring network was developed and has been maintained in accordance with Federal siting and design criteria in 40 CFR part 58 and in consultation with EPA Region 10. EPA most recently approved Oregon's air monitoring plan, on January 6, 2012 (Oregon Air Monitoring Plan Approval Letter, dated January 6, 2012). In the submittal, LRAPA states that it will continue to monitor for PM_{10} in the Eugene-Springfield NAA.

I. Does the plan meet the clean air act requirements for contingency provisions?

CAA section 175A states that a maintenance plan must include contingency provisions, as necessary, to promptly correct any violation of the NAAQS which may occur after redesignation of the area to attainment. As explained in the LMP Option memo and Calcagni memo, these contingency provisions are considered to be an enforceable part of the SIP. The plan should clearly identify the provisions to be adopted, a schedule and procedures for adoption and implementation, and a specific time limit for action by the state. The maintenance plan should identify the events that would ''trigger'' the adoption and implementation of a contingency provision, the contingency provision that would be adopted and implemented, and the schedule indicating the time frame by which the state would adopt and implement the provision. The LMP Option memo and Calcagni memo state that EPA will

review what constitutes a contingency plan on a case-by-case basis. At a minimum, it must require that the State will implement all measures contained in the Part D nonattainment plan for the area prior to redesignation.

In the submittal, ODEQ and LRAPA have included maintenance plan contingency provisions to ensure the area continues to meet the PM_{10} NAAQS. Specifically, ODEQ and LRAPA submitted revised local home wood heating curtailment program requirements for the three jurisdictions in the area, specifically, Eugene, Springfield and Lane County. The local ordinances implementing the program have been strengthened to include a requirement prohibiting solid fuel space heating devices from burning plastics, petroleum by-products, petroleum treated materials, rubber products, animal remains, animal or vegetable matter resulting from the handling, preparation, cooking or service of food, or of any other material which normally emits dense smoke or noxious odors. In addition, during a Green or Yellow advisory, the discharge of emissions from a solid fuel space heating device is now limited to a maximum opacity of 40%, with a 10 minute exemption during every 4-hour period for the building of a new fire. These revised ordinances have been adopted by the local jurisdictions and are currently being implemented in the Eugene-Springfield area. The ordinances each specify ''triggers'' for implementing provisions, based on forecasted PM_{10} levels. In addition to the local home wood heating curtailment program, the LMP references the Oregon ''Heat Smart'' law. This law has been adopted state-wide and requires the removal and decommissioning of any uncertified woodstove or fireplace insert from a home when it is sold.

The contingency provisions submitted by ODEQ and LRAPA have been adopted by the local jurisdictions, are currently being implemented in the Eugene-Springfield area, and contain triggers based on forecasted PM_{10} levels for implementing specific provisions to reduce particulate matter emissions from home wood heating. Therefore, EPA believes the contingency provisions are adequate to meet CAA Section 175A requirements.

J. Has the State met conformity requirements?

1. Transportation Conformity

Under the LMP Option, emissions budgets are treated as essentially not constraining for the maintenance period because it is unreasonable to expect that qualifying areas would experience so much growth in that period that a NAAQS violation would result. While areas with maintenance plans approved under the LMP Option are not subject to the budget test, the areas remain subject to other transportation conformity requirements of 40 CFR part 93, subpart A. Thus, the metropolitan planning organization (MPO) in the area or the state must document and ensure that:

a. Transportation plans and projects provide for timely implementation of SIP transportation control measures (TCMs) in accordance with 40 CFR 93.113;

b. Transportation plans and projects comply with the fiscal constraint element per 40 CFR 93.108;

c. The MPO's interagency consultation procedures meet applicable requirements of 40 CFR 93.105;

d. Conformity of transportation plans is determined no less frequently than every three years, and conformity of plan amendments and transportation projects is demonstrated in accordance with the timing requirements specified in 40 CFR 93.104;

e. The latest planning assumptions and emissions model are used as set forth in 40 CFR 93.110 and 40 CFR 93.111;

f. Projects do not cause or contribute to any new localized carbon monoxide or particulate matter violations, in accordance with procedures specified in 40 CFR 93.123; and

g. Project sponsors and/or operators provide written commitments as specified in 40 CFR 93.125.

In a letter to LRAPA dated October 3, 1994, EPA determined that the Eugene-Springfield area met the criteria to be exempted from regional emissions analysis for PM_{10} (Conformity Letter, dated October 3, 1994). However, project level conformity requirements would continue to apply to the area. With EPA's approval of the LMP, the area continues to be exempt from performing a regional emissions analysis, but must meet project-level conformity analyses as well as the transportation conformity criteria mentioned above.

2. General Conformity

For Federal actions which are required to address the specific requirements of the general conformity rule, one set of requirements applies particularly to ensuring that emissions from the action will not cause or contribute to new violations of the NAAQS, exacerbate current violations, or delay timely attainment. One way that this requirement can be met is to demonstrate that ''the total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment area, would not exceed the emissions budgets specified in the applicable SIP'' (40 CFR 93.158(a)(5)(i)(A)).

The decision about whether to include specific allocations of allowable emissions increases to sources is one made by the state and local air quality agencies. These emissions budgets are different than those used in transportation conformity. Emissions budgets in transportation conformity are required to limit and restrain emissions. Emissions budgets in general conformity allow increases in emissions up to specified levels. Oregon has not chosen to include specific emissions allocations for Federal projects that would be subject to the provisions of general conformity.

VI. Revisions to SIP Rules To Reflect Redesignation

In the submittal, Oregon included revisions to Oregon Administrative Rules (OAR) and LRAPA rules in the SIP to reflect the redesignation of the Eugene-Springfield area. In this action, EPA is approving changes to OAR Chapter 340, Division 204 Designation of Air Quality Areas, Rule 0030 Designation of Nonattainment Areas and Rule 0040 Designation of Maintenance Areas to remove Eugene-Springfield from the list of PM_{10} nonattainment areas and add the area to the list of PM_{10} maintenance areas. In addition, EPA is approving minor editorial changes to OAR Chapter 340, Division 204 Designation of Air Quality Areas, Rule 0010 Definitions to consistently refer to the Eugene-Springfield ''Urban Growth Boundary'' rather than the Eugene-Springfield ''Urban Growth Area.'' EPA is taking no action on OAR Chapter 340, Division 200 General Air Pollution Procedures and Definitions, Rule 0040 State of Oregon Clean Air Act Implementation Plan because this rule describes the State's procedures for adopting its SIP and incorporates by reference all of the revisions adopted by the Environmental Quality Council for approval into the Oregon SIP (as a matter of state law). This is not what is actually approved by EPA as the Federally-enforceable SIP for Oregon, so we are therefore taking no action on it.

EPA is also approving changes to LRAPA Title 29 Designation of Air Quality Areas, Section 29–0030 Designation of Nonattainment Areas and Section 29–0040 Designation of

Maintenance Areas to remove Eugene-Springfield from the list of PM_{10} nonattainment areas and add the area to the list of PM_{10} maintenance areas. In addition, EPA is approving minor editorial changes to LRAPA Title 29, Designation of Air Quality Areas, Section 29–0010 Definitions to refer to the Eugene-Springfield ''Urban Growth Boundary'' rather than the Eugene-Springfield ''Urban Growth Area.''

Finally, EPA is approving changes to LRAPA Title 32 Emission Standards, Section 32–060 Air Conveying Systems and Section 32–065 Sulfur Content of Fuels to ensure the requirements of these rules continue to apply to the Eugene-Springfield area after redesignation.

VII. Final Action

EPA is taking direct final action to approve the LMP submitted by the State of Oregon for the Eugene-Springfield NAA and concurrently redesignate the area to attainment for the PM_{10} NAAQS. EPA has reviewed air quality data for the area and determined that the Eugene-Springfield NAA attained the PM_{10} NAAQS by the required attainment date, and that air monitoring data continue to show attainment. Also in this action, EPA is approving revisions to rules in the State's Federally-approved SIP to reflect the redesignation. EPA is approving this revision to the SIP because it meets the CAA requirements for redesignation.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 10, 2013 without further notice unless the Agency receives adverse comments by May 13, 2013.

If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on June 10, 2013 and no further action will be taken on the proposed rule.

VIII. Oregon Notice Provision

Oregon Revised Statute 468.126 prohibits ODEQ from imposing a penalty for violation of an air, water or solid waste permit unless the source has been provided five days' advanced written notice of the violation and has not come into compliance or submitted a compliance schedule within that five day period. By its terms, the statute does not apply to Oregon's Title V program or to any program if application of the notice provision would disqualify the program from Federal delegation. Oregon has previously confirmed that, because application of the notice provision would preclude EPA approval of the Oregon SIP, no advance notice is required for violation of SIP requirements.

IX. Statutory and Executive Order Reviews

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

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

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

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

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 10, 2013. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects

40 CFR Part 52

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

40 CFR Part 81

Environmental protection, Air pollution control, National parks, Wilderness areas.

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

Dated: September 24, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

Note: This document was received by the Office of the Federal Register on April 5, 2013.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

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

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

Subpart MM—Oregon

■ 2. Section 52.1970 is amended by adding paragraph (c)(155) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(155) On January 13, 2012, the Oregon Department of Environmental Quality submitted the Eugene-Springfield PM_{10} Limited Maintenance Plan and requested redesignation of the Eugene-Springfield nonattainment area to attainment for the PM_{10} National Ambient Air Quality Standards. The State also submitted revisions to rules in the Federally-approved SIP to reflect the requested redesignation. The State's Limited Maintenance Plan, redesignation request, and rule revisions meet the requirements of the Clean Air Act.

(i) Incorporation by reference.

(A) The following revised sections of the Oregon Administrative Rules (OAR) Chapter 340, effective December 21, 2011: Division 204, Designation of Air Quality Areas: Rule 0010 Definitions; Rule 0030 Designation of Nonattainment Areas; and Rule 0040 Designation of Maintenance Areas.

(B) Letter from Merlyn Hough, dated January 8, 2013, certifying that Lane Regional Air Protection Agency (LRAPA) adopted LRAPA provisions from Titles 29 and 32 on September 26, 2011 as described in the LRAPA Board meeting minutes.

(C) Lane Regional Air Protection Agency (LRAPA) Board meeting minutes, dated September 26, 2011.

(D) The following revised sections of the Lane Regional Air Protection Agency (LRAPA) Rules, Title 29 Designation of Air Quality Areas, adopted September 26, 2011: Section 29–0010 Definitions (except paragraphs 1 through 5, and 7 through 14); Section 29–0030 Designation of Nonattainment Areas; and Section 29–0040 Designation of Maintenance Areas.

(E) The following revised sections of the Lane Regional Air Protection Agency (LRAPA) Rules Title 32 Emission Standards, adopted September 26, 2011: Section 32–060 Air Conveying Systems; and Section 32–065 Sulfur Content of Fuels (except paragraphs 1 and 2).

■ 3. Section 52.1973 is amended by adding paragraph (e)(6) to read as follows:

§ 52.1973 Approval of plans.

* * * * *

(e) * * *

(6) EPA approves as a revision to the Oregon State Implementation Plan, the Eugene-Springfield PM_{10} Limited Maintenance Plan adopted by the Oregon Environmental Quality Commission on December 15, 2011 and submitted to EPA on January 13, 2012.

* * * * *

PART 81—DESIGNATION OF AREAS FOR AIR QUALITY PLANNING PURPOSES

■ 4. The authority citation for part 81 continues to read as follows:

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

■ 5. In § 81.338, the table entitled ''Oregon-PM–10'' is amended by revising the entry for ''Eugene/Springfield (the Urban Growth Boundary area)'' to read as follows:

§ 81.338 Oregon.

* * * * *

OREGON—PM–10

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * *	*	*	*	*
Eugene/Springfield (the Urban Growth Boundary area).	6/10/13	Attainment	.....	
* * *	*	*	*	*

* * * * *

[FR Doc. 2013–08394 Filed 4–10–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 2, 20, 22, 24, 27, and 90

[WT Docket No. 10–4; FCC 13–21]

Signal Booster Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) amends its rules concerning signal boosters for consumer and industrial use in effort to enhance wireless coverage for consumers, particularly in rural, underserved, and difficult-to-serve areas by broadening the availability of signal boosters while ensuring that boosters do not adversely affect wireless networks.

DATES: Effective May 13, 2013, except for amendments to §§ 1.1307(b)(1), 20.3, 20.21(a)(2), 20.21(a)(5), 20.21(e)(2), 20.21(e)(8)(i)(G), 20.21(e)(9)(i)(H), 20.21(f), 20.21(h), 22.9, 24.9, 27.9, 90.203(q), 90.219(b)(1)(i), 90.219(d)(5), and 90.219(e)(5), which contain information collection requirements that are not effective until approved by the Office of Management and Budget (''OMB''). The FCC will publish a document in the **Federal Register** announcing the effective date for those sections.

FOR FURTHER INFORMATION CONTACT: Joyce Jones, Mobility Division, Wireless Telecommunications Bureau, (202) 418–1327, TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Report and Order* (*R&O*), in WT Docket No. 10–4, FCC 13–21, adopted February 20, 2013, and released February 20, 2013. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street SW., Room CY–A257, Washington, DC 20554, or by downloading the text from the Commission's Web site at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0220/FCC-13-21A1.pdf.* The complete text also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street SW., Suite CY–B402, Washington, DC 20554. Alternative formats are available for people with disabilities (Braille, large print, electronic files, audio format), by sending an email to *FCC504@fcc.gov* or calling the Consumer and Government Affairs Bureau at (202) 418–0530 (voice), (202) 418–0432 (TTY).

1. In the *R&O,* the Commission adopts new technical, operational, and registration requirements for signal boosters. The new rules create two classes of signal boosters—Consumer and Industrial—with distinct regulatory requirements outlined below.

2. *Consumer Signal Boosters* are designed to be used ''out of the box'' by individuals to improve their wireless coverage within a limited area such as a home, car, boat, or recreational vehicle. Consumer Signal Boosters will be authorized under provider licenses subject to certain requirements. Specifically, subscribers must obtain some form of licensee consent to operate the booster; register the booster with their provider; use a booster that meets the Network Protection Standard and is FCC certificated; and operate the booster on a secondary, non-interference basis and shut it down if it causes harmful interference. Consumers may continue to use existing signal boosters provided they (1) have the consent of their provider, and (2) register the booster with that provider. The Commission will conduct consumer outreach to educate consumers, public safety entities, small businesses, and others about our new regulatory framework

3. *Industrial Signal Boosters* include a wide variety of devices that are designed for installation by licensees or qualified installers. These devices are typically designed to serve multiple users simultaneously and cover larger areas such as stadiums, airports, office buildings, hospitals, tunnels, and educational campuses. Industrial Signal Boosters require an FCC license or express licensee consent to operate, and must be appropriately labeled. The *R&O* also revises technical and operational requirements for duly licensed part 90 Private Land Mobile Radio (PLMR), non-consumer signal boosters.

4. We establish a two-step transition process for equipment certification for both Consumer and Industrial Signal Boosters sold and marketed in the United States. First, on the release date of this *R&O,* we will no longer accept applications for equipment certification of Consumer or Industrial Signal Boosters that do not comply with our new rules and will cease certification of devices that do not comply with our new rules. Second, on or after March 1, 2014, all Consumer and Industrial Signal Boosters sold and marketed in the United States must meet our new requirements.

I. Procedural Matters

A. Paperwork Reduction Act Analysis

5. This document contains modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It has been submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collection requirements contained in this proceeding. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), it previously sought specific comment on how it might further reduce the information collection burden for small business concerns with fewer than 25 employees.

6. In the present document, the Commission assessed the effects of the policies adopted in this *R&O* with regard to information collection burdens on small business concerns, and find that these policies will benefit many companies with fewer than 25 employees because the rules we adopt should provide small entities with access to the coverage enhancing benefits of signal boosters that do not harm wireless networks. In addition, we describe below impacts that might affect small businesses, which includes most businesses with fewer than 25 employees.

B. Report to Congress

7. The Commission will send a copy of this *R&O* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

C. Final Regulatory Flexibility Analysis

8. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was incorporated in the *Notice of Proposed Rule Making* (*NPRM*) in WT Docket 10–4, at 76 FR 26983, May 10, 2011. The Commission sought written public comment on the proposals in the *NPRM,* including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

Need for, and Objectives of, the Report and Order:

9. In the *R&O* the Commission adopts rules and policies that will enhance wireless coverage for consumers, particularly in rural and underserved areas, by broadening the availability of signal boosters while ensuring that boosters do not adversely affect wireless networks. Mobile voice and mobile broadband services are increasingly important to consumers and to our nation's economy. While nearly the entire U.S. population is served by one or more wireless providers, coverage gaps that exist within and at the edge of service areas can lead to dropped calls, reduced data speeds, or complete loss of service. Robust signal boosters can bridge these gaps and extend coverage at the fringe of service areas. Signal boosters are particularly useful in rural and difficult-to-serve indoor environments, such as hospitals. Signal boosters can also improve public safety communications by enabling the public to connect to 911 in areas where wireless coverage is deficient or where an adequate communications signal is blocked or shielded. In short, because signal boosters represent a cost-effective means of improving our nation's wireless infrastructure, the rules the Commission adopts today should lead to more robust service for many Americans at home, at work, and on the road.

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

10. There were no comments that specifically addressed the IRFA. Nonetheless, we have considered the potential impact of the rules adopted herein on small entities, and conclude that such impact would be minimal, in terms of measurable economic costs associated with compliance with the rules.

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

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

12. *Small Businesses, Small Organizations, and Small Governmental Jurisdictions.* As of 2009, small businesses represented 99.9% of the 27.5 million businesses in the United States, according to the SBA. *See SBA, Office of Advocacy, ''Frequently Asked Questions,''* available at *http://web.sba.gov/faqs/faqindex.cfm?areaid=24* (last visited Dec. 11, 2012). Additionally, a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' *See* 5 U.S.C. 601(4). Nationwide, as of 2007, there were approximately 1,621,315 small organizations. *See* the *Independent Sector, The New Nonprofit Almanac & Desk Reference (2010).* Finally, the term ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' *See* 5 U.S.C. 601(5). Census Bureau data for 2007 indicate that there were 89,527 governmental jurisdictions in the United States. *See U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES: 2011, Table 427 (2007).* We estimate that, of this total, as many as 88,761 entities may qualify as ''small governmental jurisdictions.'' [1] Thus, we estimate that most governmental jurisdictions are small.

13. *Wireless Telecommunications Carriers (except satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular phone services, paging services, wireless Internet access, and wireless video services. *See http://www.census.gov/cgi-bin/sssd/naics/naicsrch?code=517210&search=2007%20NAICS%20Search.* The appropriate size standard under SBA rules is for the category Wired Telecommunications Carriers. Under that size standard, such a business is small if it has 1,500 or fewer employees. *See 13 CFR 121.201, NAICS code 517110.* Census Bureau data for 2007, which now supersede data from the 2002 Census, show that there were 3,188 firms in this category that operated for the entire year. Of this total, 3,144 had employment of 999 or fewer, and 44 firms had employment of 1,000 employees or more. Thus under this category and the associated small business size standard, the Commission estimates that the majority of wireless telecommunications carriers (except satellite) are small entities that may be affected by our actions. *See http://factfinder.census.gov/servlet/IBQTable?_bm=y&-fds_name=EC0700A1&-geo_id=&-_skip=600&-ds_name=EC0751SSSZ5&-_lang=en.*

14. *Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* The Census Bureau defines this category as follows: ''This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment.'' *See U.S. Census Bureau, 2007 NAICS Definitions, ''334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing''; http://www.census.gov/naics/2007/def/ND334220.HTM#N334220.* The SBA has developed a small business size standard for firms in this category, which is: all such firms having 750 or fewer employees. *See 13 CFR 121.201, NAICS code 334220.* According to Census Bureau data for 2010, there were a total of 810 establishments in this category that operated for the entire year.[2] Of this total, 787 had employment of fewer than 500, and an additional 23 had employment of 500 to 999.[3] Thus, under this size standard, the majority of firms can be considered small.

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

15. Wireless providers must create and maintain a registration mechanism to allow Consumer Signal Booster operators to register their devices. In addition, on March 1, 2015 and March 1, 2016, the nationwide wireless providers must make public certain information regarding their consent for their subscribers to use Consumer Signal Boosters. Specifically, these wireless providers must publicly indicate their status regarding consent for each Consumer Signal Booster which has received FCC certification.

16. Consumer Signal Boosters must meet the Network Protection Standard with the following requirements: (1) Comply with existing technical parameters (*e.g.,* power and unwanted emissions) for the applicable spectrum band; (2) automatically self-monitor certain operations and shut down if not in compliance with our new technical rules; (3) automatically detect and mitigate oscillations in the uplink and downlink bands; (4) power down or shut down automatically when a device is not needed, such as when the device approaches the base station with which it is communicating; (5) be designed so that these features cannot be easily

[1] The 2007 U.S Census data for small governmental organizations are not presented based on the size of the population in each such organization. There were 89,476 local governmental organizations in 2007. If we assume that county, municipal, township, and school district organizations are more likely than larger governmental organizations to have populations of 50,000 or less, the total of these organizations is 52,095. If we make the same population assumption about special districts, specifically that they are likely to have a population of 50,000 or less, and also assume that special districts are different from county, municipal, township, and school districts, in 2007 there were 37,381 such special districts. Therefore, there are a total of 89,476 local government organizations. As a basis of estimating how many of these 89,476 local government organizations were small, in 2011, we note that there were a total of 715 cities and towns (incorporated places and minor civil divisions) with populations over 50,000. CITY AND TOWNS TOTALS: VINTAGE 2011—U.S. Census Bureau, *available at http://www.census.gov/popest/data/cities/totals/2011/index.html.* If we subtract the 715 cities and towns that meet or exceed the 50,000 population threshold, we conclude that approximately 88,761 are small. U.S. CENSUS BUREAU, STATISTICAL ABSTRACT OF THE UNITED STATES 2011, Tables 427, 426 (Data cited therein are from 2007).

[2] U.S. Census Bureau, American FactFinder, 2010 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released June 26, 2012); *http://factfinder.census.gov.* The number of ''establishments'' is a less helpful indicator of small business prevalence in this context than would be the number of ''firms'' or ''companies,'' because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses.

[3] *Id.* Eighteen establishments had employment of 1,000 or more.

defeated; and (6) incorporate interference avoidance for wireless subsystems. In addition, Consumer Signal Boosters must comply with current RF exposure requirements. Consumers may continue to use existing signal boosters provided they (1) have the consent of their serving provider; and (2) register the booster with that provider.

17. The new rules also clarify that Industrial Signal Boosters require an FCC license or licensee consent to operate, must be appropriately labeled, and must comply with our current RF exposure requirements. Regarding part 90 Private Land Mobile Radio (PLMR), non-consumer signal boosters operated by licensees, the Commission revised its technical and operational requirements aimed at preventing interference. In addition, Part 90 Class B signal booster operators much register their devices with the Commission.

18. The Commission established a two-step transition process for equipment certification: (1) On the release date of this *R&O,* the Commission will no longer accept applications for equipment certification of Consumer or Industrial Signal Boosters that do not comply with our new rules and will cease certification of devices that do not comply with our new rules; and (2) as of March 1, 2014, all Consumer and Industrial Signal Boosters sold and marketed in the United States must meet the new requirements.

Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered:

19. The RFA requires an agency to describe the steps it has taken to minimize the significant economic impact on small entities consistent with the stated objectives of applicable statutes, including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

20. With the exception of the Consumer Signal Booster consent reporting requirement, the projected reporting, recordkeeping, and other compliance requirements resulting from the *R&O* will apply to all entities in the same manner. The Commission believes that applying the same rules equally to all entities in this context promotes fairness. The Commission does not believe that the costs and/or administrative burdens associated with the rules will unduly burden small entities. The revisions the Commission adopts should benefit small entities by giving them more information for resolving instances of interference should it occur. Thus, for example, a small business experiencing interference in part 90 frequencies, which it suspects may be the result of a signal booster, may access the Commission's part 90 Class B signal booster registration tool and research any nearby Class B operators in an effort to stop the interference.

21. Regarding the reporting of wireless providers' consent to Consumer Signal Booster, this requirement only applies to nationwide wireless providers. The Commission concluded that it was appropriate to monitor provider behavior with respect to signal boosters. Specifically, in the event the Commission observes that providers are refusing to give timely and reasonable consideration to signal booster consent requests, it could take appropriate action including measures such as vigorous investigation or revisiting the authorization mechanism for Consumer Signal Boosters. The Commission determined, however, that it would be able to obtain sufficient information in this regard while limiting the requirement to nationwide wireless providers. Thus, the Commission was able to minimize the impact of this requirement on small entities.

F. Report to Congress

22. The Commission will send a copy of the *R&O* in WT Docket No. 10–4, including the Final Regulatory Flexibility Analysis, in a report to be sent to Congress and the Congressional Budget Office pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the *R&O* in WT Docket No. 10–4, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the SBA. A copy of the *R&O* in WT Docket No. 10–4 and the Final Regulatory Flexibility Analysis (or summaries thereof) will also be published in the **Federal Register**.

List of Subjects

47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Telecommunications.

47 CFR Part 2

Frequency allocations and radio treaty matters.

47 CFR Part 20

Commercial mobile radio service.

47 CFR Part 22

Public mobile services.

47 CFR Part 24

Personal communications services.

47 CFR Part 27

Miscellaneous wireless communications services.

47 CFR Part 90

Private land mobile radio services.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 1, 2, 20, 22, 24, 27, and 90 as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 15 U.S.C. 79 et seq.; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 227, 303(r), and 309, the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, and 47 U.S.C. 1473.

■ 2. Section 1.1307 is amended by adding a new entry to Table 1 below the existing row for Experimental Radio Services and above the existing row for Paging and Radiotelephone Service, and by revising the first sentence in (b)(2) to read as follows:

§ 1.1307 Actions that may have a significant environmental effect, for which Environmental Assessments (EAs) must be prepared.

* * * * *

(b) * * *

(1) * * *

TABLE 1—TRANSMITTERS, FACILITIES AND OPERATIONS SUBJECT TO ROUTINE ENVIRONMENTAL EVALUATION

Service (title 47 CFR rule part)	Evaluation required if:
* *	* * * * *
Commercial Mobile Radio Services (part 20)	Non-building-mounted antennas: height above ground level to lowest point of antenna < 10 m and power > 1000 W ERP (1640 W EIRP). Building-mounted antennas: power > 1000 W ERP (1640 W EIRP). The Commercial Mobile Radio Services provisions in part 20 shall apply only if a label is affixed to the transmitting antenna that: (1) provides adequate notice regarding potential radiofrequency safety hazards, *e.g.,* information regarding the safe minimum separation distance required between users and transmitting antennas; and (2) references the applicable FCC-adopted limits for radiofrequency exposure specified in § 1.1310.
* *	* * * * *

(2) Mobile and portable transmitting devices that operate in the Commercial Mobile Radio Services pursuant to part 20 of this chapter; the Cellular Radiotelephone Service pursuant to part 22 of this chapter; the Personal Communications Services pursuant to part 24 of this chapter; the Satellite Communications Services pursuant to part 25 of this chapter; the Miscellaneous Wireless Communications Services pursuant to part 27 of this chapter; the Maritime Services (ship earth station devices only) pursuant to part 80 of this chapter; and the Specialized Mobile Radio Service, and the 3650 MHz Wireless Broadband Service pursuant to part 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use, as specified in §§ 2.1091 and 2.1093 of this chapter. * * *

* * * * *

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

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

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

■ 4. Section 2.1091 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 2.1091 Radiofrequency radiation exposure evaluation: mobile devices.

* * * * *

(c) Mobile devices that operate in the Cellular Radiotelephone Service pursuant to part 22 of this chapter; the Personal Communications Services pursuant to part 24 of this chapter; the Satellite Communications Services pursuant to part 25 of this chapter; the Miscellaneous Wireless Communications Services pursuant to part 27 of this chapter; the Maritime Services (ship earth station devices only) pursuant to part 80 of this chapter; and the Specialized Mobile Radio Service, and the 3650 MHz Wireless Broadband Service pursuant to part 90 of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use if they operate at frequencies of 1.5 GHz or below and their effective radiated power (ERP) is 1.5 watts or more, or if they operate at frequencies above 1.5 GHz and their ERP is 3 watts or more. * * *

* * * * *

■ 5. Section 2.1093 is amended by revising the first sentence in paragraph (c) to read as follows:

§ 2.1093 Radiofrequency radiation exposure evaluation: portable devices.

* * * * *

(c) Portable devices that operate in the Cellular Radiotelephone Service pursuant to part 22 of this chapter; the Personal Communications Services pursuant to part 24 of this chapter; the Satellite Communications Services pursuant to part 25 of this chapter; the Miscellaneous Wireless Communications Services pursuant to part 27 of this chapter; the Maritime Services (ship earth station devices only) pursuant to part 80 of this chapter; and the Specialized Mobile Radio Service, the 4.9 GHz Band Service, and the 3650 MHz Wireless Broadband Service pursuant to part 90 of this chapter; the Wireless Medical Telemetry Service (WMTS) and the Medical Device Radiocommunication Service (MedRadio), pursuant to subparts H and I of part 95 of this chapter, respectively; and unlicensed personal communication service, unlicensed NII devices and millimeter wave devices authorized under 15.253(f), 15.255(g), 15.257(g), 15.319(i), and 15.407(f) of this chapter are subject to routine environmental evaluation for RF exposure prior to equipment authorization or use. * * *

* * * * *

PART 20—COMMERCIAL MOBILE RADIO SERVICES

■ 6. The authority citation for part 20 is revised to read as follows:

Authority: 47 U.S.C. 154, 160, 201, 251–254, 301–303 and 332 unless otherwise noted.

■ 7. Add § 20.2 to read as follows:

§ 20.2 Other applicable rule parts.

Other FCC rule parts applicable to licensees in the commercial mobile radio services include the following:

(a) *Part 1.* This part includes rules of practice and procedure for license applications, adjudicatory proceedings, procedures for reconsideration and review of the Commission's actions; provisions concerning violation notices and forfeiture proceedings; competitive bidding procedures; and the environmental requirements that, together with the procedures specified in § 17.4(c) of this chapter, if applicable, must be complied with prior to the initiation of construction. Subpart F includes the rules for the Wireless Telecommunications Services and the procedures for filing electronically via the ULS.

(b) *Part 2.* This part contains the Table of Frequency Allocations and special requirements in international regulations, recommendations, agreements, and treaties. This part also contains standards and procedures concerning the marketing and importation of radio frequency devices, and for obtaining equipment authorization.

■ 8. Section 20.3 is amended by adding definitions ''Consumer Signal Booster'', ''Fixed Consumer Signal Booster'', ''Industrial Signal Booster'', ''Mobile

Consumer Signal Booster'', ''Non-individual'', ''Provider-Specific Consumer Signal Boosters'', ''Signal booster'', ''Signal booster operator'', and ''Wideband Consumer Signal Boosters'' in alphabetical order to read as follows:

§ 20.3 Definitions.

* * * * *

Consumer Signal Booster: A bi-directional signal booster that is marketed and sold to the general public for use without modification.

* * * * *

Fixed Consumer Signal Booster. A Consumer Signal Booster designed to be operated in a fixed location in a building.

* * * * *

Industrial Signal Booster: All signal boosters other than Consumer Signal Boosters.

* * * * *

Mobile Consumer Signal Booster. A Consumer Signal Booster designed to operate in a moving vehicle where both uplink and downlink transmitting antennas are at least 20 cm from the user or any other person.

* * * * *

Non-individual. A non-individual is a partnership and each partner is eighteen years of age or older; a corporation; an association; a state, territorial, or local government unit; or a legal entity.

* * * * *

Provider-Specific Consumer Signal Boosters. Provider-Specific Consumer Signal Boosters may only operate on the frequencies and in the market areas of the specified licensee(s). Provider-Specific Consumer Signal Boosters may only be certificated and operated with the consent of the licensee(s) whose frequencies are being amplified by the device.

* * * * *

Signal booster. A device that automatically receives, amplifies, and retransmits on a bi- or unidirectional basis, the signals received from base, fixed, mobile, or portable stations, with no change in frequency or authorized bandwidth.

* * * * *

Signal booster operator. The signal booster operator is the person or persons with control over the functioning of the signal booster, or the person or persons with the ability to deactivate it in the event of technical malfunctioning or harmful interference to a primary radio service.

* * * * *

Wideband Consumer Signal Boosters. Wideband Consumer Signal Boosters may operate on the frequencies and in the market areas of multiple licensees.

■ 9. Add § 20.21 to read as follows:

§ 20.21 Signal boosters.

(a) *Operation of Consumer Signal Boosters.* A subscriber in good standing of a commercial mobile radio service system may operate a Consumer Signal Booster for personal use under the authorization held by the licensee providing service to the subscriber provided that the subscriber complies with paragraphs (a)(1) through (6). Failure to comply with all applicable rules in this section and all applicable technical rules for the frequency band(s) of operation voids the authority to operate the Consumer Signal Booster.

(1) Prior to operation, the subscriber obtains the consent of the licensee providing service to the subscriber;

(2) Prior to operation, the subscriber registers the Consumer Signal Booster with the licensee providing service to the subscriber;

(3) The subscriber only operates the Consumer Signal Booster with approved antennas, cables, and/or coupling devices as specified by the manufacturer of the Consumer Signal Booster;

(4) The subscriber operates the Consumer Signal Booster on frequencies used for the provision of subscriber-based services under parts 22 (Cellular), 24 (Broadband PCS), 27 (AWS–1, 700 MHz Lower A–E Blocks, and 700 MHz Upper C Block), and 90 (Specialized Mobile Radio) of this chapter. Operation on part 90 (Specialized Mobile Radio) frequencies is permitted upon the Commission's release of a public notice announcing the date Consumer Signal Boosters may be used in the band;

(5) The Consumer Signal Booster complies with paragraphs (e), (f), (g), and (h) of this section and § 2.907 of this chapter; and

(6) The subscriber may not deactivate any features of the Consumer Signal Booster which are designed to prevent harmful interference to wireless networks. These features must be enabled and operating at all times the signal booster is in use.

(b) *De minimis operation of Consumer Signal Boosters.* A third party's incidental use of a subscriber's Consumer Signal Booster operated under this paragraph is *de minimis* and shall be authorized under the authorization held by the licensee providing service to the third party.

(c) *Operation of Industrial Signal Boosters.* An individual or non-individual, other than a representative of a foreign government, may operate an Industrial Signal Booster provided that the individual or non-individual:

(1) Has an FCC license or obtains the express consent of the licensee(s) whose frequencies are being retransmitted by the device on a regular basis, and

(2) Uses an Industrial Signal Booster which complies with paragraph (f) of this section.

(d) *Operation on a secondary, non-interference basis.* Operation of signal boosters under this section is on a secondary, non-interference basis to primary services licensed for the frequency bands on which they transmit, and to primary services licensed for the adjacent frequency bands that might be affected by their transmissions.

(1) The operation of signal boosters must not cause harmful interference to the communications of any primary licensed service.

(2) Upon request of an FCC representative or a licensee experiencing harmful interference, a signal booster operator must:

(i) Cooperate in determining the source of the interference, and

(ii) If necessary, deactivate the signal booster immediately, or as soon as practicable, if immediate deactivation is not possible.

(e) *Consumer Signal Booster Network Protection Standard.* (1) All Consumer Signal Boosters must incorporate features to prevent harmful interference to wireless networks including but not limited to those enumerated in this section.

(2) *Certification requirements.* (i) A Consumer Signal Booster can only be certificated and operated if it complies with all applicable rules in this subpart and all applicable technical rules for the frequency band(s) of operation including, but not limited to: § 22.355 of this chapter, Public Mobile Services, frequency tolerance; § 22.913 of this chapter, Cellular Radiotelephone Service effective radiated power limits; § 22.917 of this chapter, Cellular Radiotelephone Service, emission limitations for cellular equipment; § 24.232 of this chapter, Broadband Personal Communications Service, power and antenna height limits; § 24.238 of this chapter, Broadband Personal Communications Service, emission limitations for Broadband PCS equipment; § 27.50 of this chapter, Miscellaneous Wireless Communications Services, power and antenna height limits; § 27.53 of this chapter, Miscellaneous Wireless Communications Services, emission limits; § 90.205 of this chapter, Private Land Mobile Radio Services, power and antenna height limits; § 90.210 of this chapter, Private Land Mobile Radio Services, emission masks; and § 90.247 of this chapter, Private Land Mobile Radio Services, mobile repeater stations.

(ii) In case of any conflict between the rules set forth in this section and the rules set forth in parts 22, 24, 27, and 90 of title 47, chapter I of the Code of Federal Regulations, the rules in this section shall govern.

(iii) The application for certification must satisfy the Commission that the Consumer Signal Boosters' features designed to prevent harmful interference and protect wireless networks cannot be easily defeated and must be enabled at all times.

(3) *Frequency Bands.* Consumer Signal Boosters must be designed and manufactured such that they only operate on the frequencies used for the provision of subscriber-based services under parts 22 (Cellular), 24 (Broadband PCS), 27 (AWS–1, 700 MHz Lower A–E Blocks, and 700 MHz Upper C Block), and 90 (Specialized Mobile Radio) of this chapter. The Commission will not certificate any Consumer Signal Boosters for operation on part 90 of this chapter (Specialized Mobile Radio) frequencies until the Commission releases a public notice announcing the date Consumer Signal Boosters may be used in the band.

(4) *Self-monitoring.* Consumer Signal Boosters must automatically self-monitor their operation to ensure compliance with applicable noise and gain limits and either self-correct or shut down automatically if their operation exceeds those parameters.

(5) *Anti-oscillation.* Consumer Signal Boosters must be able to detect and mitigate any unintended oscillations in uplink and downlink bands (such as may result from insufficient isolation between the antennas).

(6) *Power Down.* Consumer Signal Boosters must automatically power down or cease amplification as they approach any affected base station.

(7) *Interference Avoidance for Wireless Subsystems.* Consumer Signal Boosters using unlicensed (part 15 of this chapter) or other frequency bands for wireless transmissions between donor and server subsystems for their internal operations must employ interference avoidance methods to prevent interference transmitted into authorized CMRS spectrum bands.

(8) *Wideband Consumer Signal Boosters.* A Wideband Consumer Signal Booster will meet the Consumer Signal Booster Network Protection Standard if it complies with paragraphs (e)(1) through (e)(7) of this section and the following:

(i) *Technical Requirements*—(A) *Noise Limits.* (*1*) The transmitted noise power in dBm/MHz of consumer boosters at their uplink and downlink ports shall not exceed −103 dBm/MHz—RSSI.

Where RSSI (received signal strength indication) is the downlink composite received signal power in dBm at the booster donor port for all base stations in the band of operation. RSSI is expressed in negative dB units relative to 1 mW.

(*2*) The transmitted maximum noise power in dBm/MHz of consumer boosters at their uplink and downlink ports shall not exceed the following limits:

(*i*) Fixed booster maximum noise power shall not exceed −102.5 dBm/MHz + 20 Log_{10} (Frequency), where Frequency is the uplink mid-band frequency of the supported spectrum bands in MHz.

(*ii*) Mobile booster maximum noise power shall not exceed −59 dBm/MHz.

(*iii*) Compliance with Noise limits will use instrumentation calibrated in terms of RMS equivalent voltage, and with booster input ports terminated or without input signals applied within the band of measurement.

(B) *Bidirectional Capability.* Consumer Boosters must be able to provide equivalent uplink and downlink gain and conducted uplink power output that is at least 0.05 watts. One-way consumer boosters (*i.e.,* uplink only, downlink only, uplink impaired, downlink impaired) are prohibited. Spectrum block filtering may be used provided the uplink filter attenuation is not less than the downlink filter attenuation, and where RSSI is measured after spectrum block filtering is applied referenced to the booster's input port for each band of operation.

(C) *Booster Gain Limits.* (*1*) The uplink gain in dB of a consumer booster referenced to its input and output ports shall not exceed −34 dB—RSSI + MSCL.

(*i*) Where RSSI is the downlink composite received signal power in dBm at the booster donor port for all base stations in the band of operation. RSSI is expressed in negative dB units relative to 1 mW.

(*ii*) Where MSCL (Mobile Station Coupling Loss) is the minimum coupling loss in dB between the wireless device and input port of the consumer booster. MSCL must be calculated or measured for each band of operation and provided in compliance test reports.

(*2*) The uplink and downlink maximum gain of a Consumer Booster referenced to its input and output ports shall not exceed the following limits:

(*i*) Fixed Booster maximum gain shall not exceed 6.5 dB + 20 Log_{10} (Frequency)

(*ii*) Where, Frequency is the uplink mid-band frequency of the supported spectrum bands in MHz.

(*iii*) Mobile Booster maximum gain shall not exceed 50 dB when using an inside antenna (*e.g.,* inside a vehicle), 23 dB when using direct contact coupling (*e.g.,* cradle-type boosters), or 15 dB when directly connected (*e.g.,* boosters with a physical connection to the phone).

(D) *Power Limits.* A booster's uplink power must not exceed 1 watt composite conducted power and equivalent isotropic radiated power (EIRP) for each band of operation. Composite downlink power shall not exceed 0.05 watt (17 dBm) conducted and EIRP for each band of operation. Compliance with power limits will use instrumentation calibrated in terms of RMS equivalent voltage.

(E) *Out of Band Emission Limits.* Booster out of band emissions (OOBE) shall be at least 6 dB below the FCC's mobile emission limits for the supported bands of operation. Compliance to OOBE limits will utilize high peak-to-average CMRS signal types.

(F) *Intermodulation Limits.* The transmitted intermodulation products of a consumer booster at its uplink and downlink ports shall not exceed the power level of −19 dBm for the supported bands of operation. Compliance with intermodulation limits will use boosters operating at maximum gain and maximum rated output power, with two continuous wave (CW) input signals spaced 600 kHz apart and centered in the pass band of the booster, and with a 3 kHz measurement bandwidth.

(G) *Booster Antenna Kitting.* All consumer boosters must be sold with user manuals specifying all antennas and cables that meet the requirements of this section. All consumer boosters must be sold together with antennas, cables, and/or coupling devices that meet the requirements of this section. The grantee is required to submit a technical document with the application for FCC equipment authorization that shows compliance of all antennas, cables and/or coupling devices with the requirements of this section, including any antenna or equipment upgrade options that may be available at initial purchase or as a subsequent upgrade.

(H) *Transmit Power Off Mode.* When the consumer booster cannot otherwise meet the noise and gain limits defined herein it must operate in ''Transmit Power OFF Mode.'' In this mode of operation, the uplink and downlink noise power shall not exceed −70 dBm/MHz and uplink gain shall not exceed the lesser of 23 dB or MSCL.

(I) *Uplink Inactivity.* When a consumer booster is not serving an active device connection after 5 minutes the uplink noise power shall not exceed −70 dBm/MHz.

(ii) *Interference Safeguards.* Consumer boosters must include features to prevent harmful interference including, at a minimum, those enumerated in this subsection. These features may not be deactivated by the operator and must be enabled and operating at all times the signal booster is in use.

(A) *Anti-Oscillation.* Consumer boosters must be able to detect and mitigate (*i.e.,* by automatic gain reduction or shut down), any oscillations in uplink and downlink bands. Oscillation detection and mitigation must occur automatically within 0.3 seconds in the uplink band and within 1 second in the downlink band. In cases where oscillation is detected, the booster must continue mitigation for at least one minute before restarting. After five such restarts, the booster must not resume operation until manually reset.

(B) *Gain Control.* Consumer boosters must have automatic limiting control to protect against excessive input signals that would cause output power and emissions in excess of that authorized by the Commission.

(C) *Interference Avoidance for Wireless Subsystems.* Consumer boosters using unlicensed (part 15) or other frequency bands for wireless transmissions between donor and server subsystems for its internal operations must employ interference avoidance methods to prevent interference transmitted into authorized CMRS spectrum bands and must meet applicable limits for radiofrequency exposure.

(9) *Provider-Specific Consumer Signal Boosters.* A Provider-Specific Consumer Signal Booster will meet the Consumer Signal Booster Network Protection Standard if it complies with paragraphs (e)(1) through (e)(7) of this section and the following:

(*i*) *Technical Requirements*—(A) *Noise Limits.* The transmitted noise power in dBm/MHz of frequency selective consumer boosters outside the licensee's spectrum blocks at their uplink and downlink ports shall not exceed the following limits:

(*1*) −103 dBm/MHz − RSSI

(*i*) Where RSSI is the downlink composite signal power received in dBm for frequencies in the band of operation outside the licensee's spectrum block as measured after spectrum block filtering is applied and is referenced to the booster's donor port for each band of operation. RSSI is expressed in negative dB units relative to 1 mW.

(*ii*) Boosters with MSCL less than 40 dB, shall reduce the Noise output in (A) by 40 dB − MSCL, where MSCL is the minimum coupling loss in dB between the wireless device and booster's server port. MSCL must be calculated or measured for each band of operation and provided in compliance test reports.

(*2*)(*i*) Maximum downlink noise power shall not exceed −102.5 dBm/MHz + 20 Log_{10} (Frequency), where Frequency is the uplink mid-band frequency of the supported spectrum bands in MHz.

(*ii*) Compliance with Noise limits will use instrumentation calibrated in terms of RMS equivalent voltage, and with booster input ports terminated or without input signals applied within the band of measurement.

(B) *Bidirectional Capability.* Consumer Boosters must be able to provide equivalent uplink and downlink gain and conducted uplink power output that is at least 0.05 watts. One-way consumer boosters (*i.e.,* uplink only, downlink only, uplink impaired, downlink impaired) are prohibited. Spectrum block filtering used must provide uplink filter attenuation not less than the downlink filter attenuation, and where RSSI is measured after spectrum block filtering is applied referenced to the booster's input port for each band of operation.

(C) *Booster Gain Limits.* The gain of the frequency selective consumer booster shall meet the limits below.

(*1*) The uplink and downlink gain in dB of a frequency selective consumer booster referenced to its input and output ports shall not exceed BSCL − 28 dB − (40 dB − MSCL).

(i) Where BSCL is the coupling loss between the booster's donor port and the base station's input port, and MSCL is the minimum coupling loss in dB between the wireless device and the booster's server port. MSCL must be calculated or measured for each band of operation and provided in compliance test reports.

(*ii*) In order of preference, BSCL is determined as follows: determine path loss between the base station and the booster; such measurement shall be based on measuring the received forward pilot/control channel power at the booster and reading the pilot/control channel transmit power from the base station as defined in the system information messages sent by the base station; estimate BSCL by assuming that the base station is transmitting at a level of +25 dBm per channel (assume a small, lightly loaded cell) and measuring the total received signal power level within the channel in dBm (RPCH) received at the booster input port. BSCL is then calculated as 25− RPCH; or assume that the BSCL is 70 dB without performing any measurement.

(*2*) The uplink and downlink maximum gain of a frequency selective consumer booster referenced to its input and output ports shall not exceed 19.5 dB + 20 Log (Frequency), or 100 dB for systems having automatic gain adjustment based on isolation measurements between booster donor and server antennas.

Where, Frequency is the uplink mid-band frequency of the supported spectrum bands in MHz.

(D) *Power Limits.* A booster's uplink power must not exceed 1 watt composite conducted power and equivalent isotropic radiated power (EIRP) for each band of operation. Downlink power shall not exceed 0.05 watt (17 dBm) composite and 10 dBm per channel conducted and EIRP for each band of operation. Compliance with power limits will use instrumentation calibrated in terms of RMS equivalent voltage.

(E) *Out of Band Gain Limits.* (*1*) A frequency selective booster shall have the following minimum attenuation referenced to the gain in the center of the pass band of the booster:

(*i*) −20 dB at the band edge, where band edge is the end of the licensee's allocated spectrum,

(*ii*) −30 dB at 1 MHz offset from band edge,

(*iii*) −40 dB at 5 MHz offset from band edge.

(*2*) A frequency selective booster having maximum gain greater than 80 dB (referenced to the center of the pass band) shall limit the out of band gain to 60 dB at 0.2 MHz offset from the band edge, and 45 dB at 1 MHz offset from the band edge, where band edge is the end of the licensee's allocated spectrum.

(F) *Out of Band Emission Limits.* Booster out of band emissions (OOBE) shall meet the FCC's mobile emission limits for the supported bands of operation. Compliance to OOBE limits will utilize high peak-to-average CMRS signal types.

(G) *Intermodulation Limits.* The transmitted intermodulation products of a consumer booster at its uplink and downlink ports shall not exceed the power level of −19 dBm for the supported bands of operation. Compliance with intermodulation limits will use boosters operating at maximum gain and maximum rated output power, with two continuous wave (CW) input signals spaced 600 kHz apart and centered in the pass band of the booster,

and with a 3 kHz measurement bandwidth.

(H) *Booster Antenna Kitting.* All consumer boosters must be sold with user manuals specifying all antennas and cables that meet the requirements of this section. Mobile consumer boosters must be sold together with antennas, cables, and/or coupling devices that meet the requirements of this section. The grantee is required to submit a technical document with the application for FCC equipment authorization that shows compliance of all antennas, cables, and/or coupling devices with the requirements of this section, including any antenna or equipment upgrade options that may be available at initial purchase or as a subsequent upgrade.

(I) *Transmit Power Off Mode.* When the consumer booster cannot otherwise meet the noise and gain limits defined herein it must operate in ''Transmit Power OFF Mode.'' In this mode of operation, the uplink and downlink noise power shall not exceed −70 dBm/MHz and uplink gain shall not exceed the lesser of 23 dB or MSCL.

(J) *Uplink Inactivity.* When a consumer booster is not serving an active device connection after 5 seconds the uplink noise power shall not exceed −70 dBm/MHz.

(ii) *Interference Safeguards.* Consumer boosters must include features to prevent harmful interference including, at a minimum, those enumerated in this subsection. These features may not be deactivated by the operator and must be enabled and operating at all times the signal booster is in use.

(A) *Anti-Oscillation.* Consumer boosters must be able to detect and mitigate (*i.e.,* by automatic gain reduction or shut down), any oscillations in uplink and downlink bands. Oscillation detection and mitigation must occur automatically within 0.3 seconds in the uplink band and within 1 second in the downlink band. In cases where oscillation is detected, the booster must continue mitigation for at least one minute before restarting. After five such restarts, the booster must not resume operation until manually reset.

(B) *Gain Control.* Consumer boosters must have automatic limiting control to protect against excessive input signals that would cause output power and emissions in excess of that authorized by the Commission.

(C) *Interference Avoidance for Wireless Subsystems.* Consumer boosters using unlicensed (part 15) or other frequency bands for wireless transmissions between donor and server subsystems for its internal operations must employ interference avoidance methods to prevent interference transmitted into authorized CMRS spectrum bands.

(10) *Equivalent Protections.* Consumer Signal Boosters which do not meet the technical specifications enumerated in paragraphs (e)(1) through (e)(9) of this section may also meet the Network Protection Standard if they provide equivalent protections as determined by the Wireless Telecommunications Bureau.

(f) *Signal booster labeling requirements.* (1) Signal booster manufacturers, distributors, and retailers must ensure that all signal boosters marketed on or after March 1, 2014 include the following advisories:

(1) In on-line, point-of-sale marketing materials,

(2) In any print or on-line owner's manual and installation instructions,

(3) On the outside packaging of the device, and

(4) On a label affixed to the device:

(i) For Consumer Signal Boosters:

This is a CONSUMER device.

BEFORE USE, you MUST REGISTER THIS DEVICE with your wireless provider and have your provider's consent. Most wireless providers consent to the use of signal boosters. Some providers may not consent to the use of this device on their network. If you are unsure, contact your provider.

You MUST operate this device with approved antennas and cables as specified by the manufacturer. Antennas MUST be installed at least 20 cm (8 inches) from any person.

You MUST cease operating this device immediately if requested by the FCC or a licensed wireless service provider.

WARNING. E911 location information may not be provided or may be inaccurate for calls served by using this device.

(ii) For Industrial Signal Boosters:

WARNING. This is NOT a CONSUMER device. It is designed for installation by FCC LICENSEES and QUALIFIED INSTALLERS. You MUST have an FCC LICENSE or express consent of an FCC Licensee to operate this device. Unauthorized use may result in significant forfeiture penalties, including penalties in excess of $100,000 for each continuing violation.

(2) A Consumer Signal Booster label may contain an acknowledgement that particular provider(s) have given their consent for all consumers to use the device. Such an acknowledgement would be inserted prior to, ''Some wireless providers may not consent to the use of this device on their network. If you are unsure, contact your provider.'' The remaining language of the advisory shall remain the same.

(g) *Marketing and sale of signal boosters.* Except as provided in § 2.803 of this chapter, no person, manufacturer, distributor, or retailer may market, distribute or offer for sale or lease any Consumer Signal Booster that does not comply with the requirements of this section to any person in the United States or to any person intending to operate the Consumer Signal Booster within the United States at any time on or after March 1, 2014. Consumer Signal Boosters may only be sold to members of the general public for their personal use.

(h) *Registration.* Each licensee consenting to the operation of a Consumer Signal Booster must establish a free registration mechanism for subscribers and register all Consumer Signal Boosters to which it consents. A licensee must establish a registration mechanism by the later of March 1, 2014 or within 90 days of consenting to the operation of a Consumer Signal Booster. At a minimum, a licensee must collect:

(1) The name of the Consumer Signal Booster owner and/or operator, if different individuals;

(2) The make, model, and serial number of the device;

(3) The location of the device; and

(4) The date of initial operation.

Licensee consent is voluntary and may be withdrawn at the licensee's discretion.

PART 22—PUBLIC MOBILE SERVICES

■ 10. The authority citation for part 22 continues to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

■ 11. Add § 22.9 to read as follows:

§ 22.9 Operation of certificated signal boosters.

Individuals and non-individuals may operate certificated Consumer Signal Boosters on frequencies regulated under this part provided that such operation complies with all applicable rules under this part and § 20.21 of this chapter. Failure to comply with all applicable rules voids the authority to operate a signal booster.

PART 24—PERSONAL COMMUNICATION SERVICES

■ 12. The authority citation for part 24 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 309, and 332.

■ 13. Add § 24.9 to subpart A to read as follows:

§ 24.9 Operation of certificated signal boosters.

Individuals and non-individuals may operate certificated Consumer Signal Boosters on frequencies regulated under this part provided that such operation complies with all applicable rules under this part and § 20.21 of this chapter. Failure to comply with all applicable rules voids the authority to operate a signal booster.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATION SERVICES

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

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

■ 15. Add § 27.9 to subpart A to read as follows:

§ 27.9 Operation of certificated signal boosters.

Individuals and non-individuals may operate certificated Consumer Signal Boosters on frequencies regulated under this part provided that such operation complies with all applicable rules under this part and § 20.21 of this chapter. Failure to comply with all applicable rules voids the authority to operate a signal booster.

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

■ 16. The authority citation for part 90 continues to read as follows:

Authority: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7), and Title VI of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. 112–96, 126 Stat. 156.

■ 17. In § 90.7 add the definition for ''Signal amplifier'' in alphabetical order to read as follows:

§ 90.7 Definitions.

* * * * *

Signal amplifier. A device that amplifies radio frequency signals and is connected to a mobile radio transceiver, portable or handset, typically to the antenna connector. Note that a signal amplifier is not the same thing as a signal booster.

* * * * *

■ 18. Add paragraph (q) to § 90.203 to read as follows:

§ 90.203 Certification required.

* * * * *

(q) Certification requirements for signal boosters are set forth in § 90.219.

■ 19. Revise § 90.219 to read as follows:

§ 90.219 Use of signal boosters.

This section contains technical and operational rules allowing the use of signal boosters in the Private Land Mobile Radio Services (PLMRS). Rules for signal booster operation in the Commercial Mobile Radio Services under part 90 are found in § 20.21 of this chapter.

(a) *Definitions.* The definitions in this paragraph apply only to the rules in this section.

Class A signal booster. A signal booster designed to retransmit signals on one or more specific channels. A signal booster is deemed to be a Class A signal booster if none of its passbands exceed 75 kHz.

Class B signal booster. A signal booster designed to retransmit any signals within a wide frequency band. A signal booster is deemed to be a Class B signal booster if it has a passband that exceeds 75 kHz.

Coverage area of a PLMRS station. All locations within the normal reliable operating range (service contour) of a PLMRS station.

Deploy a signal booster. Install and/or initially adjust a signal booster.

Distributed Antenna System (DAS). A network of spatially separated antenna nodes connected to a common source via a transport medium that provides wireless service within a geographic area or structure.

Operate a signal booster. Maintain operational control over, and responsibility for the proper functioning of, a signal booster.

Signal booster. A device or system that automatically receives, amplifies, and retransmits signals from wireless stations into and out of building interiors, tunnels, shielded outdoor areas and other locations where these signals would otherwise be too weak for reliable communications. Signal booster systems may contain both Class A and Class B signal boosters as components.

(b) *Authority to operate.* PLMRS licensees for stations operating on assigned channels higher than 150 MHz may operate signal boosters, limited to the service band for which they are authorized, as needed anywhere within the PLMRS stations' service contour, but may not extend the stations' service contour.

(1) PLMRS licensees may also consent to operation of signal boosters by non-licensees (such as a building owner or a signal booster installation contractor) within their service contour and across their applicable frequencies, but must maintain a reasonable level of control over these operations in order to resolve interference problems.

(i) Non-licensees seeking to operate signal boosters must obtain the express consent of the licensee(s) of the frequencies for which the device or system is intended to amplify. The consent must be maintained in a recordable format that can be presented to an FCC representative or other relevant licensee investigating interference.

(ii) Consent is not required from third party (unintended) licensees whose signals are incidentally retransmitted. However, signal booster operation is on a non-interference basis and operations may be required to cease or alter the operating parameters due to a request from an FCC representative or a licensee's request to resolve interference.

(2) [Reserved]

(c) *Licensee responsibility; interference.* PLMRS licensees that operate signal boosters are responsible for their proper operation, and are responsible for correcting any harmful interference that signal booster operation may cause to other licensed communications services. Normal co-channel transmissions are not considered to be harmful interference. Licensees are required to resolve interference problems pursuant to § 90.173(b). Licensees shall act in good faith regarding the operation of signal boosters and in the resolution of interference due to signal booster operation. Licensees who are unable to determine the location or cause of signal booster interference may seek assistance from the FCC to resolve such problems.

(d) *Deployment rules.* Deployment of signal boosters must be carried out in accordance with the rules in this paragraph.

(1) Signal boosters may be used to improve coverage in weak signal areas only.

(2) Signal boosters must not be used to extend PLMRS stations' normal operating range.

(3) Signal boosters must be deployed such that the radiated power of the each retransmitted channel, on the forward link and on the reverse link, does not exceed 5 Watts effective radiated power (ERP).

(4) Class B signal boosters may be deployed only at fixed locations; mobile operation of Class B signal boosters is prohibited after November 1, 2014.

(5) Class B signal booster installations must be registered in the FCC signal booster database that can be accessed at the following URL: *www.fcc.gov/signal-boosters/registration*.

(6) Good engineering practice must be used in regard to the radiation of intermodulation products and noise, such that interference to licensed communications systems is avoided. In the event of harmful interference caused by any given deployment, the FCC may require additional attenuation or filtering of the emissions and/or noise from signal boosters or signal booster systems, as necessary to eliminate the interference.

(i) In general, the ERP of intermodulation products should not exceed −30 dBm in 10 kHz measurement bandwidth.

(ii) In general, the ERP of noise within the passband should not exceed −43 dBm in 10 kHz measurement bandwidth.

(iii) In general, the ERP of noise on spectrum more than 1 MHz outside of the passband should not exceed −70 dBm in a 10 kHz measurement bandwidth.

(7) Signal booster passbands are limited to the service band or bands for which the operator is authorized. In general, signal boosters should utilize the minimum passband that is sufficient to accomplish the purpose. Except for distributed antenna systems (DAS) installed in buildings, the passband of a Class B booster should not encompass both commercial services (such as ESMR and Cellular Radiotelephone) and part 90 Land Mobile and Public Safety Services.

(e) *Device Specifications.* In addition to the general rules for equipment certification in § 90.203(a)(2) and part 2, subpart J of this chapter, a signal booster must also meet the rules in this paragraph.

(1) The output power capability of a signal booster must be designed for deployments providing a radiated power not exceeding 5 Watts ERP for each retransmitted channel.

(2) The noise figure of a signal booster must not exceed 9 dB in either direction.

(3) Spurious emissions from a signal booster must not exceed −13 dBm within any 100 kHz measurement bandwidth.

(4) A signal booster must be designed such that all signals that it retransmits meet the following requirements:

(i) The signals are retransmitted on the same channels as received. Minor departures from the exact provider or reference frequencies of the input signals are allowed, *provided that* the retransmitted signals meet the requirements of § 90.213.

(ii) There is no change in the occupied bandwidth of the retransmitted signals.

(iii) The retransmitted signals continue to meet the unwanted emissions limits of § 90.210 applicable to the corresponding received signals (assuming that these received signals meet the applicable unwanted emissions limits by a reasonable margin).

(5) On or after March 1, 2014, a signal booster must be labeled to indicate whether it is a Class A or Class B device, and the label must include the following advisory

(1) In on-line point-of-sale marketing materials,

(2) In any print or on-line owner's manual and installation instructions,

(3) On the outside packaging of the device, and

(4) On a label affixed to the device:

''WARNING. This is NOT a CONSUMER device. It is designed for installation by FCC LICENSEES and QUALIFIED INSTALLERS. You MUST have an FCC LICENSE or express consent of an FCC Licensee to operate this device. You MUST register Class B signal boosters (as defined in 47 CFR 90.219) online at *www.fcc.gov/signal-boosters/registration.* Unauthorized use may result in significant forfeiture penalties, including penalties in excess of $100,000 for each continuing violation.''

[FR Doc. 2013–07396 Filed 4–10–13; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MB Docket No. 13–73; RM–11695; DA 13–450]

Television Broadcasting Services; Jackson, Wyoming to Wilmington, DE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has been notified by PMCM TV, LLC (''PMCM''), the licensee of KJWY(TV), channel 2, Jackson, Wyoming, that it agrees to the reallocation of channel 2 from Jackson, Wyoming to Wilmington, Delaware, this language. While the Commission denied PMCM's Reallocation Request, PMCM appealed the decision to the United States Court of Appeals for the District of Columbia, which subsequently reversed the Commission's denial and remanded the Commission to approve PMCM's Reallocation Request. Therefore, channel 2 is allocated at Wilmington, Delaware as requested, as it complies with the principle community coverage and technical requirements set forth in the Commission's rules.

DATES: This rule is effective April 11, 2013.

FOR FURTHER INFORMATION CONTACT: Adrienne Y. Denysyk, *adrienne.denysyk@fcc.gov,* Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Report and Order,* MB Docket No. 13–73, adopted March 15, 2013, and released March 18, 2013. The full text of this document is available for public inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street SW., Washington, DC 20554. This document will also be available via ECFS (*http://fjallfoss.fcc.gov/ecfs/*). This document may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., 445 12th Street SW., Room CY–B402, Washington, DC 20554, telephone 1–800–478–3160 or via the company's Web site, *http://www.bcpiweb.com.* To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (tty).

This document does not contain information collection requirements subject to the Paperwork Reduction Act of 1995, Public Law 104–13. In addition, therefore, it does not contain any information collection burden ''for small business concerns with fewer than 25 employees,'' pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4). Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

The Commission will send a copy of this *Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional review Act, *see* 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 73

Television.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

Final Rule

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

■ 1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336, and 339.

§ 73.622 [Amended]

■ 2. Section 73.622(i), the Post-Transition Table of DTV Allotments is amended by removing channel 2 at Jackson, Wyoming and adding channel 2 at Wilmington, DE.

[FR Doc. 2013–08408 Filed 4–10–13; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 78, No. 70
Thursday, April 11, 2013

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[Docket No. PRM–73–15; NRC–2011–0251]

Installation of Radiation Alarms for Rooms Housing Neutron Sources

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; denial.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking (PRM), PRM–73–15, dated September 15, 2011, which was filed with the NRC by George Hamawy (the petitioner). The petitioner requested that the NRC amend its regulations to require the installation of radiation alarms for rooms housing neutron sources.

DATES: The docket for the petition for rulemaking, PRM–73–15, is closed on April 11, 2013.

ADDRESSES: Please refer to Docket ID NRC–2011–0251 when contacting the NRC about the availability of information for this petition. You may access information related to this petition, which the NRC possesses and is publicly available, by any of the following methods:

- *Federal Rulemaking Web site:* Go to *http://www.regulations.gov* and search for Docket ID NRC–2011–0251. Address questions about NRC dockets to Carol Gallagher; telephone: 301–492–3668; email: *Carol.Gallagher@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may access publicly-available documents online in the NRC Library at *http://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''*ADAMS Public Documents''* and then select ''*Begin Web-based ADAMS Search.''* For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *pdr.resource@nrc.gov.* The ADAMS accession number for each document referenced in this notice (if that document is available in ADAMS) is provided the first time that a document is referenced. The PRM–73–15 is available in ADAMS under Accession No. ML112700682.
- *NRC's PDR:* You may examine and purchase copies of public documents at the NRC's PDR, Room O1–F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Merri Horn, Office of Federal and State Materials and Environmental Management Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–8126, email: *Merri.Horn@nrc.gov.*

SUPPLEMENTARY INFORMATION:

The Petition

On December 7, 2011, the NRC published a notice of receipt and request for comment (76 FR 76327) of a PRM filed by George Hamawy. The petitioner requested that the NRC amend its regulations to require installation of radiation alarms for rooms housing neutron sources. The petitioner stated that the use of alarms can be effective in preventing source removal, especially when an in-house person may be taken hostage to get the intruder into the room housing the source. The petitioner noted that the construction of the neutron sources used by universities for irradiating foils makes the source an easy target for theft. The petitioner also noted that the source is located at the end of a rod in the middle of a 55-gallon drum and that the drum has a cover that can be easily removed, facilitating the removal of the source. The petitioner stated that radiation alarms should be installed that are connected to the Public Safety Department. The alarm would be triggered when the source is removed.

Public Comments on the Petition

The notice of receipt of the petition for rulemaking invited interested persons to submit comments. The comment period closed on February 21, 2012. The NRC received two comment letters from industry, one comment letter from an individual, and one comment letter from the Organization of Agreement States. The commenters all opposed the petition. Two of the commenters stated that the petition should not apply to the well logging industry. The commenters stated that the petition request was vague in terms of the definition of room, types of radiation alarms, connectivity to law enforcement, the isotopes included, and the threshold for action. Two of the commenters noted that their sources are stored by methods approved by the NRC (or Agreement State) and as prescribed in national standards established by the well logging industry and that additional requirements are not necessary. One of the commenters questioned why anyone would want to steal a neutron source and asked if any neutron sources have ever been stolen. The commenter also stated that natural background may contain more radiation than the neutron sources and, therefore, a radiation detector would not detect the removal of the sources. The commenter also asked if it would be possible to shield the neutron source from the detector while stealing the source. The commenter also stated that there is no reason that any person would respond to the alarm. The commenter stated that the best solution is to put the barrel in a locked room. One of the commenters noted that the typical strength of a neutron source used in a university is less than the category 2 threshold. The commenter also stated that the regulations currently require a licensee to have security measures in place to ''secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas.''

Reasons for Denial

As noted by the commenters on the petition, the petitioner did not provide information relative to the source strength of the neutron sources or the particular radionuclides for which the petitioner is requesting additional security measures be imposed by rulemaking. It is not clear whether the petitioner is requesting rulemaking on all neutron sources or only on the americium-241/beryllium (Am-241/Be or Am/Be) and plutonium-239/beryllium (Pu-239/Be or Pu/Be) sources mentioned in the petition. The NRC is taking the view that the petitioner is requesting rulemaking for all neutron sources regardless of source strength.

There are a number of different sources of neutrons, ranging from radioactive sources to operating and research reactors and spallation sources. Neutron sources are used in diverse applications in areas of physics, engineering, medicine, nuclear weapons, petroleum exploration, biology, chemistry, nuclear power, and other industries.

Radioactive materials used as neutron sources by NRC licensees include Am-241/Be, Pu/Be, and californium-252 (Cf-252). A licensee's decision to use a specific type of source may depend upon cost, availability, and the dependence upon historical data with which to compare current measurement results. The Am-241/Be and Pu/Be sources generate neutrons by the (α,n) reaction in which the americium or plutonium decays and emits an alpha particle, which is absorbed by the beryllium. Neutron sources that are not integrated into a specific device, regardless of type, are generally stored surrounded by paraffin wax or other similar low atomic number material as shielding.

Both Am-241/Be and Pu/Be sources have a wide range of uses. Neutron sources can be used with online elemental coal analyzers and bulk material analyzers in the coal and cement industries. Neutron penetration into materials makes these sources useful in analytical techniques such as radiography of aircraft components to detect corrosion, imperfections in welds, cracks, and trapped moisture. Moisture gauges use neutrons to find water and petroleum layers in oil wells, known as well logging. Neutron sources can be used for gold and silver prospecting for on-the-spot analysis, and to detect ground water movement for environmental surveys. Neutron sources are also used as calibration sources.

Californium-252 sources produce neutrons during spontaneous fission. The Cf-252 splits apart producing a number of neutrons in the process. Beyond the uses mentioned above for Am/Be and Pu/Be sources, the neutrons from Cf-252 are employed as a treatment of certain cervical and brain cancers where other radiation therapy is ineffective. The Cf-252 sources are also used to start up nuclear reactors.

The categorization of sources is established in International Atomic Energy Agency (IAEA) Safety Series RS–G–1.9, Categorization of Radioactive Sources. Safety Series RS–G–1.9 provides a risk-based ranking of radioactive sources in five categories in terms of their potential to cause severe deterministic effects for a range of scenarios that include both external exposure from an unshielded source and internal exposure following dispersal. The categorization system uses ''D values'' as normalizing factors. The ''D value'' is the radionuclide specific activity of a source that, if not under control, could cause severe deterministic effects for a range of scenarios that include both external exposure from an unshielded source and internal exposure following dispersal of the source material. Safety Series RS–G–1.9 is available on the IAEA Web site at: *http://www-pub.iaea.org/MTCD/publications/PDF/Pub1227_web.pdf.*

As previously noted, neutron sources are used for a variety of purposes and in varying source strength. Depending on the source strength (activity), the source is considered a category 1 (higher activity) to a category 5 (lower activity) source. The threshold is established for each individual radionuclide. For Am-241/Be and Pu-239/Be, a category 5 source is any source with an activity of less than 0.0006 Terabequerels (TBq) (0.016 curies (Ci)) and a category 1 source is any source with an activity of 60 TBq (1,620 Ci) or above. For Cf-252, the category 5 threshold is 0.0002 TBq (0.0.0054 Ci) and the category 1 threshold is 20 TBq (540 Ci).

The NRC's regulations in § 20.1801 of Title 10 of the *Code of Federal Regulations* (10 CFR), ''Security of stored material,'' and 10 CFR 20.1802, ''Control of material not in storage,'' require licensees to: (1) Secure, from unauthorized removal or access, licensed materials that are stored in controlled or unrestricted areas; and (2) control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. The NRC's regulations in 10 CFR 20.2201, ''Reports of theft or loss of licensed material,'' require licensees to report lost, stolen, or missing radioactive material. Further, throughout the NRC's regulations for licensing byproduct material, there are educational and training requirements to ensure that individuals with access to radioactive materials have adequate knowledge and skills to safely use the radioactive material as intended. These requirements are adequate for the protection of most radioactive material that is not subject to 10 CFR part 73, ''Physical Protection of Plants and Materials;'' however, after the terrorist attacks of September 11, 2001, the Commission determined that certain risk-significant radioactive material should be subject to enhanced security provisions. The NRC issued several security orders to licensees that possessed category 1 and category 2 quantities of radioactive material of 16 radionuclides or combinations. Included in the list of radionuclides considered to be risk-significant are Am-241/Be, Pu-239/Be, and Cf-252. In general, the orders provided requirements for enhanced security measures for such things as license verification before transfer, intrusion detection and response, use of security zones, access control, and coordination with local law enforcement agencies (LLEAs). The orders also contain requirements for the licensee to determine the trustworthiness and reliability of individuals permitted unescorted access to category 1 or category 2 quantities of radioactive material through fingerprinting and criminal history checks and other elements of a background investigation.

On March 19, 2013, the NRC published the final rule (78 FR 16922) that establishes the security requirements for category 1 and category 2 quantities of radioactive material (including Am-241/Be, Pu-239/Be, and Cf-252) in the regulations. Once the final rule is implemented, the security orders will be rescinded. The final rule establishes a new part to 10 CFR, part 37, ''Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material.'' This final rule also applies to material that if aggregated equals or exceeds the category 2 threshold. Both the orders and 10 CFR part 37 contain general requirements that allow licensees flexibility in how they meet the requirements. For example, 10 CFR part 37 requires licensees to monitor and detect without delay all unauthorized entries into its security zone where category 1 or category 2 quantities of radioactive material are stored. Part 37 of 10 CFR further requires licensees to assess attempted or actual unauthorized entries and respond as appropriate. However, neither the orders nor 10 CFR part 37 specifies exactly how a particular licensee must monitor and detect such unauthorized entries. Instead, the orders and 10 CFR part 37 allow flexibility in the methods a licensee can select. A neutron detection alarm could be an acceptable method.

The NRC is denying the petition because we have determined that current NRC security requirements are adequate to protect public health and safety. The Commission has recently determined the appropriate activity threshold that warrants additional security measures in the 10 CFR part 37 rulemaking (category 2). The Commission did not find a need to change the requirements applicable to

category 3 or lower. The petitioner has not provided sufficient reason to readdress this decision. Additionally, the Radiation Source Protection and Security Task Force, an interagency task force established by the Energy Policy Act of 2005, concluded in its report to Congress and the President, ''Radiation Source Protection and Security Task Force Report'' (ADAMS Accession No. ML062190349), dated August 2006, that the appropriate radioactive sources (category 1 and category 2 sources) were being protected. The Task Force also concluded that the IAEA Code of Conduct serves as an appropriate framework for considering which sources warrant additional protection. For its 2010 report to Congress and the President (ADAMS Accession No. ML102230141), the Task Force conducted a reevaluation of the radionuclides that warrant additional security and protection. The Task Force found ''that the Category 1 and 2 quantities remain valid for sealed and unsealed sources as the list and threshold levels of radionuclides that could result in a significant radiological exposure device (RED) or radiological dispersal device (RDD) event and therefore warrant enhanced security and protection.'' The Task Force periodically reevaluates the list of radionuclides that warrant additional security and protection. If the radionuclides and/or thresholds change in the future, then the NRC would consider making changes in a future rulemaking.

For byproduct material below the category 2 thresholds, the security of radioactive material is covered by 10 CFR 20.1801 and 20.1802. The requirement to ''secure, from unauthorized removal or access'' and to ''control and maintain constant surveillance'' are considered performance-based requirements. Licensees are allowed to select methods that work best for their facility to ensure that there is no unauthorized removal of the category 3 and lower neutron sources. These requirements provide adequate protection for the neutron sources, without the need to require a specific measure.

In conclusion, no new information has been provided by the petitioner that calls into question the established thresholds (category 2) that warrant additional security measures or the performance based approach (non-prescriptive) for ensuring source security. This view has been validated by the Radiation Source Protection and Security Task Force's conclusions. Existing NRC regulations provide the basis for reasonable assurance that the common defense and security and public health and safety are adequately protected. Additional rulemaking would impose unnecessary regulatory burden and is not warranted for the adequate protection of the public health and safety and the common defense and security.

The NRC appreciates the views of the petitioner and encourages feedback from the public on any of the NRC processes.

For the reasons cited in this document, the NRC is denying PRM–73–15.

Dated at Rockville, Maryland, this 5th day of April, 2013.

For the Nuclear Regulatory Commission.

Andrew L. Bates,

Acting Secretary of the Commission.

[FR Doc. 2013–08511 Filed 4–10–13; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0299; Directorate Identifier 2012–NM–072–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all The Boeing Company Model 727 airplanes. This proposed AD was prompted by reports of cracks on the elevator rear spar stiffener assembly. This proposed AD would require repetitive detailed inspections for cracking of the elevator rear spar stiffener assembly, and corrective actions if necessary. We are proposing this AD to detect and correct cracking of the elevator rear spar stiffener assembly, which could adversely affect elevator structural stiffness, that could lead to elevator vibration and possible interference with the tab control rod and which could result in flutter and consequent loss of control of the airplane.

DATES: We must receive comments on this proposed AD by May 28, 2013.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Ave. SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *berhane.alazar@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0299; Directorate Identifier 2012–NM–072–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

We will post all comments we receive, without change, to *http://*

www.regulations.gov, including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

We received reports of cracks on the elevator rear spar stiffener assembly. An operator reported finding a crack on the rear spar stiffener assembly while accomplishing Boeing Service Bulletin 727–55–0089 to address cracking of the elevator rear spar web at the elevator tab hinge fittings. A cracked elevator rear spar stiffener assembly, if not detected and corrected, could adversely affect elevator structural stiffness, which could result in elevator vibration and possible interference with the tab control rod and could lead to flutter and consequent loss of control of the airplane.

Relevant Service Information

We reviewed Boeing Special Attention Service Bulletin 727–55–0094, dated March 21, 2012. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0299.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

The phrase ''related investigative actions'' might be used in this proposed AD. ''Related investigative actions'' are follow-on actions that: (1) Are related to the primary actions, and (2) are actions that further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

In addition, the phrase ''corrective actions'' might be used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Costs of Compliance

We estimate that this proposed AD affects 98 airplanes of U.S. registry. We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection	5 work-hours × $85 per hour = $425 per inspection cycle..	None	$425 per inspection cycle.	$41,650 per inspection cycle

We estimate the following costs to do any necessary replacements that would be required based on the results of the proposed inspection. We have no way of determining the number of aircraft that might need this replacement:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replacement	7 work-hours × $85 per hour = $595	Unknown	$595

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2013–0299; Directorate Identifier 2012–NM–072–AD.

(a) Comments Due Date

We must receive comments by May 28, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes, certificated in any category.

(d) Subject

Joint Aircraft System Component (JASC)/ Air Transport Association (ATA) of America Code 55, Stabilizers.

(e) Unsafe Condition

This AD was prompted by reports of cracks on the elevator rear spar stiffener assembly. We are issuing this AD to detect and correct cracking of the elevator rear spar stiffener assembly, which could adversely affect elevator structural stiffness, that could lead to elevator vibration and possible interference with the tab control rod and which could result in elevator flutter and consequent loss of control of the airplane.

(f) Compliance

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

(g) Repetitive Inspections and Corrective Actions

Except as provided by paragraph (h) of this AD, at the applicable time specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 727–55–0094, dated March 21, 2012, do a detailed inspection for any cracking of the elevator rear spar stiffener assembly, and all applicable corrective actions, in accordance with the Accomplishment Instructions of Boeing Special Attention Service Bulletin 727–55–0094, dated March 21, 2012. Do all applicable corrective actions before further flight. Repeat the inspection thereafter at the applicable time specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Special Attention Service Bulletin 727–55–0094, dated March 21, 2012, except as provided by paragraph (j) of this AD.

(h) Exception

Where Boeing Special Attention Service Bulletin 727–55–0094, dated March 21, 2012, specifies a compliance time ''from the original issue date of this service bulletin,'' this AD requires compliance within the specified compliance time after the effective date of this AD.

(i) Optional Replacement

Replacing the elevator rear spar stiffener assembly with a new assembly in accordance with Part 4 or 5, as applicable, of the Accomplishment Instructions of Boeing Special Attention Service Bulletin 727–55–0094, dated March 21, 2012, terminates the inspections required by paragraph (g) of this AD for that assembly, except as required by paragraph (j) of this AD.

(j) Post-Replacement Inspection Compliance Time

For any elevator rear spar stiffener assembly replaced as required by paragraph (g) of the AD or as specified in paragraph (i) of this AD: Do the next inspection required by paragraph (g) of this AD for that assembly within 96 months after accomplishing the replacement and repeat thereafter at the times specified in paragraph (g) of this AD.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), 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 manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO, to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(l) Related Information

(1) For more information about this AD, contact Berhane Alazar, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: 425–917–6577; fax: 425–917–6590; email: *berhane.alazar@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, WA 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Ave. SW., Renton, WA. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 28, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–08454 Filed 4–10–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0304; Directorate Identifier 2013–NM–005–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–400, –400D, and –400F series airplanes. This proposed AD was prompted by a report of water leakage into the main deck cargo wire integration unit (WIU). The water flowed from the drip shield through disbonded floor seams into the aft main equipment center (MEC) drip shield gutter, then onto the WIU. This proposed AD would require removing the cargo liner support; cleaning the aft MEC drip shield gutter; and doing a one-time general visual inspection for disbonded seams, and repair if necessary. This proposed AD would also require installing a fiberglass reinforcement overcoat to the top surface of the aft MEC drip shield gutters and installing the cargo liner support. We are proposing this AD to prevent water penetration into the MEC, which could result in the loss of flight critical systems.

DATES: We must receive comments on this proposed AD by May 28, 2013.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet

https://www.myboeingfleet.com. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6596; fax (425) 917–6590; email *francis.smith@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0304; Directorate Identifier 2013–NM–005–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received a report indicating that water leakage into the main deck cargo WIU was found. The water flowed from the drip shield through disbonded floor seams into the aft MEC drip shield gutter, then onto the WIU. Liquids can leak through the MEC drip shield due to disbonded aft MEC drip shield gutters, resulting in water intrusion into the WIU of the MEC. Disbonding can occur due to improper preparation of the drip shield/gutter material and aging of materials. This condition, if not corrected, could result in water penetration into the MEC, and loss of flight critical systems.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 747–25A3613, dated June 22, 2012. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0304.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information described previously.

The phrase ''related investigative actions'' might be used in this proposed AD. ''Related investigative actions'' are follow-on actions that: (1) are related to the primary actions, and (2) further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

In addition, the phrase ''corrective actions'' might be used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Costs of Compliance

We estimate that this proposed AD affects 79 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Remove cargo liner support, clean gutter, inspection.	6 work-hours × $85 per hour = $510	$0	$510	$40,290
Install fiberglass reinforcement and cargo liner support.	6 work-hours × $85 per hour = $510	100	610	48,190

We have received no definitive data that would enable us to provide a cost estimate for the on-condition actions specified in this proposed AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by adding the following new airworthiness directive (AD): Docket No. FAA–2013–0304; Directorate Identifier 2013–NM–005–AD.

(a) Comments Due Date

We must receive comments by May 28, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–400, –400D, and –400F series airplanes, certificated in any category, as identified in Boeing Alert Service Bulletin 747–25A3613, dated June 22, 2012.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 25: Equipment/Furnishings.

(e) Unsafe Condition

This AD was prompted by a report indicating that water leakage into the main deck cargo wire integration unit (WIU) was found. The water flowed from the drip shield through disbonded floor seams into the aft main equipment center (MEC) drip shield gutter, then onto the WIU. We are issuing this AD to prevent water penetration into the MEC, which could result in the loss of flight critical systems.

(f) Compliance

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

(g) Removal/Cleaning/Inspection/Repair if Necessary/Installations

Within 24 months after the effective date of this AD: Do the actions specified in paragraphs (g)(1) and (g)(2) of this AD, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 747–25A3613, dated June 22, 2012.

(1) Remove the cargo liner support, clean the aft MEC drip shield gutter, and do a general visual inspection for disbonded seams; repair before further flight if any seam disbonding is found.

(2) Install a fiberglass reinforcement overcoat to the top surface of the aft MEC drip shield gutters, and install a cargo liner support.

(h) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle ACO, 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 manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov.*

(2) 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(i) Related Information

(1) For more information about this AD, contact Francis Smith, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, Washington 98057–3356; telephone (425) 917–6596; fax (425) 917–6590; email *francis.smith@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 29, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–08451 Filed 4–10–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0298; Directorate Identifier 2012–NM–175–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc. Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes. This proposed AD was prompted by reports of dual alternating current (AC) generator failure during flight. The failure was attributed to wire chafing along the wing lower flap shroud. This proposed AD would require revising the maintenance program to incorporate certain tasks for the electrical wiring interconnection system inspection program. We are proposing this AD to prevent failure of both AC generators due to wire chafing, which could result in loss of power to the anti-icing heaters for the elevator horn, engine inlet, and propeller, and consequent ice accumulation in these areas, which could adversely affect the controllability of the airplane.

DATES: We must receive comments on this proposed AD by May 28, 2013.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.

• *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com;* Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Assata Dessaline, Aerospace Engineer, Avionics and Services Branch, ANE–172, FAA, New York Aircraft Certification Office (ACO), 1600 Stewart Avenue, Suite 410, Westbury, New York 11590; telephone (516) 228–7301; fax (516) 794–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0298; Directorate Identifier 2012–NM–175–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued Canadian Airworthiness Directive CF–2012–25, dated August 28, 2012 (referred to after this as ''the MCAI''), to correct an unsafe condition for the specified products. The MCAI states:

> There have been several reported occurrences of dual [alternating current] AC Generator failure during flight, resulting in the loss of the variable frequency AC System.
>
> Investigations revealed wire chafing along the wing lower flap shroud due to sagging wiring harnesses resting on the support structure, missing teflon tape at the fairlead locations, and missing grommets. Chafed wires may lead to arcing, local overheating, and AC generator failure. The AC generators provide power to the anti-icing heaters, including elevator horn heater, engine inlet heater and propeller heater. Failure of both AC generators would result in the loss of these systems and poses a safety concern.
>
> This [Canadian] AD mandates the inspection and rectification of the wiring harness installations along the centre wing lower flap shroud.

Required actions include revising the maintenance program by incorporating electrical wiring interconnection system inspection program tasks.

Relevant Service Information

Bombardier, Inc. has issued the following service information:

• de Havilland Dash 8 Series 100 Maintenance Task Card 531X1, Revision 25, in Section 8, Electrical Wiring Interconnection System Inspection Program, of Part 1, Maintenance Review Board Report, of the Bombardier DHC–8 Maintenance Program Manual PSM 1–8–7, dated February 20, 2012.

• de Havilland Dash 8 Series 100 Maintenance Task Card 631X1, Revision 25, in Section 8, Electrical Wiring Interconnection System Inspection Program, of Part 1, Maintenance Review Board Report, of the Bombardier DHC–8 Maintenance Program Manual PSM 1–8–7, dated February 20, 2012.

• de Havilland Dash 8 Series 200 Maintenance Task Card 531X1, Revision 16, in Section 8, Electrical Wiring Interconnection System Inspection Program, of Part 1, Maintenance Review Board Report, of the Bombardier DHC–8 Maintenance Program Manual PSM 1–82–7, dated February 20, 2012.

• de Havilland Dash 8 Series 200 Maintenance Task Card 631X1, Revision 16, in Section 8, Electrical Wiring Interconnection System Inspection Program, of Part 1, Maintenance Review Board Report, of the Bombardier DHC–8 Maintenance Program Manual PSM 1–82–7, dated February 20, 2012.

• de Havilland Dash 8 Series 300 Maintenance Task Card 531X1, Revision 25, in Section 8, Electrical Wiring Interconnection System Inspection Program, of Part 1, Maintenance Review Board Report, of the Bombardier DHC–8 Maintenance Program Manual PSM 1–83–7, dated February 20, 2012.

• de Havilland Dash 8 Series 300 Maintenance Task Card 631X1, Revision 25, in Section 8, Electrical Wiring Interconnection System Inspection Program, of Part 1, Maintenance Review Board Report, of the Bombardier DHC–8 Maintenance Program Manual, PSM 1–83–7, dated February 20, 2012.

The actions described in this service information are intended to correct the unsafe condition identified in the MCAI.

FAA's Determination and Requirements of This Proposed AD

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

This proposed AD requires revisions to certain operator maintenance documents to include new inspections. Compliance with these inspections is required by section 91.403(c) of the Federal Aviation Regulations (14 CFR 91.403(c)). For airplances that have been previously modified, altered, or repaired in the areas addressed by these inspections, an operator might not be able to accomplish the inspections described in the revisions. In this situation to comply with 14 CFR 91.403(c), the operator must request approval of an alternative method of compliance (AMOC) in accordance with the provisions of paragraph (j)(1) of this proposed AD. The request should include a description of changes to the required inspections that will ensure the continued damage tolerance of the affected structure.

Costs of Compliance

Based on the service information, we estimate that this proposed AD would affect about 89 products of U.S. registry.

We also estimate that it would take about 1 work-hour per product to comply with the basic requirements of this proposed AD. The average labor rate is $85 per work-hour. Based on these figures, we estimate the cost of the proposed AD on U.S. operators to be $7,565, or $85 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 proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

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

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

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

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

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

We prepared a regulatory evaluation of the estimated costs to comply with this proposed AD and placed it in the AD docket.

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

Bombardier, Inc.: Docket No. FAA–2013–0298; Directorate Identifier 2012–NM–175–AD.

(a) Comments Due Date

We must receive comments by May 28, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Bombardier, Inc. Model DHC–8–102, –103, –106, –201, –202, –301, –311, and –315 airplanes, certificated in any category, serial numbers 003 and subsequent.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 24, Electrical power.

(e) Reason

This AD was prompted by reports of dual alternating current (AC) generator failure during flight. The failure was attributed to wire chafing along the wing lower flap shroud. We are issuing this AD to prevent failure of both AC generators due to wire chafing, which could result in loss of power to the anti-icing heaters for the elevator horn, engine inlet, and propeller, and consequent ice accumulation in these areas, which could adversely affect the controllability of the airplane.

(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) Maintenance Program Revision

Within 30 days after the effective date of this AD: Revise the airplane maintenance program by incorporating de Havilland Dash 8 Maintenance Task Cards 531X1 and 631X1, General visual inspection of the wiring and associated electrical wiring interconnection system (EWIS), in Section 8, Electrical Wiring Inspection Program, of Part 1, Maintenance Review Board Report into the applicable maintenance program manual specified in paragraphs (g)(1), (g)(2), and (g)(3) of this AD.

(1) For Model DHC–8–100 series airplanes: Bombardier DHC–8 Maintenance Program Manual PSM 1–8–7, Revision 25, dated February 20, 2012.

(2) For Model DHC–8–200 series airplanes: Bombardier DHC–8 Maintenance Program Manual PSM 1–82–7, Revision 16, dated February 20, 2012.

(3) For Model DHC–8–300 series airplanes: Bombardier DHC–8 Maintenance Program Manual PSM 1–83–7, Revision 25, dated February 20, 2012.

(h) Initial Task Compliance Time

The initial compliance time for the tasks specified in the maintenance task cards specified in paragraph (g) of this AD is at the applicable time specified in paragraph (h)(1) or (h)(2) of this AD.

(1) For airplanes with 45,000 total flight hours or more as of the effective date of this AD: Within 1,000 flight hours after the effective date of this AD.

(2) For airplanes with less than 45,000 total flight hours as of the effective date of this AD: Within 6,000 flight hours after the effective date of this AD, but not to exceed 46,000 total flight hours.

(i) No Alternative Actions or Intervals

After accomplishing the revisions required by paragraph (g) of this AD, no alternative actions (e.g., inspections) or intervals may be used, unless the actions and intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (j)(1) of this AD.

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

(k) Related Information

(1) Refer to MCAI Canadian Airworthiness Directive CF–2012–25, dated August 28, 2012, and the service information specified in paragraphs (k)(1)(i) through (k)(1)(vi) of this AD, for related information.

(i) de Havilland Dash 8 Series 100 Maintenance Task Card 531X1, in Section 8, Electrical Wiring Interconnection System Inspection Program, of Part 1, Maintenance Review Board Report, of the Bombardier DHC–8 Maintenance Program Manual PSM 1–8–7, Revision 25, dated February 20, 2012.

(ii) de Havilland Dash 8 Series 100 Maintenance Task Card 631X1, in Section 8, Electrical Wiring Interconnection System Inspection Program, of Part 1, Maintenance Review Board Report, of the Bombardier DHC–8 Maintenance Program Manual PSM 1–8–7, Revision 25, dated February 20, 2012.

(iii) de Havilland Dash 8 Series 200 Maintenance Task Card 531X1, in Section 8, Electrical Wiring Interconnection System Inspection Program, of Part 1, Maintenance Review Board Report, of the Bombardier DHC–8 Maintenance Program Manual PSM 1–82–7, Revision 16, dated February 20, 2012.

(iv) de Havilland Dash 8 Series 200 Maintenance Task Card 631X1, in Section 8, Electrical Wiring Interconnection System Inspection Program, of Part 1, Maintenance Review Board Report, of the Bombardier DHC–8 Maintenance Program Manual PSM 1–82–7, Revision 16, dated February 20, 2012.

(v) de Havilland Dash 8 Series 300 Maintenance Task Card 531X1, in Section 8, Electrical Wiring Interconnection System Inspection Program, of Part 1, Maintenance Review Board Report, of the Bombardier DHC–8 Maintenance Program Manual PSM 1 83–7, Revision 25, dated February 20, 2012.

(vi) de Havilland Dash 8 Series 300 Maintenance Task Card 631X1, in Section 8, Electrical Wiring Interconnection System Inspection Program, of Part 1, Maintenance Review Board Report, of the Bombardier DHC–8 Maintenance Program Manual, PSM 1–83–7, Revision 25, dated February 20, 2012.

(2) For service information identified in this AD, contact Bombardier, Inc., Q-Series Technical Help Desk, 123 Garratt Boulevard, Toronto, Ontario M3K 1Y5, Canada; telephone 416–375–4000; fax 416–375–4539; email *thd.qseries@aero.bombardier.com*; Internet *http://www.bombardier.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 28, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–08453 Filed 4–10–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0300; Directorate Identifier 2011–NM–163–AD]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 757–200, 757–200CB, and 757–200PF airplanes. This proposed AD was prompted by a report that a forward-most cam latch of the forward center cam latch pair on a main cargo door (MCD) broke during flight. This proposed AD would require performing repetitive inspections of the MCD cam latches; replacing cam latches, certain bolts, and door hinge fittings; performing related investigative and corrective actions, if necessary; and MCD rigging. We are proposing this AD to detect and correct cracked or damaged cam latches, latch pins, and latch pin cross bolts, which could reduce the structural integrity of the MCD, and result in potential rapid decompression of the airplane and potential loss of the cargo door from the airplane.

DATES: We must receive comments on this proposed AD by May 28, 2013.

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

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

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com.* You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Kimberly DeVoe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6495; fax: (425) 917–6590; email: *kimberly.devoe@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0300; Directorate Identifier 2011–NM–163–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We received a report that the forward-most cam latch on the forward center cam latch pair on a main cargo door (MCD) broke during flight on a Model 757 airplane. Cracked or damaged cam latches, latch pins, and latch pin cross bolts, if not corrected, could reduce the structural integrity of the MCD, and result in potential rapid decompression of the airplane and potential loss of the

cargo door from the airplane. Two of the eight cam latches or latch pins being broken in close proximity will cause loss of the cargo door during flight.

Relevant Service Information

We reviewed Boeing Alert Service Bulletin 757–52A0091, dated March 9, 2010. For information on the procedures and compliance times, see this service information at *http://www.regulations.gov* by searching for Docket No. FAA–2013–0300.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require accomplishing the actions specified in the service information identified previously under ''Relevant Service Information,'' except as discussed under ''Differences Between the Proposed AD and the Service Information.''

The phrase ''related investigative actions'' might be used in this proposed AD. ''Related investigative actions'' are follow-on actions that (1) are related to the primary actions, and (2) are actions that further investigate the nature of any condition found. Related investigative actions in an AD could include, for example, inspections.

In addition, the phrase ''corrective actions'' might be used in this proposed AD. ''Corrective actions'' are actions that correct or address any condition found. Corrective actions in an AD could include, for example, repairs.

Differences Between the Proposed AD and the Service Information

The Accomplishment Instructions of Boeing Alert Service Bulletin 757–52A0091, dated March 9, 2010, specify to contact the manufacturer for disposition of certain repair conditions, this proposed AD would require operators to repair those conditions using a method approved by the FAA.

Costs of Compliance

We estimate that this proposed AD affects 9 airplanes of U.S. registry.

We estimate the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspections/Modification	55 work-hours × $85 per hour = $4,675	None	$4,675	$42,075
Replace cross bolts	3 work-hours × $85 per hour = $255	$0	255	2,295

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2013–0300; Directorate Identifier 2011–NM–163–AD.

(a) Comments Due Date

We must receive comments by May 28, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 757–200, 757–200CB, and 757–200PF airplanes; certified in any category; as identified in Boeing Alert Service Bulletin 757–52A0091, dated March 9, 2010.

(d) Subject

Joint Aircraft System Component (JASC)/Air Transport Association (ATA) of America Code 52, Doors.

(e) Unsafe Condition

This AD was prompted by a report that a forward most cam latch on the forward center cam latch pair on a main cargo door (MCD) broke during flight. We are issuing to detect and correct cracked or damaged cam latches, latch pins, and latch pin cross bolts, which could reduce the structural integrity of the MCD, and result in potential rapid decompression of the airplane and potential loss of the cargo door from the airplane.

(f) Compliance

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

(g) MCD Inspections, Bolt Torque, Latch Pin Measurement, Bolt Replacement, and Rigging

At the applicable times specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–52A0091, dated March 9, 2010, except as specified in

paragraph (l)(2) of this AD: Do a detailed inspection of the cam latches and latch pins to detect damage, distress, and incorrect rigging; torque the cross bolts; measure the extension of the latch pins; replace all alloy steel bolts used as latch pin cross bolts with corrosion resistant steel (CRES) bolts; rig the MCD, as applicable; and do all applicable related investigative and corrective actions, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–52A0091, dated March 9, 2010, except as required by paragraph (l)(2) of this AD. Do all applicable related investigative and corrective actions at the applicable time specified in paragraph 1.E., ''Compliance'' of Boeing Alert Service Bulletin 757–52A0091, dated March 9, 2010.

(h) Repetitive Inspections

Repeat the applicable inspections specified in paragraph (g) of this AD, as specified in paragraphs (h)(1), (h)(2), and (h)(3) of this AD, at the applicable times specified in table 1 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–52A0091, dated March 9, 2010. The inspection conditions are defined in Boeing Alert Service Bulletin 757–52A0091, dated March 9, 2010.

(1) For airplanes found with Inspection Condition 5: Repeat the general visual inspection for broken, cracked, missing, or migrated parts of the cam latches and latch pins.

(2) For airplanes found with Inspection Condition 2, 4.2, or 5: Repeat the detailed inspection for damage, distress, and incorrect rigging of the cam latches and latch pins.

(3) For airplanes found with Inspection Condition 5: Repeat the high frequency eddy current or magnetic particle inspection to detect signs of cracking of cam latches 1 and 2.

(i) MCD Post-Rigging Initial Inspections and Related Investigative and Corrective Actions

At the applicable times specified in table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–52A0091, dated March 9, 2010: Do a general visual inspection of the cam latches and latch pins for discrepancies; a detailed inspection of the cam latches and latch pins for discrepancies; and an HFEC or magnetic particle inspection of cam latch 1 and cam latch 2 for cracking; and do all applicable related investigative and corrective actions, except as required by paragraph (l)(2) of this AD; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 757–52A0091, dated March 9, 2010. Do all applicable related investigative and corrective actions at the applicable time specified in paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–52A0091, dated March 9, 2010.

(j) MCD Post-Rigging Repetitive Inspections

(1) For all airplanes: Repeat the inspections specified in paragraph (i) of this AD, at the applicable times specified in table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–52A0091, dated March 9, 2010.

(2) For airplanes found with Inspection Condition 2 as defined in Boeing Alert Service Bulletin 757–52A0091, dated March 9, 2010: Repeat the detailed inspection for damage, distress, and incorrect rigging of the cam latches and latch pins specified in paragraph (i) of this AD on remaining cam latches and cam pins at the applicable times specified in table 2 of paragraph 1.E., ''Compliance,'' of Boeing Alert Service Bulletin 757–52A0091, dated March 9, 2010.

(k) Parts Installation Prohibition

As of the effective date of this AD, no person may install an alloy steel bolt as a cross bolt through any latch pin fitting assembly in the lower sill of the MCD on any airplane.

(l) Exceptions to Service Bulletin Specifications

The following exceptions apply in this AD.

(1) Where Boeing Alert Service Bulletin 757–52A0091, dated March 9, 2010, specifies a compliance time after the date of that service bulletin, this AD requires compliance within the specified compliance time after the effective date of this AD.

(2) Where Boeing Alert Service Bulletin 757–52A0091, dated March 9, 2010, specifies to contact Boeing for appropriate action: Before further flight, repair the discrepancy in accordance with a method approved by the Manager, Seattle, Aircraft Certification Office (ACO), FAA. For a repair method to be approved, the repair must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(m) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Seattle Aircraft Certification Office (ACO), 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 manager of the ACO, send it to the attention of the person identified in the Related Information section of this AD. Information may be emailed to: *9-ANM-Seattle-ACO-AMOC-Requests@faa.gov*.

(2) 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.

(3) An AMOC that provides an acceptable level of safety may be used for any repair required by this AD if it is approved by the Boeing Commercial Airplanes Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO to make those findings. For a repair method to be approved, the repair must meet the certification basis of the airplane and the approval must specifically refer to this AD.

(n) Related Information

(1) For more information about this AD, contact Kimberly DeVoe, Aerospace Engineer, Cabin Safety and Environmental Systems Branch, ANM–150S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue SW., Renton, WA 98057–3356; phone: (425) 917–6495 ; fax: (425) 917–6590; email: *kimberly.devoe@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Data & Services Management, P.O. Box 3707, MC 2H–65, Seattle, Washington 98124–2207; telephone 206–544–5000, extension 1; fax 206–766–5680; Internet *https://www.myboeingfleet.com*. You may review copies of the referenced service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington. For information on the availability of this material at the FAA, call 425–227–1221.

Issued in Renton, Washington, on March 28, 2013.

Ali Bahrami,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2013–08450 Filed 4–10–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2013–0195; Directorate Identifier 2013–NE–08–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for all General Electric Company (GE) model GEnx-2B67 and GEnx-2B67B turbofan engines with booster anti-ice (BAI) air duct, part number (P/N) 2469M32G01, and support bracket, P/N 2469M46G01, installed. This proposed AD was prompted by reports of cracks in the BAI air duct. This proposed AD would require initial and repetitive visual inspections of the BAI air duct, removal from service of the BAI air duct if it fails inspection and, as a mandatory terminating action, the installation of new BAI air duct support brackets. We are proposing this AD to prevent failure of the BAI air duct, resulting in an in-flight shutdown of one or more engines, loss of thrust control, and damage to the aircraft.

DATES: We must receive comments on this proposed AD by June 10, 2013.

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

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations,

M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC 20590.

• *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact General Electric, One Neumann Way, MD Y–75, Cincinnati, OH; phone: 513–552–2913; email: *geae.aoc@ge.com;* and Web site: *www.GE.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Examining the AD Docket

You may examine the AD docket on the Internet at *http://www.regulations.gov;* or in person at the Docket Management Facility between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Office (phone: 800–647–5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *Jason.Yang@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposal. Send your comments to an address listed under the **ADDRESSES** section. Include ''Docket No. FAA–2013–0195; Directorate Identifier 2013–NE–08–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD because of those comments.

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

Discussion

We propose to adopt a new AD for all GE model GEnx-2B67 and GEnx-2B67B turbofan engines with BAI air duct, P/N 2469M32G01, and support bracket, P/N 2469M46G01, installed. This proposed AD was prompted by 11 reports of cracks in the BAI air duct, P/N 2469M32G01, caused by resonant vibration of the BAI valve system. Engineering analysis determined that the single support bracket is not sufficient to prevent the vibration and cracking in the BAI air duct, and that additional support brackets are needed. This proposed AD would require initial visual inspection of the BAI air duct before it reaches 400 cycles since new (CSN), and repetitive visual inspections every 100 cycles thereafter. If the BAI air duct fails inspection, the proposed AD would require removal of the BAI air duct from service. As a mandatory terminating action, the proposed AD would also require installation of new BAI air duct support brackets at the next removal of the BAI air duct, and replacement of the BAI air duct with a duct eligible for installation. This condition, if not corrected, could result in failure of the BAI air duct, resulting in an in-flight shutdown of one or more engines, loss of thrust control, and damage to the aircraft.

Relevant Service Information

We reviewed GE Service Bulletin (SB) No. GEnx-2B S/B 75–0006, dated July 23, 2012, and GE SB No. GEnx-2B S/B 75–0008, Revision 1, dated February 4, 2013. GE SB No. GEnx-2B S/B 75–0006 describes procedures for inspecting and, if necessary, removing and replacing the BAI air duct. GE SB No. GEnx-2B S/B 75–0008, Revision 1, describes procedures for installing new BAI air duct support brackets, and inspection and possible replacement of BAI air ducts.

FAA's Determination

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

Proposed AD Requirements

This proposed AD would require initial and repetitive visual inspections of the BAI air duct, replacement of the BAI air duct if it fails inspection and, as mandatory terminating action, installation of new BAI air duct support brackets.

Costs of Compliance

We estimate that this proposed AD affects 16 engines installed on airplanes of U.S. registry. We also estimate that it would take about 4 hours per engine to comply with this proposed AD. The average labor rate is $85 per hour. Required parts would cost about $11,000 per engine. Based on these figures, we estimate the cost of the proposed AD to U.S. operators to be $181,440.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

General Electric Company: Docket No. FAA–2013–0195; Directorate Identifier 2013–NE–08–AD.

(a) Comments Due Date

We must receive comments by June 10, 2013.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all General Electric Company (GE) model GEnx-2B67 and GEnx-2B67B turbofan engines with booster anti-ice (BAI) air duct, part number (P/N) 2469M32G01, and support bracket, P/N 2469M46G01, installed.

(d) Unsafe Condition

This AD was prompted by reports of cracks in the BAI air duct, P/N 2469M32G01. We are issuing this AD to prevent failure of the BAI air duct, resulting in an in-flight shutdown of one or more engines, loss of thrust control, and damage to the aircraft.

(e) Compliance

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

(f) Inspection of BAI Air Duct

(1) Perform an initial visual inspection of the BAI air duct, P/N 2469M32G01, for cracks prior to accumulating 400 cycles since new (CSN).

(2) Thereafter, repeat the visual inspection within every 100 cycles since last inspection.

(3) If cracks in the BAI air duct are found during any inspection required by this AD, remove the BAI air duct from service.

(g) Mandatory Terminating Action

As mandatory terminating action to the repetitive inspection requirement of this AD, at the next removal of BAI air duct, P/N 2469M32G01, or if the BAI air duct is found cracked, after the effective date of this AD, do the following:

(1) Install new BAI air duct support brackets, P/Ns 2550M03G01, 2548M66G01, 2548M67P01, 2550M18G01, and 2550M17P01.

(2) Replace the BAI air duct with one that is eligible for installation.

(h) Definitions

For the purpose of this AD, a BAI air duct that is eligible for installation is one that has accumulated 25 CSN or fewer.

(i) Alternative Methods of Compliance (AMOCs)

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

(j) Related Information

(1) For more information about this AD, contact Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803; phone: 781–238–7747; fax: 781–238–7199; email: *Jason.Yang@faa.gov.*

(2) Refer to GE Service Bulletin (SB) No. GEnx-2B S/B 75–0006, dated July 23, 2012, and GE SB No. GEnx-2B S/B 75–0008, Revision 1, dated February 4, 2013, for guidance on inspecting and, if necessary, removing and replacing the BAI air duct, as well as procedures for installation of new BAI air duct support brackets.

(3) For service information identified in this proposed AD, contact General Electric, One Neumann Way, MD Y–75, Cincinnati, OH; phone: 513–552–2913; email: *geae.aoc@ge.com;* and Web site: *www.GE.com.* You may view this service information at the FAA, Engine & Propeller Directorate, 12 New England Executive Park, Burlington, MA. For information on the availability of this material at the FAA, call 781–238–7125.

Issued in Burlington, Massachusetts, on April 4, 2013.

Robert J. Ganley,

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

[FR Doc. 2013–08447 Filed 4–10–13; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2013–0103; FRL–9794–3]

Revisions to the California State Implementation Plan, Santa Barbara and San Diego County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Santa Barbara County Air Pollution Control District (SBCAPCD) and San Diego County Air Pollution Control District (SDCAPCD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) emissions from surface coating of aerospace vehicles and components and from wood products coating operations. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by May 13, 2013.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2013–0103, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air–4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov,* including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed at *www.regulations.gov,* some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an

appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Andy Steckel, EPA Region IX, (415) 947–4115, *Steckel.andrew@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SBCAPCD Rule 337, Surface Coating of Aerospace Vehicles and Components and SDCAPCD Rule 67.11, Wood Products Coating Operations. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 13, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2013–08262 Filed 4–10–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0828; FRL–9776–5]

Revisions to the California State Implementation Plan, Santa Barbara County Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Santa Barbara County Air Pollution Control District (SBCAPCD) and South Coast Air Quality Management District (SCAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC) and oxides of nitrogen (NO_X) emissions from gas-fired fan-type central furnaces, small water heaters, and the transfer and dispensing of gasoline. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: Any comments on this proposal must arrive by May 13, 2013.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0828, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the online instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Nicole Law, EPA Region IX, (415) 947–4126, *law.nicole@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: SBCAPCD Rule 352 Natural Gas-Fire Fan-Type Central Furnaces and Small Water Heaters and SCAQMD Rule 461 Gasoline Transfer and Dispensing. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: January 23, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2013–08260 Filed 4–10–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0886; FRL–9778–3]

Revisions to the California State Implementation Plan, Antelope Valley Air Quality Management District and Monterey Bay Unified and Santa Barbara County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Antelope Valley Air Quality Management District (AVAQMD), Monterey Bay Unified Air Pollution Control District (MBUAPCD) and Santa Barbara County Air Pollution Control District (SCAPCD) portions of the California State Implementation Plan (SIP). We are proposing to approve revisions local rules that address

emission statements for AVAQMD, rule rescissions that address public records for MBUAPCD, and define terms for SBCAPCD, under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by May 13, 2013.

ADDRESSES: Submit comments, identified by docket number EPA–R09–OAR–2012–0886, by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Cynthia Allen, EPA Region IX, (415) 947–4120, *allen.cynthia@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: AVAQMD Rule 107; MBUAPCD Rules 900, 901, 902, 903, and 904; and SBCAPCD Rule 102. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: January 25, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2013–08251 Filed 4–10–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2012–0914; FRL–9776–7]

Revisions to the California State Implementation Plan, Butte County Air Quality Management District and Sacramento Metropolitan Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Butte County Air Quality Management District (BCAQMD) and Sacramento Metropolitan Air Quality Management District (SMAQMD) portions of the California State Implementation Plan (SIP). These revisions concern volatile organic compound (VOC), oxides of nitrogen (NO_X), and particulate matter (PM) emissions from residential wood burning devices. We are proposing to approve local rules to regulate these emission sources under the Clean Air Act (CAA or the Act).

DATES: Any comments on this proposal must arrive by May 13, 2013.

ADDRESSES: Submit comments, identified by docket number [EPA–R09–OAR–2012–0914], by one of the following methods:

1. *Federal eRulemaking Portal: www.regulations.gov.* Follow the on-line instructions.
2. *Email: steckel.andrew@epa.gov.*
3. *Mail or deliver:* Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Instructions: All comments will be included in the public docket without change and may be made available online at *www.regulations.gov*, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through *www.regulations.gov* or email. *www.regulations.gov* is an ''anonymous access'' system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send email directly to EPA, your email address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses.

Docket: Generally, documents in the docket for this action are available electronically at *www.regulations.gov* and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901. While all documents in the docket are listed at *www.regulations.gov*, some information may be publicly available only at the hard copy location (e.g., copyrighted material, large maps), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Rynda Kay, EPA Region IX, (415) 947–4118, *Kay.Rynda@epa.gov.*

SUPPLEMENTARY INFORMATION: This proposal addresses the following local rules: BCAQMD 207 Wood Burning Devices and SMAQMD 417 Wood Burning Appliances. In the Rules and

Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: January 14, 2013.

Jared Blumenfeld,

Regional Administrator, Region IX.

[FR Doc. 2013–08245 Filed 4–10–13; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[Docket #: EPA–R10–OAR–2012–0193; FRL–9738–4]

Approval and Promulgation of Air Quality Implementation Plans; Eugene-Springfield PM_{10} Nonattainment Area Limited Maintenance Plan and Redesignation Request

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve the Limited Maintenance Plan (LMP) submitted by the State of Oregon on January 13, 2012, for the Eugene-Springfield nonattainment area (Eugene-Springfield NAA) and the State's request to redesignate the area to attainment for the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}). EPA is proposing to approve the State's request because it meets Clean Air Act (CAA) requirements for redesignation. EPA has also published, at the same time, a direct final rule of the same title because EPA views this as a noncontroversial SIP revision and anticipates no adverse comments. Any parties interested in commenting on this action should do so at this time. If EPA receives adverse comments, EPA will withdraw the direct final rule and will then address all public comments in a subsequent final rule based on this proposed rule.

DATES: Comments must be received on or before May 13, 2013.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R10–OAR–2012–0193, by any of the following methods:

- *www.regulations.gov:* Follow the on-line instructions for submitting comments.
- *Email: R10-Public_Comments@epa.gov.*
- *Mail:* Kristin Hall, EPA Region 10, Office of Air, Waste and Toxics (AWT–107), 1200 Sixth Avenue, Suite 900, Seattle, WA 98101.
- *Hand Delivery/Courier:* EPA Region 10, 1200 Sixth Avenue, Suite 900, Seattle, WA 98101. Attention: Kristin Hall, Office of Air, Waste and Toxics, AWT–107. Such deliveries are only accepted during normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–R10–OAR–2012–0193. 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, is not placed on the Internet and will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *www.regulations.gov* or in hard copy during normal business hours at the Office of Air, Waste and Toxics, EPA Region 10, 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Kristin Hall at telephone number: (206) 553–6357, email address: *hall.kristin@epa.gov,* or the above EPA, Region 10 address.

SUPPLEMENTARY INFORMATION: For further information, please see the direct final action, of the same title, which is located in the Rules section of this **Federal Register**. EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA views this as a noncontroversial SIP revision and anticipates no adverse comments. A detailed rationale for the approval is set forth in the preamble to the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this proposed rule.

If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will then address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please note that if we receive 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.

Dated: September 24, 2012.

Dennis J. McLerran,

Regional Administrator, Region 10.

Note: This document was received by the Office of the Federal Register on April 5, 2013.

[FR Doc. 2013–08396 Filed 4–10–13; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 130214139–3315–01]

RIN 0648–XC513

Atlantic Highly Migratory Species; 2013 Atlantic Bluefin Tuna Quota Specifications

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

ACTION: Proposed rule; request for comments; notice of public hearings.

SUMMARY: NMFS proposes 2013 quota specifications for the Atlantic bluefin tuna (BFT) fishery, and seeks comments from the public on the allocation of available underharvest among the fishery categories under certain circumstances. This action is necessary to implement binding recommendations of the International Commission for the Conservation of Atlantic Tunas (ICCAT), as required by the Atlantic Tunas Convention Act (ATCA), and to achieve domestic management objectives under the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: Written comments must be received on or before May 13, 2013. Public hearings will be held on April 29, 2013, from 2 to 4 p.m., and on May 3, 2013, from 1 to 3 p.m. See **SUPPLEMENTARY INFORMATION** for further details.

ADDRESSES: You may submit comments on this document, identified by ''NOAA–NMFS–2013–0042,'' by any of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2013-0042*, click the ''Comment Now!'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* Submit written comments to Sarah McLaughlin, Highly Migratory Species Management Division, Office of Sustainable Fisheries (F/SF1), NMFS, 55 Great Republic Drive, Gloucester, MA 01930
- *Fax:* 978–281–9340, Attn: Sarah McLaughlin
- *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and generally will be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

The public hearing locations are:

1. Gloucester, MA—NMFS, 55 Great Republic Drive, Gloucester, MA 01930.
2. Silver Spring, MD—NMFS Science Center, 1301 East-West Highway, Silver Spring, MD 20910.

Supporting documents, including the Supplemental Environmental Assessment, as well as others, such as the Fishery Management Plans described below may be downloaded from the HMS Web site at *www.nmfs.noaa.gov/sfa/hms/*. These documents also are available by sending your request to Sarah McLaughlin at the mailing address specified above.

FOR FURTHER INFORMATION CONTACT: Sarah McLaughlin or Brad McHale, 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic bluefin tuna, bigeye tuna, albacore tuna, yellowfin tuna, and skipjack tuna (hereafter referred to as ''Atlantic tunas'') are managed under the dual authority of the Magnuson-Stevens Act and ATCA. As an active member of ICCAT, the United States implements binding ICCAT recommendations to comply with this international treaty. ATCA authorizes the Secretary of Commerce (Secretary) to promulgate regulations, as may be necessary and appropriate to carry out ICCAT recommendations. The authority to issue regulations under the Magnuson-Stevens Act and ATCA has been delegated from the Secretary to the Assistant Administrator for Fisheries, NMFS.

Background

On May 28, 1999, NMFS published in the **Federal Register** (64 FR 29090) final regulations, effective July 1, 1999, implementing the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (1999 FMP). The 1999 FMP included a framework process to promulgate annual specifications for the BFT fishery, in accordance with ATCA and the Magnuson-Stevens Act, and to implement the annual recommendations of ICCAT. Since 1982, ICCAT has recommended a Total Allowable Catch (TAC) of western Atlantic BFT, and since 1991, ICCAT has recommended specific limits (quotas) for the United States and other Contracting Parties with BFT fisheries.

On October 2, 2006, NMFS published a final rule in the **Federal Register** (71 FR 58058), effective November 1, 2006, implementing the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP), which consolidated management of all Atlantic HMS (i.e., sharks, swordfish, tunas, and billfish) into one comprehensive FMP. The implementing regulations for Atlantic HMS are at 50 CFR part 635. Among other things, the Consolidated HMS FMP maintained an allocation scheme, established in the 1999 FMP, for dividing the baseline annual U.S. BFT quota among several domestic quota categories based on gear type (i.e., Harpoon, Purse Seine, Angling, General, Longline, and Trap categories).

The baseline quota has remained unchanged from 2012, and the 2013 BFT quota specifications are necessary to adjust the annual U.S. baseline BFT quota to account for any underharvest or overharvest of the adjusted 2012 U.S. BFT quota. Preliminary information indicates an underharvest of the 2012 adjusted BFT quota. Final 2012 landings and dead discard information will be available in late spring 2013.

In May 2011, NMFS prepared an Environmental Assessment (EA)/Regulatory Impact Review and Final Regulatory Flexibility Analysis for a final rule that: (1) implemented and allocated the U.S. BFT quota for 2011 and for 2012, (2) adjusted the 2011 U.S. quota and subquotas to account for unharvested 2010 quota allowed to be carried forward to 2011, and to account for a portion of the estimated 2011 dead discards up front, and implemented several other BFT management measures (76 FR 39019, July 5, 2011). Although it is not necessary to prepare an EA for quota specifications alone (in accordance with the approach described in the Consolidated HMS FMP), NMFS has prepared a Supplemental EA to present updated information regarding the affected environment, including information from a 2012 ICCAT stock assessment for BFT, among other things. The results of the 2012 stock assessment update were not substantively different than those of an assessment that ICCAT conducted in 2010.

2010 ICCAT Recommendation and 2011 Implementing Rule

At its 2010 annual meeting, ICCAT recommended a TAC of 1,750 mt

annually for 2011 and for 2012, inclusive of dead discards (ICCAT Recommendation 10–03—Supplemental Recommendation by ICCAT concerning the Western Atlantic BFT Rebuilding Program). This amount was expected to allow for continued stock growth under low and high stock recruitment scenarios developed by ICCAT's scientific body at the 2010 BFT stock assessment. The U.S. share of the TAC for 2011 and 2012, adjusted for two specific bycatch allocations, was 54.02 percent, which resulted in a baseline quota of 923.7 mt. The total annual U.S. quota, including an additional 25 mt to account for bycatch related to pelagic longline fisheries in the Northeast Distant gear restricted area (NED), was 948.7 mt. ICCAT limits the amount of underharvest that may be carried forward from one year to the next to no more than 10 percent of a country's quota.

Through the final rule implementing the BFT quotas and Atlantic tuna fisheries management measures (76 FR 39019, July 5, 2011), NMFS implemented the 923.7–mt baseline quota consistent with ICCAT Recommendation 10–03 and set the domestic BFT fishing category subquotas per the allocation percentages established in the Consolidated HMS FMP and implementing regulations (71 FR 58058, October 2, 2006). The baseline quota and category subquotas are codified and remain effective until changed (for instance, if any new ICCAT BFT TAC recommendation is adopted).

2012 ICCAT Recommendation

At its 2012 annual meeting, ICCAT recommended a one-year rollover of the 1,750–mt TAC as part of ICCAT Recommendation 12–02—Supplemental Recommendation by ICCAT concerning the Western Atlantic BFT Rebuilding Program. This amount is expected to allow for continued stock growth under the both the low and high stock recruitment scenarios, considering the 2012 ICCAT BFT stock assessment results. The annual U.S. baseline quota for 2013 continues to be 923.7 mt, and the annual total U.S. quota, including 25 mt to account for bycatch related to pelagic longline fisheries in the NED, continues to be 948.7 mt.

Although the baseline quota is unchanged this year because the 2012 ICCAT recommendation included the same TAC as the prior recommendation, NMFS is proposing underharvest or overharvest adjustments as necessary for the 2013 fishing year through quota specifications, consistent with the Consolidated HMS FMP. Until the final specifications for 2013 are effective, the existing BFT base quotas continue to apply as codified. See Table 1, second column. As mentioned above, ICCAT limits the amount of underharvest that may be carried forward from one year to the next to no more than 10 percent of a country's quota. Applied to the 2012 catch figures, this provision limits the amount of U.S. underharvest that may be carried forward this year to 94.9 mt (10 percent of the 948.7–mt total U.S. quota).

Accounting for Dead Discards

The United States must report BFT landings data and BFT dead discard estimates to ICCAT annually. Currently, the best available annual estimate of dead discards is the 2011 estimate of 145.2 mt. Using the 2011 estimate as a proxy for estimated 2013 dead discards for the proposed action is appropriate because it is the best available and most complete information that NMFS currently has regarding dead discards and follows the established protocol in the regulations. When the 2012 BFT dead discard estimate becomes available (late spring 2013), it will be used to prepare the final specifications and will be reported to ICCAT along with total 2012 BFT landings. Only pelagic longline dead discard estimates are available at this time. Estimates from other gear types and fishing sectors that are not observed at sufficient levels for estimation and that do not report via a logbook are not included in this calculation. However, bycatch and bycatch mortality of BFT by vessels using handgear and purse seine gear is considered to be relatively low.

2013 Quota Specifications

The 2013 BFT quota specifications NMFS proposes here are necessary to adjust the current annual U.S. baseline BFT quota to account for underharvest or overharvest of the adjusted 2012 U.S. BFT quota. Based on preliminary data available as of February 26, 2013, BFT landings in 2012 totaled 713.2 mt. Adding the 145.2–mt estimate of dead discards results in a preliminary 2012 total catch of 858.4 mt, which is 185.2 mt less than the amount of quota (inclusive of dead discards) allowed under ICCAT Recommendation 10–03, which applied in 2012 (i.e., 948.7 mt plus 94.9 mt of 2011 underharvest carried forward to 2012, totaling 1,043.6 mt). ICCAT limits the amount of underharvest that may be carried forward from one year to the next to no more than 10 percent of a country's quota, which limits the amount of 2012 U.S. underharvest that may be carried forward to 2013 to 94.9 mt.

NMFS proposes to account up front (i.e., at the beginning of the fishing year) for half of the expected dead discards for 2013, using the best available estimate of dead discards, and deducting that portion directly from the Longline category subquota. This is the same approach that NMFS took for the 2011 and 2012 BFT quota specifications. Accounting for dead discards in the Longline category in this way may provide further incentive for pelagic longline fishermen to reduce those interactions that may result in dead discards. NMFS would apply half of the amount of underharvest that is allowed to be carried forward to 2013 to the Longline category, and maintain the other half in the Reserve category. Maintaining this portion of the underharvest in the Reserve category until later in the fishing year would provide maximum flexibility in accounting for 2013 landings and dead discards. Consistent with determination criteria at 50 CFR § 635.27(a)(8), NMFS may allocate any portion of the Reserve category quota for inseason or annual adjustments to any other quota category.

Specifically, NMFS would deduct half of the dead discard estimate of 145.2 mt (i.e., 72.6 mt) from the 2013 baseline Longline category subquota of 74.8 mt and apply half of the 94.9 mt allowed to be carried forward to 2013 to the Longline category (i.e., 74.8 − 72.6 + 47.5 = 49.7 mt adjusted Longline subquota, not including the 25–mt allocation set aside by ICCAT for the NED). NMFS would add the remainder of the 2012 underharvest that can be carried forward to 2013 (47.4 mt) to the Reserve category's baseline allocation of 23.1 mt, for an adjusted Reserve category quota of 70.5 mt. The adjusted Longline category subquota (49.7 mt) would be further subdivided in accordance with the Consolidated HMS FMP (i.e., allocation of no more than 60 percent to the south of 31° N. latitude) as follows: 19.9 mt to pelagic longline vessels landing BFT north of 31° N. latitude, and 29.8 mt to pelagic longline vessels landing BFT south of 31° N. latitude. NMFS would account for landings under the 25–mt NED allocation separately from other Longline category landings.

For the directed fishing categories (i.e., the Angling, General, Harpoon, Purse Seine categories) as well as the Trap category, in which BFT may be caught incidentally, NMFS is not proposing adjustments to the baseline BFT subquotas (i.e., the allocations that result from applying the scheme established in the Consolidated HMS FMP to the baseline U.S. BFT quota).

Thus, in accordance with the ICCAT Recommendation 12–02, the Consolidated HMS FMP allocation scheme for the domestic categories, and regulations regarding annual adjustments at § 635.27(a)(10), NMFS proposes quota specifications for the 2013 fishing year as follows: General category—435.1 mt; Harpoon category—36 mt; Purse Seine category—171.8 mt; Angling category—182 mt; Longline category—49.7 mt; and Trap category—0.9 mt. The amount allocated to the Reserve category for inseason adjustments, scientific research collection, potential overharvest in any category except the Purse Seine category, and potential quota transfers would be 70.5 mt. These allocations are shown in Table 1.

NMFS will make any necessary adjustments to the 2013 specifications in the final rule after considering updated 2012 landings information and the final dead discard estimate for 2012. It is important to note that NMFS and ICCAT have separate schedules and approaches for accounting for landings and dead discards. At the beginning of the year, NMFS accounts proactively for half of the best estimate of dead discards, whereas total 2013 U.S. landings and dead discards will be accounted for at the end of the year and reported to ICCAT in 2014. ICCAT usually assesses quota compliance at its annual meeting in November by comparing the prior year's landings and reported dead discards against the adjusted U.S. quota. At the 2013 ICCAT annual meeting, ICCAT will compare actual U.S. 2012 landings and dead discards against the total 2012 adjusted U.S. quota of 1,043.6 mt (i.e., the 948.7–mt base quota for 2012, plus the 94.9 mt allowed to be carried forward from 2011 to 2012), to determine the United States' compliance with 2012 ICCAT recommendations.

Request for Public Comments

If the final 2012 landings and dead discards information result in a total of greater than 948.7 mt, but less than 1,043.6 mt, then the amount of 2012 underharvest that the United States may carry forward to 2013 would need to be reduced from 94.9 mt accordingly. NMFS invites public comment on possible allocation approaches should the carry forward amount be reduced. One option might be to provide half of the carry forward amount to the Longline category and the other half to the Reserve category. For example, if the 2012 landings and the final dead discard estimate total 963.6 mt, 80 mt would be available to carry forward and NMFS could provide 40 mt to each of these two categories). Another option might be to provide the entire amount to the Longline or Reserve category, particularly if the amount is small (e.g., 20 mt) or to allocate the amount other ways after considering domestic management needs for 2013. As described below, NMFS took this approach in the 2012 final BFT specifications (77 FR 44161, July 27, 2012). In any event, the baseline subquotas for the directed fishing categories and Trap category would not be changed.

In exploring options, one consideration is the possibility that deducting of half of the final estimate of dead discards from the baseline Longline category subquota would result in little to no quota for that category for 2013 prior to application of any available underharvest. Another consideration is the possibility that NMFS may, in the final specifications, need to close the Longline category fishery to BFT retention based on codified quotas. This was the case in 2012. NMFS closed the Longline category fishery to BFT retention in the southern area on May 29, 2012 (77 FR 31546), and in the northern area on June 30, 2012 (77 FR 38011), for the remainder of the year, because landings had met the codified subquotas for those areas. Given that the incidental Longline fishery for BFT was closed, NMFS accounted fully for those landings in the final rule by applying 76.2 of the available 94.9-mt underharvest to the Longline category and maintaining the remaining underharvest (18.7 mt) in the Reserve category. Providing this amount to the Longline category allowed NMFS to adjust the Longline South and Longline North subquotas to the amounts actually taken in those areas at the time of the closure, and to provide greater transparency than year-end accounting would.

If the complete 2012 landings information and final dead discard estimate exceed the adjusted 2012 U.S. BFT quota of 1,043.6 mt, NMFS may need to take further action, consistent with the BFT quota adjustment regulations and with ICCAT Recommendation 10–03. Also, the United States may be subject to adjustment of the U.S. BFT quota, consistent with ICCAT recommendations. Given the amount of dead discards the United States has reported to ICCAT in the last few years (ranging from 122 to 204 mt), NMFS considers this potential situation to be unlikely, as the dead discard estimate would need to be approximately 330 mt. To address the possibility of overharvest of the adjusted U.S. quota, NMFS requests public comment on potential regulatory options to consider for the final 2013 quota and subquotas. For example, the Longline and/or the Reserve category quotas could be reduced as necessary, or the overall 2013 BFT quota could be reduced, which would affect all category subquotas.

NMFS considers the proposed specifications approach as a transition from the method used for 2007 through 2010, as NMFS continues to develop draft Amendment 7 to the 2006 Consolidated HMS FMP. From 2007 through 2010, there were substantial underharvests of some of the commercial BFT subquotas. Consistent with the Consolidated HMS FMP and its implementing regulations, NMFS provided the Longline category a substantial portion of prior year U.S. underharvest that was allowed to be carried forward (limited to 50 percent of the total U.S. quota at that time) during the annual specification process at the beginning of the fishing year. This provided quota sufficient for the pelagic longline fleet to operate for the entire fishing year while also accounting for dead discards ''up front,'' using the best available estimate of anticipated dead discards. NMFS was also able to increase the directed categories' quotas and the Reserve category quota using available underharvest.

Draft Amendment 7 to the 2006 Consolidated HMS FMP will explore related BFT fishery management issues consistent with the need to end overfishing and rebuild the stock. NMFS anticipates that measures in draft Amendment 7 would address several of the long-standing challenges facing the fishery and will examine, among other things, revisiting quota allocations; reducing and accounting for dead discards; adding or modifying time/area closures or gear-restricted areas; and improving the reporting and monitoring of dead discards and landings in all categories. NMFS anticipates that draft Amendment 7 will publish in mid-2013.

In the meantime, management of the BFT fishery continues under the current Consolidated HMS FMP, implementing regulations, and ICCAT Recommendations. In contemplating how to account for dead discards within the BFT quota and allocate the underharvest that is allowed to be carried forward, NMFS believes that the operational issues facing the pelagic longline fishery as the fleet continues directed fishing operations for swordfish and other tunas should be considered. NMFS anticipates that dead discards in the pelagic longline fishery may be reduced due to continued

implementation of the weak hook requirement in the Gulf of Mexico in 2011 (76 FR 18653, April 5, 2011).

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Table 1. Proposed 2013 Atlantic Bluefin Tuna Quotas and Quota Specifications (in metric tons)

		2013 Quota Specifications		
Category (% share of baseline quota)	Baseline Allocation (per current ICCAT Recommendation and Consolidated HMS FMP allocations)	Dead Discard Deduction (1/2 of 2011 proxy of 145.2 mt)	2012 Underharvest to Carry Forward to 2013 (94.9 mt total)	Adjusted 2013 Fishing Year Quota
Total (100)	923.7*			946.0
Angling (19.7)	182.0 SUBQUOTAS: School 94.9 Reserve 17.6 North 36.5 South 40.8 LS/SM 82.9 North 39.1 South 43.8 Trophy 4.2 North 1.4 South 2.8			182.0 SUBQUOTAS: School 94.9 Reserve 17.6 North 36.5 South 40.8 LS/SM 82.9 North 39.1 South 43.8 Trophy 4.2 North 1.4 South 2.8
General (47.1)	435.1 SUBQUOTAS: Jan 23.1 Jun-Aug 217.6 Sept 115.3 Oct-Nov 56.6 Dec 22.6			435.1 SUBQUOTAS: Jan 23.1 Jun-Aug 217.6 Sept 115.3 Oct-Nov 56.6 Dec 22.6
Harpoon (3.9)	36.0			36.0
Purse Seine (18.6)	171.8			171.8
Longline (8.1)	74.8 SUBQUOTAS: North (-NED) 29.9 NED 25.0* South 44.9	-72.6	+47.5	49.7 SUBQUOTAS: North (-NED) 19.9 NED 25.0* South 29.8
Trap (0.1)	0.9			0.9
Reserve (2.5)	23.1		+47.4	70.5

*25-mt ICCAT set-aside to account for bycatch of BFT in pelagic longline fisheries in the NED. Not included in totals at top of table.

Request for Comments

NMFS solicits comments on this proposed rule through May 13, 2013.

See instructions in **ADDRESSES** section above.

Public Hearing Dates and Locations

1. April 29, 2013, 2 to 4 p.m., Gloucester, MA—NMFS, 55 Great Republic Drive, Gloucester, MA 01930

2. May 3, 2013, 1 to 3 p.m., Silver Spring, MD—NMFS Science Center, 1301 East-West Highway, Silver Spring, MD 20910

The public hearing locations will be physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Sarah McLaughlin at (978) 281–9279, at least 7 days prior to the meeting. The public is reminded that NMFS expects participants at the public hearings to conduct themselves appropriately. At the beginning of each public hearing, a representative of NMFS will explain the ground rules (e.g., alcohol is prohibited from the hearing room; attendees will be called to give their comments in the order in which they registered to speak; each attendee will have an equal amount of time to speak; and attendees should not interrupt one another). The NMFS representative will attempt to structure the meeting so that all attending members of the public will be able to comment, if they so choose, regardless of the controversial nature of the subject(s). Attendees are expected to respect the ground rules, and, if they do not, they will be asked to leave the hearing.

Classification

The NMFS Assistant Administrator has determined that the proposed rule is consistent with the Consolidated HMS FMP, the Magnuson-Stevens Act, ATCA, and other applicable law, subject to further consideration after public comment.

This proposed rule is exempt from the procedures of E.O. 12866 because this action contains no implementing regulations.

Pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.,* the Chief Council for Regulation of the Department of Commerce certified to the Chief Council for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The reasoning for this certification is as follows:

These annual BFT quota specifications (effective January 1 through December 31, 2013) are necessary to implement ICCAT recommendations, as required by ATCA, and to achieve domestic management objectives under the Magnuson-Stevens Act. Under ATCA, the United States must promulgate regulations as necessary and appropriate to implement binding recommendations of ICCAT.

The proposed rule would adjust the annual U.S. baseline BFT quota to account for any underharvest or overharvest of the adjusted 2012 U.S. BFT quota. Preliminary information indicates an underharvest of the 2012 adjusted BFT quota. This proposed action was developed in accordance with the framework process set forth in the Consolidated HMS FMP, and is supported by the Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis prepared for the Consolidated HMS FMP, the Environmental Assessment/Regulatory Impact Review/Final Regulatory Flexibility Analysis prepared for the 2011 final rule implementing BFT quotas and Atlantic tuna fisheries management, and the Supplemental Environmental Assessment prepared for these 2013 quota specifications (see **ADDRESSES**).

On July 5, 2011, NMFS published a final rule (76 FR 39019) that modified the U.S. baseline quota to 923.7 mt to implement ICCAT Recommendation 10–03 (Supplemental Recommendation by ICCAT concerning the Western Atlantic Bluefin Tuna Rebuilding Program) and set the category subquotas per the allocation percentages established in the 2006 Consolidated Atlantic Highly Migratory Species Fishery Management Plan (Consolidated HMS FMP, 71 FR 58058, October 2, 2006). At its 2012 annual meeting, ICCAT recommended a one-year rollover of the annual Total Allowable Catch (TAC) of 1,750 mt that was set in 2010 for 2011 and 2012 (ICCAT Recommendation 12–02).

Although the baseline quota is unchanged this year because the 2012 ICCAT recommendation included the same TAC as the prior recommendation, NMFS will make underharvest and overharvest adjustments as necessary for the 2013 fishing year through quota specifications, consistent with the Consolidated HMS FMP. Preliminary information indicates an underharvest of the 2012 adjusted bluefin tuna quota. The proposed quota specifications were developed in accordance with the framework process set forth in the Consolidated HMS FMP, and is supported by the Environmental Impact Statement/Regulatory Impact Review/Final Regulatory Flexibility Analysis prepared for the Consolidated HMS FMP and the Supplemental Environmental Assessment prepared for this action.

As summarized in the 2012 Stock Assessment and Fishery Evaluation Report for Atlantic Highly Migratory Species, there were approximately 8,492 commercial Atlantic tunas or Atlantic HMS permits in 2012, as follows: 4,084 in the Atlantic Tunas General category; 13 in the Atlantic Tunas Harpoon category; 5 in the Atlantic Tunas Purse Seine category; 253 in the Atlantic Tunas Longline category; 8 in the Atlantic Tunas Trap category; and 4,129 in the HMS Charter/Headboat category. This constitutes the best available information regarding the universe of permits and permit holders recently analyzed.

Under the Small Business Administration's (SBA) regulations implementing the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., a small fishing entity is one that has less than $4 million in annual revenue ($6.5 million for charter/party boats). This action would apply to all participants in the Atlantic bluefin tuna fishery, all of which are considered small entities.

The U.S. Atlantic bluefin tuna quota includes dead discards. Although the United States is not required by ICCAT or current regulations to account for the total amount of dead discards until the end of the fishing season, in both the 2011 and 2012 proposed specifications, NMFS took the proactive measure of accounting for half of the dead discard estimate ''up front,'' (i.e., at the beginning of the fishing year) and deducting that portion directly from the Longline category quota.

The current ICCAT recommendation limits the amount of underharvest that may be carried forward from one year to the next to no more than 10 percent of a country's quota. This restriction limits the amount of underharvest that may be carried forward to 94.9 mt (10 percent of the 948.7-mt total U.S. quota). In both 2011 and 2012, NMFS proposed allocating half of the amount of underharvest that was allowed to be carried forward to the Longline category and maintaining the other half in the Reserve category. This recommendation was intended to provide maximum flexibility in accounting for landings and dead discards at the end of the year. In 2012, when the pelagic longline fishery reached the incidental Longline bluefin tuna subquota, NMFS prohibited further retention of bluefin tuna in that fishery for the remainder of the year before finalizing the quota specifications. Therefore, NMFS provided a slightly larger portion to the Longline category in the final rule to account for actual bluefin tuna landings, and placed the remainder in the Reserve category. For the last two years, NMFS has maintained the directed fishing categories at their baseline quotas.

NMFS proposes to carry 94.9 mt forward to 2013 and distribute that amount in the same manner as proposed for 2011 and 2012, i.e., half to the

Longline category quota and half to the Reserve category quota. The directed fishing categories would continue to receive their baseline subquotas. This would result in the same subquotas as were finalized in 2011. NMFS will make any necessary adjustments to the 2013 specifications in the final rule after considering updated 2012 landings information and the final dead discard estimate for 2012, which should be available in late spring.

The most recent ex-vessel average price per pound information for each commercial quota category is used to estimate potential ex-vessel gross revenues under the proposed 2013 subquotas (i.e., 2012 prices for the General, Harpoon, and Longline/Trap, and Purse Seine categories). The 2013 subquotas could result in estimated gross revenues for each category, if finalized and fully utilized, as follows: General category: $8.8 million (435.1 mt * $9.13/lb); Harpoon category: $724,600 (36 mt * $9.13/lb); Purse Seine category: $4.7 million (171.8 mt * $12.46/lb); Trap category: $12,300 (0.9 mt * $6.19/lb); and Longline category: $678,000 (49.7 mt * $6.19/lb). Estimated potential 2013 revenues on a per vessel basis, considering the number of permit holders listed above and the proposed subquotas, could be $2,144 for the General category; $55,739 for the Harpoon category; $2,681 for the Longline category; $943,845 for the Purse Seine category; and $1,535 for the Trap category. Thus, all of the entities affected by this rule are considered to be small entities for the purposes of the RFA.

This proposed rule would not change the U.S. Atlantic bluefin tuna baseline quota, amount of carryover, or implement any new management measures not previously considered. The baseline quota and category subquotas are codified and remain effective until changed (for instance, if any new ICCAT bluefin tuna TAC recommendation is adopted). Thus, the affected entities will not experience any negative, direct economic impacts as a result of this rule.

The annual specification process that this proposed rule follows, including application of underharvests and overharvests, is described in detail in Chapters 2 and 4 of the Consolidated HMS FMP. Because the economic impacts of the carryover of underharvest, to the extent that there are any, are expected to be generally positive, this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. Accordingly, no initial regulatory flexibility analysis is required, and none has been prepared.

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

Dated: April 8, 2013.

Alan D. Risenhoover,

Director, Office of Sustainable Fisheries, performing the functions and duties of the Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2013–08492 Filed 4–10–13; 8:45 am]

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Notices

Federal Register
Vol. 78, No. 70
Thursday, April 11, 2013

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

Forest Service

Coconino National Forest; Arizona; Flagstaff Watershed Protection Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service is preparing an environmental impact statement (EIS) to document the potential effects of the Flagstaff Watershed Protection Project (FWPP). The analysis will evaluate and disclose the effects of implementing treatments on the National Forest to reduce the threat of high severity wildfire and subsequent flooding in two watersheds around Flagstaff. Specifically, two key areas have been identified for analysis and treatment under this project: The Dry Lake Hills portion of the Rio de Flag Watershed north of Flagstaff, and the Mormon Mountain portion of the Upper Lake Mary Watershed south of Flagstaff. The project area includes approximately 10,543 acres (roughly 7,569 acres in the Dry Lake Hills portion and 2,974 on Mormon Mountain), and proposed treatments would include thinning and prescribed fire on roughly 8,810 of those acres. The EIS will analyze a variety of harvesting methods, including the use of traditional ground-based equipment, hand thinning, and also methods atypical for the region, including cable and helicopter logging, in order to treat steep, inaccessible terrain.

DATES: Comments concerning the scope of the analysis must be received by May 13, 2013. The draft environmental impact statement is expected in early 2014 and the final environmental impact statement is expected in the summer of 2014.

ADDRESSES: Send written comments to Erin Phelps, Project Leader, USDA Forest Service, Coconino National Forest, 5075 N. Hwy 89, Flagstaff, AZ 86004. Comments may also be sent via email to *comments-southwestern-coconino-flagstaff@fs.fed.us,* or via facsimile to 928–527–8288. Verbal comments can be submitted in person at the Flagstaff Ranger District Office, 5075 N. Hwy 89, Flagstaff, AZ 86004 or via telephone at (928) 527–8240 during normal business hours (8:30 a.m.–4:30 p.m.).

FOR FURTHER INFORMATION CONTACT: Visit our planning Web site at *http://www.fs.usda.gov/projects/coconino/landmanagement/projects* or contact Erin Phelps, Project Leader, by phone at (928) 527–8240 or by email at *ephelps@fs.fed.us*.

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

SUPPLEMENTARY INFORMATION:

Purpose and Need for Action

The primary purpose of the Flagstaff Watershed Protection Project (FWPP) is to reduce the risk of high severity wildfire and subsequent flooding in two key watersheds around Flagstaff, Arizona: In the Dry Lake Hills portion of the Rio de Flag Watershed, and the Mormon Mountain portion of the Upper Lake Mary Watershed.

The FWPP analysis area includes portions of the Coconino National Forest that have either not been analyzed or not been treated previously due to prohibitive costs associated with very steep terrain, low value material, and other challenging issues such as potential impacts to wildlife and visual concerns.

There is a need to reduce the risk of high intensity wildfire in watersheds that contribute to the drinking water for the City of Flagstaff as well as reducing the risk of high intensity wildfire in the watershed that drains into the city itself. There is also a need to reduce the risk of severe flooding that would likely damage the drinking water infrastructure south of town, and which could also cause extensive damage to private municipal property should a high-intensity wildfire occur in mountainous areas that make-up the Upper Lake Mary and Rio de Flag watersheds.

In general, fire regimes in the analysis area have shifted from historically more frequent, lower-intensity surface fires (Fire Regime I and III, Condition Class I) to less frequent, higher-intensity crown fires (Condition Class III). There is a need to reduce the potential for crown fire and high intensity surface fire, and to reduce the likelihood of human-caused ignitions. The desired condition is to reduce the threat of high severity wildfire and subsequent flooding to values at risk within and adjacent to the project area, including the City of Flagstaff, outlying communities, the Kachina Peaks Wilderness, and Upper Lake Mary. For the majority of the project area, the desired condition is to decrease the departure from historic conditions, and return the majority of the analysis area in FRI and FRIII to Condition Class 1.

To meet the project's purpose and need, the Forest Service proposes a combination of thinning and prescribed burning activities, establishing a permanent campfire closure order in the Dry Lake Hills area and decommissioning about 34 miles of road in the Flagstaff Watershed Protection Project area. To facilitate timber removal, approximately 15.5 miles of temporary road are also proposed, and three non-significant Forest Plan amendments would be necessarily to implement the proposed activities.

Treatments would include mechanical and hand thinning as well as prescribed fire on approximately 8,810 acres. Mechanical tree thinning would occur within Mexican spotted owl protected activity centers (MSO PACs) with a desired condition of trees greater than 16 inches dbh contributing more than 50 percent of the stand basal area and maintaining a minimum of 40 percent canopy cover in pine-oak and 60 percent in mixed conifer per the MSO Recovery Plan (2012), followed by prescribed burning. Thinning treatments have been designed in coordination with the US Fish and Wildlife Service (FWS) to occur within MSO nest/roost habitat to reduce the risk of high severity wildfire. Some treatments proposed within occupied PACs may need to occur during the breeding season (March 1–August 31); however treatments within PACs would be prioritized to be completed as quickly as possible to avoid long-term impacts and would be coordinated with FWS.

Prescribed fire would include initial pile burning to remove slash

accumulated through harvesting, followed by broadcast burning. Maintenance burning may occur every five to seven years following implementation in order to maintain lower fuel loading levels and to restore a frequent, low-intensity fire regime. Areas of mixed conifer on steep slopes may not receive prescribed burning treatments due to the difficulty and safety concerns associationed with implementation in these fuel types and terrain, and also because the vegetation type may not require as frequent burning due to longer historic fire intervals.

Three project-specific, non-significant amendments to the Coconino National Forest Land Management Plan (Forest Plan; 1987, as amended) would be required to implement the proposed action. A site (project) specific plan amendment is a one-time variance in Forest Plan direction for the project; Forest Plan direction reverts back to its original language/direction upon completion of the specified project. The language proposed does not apply to any other forest project.

The Forest Plan is currently under revision; depending on the timing of the release of the final Forest Plan document, the final FWPP analysis will be consistent with the revised Forest Plan. Additionally, a revised MSO Recovery Plan, issued by the U.S. Fish and Wildlife Service (FWS) was finalized in December of 2012 (USDI 2012). The current Forest Plan is consistent with the previous MSO Recovery Plan (USDI 1995). For this project, a Forest Plan amendment would be needed to utilize the revised recovery plan direction if it is different than what is currently included in the Forest Plan. The proposed Forest Plan amendments include:

Amendment 1: Adding the desired percentage of interspace within uneven-aged stands to facilitate restoration in northern goshawk habitat (excluding nest areas), add the interspace distance between tree groups, add language clarifying how canopy cover would be measured, and add a definition to the Forest Plan glossary for the terms ''interspaces,'' ''open reference condition,'' and ''stands.''

Amendment 2: Adding language to allow mechanical treatments in MSO PACs beyond 9 inches dbh, treatments in MSO restricted habitat above 24 inches dbh, and also to allow treatments and prescribed burning within MSO nest/cores. The monitoring requirement specified under the Forest Plan would be amended to include the monitoring plan developed by the Forest Service, U.S. Fish and Wildlife Service, and the Rocky Mountain Research Station. This amendment would also remove timing restrictions for the duration of the FWPP project. Treatments within PACs would be prioritized to be completed as quickly as possible to avoid long-term impacts and would be coordinated with FWS.

Amendment 3: Removing language restricting mechanical equipment to slopes less than 40 percent and language identifying slopes above 40 percent as inoperable. This amendment would allow mechanical harvesting on slopes greater than 40 percent within the project area. Since the Forest Plan was written and amended, mechanized ground-based equipment has progressed to be able to operate on steep slopes more effectively. In order to be able to utilize such equipment to treat slopes above 40 percent in the project area and meet the purpose and need, this Forest Plan amendment is needed.

Possible Alternatives

A full range of alternatives to the proposed action, including a no-action alternative, will be considered. The no-action alternative represents no change and serves as the baseline for the comparison among the action alternatives.

Cooperating Agencies

The City of Flagstaff is a Cooperating Agency for the Flagstaff Watershed Protection Project, and is participating in the planning and analysis process.

Responsible Official

M. Earl Stewart, Forest Supervisor, Coconino National Forest.

Nature of Decision To Be Made

The Forest Supervisor is the responsible official for deciding whether or not, and in what manner, lands within the Flagstaff Watershed Protection Project area would be treated to reduce wildfire and flooding hazards.

Items in this decision will include: Number of acres treated mechanically; number of acres treated by hand thinning; number of acres treated with prescribed fire; treatments within the MSO restricted habitat; treatments within MSO PACs and protected habitat; treatments within northern goshawk habitat; construction of new temporary roads; decommissioning/obliteration of closed roads; type of implementation method to be used; issuance of a permanent camfire restriction order in the Dry Lake Hills; project-specific Forest Plan amendments; and design features to protect forest resources of soil, water, scenery values, wildlife and habitat, and rare plants.

The decision will be based on a consideration of the environmental effects of implementing the proposed action or alternatives. The Forest Supervisor may select the proposed action, any alternative analyzed in detail, a modified proposed action or alternative, or no action.

Scoping Process

This notice of intent initiates the formal scoping process, which guides the development of the environmental impact statement. Multiple public meetings will be held throughout the planning process for the FWPP project, including a general information sharing and comment gathering meeting scheduled for May 1, 2013 at the Aquaplex in Flagstaff (1702 N. 4th Street) from 6:00 to 8:00 p.m. The Greater Flagstaff Forests Partnership (GFFP) will also be hosting meetings on behalf of the City of Flagstaff. Please visit the FWPP project Web site at *http://www.flagstaffwatershedprotection.org/* for more information and a calendar of upcoming meeting dates.

This project is subject to the objection process pursuant to 36 CFR part 218 (March 27, 2013), and is not being authorized under the Healthy Forest Restoration Act (HFRA). As such, those who provide specific written comments during the formal scoping and/or the comment periods in accordance with § 218.5 will be eligible to participate in the objection process. Issues raised in objections must be based on previously submitted timely, specific written comments regarding the proposed project unless new information arises after designated opportunities (36 CFR 218.7).

It is important that reviewers provide their comments at such times and in such manner that they are useful to the agency's preparation of the environmental impact statement. Therefore, comments should be provided prior to the close of the 30 day scoping period and should clearly articulate the reviewer's concerns and contentions.

Comments received in response to this solicitation, including names and addresses of those who comment, will be part of the public record for this proposed action. Comments submitted anonymously will be accepted and considered, but will not be eligible for objection per § 218.5.

Dated: April 5, 2013.

M. Earl Stewart,

Forest Supervisor.

[FR Doc. 2013–08455 Filed 4–10–13; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

[Docket No. 130313244–3244–01]

XRIN 0694–XC007

Reporting for Calendar Year 2012 on Offsets Agreements Related to Sales of Defense Articles or Defense Services to Foreign Countries or Foreign Firms

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

ACTION: Notice; annual reporting requirements.

SUMMARY: This notice is to remind the public that U.S. firms are required to report annually to the Department of Commerce (Commerce) information on contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offsets agreements exceeding $5,000,000 in value. U.S. firms are also required to report annually to Commerce information on offsets transactions completed in performance of existing offsets commitments for which offsets credit of $250,000 or more has been claimed from the foreign representative. This year, such reports must include relevant information from calendar year 2012, and must be submitted to Commerce no later than June 15, 2013.

ADDRESSES: Reports should be addressed to ''Offsets Program Manager, U.S. Department of Commerce, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, Room 3878, Washington, DC 20230.''

FOR FURTHER INFORMATION CONTACT: Ronald DeMarines, Office of Strategic Industries and Economic Security, Bureau of Industry and Security, U.S. Department of Commerce, telephone: 202–482–3755; fax: 202–482–5650; email: *ronald.demarines@bis.doc.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 723(a)(1) of the Defense Production Act of 1950, as amended (DPA, 50 U.S.C. 2172(a)(1)) requires the President to submit an annual report to Congress on the impact of offsets on the U.S. defense industrial base. Section 723(a)(2) (50 U.S.C. 2172(a)(2)) directs the Secretary of Commerce (Secretary) to prepare the President's report, and to develop and administer the regulations necessary to collect offsets data from U.S. defense exporters.

The authorities of the Secretary regarding offsets have been delegated to the Under Secretary of Commerce for Industry and Security. The regulations associated with offsets reporting are set forth in part 701 of title 15 of the Code of Federal Regulations. Offsets are compensation practices required as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services, as defined by the Arms Export Control Act and the International Traffic in Arms Regulations. For example, a company that is selling a fleet of military aircraft to a foreign government may agree to offset the cost of the aircraft by providing training assistance to plant managers in the purchasing country. Although this distorts the true price of the aircraft, the foreign government may require this sort of extra compensation as a condition of awarding the contract to purchase the aircraft. As described in the regulations, U.S. firms are required to report information on contracts for the sale of defense articles or defense services to foreign countries or foreign firms that are subject to offsets agreements exceeding $5,000,000 in value. U.S. firms are also required to report annually information on offsets transactions completed in performance of existing offsets commitments for which offsets credit of $250,000 or more has been claimed from the foreign representative.

Commerce's annual report to Congress includes an aggregated summary of the data reported by industry in accordance with the offsets regulation and the DPA. As provided by section 723(c) (50 U.S.C. 2172(c)) of the DPA, BIS will not publicly disclose individual firm information it receives through offsets reporting unless the firm furnishing the information specifically authorizes public disclosure. The information collected is sorted and organized into an aggregate report of national offsets data, and therefore does not identify company-specific information.

In order to enable BIS to prepare the next annual offset report reflecting calendar year 2012 data, U.S. firms must submit required information on offsets agreements and offsets transactions from calendar year 2012 to BIS no later than June 15, 2013.

Dated: April 1, 2013.

Kevin J. Wolf,

Assistant Secretary for Export Administration.

[FR Doc. 2013–08413 Filed 4–10–13; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–983]

Drawn Stainless Steel Sinks from the People's Republic of China: Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (''ITC''), the Department is issuing an antidumping duty order on drawn stainless steel sinks (''drawn sinks'') from the People's Republic of China (''PRC''). In addition, the Department is amending its final determination to correct a ministerial error.

DATES: *Effective Date:* April 11, 2013.

FOR FURTHER INFORMATION CONTACT: Brooke Kennedy or Eve Wang, AD/CVD Operations, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–3818 or (202) 482–6231, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 2013, the Department published the final determination of sales at less than fair value in the antidumping duty investigation of drawn sinks from the PRC.[1] On April 4, 2013, the ITC notified the Department of its final determination pursuant to section 735(b)(1)(A)(i) of the Tariff Act of 1930, as amended (''the Act''), that an industry in the United States is materially injured by reason of imports of drawn sinks from the PRC.[2]

Scope of the Order

The products covered by the scope of this order are drawn stainless steel sinks

[1] *See Drawn Stainless Steel Sinks From the People's Republic of China: Investigation, Final Determination,* 78 FR 13019 (February 26, 2013) (''*Final Determination*'').

[2] *See Drawn Stainless Steel Sinks from China,* USITC Pub. 4390, Investigation Nos. 701–TA–489 and 731–TA–1201 (Final) (April 2013).

with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel. Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of this order if they are included within the sales price of the drawn stainless steel sinks.[3] For purposes of this scope definition, the term ''drawn'' refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. Drawn stainless steel sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the order. Drawn stainless steel sinks are covered by the scope of the order whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the scope of the order are stainless steel sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. Stainless steel sinks with fabricated bowls may sometimes be referred to as ''zero radius'' or ''near zero radius'' sinks.

The products covered by this order are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under statistical reporting number 7324.10.0000 and 7324.10.00.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Amendment to the Final Determination

On February 26, 2013, the Department published its affirmative final determination in this proceeding.[4] On March 5, 2013, Jiangxi Zoje Kitchen & Bath Industry Co., Ltd. (''Zoje''), a separate rate applicant in this investigation submitted a timely ministerial error allegation and requested, pursuant to 19 CFR 351.224, that the Department correct the alleged ministerial error by revising Zoje's combination rates.

After analyzing all interested party comments, we have determined, in accordance with section 735(e) of the Act and 19 CFR 351.224(e), that we made the following ministerial error in the *Final Determination* with respect to Zoje:

- We inadvertently assigned a separate rate to the exporter Zoje in combination with Jiangxi Offidun Industry Co., Ltd. as the only producer of the subject merchandise. Information provided in Zoje's separate rate application indicated that Zoje qualified for two producer-exporter combinations.

For a detailed discussion of the alleged ministerial error, as well as the Department's analysis, *see* Memorandum to Paul Piquado, Assistant Secretary for Import Administration, from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, regarding, ''Final Determination of Antidumping Duty Investigation on Drawn Stainless Steel Sinks from the People's Republic of China: Allegation of Ministerial Error,'' dated March 22, 2013.

Antidumping Duty Order

In accordance with sections 735(b)(1)(A)(i) and 735(d) of the Act, the ITC has notified the Department of its final determination in this investigation, in which it found that imports of drawn sinks from the PRC are materially injuring a U.S. industry. Therefore, in accordance with section 735(c)(2) of the Act, we are publishing this antidumping duty order.

As a result of the ITC's final determination, in accordance with section 736(a)(1) of the Act, the Department will direct U.S. Customs and Border Protection (''CBP'') to assess, upon further instruction by the Department, antidumping duties equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of drawn sinks from the PRC. These antidumping duties will be assessed on unliquidated entries from the PRC entered, or withdrawn from warehouse, for consumption on or after October 4, 2012, the date on which the Department published the *Preliminary Determination,*[5] but will not include entries occurring after the expiration of the provisional measures period and before publication of the ITC's final injury determination, as further described below.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we will instruct CBP to continue to suspend liquidation on entries of subject merchandise from the PRC. We will also instruct CBP to require cash deposits equal to the estimated amount by which the normal value exceeds the U.S. price as indicated in the chart below. These cash deposit rates will be adjusted, where appropriate, for export subsidies and estimated domestic subsidy pass-through. These instructions suspending liquidation will remain in effect until further notice.

Accordingly, effective on the date of publication of the ITC's final affirmative injury determination, CBP will require, at the same time as importers would normally deposit estimated duties on this subject merchandise, a cash deposit equal to the estimated weighted-average antidumping duty margins as discussed above, adjusted, where appropriate, for export subsidies and estimated domestic subsidy pass-through.[6] The ''PRC-wide'' rate applies to all exporters of subject merchandise not specifically listed.

Provisional Measures

Section 733(d) of the Act states that instructions issued pursuant to an affirmative preliminary determination may not remain in effect for more than four months except where exporters representing a significant proportion of exports of the subject merchandise request the Department to extend that four-month period to no more than six months. At the request of the exporters that account for a significant proportion of exports of drawn stainless steel sinks from the PRC, we extended the four-month period to no more than six months.[7] In the underlying investigation, the Department published the *Preliminary Determination* on October 4, 2012. Therefore, the six-month period beginning on the date of the publication of the *Preliminary Determination* ended on April 2, 2013. Furthermore, section 737(b) of the Act

[3] Mounting clips, fasteners, seals, and sound-deadening pads are not covered by the scope of the order if they are not included within the sales price of the drawn stainless steel sinks, regardless of whether they are shipped with or entered with drawn stainless steel sinks.

[4] *See Final Determination.*

[5] *See Drawn Stainless Steel Sinks From the People's Republic of China: Antidumping Duty Investigation,* 77 FR 60673 (October 4, 2012) (''*Preliminary Determination*'').

[6] *See* sections 736(a)(3), 772(c)(1)(C) and 777A(f) of the Act.

[7] *See Letter from Guangdong Dongyuan Kitchenware Industrial Co., Ltd.,* ''Drawn Stainless Steel Sinks from the People's Republic of China: Request for Extension of Final Determination,'' dated September 21, 2012.

states that definitive duties are to begin on the date of publication of the ITC's final injury determination.

Therefore, in accordance with section 733(d) of the Act and our practice, we will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of drawn sinks from the PRC entered, or withdrawn from warehouse, for consumption after April 2, 2013, the date the provisional measures expired, and through the day preceding the date of publication of the ITC's final injury determination in the **Federal Register**.

Amended Final Determination of Antidumping Investigation

The weighted-average dumping margins are as follows:

Exporter	Producer	Percent margin
Zhongshan Superte Kitchenware Co., Ltd/Zhongshan Superte Kitchenware Co., Ltd invoiced as Foshan Zhaoshun Trade Co., Ltd.	Zhongshan Superte Kitchenware Co., Ltd	39.87
Guangdong Dongyuan Kitchenware Industrial Co., Ltd	Guangdong Dongyuan Kitchenware Industrial Co., Ltd	27.14
B&R Industries Limited	Xinhe Stainless Steel Products Co., Ltd and Jiamen XHHL Stainless Steel Manufacturing Co., Ltd.	33.51
Elkay (China) Kitchen Solutions, Co., Ltd	Elkay (China) Kitchen Solutions, Co., Ltd	33.51
Feidong Import and Export Co., Ltd	Jiangmen Liantai Kitchen Equipment Co.; Jiangmen Xinhe Stainless Steel Product Co., Ltd.	33.51
Foshan Shunde MingHao Kitchen Utensils Co., Ltd	Foshan Shunde MingHao Kitchen Utensils Co., Ltd	33.51
Franke Asia Sourcing Ltd	Guangdong YingAo Kitchen Utensils Co., Ltd; Franke (China) Kitchen System Co., Ltd.	33.51
Grand Hill Work Company	Zhongshan Xintian Hardware Co., Ltd	33.51
Guangdong G-Top Import and Export Co., Ltd	Jiangmen Jin Ke Ying Stainless Steel Wares Co., Ltd	33.51
Guangdong Yingao Kitchen Utensils Co., Ltd	Guangdong Yingao Kitchen Utensils Co., Ltd	33.51
Hangzhou Heng's Industries Co., Ltd	Hangzhou Heng's Industries Co., Ltd	33.51
J&C Industries Enterprise Limited	Zhongshan Superte Kitchenware Co., Ltd	33.51
Jiangmen Hongmao Trading Co., Ltd	Xinhe Stainless Steel Products Co., Ltd	33.51
Jiangmen New Star Hi-Tech Enterprise Ltd	Jiangmen New Star Hi-Tech Enterprise Ltd	33.51
Jiangmen Pioneer Import & Export Co., Ltd	Jiangmen Ouert Kitchen Appliance Manufacturing Co., Ltd; Jiangmen XHHL Stainless Steel Manufacturing Co., Ltd.	33.51
Jiangxi Zoje Kitchen & Bath Industry Co., Ltd	Jiangxi Offidun Industry Co. Ltd; Jiangxi Zoje Kitchen & Bath Industry Co., Ltd.	33.51
Ningbo Oulin Kitchen Utensils Co., Ltd	Ningbo Oulin Kitchen Utensils Co., Ltd	33.51
Primy Cooperation Limited	Primy Cooperation Limited	33.51
Shunde Foodstuffs Import & Export Company Limited of Guangdong.	Bonke Kitchen & Sanitary Industrial Co., Ltd	33.51
Zhongshan Newecan Enterprise Development Corporation	Zhongshan Xintian Hardware Co., Ltd	33.51
Zhuhai Kohler Kitchen & Bathroom Products Co., Ltd	Zhuhai Kohler Kitchen & Bathroom Products Co., Ltd	33.51
PRC-Wide Rate *		76.53

* This rate also applies to Jiangmen Liantai Kitchen Equipment Co., Jiangmen Xinhe Stainless Steel Product Co., Ltd, Kele Kitchenware Co., Ltd, Capstone International Development Corporation, FoShan Fancome Trading Co., Ltd, and Shenzen Kehuaxing Industrial Ltd.

This notice constitutes the antidumping duty order with respect to drawn sinks from the PRC pursuant to section 736(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 7043 of the main Commerce building, for copies of an updated list of antidumping duty orders currently in effect.

This order and amended final determination are published in accordance with sections 736(a) and 735(e) of the Act and 19 CFR 351.211 and 351.224(e).

Dated: April 8, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–08649 Filed 4–10–13; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–942]

Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2010

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (''Department'') has completed its administrative review of the countervailing duty (''CVD'') order on certain kitchen appliance shelving and racks from the People's Republic of China (''PRC'') for the period January 1, 2010, through December 31, 2010. The final net subsidy rate for New King Shan (Zhu Hai) Co., Ltd. (''NKS'') is listed below in the section entitled ''Final Results of the Review.''

DATES: *Effective Date:* April 11, 2013.

FOR FURTHER INFORMATION CONTACT: Jennifer Meek or Mary Kolberg, Office of AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2778 and (202) 482–1785, respectively.

SUPPLEMENTARY INFORMATION:

Background

Following the *Preliminary Results,*[1] the Department sent two supplemental questionnaires to NKS regarding certain subsidy programs. NKS submitted its timely responses on October 23, 2012,

[1] *See Certain Kitchen Appliance Shelving and Racks From the People's Republic of China: Countervailing Duty Administrative Review; 2010,* 77 FR 61396 (October 9, 2012) (''*Preliminary Results*''), as corrected by *Certain Kitchen Appliance Shelving and Racks from the People's Republic of China: Countervailing Duty Administrative Review, 2010; Correction,* 77 FR 72324 (December 5, 2012).

and November 28, 2012. NKS submitted a case brief on December 10, 2012. SSW Holding Company, Inc. and Nashville Wire Products, Inc. (collectively ''Petitioners''), submitted a rebuttal brief on December 17, 2012.

On February 4, 2013, we placed on the record of this review pricing information for wire rod, hot-rolled steel coil, and cold- rolled steel coil.[2] NKS commented on these prices on February 19, 2013. On March 8, 2013, we placed on the record of this review the ''Regulations of the People's Republic of China on Import and Export Duties,'' which we obtained from the Web site of the Ministry of Commerce of the People's Republic of China.[3] No party commented on this information.

Scope of the Order

The merchandise subject to the order is shelving and racks for refrigerators, freezers, combined refrigerator-freezers, other refrigerating or freezing equipment, cooking stoves, ranges, and ovens. These products are currently classified under the Harmonized Tariff Schedule of the United States (''HTSUS'') item numbers 8418.99.80.50, 7321.90.50.00, 7321.90.60.40, 7321.90.60.90, 8418.99.80.60, 8419.90.95.20, 8516.90.80.00, and 8516.90.80.10. The HTSUS subheadings are provided for convenience and customs purposes. A full description of the scope is contained in the Memorandum from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, to Ronald K. Lorentzen, Acting Assistant Secretary for Import Administration, entitled ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review: Certain Kitchen Appliance Shelving and Racks from the People's Republic of China,'' dated concurrently with this notice (''Issues and Decision Memorandum''), which is hereby adopted by this notice.

Analysis of Comments Received

All issues raised in the parties' briefs are addressed in the Issues and Decision Memorandum. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (''IA ACCESS''). IA ACCESS is available to registered users at *http://iaaccess.trade.gov* and in the Central Records Unit, room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the internet at *http://www.trade.gov/ia/.* The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Use of Facts Otherwise Available and Adverse Inferences

For purposes of these final results, we have continued to rely on facts available and apply adverse inferences in accordance with sections 776(a) and (b), respectively, of the Tariff Act of 1930, as amended (''Act''), with regard to: (1) Whether suppliers of steel strip and wire rod are authorities under the Wire Rod and Steel Strip at Less than Adequate Remuneration programs; and (2) the specificity of various grants listed in NKS' financial statements. A full discussion of our decision to apply adverse facts available is presented in the Issues and Decision Memorandum under the section ''Use of Facts Otherwise Available and Adverse Inferences.''

Final Results of the Review

In accordance with 19 CFR 351.221(b)(5), we calculated the subsidy rate shown below for the mandatory respondent, NKS.

Producer/exporter	Net subsidy rate (percent)
New King Shan (Zhu Hai) Co., Ltd	12.06

Assessment Rates

The Department intends to issue appropriate assessment instructions directly to U.S. Customs and Border Protection (''CBP'') 15 days after publication of these final results of review, to liquidate shipments of subject merchandise by NKS entered, or withdrawn from warehouse, for consumption on or after January 1, 2010, through December 31, 2010.

Cash Deposit Instructions

The Department also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown above on shipments of subject merchandise by NKS entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed companies, we will instruct CBP to continue to collect cash deposits at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to companies covered by this order, but not examined in this review, are those established in the most recently completed segment of the proceeding for each company. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Administrative Protective Order

This notice serves as a reminder to parties subject to administrative protective order (''APO'') of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

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

Dated: April 5, 2013.

Ronald K. Lorentzen,

Acting Assistant Secretary for Import Administration.

Appendix I

List of Comments in the Issues and Decision Memorandum:

Comment 1: Application of CVD Law to the PRC

Comment 2: Benchmark Calculation for the Wire Rod for Less Than Adequate Remuneration (''LTAR'') Program

Comment 3: Inclusion of Ocean Freight in the Benchmark Calculations

Comment 4: NKS' February 19, 2013 Comments Regarding the Department's Placement of Information on the Record

[FR Doc. 2013–08514 Filed 4–10–13; 8:45 am]

BILLING CODE 3510–DS–P

[2] *See* Memorandum to the File from Jennifer Meek regarding, ''Countervailing Duty Administrative Review: Certain Kitchen Appliance Shelving and Oven Racks from the People's Republic of China: Benchmark Information Currently On the Record,'' (February 4, 2013).

[3] *See* Memorandum to the File from Jennifer Meek regarding, ''Countervailing Duty Administrative Review: Certain Kitchen Appliance Shelving and Oven Racks from the People's Republic of China: Chinese Customs Regulations for Imports,'' (March 8, 2013).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–984]

Drawn Stainless Steel Sinks From the People's Republic of China: Countervailing Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: Based on affirmative final determinations by the Department of Commerce (the ''Department'') and the International Trade Commission (''ITC''), the Department is issuing a countervailing duty order on drawn stainless steel sinks (''drawn sinks'') from the People's Republic of China (''PRC'').

DATES: *Effective Date:* April 11, 2013.

FOR FURTHER INFORMATION CONTACT: Shane Subler or Austin Redington, AD/CVD Operations, Office 1, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–0189 and (202) 482–1664, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 26, 2013, the Department published its final determination in the countervailing duty investigation of drawn sinks from the PRC.[1] On April 4, 2013, the ITC notified the Department of its final determination pursuant to section 705(b)(1)(A)(i) of the Tariff Act of 1930, as amended (''the Act''), that an industry in the United States is materially injured by reason of subsidized imports of subject merchandise from the PRC.[2]

Scope of the Order

The products covered by the scope of this order are drawn stainless steel sinks with single or multiple drawn bowls, with or without drain boards, whether finished or unfinished, regardless of type of finish, gauge, or grade of stainless steel. Mounting clips, fasteners, seals, and sound-deadening pads are also covered by the scope of this order if they are included within the sales price of the drawn stainless steel sinks.[3] For purposes of this scope definition, the term ''drawn'' refers to a manufacturing process using metal forming technology to produce a smooth basin with seamless, smooth, and rounded corners. Drawn stainless steel sinks are available in various shapes and configurations and may be described in a number of ways including flush mount, top mount, or undermount (to indicate the attachment relative to the countertop). Stainless steel sinks with multiple drawn bowls that are joined through a welding operation to form one unit are covered by the scope of the order. Drawn stainless steel sinks are covered by the scope of the order whether or not they are sold in conjunction with non-subject accessories such as faucets (whether attached or unattached), strainers, strainer sets, rinsing baskets, bottom grids, or other accessories.

Excluded from the scope of the order are stainless steel sinks with fabricated bowls. Fabricated bowls do not have seamless corners, but rather are made by notching and bending the stainless steel, and then welding and finishing the vertical corners to form the bowls. Stainless steel sinks with fabricated bowls may sometimes be referred to as ''zero radius'' or ''near zero radius'' sinks.

The products covered by this order are currently classified in the Harmonized Tariff Schedule of the United States (''HTSUS'') under statistical reporting number 7324.10.0000 and 7324.10.00.10. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope is dispositive.

Countervailing Duty Order

In accordance with sections 705(b)(1)(A)(i) and 705(d) of the Act, the ITC has notified the Department of its final determination that the industry in the United States producing drawn sinks is materially injured by reason of subsidized imports of drawn sinks from the PRC. Therefore, in accordance with section 705(c)(2) of the Act, we are publishing this countervailing duty order.

As a result of the ITC's final determination, in accordance with section 706(a) of the Act, the Department will direct U.S. Customs and Border Protection (''CBP'') to assess, upon further instruction by the Department, countervailing duties on unliquidated entries of drawn sinks from the PRC entered, or withdrawn from warehouse, for consumption on or after August 6, 2012, the date on which the Department published its preliminary countervailing duty determination in the **Federal Register**,[4] and before December 4, 2012, the date on which the Department instructed CBP to discontinue the suspension of liquidation in accordance with section 703(d) of the Act. Section 703(d) of the Act states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Therefore, entries of drawn sinks made on or after December 4, 2012, and prior to the date of publication of the ITC's final determination in the **Federal Register** are not liable for the assessment of countervailing duties due to the Department's discontinuation, effective December 4, 2012, of the suspension of liquidation.

Suspension of Liquidation

In accordance with section 706 of the Act, the Department will direct CBP to reinstitute the suspension of liquidation of drawn sinks from the PRC, effective the date of publication of the ITC's notice of final determination in the **Federal Register**, and to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rates for the subject merchandise. On or after the date of publication of the ITC's final injury determination in the **Federal Register**, CBP must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the rates noted below:

[1] *See Drawn Stainless Steel Sinks From the People's Republic of China: Final Affirmative Countervailing Duty Determination,* 78 FR 13017 (February 26, 2013).

[2] *See Drawn Stainless Steel Sinks from China,* USITC Pub. 4390, Investigation Nos. 701–TA–489 and 731–TA–1201 (Final) (April 2013).

[3] Mounting clips, fasteners, seals, and sound deadening pads are not covered by the scope of this order if they are not included within the sales price of the drawn stainless steel sinks, regardless of whether they are shipped with or entered with drawn stainless steel sinks.

[4] *See Drawn Stainless Steel Sinks From the People's Republic of China: Preliminary Affirmative Countervailing Duty Determination,* 77 FR 46717 (August 6, 2012).

Producer/Exporter	Net subsidy rate %
Guangdong Yingao Kitchen Utensils Co., Ltd., and Foshan Magang Kitchen Utensils Co., Ltd.	4.80
Zhongshan Superte Kitchenware Co., Ltd.	12.21
Foshan Zhaoshun Trade Co., Ltd.	12.26
All Others	8.51

This notice constitutes the countervailing duty order with respect to drawn sinks from the PRC, pursuant to section 706(a) of the Act. Interested parties may contact the Department's Central Records Unit, Room 7046 of the main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

This order is issued and published in accordance with section 706(a) of the Act and 19 CFR 351.211(b).

Dated: April 8, 2013.

Paul Piquado,

Assistant Secretary for Import Administration.

[FR Doc. 2013–08643 Filed 4–10–13; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RIN 0648–BB71

Marine Mammals: Alaska Harbor Seal Habitats

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

ACTION: Notice of public workshops.

SUMMARY: NMFS will hold two public workshops to solicit input from stakeholders regarding our advance notice of proposed rulemaking (ANPR) on potential management measures to protect glacially-associated harbor seal habitats in Alaska (78 FR 15669; March 12, 2013). During the workshops NMFS will present information regarding harbor seal habitat usage and available research on the effects of vessel disturbance. NMFS will seek input as to whether management measures are needed, and if so, what types of measures should be considered.

DATES: We will conduct public workshops on the harbor seal ANPR on the specific dates listed below:

1. April 22, 2013, from 2 p.m. to 4 p.m. Alaska Daylight Time (ADT) in Juneau, Alaska.

2. April 23, 2013, from 2 p.m. to 4 p.m. (ADT) in Yakutat, Alaska.

ADDRESSES: The workshop locations are:

1. Juneau, AK—Centennial Hall, Hickel Room, 101 Egan Drive, Juneau, AK 99801.

2. Yakutat, AK—ANB Hall, 522 Max Italio Dr., Yakutat, AK 99689.

You may submit written comments, identified by FDMS Docket Number NOAA–NMFS–2011–0284, before May 12, 2013 by any one of the following methods:

- *Electronic Submissions:* Submit all electronic public comments via the Federal eRulemaking Portal Web site at *http://www.regulations.gov.* To submit comments via the e-Rulemaking Portal, first click the ''Submit a Comment'' icon, then enter NOAA–NMFS–2011–0284 in the keyword search. Locate the document you wish to comment on from the resulting list and click on the ''Submit a Comment'' icon on the right of that line.
- *Mail:* Address written comments to Jon Kurland, Assistant Regional Administrator, Protected Resources Division, Alaska Region NMFS, Attn: Ellen Sebastian. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.
- *Fax:* Address written comments to Jon Kurland, Assistant Regional Administrator, Protected Resources Division, Alaska Region NMFS, Attn: Ellen Sebastian. Fax comments to 907–586–7557.
- *Hand delivery to the Federal Building:* Address written comments to Jon Kurland, Assistant Regional Administrator, Protected Resources Division, Alaska Region NMFS, Attn: Ellen Sebastian. Deliver comments to 709 West 9th Street, Room 420A, Juneau, AK.
- Hand delivery to NMFS at one of the public workshops listed in this notice.

Comments must be submitted by one of the above methods to ensure that the comments are received, documented, and considered by NMFS. Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered.

All comments received are a part of the public record and will generally be posted to *http://www.regulations.gov* without change. All Personal Identifying Information (e.g., name, address) voluntarily submitted by the commenter will be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information.

NMFS will accept anonymous comments (enter N/A in the required fields, if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, WordPerfect, or Adobe portable document file (pdf) formats only.

Electronic copies of the ANPR may be obtained from *http://www.regulations.gov* or from the NMFS Alaska Region Web site at *http://alaskafisheries.noaa.gov.*

FOR FURTHER INFORMATION CONTACT: Alicia Bishop, NMFS Alaska Regional Office, (907) 586–7224; or Shannon Bettridge, NMFS Office of Protected Resources, (301) 427–8402.

SUPPLEMENTARY INFORMATION: On March 12, 2013, NMFS published an ANPR in the **Federal Register** (78 FR 15669) to consider whether to propose regulations to protect glacially-associated harbor seal habitats in Alaska used for pupping, nursing, resting, and molting, and to limit vessel disturbance to harbor seals in those habitats. We will conduct two public workshops to inform interested parties of the ANPR and receive written comments.

In response to the ANPR, and at the workshops, we are seeking information and comments concerning: (1) The advisability of and need for regulations; (2) the geographic scope and time horizon of regulations; (3) management options for regulating vessel interactions with harbor seals, including but not limited to the options listed in this notice; (4) scientific and commercial information regarding the effects of vessels on harbor seals and their habitat; (5) information regarding potential economic effects of regulating vessel interactions; (6) the feasibility of any management measure or regulation (for example, navigational safety or security concerns); and (7) any additional relevant information that NMFS should consider should it undertake rulemaking.

Oral statements will not be recorded at the workshop. We encourage interested people, groups, and organizations to provide a written copy of their statement and present it to us at

the workshop. Blank ''comment sheets'' will be provided at the public meetings for those without prepared written comments. In addition, we encourage the submission of comments in accordance with the instructions the ANPR. If attendance at the public workshops is large, the time allotted for individual oral comments may be limited. There are no limits on the length of written comments submitted to us. There is no need to register for these workshops.

Dated: April 5, 2013.

Helen M. Golde,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 2013–08493 Filed 4–10–13; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Climate Assessment and Development Advisory Committee (NCADAC)

AGENCY: Office of Oceanic and Atmospheric Research (OAR), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of Open Meeting.

SUMMARY: This notice sets forth the schedule of a forthcoming meeting of the DoC NOAA National Climate Assessment and Development Advisory Committee (NCADAC).

Time and Date: The meeting will be held Monday, May 13, 2013 from 3:00 p.m.–5:00 p.m. Eastern time.

Place: This meeting will be a conference call. Public access and materials will be available at the office of the U.S. Global Change Research Program, Conference Room A, Suite 250, 1717 Pennsylvania Avenue NW., Washington, DC 20006. The public will not be able to dial into the call. Please check the National Climate Assessment Web site for additional information at *http://www.globalchange.gov/what-we-do/assessment.*

Status: The meeting will be open to public participation with a 10-minute public comment period from 4:45–4:55 p.m. The NCADAC expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of two minutes. Written comments should be received in the NCADAC DFO's office by Monday, May 6, 2013 to provide sufficient time for NCADAC review. Written comments received by the NCADAC DFO after Monday, May 6, 2013 will be distributed to the NCADAC, but may not be reviewed prior to the meeting date.

Special Accommodations: These meetings are physically accessible to people with disabilities. Requests for special accommodations may be directed no later than 12 p.m. on Monday, May 6, 2013 to Dr. Cynthia Decker, SAB Executive Director, SSMC3, Room 11230, 1315 East–West Hwy., Silver Spring, MD 20910.

MATTERS TO BE CONSIDERED: Please refer to the Web page *http://www.nesdis.noaa.gov/NCADAC/index.html* for the most up-to-date meeting agenda, when available.

FOR FURTHER INFORMATION CONTACT: Dr. Cynthia Decker, Designated Federal Officer, National Climate Assessment and Development Advisory Committee, NOAA, Rm. 11230, 1315 East–West Highway, Silver Spring, Maryland 20910. (Phone: 301–734–1156, Fax: 301–713–1459, Email: *Cynthia.Decker@noaa.gov.*

SUPPLEMENTARY INFORMATION: The National Climate Assessment and Development Advisory Committee was established in December 2010. The committee's mission is to synthesize and summarize the science and information pertaining to current and future impacts of climate change upon the United States; and to provide advice and recommendations toward the development of an ongoing, sustainable national assessment of global change impacts and adaptation and mitigation strategies for the Nation. Within the scope of its mission, the committee's specific objective is to produce a National Climate Assessment.

Dated: April 5, 2013.

Jason Donaldson,

Chief Financial Officer/Chief Administrative Officer, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 2013–08474 Filed 4–10–13; 8:45 am]

BILLING CODE 3510–KD–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–HA–0084]

Proposed Collection; Comment Request

AGENCY: Office of the Assistant Secretary of Defense for Health Affairs, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the *Paperwork Reduction Act of 1995,* the Office of the Assistant Secretary of Defense for Health Affairs announces a proposed extension of a public information collection and seeks public comment on the provisions thereof. 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 proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by June 10, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name, docket number and title for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

Any associated form(s) for this collection may be located within this same electronic docket and downloaded for review/testing. Follow the instructions at *http://www.regulations.gov* for submitting comments. Please submit comments on any given form identified by docket number, form number, and title.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the TRICARE Management Activity, TRICARE Overseas Program Office, ATTN: Ms. Kimberly Stakes, 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101, or call 703–681–0039.

Title; Associated Form; and OMB Number: Women, Infants, and Children Overseas Program (WIC Overseas) Eligibility Application; OMB Control Number 0720–0030.

Needs and Uses: The information collection requirement is necessary for individuals to apply for certification and periodic recertification to receive WIC Overseas benefits.

Affected Public: Individuals or Households.

Initial Burden

Annual Burden Hours: 3,959.

Number of Respondents: 15,836.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Semi-Annual Burden

Annual Burden Hours: 3,959.

Number of Respondents: 15,836.

Responses per Respondent: 1.

Average Burden per Response: 15 minutes.

Frequency: Initially and every six months.

Total Annual Burden Hours: 7,918.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

The purpose of the program is to provide supplemental foods and nutrition education to serve as an adjunct to good health care during critical times of growth and development, in order to prevent the occurrence of health problems, including drug and other substance abuse, and to improve the health status of program participants. The benefit is similar to the benefit provided under the domestic WIC program.

Respondents are individuals who are dependents of members of the armed forces stationed overseas, dependents of a civilian employee of a military department stationed overseas, and DoD contractors and their dependents stationed overseas who desire to receive supplemental food and nutrition education services. To be eligible for program, a person must meet specific income guidelines. In determining income eligibility, the Department will use the Department of Health and Human Services income poverty table for the state of Alaska.

Dated: April 5, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–08458 Filed 4–10–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Acquisition University Board of Visitors; Notice of Federal Advisory Committee Meeting

AGENCY: Defense Acquisition University, DoD.

ACTION: Meeting notice.

SUMMARY: Under the provisions of the Federal Advisory Committee Act of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.150, the Department of Defense announces that the following Federal advisory committee meeting of the Defense Acquisition University Board of Visitors will take place.

DATES: Wednesday, May 15, 2013, from 8:30 a.m. to 11:30 a.m.

ADDRESSES: DAU Headquarters, 9820 Belvoir Road, Fort Belvoir, VA 22060.

FOR FURTHER INFORMATION CONTACT: Christen Goulding, Protocol Director, DAU, Phone: 703–805–5134, Fax: 703–805–5940, Email: *christen.goulding@dau.mil.*

SUPPLEMENTARY INFORMATION:

Purpose of the Meeting: The purpose of this meeting is to report back to the Board of Visitors on continuing items of interest. Agenda:

8:30 a.m. Welcome and approval of minutes
8:40 a.m. Status of Certification to Qualification Initiative
9:00 a.m. RFP Team-learning
9:30 a.m. Better Buying Power 2.0
10:30 a.m. Acker Knowledge Repository
11:00 a.m. Sequestration Impacts on DAU
11:30 a.m. Adjourn

Public's Accessibility to the Meeting: Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, and the availability of space, this meeting is open to the public. However, because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Ms. Christen Goulding at 703–805–5134. Committee's Designated Federal Officer or

Point of Contact: Ms. Kelley Berta, 703–805–5412.

Dated: April 5, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2013–08434 Filed 4–10–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0079]

Privacy Act of 1974; System of Records

AGENCY: Defense Information Systems Agency, DoD.

ACTION: Notice to delete three Systems of Records Notices.

SUMMARY: The Defense Information Systems Agency is deleting three systems of records notices in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on May 13, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before May 13, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this Federal Register document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Jeanette Weathers-Jenkins, 6916 Cooper Avenue, Fort Meade, MD 20755–7901, or (301) 225–8158.

SUPPLEMENTARY INFORMATION: The Defense Information Systems Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 1, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS:

K317.01, Mishap Report (February 22, 1993, 58 FR 10562)

KPAC–05, 403–03 Injury Records (February 22, 1993, 58 FR 10562)

K232.02, Injury Record File (February 22, 1993, 58 FR 10562)

REASON:

Based on a recent review of the systems of records notices, K317.01, Mishap Report, KPAC–05, 403–03 Injury Records, and K232.02, Injury Record File, are covered by the Government wide system of records notice OPM/GOVT–10, Employee Medical File System Records (June 21, 2010, 75 FR 35099). Therefore, these notices can be deleted. Government-wide notices can be found at *http://dpclo.defense.gov/privacy/SORNs/govt/OPMGOVT-10.html*.

[FR Doc. 2013–08437 Filed 4–10–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0050]

Privacy Act of 1974; System of Records

AGENCY: National Geospatial-Intelligence Agency, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The National Geospatial-Intelligence Agency is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on May 13, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before May 13, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

* *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

* *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: For privacy questions please contact: NGA Privacy Office, National Geospatial-Intelligence Agency, 7500 GEOINT Drive, Springfield, VA 22150.

SUPPLEMENTARY INFORMATION: The National Geospatial-Intelligence Agency systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 5, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION:

B0503–09, Key Accountability Files (67 FR 12532, March 19, 2002).

REASON:

This system was originally established to maintain documentation on periodic inspections, key accountability, reference checks and daily use records and investigations into lost or destruction of secure areas. The system no longer exists, the records have met their retention, and therefore B0503–09, Key Accountability Files can be deleted.

[FR Doc. 2013–08438 Filed 4–10–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2013–OS–0073]

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to delete a Systems of Records.

SUMMARY: The Defense Logistics Agency is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on May 13, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before May 13, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

• *Federal Rulemaking Portal: http://www.regulations.gov*. Follow the instructions for submitting comments.

• *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Sinkler, DLA FOIA/Privacy Act Office, Headquarters, Defense Logistics Agency, ATTN: DGA, 8725 John J. Kingman Road, Suite 1644, Fort Belvoir, VA 22060–6221, or by phone at (703) 767–5045.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency system of records notice subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 1, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion:

S380.50

SYSTEM NAME:

DLA Drug-Free Workplace Program Records (May 20, 2010; 75 FR 28242)

REASON:

Records are covered under the Office of Personnel Management (OPM) government-wide Privacy Act system of records notice OPM/Govt-10, entitled ''Employee Medical File System Records'' last published in the **Federal**

Register on June 21, 2010, at 75 FR 35099.

Therefore, S380.50, DLA Drug-Free Workplace Program Records can be deleted.

[FR Doc. 2013–08439 Filed 4–10–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2013–0021]

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to delete a System of Records.

SUMMARY: The Department of the Air Force is deleting a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective on May 13, 2013 unless comments are received which result in a contrary determination. Comments will be accepted on or before May 13, 2013.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, 2nd Floor, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. Charles J. Shedrick, Department of the Air Force Privacy Office, Air Force Privacy Act Office, Office of Warfighting Integration and Chief Information Officer, ATTN: SAF/CIO A6, 1800 Air Force Pentagon, Washington, DC 20330–1800, or by phone at (571) 256–2515.

SUPPLEMENTARY INFORMATION: The Department of the Air Force systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address in **FOR FURTHER INFORMATION CONTACT**.

The Department of the Air Force proposes to delete one system of records notice from its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The proposed deletion is not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: April 5, 2013.

Aaron Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Deletion: F036 AFPC R,

SYSTEM NAME:

Air Force Personnel Accountability and Assessment System (AFPAAS) (May 6, 2009, 74 FR 20935).

REASON:

Records are now covered by DoD System of Records Notice DPR 39 DoD, DoD Personnel Accountability and Assessment System (March 24, 2010, 75 FR 14141). Therefore, F036 AFPC R, Air Force Personnel Accountability and Assessment System (AFPAAS) can be deleted.

[FR Doc. 2013–08436 Filed 4–10–13; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2013–ICCD–0044]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Postsecondary Education Quick Information System (PEQIS) 19: Services and Support Programs for Military Service Members and Veterans 2012–2013

AGENCY: Department of Education (ED), Institute of Education Sciences/National Center for Education Statistics (IES).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 3501 *et seq.*), ED is proposing a new information collection.

DATES: Interested persons are invited to submit comments on or before May 13, 2013.

ADDRESSES: Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting Docket ID number ED–2013–ICCD–0044 or via postal mail, commercial delivery, or hand delivery. Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted. Written requests for information or comments submitted by postal mail or delivery should be addressed to the Director of the Information Collection Clearance Division, U.S. Department of Education, 400 Maryland Avenue SW., LBJ, Room 2E105, Washington, DC 20202–4537.

FOR FURTHER INFORMATION CONTACT: Electronically mail *ICDocketMgr@ed.gov.* Please do not send comments here.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Postsecondary Education Quick Information System (PEQIS) 19: Services and Support Programs for Military Service Members and Veterans 2012–2013.

OMB Control Number: 1850–0733.

Type of Review: New collection.

Respondents/Affected Public: Private Sector.

Total Estimated Number of Annual Responses: 4240.

Total Estimated Number of Annual Burden Hours: 953.

Abstract: The Postsecondary Education Quick Information System

(PEQIS) collects issue-oriented data quickly and with minimum response burden outside of NCES' large recurring surveys. The system was designed to collect and report data on key education issues at the postsecondary level, and to meet the data needs of Department of Education analysts, planners, and decision-makers when information cannot be collected quickly through NCES's large recurring surveys. The purpose of this PEQIS # 19 survey is to collect national data on support programs and services for veterans and active-duty service members at postsecondary institutions. The survey will provide the first nationally representative data about the prevalence of various types of services and support programs for military service members and veterans, with a First Look report on the results to be released in 2014. This request is for a full scale PEQIS # 19 data collection.

Dated: April 4, 2013.

Stephanie Valentine,

Acting Director, Information Collection Clearance Division, Privacy, Information and Records Management Services, Office of Management.

[FR Doc. 2013–08401 Filed 4–10–13; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Amendment to an Approved Agency Information Collection

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

ACTION: Notice and Request for Comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. The proposed collection of information relates to three of DOE's Better Buildings Programs. 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, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments regarding this proposed information collection must be received on or before June 10, 2013. If you anticipate difficulty in submitting comments within that period, contact the person listed in **ADDRESSES** as soon as possible.

ADDRESSES: Written comments may be sent Nancy Gonzalez, EE–2F/Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, by fax at 202–586–5234, or by email at *nancy.gonzalez@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Nancy Gonzalez, EE–2F/Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, by fax at 202–586–5234, or by email at *nancy.gonzalez@ee.doe.gov.*

SUPPLEMENTARY INFORMATION: This information collection request contains:

(1) *OMB No.:* 1910–5141;

(2) *Information Collection Request Title:* Department of Energy Better Buildings Challenge Information Collection Request;

(3) *Type of Request:* Amendment;

(4) *Purpose:* This Information Collection Request applies to three Department of Energy (DOE) voluntary leadership initiatives: (1) The Better Buildings Challenge; (2) the Better Buildings, Better Plants Program; and (3) the Better Buildings Alliance. The information being collected is needed so as to include participants in the DOE's Better Buildings Alliance Program, as well as collecting additional information on a Better Buildings, Better Plants Program training function. Each leadership initiative is intended to drive greater energy efficiency in the commercial and industrial marketplace to create savings and jobs. This will be accomplished by highlighting the ways participants overcome market barriers/persistent obstacles with replicable, marketplace solutions. The program will showcase real solutions and partner with industry leaders to better understand policy and technical opportunities. There are three types of information to be collected from primary participants, also referred to as ''Partners'': (1) Background data, including contact information, a partnership agreement form, logo(s), information needed to support public announcements, updates on participants' showcase projects, and an energy savings goal; (2) Portfolio-wide energy performance information; and (3) Information on market innovations participants are including in their energy efficiency processes. Background data will primarily be used to develop Web site content that will be publically available. Portfolio-wide facility-level energy performance information will be used by DOE to measure the participants' progress in meeting the goals of the program, as well as to aggregate the change in energy performance and related metrics for the entire program. Information on market innovation will be used to highlight successful strategies participants use to overcome challenges, and will be publicly available. Additional background information is being collected from ''Allies'', financial and utility organizations that make a public commitment to support the energy efficiency marketplace. Background information including name, commitment in terms of dollars committed by financial allies, or percent of commercial customer class committed by utility allies, and a company logo will be used to develop publically available Web site content. Responses to the DOE's Information Collection Request will be voluntary.

(5) *Annual Estimated Number of Respondents:* Amending currently approved Information Collection Request (''ICR'') which includes respondents of 305, by 245, for a total of 550;

(6) *Annual Estimated Number of Total Responses:* Amending currently approved ICR with includes an estimated number of total response of 2,108 by 1,070, for a total of 3,178;

(7) *Annual Estimated Number of Burden Hours:* Amending currently approved ICR with an estimated number of burden hours of 3,731, by 1346, for a total of 5077.

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* Amending currently approved ICR with an estimated $143,251, by $51,675, for a total reporting and recording cost burden of $194,926.

Statutory Authority: Section 421 of the Energy Independence and Security Act of 2007 (42 U.S.C. 17081); Section 911 of the Energy Policy Act of 2005, as amended (42 U.S.C. 16191).

Issued in Washington, DC on April 3, 2013.

Maria Vargas,

Director Better Buildings Challenge, Buildings Technology Program.

[FR Doc. 2013–08484 Filed 4–10–13; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2013–0075; FRL–9383–2]

FIFRA Scientific Advisory Panel; Change of Meeting Dates

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Agency is issuing this notice to change the meeting dates of the Federal Insecticide, Fungicide, and Rodenticide Act Scientific Advisory Panel (FIFRA SAP) to consider and review the Endocrine Disruptor Screening Program (EDSP) Tier 1 Screening Assays and Battery Performance. The meeting was originally scheduled for May 21–24, 2013. The new meeting dates are shown below.

DATES: The meeting will be held on May 21–23, 2013, from approximately 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, Conference Center, Lobby Level, One Potomac Yard (South Bldg.), 2777 S. Crystal Dr., Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Fred Jenkins, Designated Federal Official (DFO), Office of Science Coordination and Policy (7201M), Environmental Protection Agency, 1200 Pennsylvania Ave. NW., Washington, DC 20460–0001; telephone number: (202) 564–3327; fax number: (202) 564–8382; email address: *jenkins.fred@epa.gov.*

SUPPLEMENTARY INFORMATION: All other information provided in the February 22, 2013, **Federal Register** notice remains unchanged (78 FR 12311).

List of Subjects

Environmental protection, Pesticides, and pests Endocrine disruptors.

Dated: April 2, 2013.

Steven M. Knott,

Acting Director, Office of Science Coordination and Policy.

[FR Doc. 2013–08254 Filed 4–10–13; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Proposed Reporting Entity; Request for Comments

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

Board Action: Pursuant to 31 U.S.C. 3511(d), the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and the FASAB Rules of Procedure, as amended in October, 2010, notice is hereby given that the Federal Accounting Standards Advisory Board is seeking input on a proposed Statement of Federal Financial Accounting Standards addressing the *Reporting Entity.*

The Standard is available at *http://www.fasab.gov/board-activities/documents-for-comment/exposure-drafts-and-documents-for-comment/.*

Copies can be obtained by contacting FASAB at (202) 512–7350.

Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by July 3, 2013, and should be sent to:

Wendy M. Payne, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW., Suite 6814, Mail Stop 6H19, Washington, DC 20548.

For assistance in accessing the document contact FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Wendy Payne, Executive Director, at (202) 512–7350.

Authority: Federal Advisory Committee Act, Pub. L. 92–463.

Dated: April 5, 2013.

Charles Jackson,

Federal Register Liaison Officer.

[FR Doc. 2013–08406 Filed 4–10–13; 8:45 am]

BILLING CODE 1610–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 26, 2013.

A. Federal Reserve Bank of Chicago (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *MBG Investors I, LP, Mexico City, Mexico, and its partners, Antonio del Valle Ruiz, Antonio del Valle Perochena, Francisco Javier del Valle Perochena, Juan Pablo del Valle Perochena, Ignacio del Valle Ruiz and Adolfo del Valle Ruiz, all of Mexico City, Mexico, together as a group acting concert with Fambeck Servicios Financieros del Exterior, S.A. de C.V., Mexico City, Mexico, and Juan Francisco Beckmann Vidal, Mexico City, Mexico; ECR Holding, S.A. de C.V., Nuevo Leon, Mexico, and Eugenio Santiago Clariond Reyes and Alejandra Rangel Hinojosa both of Nuevo Leon, Mexico; ETH Trigo Holding, S.A. de C.V., Durango, Mexico, and Eduardo Tricio Haro, Durango, Mexico; Tenedora Rosario ETG, S.A., de C.V., Coahuila, Mexico, and Eduardo Tricio Gomez, Coahuila, Mexico; Tenedora Jacaru, S.A.de C.V., Mexico City, Mexico, Jaime Ruiz Sacristan, Mexico City, Mexico, and Carlos Ruiz Sacristan, Mexico, City, Mexico; Tenedora de Acciones ACA, S.A. de C.V., Antonio Cosio Arino and Antonio Cosio Pando, all of Mexico City, Mexico; MBI Holding, LP, Mexico City, Mexico and Fernando Gerardo Chico Pardo, Mexico City, Mexico; Malugo LP, Mexico City, Mexico, and Maria Luisa Guadalupe Gonzalez Cardenas, Mexico City, Mexico; Aguila Real, LP, Dallas, Texas, Jorge Esteve Recolons and Patricia Estave, both of Dallas Texas; Barce Financial, LP, Dallas, Texas, Felipe Esteve Recolons and Marta Esteve Recolons, both of Dallas Texas; Alanbal, LP, Dallas, Texas and Edward Andres Esteve Creixell, both of Dallas, Texas; Inversiones Plano, LP, Claudia Esteve Vila, and Maria Esteve Vila, all of Dallas, Texas: Double B. Holdings, LP, Mexicio City, Mexico and Rogelio Barrenechea Banzalez, Mexico City, Mexico; Constructora Maiz Mier, S.A. de C.V, Jose Sebastian Maiz Garcia, Carlos Francisco Maiz Garcia and Ricardo Javier Maiz Garcia, all of Nuevo Leon, Mexico; Global Stockholder, S.A. de C.V., David Troice Jalife, Jacobo Troice Jalife, Jaime Abadi Cherem, Elias Abadi Cherem, all of Mexico City, Mexico; Tenedora FAMVA, S.A. de C.V., Fernando Manuel del Valle Yanez, Maria de las Mercedes del Valle Yanez, Ana Maria del Valle Yanez, and Maria Jose del Valle Yanez, all of Mexico City, Mexico; ZB Holding, S.A. de C.V. and Enrique de Jesus Zambrano Benitez, both of Nuevo Leon, Mexico; Promotora Priesi, S.A. de C.V., Javier Carlos Prieto Sierra, and Carlos Francisco Prieto Sierro, all of Mexico City, Mexico; Mata Martin, S.A.P.I. de C.V. and Armando*

Mata Martin, both of Mexico City, Mexico; IZA Investments, LP, Mexico City, Mexico, Ernesto Morales Garza, Helue Iza Milan, Helue Renee Morales Iza, Pedro Ernesto Morales Iza, all of Mexico City, Mexico; CLK Holding, S.A. de C.V. and Maria Daniela Garcia Gamez, both of Nuevo Leon, Mexico; Vultus Capital Partners, S.A. de C.V., Mexico City, Mexico, Benito Grinberg Kriemerman, Leopoldo Grinberg, Arturo Grinberg, Sergio Grinberg, and Carla Persovski, all of Mexico City, Mexico; MEG Holding, S.A. de C.V., Angel Abel Munoz Aguirre and Jose Javier Jorge Alberto Gonzalez Egea, all of Mexico City, Mexico; Impulsora Ridi, S.A. de C.V. and Ener Enrique Escobar Aquirre, both of Mexico City, Mexico; Anmoor Civil, Co., Aventura, Florida, Alejandro Finkler Kudler and Ruth Kolangui Nissanoff, both of Aventura, Florida; Roberto R. Herencia, Chicago, Illinois; Alberto Paracchini, Chicago, Illinois; Lindsay Corby, Chicago, Illinois; and Sandra Thoms, Chicago, Illinois; to acquire voting shares of Metropolitan Bank Group, Inc., Chicago, Illinois, and thereby indirectly acquire voting shares of North Community Bank, Metrobank, Archer Bank, Plaza Bank, all in Chicago, Illinois, and Oswego Community Bank, Oswego, Illinois.

B. Federal Reserve Bank of St. Louis (Yvonne Sparks, Community Development Officer) P.O. Box 442, St. Louis, Missouri 63166–2034:

1. *Charles C. Martin, individually and as a member of a family control group that includes Lynne B. Martin,* both of Bowling Green, Kentucky; to retain voting shares of Ambanc Holding Company, Inc., and thereby indirectly retain voting shares of American Bank & Trust Company, Inc., both in Bowling Green, Kentucky.

Board of Governors of the Federal Reserve System, April 8, 2013.

Margaret McCloskey Shanks,

Deputy Secretary of the Board.

[FR Doc. 2013–08479 Filed 4–10–13; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination—on the dates indicated—of the waiting period provided by law and the premerger notification rules. The listing for each transaction includes the transaction number and the parties to the transaction. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

EARLY TERMINATIONS GRANTED

March 1, 2013 thru March 29, 2013

03/01/2013		
20130612	G	Carl C. Icahn; Herbalife Ltd.; Carl C. Icahn.
20130618	G	Exxon Mobil Corporation; Wolverine Pipe Line Company; Exxon Mobil Corporation.
20130619	G	General Electric Company; Advanced Atomization Technologies LLC; General Electric Company.
03/04/2013		
20130615	G	The Swatch Group Ltd.; Harry Winston Diamond Corporation; The Swatch Group Ltd.
20130625	G	Nippon Yusoki, Co., Ltd.; Mitsubishi Heavy Industries, Ltd.; Nippon Yusoki Co., Ltd.
03/07/2013		
20130495	G	The NASDAQ OMX Group, Inc.; 2003 TIL Settlement; The NASDAQ OMX Group, Inc.
20130628	G	Western Gas Partners, LP; Chesapeake Energy Corporation; Western Gas Partners, LP.
20130630	G	Algonquin Power & Utilities Corp.; Energy Transfer Equity, L.P.; Algonquin Power & Utilities Corp.
03/08/2013		
20130621	G	CVC Capital Partners Asia Pacific III L.P.; Philippine Long Distance Telephone Company (PLDT); CVC Capital Partners Asia Pacific III L.P.
03/11/2013		
20130604	G	Scientific Games Corporation; WMS Industries Inc.; Scientific Games Corporation.
20130629	G	AZZ incorporated; CCP II AIV II, L.P.; AZZ incorporated.
20130631	G	Precision Castparts Corp.; General Electric Company; Precision Castparts Corp.
20130632	G	Cardinal Health, Inc.; Clayton, Dubilier & Rice Fund VIII, L.P.; Cardinal Health, Inc.
20130634	G	Jabil Circuit, Inc.; Nypro Inc. Employee Stock Ownership Plan; Jabil Circuit, Inc.
20130635	G	Broad Street Energy Partners, L.P.; Cadent Energy Partners II, L.P.; Broad Street Energy Partners, L.P.
20130636	G	Apollo Investment Fund VII, L.P.; Hostess Brands, Inc.; Apollo Investment Fund VII, L.P.
20130639	G	JPMorgan Chase & Co.; SGH (No.2) Limited; JPMorgan Chase & Co.
20130640	G	Sinclair Broadcast Group, Inc.; Dayton-Cox Trust A; Sinclair Broadcast Group, Inc.
20130641	G	Starwood Property Trust, Inc.; LNR Property LLC; Starwood Property Trust, Inc.
20130642	G	Odyssey Investment Partners Fund IV, L.P.; MSouth Equity Partners, L.P.; Odyssey Investment Partners Fund IV, L.P.
20130645	G	Steve Ballmer; Maloof Sports & Entertainment, LLC; Steve Ballmer.

EARLY TERMINATIONS GRANTED—Continued

March 1, 2013 thru March 29, 2013

20130652	G	Health Management Associates, Inc.; Bayfront Health System, Inc.; Health Management Associates, Inc.
03/12/2013		
20130633	G	Greeneden Topco S.C.A.; Michael J. Saylor; Greeneden Topco S.C.A.
03/13/2013		
20130656	G	Linn Energy, LLC; Berry Petroleum Company; Linn Energy, LLC.
03/14/2013		
20130653	G	GTCR Fund X/B LP Wells Fargo & Company; GTCR Fund X/B LP.
20130659	G	Total System Services, Inc.; NetSpend Holdings, Inc.; Total System Services, Inc.
03/15/2013		
20130575	G	Baxter International Inc.; Inspiration Biopharmaceuticals, Inc.; Baxter International Inc.
20130654	G	DCP Midstream Partners, LP; Phillips 66; DCP Midstream Partners, LP.
20130655	G	DCP Midstream Partners, LP; Spectra Energy Corp.; DCP Midstream Partners, LP.
20130660	G	Oak Investment Partners XII Limited Partnership; MobiTV, Inc.; Oak Investment Partners XII, Limited Partnership.
20130662	G	Crestview Partners II, L.P.; KeyCorp; Crestview Partners II, L.P.
20130665	G	Wind Point Partners VII–A, L.P.; WP FlexPack Holdings S.a.r.l.; Wind Point Partners VII–A, L.P.
20130667	G	Riverstone Global Energy and Power Fund V, L.P. Industrial Sealing Solutions Holdings LLC; Riverstone Global Energy and Power Fund V, L.P.
20130668	G	Telephone and Data Systems, Inc. Voting; Baja Broadband Holding Company, LLC; Telephone and Data Systems, Inc. Voting.
20130669	G	Cole Credit Property Trust III, Inc.; Christopher H. Cole; Cole Credit Property Trust III, Inc.
20130675	G	Charter Communications, Inc.; Cablevision Systems Corporation; Charter Communications, Inc.
20130677	G	Suzuki Motor Corporation; American Suzuki Motor Corporation; Suzuki Motor Corporation.
03/18/2013		
20130673	G	Ajinomoto Co., Inc.; Telegraph Hill Partners II, L.P.; Ajinomoto Co., Inc.
03/19/2013		
20130678	G	ITOCHU Corporation; USPF III Leveraged Feeder, L.P.; ITOCHU Corporation.
20130679	G	Exterran Partners, L.P.; Exterran Holdings, Inc.; Exterran Partners, L.P.
03/22/2013		
20130670	G	Altisource Portfolio Solutions S.A.; Ocwen Financial Corporation; Altisource Portfolio Solutions S.A.
20130676	G	Aberdeen Asset Management PLC; Artio Global Investors Inc.; Aberdeen Asset Management PLC.
20130682	G	Ernesto Bertarelli; Raymond James Capital Partners, L.P.; Ernesto Bertarelli.
20130686	G	New Salem Credit Union; Capital Credit Union; New Salem Credit Union.
20130688	G	BayCare Health System, Inc.; Mid-Florida Medical Services, Inc.; BayCare Health System, Inc.
20130690	G	Chamly Aspen Trust; Compagnie de Saint-Gobain; Chamly Aspen Trust.
20130702	G	Foundation Asset Management Sweden AB; Hoganas AB; Foundation Asset Management Sweden AB.
20130703	G	Jenny Linden Urnes; Hoganas AB; Jenny Linden Urnes.
03/25/2013		
20130643	G	Berkshire Hathaway Inc.; H.J. Heinz Company; Berkshire Hathaway Inc.
20130644	G	3G Special Situations Fund III, L.P.; H.J. Heinz Company; 3G Special Situations Fund III, L.P.
20130697	G	Stefan Kaluzny Hot Topic, Inc.; Stefan Kaluzny.
03/26/2013		
20130674	G	Cerberus Institutional Partners, L.P.; Sanofi; Cerberus Institutional Partners, L.P.
20130689	G	Thoma Bravo Fund IX, L.P.; nCircle Network Security, Inc.; Thoma Bravo Fund IX, L.P.
03/27/2013		
20130648	G	Donald G. Lang; Avery Dennison Corporation; Donald G. Lang.
20130649	G	Stuart W. Lang; Avery Dennison Corporation; Stuart W. Lang.
20130694	G	Holding Bercy Investissement S.C.A.; TrustHouse Services Holdings, LLC; Holding Bercy Investissement S.C.A.
20130695	G	ABRY Partners VII, L.P.; Castle Harlan Partners V, L.P.; ABRY Partners VII, L.P.
03/28/2013		
20130685	G	Mr. Mark Zuckerberg; Microsoft Corporation; Mr. Mark Zuckerberg.
20130698	G	Energy Capital Partners II–A, LP; Dominion Resources, Inc.; Energy Capital Partners II–A, LP.

EARLY TERMINATIONS GRANTED—Continued

March 1, 2013 thru March 29, 2013

03/29/2013

20130681	G	ORIX Corporation; Cooperatieve Centrale Raiffeisen- Boerenleenank B.A.; ORIX Corporation.
20130691	G	Marlin Equity III, L.P.; Nokia Corporation; Marlin Equity III, L.P.
20130696	G	Wuhan Iron and Steel (Group) Corporation; ThyssenKrupp AG; Wuhan Iron and Steel (Group) Corporation.
20130704	G	Greenbriar Equity Fund II, L.P.; EDAC Technologies Corporation; Greenbriar Equity Fund II, L.P.
20130706	G	Hecla Mining Company; Aurizon Mines Ltd.; Hecla Mining Company.
20130709	G	KKR North America Fund XI, L.P.; Gardner Denver, Inc.; KKR North America Fund XI, L.P.
20130718	G	Harvest Partners VI, L.P.; Excellere Capital Fund, L.P.; Harvest Partners VI, L.P.

FOR FURTHER INFORMATION CONTACT:
Renee Chapman, Contact Representative; or
Theresa Kingsberry, Legal Assistant; Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room H–303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 2013–08214 Filed 4–10–13; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Delegation of Authority

Notice is hereby given that in furtherance of the delegation of authority to the Assistant Secretary for Health on September 28, 1979, by the Secretary of Health and Human Services, the Assistant Secretary for Health has delegated to the Director, National Vaccine Program Office the authority under Section 1702(a) [42 U.S.C. 300u–1(a)] and Section 1703(a) and (c) [42 U.S.C. 300u–2(a) and (c)] of the Public Health Service Act, as amended, to conduct and support research programs and to conduct and support programs in health information and health promotion, preventive health services, and education in the appropriate use of health care and to support such work by private non-profit entities, respectively.

All previous delegations and redelegations under Title XVII of the Public Health Service Act shall continue in effect, provided that they are consistent with this delegation.

This delegation excludes the authority to issue regulations and to establish advisory committees and councils and appoint their members and shall be exercised in accordance with the Department's applicable policies, procedures, and guidelines.

I hereby affirm and ratify any actions taken by the Director, National Vaccine Program Office, or other NVPO officials, which involved the exercise of these authorities prior to the effective date of this delegation.

Dated: April 5, 2013.

Howard K. Koh,

Assistant Secretary for Health.

[FR Doc. 2013–08512 Filed 4–10–13; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the President's Council on Fitness, Sports, and Nutrition

AGENCY: Office of the President's Council on Fitness, Sports, and Nutrition, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice of meeting.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the U.S. Department of Health and Human Services is hereby giving notice that the President's Council on Fitness, Sports, and Nutrition (PCFSN) will hold a meeting. The meeting will be open to the public.

DATES: The meeting will be held on May 7, 2013, from 10:00 a.m. to 4:30 p.m.

ADDRESSES: Department of Health and Human Services, 200 Independence Ave. SW., Room 800, Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Ms. Shellie Pfohl, Executive Director, President's Council on Fitness, Sports, and Nutrition, 1101 Wootton Parkway, Suite 560, Rockville, MD 20852. Telephone: (240) 276–9866. Information about PCFSN, including details about the upcoming meeting, also can be obtained at *www.fitness.gov* and/or by calling (240) 276–9567.

SUPPLEMENTARY INFORMATION: The primary functions of the PCFSN include (1) Advising the President, through the Secretary, concerning progress made in carrying out the provisions of Executive Order 13545 and recommending to the President, through the Secretary, actions to accelerate progress; (2) advising the Secretary on ways to promote regular physical activity, fitness, sports participation, and good nutrition. Recommendations may address, but are not necessarily limited to, public awareness campaigns; federal, state, and local physical activity; fitness, sports participation, and nutrition initiatives; and partnership opportunities between public- and private-sector health promotion entities; (3) functioning as a liaison to relevant state, local, and private entities in order to advise the Secretary regarding opportunities to extend and improve physical activity, fitness, sports, and nutrition programs and services at the local, state, and national levels; and (4) monitoring the need to enhance programs and educational and promotional materials sponsored, overseen, or disseminated by the Council, and advising the Secretary, as necessary, concerning such need. In performing its functions, the Council shall take into account the federal Dietary Guidelines for Americans and the Physical Activity Guidelines for Americans.

The PCFSN will hold, at a minimum, one meeting per fiscal year. The meeting will be held to (1) assess ongoing Council activities and (2) discuss and plan future projects and programs. The agenda for the planned meeting is being developed and will be posted at *www.fitness.gov* when it has been finalized.

The meeting that is scheduled to be held on May 7, 2013 is open to the public. Every effort will be made to provide reasonable accommodations for persons with disabilities and/or special needs who wish to attend the meeting. Persons with disabilities and/or special needs should call (240) 276–9567 no later than close of business on April 23, 2013, to request accommodations. Members of the public who wish to attend the meeting are asked to pre-register by sending an email to *rsvp.fitness@hhs.gov* or by calling (240) 276–9567. Registration for public

attendance must be completed before close of business on April 30, 2013.

Dated: March 28, 2013.

Shellie Y. Pfohl,

Executive Director, President's Council on Fitness, Sports, and Nutrition.

[FR Doc. 2013–08494 Filed 4–10–13; 8:45 am]

BILLING CODE 4150–35–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Stakeholder Listening Session in Preparation for the 66th World Health Assembly

Time and date: May 6, 2013, 3 p.m.–4:30 p.m. EST.

Place: Great Hall of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

Status: Open, but requiring RSVP to *OGA.RSVP@hhs.govmailto:Rebecca.Powell@hhs.gov.*

Purpose

The U.S. Department of Health and Human Services (HHS)—charged with leading the U.S. delegation to the 66th World Health Assembly—will hold an informal Stakeholder Listening Session on Monday, May 6, 3–4:30 p.m., in the Great Hall of the HHS Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

The Stakeholder Listening Session will help the HHS's Office of Global Affairs prepare for the World Health Assembly by taking full advantage of the knowledge, ideas, feedback, and suggestions from all communities interested in and affected by agenda items to be discussed at the 66th World Health Assembly. Your input will contribute to US positions as we negotiate these important health topics with our international colleagues.

The listening session will be organized around the interests and perspectives of stakeholder communities, including, but not limited to:

- Public health and advocacy groups;
- State, local, and Tribal groups;
- Private industry;
- Minority health organizations; and
- Academic and scientific organizations.

It will allow public comment on all agenda items to be discussed at the 66th World Health Assembly *http://apps.who.int/gb/ebwha/pdf_files/WHA66/A66_1-en.pdf.*

RSVP

Due to security restrictions for entry into the HHS Hubert H. Humphrey Building, we will need to receive RSVPs for this event. Please include your first and last name as well as organization and send it to *OGA.RSVP@hhs.gov.* If you are *not* a US citizen please note this in the subject line of your RSVP, and our office will contact you to gain additional biographical information for your clearance. Please RSVP no later than Monday, April 29th.

Written comments are welcome and encouraged, even if you are planning on attending in person. Please send these to the same email address *OGA.RSVP@hhs.gov.*

We look forward to hearing your comments relative to the 66th World Health Assembly agenda items.

Dated: April 4, 2013.

Nils Daulaire,

Assistant Secretary for Global Affairs.

[FR Doc. 2013–08513 Filed 4–10–13; 8:45 am]

BILLING CODE 4150–38–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health Partnership Opportunity on a Research Project To Evaluate the Performance of Isolation Gowns

AGENCY: National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

ACTION: Notice of opportunity to support research.

SUMMARY: The NIOSH National Personal Protective Technology Laboratory is initiating a research study in support of American Society for Testing and Materials (ASTM) International standards development to establish minimum performance requirements for isolation gowns for health care workers. NIOSH is seeking to identify currently marketed isolation gown products. All manufacturers are requested to submit samples to NIOSH free of charge for testing. There will be no cost to the manufacturers for testing. Not all submitted products may be tested, depending on the response to this announcement and the results of screening tests. Each manufacturer that submits gowns that are tested will receive the test results from their gowns. Through submission of the gown samples, manufacturers will be making an important contribution to ASTM, International's process to establish an important standard for evaluating the protection provided for health care workers by isolation gowns. Participating manufacturers will be recognized as contributing to the establishment of the performance standard. Manufacturers whose products are tested will also receive the results of all gowns tested in a blinded format.

Gown Criteria: Candidate gowns for inclusion in the research program must meet the following criteria: (1) The gowns must be identified (labeled) as ''isolation gowns'' and have full coverage in the back to provide protection for the health care worker and the patient; (2) A minimum of 100 units for each code (model) of disposable (single use) gown submitted; (3) A minimum of 200 ''new'' (unprocessed, unused, unwashed) reusable gowns for each model submitted. Reusable gown submissions must include a labeling recommendation for the maximum number of laundering cycles to be included in this study. Half of the gown samples will be tested after one laundering and drying cycle and half of the gown samples will be tested as laundered for the maximum number of cycles claimed by the manufacturer; and, (4) Samples should be provided in finished package format, with any claims that may not be noted on the packaging or labels provided by the manufacturer. NIOSH will not return any gowns submitted for this testing.

DATES: Submit letters of interest to provide gowns and participate in this research program prior to May 13, 2013.

ADDRESSES: Interested manufacturers should submit a letter of interest with information about their isolation gowns' capabilities to: NIOSH, National Personal Protective Technology Laboratory, Attn: Selcen Kilinc, PO Box 18070, Pittsburgh, PA 15236, Email address: *jcq8@cdc.gov*

Background: It has been reported by user groups (e.g. Association of Perioperative Registered Nurses and Association for Professionals in Infection Control and Epidemiology) as well as U.S. Food and Drug Administration (FDA), that performance properties and levels of protection for isolation gowns are poorly understood and defined. NIOSH and FDA are currently working with the ASTM International Committee on Personal Protective Clothing and Equipment—Biological Subcommittee, to establish a standard that defines criteria for measurement and minimum levels of performance for isolation gowns. Development of a standard is expected

to improve users' understanding of levels of protection to be provided.

Product testing results will be provided to the ASTM Committee on Personal Protective Clothing and Equipment—Biological Subcommittee (a.k.a. ASTM Task Force), which will utilize the data as the scientific basis to develop a standard establishing minimum performance criteria for single-use and reusable isolation gowns. The research objective is to evaluate performance properties, such as strength and barrier properties, of isolation gowns to be provided to the ASTM Task Force as scientific input for establishing minimum performances for conformance to this standard.

In this study, all testing will be conducted blind. Results will be shared with the ASTM Task Force only in a blinded format. Results will be shared with the individual manufacturers for their gowns only. The final summary of the testing will be shared in a blinded format only with all manufacturers that participated.

Randomized samples will be tested by both NIOSH and Nelson Labs. The ASTM Task Force will review and analyze all test results. Establishment of the minimum requirement for each property will be the responsibility of the ASTM Task Force. NIOSH plans to conduct testing to measure the following properties: Fabric weight, breaking strength, tear strength, seam strength, water resistance (impact penetration and hydrostatic pressure), microbial/viral penetration resistance, air permeability, evaporative resistance, and thermal insulation.

Neither this announcement, nor product submittals in response to this announcement, obligates NIOSH to enter into a contractual agreement with any respondent. Inquiries should be sent to Selcen Kilinc at *jcq8@cdc.gov*. NIOSH reserves the right to establish a partnership based on scientific analysis and capabilities found by way of this announcement or other searches, if determined to be in the best interest of the government.

Dated: April 5, 2013.

John Howard,

Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention.

[FR Doc. 2013–08461 Filed 4–10–13; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

Notice of Hearing: Reconsideration of Disapproval of Maine State Plan Amendments (SPA) 12–010

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing to be held on May 23, 2013, at the CMS Boston Regional Office, JFK Federal Building, 15 N. Sudbury Street, Room 2050, Boston, Massachusetts 02203–0003 to reconsider CMS' decision to disapprove Maine SPA 12–010.

DATES: *Closing Date:* Requests to participate in the hearing as a party must be received by the presiding officer by (15 days after publication).

FOR FURTHER INFORMATION CONTACT: Benjamin Cohen, Presiding Officer, CMS, 2520 Lord Baltimore Drive, Suite L, Baltimore, Maryland 21244, Telephone: (410) 786–3169.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider CMS' decision to disapprove Maine SPA 12–010 which was submitted on August 1, 2012, and disapproved on January 7, 2013. The SPA proposed changes to eligibility for parents, caretaker relatives, and children whose income is at or below 133 percent of the federal poverty level (FPL). The proposal would make eligibility standards, methods, and procedures more restrictive than those in effect on March 23, 2010.

CMS disapproved this SPA after consulting with the Secretary as required by 42 CFR 430.15(c)(2) because it appeared the proposal would have eliminated Medicaid eligibility for parents and caretaker relatives eligible under sections 1902(a)(10)(A)(i)(I) and 1931 whose incomes are between 100 percent and 133 percent of the FPL, and Medicaid eligibility of certain individuals considered ''children'' under Maine's state Medicaid plan. Both proposals constituted more restrictive eligibility standards than those in effect in Maine as of March 23, 2010, that could not be excepted from the maintenance-of-effort (MOE) mandate that Maine is subject to under section 1902(a)(74) and (gg) of the Social Security Act (hereafter ''the Act''). At issue in this appeal are the following issues.

While states generally have authority to modify Medicaid eligibility rules, sections 1902(a)(74) and (gg) of the Act require that states maintain eligibility standards, methodologies, and procedures that are no more restrictive than those in effect under a state's plan as of the date of enactment of the Patient Protection and Affordable Care Act (March 23, 2010). This MOE requirement applies to adults until a state's health insurance exchange is operational (January 1, 2014) and to children until October 1, 2019.

Section 1902(gg)(3) of the Act offers a partial non-application of the MOE requirement during the period between January 1, 2011, and December 31, 2013, when a state certifies to the Secretary that it has a budget deficit during the fiscal year for which it is seeking a non-application, or projects a budget deficit during the succeeding fiscal year. This provision limits the non-application to ''nonpregnant, nondisabled adults who are eligible for medical assistance under the state plan or under a waiver of the plan at the option of the state and whose income exceeds 133 percent of the poverty line.''

Maine certified a projected budget deficit for state fiscal year 2013 in December 2011 and requested a non-application of the MOE requirement for the period of July 1, 2012, through June 30, 2013. On February 10, 2012, CMS notified Maine that it qualified for the non-application for the requested period.

Maine submitted SPA #12–010 on August 1, 2012, which proposed changes to its Medicaid eligibility rules for parents, caretaker relatives, children, and to Medicare savings programs (MSPs). Specifically, Maine proposed: Reducing the income eligibility limit from 150 percent of the FPL to 100 percent for parents and caretaker relatives who may qualify under section 1902(a)(10)(A)(i)(I) and 1931 of the Act; lowering the age limit of eligibility from 20 to 18 for children who meet the eligibility requirements for the aid to families with dependent children (AFDC) state plan but who would not have received AFDC based on age; and reducing income eligibility for the MSPs through the elimination of certain income disregards. Maine eventually split the SPA into two, with the proposal relating to families, caretaker relatives, and children identified as SPA #12–010, and the proposal relating to MSPs identified as SPA #12–010A.

On January 7, 2013, CMS approved SPA #12–010A, but disapproved SPA #12–010. CMS determined that Maine's SPAs proposed eligibility rules more restrictive than Maine's rules in effect on March 23, 2010. However, due to Maine's FY 2013 budget deficit

certification, CMS determined that non-application of the MOE requirement could apply to the changes to the MSP eligibility rules in SPA #12–010A. (The SPA will be effective only through June 30, 2013, unless the state certifies that in the fiscal year beginning July 1, 2013, it again projects a budget deficit.) CMS concluded that SPA #12–010A did not reduce eligibility for any group of individuals eligible for Medicaid on the basis of a disability, pregnancy, or status as a child. (On February 20, 2013, Louis Bourgoin and others filed suit in the United States District Court for the District of Maine against the U.S. Department of Health & Human Services seeking to set aside the agency's approval of Maine SPA #12–010A.)

However, CMS determined that Maine was not permitted an exception from the MOE for the eligibility rule changes proposed by SPA #12–010. The changes proposed by SPA #12–010 applied to individuals who are exempted from the non-application provisions of the MOE requirement, specifically, adults whose incomes are below 133 percent of the FPL and children.

Section 1116 of the Act and federal regulations at 42 CFR part 430, establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a state plan or plan amendment. CMS is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing, and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the presiding officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as *amicus curiae* must petition the presiding officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c). If the hearing is later rescheduled, the presiding officer will notify all participants.

The notice to Maine announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Mary C. Mayhew, Commissioner
Department of Health and Human Services
Commissioner's Office
221 State Street
11 State House Station
Augusta, ME 04333–0011

Dear Ms. Mayhew:

I am responding to your request for reconsideration of the decision to disapprove the Maine State Plan Amendment (SPA) 12–010 which was submitted on August 1, 2012, and disapproved on January 7, 2013. The SPA proposed changes to eligibility for parents, caretaker relatives, and children whose income is at or below 133 percent of the federal poverty level (FPL). The proposal would make eligibility standards, methods, and procedures more restrictive than those that were in effect on March 23, 2010.

I disapproved Maine SPA 12–010 because the proposal would have eliminated Medicaid eligibility for parents and caretaker relatives eligible under sections 1902(a)(10)(A)(i)(I) and 1931 whose incomes are between 100 percent and 133 percent of the FPL, and Medicaid eligibility of certain individuals considered ''children'' under Maine's state Medicaid plan. Both proposals constituted more restrictive eligibility standards than those in effect in Maine as of March 23, 2010, that could not be excepted from the maintenance-of-effort (MOE) mandate that Maine is subject to under section 1902(a)(74) and (gg) of the Social Security Act (hereafter ''the Act''). At issue in this appeal are the following issues, which are more detailed than set out in the disapproval letter:

While states generally have authority to modify Medicaid eligibility rules, sections 1902(a)(74) and (gg) of the Act require that states maintain eligibility standards, methodologies, and procedures that are no more restrictive than those in effect under a state's plan as of the date of enactment of the Patient Protection and Affordable Care Act (March 23, 2010). This MOE requirement applies to adults until a state's health insurance exchange is operational (January 1, 2014) and to children until October 1, 2019.

Section 1902(gg)(3) of the Act offers a partial non-application of the MOE requirement during the period between January 1, 2011, and December 31, 2013, when a state certifies to the Secretary that it has a budget deficit during the fiscal year for which it is seeking a non-application, or projects a budget deficit during the succeeding fiscal year. This provision limits the non-application to ''nonpregnant, nondisabled adults who are eligible for medical assistance under the state plan or under a waiver of the plan at the option of the state and whose income exceeds 133 percent of the poverty line.''

Maine certified a projected budget deficit for state fiscal year 2013 in December 2011 and requested a non-application of the MOE requirement for the period of July 1, 2012, through June 30, 2013. On February 10, 2012, the Centers for Medicare & Medicaid Services (CMS) notified Maine that it qualified for the non-application for the requested period.

Maine submitted SPA #12–010 on August 1, 2012, which proposed changes to its Medicaid eligibility rules for parents, caretaker relatives, children, and to Medicare savings programs (MSPs). Specifically, Maine proposed: reducing the income eligibility limit from 150 percent of the FPL to 100 percent for parents and caretaker relatives who may qualify under section 1902(a)(10)(A)(i)(I) and 1931 of the Act; lowering the age limit of eligibility from 20 to 18 for children who meet the eligibility requirements for the aid to families with dependent children (AFDC) state plan but who would not have received AFDC based on age; and reducing income eligibility for the MSPs through the elimination of certain income disregards. Maine eventually split the SPA into two, with the proposal relating to families, caretaker relatives and children identified as SPA #12–010, and the proposal relating to MSPs identified as SPA #12–010A.

On January 7, 2013, CMS approved SPA #12–010A, but disapproved SPA #12–010. CMS determined that Maine's SPAs proposed eligibility rules more restrictive than Maine's rules in effect on March 23, 2010. However, due to Maine's FY 2013 budget deficit certification, CMS determined that non-application of the MOE requirement could apply to the changes to the MSP eligibility rules in SPA #12–010A. (The SPA will be effective only through June 30, 2013, unless the state certifies that in the fiscal year beginning July 1, 2013, it again projects a budget deficit.) CMS concluded that SPA #12–010A did not reduce eligibility for any group of individuals eligible for Medicaid on the basis of a disability, pregnancy, or status as a child. (On February 20, 2013, Louis Bourgoin and others filed suit in the United States District Court for the District of Maine against the U.S. Department of Health & Human Services seeking to set aside the agency's approval of Maine SPA#12–010A.)

However, CMS determined that Maine was not permitted an exception from the MOE for the eligibility rule changes proposed by SPA #12–010. The changes proposed by SPA #12–010 applied to individuals who are exempted from the non-application provisions of the MOE requirement, specifically, adults whose incomes are below 133 percent of the FPL and children.

In its letter of disapproval, CMS responded to Maine's claim that *National Federation of Independent Business v. Sebelius,* 567 U.S. ____, 132 S. Ct. 2566 (2012), directed approval of the SPA. CMS pointed out that the Supreme Court did not strike down any provision of the Patient Protection and Affordable Care Act, including the MOE requirement, and that the MOE requirement is unrelated to the Medicaid eligibility expansion.

I am scheduling a hearing on your request for reconsideration to be held on May 23, 2013, at the CMS Boston Regional Office, JFK Federal Building, 15 N. Sudbury Street, Room 2050, Boston, Massachusetts 02203–0003 to reconsider CMS' decision to disapprove Maine SPA #12–010.

If this date is not acceptable, I would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed by federal regulations at 42 CFR Part 430.

I am designating Mr. Benjamin Cohen as the presiding officer. If these arrangements present any problems, please contact Mr. Cohen at (410) 786–3169. In order to facilitate any communication that may be necessary between the parties prior to the hearing, please notify the presiding officer to indicate acceptability of the hearing date that has been scheduled and provide names of the individuals who will represent the state at the hearing.

Sincerely,
Marilyn Tavenner
Acting Administrator

Section 1116 of the Social Security Act (42 U.S.C. 1316; 42 CFR 430.18)

(Catalog of Federal Domestic Assistance program No. 13.714, Medicaid Assistance Program.)

Dated: April 4, 2013.

Marilyn Tavenner,

Acting Administrator, Centers for Medicare & Medicaid Services.

[FR Doc. 2013–08524 Filed 4–10–13; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Community Living

Expansion Funds for the Support of the Senior Medicare Patrol (SMP) Program

ACTION: Notice of intent to provide expansion and capacity building funding to the incumbent Senior Medicare Patrol (SMP) grantees under limited competition.

SUMMARY: The Administration for Community Living is announcing the availability of expansion funds for the support of the Senior Medicare Patrol (SMP) Program. This additional funding opportunity will be used to expand the reach of the SMP program with the explicit purpose of expanding current program capacity to recruit, train, and support the SMP volunteer network. In addition, this funding opportunity will increase targeted collaborative efforts with the Centers for Medicare and Medicaid Services, Office of Inspector General and other law enforcement entities in identified high fraud states.

Funding Opportunity Title/Program Name: Health Care Fraud Prevention Program Expansion and SMP Capacity Building Grants.

Announcement Type: Health Care Fraud Prevention Program Expansion Capacity.

Funding Opportunity Number: Program Announcement No. HHS–2013–ACL–AoA–SP–0049

Statutory Authority: HIPAA of 1996 (Pub. L. 104–191).

Catalog of Federal Domestic Assistance (CFDA) Number: 93.048 Discretionary Projects

DATES: The deadline date for comments on this program announcement is May 13, 2013. Other important dates:

- The application due date May 27, 2013.
- The anticipated start date is September 30, 2013.

I. Funding Opportunity Description

During the past several years, the Department of Health and Human Services has increased efforts to fight Medicare and Medicaid fraud. The Administration for Community Living (ACL), Administration on Aging (AoA), through the SMP program, has worked in partnership with the Centers for Medicare and Medicaid Services (CMS), the Office of Inspector General (OIG), and the Department of Justice to expand strategies to eliminate waste, fraud, and abuse in these Federal programs. This additional funding opportunity will be used to expand the reach of the SMP program with the explicit purpose of expanding efforts to target collaborative efforts with CMS, OIG and other law enforcement entities in high fraud states and to expand current capacity to recruit, train, and support the SMP volunteer network.

Justification for the Exception to Competition

It is necessary to limit competition for this program to the current SMP grantees to expand their implementation efforts. In order for the outcomes expected to be produced within the allotted timeframe of the program, the infrastructure for achieving these results must already be in place. This infrastructure includes:

- A proven SMP volunteer management, training, and recruiting program;
- Expertise in capturing data in the SMP management, tracking, and reporting system (SMART FACTS);
- Established partnership relationships between the SMP program and state and local fraud control partners, including CMS, OIG, Attorney General, and State Insurance Commissioners offices;
- Developed and tested SMP program public awareness materials, brochures, PSAs, and other resources to use in outreach and educational efforts;
- Expertise and experience in reaching targeted populations with the SMP message, among others.

The current SMP projects are uniquely qualified to address the requirements contained in this funding opportunity. Their established infrastructure and expertise will enable them to successfully meet the challenging and time-sensitive requirements of this program. It is essential that the infrastructure, foundation of expertise, and proven experience is in place to assure the grant objectives are achieved.

II. Award Information

A. *Purpose of the Program:* Health Care Fraud Prevention Program Expansion.

B. *Amount of the Awards:* $20,000 to $372,000 per budget period.

C. *Project Period:* September 30, 2013–September 29, 2015.

III. Eligible Applicants

Incumbent Senior Medicare Patrol (SMP) grantees.

IV. Evaluation Criteria

A. *Project Relevance & Current Need—Weight: 5 points*
B. *Approach—Weight: 35 points*
C. *Budget—Weight: 10 points*
D. *Project Impact—Weight: 25 points*
E. *Organizational Capacity—Weight: 25 points*

V. Application and Submission Requirements

A. SF 424—Application for Federal Assistance.

B. SF 424A—Budget Information.

C. Separate Budget Narrative/Justification.

D. SF 424B—Assurances. Note: Be sure to complete this form according to

instructions and have it signed and dated by the authorized representative (see item 18d of the SF 424).

E. Lobbying Certification.

F. Program narrative no more than twenty pages.

G. Work Plan.

H. The application should be submitted through grants.gov using the funding opportunity # HSS–2013–ACL–AoA–SP–0049.

VI. Application Review Information

Three field reviewers external to the Office of Elder Rights will be assigned to review and score each application.

VII. Agency Contact

For further information or comments regarding this program expansion supplement, contact Rebecca Kinney, U.S. Department of Health and Human Services, Administration for Community Living, Administration on Aging, Office of Elder Rights, One Massachusetts Avenue NW., Washington, DC 20001; telephone (202) 357–3520; fax (202) 357–3560; email *Rebecca.Kinney@acl.hhs.gov.*

Dated: April 8, 2013.

Kathy Greenlee,

Administrator and Assistant Secretary for Aging.

[FR Doc. 2013–08485 Filed 4–10–13; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0620]

Guidance for Industry on Self-Selection Studies for Nonprescription Drug Products; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled ''Self-Selection Studies for Nonprescription Drug Products.'' This guidance is intended to provide recommendations to industry involved in developing and conducting self-selection studies to support an application for nonprescription drug products. A self-selection study assesses the ability of consumers to apply drug labeling information to their personal health situation to make correct decisions about whether or not it is appropriate for them to use a drug product. This guidance finalizes the draft guidance issued on September 19, 2011.

DATES: Submit either electronic or written comments on Agency guidances at any time.

ADDRESSES: Submit written requests for single copies of this guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2201, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

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

FOR FURTHER INFORMATION CONTACT: Barbara R. Cohen, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 22, Rm. 5437, Silver Spring, MD 20993–0002, 301–796–2060.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a guidance for industry entitled ''Self-Selection Studies for Nonprescription Drug Products.'' A self-selection study assesses the ability of consumers to apply drug labeling information to their personal health situation to make correct decisions about whether or not it is appropriate for them to use a drug product. The guidance provides recommendations to industry involved in developing and conducting self-selection studies to support an application for nonprescription drug products.

The guidance includes recommendations regarding study design, study conduct, and final reporting of self-selection studies. The guidance should not be considered a substitute for an FDA review of specific protocols. This guidance finalizes the draft guidance issued on September 19, 2011 (76 FR 58018). FDA has reviewed the docket comments submitted in response to the draft guidance and the guidance was revised based on that review. The guidance also incorporates advice obtained from the Nonprescription Drugs Advisory Committee at a meeting on September 25, 2006, at which the committee considered issues related to analysis and interpretation of consumer studies conducted to support marketing of nonprescription drug products.

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on self-selection studies for nonprescription drug products. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

II. The Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR parts 312 and 314 have been approved under OMB control numbers 0910–0014 and 0910–0001, respectively.

III. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

IV. Electronic Access

Persons with access to the Internet may obtain the document at either *http://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm* or *http://www.regulations.gov*.

Dated: April 5, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–08443 Filed 4–10–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2011–D–0916]

Medical Device Classification Product Codes; Guidance for Industry and Food and Drug Administration Staff; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled ''Medical Device Classification Product Codes.'' This document describes how device product codes are used in a variety of FDA program areas to regulate and track medical devices regulated by the Center for Devices and Radiological Health (CDRH) and the Center for Biologics Evaluation and Research (CBER).

DATES: Submit either electronic or written comments on this guidance at any time. General comments on Agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the guidance document entitled ''Medical Device Classification Product Codes'' to the Division of Small Manufacturers, International, and Consumer Assistance, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 4613, Silver Spring, MD 20993–0002 or the Office of Communication, Outreach and Development (HFM–40), 1401 Rockville Pike, suite 200N, Rockville, MD 20852. Send one self-addressed adhesive label to assist that office in processing your request, or fax your request to CDRH at 301–847–8149. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit electronic comments on the guidance to *http://www.regulations.gov*. Submit written comments to the Division of Dockets Management (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852. Identify comments with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT:

Diane Garcia, Center for Devices and Radiological Health, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 66, Rm. 1644, Silver Spring, MD 20993–0002, 301–796–6559; or

Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

Since the May 28, 1976, Medical Device Amendments were passed, the Classification Regulation Panels (parts 862 through 892 (21 CFR parts 862 through 892)) have been the basis for CDRH's Classification Product Code structure and organization. These 16 Panels have largely been the driving force for CDRH's internal organizational structure as well. These Panels were established with the 1976 Medical Device Amendments, and rulemaking is required in order to add to or modify the Panels. However, rulemaking has resulted in very few additions or modifications to the Panels and subgroups since 1976.

In order to respond to the evolution of device technology, classification product codes were created to assist in accurate identification and tracking of current medical devices and to allow for tracking and easy reference of predicate device types. Classification product codes are a method of classifying medical devices. CDRH and a subset of CBER-regulated medical device product codes consist of a three-letter combination that associates a device's type with a product classification designated for the application. Classification product codes and information associated with these devices, such as names and attributes, are assigned by CDRH to support their regulation.

The purpose of this guidance document is to educate regulated industry and FDA Staff on how, when, and why to use classification product codes for medical devices regulated by CDRH and CBER. This document describes how classification product codes are used in a variety of FDA program areas to regulate and track medical devices. This document is limited to medical devices as defined in section 201(h) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(h)) and does not discuss classification products codes used to regulate nonmedical electronic radiation-emitting products.

The scope of the guidance document includes devices described in the existing classification under parts 862 through 892. It also describes how classification product codes are used for CBER regulated devices, which currently do not fall within this existing classification. This guidance may be applicable to future devices. It also covers unclassified devices and devices not yet classified.

In the **Federal Register** of January 3, 2012 (77 FR 125), FDA announced the availability of the draft guidance document. Interested persons were invited to comment by May 2, 2012. Five comments were received with multiple recommendations pertaining to the administrative processes and policies regarding medical device classification product codes. In response to these comments, FDA revised the guidance document to clarify the processes and policies as appropriate.

II. Significance of Guidance

This guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the Agency's current thinking on medical device classification product codes. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute and regulations.

III. Electronic Access

Persons interested in obtaining a copy of the guidance may do so by using the Internet. A search capability for all CDRH guidance documents is available at *http://www.fda.gov/MedicalDevices/DeviceRegulationandGuidance/GuidanceDocuments/default.htm*. Guidance documents are also available at *http://www.regulations.gov* or from CBER at *http://www.fda.gov/BiologicsBloodVaccines/GuidanceComplianceRegulatoryInformation/default.htm*. To receive ''Medical Device Classification Product Codes,'' you may either send an email request to *dsmica@fda.hhs.gov* to receive an electronic copy of the document or send a fax request to 301–847–8149 to receive a hard copy. Please use the document number 1774 to identify the guidance you are requesting.

IV. Paperwork Reduction Act of 1995

This guidance refers to previously approved collections of information found in FDA regulations. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The collections of information in 21 CFR part 803, subpart A through E, have been approved under OMB control number 0910–0437; the collections of information in 21 CFR part 807, subpart E, have been approved under OMB control number 0910–0120; and the

collections of information under 21 CFR part 814 have been approved under OMB control number 0910–0231.

V. Comments

Interested persons may submit either electronic comments regarding this document to *http://www.regulations.gov* or written comments to the Division of Dockets Management (see **ADDRESSES**). It is only necessary to send one set of comments. Identify comments with the docket number found in brackets in the heading of this document. Received comments may be seen in the Division of Dockets Management between 9 a.m. and 4 p.m., Monday through Friday, and will be posted to the docket at *http://www.regulations.gov*.

Dated: April 5, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–08442 Filed 4–10–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2012–N–0967]

Prescription Drug User Fee Act Patient-Focused Drug Development; Announcement of Disease Areas for Meetings Conducted in Fiscal Years 2013–2015

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of Availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the selection of disease areas to be addressed during the first 3 years of Patient-Focused Drug Development. This 5-year initiative is being conducted to fulfill FDA's performance commitments made as part of the fifth authorization of the Prescription Drug User Fee Act (PDUFA V). It provides a more systematic approach for the Agency to obtain patients' input on specific disease areas, including their perspectives on their condition, its impact on daily life, and available therapies. FDA selected these disease areas based on a set of selection criteria, the perspectives of the reviewing divisions at FDA, and the public input received on a preliminary set of disease areas published in the **Federal Register** on September 24, 2012.

ADDRESSES: The general schedule of fiscal years (FY) 2013–2015 meetings concerning Patient-Focused Drug Development, information on how stakeholders can prepare for them, and information on how stakeholders may leverage Patient-Focused Drug Development to generate input on disease areas that are not addressed through the PDUFA V commitments can be found at the Web site for Patient-Focused Drug Development: *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm326192.htm.*

FOR FURTHER INFORMATION CONTACT: Graham Thompson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, rm. 1199, Silver Spring, MD 20993, 301–796–5003, FAX: 301–847–8443, Email: *Graham.Thompson@fda.hhs.gov;* or Stephen Ripley, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, suite 200N, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

On July 9, 2012, the President signed into law the Food and Drug Administration Safety and Innovation Act (FDASIA) (Pub. L. 112–144). Title I of FDASIA reauthorizes the Prescription Drug User Fee Act (PDUFA), which provides FDA with the necessary user fee resources to maintain an efficient review process for human drug and biologic products. The reauthorization of PDUFA includes performance goals and procedures that represent FDA's commitments during FY 2013–2017. These commitments are referred to in section 101 of FDASIA and are available on the FDA Web site at *http://www.fda.gov/downloads/ForIndustry/UserFees/PrescriptionDrugUserFee/UCM270412.pdf.*

Section X of these commitments relates to enhancing benefit-risk assessment in regulatory decision-making. A key part of regulatory decision-making is establishing the context in which the particular decision is made. For purposes of drug marketing approval, this includes an understanding of the severity of the treated condition and the adequacy of the available therapies. Patients who live with a disease have a direct stake in the outcome of FDA's decisions and are in a unique position to contribute to the understanding of their disease.

FDA has committed to obtain the patient perspective on 20 disease areas during the course of PDUFA V. For each disease area, the Agency will conduct a public meeting to discuss the disease and its impact on patients' daily lives, the types of treatment benefit that matter most to patients, and patients' perspectives on the adequacy of available therapies. These meetings will include participation of FDA review divisions, the relevant patient community, and other interested stakeholders.

II. Disease Area Selection

On September 24, 2012, FDA published a **Federal Register** notice (77 FR 58849) that announced an opportunity for public comment on potential disease areas to be addressed throughout PDUFA V. In that notice, based on several criteria listed therein, FDA identified 39 disease areas as potential candidates for 20 public meetings and invited public comment on the preliminary list and on disease areas that were not listed. The Agency obtained public comment through a docket and a public meeting convened on October 25, 2012.

Almost 4,500 comments addressing over 90 disease areas were submitted by patients, patient advocates and advocacy groups, caregivers, healthcare providers, professional societies, scientific and academic experts, pharmaceutical companies, and others. The majority of comments were submitted by individual patients. The comments generally focused on one or more of the following: Nominations of support for individual disease areas or groups of disease areas, general suggestions for Patient-Focused Drug Development, and topics outside the scope of the program. Many comments discussed the impact of the disease on daily life and the symptoms that were most concerning to patients. Others addressed lack of treatment options or the nature of specific treatments. Over half of the comments received concerned lung cancer, narcolepsy, and interstitial lung disease. Other disease areas also received a significant number of comments, including migraine, pulmonary fibrosis, amyloidosis, myalgic encephalomyelitis/chronic fatigue syndrome, amyotrophic lateral sclerosis, chronic obstructive pulmonary disease, lysosomal storage disorders, peripheral neuropathy, dystonia, and fibromyalgia. Comments were received for numerous other disease areas not listed in this notice. Individual comments may be viewed at *http://www.regulations.gov/#!docketDetail;D=FDA-2012-N-0967,* or by visiting FDA Dockets Management at 5630 Fishers Lane, rm. 1061, HFA–305, Rockville, MD 20852.

Input from the public was particularly helpful for FDA in better understanding the aspects of diseases that are not formally measured in clinical trials as

well as cases where available therapies do not directly impact the aspects of disease that matter most to patients. The extent of public comment for specific disease areas was one of many factors used to select the disease areas for Patient-Focused Drug Development during FY 2013–2015. In selecting the disease areas of focus, FDA carefully considered the public comments received, the perspectives of reviewing divisions at FDA, and the following selection criteria, which were published in the September 24, 2012, **Federal Register** notice:

- Disease areas that are chronic, symptomatic, or affect functioning and activities of daily living;
- disease areas for which aspects of the disease are not formally captured in clinical trials; and
- disease areas for which there are currently no therapies or very few therapies, or the available therapies do not directly affect how a patient feels or functions.

FDA's selection also reflects the Agency's desire to include a diverse set of disease areas that represent the wide range of diseases the Agency encounters in its regulatory decision-making. These criteria, also published in the September 24, 2012, **Federal Register** notice, were overarching considerations that the Agency took into account in selecting the set of disease areas:

- Disease areas that reflect a range of severity, from diseases that are life-threatening to those that are mild and symptomatic;
- disease areas that have a severe impact on identifiable subpopulations, such as children or the elderly; and
- disease areas that represent a broad range in terms of size of the affected population, including common conditions experienced by large numbers of patients and rare diseases that affect much smaller patient populations.

Patient-Focused Drug Development was conceived as a mechanism to learn more from patients where their perspectives could be helpful to drug development and FDA's review of applications for new drugs in certain disease areas. For FDA's review divisions, this kind of input is most helpful when the impact of a disease on patients is not well understood or endpoints for studying drugs for a disease are not clearly defined or established. The potential to fill these information gaps by hearing from patients was also a key consideration in identifying the initial 12 disease areas.

FDA has selected the following diseases to be addressed in FY 2013–2015:

- Alpha-1 antitrypsin deficiency;
- breast cancer;
- chronic Chagas disease;
- female sexual dysfunction;
- fibromyalgia;
- hemophilia A, hemophilia B, von Willebrand disease, and other heritable bleeding disorders;
- HIV;
- idiopathic pulmonary fibrosis;
- irritable bowel syndrome, gastroparesis, and gastroesophageal reflux disease with persistent regurgitation symptoms on proton-pump inhibitors;
- lung cancer;
- myalgic encephalomyelitis/chronic fatigue syndrome;
- narcolepsy;
- neurological manifestations of inborn errors of metabolism;
- Parkinson's disease and Huntington's disease;
- pulmonary arterial hypertension; and
- sickle cell disease.

A schedule of the meetings planned for each year can be found at the FDA Patient-Focused Drug Development Web site described in the following section of this notice.

FDA will initiate a second public process to determine the list of disease areas for FY 2016–2017. The Agency recognizes that there are many more disease areas than can be addressed in the planned FDA meetings under PDUFA V, and FDA will seek other opportunities to gather public input on disease areas not addressed through this PDUFA V commitment. FDA also encourages stakeholders to identify and organize patient-focused collaborations to generate public input on other disease areas with regard to the types of questions addressed through this PDUFA commitment, using the process established through Patient-Focused Drug Development as a model. More information on other opportunities for gathering patient input can be found on the Patient-Focused Drug Development Web site.

III. Patient-Focused Drug Development Web site

FDA has a Web site on Patient-Focused Drug Development: *http://www.fda.gov/ForIndustry/UserFees/PrescriptionDrugUserFee/ucm326192.htm.* This Web site contains the general schedule of upcoming meetings for FY 2013–2015, information on how stakeholders can prepare for upcoming meetings, and information on how stakeholders may leverage Patient-Focused Drug Development to generate input on disease areas not addressed through the Patient-Focused Drug Development PDUFA V commitment. The Web site will be updated as new information becomes available.

Dated: April 5, 2013.

Leslie Kux,

Assistant Commissioner for Policy.

[FR Doc. 2013–08441 Filed 4–10–13; 8:45 am]

BILLING CODE 4160–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: The inventions listed below are owned by an agency of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally-funded research and development. Foreign patent applications are filed on selected inventions to extend market coverage for companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Licensing information and copies of the U.S. patent applications listed below may be obtained by writing to the indicated licensing contact at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804; telephone: 301–496–7057; fax: 301–402–0220. A signed Confidential Disclosure Agreement will be required to receive copies of the patent applications.

Lentiviral Vectors with Dual Fluorescence/Luminescence Reporters

Description of Technology: Twelve lentiviral vectors that express both fluorescent and luminescent markers as a single fusion protein under various gene promoters were constructed. Vectors have been developed previously to monitor tumors or tumor cells via bioluminescence or fluorescence alone. However, bioluminescence is not sensitive enough to sort individual tumor cells and fluorescence cannot be used effectively to view internal tumors. By combining the two reporters into a single fusion protein, the tumor can be effectively visualized within the animal as well as sorted from non-tumor cells for post-necropsy experiments. The added advantage of bioluminescent visualization allows for *in vivo*

experiments that more closely simulate the biological development of tumors in organs rather than at the surface of the skin. Additionally, since twelve different vectors with different gene promoters were developed, they can be tested in individual tumor models to find the best vector for visualizing that particular tumor cell line. The vectors are able to sustain long-term expression of both visualization markers, depending on the cell type and promoter in each vector.

Potential Commercial Applications:

- The vectors will be extremely useful for experiments in which both *in vivo* and *in vitro* analysis is desired.
- The vectors can also be used for screening cancer cell lines and in tumor models for reporter gene activity.
- The vectors can be useful in drug development.

Competitive Advantages:

- The bioluminescent marker allows for effective visualization of deep (non-surface) tumors in mice.
- The fluorescence label permits efficient sorting of tumor cells from normal (non-labeled) cells after tumors are excised from the mice.
- The vectors allow *in vivo* experiments that more closely simulate the biological development of tumors in organs rather than at surface of skin.
- The vectors sustain long-term expression.

Development Stage:

- Early-stage
- Pre-clinical
- *In vitro* data available
- *In vivo* data available (animal)

Inventors: Dominic Esposito, Chi-Ping Day, Glenn Y. Merlino (NCI)

Publication: Day CP, *et al.* Lentivirus-mediated bifunctional cell labeling for *in vivo* melanoma study. Pigment Cell Melanoma Res. 2009 Jun;22(3):283–95. [PMID 19175523]

Intellectual Property: HHS Reference No. E–132–2011/0—Research Tool. Patent protection is not being pursued for this technology.

Licensing Contact: Sury Vepa, J.D., Ph.D.; 301–435–5020; *vepas@mail.nih.gov*.

Collaborative Research Opportunity: The National Cancer Institute is seeking statements of capability or interest from parties interested in collaborative research to further develop, evaluate or commercialize dual luminescent/fluorescent vectors. For collaboration opportunities, please contact John D. Hewes, Ph.D. at *hewesj@mail.nih.gov*.

Epigenetic Factors Associated with the Development of Age-related Macular Degeneration

Description of Technology: Recent studies have demonstrated genetic associations between Age-related Macular Degeneration (AMD) and specific genes. In the case of identical twins in which only one twin develops AMD, a direct genetic cause seems unlikely. NIH researchers explored the epigenetic mechanisms that control the pathogenesis of AMD. A DNA methylation study identified sites on selected gene promoters that can potentially serve as markers to distinguish patients likely to develop AMD from those less likely to develop the disease. The strongest association was found in the IL17RC gene and later studies confirmed this association, first in siblings that were discordant for AMD and then in AMD patients as compared with age-matched controls.

Potential Commercial Applications: Diagnosis of Age-related Macular Degeneration.

Competitive Advantages: This technology is potentially a more sensitive means of diagnosing patients with AMD.

Development Stage: In vitro data available.

Inventors: Lai Wei, Robert Nussenblatt, Baoying Liu, Chi-Chao Chan (NEI).

Publication: Wei L, *et al.* Hypomethylation of the IL17RC promoter associates with age-related macular degeneration. Cell Rep. 2012 Nov 29;2(5):1151–8. [PMID 23177625]

Intellectual Property: HHS Reference No. E–075–2011/0—

- US Application No. 61/435,989 filed 25 Jan 2011
- PCT Application No. PCT/US2012/022511 filed 25 Jan 2011

Licensing Contact: Jaime M. Greene; 301–435–5559; *greenejaime@mail.nih.gov*.

Dated: April 5, 2013.

Richard U. Rodriguez,

Director, Division of Technology Development and Transfer, Office of Technology Transfer, National Institutes of Health.

[FR Doc. 2013–08414 Filed 4–10–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Epilepsy Genetics Review.

Date: May 1, 2013.

Time: 8:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: William C. Benzing, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research, NINDS, NIH, NSC, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–0660, *benzingw@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 5, 2013.

Carolyn Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–08416 Filed 4–10–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Initial

Review Group Epidemiology, Prevention, and Behavior Research Review Subcommittee.

Date: July 23, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Rooms, Rockville, MD 20852.

Contact Person: Katrina L Foster, Ph.D., Scientific Review Administrator, National Institutes on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 2019, Rockville, MD 20852, 301–443–3037, *katrina@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.273, Alcohol Research Programs; National Institutes of Health, HHS)

Dated: *April 5, 2013.*

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–08419 Filed 4–10–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; 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 on Alcohol Abuse and Alcoholism Initial Review Group Clinical, Treatment and Health Services Research Review Subcommittee.

Date: July 16, 2013.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 5635 Fishers Lane, Terrace Level Conference Rooms, Rockville, MD 20852.

Contact Person: Katrina L Foster, Ph.D., Scientific Review Officer, National Institute on Alcohol Abuse & Alcoholism, National Institutes of Health, 5635 Fishers Lane, Rm. 2019, Rockville, MD 20852, 301–443–4032, *katrina@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program No. 93.273, Alcohol Research Programs; National Institutes of Health, HHS)

Dated: *April 5, 2013.*

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–08418 Filed 4–10–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Salivary glands, oral microbiology and oral pathology.

Date: May 1, 2013.

Time: 1:00 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscilla B Chen, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4104, MSC 7814, Bethesda, MD 20892, (301) 435–1787, *chenp@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Member Conflict: Immune Mechanism.

Date: May 6–7, 2013.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Scott Jakes, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4198, MSC 7812, Bethesda, MD 20892, 301–495–1506, *jakesse@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 4, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–08415 Filed 4–10–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; BDCN Special Emphasis Panel: Brain Tumors, Neurodegeneration and Neuronal Injury.

Date: April 30, 2013.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Samuel C Edwards, Ph.D., IRG CHIEF, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7846, Bethesda, MD 20892, (301) 435–1246, *edwardss@csr.nih.gov*.

Name of Committee: Center for Scientific Review Special Emphasis Panel; PAR Panel: Pregnancy in Women with Disabilities.

Date: May 2, 2013.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Priscah Mujuru, RN, MPH, DRPH, COHNS, Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3139, MSC 7770, Bethesda, MD 20892, 301–594–6594, *mujurup@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844,

93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 5, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–08417 Filed 4–10–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. App.), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel, NIAMS Small Grant Program for New Investigators (R03).

Date: April 25, 2013.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate. grant applications.

Place: National Institutes of Health, 6701 Democracy Boulevard, Suite 824, Bethesda, MD 20892, (Virtual Meeting).

Contact Person: Eric H. Brown, MS, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute of Arthritis, Musculoskeletal and Skin Diseases, NIH, 6701 Democracy Boulevard, Suite 800, Bethesda, MD 20892, (301) 594–4955, *browneri@mail.nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 5, 2013.

Carolyn A. Baum,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2013–08420 Filed 4–10–13; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–18]

Notice of Proposed Information Collection: Comment Request; Final Endorsement of Credit Instrument

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 10, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Information Relay Service (1–800–877–8339).

FOR FURTHER INFORMATION CONTACT: Theodore K. Toon, Director, Office of Multifamily Housing Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–1142 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Final Endorsement of Credit Instrument.

OMB Control Number, if applicable: 2502–0016.

Description of the need for the information and proposed use: The information collected on the ''Final Endorsement of Credit Instrument'' form is used to request to request final endorsement by HUD of the credit instrument. The mortgagee/lender submits information to indicate the schedule of advances made on the project and the final advances to be disbursed immediately upon final endorsement.

Agency form numbers, if applicable: HUD–92023.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 5,126. The number of respondents is 5,126, the number of responses is 5,126, the frequency of response is on occasion, and the burden hour per response is 1 hr.

Status of the proposed information collection: This is a revision without change of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 8, 2013.

Laura M. Marin,

Acting General Deputy Assistant Secretary for Housing-Acting General Deputy Federal Housing Commissioner.

[FR Doc. 2013–08515 Filed 4–10–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5687–N–19]

Notice of Proposed Information Collection: Comment Request; Multifamily Project Construction Contract, Building Loan Agreement, and Construction Change Request

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

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 10, 2013.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Reports Liaison Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, Room 9120 or the number for the Federal Relay information Service, 1–800–877–8330.

FOR FURTHER INFORMATION CONTACT: Theodore K. Toon, Director, Office of Multifamily Housing Development, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 402–8386 (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. This Notice also lists the following information:

Title of Proposal: Multifamily Project Construction Contract, Building Loan Agreement, and Construction Change Request.

OMB Control Number, if applicable: 2502–0011.

Description of the need for the information and proposed use: The information collected on the ''Multifamily Project Construction Contract, Building Loan Agreement, and Construction Change Request'' form provides HUD with information from contractors, mortgagors/borrowers, and mortgagees/lenders for construction of multifamily projects and to obtain approval of changes in previously approved contract drawings and/or specifications.

Agency form numbers, if applicable: HUD–92437, HUD–92441, HUD–92442, HUD–92442–A, HUD–92442–CA and HUD–92442–A–CA.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The number of burden hours is 9538. The number of respondents is 1158, the number of responses is 1158, the frequency of response is annually, and the burden hour per response is 3 hours.

Status of the proposed information collection: This is an extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: April 8, 2013.

Laura M. Marin,

Acting General Deputy Assistant Secretary for Housing-Acting General Deputy Federal Housing Commissioner.

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BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5706–N–01]

Mortgagee Review Board: Administrative Actions

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice.

SUMMARY: In compliance with Section 202(c) (5) of the National Housing Act, this notice advises of the cause and description of administrative actions taken by HUD's Mortgagee Review Board against HUD-approved mortgagees.

FOR FURTHER INFORMATION CONTACT: Nancy A. Murray, Secretary to the Mortgagee Review Board, 451 Seventh Street SW., Room B–133/3150, Washington, DC 20410–8000; telephone number 202–708–2224 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Information Service at 800–877–8339.

SUPPLEMENTARY INFORMATION: Section 202(c)(5) of the National Housing Act (12 U.S.C. 1708(c)(5)) requires that HUD ''publish a description of and the cause for administrative action against a HUD-approved mortgagee'' by the Department's Mortgagee Review Board (''Board''). In compliance with the requirements of Section 202(c)(5), this notice advises of actions that have been taken by the Board in its meetings from January 1, 2012 to September 30, 2012.

I. Civil Money Penalties, Withdrawals of FHA Approval, Suspensions, Probations, Reprimands, and Administrative Payments

1. Academy Mortgage Corporation, Sandy, UT [Docket No. 12–1609–MR]

Action: On April 27, 2012, the Board entered into a Settlement Agreement with Academy Mortgage Corporation (Academy) that required Academy to pay a civil money penalty in the amount of $75,000, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Academy failed to notify the Department that it was the subject of multiple state regulatory actions and sanctions, and submitted false certifications to HUD in connection with Academy's annual renewal of eligibility documentation for its fiscal years ending in 2009, 2010 and 2011.

2. AmericaHomeKey, Inc., Dallas, TX [Docket No. 11–1294–MR]

Action: On March 22, 2012, the Board issued a Notice of Administrative Action immediately and permanently withdrawing the FHA approval of AmericaHomeKey, Inc. (AHK).

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: AHK failed to perform quality control functions in compliance with HUD/FHA requirements, failed to meet the requirements for participation in the FHA mortgage insurance program, failed to ensure the correct mortgagee identification number was used when originating FHA-insured mortgage loans, failed to adequately document the source of and/or adequacy of funds used for closing, failed to correctly calculate and document the mortgagor's income, failed to verify the stability of the mortgagor's income, failed to ensure the mortgagor was eligible for an FHA-insured mortgage loan, failed to ensure the property met HUD's eligibility requirements, failed to comply with TOTAL Scorecard requirements, failed to comply with HUD's property flipping requirements, failed to provide construction documents required for property eligibility and/or high ratio financing resulting in over-insured mortgages, failed to ensure that the maximum mortgage amount was correctly calculated, resulting in over-insured mortgages, failed to ensure that data submitted to HUD systems was

accurate, and charged mortgagors unallowable fees.

3. American Financial Resources, Inc., Parsippany, NJ [Docket No. 12–1594–MR]

Action: On November 21, 2012, the Board entered into a Settlement Agreement with American Financial Resources, Inc. (AFR) that required AFR to pay civil money penalties in the amount of $17,000, to indemnify HUD/FHA for its losses with respect to two FHA-insured loans, and to refund borrowers for excessive origination fees, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: AFR failed to obtain adequate documentation of the income used to qualify a borrower, failed to resolve discrepancies and/or conflicting information before submitting loans for FHA mortgage approval, and failed to ensure mortgagors were not charged fees that were excessive and/or unreasonable for the services performed.

4. Homeward Residential, Inc., Formerly Known as American Home Mortgage Servicing, Inc., Coppell, TX [Docket No. 12–1544–MR]

Action: On September 14, 2012, the Board entered into a Settlement Agreement with Homeward Residential, Inc., formerly known as American Home Mortgage Servicing, Inc. (AHMSI) that, among other things, required AHMSI to pay a civil money penalty in the amount of $1.2 million and to complete mortgage record changes to facilitate the payment of certain FHA insurance claims, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: AHMSI submitted or caused to be submitted false information to HUD in relation to 63 mortgagee record changes, failed to reconcile its portfolio data and allowed HUD records to incorrectly identify AHMSI as the holder of 97 FHA-insured mortgage loans, and submitted false information to HUD on 133 claims for FHA insurance benefits and, in 90 instances, claimed benefits for ineligible holders of record.

5. Capitol Federal Savings Bank, Topeka, KS [Docket No. 12–1624–MR]

Action: On June 29, 2012, the Board entered into a Settlement Agreement with Capitol Federal Savings Bank (CFSB) that required CFSB to pay a civil money penalty in the amount of $59,000, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: CFSB employed or retained a debarred director and made three false certifications to HUD on CFSB's Yearly Verification Report and annual recertification submissions to HUD for 2009, 2010 and 2011.

6. Cenlar Federal Savings Bank, Trenton, NJ [Docket No. 11–1146–MR]

Action: On April 16, 2012, the Board entered into a Settlement Agreement with Cenlar Federal Savings Bank (Cenlar) that required Cenlar, to pay a civil money penalty in the amount of $32,500, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Cenlar failed to engage in loss mitigation and/or retain required documentation in its loan servicing files with respect to its loss mitigation decisions.

7. Community West Mortgage, LLC, Lakewood, CO [Docket No. 10–1931–MR]

Action: On June 14, 2012, the Board entered into a Settlement Agreement with Community West Mortgage, LLC (CW) that required CW, to pay a civil money penalty in the amount of $12,000, without admitting fault or liability.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: CW failed to adopt and maintain a quality control plan and management reports, failed to implement a quality control plan, allowed non-employees and non W–2 employees to originate FHA loans, and failed to require the loan interviewer to sign page 4 of the initial Uniform Residential Loan Application, Fannie Mae Form 1003, and page 1 of the initial Form HUD 92900–A.

8. First Liberty Financial Group, LLC, Owensboro, KY [Docket No. 12–1598–MR]

Action: On July 16, 2012, the Board entered into a Settlement Agreement with First Liberty Financial Group, LLC (FLFG) that placed FLFG on probation for a period of six months and required FLFG, to pay a civil money penalty in the amount of $7,500, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: FLFG disseminated a misrepresentative or misleading advertisement or business solicitation to the public.

9. First National Bank of Alaska, Anchorage, AK [Docket No. 11–1204–MR]

Action: On October 30, 2012, the Board entered into a Settlement Agreement with First National Bank of Alaska (FNBA) that required FNBA to pay a civil money penalty in the amount of $23,300, to require all of its mortgage servicing staff and supervisors to complete, within six months, HUD's twelve-module electronic training program on loss mitigation and servicing systems, and to submit to HUD and implement a written quality control plan that complies with HUD requirements, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: FNBA failed to maintain a quality control plan, failed to perform quality control functions, failed to service FHA-insured loans in accordance with HUD's loss mitigation requirements, and failed to timely provide the HUD–PA–426 pamphlet to delinquent borrowers.

10. First Reverse Financial Services, LLC, Westmont, IL [Docket No. 12–1607–MR]

Action: On June 15, 2012, the Board issued a Notice of Administrative Action withdrawing the FHA approval of First Reverse Financial Services, LLC (FRFS) for a period of one year.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: FRFS failed to notify HUD/FHA that FRFS was involuntarily dissolved by the state of Illinois and, the fiscal years ending March 31, 2009, March 31, 2010 and March 31, 2011, failed to timely submit its Yearly Verification Report/Electronic Annual Certification forms, failed to pay the annual recertification fees and failed to submit acceptable audited financial statements.

11. Flagstar Bank, F.S.B., Troy, MI [Docket No. 11–1297–MR]

Action: On May 29, 2012, the Board entered into a Settlement Agreement with Flagstar Bank, F.S.B. (Flagstar) that required Flagstar to pay a civil money penalty in the amount of $85,150, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Flagstar failed either to timely remit monthly mortgage insurance premiums to HUD/FHA or to notify HUD/FHA within fifteen calendar days

of the termination of the contract of mortgage insurance, the sale of the mortgage, or both on 1,373 loans.

12. Flagstar Bank, F.S.B., Troy, MI [Docket No. 12–1436–MR]

Action: On November 21, 2012, the Board entered into a Settlement Agreement with Flagstar Bank, F.S.B. (Flagstar) that required Flagstar to pay a civil money penalty in the amount of $37,000, and pay $92,677 to indemnify HUD for its losses with respect to one FHA loan, to indemnify HUD for any loss (past, present or future) on five FHA loans for a period of five years from the date of the agreement, and to retain and fully pay for a third-party servicing monitor for a period of one year, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: Flagstar failed to engage in loss mitigation, failed to service FHA loans in accordance with HUD requirements, and failed to offer property disposition options to the mortgagors.

13. ISB Mortgage Company, LLC, Millburn, NJ [Docket No. 11–1296–MR]

Action: On March 2, 2012, the Board entered into a Settlement Agreement with ISB Mortgage Company, LLC (ISB) that required ISB to pay a civil money penalty in the amount of $8,100 and remit all Mortgage Insurance Premiums and late fees due HUD for 20 FHA insured mortgages serviced by ISB, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: ISB failed either to timely remit mortgage insurance premiums to HUD/FHA or to notify HUD/FHA within 15 calendar days of the termination of the contract of mortgage insurance, the sale of the mortgage, or both on twenty loans.

14. Jersey Mortgage Company, Cranford, NJ [Docket No. 11–1195–MR]

Action: On July 16, 2012, the Board entered into a Settlement Agreement with Jersey Mortgage Company (JMC) that required JMC to pay a civil money penalty in the amount of $91,500, to pay $917,528 to indemnify HUD for its losses with respect to five defaulted FHA loans, and to indemnify HUD for any loss (past, present or future) on three FHA loans for a period of five years from the date of the agreement, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: JMC approved loans without properly analyzing the borrower's credit, approved loans without properly documenting or verifying effective income, approved loans with inadequate verification of the borrowers cash investment in the property, approved loans with inadequate analysis of the borrower's ability to repay the mortgage obligation, approved a loan with an incomplete Mortgage Credit Analysis Worksheet (MCAW), and failed to implement an acceptable quality control plan.

15. Mac-Clair Mortgage Corporation, Burton, MI [Docket No. 11–1292–MR]

Action: On April 12, 2012, the Board issued a Notice of Administrative Action withdrawing the FHA approval of Mac-Clair Mortgage Corporation (MCMC) for a period of one year.

Cause: The Board took this action based on the following violation of HUD/FHA requirements alleged by HUD: On thirteen FHA-insured mortgages serviced or held by MCMC, MCMC failed to remit Mortgage Insurance Premiums, failed to notify HUD/FHA within fifteen calendar days of the termination of the contract for mortgage insurance or the sale of the mortgage, or both.

16. Mortgage Now, Inc., Cleveland, OH [Docket No. 11–1224–MR]

Action: On April 27, 2012, the Board entered into a Settlement Agreement with Mortgage Now, Inc. (MN) that required MN to pay a civil money penalty in the amount of $13,500 and to pay $243,872 to indemnify HUD for its losses with respect to two defaulted FHA loans, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: MN failed to timely remit 200 Upfront Mortgage Insurance Premiums to HUD/FHA within ten calendar days of closing or disbursement, whichever was later, and failed to honor two indemnification agreements with HUD when it failed to remit payments owed to HUD pursuant to the terms of the Indemnification Agreements.

17. Nationwide Home Loans, Inc., Miami, FL [Docket No. 12–1588–MR]

Action: On June 12, 2012, the Board issued a Notice of Administrative Action permanently withdrawing the FHA approval of Nationwide Home Loans, Inc. (NHL).

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: NHL failed to complete its annual online certification, failed to submit the recertification fee, failed to submit its audited financial statements, employed individuals to originate loans who NHL knew or should have known were engaged in prohibited outside employment in the mortgage lending field, permitted non-FHA-approved mortgage brokers to perform loan origination services, failed to adhere to HUD/FHA requirements when underwriting loans for FHA insurance, and failed to adopt, maintain, and implement a quality control plan in compliance with HUD/FHA requirements.

18. Pine State Mortgage Corporation, Atlanta, GA [Docket No. 12–0000–MR]

Action: On June 15, 2012, the Board issued a Notice of Administrative Action permanently withdrawing the FHA approval of Pine State Mortgage Corporation (PSMC).

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: PSMC failed to remit payments owed to HUD per the terms of an indemnification agreement between PSMC and HUD, failed to timely notify HUD/FHA of a business change that affected PSMC's standing as an approved institution or changed the information on which it was originally approved, failed to timely submit its audited financial statements for fiscal years 2009, 2010, and 2011, failed to timely submit its annual recertification fee(s) for fiscal years 2009, 2010 and 2011, and failed to timely submit its annual online certifications for fiscal years 2009, 2010 and 2011.

19. U.S. Mortgage Finance Corporation, Cockeysville, MD [Docket No. 11–1209–MR]

Action: On June 12, 2012, the Board issued a Notice of Administrative Action withdrawing the FHA approval of U.S. Mortgage Finance Corporation (USMFC) for a period of one year.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: USFMC failed to maintain its Maryland state mortgage lender's license and failed to notify HUD/FHA that it had closed its main office and was no longer licensed in Maryland.

20. People's United Bank, Bridgeport, CT [Docket No. 11–1155–MR]

Action: On January 22, 2013, the Board entered into a Settlement Agreement with People's United Bank (PUB) that required PUB to pay a civil money penalty in the amount of $15,000, without admitting fault or liability.

Cause: The Board took this action based on the following violations of HUD/FHA requirements alleged by HUD: PUB failed either to timely remit mortgage insurance premiums to HUD/FHA or to notify HUD/FHA within fifteen calendar days of the termination of the contract of mortgage insurance, the sale of the mortgage, or both on 97 FHA-insured loans.

II. Lenders That Failed To Timely Meet Requirements for Annual Recertification of HUD/FHA Approval

Action: The Board entered into settlement agreements with the lenders listed below, which required the lender to pay a $7,500 or $3,500 civil money penalty, without admitting fault or liability.

Cause: The Board took these actions based upon allegations that the lenders listed below failed to comply with the Department's annual recertification requirements in a timely manner.

1. Banking Mortgage Services BMS Corp., Miami, FL ($3,500) *[Docket No. 11–1249–MRT]*
2. BM Real Estate Services, Inc. DBA Priority Financial Network, Calabasas, CA ($7,500) *[Docket No.12–1622–MRT]*
3. FedTrust Mortgage, LLC, Farmington Hills, MI ($3,500) *[Docket No. 11–1218–MRT]*
4. Home Retention Services, Inc., Houston, TX ($7,500) *[Docket No. 11–1283–MRT]*
5. Mortgage Corp of the East III, Rockland, MA ($3,500) *[Docket No. 12–1656–MRT]*
6. Prysma Lending Group, LLC, Danbury, CT ($3,500) *[Docket No. 11–1236–MRT]*
7. SWI Financial Services, Inc. DBA Integrity 1ST Mortgage, Escondido, CA ($3,500) *[Docket No. 12–1647–MRT]*

III. Lenders That Failed to Meet Requirements for Annual Recertification of HUD/FHA Approval

Action: The Board voted to withdraw the FHA approval of each of the lenders listed below for a period of one year.

Cause: The Board took these actions based upon allegations that the lenders listed below were not in compliance with the Department's annual recertification requirements.

1. AAA Worldwide Financial Co., Addison, TX *[Docket No. 13–1344–MRT]*
2. Access Mortgage Corporation, West Haven, CT *[Docket No. 11–1284–MRT]*
3. Admiral Mortgage, Inc., Pikesville, MD *[Docket No. 13–1345–MRT]*
4. Aeslech, Inc., Los Angeles, CA *[Docket No. 13–1346–MRT]*
5. Allstate Lending Group, Inc., Atlanta, GA *[Docket No.13–1347–MRT]*
6. Amber Financial Group, LLC, San Diego, CA *[Docket No. 13–1348–MRT]*
7. American Independent Association, Inc., Diamond Bar, CA *[Docket No. 13–1349–MRT]*
8. American Mortgage Specialists, Inc., Scottsdale, AZ *[Docket No. 13–1350–MRT]*
9. American South Lending, Inc., Greensboro, NC *[Docket No. 11–1262–MRT]*
10. American Union Financial Services, Inc., Pasadena, CA *[Docket No. 13–1351–MRT]*
11. Americas First Home Mortgage Company, Inc., Cedartown, GA *[Docket No. 13–1352–MRT]*
12. Amerifund Financial, Inc., Tacoma, WA *[Docket No. 13–1353–MRT]*
13. Ameritrust Mortgage Bankers, Inc. DBA NY Financial Lending, Inc., New Hyde Park, NY *[Docket No. 13–1354–MRT]*
14. Atlantic Coast Mortgage Group, Inc., Fort Lauderdale, FL *[Docket No. 13–1355–MRT]*
15. Bache & Co., Inc., Clearwater, FL *[Docket No. 13–1356–MRT]*
16. Baker and Lindsey, Inc., Fort Walton Beach, FL *[Docket No. 13–1357–MRT]*
17. Bankers Acceptance Mortgage Corp., Springfield, MO *[Docket No. 13–1358–MRT]*
18. Benefit Funding Corporation, Beltsville, MD *[Docket No. 11–1243–MRT]*
19. Birmingham Bancorp Mortgage Corporation, West Bloomfield, MI *[Docket No. 13–1359–MRT]*
20. BMC Capital, LP, Dallas, TX *[Docket No. 13–1360–MRT]*
21. Brian A. Cole & Associates, LTD., Westlake, OH *[Docket No. 13–1361–MRT]*
22. Briner Incorporated, Fredericksburg, VA *[Docket No. 13–1362–MRT]*
23. Brookside Mortgage Corporation, Orange, CA *[Docket No. 13–1363–MRT]*
24. Butker Financial Services, Inc., Orange, CA *[Docket No. 13–1364–MRT]*
25. Cambridge Funding Group, Inc., Irvine, CA *[Docket No. 13–1365–MRT]*
26. Cambridge Home Capital, LLC, Great Neck, NY *[Docket No. 13–1366–MRT]*
27. Capital Mortgage Corporation, Raleigh, NC *[Docket No. 11–1270–MRT]*
28. Capstone Realty Advisors, LLC, Cleveland, OH *[Docket No. 13–1367–MRT]*
29. Castle Rock Financial Services, LLC, Provo, UT *[Docket No. 13–1368–MRT]*
30. Cayman Suisse Capital, Inc., Gibbsboro, NJ *[Docket No. HUDALJ 12–M–044–MRT]*
31. Citizens Independent Bank, St Louis Park, MN *[Docket No. 13–1331–MRT]*
32. Classic Home Loans, Lafayette, CA *[Docket No. 12–1654–MRT]*
33. Classic Mortgage Solutions, Inc., Phoenix, AZ *[Docket No. 13–1369–MRT]*
34. Coastal Lending Financial Corp., West Lake Hills, TX *[Docket No. 13–1370–MRT]*
35. Commonwealth Home Mortgage Bankers Corp., New Hyde Park, NY *[Docket No. 13–1371–MRT]*
36. Community Central Mortgage Co., LLC, Mount Clemens, MI *[Docket No. 12–1623–MRT]*
37. Consumer Mortgage Group, Inc., Woodbridge, NJ *[Docket No. 13–1372–MRT]*
38. Cornerstone Bancor Mortgage Corp., DBA Nations Credit Mortgage Co., Massapequa, NY *[Docket No. 13–1373–MRT]*
39. CSW Financial, LLC, Reno, NV *[Docket No. 13–1374–MRT]*
40. DASH Funding, LP, Plano, TX *[Docket No. 13–1375–MRT]*
41. DBSA Holdings, Inc., San Diego, CA *[Docket No. 13–1376–MRT]*
42. Delta Mortgage Company, Beachwood, OH *[Docket No. 13–1377–MRT]*
43. Direct Equity Mortgage, LLC, Las Vegas, NV *[Docket No. 13–1378–MRT]*
44. Dover Mortgage Company, Charlotte, NC *[Docket No. 11–1252–MRT]*
45. E*TRADE Mortgage Corporation, Irvine, CA *[Docket No. 13–1379–MRT]*
46. East Coast Mortgage Corp., Springfield, NJ 07081 *[Docket No. 13–1328–MRT]*
47. Equity Services, Inc., Raleigh, NC *[Docket No. 13–1380–MRT]*
48. Essex Mortgage Company, LLC, Chesterfield, MO *[Docket No. 13–1381–MRT]*
49. Euro Mortgage Bankers, Inc., Patchogue, NY *[Docket No. 13–1382–MRT]*
50. FHAST Mortgage Corporation, Irvine, CA *[Docket No. 13–1383–MRT]*
51. First American Realty Capital Corp., Los Angeles, CA *[Docket No. 13–1384–MRT]*
52. First Chesapeake Home Mortgage, LLC, Annapolis, MD *[Docket No. 13–1385–MRT]*
53. First Florida Funding Corp., Hialeah, FL *[Docket No. 13–1386–MRT]*

54. First Marathon Financial Corporation, Austin, TX *[Docket No. 13–1387–MRT]*
55. First Residential Mortgage Network, Louisville, KY *[Docket No. 13–1388–MRT]*
56. First Suffolk Mortgage Corporation, North Babylon, NY *[Docket No. 13–1389–MRT]*
57. First United Mortgage Company, Inc., Cranford, NJ *[Docket No. 13–1390–MRT]*
58. GD LLC, Webster Groves, MO *[Docket No. 13–1391–MRT]*
59. Get On The Map Corporation FKA AAA Financial Corporation, Coral Springs, FL *[Docket No. 13–1392–MRT]*
60. Gold Reverse, Inc., Anaheim, CA *[Docket No. 13–1393–MRT]*
61. Goode Mortgage Corporation, Conway, AR *[Docket No. 13–1394–MRT]*
62. Granite Mortgage, Inc., Winston Salem, NC *[Docket No. 13–1395–MRT]*
63. Great American Mortgage Corp., Roslyn Heights, NY *[Docket No. 13–1396–MRT]*
64. Greenberry Financial Services, Inc., Ladera Ranch, CA *[Docket No. 13–1397–MRT]*
65. Heartland Funding Corporation, Springfield, MO *[Docket No. 13–1398–MRT]*
66. Home Loan Consultants, Inc., San Diego, CA *[Docket No. 13–1399–MRT]*
67. Homelynx Home Loans, LLC, Fort Meyers, FL *[Docket No. 13–1400–MRT]*
68. ICMC, LLC, Columbia, SC *[Docket No. 13–1401–MRT]*
69. Infinity Group Services, Irvine, CA *[Docket No. 13–1402–MRT]*
70. Inter Mountain Mortgage, Pomona, CA *[Docket No. 13–1403–MRT]*
71. International Mortgage Corporation, Millersville, MD *[Docket No. 13–1404–MRT]*
72. Jay's Mortgage Acceptance Corp., DBA JMAC Home Mortgage, Houston, TX *[Docket No. 13–1405–MRT]*
73. Journey Financial, Inc., Tacoma, WA *[Docket No. 13–1406–MRT]*
74. Lenox Financial Mortgage, LLC, Atlanta, GA *[Docket No. 13–1407–MRT]*
75. Loan Correspondents, Inc., Irvine, CA *[Docket No. 13–1409–MRT]*
76. Loan Network, LLC, Renton, WA *[Docket No. 13–1410–MRT]*
77. Lumina Mortgage Company, Inc., Wilmington, NC *[Docket No. 13–1411–MRT]*
78. Maverick Residential Mortgage, Inc., Plano, TX *[Docket No. 13–1412–MRT]*
79. MBI Mortgage, Inc., Dallas, TX *[Docket No. 13–1413–MRT]*
80. Medallion Mortgage Corporation, Arlington, TX *[Docket No. 13–1414–MRT]*
81. Mercury, Inc., Fairfield, NJ *[Docket No. 13–1415–MRT]*
82. Meredian Financial Corporation, Costa Mesa, CA *[Docket No. 13–1416–MRT]*
83. Meridias Capital, Inc., Henderson, NV *[Docket No. 12–1664–MRT]*
84. Merrlin Mortgage Corporation, Overland Park, KS *[Docket No. 13–1417–MRT]*
85. MetAmerica Mortgage Bankers, Inc., Virginia Beach, VA *[Docket No. 13–1418–MRT]*
86. MIG Mortgage, LLC, Houston, TX *[Docket No. 13–1420–MRT]*
87. Money Warehouse, Inc., Southampton, PA *[Docket No. 13–1421–MRT]*
88. Mortgage and Investment Consultants, Inc., Saint Paul, MN *[Docket No. 13–1422–MRT]*
89. Mortgage Direct, Chicago, IL *[Docket No. 12–1655–MRT]*
90. Mortgage Plus of America Corporation, Kalamazoo, MI *[Docket No. 13–1423–MRT]*
91. Mortgage South, Inc., Richmond, VA *[Docket No. 13–1424–MRT]*
92. MORTGAGECLOSE.COM, Inc., Santa Ana, CA *[Docket No. 13–1425–MRT]*
93. M-Point Mortgage Services, LLC, Crofton, MD *[Docket No. 13–1426–MRT]*
94. MWF Financial & Mortgage Center, Inc., Saint Charles, IL *[Docket No. 13–1427–MRT]*
95. National Title Insurance Company, Miami, FL *[Docket No. 13–1428–MRT]*
96. Nationwide Mortgage Concepts, LLC, Rancho Mirage, CA *[Docket No. 13–1429–MRT]*
97. NDNJ, Inc., Ranchos Palos Verdes, CA *[Docket No. 13–1430–MRT]*
98. Neighborhood Funding, Inc., Tampa, FL, *[Docket No. 13–1431–MRT]*
99. Neighborhood Housing Services of America, Oakland, CA *[Docket No. 13–1432–MRT]*
100. Nichols Mortgage Services, Inc., Indianapolis, IN *[Docket No. 13–1433–MRT]*
101. NLMC, Inc., Houston, TX *[Docket No. 13–1434–MRT]*
102. Olympic Coast Investments, Inc., Virginia Beach, VA *[Docket No. 11–1267–MRT]*
103. Online Financial Group, San Jose, CA *[Docket No. 13–1435–MRT]*
104. Oxford Lending Group, LLC, Columbus, OH *[Docket No. 13–1436–MRT]*
105. Pacific Charter Mortgage Corp., Laguna Hills, CA *[Docket No. 13–1437–MRT]*
106. Pacific Mutual Funding, Inc., Brea, CA *[Docket No. 13–1438–MRT]*
107. Pacific Reverse Mortgage, Inc., Palm Beach Gardens, FL *[Docket No. 13–1439–MRT]*
108. Pinnacle Financial Services, Inc., Chesterfield, MO *[Docket No. 13–1440–MRT]*
109. Preferred Financial Funding, Inc., Colton, CA *[Docket No. 13–1441–MRT]*
110. Prime Home Mortgage, Inc., Ormond Beach, FL *[Docket No. 13–1442–MRT]*
111. Prodigy, Inc., Austin, TX *[Docket No. 13–1443–MRT]*
112. Production Mortgage, Inc., Anaheim, CA *[Docket No. 13–1444–MRT]*
113. Professional Lending. LLC, Augusta, GA *[Docket No. 13–1445–MRT]*
114. Protofund Mortgage Corporation, Winnetka, CA *[Docket No. 13–1446–MRT]*
115. Provident Mortgage Corporation Central CA, Visalia, CA *[Docket No. 11–1214–MRT]*
116. Residential Lending Network, Inc., Coral Springs, FL *[Docket No. 11–1281–MRT]*
117. Right Mortgage Company, Lebanon, TN *[Docket No. 13–1447–MRT]*
118. Rokitto Enterprises, Porter Ranch, CA *[Docket No. 13–1448–MRT]*
119. Sacramento Valley Financial, Inc., Roseville, CA *[Docket No. 13–1449–MRT]*
120. Silver Oak Mortgage, LP, Arlington, TX *[Docket No. 13–1450–MRT]*
121. Sky Investments, Inc., Deerfield Beach, FL *[Docket No. 13–1451–MRT]*
122. Sterling Empire Funding Associates, LTD, Bronx, NY *[Docket No. 13–1452–MRT]*
123. Sun Capital, Inc., Pelham, AL *[Docket No. 13–1453–MRT]*
124. Sydion Financial, LLC, Lake Tapps, WA *[Docket No. 13–1454–MRT]*
125. The Mortgage Bank of Arkansas, Little Rock, AR *[Docket No. 11–1219–MRT]*
126. The Mortgage Co-op, LLC, Sandy, UT *[Docket No. 13–1455–MRT]*
127. The Mortgage Makers, Inc., Houston, TX *[Docket No. 13–1456–MRT]*
128. Thornburg Mortgage Home Loan, Inc., Santa Fe, NM *[Docket No. 13–1457–MRT]*
129. TMBG, Inc., Everett, WA *[Docket No. 11–1227–MRT]*
130. Town & Country Home Mortgage, Inc., Portland, OR *[Docket No. 13–1458–MRT]*

131. U.S. Financial Mortgage Corporation, Rocklin, CA *[Docket No. 13–1459–MRT]*
132. United Funding Mortgage Corp., Alpharetta, GA *[Docket No. 13–1460–MRT]*
133. United Home Mortgage Corp., Antioch, CA *[Docket No. 13–1461–MRT]*
134. Universal Mortgage Corporation, Mequon, WI *[Docket No. 13–1462–MRT]*
135. US Capital Funding, LLC, East Islip, NY *[Docket No. 13–1463–MRT]*
136. USGI, Inc., Darien, CT *[Docket No. 13–1464–MRT]*
137. Vision Mortgage Professionals, Inc., Lebanon, TN *[Docket No. 13–1465–MRT]*
138. Volunteer Trust Mortgage Corporation, Nashville, TN *[Docket No. 13–1466–MRT]*

Dated: April 5, 2013.

Carol J. Galante,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2013–08520 Filed 4–10–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–5638–N–02]

Public Housing Assessment System (PHAS): Capital Fund Final Scoring Notice

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

ACTION: Notice.

SUMMARY: This notice makes final an interim notice that advised public housing agencies (PHAs), as well as members of the public, that HUD intended to award 5 points for the occupancy sub-indicator of the Capital Fund indicator to all PHAs for the Capital Fund Indicator under the PHAS interim rule published February 23, 2011. The award of 5 points is awarded as a temporary measure to address the transition to the scoring system implemented by the PHAS interim rule, especially as relates to the Capital Fund sub-indicator that assesses occupancy rate. The 5 points for this occupancy sub-indicator is awarded for fiscal years ending March 31, 2011, June 30, 2011, September 30, 2011, and December 31, 2011. This notice follows an interim notice for comment published on June 11, 2012.

DATES: *Effective Date:* April 11, 2013.

FOR FURTHER INFORMATION CONTACT: Claudia J. Yarus, Real Estate Assessment Center (REAC), Office of Public and Indian Housing, Department of Housing and Urban Development, 550 12th Street SW., Suite 100, Washington, DC 20410, telephone 202–475–8830 (this is not a toll-free number). Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at 800–877–8339. Additional information is available from the REAC Internet site at *http://www.hud.gov/offices/reac/*.

SUPPLEMENTARY INFORMATION:

I. The June 11, 2012 Interim Notice for Comment

On June 11, 2012, HUD published for public comment an interim notice that advised that for PHA's with fiscal years ending March 31, 2011, June 30, 2011, September 30, 2011 and December 31, 2011, HUD was awarding all PHAs 5 points for the occupancy rate sub-indicator under the Capital Fund Program Indicator. The score already assigned for occupancy rate sub-indicator of the Capital Fund score was made advisory only as of the effective date of the interim notice, and remains advisory for a period of one year from the date of publication of this notice.

II. This Final Notice

This notice makes final the June 11, 2012 interim notice without change.

III. The Public Comments

The public comment period for the interim notice closed on July 11, 2012. By the close of the comment period, HUD received 22 public comments. Comments were submitted by housing authorities, a consortium, and public housing trade associations.

A summary of the significant issues raised in the comments, and HUD's responses, follows.

A. The Occupancy Sub-Indicator of the Capital Fund Indicator

Issue: Opposition to 2 occupancy indicators. Commenters stated that: there should not be two occupancy indicators in a scoring system, when they are based on different criteria; Having two occupancy standards is duplicative and redundant, even though they are not weighted the same; the different uses of the occupancy sub-indicator in the management indicator and the Capital Fund indicator appear to conflict; it seems odd that 96 percent occupancy is acceptable in the Capital Fund indicator, but for the management indicator 98 percent is the standard; having an occupancy indicator under both the management indicator and the Capital Fund indicator leads to a double penalty for one sub-indicator; and that it is incongruous for PHAs to be high performing or passing for the occupancy sub-indicator under one subsystem and failing in another.

HUD Response: HUD disagrees that there should not be two occupancy sub-indicators. The two sub-indicators are for different purposes. The occupancy sub-indicator under the Management (MASS) Indicator is a management measure. The occupancy sub-indicator under the Capital Fund Indicator is a measure of the use of Capital Funds for modernization and other capital needs. HUD believes that success in addressing capital needs will be reflected in higher occupancy rates. Because they are two different measures, HUD does not agree that there is a redundancy or double penalty.

The percentage difference between the MASS occupancy sub-indicator and the Capital Fund occupancy sub-indicator is due to the exclusion of all HUD approved vacant units from the MASS occupancy calculation. The higher percentage required for full points under the MASS sub-indicator reflects that HUD approved vacant units (under 24 CFR 990.145) are not considered in the formula used to determine this occupancy percentage. Since those same HUD approved vacant units are considered in the formula used to calculate the Capital Fund occupancy percentage, the percentage required for full points under Capital Fund is lower.

With the award of five (5) points to all PHAs for the Capital Fund occupancy sub-indicator for FY 2011, as provided in this notice, for this assessment cycle a PHA cannot ''fail'' one occupancy sub-indicator and still be designated a high performer or ''pass'' the other occupancy sub-indicator. Furthermore, even were it not for this adjustment, as the two occupancy sub-indicators are intended for different purposes, it would not be incongruous for PHAs to receive differing scores.

Issue: Commenters stated that standard is too strict. A commenter stated that the standard for the occupancy sub-indicator is too stringent. Real estate firms in the local area accept 5 percent vacancy as normal. If HUD multi-family projects accept 5 percent as normal (grade of C), public housing should be no different. Another commenter stated that, if the multi-family standard is only 95 percent, PHAs should not be held to a different standard and penalized for what is acceptable with PHA's private counterparts, as PHA's challenges are just as real, if not more so. One commenter stated as an example of the problems with the new PHAS rule, that

although it has always previously maintained high performer status under PHAS, ''based on the new flawed PHAS rule'' it received an 89 initially. The commenter states that it was ''unfairly penalized'' 5 points in the occupancy sub-indicator of the Capital Fund indicator.

HUD Response: HUD disagrees that the standard is too stringent. Insofar as the comment is directed to the 98 percent threshold for full points under the MASS occupancy sub-indicator, that comment is outside the scope of this notice. Insofar as the comment relates to the 96 percent threshold for full points under the Capital Fund occupancy sub-indicator, HUD sees this sub-indicator as a measure of how the PHA is using the Capital Funds to make units available to house families. An occupancy rate of 96 percent permits up to 4 percent of a PHA's units to be used for non-dwelling purposes and to be vacant in accordance with a modernization program.

Insofar as a commenter claims that the standard is unfair, this Notice addresses that issue by providing 5 additional points and thus extending the time during which PHAs can prepare to address the new standard.

Although HUD's diverse housing programs provide necessary low-income housing, the public housing program serves a different population than the multifamily program and both of these programs serve different needs than conventional multifamily real estate firms. With the need for low-income housing and the long waiting lists, the occupancy percentages in the PHAS rule are consistent with the Department's goals of utilization and housing more low-income families.

Issue: HUD-approved vacant units. A commenter stated that the indicator is flawed because it does not recognize approved vacant units under the management indicator (MASS). These include vacant units approved and exempt under MASS (e.g., because undergoing modernization, litigation, or market conditions), and non-dwellings units (e.g., those used for self sufficiency and anti-crime initiatives) that are approved and exempt under MASS. A number of commenters stated that the indicator fails to account for HUD-approved vacancies for modernization, which discourages PHAs from making improvements to the nation's aging stock and unfairly punishes PHAs for well-managed renovation programs. Occupancy should continue to be evaluated based on a PHAs adjusted occupancy rate, as is done in the management indicator. Also, these vacancies are needed to improve the living conditions for the residents. HUD should be encouraging the modernization of existing public housing stock for long-term viability, rather than penalizing modernization efforts in the PHAS scoring. One commenter stated that PHAs with active and on-schedule construction contracts should be able to exclude vacancies for modernization and casualty loss.

A commenter stated that HUD has a system that recognizes that some units are vacant for legitimate reasons. These include having to perform modernization work on properties that, in some cases, are now approaching the 75 year old mark. Often, vacating these units for renovation is more cost-effective and better for the residents. In situations where PHAs have HUD approval for this work, they should not be penalized for taking these steps to improve their properties and the lives of their residents. The Capital Fund occupancy sub-indicator, however, does exactly that, by measuring occupancy rates regardless of any reason why a unit might be vacant. This method is inherently flawed, with ''perverse consequences,'' and fails to measure PHA management performance accurately. Occupancy should only measured once, and only after HUD-approved vacancies have been excluded.

One commenter stated that modernization cannot be efficient if a PHA has to wait until a contract is signed before moving tenants to do the modernization. A commenter stated that renovating dwelling units that are located in close proximity, then moving residents permanently into the newly renovated units, and placing their previous dwelling units on the next annual Capital Fund Program (CFP) renovation program is the most efficient way to manage the program and the least disrupting to the lives of residents. It is not logical to rent the renovated dwelling units and wait for more dwelling units to become vacant, which would be scattered throughout the development, to begin the next CFP renovation program.

A commenter stated that it is counter-intuitive that HUD would approve modernization initiatives and then penalize the PHA for doing exactly what was approved by HUD. Two commenters cited their specific experience with having units approved to be offline for rehabilitation and being penalized under the Capital Fund indicator, even though they were following HUD's requirements. One of these commenters stated that the PHAS snapshot taken on the last day of the fiscal year does not capture all units leased at the end of the month.

HUD Response: The calculations of the occupancy percentages for each PHAS occupancy sub-indicator are different under the two sub-indicators because, as stated in the response to the first comment above, they are different measures. To measure the number of families served, as the Capital Fund occupancy sub-indicator does, dwelling units with approved vacancies for modernization and special uses (e.g., self sufficiency and anti-crime initiative), as well as units vacant due to litigation, disasters and casualty losses that are not included in the MASS occupancy calculation are included in the Capital Fund calculation. As a result, a PHA's Capital Fund occupancy score reflects how well each PHA is serving the families in its communities.

HUD is concerned about the time that dwelling units are in modernization status. The scoring for the Capital Fund occupancy sub-indicator allows up to 4 percent of the PHA's dwelling units to be vacant at any one time for non-dwelling uses and modernization in order for the PHA to receive the full 5 points and up to 7 percent of the units to receive partial points. To achieve a higher occupancy rate that results in a corresponding higher score under this sub-indicator, PHAs are encouraged to continue ongoing proactive capital projects, strategize and stage their modernization projects minimizing the number of units that are off-line as well as the time, and to consider performing modernization while units are occupied since not all modernization work requires the family to vacate. With the Capital Fund occupancy measure being based on the data the PHA enters in the Public and Indian Housing Information Center (PIC) as of the last day of the PHA's fiscal year, HUD believes that PHAs can effectively plan their modernization projects early in the fiscal year in preparation for the occupancy percentage calculation at the end of the PHA's fiscal year.

HUD can legally approve the use of units for a number of purposes other than occupancy, but it is the decision of the PHA how to best serve the families in its community and minimize the number of units that are not occupied by tenants. With respect to HUD's approval of units under modernization, this approval is granted under the Operating Fund, not for the Capital Fund or occupancy purposes. However, because Operating Funds can be used to make certain improvements and repairs, for example, to turn a unit over for occupancy, this approval and the

attendant funding can positively impact a PHA's Capital Fund occupancy percentage under PHAS.

The methodology for counting units for a Uniform Physical Condition Standards (UPCS) inspection has no impact on a PHA's occupancy percentage or score under PHAS. Units are counted under the UPCS inspection protocol, including units vacant for modernization, for the purpose of determining the inspection sample size. The calculation of a PHA's Capital Fund occupancy percentage, determined based on the data the PHA has entered in PIC, is based on units occupied in PIC at the FYE of that agency. Unit count issues experienced during a PASS inspection may indicate the PHA has data errors in PIC that need to be corrected or the PASS protocol counts the units differently to serve the inspection process. In instances when there are PIC errors, it is incumbent on the PHA to get these errors corrected as, in addition to affecting their PHAS Capital Fund indicator score, it can also affect the PHA's funding under Capital Fund and Operating Fund.

Issue: Occupancy sub-indicator should be permanently removed. Commenters stated that there should not be an occupancy sub-indicator in the Capital Fund section for a number of reasons, namely: it is redundant to have two occupancy sub-indicators; the one in the management section is more than sufficient with its 16 point value; ''it serves no useful purpose''; too much emphasis is placed on the occupancy factor; occupancy points comprise 21 potential points out of 100, which is too much weight for one factor; the ''illogic'' of the indicator is shown by the fact that Capital Fund has little to do with occupancy; the occupancy component of the management indicator is extremely important, with a 16 point value, and there is no reason to have a second sub-indicator measuring the same thing; and it unnecessarily complicates the scoring and appeals process and overall efficient administration of the PHAS scoring system. A commenter stated that the possibility of receiving an 'A' in one and an 'F' in the other displays a lack of understanding of what it is the Department is trying to measure and reduces confidence in the integrity of the scores.

A commenter stated that this occupancy sub-indicator is presumably to measure whether PHAs are adequately using Capital Funds to improve units for occupancy. However, there are many factors outside of the use of Capital Funds that determine successful occupancy rates, including tenant driven factors, property management, and local housing markets.

HUD Response: The removal of the Capital Fund occupancy sub-indicator from PHAS is outside the scope of this notice. This notice is limited to providing PHAs with a year to adjust to the assessments under the Interim PHAS rule by awarding all PHAs the full five (5) points for the Capital Fund occupancy sub-indicator for fiscal year 2011.

As stated in HUD responses above, HUD does not believe that it is redundant to have two occupancy sub-indicators since each one measures something different. The emphasis on occupancy in the PHAS rule is consistent with HUD's goals that include increasing the number of families housed through its low-income rental housing programs.

HUD disagrees that the Capital Fund occupancy sub-indicator discourages renovation and complicates PHAS. The Capital Fund provides money for PHAs to modernize units for occupancy by low income families and considering occupancy provides a good measure of how well those funds are being used for capital expenditures. All PHAs continue to request and receive Capital Funds and all PHAs obligate these funds timely in order to rehabilitate units and return those units to commerce for occupancy by income eligible families. As such, the Capital Fund occupancy sub-indicator is a valuable measure of how the program funds authorized for improving and modernizing units are being used to house families.

Issue: Change should be made permanent. A commenter stated that the final notice should make permanent the restoration of 5 points for the occupancy sub-indicator for the duration of the interim rule, as the problems with the Capital Fund subsystem will still be present in subsequent fiscal years. This notice is only a temporary solution.

HUD Response: The purpose of the notice is to provide PHAs with a one year period of time to adjust to the new occupancy measure under Capital Fund in the PHAS interim rule.

Issue: Other suggested changes to the Capital Fund indicator. A commenter stated that the obligation and expenditure of Capital Funds should be worth the whole 10 points. This is an important indicator that PHAs can use funding in a timely and appropriate manner. Another commenter stated that timeliness of the obligation of Capital Funds might be preferable.

HUD Response: HUD disagrees that the obligation and expenditure of Capital Funds should be the two measures for the full ten (10) points scored under the PHAS Capital Fund indicator. HUD has determined that the quantitative expenditure of Capital Funds, alone, is not necessarily a good qualitative measure of how well the funds are being. Thus, HUD revised the indicator accordingly to consider occupancy as one of the two Capital Fund sub-indicators in order to measure the outcomes of this funding stream in addition to the timeliness of the obligation of the funds as the other sub-indicator.

Issue: Small PHAs. A commenter stated that the occupancy sub-indicator is unfair to small PHAs, who can end up with a low score because of vacancies due to all kinds of circumstances.

HUD Response: HUD has addressed all PHAs, both small and large, in this notice by providing the full 5 points for the Capital Fund occupancy sub-indicator for fiscal years ending in 2011.

Issue: Snapshot in time. Two commenters stated that the occupancy standards do not recognize a PHA's true performance because it only measures a single point in time. Taking a snapshot of occupancy at the end of the fiscal year is wrong because vacancies could be unusually high at that time, and cited an example involving families vacating at the end of the fiscal year. The scoring of the occupancy sub-indicator affects Capital Fund allocations, and can reduce small PHAs funding drastically.

HUD Response: HUD disagrees with the commenters. This notice has provided PHAs with additional time to adjust to this measure of performance under the interim PHAS rule. Because PHAs know that under the Capital Fund occupancy sub-indicator, they will be measured using PIC data as of the last day of the PHA's fiscal year. They can plan accordingly starting at the beginning of the fiscal year. With planning, for other than resident elective moves that can occur at any time during the fiscal year, PHAs can control both the timing of their data entries in PIC that is used to calculate the Capital Fund occupancy sub-indicator percentage as well as their modernization work. With modernization planning and timely entry of data in PIC there should be no adverse impact. By itself, the score received for this sub-indicator will not cause a PHA to receive an overall PHAS score of less than 90 and experience a reduction in funding because the PHA is not a high performer. HUD considers the occupancy of units as an integral measure of a high performing PHA.

Issue: Funding issues. Commenters stated that funding shortfalls must be taken into account the scoring system.

Virtually each year the public housing operating fund is funded at less than 100 percent eligibility. The Capital Fund is currently receiving only about half the necessary amount to keep up with the annual accrual, without even considering the $26 billion backlog. As a result, agencies do not receive the funding HUD itself says is necessary for their management. Other HUD programs, subject to some of the same reviews, do receive 100 percent of their eligibility on an annual basis. It is not fair to use the same standard on one program, which receives 100 percent of its funding, and another, which receives far less. HUD must determine a method to take these annual funding shortfalls into account in assessing public housing performance.

HUD Response: With respect to the Capital Fund, which is the subject of this notice, HUD declines to prorate the scoring based on funding. The funding for PHAs is subject to the availability of appropriations, and all PHAs are under the same funding constraints. PHAs that make the most effective and efficient use of their available resources and efficiently manage modernization, will, and should, score the most points under the Capital Fund occupancy sub-indicator.

Issue: Difficulties with the scoring process. A commenter stated that the final scores have been issued for housing authorities well after the close of their fiscal years, making it difficult for housing authorities to learn from the first year and make changes for following years. Many PHAs have had difficulty in obtaining the details of actual indicators or reports of scores–making it very difficult to address scoring issues or prepare for the following year. There have also been unnecessary problems with regard to PIC data submission deadlines. PHAs were unaware that REAC was pulling PIC data on the date of a PHA's fiscal year end, despite the fact that multiple Departmental guidelines and notices allow housing authorities 60 days to enter data into the PIC system. This kind of contradictory action by HUD further convolutes the implementation process and strengthens the argument that scoring under the interim rule should be advisory.

HUD Response: As to advisory scoring, that issue is beyond the scope of this notice. The HUD guidance to which the commenter refers on PIC data entry does provide that PHAs have 60 days to enter the data. That guidance, however, does not prohibit PHAs from entering their data sooner. The 60 day period gives PHAs the time that may be needed for entering all of the required information, including information that may require additional time to verify such as tenant identification issues as well as the resolution of issues regarding certain data entries that require HUD assistance. PHAs are encouraged to submit their data in PIC and other HUD systems at the first opportunity. In light of HUD's continued reliance on PHA submissions and the use of HUD systems, prompt and accurate entry of data is becoming more critical. HUD acknowledges that there are times when data cannot be entered sooner but the majority of information can be done sooner.

B. Issues Outside the Scope of the Interim Capital Fund Notice

Issue: PHAS generally. Many of the commenters had concerns about aspects of PHAS other than the Capital Fund indicator, namely:

The management occupancy sub-indicator standard is unrealistic and unrepresentative, in that a 98 percent occupancy level in order to be given an 'A' is too high, given that HUD accepts a 3 percent vacancy rate as normal because of routine turnovers. Point deductions occur too rapidly, with a 95 percent occupancy rate causing the property to lose half the possible points. 95 percent should never be a failing grade. Since 95 percent is the standard in multi-family, it is not fair essentially to fail a public housing property for having an occupancy rate that is acceptable in the multifamily program;

When HUD does a financial pro forma, it is based on 95 percent occupancy, and rents are set a high enough level to make sure that the development is financially viable at this 95 percent rate. Thus a 95 percent occupancy rate is the norm in the multifamily program. If owners can achieve a higher rate, they are able to earn additional money. Under the management occupancy sub-indicator, however, an public housing property with a 95 percent occupancy rate will only be awarded 8 out of 16 possible points, a 50 percent score or the equivalent of failing;

The order of the waiting list, the need to have current screening and verifications, the fact that the PHA doesn't always get proper notice from families that are vacating, the fact that some applicants cannot move until their current lease ends, the fact that applicants move and do not tell the PHA their new address, and family situations, can all lead to slower turnover. This commenter stated that turnover also depends on the condition of the unit and how long maintenance will take;

To receive maximum points on occupancy under the management indicator, a small PHA might have to keep all but 2 units occupied at all times. Being a small PHA, manpower prevents immediate preparation if more than two apartments are vacant at the same time and it is especially hard to increase manpower, whether by more employees or contractors, when Operating Subsidy cuts require frugality;

For HUD Section 8 New Construction, 94 percent occupancy is considered excellent. Tax Credit developments have an even lower occupancy standard than HUD Section 8 New Construction. The scoring system for occupancy levels needs to be re-evaluated and made more realistic. Each year, 20–30 percent of units turn over for a variety of reasons. Routine turnovers are entirely out of the PHA's control; even where there is no problem getting an apartment ready, getting it filled can be a problem, for instance, with a tenant who decides not to take a unit, or has a criminal record, for example, which delays filling the unit;

Due to frequent turnover, which is common in the rental industry, it is not unusual to have several apartments vacate within a short time of each other. There is always some time needed to prepare the apartment for the next renter and to have the new renter sign their lease. Since this indicator is worth 16 points it is very critical that PHAs have a realistic opportunity to gain the maximum points;

An occupancy rate of equal to or greater than 97 percent is an excellent achievement and should be graded as such. Also, operating subsidy full payment is based on 97 percent occupancy. Point deductions should begin at equal to or less than 96 percent, with 96 percent being a standard rate with minimal points deducted;

The accounts payable sub-indicator should be eliminated as unnecessary, not relevant to evaluating whether properties are fully occupied, in good physical condition and in sound financial health, and a sign of micromanagement. One commenter described specific issues where late court judgments caused problems with the account payable indicator score. Another commenter stated that as long as the PHA is well-managed, in sound financial health, and occupied, the exact arrangements a PHA has with its vendors to pay its bills is not an appropriate subject for HUD review and scoring. An agency's performance on this subindicator only muddies the scoring of its performance on the key indicators of physical status, occupancy

and financial condition and thus affects the integrity of the PHAS score as a measurement of PHA performance;

Because of the way billing cycles work, there will always be some accounts payable. The question should be whether the PHA has the ability to pay off the accounts payable;

The physical indicator scoring system needs to be revised as it deducts points for some deficiencies disproportionately to their importance, and the scoring system should have an easily understandable point value for each deficiency based on a logical standard;

The physical inspection system continues to have numerous flaws including deducting points that are disproportionate to the value of the deficiency, failing to take into account differences in the size of properties and buildings consistently, including irrelevant and redundant deficiencies, and utilizing a complicated scoring system that lacks transparency. Deficiencies whose severity is minor can still be worth a lot of points, because they have high weights and criticality values. Instead of this system, HUD should develop one in which each deficiency is assigned an individual point value based upon a logical standard. The Department should also undertake a review to determine which deficiencies are not necessary and which could be consolidated. The scoring standard should account for proportionality. Unrealistic point deductions and unessential deficiencies should be eliminated.

PHAS in its entirely should be advisory as PHAs need more time to adjust and plan accordingly and the current schedule is unfair. Since it is clear that HUD recognizes the deficiencies in the interim rule, including inadequate training and timing, HUD should make all scores advisory for FY 2011 and 2012. The time allotted by HUD to agencies to meet the new PHAS standards was 24 work days for agencies with a fiscal year ending March 31st and 89 work days for agencies with a fiscal year ending June 30th. PHAs should be allowed one full year to prepare for the entire PHAS;

The entire PHAS protocol needs to be revised and simplified. The accounts payable indicator is unnecessary. The financial indicators do not measure what is most important, and the inspection protocol now well over a decade old is cumbersome, expensive to administer and adds little value to management of property. PHAS can be improved and can be supported with fewer resources. The Department should work more closely with local housing agencies and industry groups to arrive at a better system that will be more useful and beneficial to housing agencies, residents, HUD and the public. The number of deficiencies should be reduced and similar ones consolidated;

The presence of brand new, more stringent indicators in the Financial, Management Operations, and Capital Fund subsystems (including the occupancy subindicator within the Capital Fund), in conjunction with the lack of time and training made available to housing authorities to learn about the changes in the system, are all cause for making scores issued under the interim rule advisory. Imposing these new standard puts PHAs' reputations at risk;

Having standards apply retroactively is not fair, and the Department in this notice recognizes that fact. This same logic applies to PHAS generally. Numerous other changes, in addition to the Capital Fund occupancy sub-indicator were made, and agencies had no more time to adjust to these changes than they did to the Capital Fund occupancy sub-indicator. This is particularly true with respect to the management indicator;

The scoring system is arbitrary and frustrating to work with and does not give a fair assessment of the condition of the property as it is intended to do. The system is complex and unwieldy, and can lead to excessive deductions for minor issues;

Health and safety deductions are ''devastating'' because they are worth too many points even if only a small item;

REAC inspectors should not nit-pick minor issues. REAC physical inspectors need to be aware of the cost to a PHA for findings of very little significance. Common sense should be used for the overall evaluation of a property. Major defects and safety issues should be written up—however some inspectors are not giving the property the overall scoring it should receive;

For physical inspections, the REAC inspector should accept all documentation provided by the PHA and then grade according to that. For example, if a PHA has documentation that it does not own a fence that runs along its property line then the inspector should not grade the fence instead of the inspector grading it and then the PHA having to appeal it. This is a waste of everyone's time;

PHAS should emphasize the units, since that is where residents actually live, but the units are only worth 35 percent of the overall score;

There should be ongoing collaboration with the Department in continuing to remedy the major issues in the interim rule;

Since HUD is asking PHAs to act more like private asset managers, the PHAs are asking that HUD do the same with respect to PHAs.

HUD Response: These comments concern matters outside the scope of the notice, which is directed only to a temporary change to the occupancy sub-indicator of the Capital Fund indicator.

Dated: April 5, 2013.

Sandra B. Henriquez,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 2013–08519 Filed 4–10–13; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–IA–2013–N086; FXIA16710900000P5–123–FF09A30000]

Endangered Species; Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on the following applications to conduct certain activities with endangered species. With some exceptions, the Endangered Species Act (ESA) prohibits activities with listed species unless Federal authorization is acquired that allows such activities.

DATES: We must receive comments or requests for documents on or before May 13, 2013.

ADDRESSES: Brenda Tapia, Division of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 212, Arlington, VA 22203; fax (703) 358–2280; or email *DMAFR@fws.gov.*

FOR FURTHER INFORMATION CONTACT: Brenda Tapia, (703) 358–2104 (telephone); (703) 358–2280 (fax); *DMAFR@fws.gov* (email).

SUPPLEMENTARY INFORMATION:

I. Public Comment Procedures

A. How do I request copies of applications or comment on submitted applications?

Send your request for copies of applications or comments and materials concerning any of the applications to the contact listed under **ADDRESSES**. Please include the **Federal Register** notice publication date, the PRT-number, and the name of the applicant in your request or submission. We will

not consider requests or comments sent to an email or address not listed under **ADDRESSES.** If you provide an email address in your request for copies of applications, we will attempt to respond to your request electronically.

Please make your requests or comments as specific as possible. Please confine your comments to issues for which we seek comments in this notice, and explain the basis for your comments. Include sufficient information with your comments to allow us to authenticate any scientific or commercial data you include.

The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) Those that include citations to, and analyses of, the applicable laws and regulations. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed above (see **ADDRESSES**).

B. May I review comments submitted by others?

Comments, including names and street addresses of respondents, will be available for public review at the street address listed under **ADDRESSES**. The public may review documents and other information applicants have sent in support of the application unless our allowing viewing would violate the Privacy Act or Freedom of Information Act. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), along with Executive Order 13576, ''Delivering an Efficient, Effective, and Accountable Government,'' and the President's Memorandum for the Heads of Executive Departments and Agencies of January 21, 2009—Transparency and Open Government (74 FR 4685; January 26, 2009), which call on all Federal agencies to promote openness and transparency in Government by disclosing information to the public, we invite public comment on these permit applications before final action is taken.

III. Permit Applications

A. Endangered Species

Applicant: Saint Louis Zoo, St. Louis, MO; PRT–94882A

The applicant requests a permit to re-export a biological sample from a deceased captive-born Somali wild ass (*Equus africanus somalicus*) that was held at San Diego Zoo until her death on May 3, 2010, for the purpose of scientific research.

Applicant: Centers for Disease Control, Atlanta, GA; PRT–94950A

The applicant requests a permit to import biological samples from wild-born captive held gorillas (*Gorilla gorilla*) in Cameroon for the purpose of scientific research on the incidence of disease.

Applicant: Jonathan Pauli, University of Wisconsin, Madison, WI; PRT–94907A

The applicant requests a permit to import biological samples collected from wild Andean condors (*Vultur gryphus*) in Argentina for the purpose of scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Dark Horse Ent., Fredericksburg, TX; PRT–00453B

The applicant requests a captive-bred wildlife registration under 50 CFR 17.21(g) for the barasingha (*Rucervus duvaucelii*), Eld's deer (*Rucervus eldii*), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) to enhance the species' propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Dark Horse Ent., Fredericksburg, TX; PRT–00452B

The applicant requests a permit authorizing interstate and foreign commerce, export, and cull of excess barasingha (*Rucervus duvaucelii*), scimitar-horned oryx (*Oryx dammah*), Arabian oryx (*Oryx leucoryx*), addax (*Addax nasomaculatus*), dama gazelle (*Nanger dama*), and red lechwe (*Kobus leche*) from the captive herd maintained at their facility, for the purpose of enhancement of the survival of the species. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Larry Johnson, Boerne, TX; PRT–776134

The applicant requests renewal of their captive-bred wildlife registration under 50 CFR 17.21(g) for the following families, genera, and species, to enhance their propagation or survival. This notification covers activities to be conducted by the applicant over a 5-year period.

Families:
Bovidae
Cervidae
Equidae
Tapiridae

Applicant: Michael Tomb, Jackson, LA; PRT–01602B

The applicant requests a permit to import a sport-hunted trophy of one male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Brenda Tapia,

Program Analyst/Data Administrator,

Branch of Permits, Division of Management Authority.

[FR Doc. 2013–08483 Filed 4–10–13; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLCON06000–L16100000–DP0000]

Notice of Dominguez-Escalante National Conservation Area Advisory Council Meeting Cancellation and Change of Location

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Public Meeting Cancellation and Public Meeting Change of Location.

SUMMARY: In accordance with the Federal Land Policy and Management Act (FLPMA) and the Federal Advisory Committee Act of 1972 (FACA), notice is hereby given that the Dominguez-Escalante National Conservation Area Advisory Council meeting scheduled for May 1, 2013, at the Delta County Courthouse, Room 234, 501 Palmer Street, Delta, CO, has been cancelled. The location of a subsequent meeting scheduled for May 29, 2013, has been changed from the Mesa County Courthouse Annex, Multi-Purpose Room, 544 Rood Avenue, Grand Junction, CO, to the Bill Heddles Recreation Center, 530 Gunnison River Drive, Delta, CO. Notice of both

meetings appeared in the **Federal Register** on February 14, 2013.

DATES: The cancelled meeting was scheduled for May 1, 2013, from 3 p.m. to 6 p.m. The other meeting that was moved from Grand Junction to Delta, Colorado, is scheduled for May 29, 2013, from 3 p.m. to 6 p.m.

FOR FURTHER INFORMATION CONTACT: Shannon Borders, Southwest District Public Affairs Specialist, BLM Southwest District Office, 2465 South Townsend Ave., Montrose, CO, 81401. Phone: (970) 240–5399. Email: *sborders@blm.gov*. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 to contact the above individual during normal business hours. The FIRS is available 24 hours a day, seven 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 council advises the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the resource management planning process for the Dominguez-Escalante National Conservation Area and Dominguez Canyon Wilderness. Future meetings will be announced through a separate **Federal Register** notice. For more information about the Dominguez-Escalante National Conservation Area Advisory Council, visit *http://www.blm.gov/co/st/en/nca/denca/denca_rmp/DENCA_Resource_Advisory_Council.html*.

Dated: April 5, 2013.

Helen M. Hankins,

BLM Colorado State Director.

[FR Doc. 2013–08452 Filed 4–10–13; 8:45 am]

BILLING CODE 4310–JB–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–854]

Certain Two-Way Global Satellite Communication Devices, System and Components Thereof Issuance of Consent Order; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (''ID'') (Order No. 21) of the presiding administrative law judge (''ALJ'') terminating the investigation based on a consent order stipulation.

FOR FURTHER INFORMATION CONTACT: Clint Gerdine, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 708–2310. Copies of non-confidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone (202) 205–2000. General information concerning the Commission may also be obtained by accessing its Internet server at *http://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *http://edis.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on September 21, 2012, based on a complaint filed on behalf of BriarTek IP, Inc. of Alexandria, Virginia. 77 FR 58579–80. The complaint alleges violations of section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain two-way global satellite communication devices, system and components thereof by reason of infringement of certain claims of U.S. Patent No. 7,991,380. The complaint further alleged the existence of a domestic industry. The Commission's notice of investigation named as respondents Yellowbrick Tracking, Ltd. (''Yellowbrick'') of Essex, United Kingdom; DeLorme Publishing Company, Inc.; and DeLorme InReach LLC (collectively, ''DeLorme''), both of Yarmouth, Maine.

On December 7, 2012, the Commission determined not to review the ALJ's ID (Order No. 7) terminating Yellowbrick from the investigation based on a settlement agreement. On March 15, 2013, the Commission determined not to review the ALJ's ID (Order No. 17) granting-in-part complainant's motion for summary determination of importation of the accused InReach 1.0 and InReach 1.5 products, and the accused main boards for the InReach 1.5 product with respect to DeLorme.

On March 7, 2013, DeLorme moved to terminate the investigation based on a consent order stipulation. The Commission investigative attorney filed a response in support of the motion and complainant opposed the motion.

The ALJ issued the subject ID on March 15, 2013, granting DeLorme's motion for termination of the investigation. He found that the motion for termination by consent order stipulation satisfied Commission rule 210.21(c)(3). He further found, pursuant to Commission rule 210.50(b)(2), that termination of this investigation by consent order stipulation is in the public interest. No party petitioned for review of the ID.

The Commission has determined not to review the subject ID, and has terminated the investigation.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in sections 210.21 and 210.42(h) of the Commission's Rules of Practice and Procedure (19 CFR 210.21, 210.42(h)).

By order of the Commission.

Issued: April 5, 2013.

Lisa R. Barton,

Acting Secretary to the Commission.

[FR Doc. 2013–08428 Filed 4–10–13; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging Proposed Consent Decree

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Russ Huseby,* Civil Action No. 09–3737 (JRT/LIB), was lodged with the United States District Court for the District of Minnesota on April 2, 2013.

This proposed Consent Decree concerns a complaint filed by the United States against Russ Huseby, pursuant to Sections 309(b) and 309(d) of the Clean Water Act (''CWA''), 33 U.S.C. 1319(b) and 1319(d), to obtain injunctive relief from and impose civil penalties against the Defendant for violating the Clean Water Act by discharging pollutants without a permit into waters of the United States. The proposed Consent Decree resolves these allegations by requiring the Defendant to restore the impacted areas and to pay a civil penalty.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this

Notice. Please address comments to Friedrich A.P. Siekert, Assistant United States Attorney, 600 United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415 and refer to *United States* v. *Russ Huseby,* USAO # 2009v00301, DJ # 90–5–1–1–18555.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Minnesota, 200 United States Courthouse, 300 South Fourth Street, Minneapolis, MN 55415. In addition, the proposed Consent Decree may be examined electronically at *http://www.justice.gov/enrd/Consent_Decrees.html.*

Cherie L. Rogers,

Assistant Section Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 2013–08429 Filed 4–10–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Employment and Training Administration

Comment Request for Information Collection for a Youthful Offender Grants Management Information System, New Collection

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the 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 [44 U.S.C. 3506(c)(2)(A)]. This program helps 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 requirements on respondents can be properly assessed.

Currently, ETA is soliciting comments concerning the collection of data for a proposed management information system for Youthful Offender Grants.

DATES: Written comments must be submitted to the office listed in the addresses section below on or before June 10, 2013.

ADDRESSES: Submit written comments to Richard Morris, Division of Youth Services, Reintegration of Ex-Offenders, Room N–4511, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Telephone number: 202–693–3603 (this is not a toll-free number). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at 1–877–889–5627 (TTY/TDD). Fax: 202–693–2764. Email: *morris.richard@dol.gov.* A copy of the proposed Information Collection Request (ICR) can be obtained by contacting the office listed above.

SUPPLEMENTARY INFORMATION:

I. Background

Each year, the Department of Labor/Employment and Training Administration is appropriated funds for youthful offender demonstration projects. The Department of Labor uses these funds for a variety of multi-site demonstrations aimed at developing model programs for serving young offenders. The Department expects over the next few years to award 28 new Youthful Offender grants in various sets of demonstrations each year for two years of operation and up to one year of follow-up services and post-placement data collection. In any given year this will result in 28 grants in their first year of operation, 28 grants in their second year of operation, and 28 grants providing follow-up services and tracking post-placement outcomes, for a total of 84 grants collecting data each year.

This data collection request is to permit the Department of Labor to implement a management information system for these various sets of grantees. ETA will be collecting data from these grantees on participant characteristics, services provided, and participant outcomes. This request establishes a reporting and recordkeeping system for a minimum level of information collection that is necessary to comply with Equal Opportunity requirements, to hold Youthful Offender grantees appropriately accountable for the Federal funds they receive, including performance measures, and to allow the Department to fulfill its oversight and management responsibilities.

II. Review Focus

The Department is particularly interested in comments which:

- evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- enhance the quality, utility, and clarity of the information to be collected; and
- minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Type of Review: New Collection.

Title: Youthful Offender Grants Management Information System.

OMB Number: 1205–0NEW.

Affected Public: State and Local Government Agencies, Faith-Based and Community-Based Organizations.

Total Annual Burden Cost for Respondents: $0.

Data collection activity	Number of respondents (grantees)	Frequency	Total responses	Average time per response	Burden hours
Participant Record	84	Continual	12,000	1.8	21,600
Performance Report	84	Quarterly	336	30	10,080
Recidivism Report	84	Annual	12,000	.5	6,000
Total	84		24,336	1.55	37,600

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the ICR; they will also become a matter of public record.

Signed at Washington, DC, this 27th day of March 2013.

Jane Oates,

Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2013–08435 Filed 4–10–13; 8:45 am]

BILLING CODE 4510–FT–P

OFFICE OF MANAGEMENT AND BUDGET

Fiscal Year 2013 Cost of Hospital and Medical Care Treatment Furnished by the Department of Defense Medical Treatment Facilities; Certain Rates Regarding Recovery From Tortiously Liable Third Persons

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice.

SUMMARY: By virtue of the authority vested in the President by Section 2(a) of Pub. B. 87–603 (76 Stat. 593; 42 U.S.C. 2652), and delegated to the Director of the Office of Management and Budget (OMB) by the President through Executive Order No. 11541 of July 1, 1970, the rates referenced below are hereby established. These rates are for use in connection with the recovery from tortiously liable third persons for the cost of inpatient medical services furnished by military treatment facilities through the Department of Defense (DoD). The rates have been established in accordance with the requirements of OMB Circular A–25, requiring reimbursement of the full cost of all services provided. The *FY13 inpatient medical rates* referenced are effective upon publication of this notice in the **Federal Register** and will remain in effect until further notice. Previously published outpatient medical and dental, and cosmetic surgery rates remain in effect until further notice. Pharmacy rates are updated periodically. A full disclosure of the rates is posted on DoD's Uniform Business Office Web site: *http://www.tricare.mil/ocfo/mcfs/ubo/mhs_rates.cfm.*

Jeffrey D. Zients,

Acting Director.

[FR Doc. 2013–08517 Filed 4–10–13; 8:45 am]

BILLING CODE P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 13–049]

NASA Advisory Council; Audit, Finance and Analysis Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting—Correction.

Ref: NASA **Federal Register** Notice [13–043] dated Friday, April 5, 2013; **Federal Register**/Vol. 78, No. 66 [20696].

SUMMARY: This is an amended version of NASA's earlier **Federal Register** Notice [13–043] published on April 5, 2013 [page 20696]. The dates and agenda for the meeting of the Audit, Finance and Analysis Committee of the NASA Advisory Council have been revised. The revised date and agenda are provided below. In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the Audit, Finance and Analysis Committee of the NASA Advisory Council.

DATES: Monday, April 22, 2013, 9:00 a.m.–4:30 p.m., Local Time.

ADDRESSES: NASA Headquarters. 300 E Street SW., Room 8E40, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Charlene Williams, Office of the Chief Financial Officer, National Aeronautics and Space Administration Headquarters, Washington, DC 20546. Phone: 202–358–2183.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes briefings on the following topics:

- Finance Update
- Strategy, Performance, Budget Update
- Conference Cost Reporting Requirements
- FY2013 Financial Statement Audit—Unfunded Environmental Liability Estimation
- Internal Control Assurances
- Administrative Session

The meeting will be open to the public up to the seating capacity of the room. It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Attendees will be requested to sign a register and comply with NASA Security requirements, including presentation of a valid picture ID to Security before access to NASA Headquarters. Foreign nationals attending this meeting will be required to provide 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 Ms. Charlene Williams at fax number 202–358–4336. 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 Ms. Charlene Williams via email at *charlene.williams-1@nasa.gov* or by telephone at 202–358–2183 or fax at 202–358–4336.

Patricia D. Rausch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 2013–08480 Filed 4–10–13; 8:45 am]

BILLING CODE 7510–13–P

NATIONAL SCIENCE FOUNDATION

National Science Board; Sunshine Act Meetings; Notice

The National Science Board's Committee on Education and Human Resources, pursuant to NSF regulations (45 CFR part 614), the National Science Foundation Act, as amended (42 U.S.C. 1862n–5), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of a teleconference for the transaction of National Science Board business and other matters specified, as follows:

DATE & TIME: Tuesday, April 16, 2013, from 2:00–3:00 p.m. EDT.

SUBJECT MATTER: (1) Chairman's opening remarks; (2) discussion of a possible role for CEH in enhancing retention of undergraduates in STEM education; and (3) update on the NSTC's committee on STEM education (CoSTEM) activities and their implications for NSF.

STATUS: Open.

LOCATION: This meeting will be held by teleconference at the National Science Board Office, National Science Foundation, 4201Wilson Blvd., Arlington, VA 22230. A public listening room will be available for this teleconference meeting. All visitors must contact the Board Office (call 703–292–7000 or send an email message to *nationalsciencebrd@nsf.gov*) at least 24 hours prior to the teleconference for the public room number and to arrange for a visitor's badge. All visitors must report to the NSF visitor desk located in the lobby at the 9th and N. Stuart Streets entrance on the day of the

teleconference to receive a visitor's badge.

UPDATES & POINT OF CONTACT: Please refer to the National Science Board Web site *www.nsf.gov/nsb* for additional information. Meeting information and updates (time, place, subject matter or status of meeting) may be found at *http://www.nsf.gov/nsb/notices/*. Point of contact for this meeting is: Jack Meszaros, 4201Wilson Blvd., Arlington, VA 22230. Telephone: (703) 292–7000.

Ann Bushmiller,

Senior Counsel to the National Science Board.

[FR Doc. 2013–08642 Filed 4–9–13; 4:15 pm]

BILLING CODE 7555–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Investigative Hearing

On January 7, 2013, about 1021 eastern standard time, smoke was discovered by cleaning personnel in the aft cabin of a Japan Airlines (JAL) Boeing 787–8, JA829J, which was parked at a gate at General Edward Lawrence Logan International Airport (BOS), Boston, Massachusetts. About the same time, a maintenance manager in the cockpit observed that the auxiliary power unit (APU)—the sole source of airplane power at the time—had automatically shut down. Shortly afterward, a mechanic opened the aft electronic equipment bay and found heavy smoke and fire coming from the front of the APU battery case. No passengers or crewmembers were aboard the airplane at the time, and none of the maintenance or cleaning personnel aboard the airplane was injured. Aircraft rescue and firefighting personnel responded, and one firefighter received minor injuries. The airplane had arrived from Narita International Airport, Narita, Japan, as a regularly scheduled passenger flight operated as JAL flight 008 and conducted under the provisions of 14 Code of Federal Regulations Part 129.

The investigative hearing is being held to discuss the Boeing 787 battery and battery charger system. Areas that will be discussed include the selection and certification requirements, the battery system design, development, verification and validation processes and the FAA finding of compliance. The goals of this hearing will be to gather additional information on the selection of the lithium ion (Li-ion) battery technology and how this new technology was evaluated, the role of the prime contractor and subcontractors, development of the battery system safety assessment, certification process structure and findings of compliance for the Boeing 787 Li-ion battery system.

Parties to the hearing include the Federal Aviation Administration, The Boeing Company, Thales Avionics and GS Yuasa.

Order of Proceedings

1. Opening Statement by the Chairman of the Board of Inquiry.
2. Introduction of the Board of Inquiry and Technical Panel.
3. Introduction of the Parties to the Hearing.
4. Introduction of Exhibits by Hearing Officer.
5. Overview of the incident and the investigation by Investigator-In-Charge.
6. Calling of Witnesses by Hearing Officer.
7. Closing Statement by the Chairman of the Board of Inquiry.

Additional information can be found on the web at: *http://www.ntsb.gov/news/2013/130402.html.*

The accident docket is DCA13IA037.

The Investigative Hearing will be held in the NTSB Board Room and Conference Center, located at 429 L'Enfant Plaza E., SW., Washington, DC, Tuesday, April 23 and Wednesday, April 24th, 2013 at 9:00 a.m. The public can view the hearing in person or by live webcast at *www.ntsb.gov.* Webcast archives are generally available by the end of the next day following the hearing, and webcasts are archived for a period of 3 months from after the date of the event.

Individuals requesting specific accommodations should contact Ms. Rochelle Hall at (202) 314–6305 or by email at *Rochelle.Hall@ntsb.gov* by Friday, April 19, 2013.

NTSB Media Contact: Mr. Eric Weiss—*eric.weiss@ntsb.gov.*

NTSB Investigative Hearing Officer: Mr. David Helson—*david.helson@ntsb.gov.*

Dated: April 5, 2013.

Candi R. Bing,

Federal Register Liaison Officer.

[FR Doc. 2013–08407 Filed 4–10–13; 8:45 am]

BILLING CODE 7533–01–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2013–59; Order No. 1692]

International Mail Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional International Reply Service Competitive Contract 3 Negotiated Service Agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 12, 2013.

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: Stephen L. Sharfman, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Contents of Filing
III. Notice of Proceeding
IV. Ordering Paragraphs

I. Introduction

On April 4, 2013, the Postal Service filed a notice pursuant to 39 CFR 3015.5 announcing that it has entered into an additional International Business Reply Service (IBRS) Competitive Contract 3 negotiated service agreement (Agreement).[1] It seeks to have the Agreement included within the existing IBRS Competitive Contract 3 product on grounds of functional equivalence to the baseline agreement filed in Docket No.CP2011–59.[2] Notice at 3–5.

II. Contents of Filing

Agreement. The Postal Service states that the Agreement is with a customer who is entering into its first IBRS agreement. *Id.* at 3.

The Postal Service filed the following material in conjunction with its Notice, along with public (redacted) versions of supporting financial information:

- Attachment 1—a redacted copy of the Agreement;
- Attachment 2—the certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a copy of Governors' Decision No. 08–24; and
- Attachment 4—an application for non-public treatment of materials filed under seal.

[1] Notice of United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, April 4, 2013 (Notice).

[2] *See* Docket Nos. MC2011–21 and CP2011–59, Order No. 684, Order Approving International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, February 28, 2011.

Functional equivalency. The Postal Service asserts that the Agreement is functionally equivalent to the baseline agreement filed in Docket No. CP2011–59 because it shares similar cost and market characteristics and meets the criteria in Governors' Decision No. 08–24 concerning attributable costs. *Id.* at 3–4. The Postal Service further asserts that the functional terms of the Agreement and the baseline agreement are the same and the benefits are comparable. *Id.* at 4. It states that prices offered under the Agreement may differ from other IBRS 3 contracts due to differences in volumes, postage commitments, and pricing at the time of the Agreement's execution, but asserts that these differences do not alter the functional equivalency of the Agreement and the baseline agreement. *Id.* at 4–5. The Postal Service also identifies differences between the terms of the baseline agreement and this Agreement, but asserts that these differences do not affect the fundamental service being offered or the fundamental structure of the Agreement.[3] *Id.*

III. Notice of Proceeding

The Commission establishes Docket No. CP2013–59 for consideration of matters raised by the Postal Service's Notice. Interested persons may submit comments on whether the Agreement is consistent with the requirements of 39 CFR part 3020 subpart B, 39 CFR 3015.5, and the policies of 39 U.S.C. 3632, 3633, and 3642. Comments are due no later than April 12, 2013. 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 material filed under seal appears in 39 CFR part 3007.

The Commission appoints Curtis E. Kidd to serve as Public Representative in the captioned proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2013–59 for consideration of the matters raised by the Postal Service's Notice.

2. Comments by interested persons in this proceeding are due no later than April 12, 2013.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Curtis E. Kidd 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. 2013–08433 Filed 4–10–13; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket No. CP2013–58; Order No. 1691]

International Mail Product

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing concerning an additional International Reply Service Competitive Contract 3 Negotiated Service Agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* April 12, 2013.

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: Stephen L. Sharfman, General Counsel, at 202–789–6820.

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II. Contents of Filing

Agreement. The Postal Service states that the Agreement is the successor to the agreement included in the IBRS Competitive Contract 3 product in Docket No. CP2012–17, and is on behalf of the same customer as in Docket No. CP2012–17. *Id.* at 3.

The Postal Service filed the following material in conjunction with its Notice:

- Attachment 1—a copy of the Agreement;
- Attachment 2—the certified statement required by 39 CFR 3015.5(c)(2);
- Attachment 3—a copy of Governors' Decision No. 08–24; and
- Attachment 4—an application for non-public treatment of materials filed under seal.

Attachments 1 through 3 were filed in redacted (public) and unredacted (sealed) versions.

Effective date; duration. The Postal Service intends the Agreement to take effect April 24, 2013. *Id.* The Agreement expires 1 year after its effective date unless terminated earlier. *Id.* at 4.

Functional equivalency. The Postal Service asserts that the Agreement is functionally equivalent to the baseline agreement filed in Docket No. CP2011–59 because it shares similar cost and market characteristics and meets the criteria in Governors' Decision No. 08–24 concerning attributable costs. *Id.* The Postal Service further asserts that the functional terms of the Agreement and the baseline agreement are the same and the benefits are comparable. *Id.* It states that prices offered under the Agreement may differ from other IBRS 3 contracts due to differences in volume, postage commitments, and pricing at the time of the Agreement's execution, but asserts that these differences do not alter the functional equivalency of the Agreement and the baseline agreement. *Id.* at 5.

The Postal Service states that there are differences between the terms of the two agreements, but characterizes them as minor, and asserts that they do not affect the fundamental service being offered or the fundamental structure of the Agreement.[3] *Id.*

III. Notice of Proceeding

The Commission establishes Docket No. CP2013–58 for consideration of matters raised by the Postal Service's

[1] Notice of United States Postal Service Filing of a Functionally Equivalent International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, April 4, 2013 (Notice).

[2] *See* Docket Nos. MC2011–21 and CP2011–59, Order No. 684, Order Approving International Business Reply Service Competitive Contract 3 Negotiated Service Agreement, February 28, 2011.

[3] Differences include an additional phrase in Article 15, captioned Confidentiality, stating that the Postal Service may be required to file information (such as revenue, cost or volume data) related to the Agreement in other Commission dockets and an additional Article 30, captioned Intellectual Property, Co-Branding and Licensing). *Id.* at 5–6.

Notice. Interested persons may submit comments on whether the Agreement is consistent with the requirements of 39 CFR part 3020 subpart b, 39 CFR 3015.5, and the policies of 39 U.S.C. 3632, 3633, and 3642. Comments are due no later than April 12, 2013. 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 material filed under seal appears in 39 CFR part 3007.

The Commission appoints Lawrence Fenster to serve as Public Representative in the captioned proceeding.

IV. Ordering Paragraphs

It is ordered:

1. The Commission establishes Docket No. CP2013–58 for consideration of the matters raised by the Postal Service's Notice.

2. Comments by interested persons in this proceeding are due no later than April 12, 2013.

3. Pursuant to 39 U.S.C. 505, the Commission appoints Lawrence Fenster 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. 2013–08432 Filed 4–10–13; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Order of Suspension of Trading; in the Matter of Integrity Bancshares, Inc.

April 9, 2013.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Integrity Bancshares, Inc. (''Integrity'') because Integrity has not filed any reports since its Form 10–Q for the period ended September 30, 2007, filed November 13, 2007.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of Integrity.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the securities of Integrity is suspended for the period from 9:30 a.m. EDT on April 9, 2013, through 11:59 p.m. EDT on April 22, 2013.

By the Commission.

Lynn M. Powalski,

Deputy Secretary.

[FR Doc. 2013–08632 Filed 4–9–13; 4:15 pm]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69319; File No. SR–CHX–2013–08]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Adopt and Amend Exchange Rules in Connection With Limit Up-Limit Down Plan

April 5, 2013.

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 March 28, 2013, the Chicago Stock Exchange, Inc. (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by 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

CHX proposes to amend Article 20, Rule 2 and to adopt Article 20, Rule 2A to implement the Limit Up-Limit Down requirements as detailed in the Regulation NMS Plan to Address Extraordinary Market Volatility (the ''Limit Up-Limit Down Plan,'' ''LULD Plan,'' or the ''Plan''),which was submitted to and approved, on a one-year pilot basis, by the Securities and Exchange Commission (the ''Commission'') pursuant to Rule 608 of Regulation NMS under the Act. The Exchange also proposes to amend Article 1, Rule 2; Article 20, Rule 4; and Article 20, Rule 8 to comport the CHX Only Price Sliding Processes with the proposed Limit Up-Limit Down Price Sliding (''LULD Price Sliding'') functionality and amend Article 16, Rule 8 and Article 20, Rule 10 to update various citations affected by this proposed rule change. The text of this proposed rule change is available on the Exchange's Web site at (*www.chx.com*) and in 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 CHX included statements concerning the purpose of and basis for the proposed rule changes 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 CHX has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Article 20, Rule 2 and adopt Article 20, Rule 2A (''Limit Up-Limit Down Plan and Trading Pauses in Individual Securities Due to Extraordinary Market Volatility'') to implement the Limit Up-Limit Down Plan,[3] as approved by the Commission on a one-year pilot basis.[4] Moreover, the Exchange proposes to amend Article 1, Rule 2; Article 20, Rule 4; and Article 20, Rule 8 to comport the CHX Only Price Sliding Processes with the proposed LULD Price Sliding functionality and to amend Article 16, Rule 8 and Article 20, Rule 10 to update various citations affected by the proposed rule change. Among other things, proposed Rule 2A will gradually phase out the current single-stock circuit breaker under CHX Article 20, Rule 2(d) and (e), which will be modified and incorporated as proposed Article 20, Rule 2A(c)(1) and (b)(2), as discussed below.

Since May 6, 2010, when the markets experienced excessive volatility in an abbreviated time period (*i.e.,* the ''flash

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter from Janet McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated May 24, 2012.

[4] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc).

crash''), the exchanges and FINRA (the ''Participants'') have implemented market-wide measures designed to restore investor confidence by reducing the potential for excessive market volatility. Among the measures adopted include the trading halts in all stocks triggered by extraordinary market volatility,[5] pilot plans for stock-by-stock trading pauses [6] and related changes to the clearly erroneous execution rules [7] and more stringent market maker quoting requirements.[8]

On April 5, 2011, the Participants filed the Limit Up-Limit Down Plan,[9] amendments to which were subsequently filed on May 24, 2012 [10] and January 17, 2013.[11] On May 31, 2012, the Commission approved the Plan, as amended, on a one-year pilot basis.[12] As proposed, the Plan is designed to prevent trades in individual NMS stocks from occurring outside specified Price Bands.[13] As detailed below, the requirements of the Plan are coupled with Trading Pauses to accommodate more fundamental price moves, as opposed to erroneous trades or momentary gaps in liquidity. All trading centers in NMS Stocks, including both those operated by Participants and those operated by members of Participants, are required to establish, maintain and enforce written policies and procedures that are reasonably designed to comply with the requirements specified in the Plan.[14] As set forth in more detail in the Plan, Price Bands consisting of a Lower Price Band and an Upper Price Band for each NMS Stock are calculated by the Processors.[15] When the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band, the Processors shall disseminate such National Best Bid (Offer) with an appropriate flag identifying it as not executable. When the National Best Bid (Offer) is equal to the Upper (Lower) Price Band, the Processors shall distribute such National Best Bid (Offer) with an appropriate flag identifying it as a Limit State Quotation.[16] All trading centers in NMS Stocks must maintain written policies and procedures that are reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for NMS Stocks. However, the Processor shall nevertheless display an offer (bid) below (above) the Lower (Upper) Price Band, but with a flag that it is non-executable. Such bids or offers shall not be included in the National Best Bid (''NBB'') or National Best Offer (''NBO'' and together with the NBB, ''NBBO'') calculations.[17]

Trading in a NMS Stock immediately enters a Limit State if the NBO (NBB) equals but does not cross the Lower (Upper) Price Band.[18] Trading for a NMS stock exits a Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange would declare a five-minute trading pause pursuant to Section VII of the LULD Plan, which would be applicable to all markets trading the security.[19] In addition, the Plan defines a Straddle State as when the NBB (NBO) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State.

For example, assume the Lower Price Band for an NMS Stock is $9.50 and the Upper Price Band is $10.50, such NMS stock would be in a Straddle State if the NBB were below $9.50 and therefore not executable and the NBO were above $9.50 (including a NBO that could be above $10.50). If an NMS Stock is in a Straddle State and trading in that stock deviates from normal trading characteristics, the Primary Listing Exchange may declare a trading pause for that NMS Stock.

Proposed Article 20, Rule 2A

Pursuant to the Plan, the Exchange is required to establish, maintain, and enforce written policies and procedures that are reasonably designed to comply with the Limit Up-Limit Down and Trading Pause requirements specified in the Plan. As such, the Exchange proposes that the following rules be operative April 8, 2013.

Proposed Article 20, Rule 2A(a)

''Limit Up-Limit Down Requirements''

Proposed paragraph (a)(1)(A) states that ''Plan'' means the Plan to Address Extraordinary Market Volatility Submitted to the Securities and Exchange Commission Pursuant to Rule 608 of Regulation NMS under the Securities Exchange Act of 1934, Exhibit A to Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012), as it may be amended from time to time. Also, proposed paragraph (a)(1)(B) states that all capitalized terms not otherwise defined in this Rule shall have the meanings set forth in the Plan or Exchange rules, as applicable. Proposed paragraph (a)(2) states that the Exchange is a Participant in, and subject to the applicable requirements of, the Plan, which establishes procedures to address extraordinary volatility in NMS Stocks. Proposed paragraph (a)(3) states that member organizations shall comply with the applicable provisions of the Plan. The Exchange believes that this requirement will help ensure the compliance by its members with the provisions of the Plan as required pursuant to Section II(B) of the Plan.[20]

Proposed paragraph (a)(4) outlines how the Exchange will comply with the Plan's requirement that the Exchange establish, maintain and enforce written policies and procedures that are reasonably designed to prevent (1) trades at prices that are below the Lower Price Band or above the Upper Price Band for an NMS Stock [21] and (2) the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock.[22]

Specifically, proposed subparagraph (A) states that the Matching System shall not execute any orders at prices that are below the Lower Price Band or above the Upper Price Band, unless

[5] *See* CHX Article 20, Rule 2.

[6] *Id.*

[7] *See* CHX Article 20, Rule 10.

[8] *See* CHX Article 16, Rule 8(a)(2).

[9] *See* Letter from Janet McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated April 5, 2011.

[10] *See* Letter from Janet McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated May 24, 2012.

[11] *See* Letter from Janet McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated January 17, 2013.

[12] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc).

[13] Unless otherwise specified, capitalized terms used in this rule filing are based on the defined terms of the Plan.

[14] The Exchange is a Participant in the Plan.

[15] *See* Section (V)(A) of the Plan.

[16] *See* Section VI(A) of the Plan.

[17] *See* Section VI(A)(3) of the Plan.

[18] *See* Section VI(B)(1) of the Plan.

[19] The primary listing market would declare a trading pause in an NMS Stock; upon notification by the primary listing market, the Processor would disseminate this information to the public. No trades in that NMS Stock could occur during the trading pause, but all bids and offers may be displayed. *See* Section VII(A) of the Plan. As discussed below, however, upon declaring a Trading Pause, the Exchange proposes to cancel orders resting in the CHX book, as well as reject all incoming orders in the affected NMS stock during the Trading Pause.

[20] *See* Section II(B) of the Plan.

[21] *See* Section VI(A)(1) of the Plan.

[22] *See* Section VI(A)(3) of the Plan.

such interest is specifically exempted under the Plan. Thereunder, proposed subparagraph (A)(i) states that ''Limit'' orders, as defined under current Article 1, Rule 2(p),[23] shall not be executed at a price above the Upper Price Band or below the Lower Price Band; proposed subparagraph (A)(ii) states that ''Market'' orders, as defined under Article 1, Rule 2(n),[24] may execute at the most aggressive permissible price at or within the Price Bands and that all Market orders are Immediate or Cancel and shall not be posted to the CHX book;[25] and proposed subparagraph (A)(iii) states that ''Cross'' orders, as defined under Article 1, Rule 2(e),[26] shall not be executed at a price above the Upper Price Band or below the Lower Price Band. Moreover, proposed subparagraph (B) states that a buy (sell) order shall not be displayed at a price above (below) the Upper (Lower) Price Band and that such an order may be eligible for Limit Up-Limit Down Price Sliding (''LULD Price Sliding''), pursuant to proposed paragraph (b). Finally, proposed subparagraph (C) states that the Matching System shall not route buy (sell) interest to an away market displaying a sell (buy) quote that is above (below) the Upper (Lower) Price Band.

Proposed Article 20, Rule 2A(b)

''LULD Price Sliding''

Proposed paragraph (b)(1) outlines the Exchange's proposed Limit Up-Limit Down Price Sliding (''LULD Price Sliding''), the purpose of which is to provide CHX Participants a price sliding functionality for eligible incoming and resting limit orders to follow movements in the Price Bands, so as to promote liquidity by reducing the number of automatic cancellations. Specifically, proposed paragraph (b)(1) states that all fully-displayable incoming and resting limit orders shall be eligible for LULD Price Sliding and that an order sender may not opt-out of the proposed LULD Price Sliding for eligible orders. That is, the order sender may not instruct the Matching System to cancel orders that are eligible for the proposed LULD Price Sliding if the functionality is triggered.[27] In addition, since only fully-displayable limit orders are eligible for LULD Price Sliding, limit orders marked either ''Reserve Size,'' as defined under Article 1, Rule 2(dd)[28] or ''Do Not Display,'' as defined under Article 1, Rule 2(j)[29] shall not be eligible for the proposed LULD Price Sliding. Also, proposed paragraph (b)(1) provides that all eligible orders shall retain their original limit price and sequence number,[30] notwithstanding price sliding. The importance of this language is that, as discussed in detail below, LULD Price Sliding will continuously price slide orders up to its original limit price and that all price slid orders will be sorted for order execution priority based on original limit price, then time of order entry.

Thereunder, proposed subparagraph (A) states that an eligible incoming buy (sell) order that would be displayed at a price above (below) the Upper (Lower) Price Band shall be price slid to the Upper (Lower) Price Band, subject to proposed paragraph (b)(2). As discussed below, proposed paragraph (b)(2) outlines the interplay between LULD Price Sliding and the Exchange's other price sliding functionality, the CHX Only Price Sliding Processes, detailed under Article 1, Rule 2(y).[31] In addition, proposed subparagraph (A) clarifies that a cross order priced above the Upper Price Band or below the Lower Price Band shall be cancelled and that an ineligible incoming buy (sell) order (*e.g.* an undisplayed or partially displayed limit order) that would post at a price above (below) the Upper (Lower) Price Band shall also be cancelled.

Example 1. Assume that the Upper Price Band for security XYZ is $10.50, the NBO for security XYZ is $10.55 and there are no orders for security XYZ resting on the CHX book. Assume that the Matching System then receives an incoming fully-displayable limit bid for security XYZ priced at $10.53 (''Bid A''). Pursuant to proposed paragraph (b)(1), since Bid A is a limit order that is fully-displayable, it is eligible for LULD Price Sliding. Also, pursuant to proposed subparagraph (A), since Bid A would be displayed at a price above the Upper Price Band, Bid A will be price slid to the Upper Price Band at $10.50. Bid A would thus be executable and displayed at $10.50.

Proposed subparagraph (B) states that an eligible resting buy (sell) order that, at the time of entry, was displayed at a price at or below (above) the Upper (Lower) Price Band, but, due to movements in the Price Band, would now be displayed at a price above (below) the Upper (Lower) Price Band, shall be price slid to the Upper (Lower) Price Band, subject to proposed paragraph (b)(2). In addition, proposed subparagraph (B) clarifies that an ineligible resting buy (sell) order that, at the time of entry, was posted at a price at or below (above) the Upper (Lower) Price Band, but, due to movements in the Price Band, would now be posted at a price above (below) the Upper (Lower) Price Band, shall be cancelled.

Proposed subparagraph (C) states that an eligible price slid buy (sell) order shall be continuously price slid to follow bi-directional movements to the Upper (Lower) Price Band, so that the buy (sell) order is always displayed at the Upper (Lower) Price Band, subject to proposed paragraph (b)(2). However, a price slid order that could be displayed at a more aggressive price will never be price slid through its original limit price. Given that Price Bands may move quickly and frequently, the Exchange submits that a continuous LULD Price Sliding process is essential to avoiding

[23] CHX Article 1, Rule 2(p) defines ''Limit order'' as ''an order to buy or sell a specific amount of a security at a specific price or better if obtainable once the order has been submitted to the market.

[24] CHX Article 1, Rule 2(n) defines ''IOC Market'' as ''a market order that is to be executed only during the Regular Trading Session, either in whole or in part, at or better than the Exchange's BBO (including any reserve size or other undisplayed orders at or better than that price), with any unexecuted balance of the order to be immediately cancelled. IOC market orders shall not be accepted until (i) the primary market in a security has opened trading in that security or (ii) two senior officers of the Exchange have determined that it is appropriate for the Exchange to accept IOC market orders. For purposes of this rule, another exchange will be considered to have opened for trading in a security when the first trade in that security occurs in that market on or after 8:30 a.m.''

[25] The Matching System will only accept Market orders as IOC.

[26] CHX Article 1, Rule 2(e) defines ''cross'' as ''an order to buy and sell the same security at a specific price better than the best bid and offer displayed in the Matching System and which would not constitute a trade-through under Reg NMS (including all applicable exceptions and exemptions). A cross order may represent interest of one or more Participants of the Exchange, but may only be executed in an increment permitted by Article 20, Rule 4(a)(7)(b).''

[27] Notwithstanding, an order sender may cancel an order at any time after order entry and prior to order execution. Under certain circumstances, an order may be cancelled after order execution. *See* CHX Article 20, Rules 9 and 10.

[28] CHX Article 1, Rule 2(dd) defines ''Reserve Size'' as ''an order that identifies a portion of the order that should be displayed and a portion of the order that should not be displayed, along with an instruction that the displayed portion should be refreshed to the original display quantity (or the remaining number of shares, if less) whenever the displayed share size falls below a specified threshold.''

[29] CHX Article 1, Rule 2(j) defines ''Do Not Display'' as ''an order that should only be executed or displayed within the Exchange's Matching System and should not be routed to another market. Any types of cross, IOC or FOK orders are deemed to have been received with a 'do not route' condition.''

[30] The CHX sequence number is a unique number assigned by the Matching System to every order upon initial order entry. Since the CHX Matching System can only receive one order at a time, each order will receive a unique sequence number and, consequently, it is impossible for two orders to have the same sequence number.

[31] The Exchange also proposes to amend the current CHX Only Price Sliding Processes to comport it with the proposed LULD Price Sliding, as propose Article 1, Rule 2(y), as discussed in detail below.

excessive order cancellations and to ensure that orders are constantly being displayed at the most aggressive permissible price within the Price Bands, subject to Rule 610(d) of Regulation NMS and Rule 201 of Regulation SHO.

Example 2. Assume the same as Example 1 and that the Matching System receives an incoming fully-displayable limit bid at $10.50 (''Bid B''). Thus, the CHX Book has two resting bids for security XYZ at $10.50. Assume further that the Upper Price Band moves to $10.49 and the NBO remains at $10.55. Pursuant to proposed subparagraph (B), since Bid B, at the time of entry, was displayed at a price at the Upper Price Band, but, due to a movement in the Upper Price Band, would now be displayed at a price above the Upper (Lower) Price Band, Bid B will be price slid to the new Upper Price Band at $10.49. In addition, pursuant to proposed subparagraph (C), Bid A would be price slid to $10.49 as well since eligible price slid orders shall be continuously price slid to follow bi-directional movements to the Price Bands. Thus, both Bid A and Bid B would be executable and displayed at $10.49.

Example 3. Assume the same as Example 2. Assume further that the Upper Price Band moves from $10.49 to $10.52 and the NBO remains at $10.55. Pursuant to proposed subparagraph (C), Bid A would be price slid to $10.52, since eligible price slid bids will be continuously price slid to follow changes to the Upper Price Band. However, pursuant to proposed subparagraph (C), Bid B would only be price slid to $10.50, since an eligible order will never be price slid through its original limit price.

Examples 1–3 address scenarios where the Upper (Lower) Price Band is below (above) the NBO. If the NBO (NBB) is at or below (above) the Upper (Lower) Price Band, the applicability of any price sliding to any eligible incoming or resting orders would depend on their limit prices and whether or not such orders are also eligible for the CHX Only Price Sliding Processes.

Thus, proposed paragraph (b)(2) details the interplay between LULD Price Sliding and the CHX Only Price Sliding Processes, which is comprised of NMS Price Sliding and Short Sale Price Sliding. Specifically, proposed paragraph (b)(2) begins by stating that any order eligible for the CHX Only Price Sliding Processes shall be eligible for LULD Price Sliding. This is because Article 1, Rule 2(y) provides that all fully-displayable limit orders marked ''CHX Only'' are eligible for the CHX Only Price Sliding Processes, whereas proposed paragraph (b)(1) states that all fully-displayable limit orders are eligible for LULD Price Sliding. Thus, an order eligible for LULD Price Sliding shall only be eligible for CHX Only Price Sliding if it is marked ''CHX Only.''

Thereunder, proposed subparagraph (A) describes how orders that are dually eligible for LULD Price Sliding and the CHX Only Price Sliding Processes will be price slid, under certain market and order pricing conditions. Specifically, proposed subparagraph (A)(i) states that if a dually eligible order would be displayed at a price in violation of any combination of Rule 610(d) of Regulation NMS, Rule 201 of Regulation SHO or the Plan, the order shall be price slid to the most aggressive permissible prices, in compliance with Regulation NMS, Regulation SHO, and the Plan. Proposed subparagraph (A)(ii) states that if a dually eligible price slid resting order could be executable and/or displayed at a more aggressive price, the order shall be price slid to, and displayed at, the most aggressive permissible prices, in compliance with Regulation NMS, Regulation SHO, and the Plan. The value of the ''most aggressive permissible prices'' will depend on the pricing of the NBBO and the Price Bands, as shown below.

Example 4. Assume that the NBO for security XYZ is priced at $10.00 and the Upper Price Band for security XYZ is priced at $10.50. Assume further that the CHX book has no resting orders for security XYZ. Then assume that the Matching System receives three dually eligible incoming bids in quick succession for security XYZ (''Bids A, B and C''). Bid A is priced at $10.00 and locks the NBO; Bid B is priced at $10.01 and crosses the NBO; and Bid C is priced at $10.51 and is priced through the Upper Price Band. Pursuant to proposed subparagraph (A)(i), all three bids must be price slid to the ''most aggressive permissible prices,'' in compliance with Regulation NMS, Regulation SHO and the Plan. The only price sliding functionality that would result in price sliding that satisfies all three considerations is NMS Price Sliding. Thus, all three bids would be executable at the NBO priced at $10.00 and displayed at one minimum price increment below the NBO at $9.99.

Example 5. Assume the same as Example 4, except that the NBO moves to $10.40 and the Upper Price Band remains at $10.50. Since all three bids had been price slid away from their original limit prices, pursuant to proposed subparagraph (A)(ii), the change in the NBO would allow the bids to be price slid to, and displayed at, more aggressive permissible prices. Thus, Bid A would remain executable at $10.00, but would now be displayed at $10.00 since it has reached its original limit price; Bid B would be price slid to $10.01 and displayed at $10.01, since it has reached its original limit price; and Bid C would be price slid to $10.40 and displayed at $10.39. Similarly, if the NBO instead moved to $10.51, Bids A and B would have been price slid to their original limit prices, whereas Bid C would have been price slid to the Upper Price Band. In such a scenario, Bid C priced at the Upper Price Band is its ''most aggressive permissible price.'' Alternatively, if the Upper Price Band moved away, but the NBO remained the same, all three bids would have remained at their respective prices, because the bids were already priced at their most aggressive permissible prices.

Proposed subparagraph (B) outlines what would happen to an order that is eligible for LULD Price Sliding, but not eligible for the CHX Only Price Sliding Processes (*i.e.* the order is a fully-displayable limit order not marked ''CHX Only''), under certain market and pricing conditions. Specifically, proposed subparagraph (B)(i) provides that an incoming buy (sell) order that is eligible for LULD Price Sliding only shall be rejected if it would be displayed at a price that locks or crosses the NBO (NBB) and the NBO (NBB) is at or below (above) the Upper (Lower) Price Band.

Example 6. Assume that the NBO for security XYZ is priced at $10.45 and the Upper Price Band for security XYZ is priced at $10.50. Assume further that the CHX book has no resting orders for security XYZ. Then assume that the Matching System first receives an incoming bid eligible for LULD Price Sliding only priced at $10.46 (''Bid A''), then another incoming bid eligible for LULD Price Sliding only priced at $10.52 (''Bid B''). Since Bid A and Bid B are not eligible for CHX Only Price Sliding Processes and the display of Bid A and Bid B would cross the NBO priced at $10.45, pursuant to subparagraph (B)(i), both orders would be cancelled. Alternatively, if the NBO were priced at $10.51, Bid A would have posted at its original limit price of $10.46, whereas Bid B would have been price slid to the Upper Price Band, since the NBO was priced above the Upper Price Band, pursuant to proposed paragraph (b)(1)(A).

Proposed subparagraph (B)(ii) states that an order that is eligible for LULD Price Sliding only shall be cancelled if the price sliding of the resting order pursuant to LULD Price Sliding would

result in a violation of either the prohibition against locked and crossed markets under Rule 610(d) of Regulation NMS or the short sale price test restriction under Rule 201 of Regulation SHO.

Example 7. Assume that the NBO for security XYZ is $10.51 and the Upper Price Band is $10.50. Assume that the CHX book has one resting order for security XYZ and it is a price slid bid at $10.50, with an original limit price of $10.52 (''Bid A''). Now assume that the Upper Price Band moves to $10.52. If Bid A were to be price slid to $10.52, pursuant to proposed paragraph (b)(1)(C), Bid A would be displayed at a price that would cross the NBO at $10.51, in violation of Rule 610(d) of Regulation NMS. Thus, since Bid A is not eligible for the CHX Only Price Sliding Processes, Bid A will be cancelled, pursuant to proposed subparagraph (B)(ii). Alternatively, if Bid A were eligible for NMS Price Sliding, Bid A would have remained displayed at $10.50, but would have been executable at $10.51, pursuant to proposed paragraph (b)(2)(A)(ii).

Proposed paragraph (b)(3) addresses the issue of order execution priority for orders that have been price slid pursuant to LULD Price Sliding. Specifically, proposed paragraph (b)(3) states that eligible orders subject to LULD Price Sliding will retain their time priority versus other orders based upon the time those orders were initially received by the Matching System. This language mirrors current CHX Article 1, Rule 2(y)(4), which establishes an identical requirement for orders subject to the CHX Only Price Sliding Processes.[32] In addition, the proposed paragraph further states that if an eligible order is price slid pursuant to LULD Price Sliding, it shall receive order execution priority pursuant to Article 20, Rule 8(a)(7). To this end, the Exchange also proposes to amend CHX Article 20, Rule 8(b)(7) to reflect that orders subject to the CHX Only Price Sliding Processes and/or the proposed LULD Price Sliding shall be subject to ''Working Price Priority,'' which establishes order execution priority of an order based first on its working price (*i.e.* most aggressive executable price), then time of original order entry (*i.e.* sequence number).[33] The following examples illustrate how Working Price Priority would function.

Example 8. Assume that the NBB for security XYZ is $9.50, the Lower Price Band for security XYZ is $9.51 and the short sale price test restriction is not in effect for security XYZ. Assume further that the CHX book has no resting orders for security XYZ. Then assume that a fully-displayable CHX Only inbound limit offer for security XYZ priced at $9.51, with a sequence number of 10 (''Offer A''), is received by the Matching System. Then assume that two additional fully-displayable CHX Only inbound limit offers for security XYZ priced at $9.50 each, with sequence numbers of 20 (''Offer B'') and 30 (''Offer C''), respectively, are received by the Matching System. The order execution priority of the offers is as follows (roman numbers represent order execution priority):

(i): 10	A—Original Limit Price: $9.51	Work: $9.51 [34]	Display: $9.51.
(ii): 20	B—Original Limit Price: $9.50	Work: $9.51	Display: $9.51.
(iii): 30	C—Original Limit Price: $9.50	Work: $9.51	Display: $9.51.

Offer A is not price slid because its limit price locks the Lower Price Band at $9.51. In contrast, Offers B and C are price slid and displayed at $9.51 because their limit prices at $9.50 cross the Lower Price Band. Thus, Offer A receives order execution priority over Offers B and C because although Offers B and C have a superior limit price to Offer A, Offer A has a superior working price to Offers B and C. In turn, Offer B receives order execution priority over Offer C because although both are priced identically, Offer B has a superior sequence number to Offer C.

Example 9. Assume the same as Example 8. Now assume that the NBB remains at $9.50, but the Lower Price Band moves from $9.51 to $9.49. At this point, the order execution priority of the offers is as follows:

(i): 20	B—Original Limit Price: $9.50	Work: $9.50	Display: $9.51.
(ii): 30	C—Original Limit Price: $9.50	Work: $9.50	Display: $9.51.
(iii): 10	A—Original Limit Price: $9.51	Work: $9.51 [35]	Display: $9.51.

Pursuant to proposed Rule 2A(b)(2)(A)(ii), Offers B and C have been price slid to the NBB locking price of $9.50 and remain displayed at $9.51, which are the most aggressive permissible prices that Offers B and C could be executed and displayed in compliance with Regulation NMS, Regulation SHO, and the Plan. In contrast, Offer A remains executable and displayed at $9.51, because an order will never be price slid through its original limit price. Thus, Offers B and C have jumped Offer A for order execution priority. Moreover, just as in Example 8, Offer B maintains priority over Offer C because Offer B has a superior sequence number to Offer C. If the Lower Price Band were to move back to $9.51, Offer A would jump Offers B and C for order execution priority, which would result in order execution priority as detailed in Example 8.

Proposed Article 20, Rule 2A(c)

''Trading Pauses''

Proposed paragraph (c) outlines the phase-in of the Plan [36] and the Exchange's protocol for a Trading Pause in a NMS security. Specifically, proposed paragraph (c) begins by stating that securities shall remain subject to

[32] CHX Article 1, Rule 2(y)(4) states as follows:

Original Time Priority Retained. CHX Only orders subject to the Price Sliding Processes will retain their time priority versus other orders based upon the time those orders were initially received by the Matching System.

[33] *See* CHX Article 1, Rule 2(y); *see also* Securities Exchange Act Release No. 69075 (March 8, 2013), 78 FR 16311 (March 14, 2013) (SR–CHX–2013–07).

The term ''Working Price Priority'' best describes the current order execution priority scheme currently utilized by the CHX Only Price Sliding Processes, which the Exchange now proposes to apply to orders subject to LULD Price Sliding. As such, for ease of reference, the Exchange proposes to replace the term ''ranked price'' with the more accurate term ''working price'' in CHX Article 20, Rule 8(a)(7). In amending Rule 8(a)(7), the Exchange does not propose to substantively modify the order execution scheme currently utilized by the CHX Only Price Sliding Processes.

[34] In situations, such as Offer A, where an inbound order is posted to the CHX book without price sliding, the Working Price and Limit Price of the order will always be the same.

[35] In situations, such as Offer A, where an inbound order is posted to the CHX book without price sliding, the Working Price and Limit Price of the order will always be the same.

[36] *See* Section VIII of the Plan.

the requirements of proposed paragraphs (c)(1) and (c)(2) below until such securities become subject to the Plan. Moreover, once an NMS Stock is subject to the Plan, the security shall only be subject to a Trading Pause under the Plan consistent with proposed paragraphs (c)(3) and (c)(4) below. The Exchange believes this language is consistent with the Plan's requirements for the Exchange to establish, maintain, and enforce policies and procedures that are reasonably designed to comply with the Trading Pause requirements specified in the Plan.[37]

Proposed paragraphs (c)(3) states that a Trading Pause shall be commenced by the Exchange pursuant to the Plan.[38] Proposed subparagraph (A) provides that when a Trading Pause is declared, the Exchange shall cancel all orders in the NMS Stock subject to the Trading Pause resting in the CHX book. In addition, proposed subparagraph (B) provides that no trades in the NMS Stock subject to the Trading Pause shall be executed on the Exchange or any other trading center and the Matching System shall reject all incoming orders in the NMS Stock subject to the Trading Pause.

Proposed paragraph (c)(4) states after a Trading Pause, the Exchange shall attempt to reopen trading in the NMS Stock subject to the Trading Pause, pursuant to the Plan and to procedures adopted by the Exchange and communicated by notice to its Participants.[39] Proposed paragraph (c)(4) simply states that nothing in this proposed Rule 2A should be construed to limit the ability of the Exchange to otherwise halt, suspend, or pause the trading in any stock or stocks traded on the Exchange pursuant to any other Exchange rule or policy. This language is nearly identical to current CHX Article 20, Rule 2(f), now proposed Rule 2(d).

Proposed Article 1, Rule 2(y)

''CHX Only''

The Exchange proposed to amend Article 1, Rule 2(y), which defines the ''CHX Only'' order type and the corresponding CHX Only Price Sliding Processes, to modify the CHX Only order type only to the extent necessary to comport it with the Plan and the Exchange's proposed LULD Price Sliding. As such, the Exchange proposes to make the amendments to Article 1, Rule 2(y) operative April 8, 2013, to coincide with the operative date for the Plan.

In 2011, the Exchange introduced the CHX Only order type, amended in 2013,[40] which is designed to encourage displayed liquidity on the Exchange and to reduce automatic cancellations by the Matching System.[41] The CHX Only order type is a limit order that is to be ranked and executed on the Exchange, without routing away to another trading center.[42] Order senders have the option to default all limit orders to ''CHX Only'' and therefore be subject to the CHX Only Price Sliding Processes. The CHX Only Price Sliding Processes is an order handling functionality comprised of NMS Price Sliding and Short Sale Price Sliding, to ensure compliance with Rule 610(d) of Regulation NMS and Rule 201 of Regulation SHO. The CHX Only Price Sliding Processes are applied to all CHX Only orders that, at the time of order entry, would be in violation of Rule 610(d) of Regulation NMS and/or Rule 201 of Regulation SHO, if displayed or executed at the limit price. However, a CHX Only order that, at the time of order entry, could be displayed or executed in compliance with Regulation NMS and Rule 201 of Regulation SHO will not be subject to the CHX Only Price Sliding Processes and shall be displayed and executable without price sliding.

Currently, for those orders subject to the CHX Only Price Sliding Processes, the Matching System will reprice, re-rank and/or re-display certain CHX Only orders multiple times depending on changes to the NBBO (the repricing of CHX Only sell short orders subject to Rule 201 of Regulation SHO is dependent solely on declines to the NBB), so long as the order can be ranked and displayed in an increment consistent with the provisions of Rule 610(d) of Regulation NMS and Rule 201 of Regulation SHO, until the order is executed, cancelled or the original limit price is reached. Also, the CHX Only Price Sliding Processes are based on Protected Quotations[43] at equities exchanges other than the Exchange (Short Sale Price Sliding is based on the NBB) and all CHX Only limit orders subject to the CHX Only Price Sliding Processes shall maintain their original limit price and shall retain their time priority with respect to other orders based upon the time those orders were initially received by the Matching System. Finally, orders that have been price slid pursuant to the CHX Only Price Sliding Processes are prioritized for order execution by the price at which they are ''ranked'' (*i.e.* ''working'' price or ''executable'' price), then time of receipt (*i.e.* sequence number).

The Exchange now proposes to make the following amendments and/or additions to Rule 2(y). First, the Exchange proposes to add an additional sentence above paragraph (y)(1) that provides that CHX Only orders shall also be eligible for LULD Price Sliding, pursuant to proposed Article 20, Rule 2A(b)(2). As discussed above, pursuant to proposed Article 20, Rule 2A(b)(2), all limit orders marked CHX Only are eligible for LULD Price Sliding precisely because limit orders marked CHX Only will always be fully-displayable.

The Exchange proposes to amend paragraph (y)(1) to comport NMS Price Sliding with the Plan. Specifically, the Exchange proposes to add an additional sentence to proposed paragraph (y)(1)(A) that provides that if the NBB (NBO) is priced below (above) the Lower (Upper) Price Band, an incoming CHX Only sell (buy) order that, at the time of entry, would be displayed at a price below (above) the Lower (Upper) Price Band, shall be ranked and displayed at the Lower (Upper) Price Band, pursuant to proposed Article 20, Rule 2A(b)(2)(A)(i).

The Exchange also proposes to add similar language to paragraph (y)(1)(B). Specifically, the Exchange proposes to add an additional sentence to

[37] *Id.*

[38] The Exchange will develop written policies and procedures to determine when to declare a Trading Pause in the situation where the Exchange may declare a Trading Pause for a NMS Stock listed on the Exchange when (i) the NBB (NBO) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State; and (ii) trading in that NMS Stock deviates from normal trading characteristics. *See* Section VII(A)(1) of the Plan.

[39] *See* Section VII(B) and (C) of the Plan.

[40] *See* Securities Exchange Act Release No. 69075 (March 8, 2013), 78 FR 16311 (March 14, 2013) (SR–CHX–2013–07).

[41] Prior to the recent amendment, the CHX Only order type was originally adopted in 2011. *See* Securities Exchange Act Release No. 64319 (Apr. 21, 2011), 76 FR 23634 (Apr. 27, 2011) (SR–CHX–2011–04).

[42] The Exchange currently offers one order subtype (*i.e.* CHX Only) and two order modifiers (''Do Not Route,'' under CHX Article 1, Rule 2(k) and ''Post Only,'' under CHX Article 20, Rule 4(b)(18)) that require order execution on the Exchange only. Of the three, only orders marked CHX Only are eligible for the CHX Only Price Sliding Processes. An order that is not marked CHX Only shall not be eligible for the CHX Only Price Sliding Processes.

[43] Pursuant to Article 20, Rule 6(a)(1), the Exchange defines ''Protected Quotation'' as that term is defined under Rule 600(b) of Regulation NMS (17 CFR 242.600(b)), which states ''protected quotation means a protected bid or a protected offer.'' In turn, Rule 600(b)(57) of Regulation NMS (17 CFR 242.600(b)(57)) states, ''protected bid or offer means a quotation in an NMS stock that: (i) Is displayed by an automated trading center; (ii) is disseminated pursuant to an effective national market system plan; and (iii) is an automated quotation that is the best bid or best offer of a national securities exchange, the best bid or best offer of The Nasdaq Stock Market, Inc., or the best bid or best offer of a national securities association other than the best bid or best offer of the Nasdaq Stock Market, Inc.''

subparagraph (i) that provides that if the NBB (NBO) moves to a price below (above) the Lower (Upper) Price Band, the resting CHX Only sell (buy) order shall be re-ranked at the Lower (Upper) Price Band, pursuant to proposed Article 20, Rule 2A(b)(2)(A)(ii). In addition, the Exchange proposes to add an additional sentence to subparagraph (ii) that provides that if the NBB (NBO) moves to a price below (above) the Lower (Upper) Price Band, the resting CHX Only order shall be re-displayed at the Lower (Upper) Price Band, pursuant to Article 20, Rule 2A(b)(2)(A)(ii).

The Exchange further proposes to amend paragraph (y)(2) to comport Short Sale Price Sliding with the Plan. Specifically, the Exchange proposes to amend subparagraph (A) to provide that a CHX Only sell short order that, at the time of entry, could not be executed or displayed in compliance with Rule 201 of Regulation SHO will be repriced and displayed by the Matching System at the *greater* of one minimum price variation above the current NBB or the Lower Price Band, pursuant to Article 20, Rule 2A(b)(2)(A)(i). Similarly, the Exchange proposes to amend subparagraph (B) to provide that to reflect declines in the NBB and/or the Lower Price Band, the Matching System will continue to reprice and display a CHX Only sell short order subject to Rule 201 of Regulation SHO at the *greater* of the Permitted Price or the Lower Price Band, until the order is executed, cancelled or its original limit price is reached, pursuant to Article 20, Rule 2A(b)(2)(A)(ii). The purpose of these amendments are to ensure that in the instance where the Lower Price Band is above the NBB and the short sale price test restriction under Rule 201 of Regulation SHO is in effect, orders are not priced or price slid below the Lower Price Band.

The Exchange also proposes to amend paragraph (y)(2)(D) to provide that when a short sale price test restriction under Rule 201 of Regulation SHO is in effect, the Matching System may execute a CHX Only sell short order subject to Short Sale Price Sliding at a price below the Permitted Price if, at the time of initial display of the short sale order, the order was at a price above the then current NBB; *provided, however, that the CHX Only sell short order is priced at or above the Lower Price Band at the time it is priced below the Permitted Price.* The purpose of this amendment is to prohibit an order that may be executed pursuant to Rule 201(b)(1)(iii)(A) of Regulation SHO from executing at a price below the Lower Price Band.

Article 20, Rule 4(b)(18)

''Post Only''

The Exchange proposes to amend Rule 4(b)(18), to comport the definition of ''Post Only'' with the Plan. Specifically, Rule 4(b)(18) defines ''Post Only'' as an order as one that is to be posted on the Exchange and not routed away to another trading center. Furthermore, a Post Only order will be immediately cancelled under two circumstances. First, a Post Only order that would remove liquidity from the CHX book will be immediately cancelled. Second, a Post Only order that, at the time of order entry, would lock or cross a Protected Quotation of an external market will be immediately cancelled; provided, however, that if the Post Only order is marked ''CHX Only'' and is eligible for the CHX Only Price Sliding Processes, pursuant to Article 1, Rule 2(y), the Post Only order that would lock or cross a Protected Quotation of an external market shall be subject to the CHX Only Price Sliding Processes and shall not be immediately cancelled.

In light of the Plan and LULD Price Sliding, the Exchange proposes to amend Rule 4(b)(18)(B) to provide that a Post Only order will be immediately cancelled when, at the time of order entry, the Post Only order would lock or cross a Protected Quotation of an external market; provided, however, that if the Post Only order is marked ''CHX Only'' and is eligible for the CHX Only Price Sliding Processes, pursuant to Article 1, Rule 2(y), the Post Only order that would lock or cross a Protected Quotation of an external market shall be subject to the CHX Only Price Sliding Processes *or Limit Up-Limit Down Price Sliding, pursuant to Article 20, Rule 2A(b), whichever is applicable,* and shall not be immediately cancelled.

Article 16, Rule 8

Article 20, Rule 10

Citation Updates

In light of this proposed rule change, current Article 20, Rule 2(e) will no longer exist. As discussed above, current Article 20, Rule 2(e) has been modified and incorporated into proposed Article 20, Rule 2A as proposed Rule 2A(c)(1). Thus, the Exchange proposes to update all citations to the current Article 20, Rule 2(e) in the CHX rules, which are specifically found under Article 16, Rule 8 and Article 20, Rule 10.[44]

With respect to Article 16, Rule 8(a), the Exchange proposes to amend paragraphs (a)(2)(D) and (E) to update citations of current Rule 2 to both proposed Rule 2 and proposed Rule 2A; current Rule 2(e)(i) to proposed Rule 2A(c)(1)(A); current Rule 2(e)(ii) to proposed Rule 2A(c)(1)(B); and current Rule 2(e)(iii) to proposed Rule 2A(c)(1)(C).

With respect to Article 20, Rule 10, the Exchange proposes to amend paragraph (c)(1)–(3) to delete all citations to Article 20, Rule 2(e) and to replace them with references to ''certain specified securities,'' which are described in paragraph (c)(4). In turn, the Exchange proposes to amend paragraph (c)(4) to delete all citations to Article 20, Rule 2(e) and to replace them with the term ''Subject Securities,'' which the Exchange proposes to define as any securities included in the ''S&P 500® Index, the Russell 1000® Index, as well as a pilot list of Exchange Traded Products.'' [45]

2. Statutory Basis

The proposed rule change is consistent with Rule 608(c) of Regulation NMS,[46] which requires the Exchange, as a sponsor and participant to an effective national market system plan, namely the amended Limit Up-Limit Down Plan, to comply with the terms of the Plan, as submitted to the Commission on May 24, 2012 [47] and approved by the Commission on May 31, 2012 [48] pursuant to Rule 608(b)(2) of Regulation NMS.[49]

Moreover, the proposed rule changes are consistent with Section 6(b) of the Act [50] in general, and furthers the objectives of Section 6(b)(5) [51] in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and

[44] It is important to note that the Exchange does not propose to make any substantive amendments to Article 16, Rule 8 and Article 20, Rule 10.

[45] These proposed amendments to Article 20, Rule 10 are identical to the language and citation methodology of BATS BZX Rule 11.17(c)(1)–(4).

[46] 17 CFR 242.608(c).

[47] *See* Letter from Janet McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated May 24, 2012.

[48] *See* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (File No. 4–631) (Order Approving, on a Pilot Basis, the National Market System Plan To Address Extraordinary Market Volatility by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, The Nasdaq Stock Market LLC, National Stock Exchange, Inc., New York Stock Exchange LLC, NYSE MKT LLC, and NYSE Arca, Inc).

[49] 17 CFR 242.608(b)(2).

[50] 15 U.S.C. 78f(b).

[51] 15 U.S.C. 78f(b)(5).

coordination with persons engaged in facilitating transaction in securities, to remove impediments and perfect the mechanisms of a free and open market, and, in general, to protect investors and the public interest. Specifically, the Exchange believes that the proposed rule change supports the objective of the Act by providing harmonization between CHX Rules and rules of all other organization subject to the requirements of the Plan, so as to promote uniformity across markets concerning when and how to halt trading in individual NMS Stocks as a result of extraordinary market volatility. Such uniformity would also result in less burdensome and more efficient regulatory compliance. In addition, the Exchange submits that the proposed rules concerning the Limit Up-Limit Down requirements are consistent with the protection of investors and the public interest in that the proposed rules will promote investor confidence by reducing the potential for excessive market volatility.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed change will result in the uniform implementation of the Limit Up-Limit Down Plan,[52] among all of the organizations subject to the Plan.

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 Exchange has filed the proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[53] and Rule 19b–4(f)(6) thereunder.[54] 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 prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6)(iii) thereunder.

A proposed rule change filed under Rule 19b–4(f)(6)[55] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[56] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest. The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because such waiver would allow the proposal to become operative by the April 8, 2013 date of implementation for the Limit Up-Limit Down Plan. Accordingly, the Commission hereby grants the Exchange's request and designates the proposal operative upon filing.[57]

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.

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–CHX–2013–08 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CHX–2013–08. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CHX–2013–08 and should be submitted on or before May 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[58]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08467 Filed 4–10–13; 8:45 am]

BILLING CODE 8011–01–P

[52] *See* Letter from Janet McGinness, Senior Vice President, Legal and Corporate Secretary, NYSE Euronext, to Elizabeth M. Murphy, Secretary, Commission, dated May 24, 2012.

[53] 15 U.S.C. 78s(b)(3)(A)(iii).

[54] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) 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.

[55] 17 CFR 240.19b–4(f)(6).

[56] 17 CFR 240.19b–4(f)(6)(iii).

[57] For purposes only of waiving the 30-day operative delay, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[58] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69328; File No. SR–CBOE–2013–030]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Accelerated Approval to Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, Relating to the Regulation NMS Plan To Address Extraordinary Market Volatility

April 5, 2013.

I. Introduction

On March 7, 2013, Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify its rules to address certain option order types, order handling procedures, obvious error and market-maker quoting obligations on the Exchange after the implementation of the National Market System Plan to Address Extraordinary Market Volatility (''Limit up-Limit Down Plan''). The proposed rule change was published for comment in the **Federal Register** on March 14, 2013.[3] On March 26, 2013, CBOE filed Amendment No. 1 to the proposed rule change.[4] On April 4, CBOE filed Amendment No. 2 to the proposed rule change.[5] The Commission received one comment letter on the proposed rule change.[6] This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2, on an accelerated basis.

II. Background

On May 6, 2010, the U.S. equity markets experienced a severe disruption that, among other things, resulted in the prices of a large number of individual securities suddenly declining by significant amounts in a very short time period before suddenly reversing to prices consistent with their pre-decline levels.[7] This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices. One response to the events of May 6, 2010, was the development of the single-stock circuit breaker pilot program, which was implemented through a series of rule filings by the equity exchanges and by FINRA.[8] The single-stock circuit breaker was designed to reduce extraordinary market volatility in NMS stocks by imposing a five-minute trading pause when a trade was executed at a price outside of a specified percentage threshold.[9]

To replace the single-stock circuit breaker pilot program, the equity exchanges filed a National Market System Plan [10] pursuant to Section 11A of the Act,[11] and Rule 608 thereunder,[12] which featured a ''limit up-limit down'' mechanism.

The Plan sets forth requirements that are designed to prevent trades in individual NMS stocks from occurring outside of the specified price bands. The price bands consist of a lower price band and an upper price band for each NMS stock. When one side of the market for an individual security is outside the applicable price band, *i.e.*, the National Best Bid is below the Lower Price Band, or the National Best Offer is above the Upper Price band, the Processors [13] are required to disseminate such National Best Bid or National Best Offer [14] with a flag identifying that quote as non-executable. When the other side of the market reaches the applicable price band, *i.e.*, the National Best Offer reaches the lower price band, or the National Best Bid reaches the upper price band, the market for an individual security enters a 15-second Limit State, and the Processors are required disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation. Trading in that stock would exit the Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange will declare a five-minute trading pause, which is applicable to all markets trading the security.

The Primary Listing Exchange may also declare a trading pause when the stock is in a Straddle State, *i.e.*, the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. In order to declare a trading pause in this scenario, the Primary Listing Exchange must determine that trading in that stock deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility.[15]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 69082 (March 8, 2013), 78 FR 16351 (''Notice'').

[4] *See* Amendment No. 1 dated March 26, 2013 (''Amendment No. 1''). Amendment No. 1 expanded upon the Exchange's rationale for its proposed changes regarding the nullification and adjustment of options transactions and agreed to provide the Commission with relevant data to assess the impact of the proposal. Additionally, the Exchange provided rationale for terminating the HAL auction early and cancelling of the market orders, discussed *infra*. Because Amendment No. 1 is technical in nature, it is not subject to notice and comment.

[5] *See* Amendment No. 2 dated April 4, 2013 (''Amendment No. 2''). Amendment No. 2 expanded upon the Exchange's rationale for its proposal to accept certain types of market orders during a limit up-limit down state, its proposal to cancel and replace limit orders with market orders during a limit up-limit down state, and its proposed treatment of stock-option orders in a limit up-limit down state. Because Amendment No. 2 is technical in nature, it is not subject to notice and comment.

[6] *See* Letter to Elizabeth M. Murphy, Secretary, Commission, from Angelo Evangelou, Associate General Counsel, CBOE, dated April 4, 2013 (''CBOE Letter'').

[7] The events of May 6 are described more fully in a joint report by the staffs of the Commodity Futures Trading Commission (''CFTC'') and the Commission. *See* Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, ''Findings Regarding the Market Events of May 6, 2010,'' dated September 30, 2010, available at *http://www.sec.gov/news/studies/2010/marketevents-report.pdf*.

[8] For further discussion on the development of the single-stock circuit breaker pilot program, *see* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (''Limit Up-Limit Down Plan'' or ''Plan'').

[9] *See* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033) (describing the ''second stage'' of the single-stock circuit breaker pilot) and Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (describing the ''third stage'' of the single-stock circuit breaker pilot).

[10] NYSE Euronext filed on behalf of New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex''), and NYSE Arca, Inc. (''NYSE Arca''), and the parties to the proposed National Market System Plan, BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated (''CBOE''), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the ''Participants''). On May 14, 2012, NYSE Amex filed a proposed rule change on an immediately effective basis to change its name to NYSE MKT LLC (''NYSE MKT''). See Securities Exchange Act Release No. 67037 (May 21, 2012) (SR–NYSEAmex–2012–32).

[11] 15 U.S.C. 78k–1.

[12] 17 CFR 242.608.

[13] As used in the Plan, the Processor refers to the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act. *See id.*

[14] ''National Best Bid'' and ''National Best Offer'' has the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act. *See id.*

[15] As set forth in more detail in the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would be able to disseminate an offer below the Lower Price Band or bid above the

On May 31, 2012, the Commission approved the Plan as a one-year pilot, which shall be implemented in two phases.[16] The first phase of the Plan shall be implemented beginning April 8, 2013.[17]

III. Description of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

In light of and in connection with the Plan, the Exchange proposes to amend its rules to address certain option order types, order handling procedures, obvious error and market-maker quoting obligations.[18] The Exchange believes these modifications will protect investors because when an underlying security is in a limit or straddle state (collectively referred to as a ''limit up-limit down state''), there will not be a reliable price for the security to serve as a benchmark for the price of the option. In addition, the Exchange believes these changes are warranted because the width of the options markets might be compromised during the limit up-limit down states and, thus, the quality of execution may be adversely impacted.

A. Exchange Rule 6.3A and the Plan

The Exchange proposes to add to Exchange Rule 6.3A to codify the changes occurring throughout its rulebook in connection with the Plan. The Exchange proposes to re-name Rule 6.3A, which is currently titled ''Equity Market Trading Halt'', as ''Equity Market Plan to Address Extraordinary Market Volatility''. The Exchange also plans to add new rule text that will define the Plan as it applies to the Exchange, and will describe the location of the other rule changes associated with the Plan. The proposed changes to Rule 6.3A will essentially serve as a roadmap for the Exchange's universal changes due to the implementation of the Plan.

B. Order Handling During the Limit Up-Limit Down State

The Exchange proposes to modify Exchange Rules 6.2B, 6.14A, 6.3A, 6.53 and 6.53C to address how certain Exchange order types will be handled when the underlying security of such orders is in a limit up-limit down state. The proposed rule change will address how market orders,[19] market-on-close,[20] stop orders,[21] and stock option orders,[22] will function on the Exchange upon the implementation of the Plan. The Exchange is proposing to add language to clarify that: (a) Any market order will be returned during limit up-limit down states unless it qualifies for certain exceptions;[23] (b) market-on-close orders will not be elected if the underlying security is in a limit up-limit down state;[24] (c) stop orders will not be triggered if the underlying security is in a limit up-limit down state, but will until the end of that state, at which time they will become eligible to be triggered; (d) stock-option orders will only execute if the calculated stock price is within the permissible bands.[25] In addition, if a message is sent to replace a limit order with a market order while the underlying is in a limit up-limit down state, the resting limit order will be cancelled and the replaced market order will also be cancelled. The Exchange represented that cancelling a market order in this scenario is consistent with its treatment of market orders that are received during a limit up-limit down state, and cancelling the original limit order would be consistent with the Exchange's current cancel and replace functionality.[26]

The Exchange stated that, although it has determined to continue options trading when a stock is in a limit up-limit down state, there will not be a reliable price for the underlying security to serve as a benchmark for the price of the option. Without a reliable underlying stock price, the Exchange stated that there is an enhanced risk of errors and improper executions. The Exchange also stated that adding a level of certainty for TPHs by specifying the treatment of such orders will encourage participation on the Exchange while the underlying security is in limit up-limit down states. Accordingly, the Exchange believes these order handling changes will best protect market participants after the implementation of the Plan by not allowing execution at unreasonable prices due to the shift in the stock prices.

The Exchange also proposes to modify its opening procedures under Exchange Rule 6.2B, ''Hybrid Opening System'' (''HOSS''). The Exchange proposes to

Upper Price Band that nevertheless may be inadvertently submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

[16] *See* ''Limit Up-Limit Down Plan,'' *supra* note 8. *See also* Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February 26, 2013) (Second Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y- Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*) and Securities Exchange Act Release No. 69062 (March 7, 2013), 78 FR 15757 (March 12, 2013) (Third Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y- Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*)

[17] *See* ''Second Amendment to Limit Up-Limit Down Plan,'' *supra* note 16.

[18] Specifically, the Exchange proposes to make changes to Exchange Rules Rule 6.2B, ''Hybrid Opening System, Rule 6.14A, ''Hybrid Agency Liaison'', Rule 6.25, ''Nullification and Adjustment of Options Transactions,'' Rule 6.53, ''Certain Types of Orders Defined,'' Rule 6.53C, ''Complex Orders on the Hybrid System,'' Rule 8.7, ''Obligations of Market-Makers, Rule 8.13, ''Preferred Market-Maker Program,'' Rule 8.15A, ''Lead Market-Maker in Hybrid Classes,'' Rule 8.15B, ''Participation Entitlements of LLMs'', Rule 8.85, ''DPM Obligations,'' Rule 8.87, ''Participation Entitlement of DPMs and e-DPMs,'' and Rule 8.93, ''e-DPM Obligations.'' *See* Notice and Amendment No. 1.

[19] *See* Exchange Rule 6.53(a) which defines a market order as ''an order to buy or sell a stated number of options contracts at the best price obtainable when the order reaches the post.''

[20] *See* Exchange Rule 6.53(c)(ii) which defines a market-on-close order designation as an order ''to be executed as close as possible to the closing bell, or during the closing rotation, and should be near to or at the closing price for the particular series of option contracts.''

[21] *See* Exchange Rule 6.53(c)(iii), which defines a stop order as a market order ''to buy or sell when the market for a particular option contract reaches a specified price on the CBOE floor.'' In contrast, a stop-limit order, as defined in Exchange Rule 6.53(c)(iv), becomes a limit order when the market for the option contract reaches a specified price. CBOE does not propose to make any modifications to the treatment of stop-limit orders.

[22] *See* Exchange Rule 6.53C(a)(2) which defines a stock-option order as ''an order to buy or sell a stated number of units of an underlying stock or a security convertible into the underlying stock * * * coupled with the purchase or sale of options contract(s) on the opposite side of the market.''

[23] Specifically, a market order submitted to initiate an Automated Improvement Mechanism will be accepted. Market orders will also not be returned if the TPH elected to route that order for manual handling. With respect to market orders submitted to initiate an Automated Improvement Mechanism, the Exchange represented that such orders are entered with a contra order. Because these market orders are entered as a pair, they are effectively stopped because they must execute at a price at or better than the contra order. *See* Amendment No. 2. With respect to market orders routed for manual handling, the Exchange represented that those orders are physically handled by a broker on the Exchange floor who must affirmatively agree to an execution price, and that such orders are thus not subject to the same risks a market order may have if such order were to execute against unfiltered electronic prices. *Id.*

[24] During closing rotation, the Exchange will continue to re-evaluate the state of underlying securities for which the overlying securities have not yet been closed. If upon re-evaluation the underlying security should exit a limit up-limit down state, a market-on-close order may be executed.

[25] If the calculated price of a stock-option order is not within the permissible Price Bands, the stock-option order will be routed for manual handling. This provision would help ensure that a stock order would not be electronically routed to a stock venue for an execution outside of the price bands. In addition, by routing stock-option orders for manual handling, these orders will be physically handled by a broker on the Exchange floor who must affirmatively agree to an execution price. *See* Amendment No. 2.

[26] *See* Amendment No. 2.

add an Interpretation and Policy .07 to clarify that if the underlying security for a class of options enters into a limit up-limit down state when the class moves to opening rotation, any market orders entered that trading day will be cancelled. The Exchange stated that, by cancelling the market orders, it will comply with the Plan by not allowing orders outside of the Price Bands to execute. As an exception, market orders that are considered limit orders pursuant to Rule 6.13(b)(iv) and entered the previous trading day will remain in the book. The Exchange is proposing to allow such market orders to remain in the Book because these essentially act as limit orders at the minimum increment.

Next, the Exchange proposes to modify Exchange Rule 6.14A, ''Hybrid Agency Liaison (''HAL''). This functionality provides automated order handling in designated classes trading on the Hybrid System for qualifying electronic orders that are not automatically executed by the Hybrid System.[27] When the Exchange receives a qualifying order that is marketable against the National Best Bid or Offer (''NBBO'') and/or the Exchange's best bid or offer (''BBO''),[28] HAL electronically exposes the order[29] at the NBBO price to allow Market-Makers appointed in that class, as well as all Trading Permit Holders (''TPHs'') acting as agent for orders, at the top of the Exchange's book in the relevant series (or all TPHs if allowed by the Exchange) to step up to the NBBO price.

The Exchange proposes to amend Rule 6.14A to modify the functioning of HAL with respect to market orders when the underlying security of the option is in a limit up-limit down state. Under the proposal, if an underlying security enters a limit up-limit down state while a market order is being exposed through HAL, the auction will end early, *i.e.,* upon the entering of the limit up-limit down state. Additionally, any unexecuted portion of the market order would be cancelled. The Exchange stated that because there is an uncertainty of market prices during a limit up-limit down state, terminating the HAL auction early and cancelling the market order will ensure that market orders do not receive an unanticipated price.[30] As such, the proposed rule changes would protect market participants by ensuring that they do not receive an executed order with an unanticipated price due to the change in the underlying security.

The Exchange also proposes to modify the treatment of complex orders on the Hybrid System and the Complex Order Auction (''COA'') process. Generally, on a class-by-class basis, the Exchange may activate COA, which is a process by which eligible complex orders[31] are given an opportunity for price improvement before being booked in the electronic complex order book (''COB'') or on a PAR workstation. Upon receipt of a COA-eligible order and a request from a TPH representing the order that such order be subjected to a COA, the Exchange will send a request for responses (''RFR'') message to all TPHs who have elected to receive RFR messages.[32] Each Market-Maker with an appointment in the relevant option class and each TPH acting as agent for orders resting at the top of the COB in the relevant options series may then submit responses to the RFR message during the Response Time Interval.[33]

The Exchange proposes to add to the COA rule that if, during COA of a market order, the underlying security of an option enters a limit up-limit down state, the COA will end upon the entering of that state and the remaining portion of the order, if a market order, will cancel. The Exchange believes this change will best protect investors because, once the underlying enters a limit up-limit down state, pricing in the options markets may change, resulting in executions at unexpected prices.

C. Market Maker Obligations and Participation Entitlements

The Exchange proposes to eliminate all market maker obligations for options in which the underlying security is in a limit up-limit down state. Currently, Exchange Rules 8.7, 8.13, 8.15A, 8.85, and 8.93 impose certain obligations on Market-Makers,[34] PMMs,[35] LMMs,[36] DPMs,[37] and e-DPMs,[38] respectively, including obligations to provide continuous electronic quotes.

The Exchange proposes to eliminate all market maker quoting obligations[39] in series of options when the underlying security is currently in a limit up-limit down state. According to the Exchange, eliminating all Market Maker obligations in connection with the implementation of the Plan is the most effective way to ensure the options markets will not be compromised when the underlying security enters a limit up-limit down state. Specifically, there may not be reliable prices for an underlying security during a limit up-limit down state. Additionally, it may be difficult or not possible for a market participant to hedge the purchase or sale of an option if the bid or offer of an underlying security may not be executable due to a limit up-limit down state. Given the possible effects of the limit up-limit down state, the Exchange anticipates that Exchange Market-Makers may be forced to change behaviors during these periods. In an effort to protect the investors in the options market while the underlying security is in a limit up-limit down state, the Exchange believes that eliminating quoting obligations is the more effective way for this protection.

Although the Exchange is proposing to relieve market makers of their quoting

[27] Currently, the Exchange determines the eligible order size, eligible order types, eligible origin code (*i.e.,* public customer orders, non-Market-Maker broker-dealer orders and Market-Maker broker-dealer orders), and classes in which HAL is activated. *See* Exchange Rule 6.14A(a).

[28] HAL will not electronically expose the order if the Exchange's quotation contains resting orders and does not contain sufficient Market-Maker quotation interest to satisfy the entire order.

[29] The duration of the exposure period may not exceed one second. *See* Exchange Rule 6.14A(c) (describing the manner in which an exposed order is allocated under HAL); *see also* Exchange Rule 6.14A(d) (listing the circumstances in which an exposure period would terminate early).

[30] *See* Amendment No. 1.

[31] An eligible complex order, referred to in Rule 6.53C as a ''COA-eligible order,'' means a complex order that, as determined by the Exchange on a class-by-class basis, is eligible for a COA considering the order's marketability (defined as a number of ticks away from the current market), size, complex order type and complex order origin type (*i.e.,* non-broker-dealer public customer, broker-dealers that are not Market-Makers or specialists on an options exchange, and/or Market-Makers or specialists on an options exchange). All determinations by the Exchange on COA-eligible order parameters are announced to Trading Permit Holders by Regulatory Circular. *See* Rule 6.53C(d)(i)(2) and Interpretation and Policy .01 to Rule 6.53C.

[32] *See* Exchange Rule 6.53C(d)(ii). The RFR message will identify the component series, the size of the COA-eligible order and any contingencies, but will not identify the side of the market.

[33] *See* Exchange Rule 6.53C(d)(iii). A ''Response Time Interval'' means the period of time during which responses to the RFR may be entered, the length of which is determined by the Exchange on a class-by-class basis but may not exceed three seconds. *See* Rule 6.53C(d)(iii)(2).

[34] *See* Exchange Rule 8.1, which defines a ''Market-Maker'' as ''an individual Trading Permit Holder or a TPH organization that is registered with the Exchange for the purpose of making transactions as a dealer specialist on the Exchange * * *.''

[35] *See* Exchange Rule 8.13, which defines a ''Preferred Market-Maker'' as a specific Market-Maker designated by a Trading Permit Holder to receive that Trading Permit Holder's orders in a specific class.

[36] *See* Exchange Rule 8.15A, which defines a ''Lead Market-Maker'' as a Market-Maker in good standing appointed by the Exchange ''in an option class for which a DPM has not been appointed * * *.''

[37] *See* Exchange Rule 8.80, which defines a ''Designated Primary Market-Maker'' as a ''TPH organization that is approved by the Exchange to function in allocated securities as a Market-Maker * * * and is subject to the obligations under Rule 8.85 * * *.''

[38] *See* Exchange Rule 8.92, which defines an ''Electronic DPM'' as a ''TPH Organization that is approved by the Exchange to remotely function in allocated option classes as a DPM and to fulfill certain obligations required of DPMs * * *.''

[39] *See* Notice, *supra* note 3.

obligations when the underlying is in a limit up-limit down state, the Exchange is proposing that PMMs, LMMs, DPMs and e-DPMs may still receive participation entitlements pursuant to the proposed rules in all series in their assigned classes in which they are quoting, even in series in which they are not required to provide continuous electronic quotes under the Exchange Rules. The Exchange stated that market makers already receive participation entitlements in series in which they are not required to quote; thus, under the proposed rule change, the market would continue to function as it does now with respect to how entitlements are allocated to Market-Makers. The Exchange believes this benefit is appropriate, as it incentivizes Market-Makers to quote in as many series as possible in their appointed classes, even those series in which the underlying security has entered into a limit up-limit down state. The Exchange stated that it is attempting to better encourage Market-Makers to quote even though they will not have the obligation. If market makers do choose to quote, the Exchange believes they should be entitled to receive the entitlement for such quoting as appropriate.

D. Nullification and Adjustment of Options Transactions

In connection with the implementation of the Plan, the Exchange proposes to adopt Interpretation and Policies .06 to Rule 6.25 to exclude transactions in options that overlay a security during a Limit State or Straddle State from the obvious error pricing provision in Rule 6.25(a)(1) for a one year pilot basis from the date of adoption of the proposed rule change. Additionally, the Exchange proposes to specify that electronic transactions in options that overlay an NMS stock that occur during a Limit State or Straddle State may be reviewed on an Exchange motion pursuant to Rule 6.25(b)(3). The Exchange also proposes to provide the Commission with data and analysis during the duration of the pilot as requested.

Under Rule 6.25, an Obvious Price Error occurs when the execution price of an electronic transaction is above or below the theoretical price for the series by a specified amount. Pursuant to Rule 6.25(a)(1)(i), the theoretical price of an option series is currently defined, for series traded on at least one other options exchange, as the last national best bid price with respect to an erroneous sell transaction, and the last national best offer price with respect to an erroneous buy transaction, just prior to the trade. In certain circumstances, Trading Officials have the discretion to determine the theoretical price pursuant to Rule 6.25(a)(1)(iv).[40]

The Exchange believes that neither method is appropriate during a Limit State or Straddle State. In Amendment No. 1, the Exchange noted that during a Limit State or Straddle State, options prices may deviate substantially from those available prior to or following the state. The Exchange believes this provision would give rise to much uncertainty for market participants as there is no bright line definition of what the theoretical value should be for an option when the underlying NMS stock has an unexecutable bid or offer or both. The Exchange noted that determining theoretical value in such a situation would be often times be very subjective rather than an objective determination and would give rise to additional uncertainty and confusion for investors. Similarly, the Exchange believes the application of the current rule would be impracticable given the lack of a reliable national best bid or offer in the options market during Limit States and Straddle States, and would produce undesirable effects.

Ultimately, the Exchange believes that adding certainty to the execution of limit orders in these situations should encourage market participants to continue to provide liquidity to the Exchange, thus promoting a fair and orderly market. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying these provisions during such unusual market conditions.

Therefore, the Exchange proposes to adopt Interpretation and Policy .06 to Rule 6.25 to provide that transactions executed during a Limit State or Straddle State are not subject to the obvious pricing error provision in Rule 6.25(a)(1). In addition, amended Rule 6.25 will include a qualification that nothing in the proposed rule change will prevent transactions in options that overlay a security in a Limit State or Straddle State from being reviewed on an Exchange motion pursuant to Rule 6.25(b)(3). According to the Exchange, this safeguard will provide the flexibility to act when necessary and appropriate, while also providing market participants with certainty that trades they effect with quotes and/or orders having limit prices will stand irrespective of subsequent moves in the underlying security. The right to review on Exchange motion electronic transactions that occur during a Limit State or Straddle State under this provision, according to the Exchange, would enable the Exchange to account for unforeseen circumstances that result in obvious or catastrophic errors for which a nullification or adjustment may be necessary in order to preserve the interest of maintaining a fair and orderly market and for the protection of investors. The Exchange also proposes to provide the Commission with data and analysis during the duration of the pilot as requested.

IV. Discussion and Commission's Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange.[41] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[42] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, 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 regulation, 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.

A. Exchange Rule 6.3A and the Plan

Exchange Rule 6.3A lists changes to Exchange order types, order handling, obvious error, and market-maker quoting obligations that the Exchange is making in connection with the implementation of the Plan. The Exchange believes that the proposed changes to Rule 6.3A will describe to TPHs and other market participants where to find the changes associated

[40] Rule 6.25(a)(1)(iv) provides there are no quotes for comparison, or if the bid/ask differential of the national best bid and offer for the affected series just prior to the erroneous transaction was at least two times the permitted bid/ask differential determined by the Exchange, designated Trading Officials will determine the theoretical price.

[41] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[42] 15 U.S.C. 78f(b).

with the Plan's implementation. Accordingly, the Commission finds that this change promotes clarity in connection with CBOE's proposed changes in response to the Limit up-Limit Down Plan and is therefore consistent with the Act.

B. Order Handling During the Limit Up-Limit Down State

As detailed above, the Exchange proposes to add language to clarify that: (a) market orders, with certain exceptions, will be returned during limit up-limit down states, (b) market-on-close orders will not be elected if the underlying security is in a limit up-limit down state, (c) stop orders will not be triggered while the underlying security is in a limit up-limit down state, and (d) stock-option orders will only execute if the calculated stock price is within the permissible bands, unless such order is routed for manual handling. In addition, during a limit up-limit down state, if a message is sent to replace a limit order with a market order, the resting limit order will be cancelled and the replaced market order will also be cancelled.

The Commission finds that the Exchange's proposed method of handling such orders is consistent with Section 6(b)(5) of the Act. When the underlying stock enters a limit up-limit down state, the lack of a reliable price in that market could affect the options markets in various ways, including wider spreads and less liquidity. This could potentially mean that market orders, which contain no restrictions on the price at which they may execute, could receive executions at unintended prices if executed during the limit up-limit down state. As such, the proposed changes to reject market orders and market-on-close orders if the underlying is in a limit up-limit down state, to not trigger stop orders if the underlying is in a limit up-limit down state, and to cancel market orders that replace limit orders when the underlying is in a limit up-limit down state, are reasonably designed to prevent such orders from being executed at potentially unexpected prices.

At the same time, the proposed exceptions to the treatment of these orders—accepting market orders that are submitted to initiate an Automated Price Improvement Mechanism, or which are routed for manual handling—are designed to take into account that market orders submitted in these ways may not be at the same risk as other market orders for executions at unexpected prices. Specifically, market orders submitted through the Automated Price Improvement Mechanism are submitted as pairs, and are effectively stopped because they must execute at a price at or better than the contra order. With respect to market orders routed for manual handling, such orders are physically handled by a broker on the Exchange floor who must affirmatively agree to an execution price, as opposed to simply executing that order against electronic prices. Similarly, the Exchange's proposal to route a stock-option order for manual handling when the underlying is in a limit up-limit down state allows such orders to be physically handled by a broker on the Exchange floor who must affirmatively agree to an execution price.

The Exchange proposes to add an Interpretation and Policy .07 to Rule 6.2B which states that if the underlying security for a class of options enters into a limit up-limit down state when the class moves to opening rotation, any market orders entered that trading day will be cancelled. However, market orders that are considered limit orders pursuant to Rule 6.13(b)(iv) and entered the previous trading day will remain in the Book and can essentially act as limit orders at the minimum increment.

The Commission finds that these changes are consistent with the Act in that they are reasonably designed to counter potential price dislocations that may occur if the underlying enters a limit up-limit down state during the opening by preventing market orders, which contain no restrictions on the price at which they may execute, from being executed at potentially unintended prices. At the same time, this proposal allows market orders that are essentially limit orders to continue to participate in the opening process without a similar risk of an execution at an unintended price.

The Exchange also proposes that, if an underlying security enters a limit up-limit down state while a market order is being exposed through HAL, the auction will end early, and any unexecuted portion of the market order would be cancelled. The Commission believes that this provision will provide certainty to options market participants on how market orders submitted to HAL will be handled during limit up-limit down states. In addition, the Commission finds that this provision is consistent with the Act in that it is reasonably designed to counter potential price dislocations that may occur if the underlying enters a limit up-limit down state while the HAL functionality is underway by preventing market orders, which contain no restrictions on the price at which they may execute, from being executed at potentially unintended prices.

The Exchange proposes to amend the COA rule so that, if during a COA of a market order, the underlying security of an option enters a limit up-limit down state, the COA will end and the remaining portion of the order, if a market order, will cancel. As with the proposed change to HAL, the Commission believes that this provision is consistent with the Act in that it will provide certainty to options market participants on how market orders submitted to COA will be handled during limit up-limit down states. In addition, the Commission finds that this provision is reasonably designed to counter potential price dislocations that may occur if the underlying enters a limit up-limit down state while a COA is underway by preventing market orders, which contain no restrictions on the price at which they may execute, from being executed at potentially unintended prices.

C. Market Maker Obligations

The Commission finds that the proposal to suspend a market maker's obligations when the underlying security is in a limit up-limit down state is consistent with the Act. During a limit up-limit down state, there may not be a reliable price for the underlying security to serve as a benchmark for market makers to price options. In addition, the absence of an executable bid or offer for the underlying security will make it more difficult for market makers to hedge the purchase or sale of an option. Given these significant changes to the normal operating conditions of market makers, the Commission finds that the Exchange's decision to suspend a market maker's obligations in these limited circumstances is consistent with the Act. The Commission notes, however, that the Plan was approved on a pilot basis and its Participants will monitor how it is functioning in the equity markets during the pilot period. To this end, the Commission expects that, upon implementation of the Plan, the Exchange will continue monitoring the quoting requirements that are being amended in this proposed rule change and determine if any necessary adjustments are required to ensure that they remain consistent with the Act.

The Commission also finds that the proposal to maintain participation entitlements for market makers in all series in their assigned classes in which they are quoting, including in series for which the underlying security is in a limit up-limit down state and for which they are not required to provide continuous electronic quotes under the Exchange Rules, is consistent with the

Act. To the extent that market makers are only eligible for participation entitlements if they are quoting at the best price on the Exchange, this proposal is reasonably designed to incentivize Market-Makers to quote more aggressively when the underlying security has entered into a limit up-limit down state than they might otherwise quote, potentially providing additional liquidity and price discovery. To the extent that, under this proposal, market makers would receive participation entitlements in series in which they are not required to quote, the Commission notes that this aspect of the proposal is consistent with the current application of participation entitlements.

D. Nullification and Adjustment of Options Transactions

The Commission finds that the Exchange's proposal to suspend certain aspects of Rule 6.25 during a Limit State or Straddle State is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[43] in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

In Amendment No. 1, the Exchange notes its belief that suspending certain aspects of Rule 6.25 during a Limit State or Straddle State will ensure that limit orders that are filled during a Limit or Straddle State will have certainty of execution in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange believes the application of the current rule would be impracticable given what it perceives will be the lack of a reliable NBBO in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.,* nullified trades or adjusted prices) may not be appropriate given market conditions. In addition, given the Exchange's view that options prices during Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes that providing market participants time to re-evaluate a transaction executed during a Limit State or Straddle State will create an unreasonable adverse selection opportunity that will discourage participants from providing liquidity during Limit States or Straddle States. Ultimately, the Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange during Limit States and Straddle States, thus promoting fair and orderly markets.

The Exchange, however, has proposed this rule change based on its expectations about the quality of the options market during Limit States and Straddle States. The Exchange states, for example, that it believes that application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during Limit States and Straddle States. Given the Exchange's recognition of the potential for unreliable NBBOs in the options markets during Limit States and Straddle States, the Commission is concerned about the extent to which investors may rely to their detriment on the quality of quotations and price discovery in the options markets during these periods. This concern is heightened by the Exchange's proposal to exclude electronic trades that occur during a Limit State or Straddle State from the obvious pricing error provisions of Rule 6.25(a)(1) and the nullification or adjustment provisions of Rule 6.25. The Commission urges investors and market professionals to exercise caution when considering trading options under these circumstances. Broker-dealers also should be mindful of their obligations to customers that may or may not be aware of specific options market conditions or the underlying stock market conditions when placing their orders.

While the Commission remains concerned about the quality of the options market during the Limit States and Straddle States, and the potential impact on investors of executing in this market without the protections of the obvious or catastrophic error rules that are being suspended during the Limit and Straddle States, it believes that certain aspects of the proposal could help mitigate those concerns.

First, despite the removal of obvious and catastrophic error protection during Limit States and Straddle States, the Exchange states that there are additional measures in place designed to protect investors. For example, the Exchange states in Amendment No. 1 that by rejecting market orders and not electing stop orders, only those orders with a limit price will be executed during a Limit State or Straddle State. Additionally, the Exchange notes the existence of SEC Rule 15c3–5 requiring broker-dealers to have controls and procedures in place that are reasonably designed to prevent the entry of erroneous orders. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying certain provisions during such unusual market conditions.

The Exchange also believes that the aspect of the proposed rule change that will continue to allow the Exchange to review on its own motion electronic trades that occur during a Limit State or a Straddle State is consistent with the Act because it would provide flexibility for the Exchange to act when necessary and appropriate to nullify or adjust a transaction and will enable the Exchange to account for unforeseen circumstances that result in obvious errors for which a nullification or adjustment may be necessary in order to preserve the interest of maintaining a fair and orderly market and for the protection of investors. The Exchange represents that it will administer this provision in a manner that is consistent with the principles of the Act. In addition, the Exchange has represented that it will create and maintain records relating to the use of the authority to act on its own motion during a Limit State or Straddle State.

Finally, the Exchange has proposed that the changes be implemented on a one year pilot basis. The Commission believes that it is important to implement the proposal as a pilot. The one year pilot period will allow the Exchange time to assess the impact of the Plan on the options marketplace and allow the Commission to further evaluate the effect of the proposal prior to any proposal or determination to make the changes permanent. To this end, the Exchange has committed to: (1) Evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange has agreed to provide the Commission with data requested to evaluate the impact of the elimination of

[43] 15 U.S.C. 78f(b)(5).

the obvious error rule, including data relevant to assessing the various analyses noted above. On April 4, 2013, the Exchange submitted a letter stating that it would provide specific data to the Commission and the public and certain analysis to the Commission to evaluate the impact of Limit States and Straddle States on liquidity and market quality in the options markets.[44] This will allow the Commission, the Exchange, and other interested parties to evaluate the quality of the options markets during Limit States and Straddle States and to assess whether the additional protections noted by the Exchange are sufficient safeguards against the submission of erroneous trades, and whether the Exchange's proposal appropriately balances the protection afforded to an erroneous order sender against the potential hazards associated with providing market participants additional time to review trades submitted during a Limit State or Straddle State.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act[45] for approving the proposed rule change on an accelerated basis. This proposal is related to the Plan, which will become operative on April 8, 2013, and aspects of the proposal, such as rejecting market orders and not electing Stop Orders during a limit up-limit down state, are designed to prevent such orders from receiving poor executions during those times. In granting accelerated approval, the proposed rule change, and its corresponding protections, will take effect upon the Plan's implementation date. Accordingly, the Commission finds that good cause exists for approving the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[46] that the proposed rule change (SR–CBOE–2013–030), as modified by Amendments Nos. 1 and 2, be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[47]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08473 Filed 4–10–13; 8:45 am]

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[44] In particular, the Exchange represented that, at least two months prior to the end of the one year pilot period of proposed Interpretation and Policy .06 to Rule 6.25, it would provide to the Commission an evaluation of (i) the statistical and economic impact of Straddle States on liquidity and market quality in the options market and (ii) whether the lack of obvious error rules in effect during the Limit States and Straddle States are problematic. In addition, the Exchange represented that each month following the adoption of the proposed rule change it would provide to the Commission and the public a dataset containing certain data elements for each Limit State and Straddle State in optionable stocks. The Exchange stated that the options included in the dataset will be those that meet the following conditions: (i) the options are more than 20% in the money (strike price remains greater than 80% of the last stock trade price for calls and strike price remains greater than 120% of the last stock trade price for puts when the Limit State or Straddle State is reached); (ii) the option has at least two trades during the Limit State or Straddle State; and (iii) the top ten options (as ranked by overall contract volume on that day) meeting the conditions listed above. For each of those options affected, each dataset will include, among other information: stock symbol, option symbol, time at the start of the Limit State or Straddle State and an indicator for whether it is a Limit State or Straddle State. For activity on the exchange in the relevant options, the Exchange has agreed to provide executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during Straddle States and Limit States, an indicator variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit State or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit State or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit State or Straddle state. *See* CBOE Letter, *supra* note 6.

[45] 15 U.S.C. 78s(b)(2)

[46] 15 U.S.C. 78s(b)(2).

[47] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69318; File No. SR–CTA/CQ–2013–02]

Consolidated Tape Association; Notice of Filing and Immediate Effectiveness of the Seventeenth Charges Amendment to the Second Restatement of the CTA Plan and Ninth Charges Amendment to the Restated CQ Plan

April 5, 2013.

Pursuant to Section 11A of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 608 thereunder,[2] notice is hereby given that on March 27, 2013, the Consolidated Tape Association (''CTA'') Plan and Consolidated Quotation (''CQ'') Plan participants (''Participants'')[3] filed with the Securities and Exchange Commission (''Commission'') a proposal to amend the Second Restatement of the CTA Plan and Restated CQ Plan (collectively, the ''Plans'').[4] The proposal represents the seventeenth charges amendment to the CTA Plan and the ninth charges amendment to the CQ Plan (''Amendments'') and delays the effective date for the change to the Network B interrogation device fee payable in respect of professional subscribers.[5]

Pursuant to Rule 608(b)(3)(ii) under the Act,[6] the Participants designated the Amendments as concerned solely with the administration of the Plans. As a result, the Amendments are effective upon filing with the Commission. At any time within 60 days of the filing of the Amendments, the Commission may summarily abrogate the Amendments and require that the Amendments be refiled in accordance with paragraph (a)(1) of Rule 608 and reviewed in accordance with paragraph (b)(2) of Rule 608, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or the maintenance of fair and orderly markets, to remove impediments to, and perfect the mechanisms of, a national market system or otherwise in furtherance of the purposes of the Act. The Commission is publishing this notice to solicit comments from interested persons on the proposed Amendments.

[1] 15 U.S.C. 78k–1.

[2] 17 CFR 242.608.

[3] The Participants are: BATS Exchange, Inc., BATS-Y Exchange, Inc., Chicago Board Options Exchange, Incorporated, Chicago Stock Exchange, Inc., EDGA Exchange, Inc. (''EDGA''), EDGX Exchange, Inc. (''EDGX''), Financial Industry Regulatory Authority, Inc. (''FINRA''), International Securities Exchange, LLC, NASDAQ OMX BX, Inc. (''Nasdaq BX''), NASDAQ OMX PHLX, Inc. (''Nasdaq PSX''), Nasdaq Stock Market LLC, National Stock Exchange, New York Stock Exchange LLC (''NYSE''), NYSE MKT LLC (formerly NYSE Amex, Inc.), and NYSE Arca, Inc. (''NYSE Arca''). Because the proposal constitutes a Ministerial Amendment under both clause (1) of Section IV(b) of the CTA Plan and clause (1) of Section IV(c) of the CQ Plan, the Chairman of CTA and the CQ Plan's Operating Committee may submit the proposal on behalf of the Participants.

[4] *See* Securities Exchange Act Release Nos. 10787 (May 10, 1974), 39 FR 17799 (May 20, 1974) (declaring the CTA Plan effective); 15009 (July 28, 1978), 43 FR 34851 (August 7, 1978) (temporarily authorizing the CQ Plan); and 16518 (January 22, 1980), 45 FR 6521 (January 28, 1980) (permanently authorizing the CQ Plan). The most recent restatement of both Plans was in 1995. The CTA Plan, pursuant to which markets collect and disseminate last sale price information for non-NASDAQ listed securities, is a ''transaction reporting plan'' under Rule 601 under the Act, 17 CFR 242.601, and a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608. The CQ Plan, pursuant to which markets collect and disseminate bid/ask quotation information for listed securities, is a ''national market system plan'' under Rule 608 under the Act, 17 CFR 242.608.

[5] *See* Securities Exchange Act Release No. 69157 (March 18, 2013), 78 FR 17946 (March 25, 2013).

[6] 17 CFR 242.608(b)(3)(ii).

I. Rule 608(a)

A. Description and Purpose of the Amendments

On March 11, 2013, the Participants filed for immediate effectiveness the Sixteenth Charges Amendment to the Second Restatement of the CTA Plan and the Eighth Charges Amendment to the Restated CQ Plan.[7] These two amendments (''Fee Change Amendments'') made a number of changes to the fees payable under the Plans in an effort to achieve greater simplicity and to reduce administrative burdens. Among those fee changes, the Fee Change Amendments combined separate monthly device fees that professional subscribers pay for Network B last sale information under the CTA Plan and for Network B quotation information under the CQ Plan into one monthly fee of $24.00 per device for both last sale information and quotation information.

The Fee Change Amendments stated that the Participants anticipated implementing the proposed fee changes in 2013, without specifying a date. In the notice that the Participants sent to the industry, they specified April 1, 2013, as the date the Fee Change Amendments would be implemented.[8]

Subsequently, due to the technical needs of data recipients to make systems changes to accommodate the revised fee, the Participants decided to extend the effective date for implementation of the combined Network B $24.00 device fee to July 1, 2013, and therefore submitted the Amendments. The effective date for the changes to the Network A device fees and the other changes set forth in the Fee Change Amendments remains April 1, 2013. The Amendments do not change the language of the CTA Plan or of its fee schedule.

B. Additional Information Required by Rule 608(a)

1. Governing or Constituent Documents

Not applicable.

2. Implementation of the Amendments

Because the Amendments constitute ''Ministerial Amendments'' under clause (1) of Section IV(b) of the CTA Plan and clause (1) of Section IV(c) of the CQ Plan, the Chairman of CTA and the CQ Plan's Operating Committee may submit the Amendments to the Commission on behalf of the Participants in the CTA Plan and the CQ Plan. Because the Participants designate the Amendments as concerned solely with the administration of the Plans, the Amendments are effective upon filing with the Commission.

3. Development and Implementation Phases

See Item I(B)(2) above.

4. Analysis of Impact on Competition

The proposed amendments do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Participants do not believe that the Amendments introduce terms that are unreasonably discriminatory for the purposes of Section 11A(c)(1)(D) of the Act.

5. Written Understanding or Agreements Relating to Interpretation of, or Participation in, Plan

Not applicable.

6. Approval by Sponsors in Accordance With Plan

See Item I(B)(2) above.

7. Description of Operation of Facility Contemplated by the Proposed Amendments

a. Terms and Conditions of Access

See Item I(A) above.

b. Method of Determination and Imposition, and Amount of, Fees and Charges

See Item I(A) above.

c. Method of Frequency of Processor Evaluation

Not applicable.

d. Dispute Resolution

Not applicable.

II. Rule 601(a) (Solely in Its Application to the Amendments to the CTA Plan)

A. Equity Securities for Which Transaction Reports Shall Be Required by the Plan

Not applicable.

B. Reporting Requirements

Not applicable.

C. Manner of Collecting, Processing, Sequencing, Making Available and Disseminating Last Sale Information

Not applicable.

D. Manner of Consolidation

Not applicable.

E. Standards and Methods Ensuring Promptness, Accuracy and Completeness of Transaction Reports

Not applicable.

F. Rules and Procedures Addressed to Fraudulent or Manipulative Dissemination

Not applicable.

G. Terms of Access to Transaction Reports

Not applicable.

H. Identification of Marketplace of Execution

Not applicable.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed Amendments to the CTA Plan are 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–CTA/CQ–2013–02 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–CTA/CQ–2013–02. 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 Amendments that are filed with the Commission, and all written communications relating to the Amendments 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

[7] *See supra* note 5.

[8] *See* email from Steve Abrams, Counsel to the CTA, to Kathy England and Natasha Cowen, Securities and Exchange Commission, April 3, 2013 (clarifying implementation dates applicable to the Fee Change Amendments).

3:00 p.m. Copies of the Amendments also will be available for inspection and copying at the principal office of the CTA.

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–CTA/CQ–2013–02 and should be submitted on or before May 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[9]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08466 Filed 4–10–13; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69325; File No. SR–NYSEArca–2013–17]

Self-Regulatory Organizations; NYSE Arca, Inc.; Order Granting Approval of Proposed Rule Change Amending Its Rules To Reflect the Merger of NYSE Arca Holdings, Inc., An Intermediate Holding Company, Into and With NYSE Group, Inc., Thereby Eliminating NYSE Arca Holdings, Inc. From the Ownership Structure of the Exchange

April 5, 2013.

I. Introduction

On February 7, 2013, NYSE Arca, Inc. (''NYSE Arca'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] proposed rule changes to reflect the merger of NYSE Arca Holdings, Inc. (''NYSE Arca Holdings''), an intermediate holding company, into and with NYSE Group, Inc. (''NYSE Group''), thereby eliminating NYSE Arca Holdings from the ownership structure of the Exchange (the ''Merger''). The proposed rule changes were published for comment in the **Federal Register** on February 26, 2013.[3] The Commission received no comment letters on the proposal. The Commission has reviewed carefully the proposed rule changes and finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[4] This order approves the proposed rule changes.

II. Description

NYSE Euronext intends to merge NYSE Arca Holdings with and into NYSE Group, effective following approval of the proposed rule changes.[5] According to the Exchange, the reason for the Merger is to eliminate an unnecessary intermediate holding company.[6] Following the Merger, the Exchange would be wholly-owned by NYSE Group (as its two affiliate exchanges, New York Stock Exchange LLC (''NYSE'') and NYSE MKT LLC (''NYSE MKT''), are), which in turn would be wholly-owned by NYSE Euronext.

The Exchange has submitted its proposal to (i) delete in its entirety the Second Amended and Restated Certificate of NYSE Arca Holdings (the ''NYSE Arca Holdings Certificate''), (ii) delete in its entirety the Amended and Restated Bylaws of NYSE Arca Holdings (''NYSE Arca Holdings Bylaws''); (iii) amend the rules of NYSE Arca, Inc. (''NYSE Arca''); (iv) amend the Bylaws of NYSE Arca (''NYSE Arca Bylaws''); and (v) file the resolution (the ''Resolution'') of the Board of Directors of NYSE Arca (the ''NYSE Arca Board'') in connection with the Merger.

Section 19(b) of the Act and Rule 19b–4 thereunder require a self-regulatory organization (''SRO'') to file proposed rule changes with the Commission. Although NYSE Arca Holdings is not an SRO, the NYSE Arca Holdings Certificate and NYSE Arca Holdings Bylaws, along with other corporate documents, are rules of the Exchange[7] and must be filed with the Commission pursuant to Section 19(b)(4) of the Act and Rule 19b–4 thereunder. Accordingly, the Exchange filed the NYSE Arca Holdings Certificate and NYSE Arca Holdings Bylaws with the Commission, along with other corporate governance documents.[8]

The proposed rule changes reflect the elimination of NYSE Arca Holdings from the Exchange's ownership structure and delete duplicative or obsolete text. For example, the Exchange proposes to replace references to NYSE Arca Holdings in Sections 2.01 and 3.13 of the NYSE Arca Bylaws with references to NYSE Group.[9] The Exchange also proposes to delete Sections 2.02, 2.04 and 2.05 of the NYSE Arca Bylaws which relate to scheduling meetings of the Holding Member. The Exchange states that the Second Amended and Restated Bylaws of NYSE Group already include provisions for meetings of NYSE Group's stockholders and Board of Directors.[10] The Exchange also represents that the operating agreements of the Exchange's affiliated SROs, the NYSE and NYSE MKT, do not contain provisions relating to annual meetings of NYSE Group.[11]

The Exchange proposes to amend Section 3.02(f) of the NYSE Arca Bylaws to provide that, except as otherwise provided in the NYSE Arca Bylaws or rules, the Holding Member shall nominate directors for election at the Holding Member's annual meeting.[12] The Exchange notes that the NYSE Arca Bylaws and rules do not have any other provisions concerning the nomination of non-fair representation directors.[13] Accordingly, this proposed rule change will not have any impact on the current process for the nomination and selection of fair representation directors of the Exchange and NYSE Arca Equities, Inc. (''NYSE Arca Equities'').[14]

III. Discussion

The Commission finds that the proposed rule changes are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities

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[9] 17 CFR 200.30–3(a)(27).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 68959 (February 20, 2013), 78 FR 13103 (''Notice'').

[4] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[5] Currently, NYSE Arca Holdings, Inc. owns all of the equity interest of the Exchange. NYSE Group owns all of the equity interest of NYSE Arca Holdings. NYSE Euronext owns all of the equity interest of NYSE Group.

[6] *See* Notice, *supra* note 3, at 13103.

[7] *See* Section 3(a)(27) of the Act, 15 U.S.C. 78c(a)(27).

[8] The Exchange proposes to delete the entirety of the Second Amended and Restated Certificate of Incorporation of NYSE Arca Holdings and the Amended and Restated Bylaws of NYSE Arca Holdings, attached as Exhibit A and Exhibit B, respectively, to the Notice. The Exchange also filed the proposed rule changes to its rules as the proposed Amended and Restated NYSE Arca Bylaws and rules, attached as Exhibit C and Exhibit D, respectively, to the Notice. The Exchange also filed the Resolution as Exhibit E to the Notice. These exhibits are available on the Commission's Web site (*http://www.sec.gov/rules/sro.shtml*) and at the Commission's Public Reference Room.

[9] As a result of this change NYSE Group will replace NYSE Arca Holdings as the ''Holding Member'' for purposes of the NYSE Arca Bylaws.

[10] *See* Notice, *supra* note 3, at 13104.

[11] *See id.*

[12] Currently, Section 3.02(f) provides that ''[e]xcept as otherwise provided in these Bylaws or the Rules, the Nominating Committee of NYSE Arca Holdings, Inc. Holding Member shall nominate directors for election at the annual meeting of the Holding Member.''

[13] *See* Notice, *supra* note 3, at 13104.

[14] *See* Notice, *supra* note 3 at 13104.

exchange.[15] Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[16] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The proposal would accommodate the merger of NYSE Arca Holdings, an intermediate holding company, into and with NYSE Group, thereby eliminating NYSE Arca Holdings from the ownership structure of the Exchange. The Commission notes that the proposed rule changes would otherwise have no substantive impact on other rules of the Exchange, including those concerning the nomination and selection of fair representation directors that currently apply to the Exchange. The Exchange would continue as an indirect wholly-owned subsidiary of NYSE Euronext. In addition, the Commission notes that the NYSE Arca Board made certain findings set forth in the Resolution that the proposed rule changes to NYSE Arca's Bylaws are consistent with the restrictions on amending NYSE Arca's Bylaws.[17]

In light of these representations and findings, the Commission believes that the proposed rule changes are consistent with the Act and will not impair the ability of the Commission or the Exchange to discharge their respective responsibilities under the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NYSEArca–2013–17) be, and it hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08472 Filed 4–10–13; 8:45 am]

BILLING CODE 8011–01–P

[15] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78f(b)(5).

[17] *See* Resolution.

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69317; File No. SR–BYX–2013–012]

Self-Regulatory Organizations; BATS Y-Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Related to Fees for Use of BATS Y-Exchange, Inc.

April 5, 2013.

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 March 27, 2013, BATS Y-Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act[3] and Rule 19b–4(f)(2) thereunder,[4] which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the fee schedule applicable to Members[5] and non-members of the Exchange pursuant to BYX Rules 15.1(a) and (c). While changes to the fee schedule pursuant to this proposal will be effective upon filing, the changes will become operative on April 1, 2013.

The text of the proposed rule change is available at the Exchange's Web site at *http://www.batstrading.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to modify its fee schedule effective April 1, 2013, in order to amend the rebates that it provides for removing liquidity and to amend the fees that it charges for adding liquidity, as described in further detail below.

Rebates to Remove Liquidity

The Exchange currently offers a tiered pricing structure for executions that remove liquidity. Under the tiered pricing structure, a Member must add a daily average of at least 50,000 shares of liquidity on BYX Exchange in order to receive a rebate to remove liquidity. For Members that meet this requirement, the Exchange provides three different rebates, as described below.

The Exchange currently provides a rebate of $0.0004 per share to remove liquidity for Members that have an average daily volume (''ADV'') on the Exchange of at least 0.5% of the total consolidated volume (''TCV''), a rebate of $0.0003 per share to remove liquidity for Members that have an ADV on the Exchange of at least 0.25% but less than 0.5% of TCV, and a rebate of $0.0002 per share to remove liquidity for Members that add the requisite number of shares of liquidity on BYX Exchange but do not qualify for a rebate based on TCV as set forth above. As with its other current tiered pricing, the daily average in order to receive the liquidity removal rebate is calculated based on a Member's activity in the month for which the rebates would apply. For Members that do not reach a tier to receive the liquidity removal rebate, the Exchange does not currently provide rebate. The Exchange does not, however, charge such Members, but rather, provides such executions free of charge. The Exchange does not propose modifying the existing rebate structure for Members that do not achieve one of the three enhanced rebate tiers.

The Exchange does not propose to change the requirement that a Member add a daily average of at least 50,000 shares of liquidity on BYX Exchange in order to receive a rebate to remove liquidity. The Exchange proposes to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] A Member is any registered broker or dealer that has been admitted to membership in the Exchange.

increase by $0.0003 per share the rebates provided to all Members that qualify for a liquidity removal tier. Specifically, the Exchange proposes to provide a rebate of $0.0007 per share to remove liquidity for Members that have an ADV on the Exchange of at least 0.5% of TCV, a rebate of $0.0006 per share to remove liquidity for Members that have an ADV on the Exchange of at least 0.25% but less than 0.5% of TCV, and a rebate of $0.0005 per share to remove liquidity that add the requisite number of shares of liquidity on BYX Exchange but do not qualify for a rebate based on TCV as set forth above.

Consistent with the current fee structure, the fee structure for executions that remove liquidity from the Exchange described above will not apply to executions that remove liquidity in securities priced under $1.00 per share. The fee for such executions will remain at 0.10% of the total dollar value of the execution. Similarly, as is currently the case for adding liquidity to the Exchange, there will be no liquidity rebate for adding liquidity in securities priced under $1.00 per share.

Fees to Add Liquidity

The Exchange currently maintains a tiered pricing structure for adding displayed liquidity in securities priced $1.00 and above that allows Members to add liquidity at a reduced fee if they reach certain volume thresholds. The tiered pricing structure allows Members that qualify for reduced fees to add liquidity at a further reduced fee to the extent such liquidity sets the national best bid or offer (the ''NBBO Setter Program''). The Exchange charges Members that maintain ADV on the Exchange of at least 0.5% of the total TCV during the month a liquidity adding fee of $0.00025 per share on orders that set the NBBO and $0.0003 per share on orders that do not set the NBBO. The Exchange charges Members that maintain ADV on the Exchange of at least 0.25% but less than 0.5% of the total TCV during the month a liquidity adding fee of $0.00035 per share on orders that set the NBBO and $0.0004 per share for orders that do not set the NBBO. The Exchange charges a liquidity adding fee of $0.0005 per share to Members that do not qualify for a reduced fee based on their volume on the Exchange.

The Exchange proposes to increase its fees to add displayed liquidity for all Members by $0.0002 per share. Specifically, the Exchange proposes to charge Members that maintain ADV on the Exchange of at least 0.5% of the total TCV during the month a liquidity adding fee of $0.00045 per share on orders that set the NBBO and $0.0005 per share on orders that do not set the NBBO. The Exchange proposes to charge Members that maintain ADV on the Exchange of at least 0.25% but less than 0.5% of the total TCV during the month a liquidity adding fee of $0.00055 per share on orders that set the NBBO and $0.0006 per share for orders that do not set the NBBO. The Exchange proposes to charge Members that do not qualify for a reduced fee based on their volume on the Exchange a liquidity adding fee of $0.0007 per share.

The Exchange notes that it does not propose to modify its existing definitions of ''ADV'' or ''TCV'' in connection with the changes described above. The Exchange notes that the definition of ADV used in conjunction with TCV for the NBBO Setter Program and the tiered pricing structures for executions that add and remove liquidity includes both a Member's liquidity adding and removing activity. However, as today, the 50,000 shares added requirement necessary to achieve tiered pricing to remove liquidity only includes added volume.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder that are applicable to a national securities exchange, and, in particular, with the requirements of Section 6 of the Act.[6] Specifically, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4) of the Act,[7] in that it provides for the equitable allocation of reasonable dues, fees and other charges among members and other persons using any facility or system which the Exchange operates or controls. The Exchange notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive.

The changes to Exchange execution fees and rebates proposed by this filing are intended to attract order flow to the Exchange by continuing to offer competitive pricing while also allowing the Exchange to continue to offer incentives to providing aggressively priced displayed liquidity. While Members that add liquidity to the Exchange will be paying higher fees due to the proposal, the increased revenue received by the Exchange will be used to continue to fund programs that the Exchange believes will attract additional liquidity to the Exchange.

With respect to the proposed changes to the tiered pricing structure for removing liquidity from the Exchange, the Exchange believes that its proposal is reasonable because it will continue to be available to Members that achieve a relatively low threshold of added liquidity, and thus who contribute to the depth of liquidity generally available on the Exchange. By providing higher potential rebates to all qualifying Members, the Exchange is further incentivizing Members to participate in the growth of the Exchange. The increased rebates also provide additional incentive to Members that do not qualify for the tier to increase their participation on the Exchange in order to qualify. Volume-based tiers such as the liquidity removal tiers maintained by the Exchange have been widely adopted in the equities markets, and are equitable and not unfairly discriminatory because they are open to all members on an equal basis and provide rebates that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process. Accordingly, the Exchange believes that the proposal is equitably allocated and not unfairly discriminatory because it is consistent with the overall goals of enhancing market quality.

With respect to the increases to the fees charged to add displayed liquidity, the Exchange believes that the proposed fees are reasonable as such fees are still comparable to other market centers that charge to add displayed liquidity and represent only a slight increase from the current fee levels. The Exchange notes that at least one market center charges a higher fee to add displayed liquidity.[8]

The Exchange believes that any additional revenue it receives based on the increases to fees set forth above will allow the Exchange to devote additional capital to its operations and to continue to offer competitive pricing, which, in turn, will benefit Members of the Exchange. Further, the Exchange again notes that the tiered fee structure whereby Members meeting certain volume thresholds will receive reduced fees on their added liquidity executions is equitable and not unfairly discriminatory because it will be open

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] NASDAQ OMX BX charges up to $0.0018 per share, with the potential for a slightly lower fee to the extent a participant meets certain quoting criteria.

to all Members on an equal basis the reduced fee is reasonably related to the value to the Exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery process.

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. Because the market for order execution is extremely competitive, Members may choose to preference other market centers ahead of the Exchange if they believe that they can receive better fees or rebates elsewhere. Further, because certain of the proposed changes are intended to provide incentives to Members that will result in increased activity on the Exchange, such changes are necessarily competitive. The Exchange also believes that its pricing for displayed orders is appropriately competitive vis-à-vis the Exchange's competitors. Further, the Exchange believes that continuing to incentivize the entry of aggressively priced, displayed liquidity fosters intra-market competition to the benefit of all market participants that enter orders to the Exchange. However, 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. The Exchange does not believe that any of the changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors.

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.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and paragraph (f) of Rule 19b–4 thereunder.[10] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–BYX–2013–012 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–BYX–2013–012. 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–BYX–2013–012 and should be submitted on or before May 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08465 Filed 4–10–13; 8:45 am]

BILLING CODE 8011–01–P

[9] 15 U.S.C. 78s(b)(3)(A)(ii).

[10] 17 CFR 240.19b–4(f).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69334; File No. SR–BX–2013–022]

Self-Regulatory Organizations; NASDAQ OMX BX, Inc.; Order Approving, on an Accelerated Basis, Proposed Rule Change To Adopt Chapter V, Section 3(d)(iii) Regarding Quoting Obligations

April 5, 2013.

I. Introduction

On March 5, 2013, NASDAQ OMX BX, Inc. (''BX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to adopt Chapter V, Section 3(d)(iii) regarding quoting obligations. The proposed rule change was published for comment in the **Federal Register** on March 14, 2013.[4] The Commission received no comment letters on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Background

On May 6, 2010, the U.S. equity markets experienced a severe disruption that, among other things, resulted in the prices of a large number of individual securities suddenly declining by significant amounts in a very short time period before suddenly reversing to prices consistent with their pre-decline levels.[5] This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 69070 (March 7, 2013), 78 FR 16303.

[5] The events of May 6 are described more fully in a joint report by the staffs of the Commodity Futures Trading Commission (''CFTC'') and the Commission. *See* Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, ''Findings Regarding the Market Events of May 6, 2010,'' dated September 30, 2010, available at *http://www.sec.gov/news/studies/2010/marketevents-report.pdf.*

One response to the events of May 6, 2010, was the development of the single-stock circuit breaker pilot program, which was implemented through a series of rule filings by the equity exchanges and by FINRA.[6] The single-stock circuit breaker was designed to reduce extraordinary market volatility in NMS stocks by imposing a five-minute trading pause when a trade was executed at a price outside of a specified percentage threshold.[7]

To replace the single-stock circuit breaker pilot program, the equity exchanges filed a National Market System Plan[8] pursuant to Section 11A of the Act,[9] and Rule 608 thereunder,[10] which featured a ''limit up-limit down'' mechanism (as amended, the ''Limit Up-Limit Down Plan'' or ''Plan'').

The Plan sets forth requirements that are designed to prevent trades in individual NMS stocks from occurring outside of the specified price bands. The price bands consist of a lower price band and an upper price band for each NMS stock. When one side of the market for an individual security is outside the applicable price band, i.e., the National Best Bid is below the Lower Price Band, or the National Best Offer is above the Upper Price band, the Processors[11] are required to disseminate such National Best Bid or National Best Offer[12] with a flag identifying that quote as non-executable. When the other side of the market reaches the applicable price band, i.e., the National Best Offer reaches the lower price band, or the National Best Bid reaches the upper price band, the market for an individual security enters a 15-second Limit State, and the Processors are required disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation. Trading in that stock would exit the Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange will declare a five-minute trading pause, which is applicable to all markets trading the security.

The Primary Listing Exchange may also declare a trading pause when the stock is in a Straddle State, i.e., the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. In order to declare a trading pause in this scenario, the Primary Listing Exchange must determine that trading in that stock deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility.[13]

On May 31, 2012, the Commission approved the Plan as a one-year pilot, which shall be implemented in two phases.[14] The first phase of the Plan shall be implemented beginning April 8, 2013.[15]

III. Description of the Proposal

In light of and in connection with the Limit Up-Limit Down Plan, BX is adopting Chapter V, Section 3(d)(iii) to provide that the Exchange shall exclude the amount of time an NMS stock underlying a BX option is in a Limit State or Straddle State from the total amount of time in the trading day when calculating the percentage of the trading day that Options Market Makers are required to quote.

Currently, under Chapter VII, Sections 5 and 6, BX requires Market Makers, on a daily basis, to make markets consistent with the applicable quoting requirements specified in Sections 5 and 6, on a continuous basis in at least 60% of the series in options in which the Market Maker is registered. To satisfy this requirement with respect to quoting a series, a Market Maker must quote such series 90% of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as BX may announce in advance. The Exchange's proposal would suspend a Market Maker's continuous quoting obligation for the duration that an underlying NMS stock is in a Limit State or a Straddle State. As a result, when calculating the duration necessary for a Market Maker to meet its obligations that it post valid quotes at least 90% of the time the classes are open for trading, that time will not include the duration that the underlying is in a Limit State or Straddle State.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[17] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of

[6] For further discussion on the development of the single-stock circuit breaker pilot program, *see* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (''Limit Up-Limit Down Plan'' or ''Plan'').

[7] *See* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033) (describing the ''second stage'' of the single-stock circuit breaker pilot) and Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (describing the ''third stage'' of the single-stock circuit breaker pilot).

[8] NYSE Euronext filed on behalf of New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex''), and NYSE Arca, Inc. (''NYSE Arca''), and the parties to the proposed National Market System Plan, BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated (''CBOE''), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the ''Participants''). On May 14, 2012, NYSE Amex filed a proposed rule change on an immediately effective basis to change its name to NYSE MKT LLC (''NYSE MKT''). See Securities Exchange Act Release No. 67037 (May 21, 2012) (SR–NYSEAmex–2012–32).

[9] 15 U.S.C. 78k–1.

[10] 17 CFR 242.608.

[11] As used in the Plan, the Processor refers to the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act. *See id.*

[12] ''National Best Bid'' and ''National Best Offer'' has the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act. *See id.*

[13] As set forth in more detail in the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would be able to disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless may be inadvertently submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

[14] *See* ''Limit Up-Limit Down Plan,'' *supra* note 6. *See also* Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February 26, 2013) (Second Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*) and Securities Exchange Act Release No. 69062 (March 7, 2013), 78 FR 15757 (March 12, 2013) (Third Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y- Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*)

[15] *See* ''Second Amendment to Limit Up-Limit Down Plan,'' *supra* note 14.

[16] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b).

the exchange, 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 regulation, 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 Commission finds that the proposal to suspend a Market Maker's obligations when the underlying security is in a limit up-limit down state is consistent with the Act. During a limit up-limit down state, there may not be a reliable price for the underlying security to serve as a benchmark for market makers to price options. In addition, the absence of an executable bid or offer for the underlying security will make it more difficult for market makers to hedge the purchase or sale of an option. Given these significant changes to the normal operating conditions of market makers, the Commission finds that the Exchange's decision to suspend a Market Maker's obligations in these limited circumstances is consistent with the Act.

The Commission notes, however, that the Plan was approved on a pilot basis and its Participants will monitor how it is functioning in the equity markets during the pilot period. To this end, the Commission expects that, upon implementation of the Plan, the Exchange will continue monitoring the quoting requirements that are being amended in this proposed rule change and determine if any necessary adjustments are required to ensure that they remain consistent with the Act.

The Commission also notes that the Exchange did not propose to waive its bid-ask spread requirements for Market Makers when the underlying is in a Limit or Straddle State. The Commission believes that retaining this requirement should help ensure the quality of the quotes that are entered and preserves one of the obligations of being a Market Maker.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act [18] for approving the proposed rule change on an accelerated basis. The proposal is related to the Plan, which will become operative on April 8, 2013.[19] Without accelerated approval, the proposed rule change, and any attendant benefits, would take effect after the Plan's implementation date. Accordingly, the Commission finds that good cause exists for approving the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [20] that the proposed rule change (SR–BX–2013–022) is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

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BILLING CODE 8011–01–P

[18] 15 U.S.C. 78s(b)(2)

[19] *See supra* note 15.

[20] 15 U.S.C. 78f(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69322; File No. SR–NASDAQ–2013–061]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Rule 4120

April 5, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by 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

NASDAQ proposes to adopt NASDAQ Rule 4120(c)(7)(D) concerning the extension of the Display Only Period conducted prior to the IPO Halt Cross under NASDAQ Rule 4753. The Exchange has designated the proposed changes herein as immediately effective.

The text of the proposed rule change is below. Proposed new language is underlined; proposed deletions are in brackets.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

4120. Trading Halts

(a)–(b) No change.

(c) Procedure for Initiating a Trading Halt

(1)–(6) No change.

(7)

(A) A trading halt or pause initiated under Rule 4120(a)(1), (4), (5), (6), (9), (10), (11) or Rule 4120(b) shall be terminated when Nasdaq releases the security for trading. Prior to terminating the halt, there will be a 5-minute Display Only Period during which market participants may enter quotations and orders in that security in Nasdaq systems. At the conclusion of the 5-minute Display Only Period, the security shall be released for trading unless Nasdaq extends the Display Only Period for an additional 1-minute period pursuant to subparagraph (C) below. At the conclusion of the Display Only Period, trading shall immediately resume pursuant to Rule 4753.

(B) A trading halt initiated under Rule 4120(a)(7) shall be terminated when Nasdaq releases the security for trading. Prior to terminating the halt, there will be a 15-minute Display Only Period during which market participants may enter quotes and orders in that security in Nasdaq systems. In addition, beginning at 7 a.m., market participants may enter Market Hours Day Orders in a security that is the subject of an Initial Public Offering on Nasdaq and designate such orders to be held until the beginning of the Display Only Period, at which time they will be entered into the system. At the conclusion of the 15-minute Display Only Period, the security shall be released for trading unless Nasdaq extends the Display Only Period for up to six additional 5-minute Display Only Periods pursuant to subparagraph (C) *or (D)* below. At the conclusion of the Display Only Period(s), there shall be an additional delay of between zero and 15 seconds (randomly selected) and then trading shall resume pursuant to Rule 4753.

(C) If at the end of a Display Only Period, Nasdaq detects an order imbalance in the security, Nasdaq will extend the Display Only Period as permitted under subparagraphs (A) and (B) above. Order imbalances shall be established when (i) the Current Reference Prices, as defined in Rule 4753(a)(2)(A), disseminated 15 seconds and immediately prior to the end of the Display Only Period differ by more than the greater of 5 percent or 50 cents, or (ii) all buy or sell market orders will not be executed in the cross.

(D) At any time within the last five minutes prior to the end of a Display

Only Period, Nasdaq may extend the Display Only Period as permitted under subparagraph (B) above at the request of an underwriter of an IPO.

* * * * *

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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt Rule 4120(c)(7)(D) to describe an additional basis for extending the Display Only Period as permitted by Rule 4120(c)(7)(B), and is making a conforming change to Rule 4120(c)(7)(B). Rule 4120(c)(7)(B) governs the orderly launch of trading of a company's securities approved for listing on NASDAQ in an initial public offering (''IPO''). Rule 4120(c)(7)(B), provides a fifteen-minute ''Display Only Period'' prior to terminating the halt imposed on an IPO security before it opens for trading for the first time on NASDAQ pursuant to the IPO Halt Cross of Rule 4753. Under Rule 4120(c)(7)(B), at the conclusion of the fifteen-minute Display Only Period NASDAQ may extend the period for up to six additional five-minute Display Only Periods, pursuant to the basis described under Rule 4120(c)(7)(C). Rule 4120(c)(7)(C) allows an extension when NASDAQ detects an order imbalance in the security.

In May 2007, nearly a year after the launch of the IPO Halt Cross, NASDAQ determined to change its internal procedures to consider requests by underwriting firms involved in an IPO to extend the Display Only Period by five minutes, up to a maximum of six five-minute extensions. NASDAQ made the change based on its experience with operating the IPO process and in an effort to ensure the orderly operation of the IPO process. NASDAQ found that underwriters possess valuable information about the pending IPO given their unique position in the market, including the state of IPO orders resting on the underwriter's book, and believed that it is in the best interest of the markets to extend the 15-minute Display Only Period upon the request of a market maker. Accordingly, pursuant NASDAQ's internal procedures it relies on the underwriter's reasonable judgment as to whether a five-minute extension of the Display Only Period will improve the price discovery process of the IPO Halt Cross, and thereby help to ensure a fair and orderly launch of trading in the IPO security.

NASDAQ is amending its rules to memorialize the underwriter-requested extension process under Rule 4120(c)(7)(D). NASDAQ developed criteria for determining whether to grant an underwriter-requested extension of the Display Only Period, and applies such criteria consistently in every IPO wherein an underwriter makes an extension request. NASDAQ may change such criteria from time to time in the interest of improving the IPO process for market participants.

NASDAQ notes that other markets also recognize the importance of allowing underwriters to extend the IPO auctions of their markets. For example, BATS Exchange, Inc. permits an extension to its IPO Auction Quote-Only period upon the request of an underwriter, with no limit on the number or length of extensions. Affording underwriters the ability to request an extension is consistent with NASDAQ's goal of promoting a fair and orderly market and NASDAQ believes that it is appropriate to include its long-standing procedure in its rules. Doing so will provide market participants with a better understanding the operation of the Display Only Period of the IPO process. Accordingly, NASDAQ is proposing to adopt new Rule 4120(c)(7)(D) to reflect that it may consider the request of an underwriter of an IPO to extend the Display Only Period by five minutes, up to a maximum six five-minute extensions.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[3] in general, and with Section 6(b)(5) of the Act,[4] in particular, in that it is designed 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 transaction in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers. The proposed rule change promotes this goal by establishing in NASDAQ's rules an IPO process that protects investors and the public interest by ensuring an orderly opening of trading in IPOs on NASDAQ. NASDAQ believes that underwriters of IPOs have unique insight into the investor interest in the IPO, and therefore are uniquely positioned to evaluate the book and make extension decisions to ensure an orderly IPO launch. NASDAQ notes that the criteria it applies in considering an underwriter-requested extension are applied consistently to every IPO, and therefore do not permit NASDAQ to discriminate in any manner.

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. The Exchange believes that the proposal is irrelevant to competition because it is not driven by, nor impactful to, competition.

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 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)(ii) of the Act[5] and Rule 19b–4(f)(6) thereunder.[6]

A proposed rule change filed under Rule 19b–4(f)(6)[7] normally does not become operative for 30 days after the date of filing. However, pursuant to

[3] 15 U.S.C. 78f.

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78s(b)(3)(a)(ii).

[6] 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.

[7] 17 CFR 240.19b–4(f)(6).

Rule 19b–4(f)(6)(iii)[8] the Commission may 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. NASDAQ believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest because the proposed rule change provides an additional means by which NASDAQ may extend the Display Only Period, which is in the interest of providing a fair and orderly launch of trading in an IPO security. The Exchange also notes that other markets allow underwriter-requested extensions of their pre-IPO quote periods. The Commission believes that waiving the 30-day operative delay is consistent with the protection of investors and the public interest, as it may aid in the fair and orderly launch of trading in an IPO security. For this reason, the Commission designates the proposed rule change to be operative upon filing.[9]

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 proposal is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–NASDAQ–2013–061 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–061. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–061 and should be submitted on or before May 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[10]

Kevin M. O'Neill,

Deputy Secretary.

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[8] 17 CFR 240.19b–4(f)(6)(iii).

[9] 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).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69329; File No. SR–ISE–2013–22]

Self-Regulatory Organizations; International Securities Exchange LLC; Order Approving, on an Accelerated Basis, Proposed Rule Change, as Modified by Amendments No. 1 and No. 2, To Suspend Certain Market Maker Quotation Requirements and To Suspend Rule 720 Regarding Obvious Errors During Limit Up-Limit Down States in Securities That Underlie Options Traded on the ISE

April 5, 2013.

I. Introduction

On March 8, 2013 the International Securities Exchange, LLC (the ''Exchange'' or ''ISE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to provide for how the Exchange proposes to treat market-making quoting obligations and trading errors in response to the Regulation NMS Plan to Address Extraordinary Market Volatility. The proposed rule change was published for comment in the **Federal Register** on March 18, 2013.[4] On March 12, 2013, the Exchange submitted Amendment No. 1 to the proposed rule change.[5] The Exchange then submitted Amendment No. 2 on March 19, 2013.[6] The Commission received one comment letter on the proposal.[7] This order approves the

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 69110 (March 11, 2013), 78 FR 16726 (''Notice'').

[5] In Amendment No. 1, the Exchange submitted Exhibit 2 to the filing, which the Exchange inadvertently omitted when the filing was first submitted. Because the changes made in Amendment No. 1 do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, Amendment No. 1 is not subject to notice and comment.

[6] In Amendment No. 2, the Exchange noted that its Order Protection rule will continue to apply during Limit and Straddle States and represented that it would conduct its own analysis concerning the elimination of obvious error rule during Limit and Straddle States and agreed to provide the Commission with relevant data to assess the impact of the proposal. Because the changes made in Amendment No. 2 do not materially alter the substance of the proposed rule change or raise any novel regulatory issues, Amendment No. 2 is not subject to notice and comment.

[7] *See* Letter to David Dimitrious, Senior Special Counsel, Division of Trading and Markets, Commission, from Michael Simon, General Counsel, ISE, dated April 4, 2013 (''ISE Letter'').

proposed rule change on an accelerated basis.

II. Background

On May 6, 2010, the U.S. equity markets experienced a severe disruption that, among other things, resulted in the prices of a large number of individual securities suddenly declining by significant amounts in a very short time period before suddenly reversing to prices consistent with their pre-decline levels.[8] This severe price volatility led to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices. One response to the events of May 6, 2010, was the development of the single-stock circuit breaker pilot program, which was implemented through a series of rule filings by the equity exchanges and by FINRA.[9] The single-stock circuit breaker was designed to reduce extraordinary market volatility in NMS stocks by imposing a five-minute trading pause when a trade was executed at a price outside of a specified percentage threshold.[10]

To replace the single-stock circuit breaker pilot program, the equity exchanges filed a National Market System Plan [11] pursuant to Section 11A of the Act,[12] and Rule 608 thereunder,[13] which featured a ''limit up-limit down'' mechanism (as amended, the ''Limit Up-Limit Down Plan'' or ''Plan'').

The Plan sets forth requirements that are designed to prevent trades in individual NMS stocks from occurring outside of the specified price bands. The price bands consist of a lower price band and an upper price band for each NMS stock. When one side of the market for an individual security is outside the applicable price band, i.e., the National Best Bid is below the Lower Price Band, or the National Best Offer is above the Upper Price band, the Processors [14] are required to disseminate such National Best Bid or National Best Offer [15] with a flag identifying that quote as non-executable. When the other side of the market reaches the applicable price band, i.e., the National Best Offer reaches the lower price band, or the National Best Bid reaches the upper price band, the market for an individual security enters a 15-second Limit State, and the Processors are required disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation. Trading in that stock would exit the Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange will declare a five-minute trading pause, which is applicable to all markets trading the security.

The Primary Listing Exchange may also declare a trading pause when the stock is in a Straddle State, i.e., the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. In order to declare a trading pause in this scenario, the Primary Listing Exchange must determine that trading in that stock deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility.[16]

On May 31, 2012, the Commission approved the Plan as a one-year pilot, which shall be implemented in two phases.[17] The first phase of the Plan shall be implemented beginning April 8, 2013.[18]

III. Description of the Proposal

1. Market Maker Quoting Obligations

In light of the Plan, the Exchange has proposed to suspend the maximum quotation spread requirement for market maker quotes contained in Rule 803(b)(5) and the continuous market maker quotation requirements contained in Rule 804(e) when the security underlying an option class is in a Limit State or Straddle State. Concerning the calculation of a market maker's quoting obligation, the Exchange will not consider the time periods associated with Limit and Straddle States when evaluating whether a market maker complied with the continuous quotation requirements contained in Rule 804(e).

The Exchange represented that market makers should be exempted from their continuous quoting obligations during Limit and Straddle states because during such periods, market makers could not be certain whether they could buy or sell an underlying security, or if they could, at what price or quantity. The Exchange's corresponding proposal to suspend the maximum quotation spread requirement during Limit or Straddle States is intended to encourage market makers to choose to provide liquidity during such states. According to the Exchange, allowing options market makers the flexibility to choose whether to enter quotes and to do so without spread restrictions is necessary to encourage market makers to provide liquidity in options classes overlying

[8] The events of May 6 are described more fully in a joint report by the staffs of the Commodity Futures Trading Commission (''CFTC'') and the Commission. *See* Report of the Staffs of the CFTC and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, ''Findings Regarding the Market Events of May 6, 2010,'' dated September 30, 2010, available at *http://www.sec.gov/news/studies/2010/marketevents-report.pdf.*

[9] For further discussion on the development of the single-stock circuit breaker pilot program, *see* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (''Limit Up-Limit Down Plan'' or ''Plan'').

[10] *See* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033) (describing the ''second stage'' of the single-stock circuit breaker pilot) and Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (describing the ''third stage'' of the single-stock circuit breaker pilot).

[11] NYSE Euronext filed on behalf of New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex''), and NYSE Arca, Inc. (''NYSE Arca''), and the parties to the proposed National Market System Plan, BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated (''CBOE''), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the ''Participants''). On May 14, 2012, NYSE Amex filed a proposed rule change on an immediately effective basis to change its name to NYSE MKT LLC (''NYSE MKT''). See Securities Exchange Act Release No. 67037 (May 21, 2012) (SR–NYSEAmex–2012–32).

[12] 15 U.S.C. 78k–1.

[13] 17 CFR 242.608.

[14] As used in the Plan, the Processor refers to the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act. *See id.*

[15] ''National Best Bid'' and ''National Best Offer'' has the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act. *See id.*

[16] As set forth in more detail in the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would be able to disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless may be inadvertently submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

[17] *See* ''Limit Up-Limit Down Plan,'' *supra* note 9. *See also* Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February 26, 2013) (Second Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*) and Securities Exchange Act Release No. 69062 (March 7, 2013), 78 FR 15757 (March 12, 2013) (Third Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y- Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*)

[18] *See* ''Second Amendment to Limit Up-Limit Down Plan,'' *supra* note 17.

securities that may enter a Limit State or Straddle State.

Additionally, the Exchange notes that all other requirements relating to market maker quotes will remain applicable to market makers that choose to enter quotes during a Limit or Straddle State. For instance, the Exchange represents that market makers would still be subject to the obligation to maintain fair and orderly markets in their appointed classes, and they would still be prohibited from making bids or offers or entering into transactions that are inconsistent with such course of dealings.[19]

2. Obvious Error

In connection with the implementation of the Plan, the Exchange proposes to adopt new Rule 703A(d) to exclude transaction that occur during a Limit State or Straddle State from the obvious error or catastrophic error review, nullification, and adjustment procedures pursuant to Rule 720 for a one year pilot ending April 8, 2014.

Rule 720 provides a process by which a transaction may be busted or adjusted when the execution price of a transaction deviates from the option's theoretical price by a certain amount. Under Rule 720(a)(3)(i), the theoretical price is the national best bid price for the option with respect to a sell order and the national best offer for the option with respect to a buy order, just prior to the trade in question. In certain circumstances, Exchange officials have the discretion to determine the theoretical price pursuant to Rule 720(a)(3)(ii).[20]

The Exchange believes that neither method is appropriate during a Limit State or Straddle State. According to the Exchange, during a Limit State or Straddle State, options prices may deviate substantially from those available prior to or following the state. The Exchange believes this provision would give rise to much uncertainty for market participants as there is no bright line definition of what the theoretical price should be for an option when the underlying NMS stock has an unexecutable bid or offer or both. Because the approach under Rule 720(a)(3)(i) by definition depends on a reliable NBBO, the Exchange does not believe that approach is appropriate during a Limit State or Straddle State.

With respect to Rule 720(a)(3)(ii) affording discretion to designated personnel in the Exchange's market control center to determine the theoretical price, the Exchange notes that does not believe it would be reasonable for ISE personnel to derive theoretical prices to be applied to transactions executed during such unusual market conditions, given that options market makers and other industry professionals will have difficulty pricing options during Limit States and Straddle States.

Ultimately, the Exchange believes the application of the current rule would be impracticable given the lack of a reliable national best bid or offer in the options market during Limit States and Straddle States, and would produce undesirable effects. The Exchange believes that adding certainty to the execution of orders in these situations should encourage market participants to continue to provide liquidity to the Exchange, thus promoting fair and orderly markets. On balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying these provisions during such unusual market conditions. In further support of its proposed rule change, in Amendment No. 2, the Exchange noted that Rule 1901 (Order Protection) would continue to apply during Limit States and Straddle States. According to the Exchange, the application of Rule 1901 would mean that only orders identified as Intermarket Sweep Orders will trade through protected bids and offers during Limit and Straddle States, and as a result, the only trades that would potentially have been reviewed under Rule 720 during Limit and Straddle States are those involving Intermarket Sweep Orders.

Therefore, the Exchange proposes to adopt 703A(d) to provide that transactions executed during a Limit State or Straddle State are not subject to the provisions of Rule 720.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange.[21] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[22] which, among other things, requires a national securities exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, 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 regulation, 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 Commission finds that the proposal to suspend a market maker's obligations when the underlying security is in a limit up-limit down state is consistent with the Act. During a limit up-limit down state, there may not be a reliable price for the underlying security to serve as a benchmark for market makers to price options. In addition, the absence of an executable bid or offer for the underlying security will make it more difficult for market makers to hedge the purchase or sale of an option. Given these significant changes to the normal operating conditions of market makers, the Commission finds that the Exchange's decision to suspend a market maker's obligations in these limited circumstances is consistent with the Act.

The Commission notes, however, that the Plan was approved on a pilot basis and its Participants will monitor how it is functioning in the equity markets during the pilot period. To this end, the Commission expects that, upon implementation of the Plan, the Exchange will continue monitoring the quoting requirements that are being amended in this proposed rule change and determine if any necessary adjustments are required to ensure that they remain consistent with the Act.

In addition, the Commission finds that the Exchange's proposed rule change to exclude transactions that occur during a Limit State or Straddle State from the obvious error or catastrophic error review, nullification, and adjustment procedures pursuant to Rule 720 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to

[19] *See* Notice, *supra* note 4, 78 FR at 16728–16729.

[20] Rule 720 provides that if there are no quotes from other options exchanges for comparison purposes, the theoretical price will be determined by designated personnel in the Exchange's market control center.

[21] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[22] 15 U.S.C. 78f(b).

a national securities exchange. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act,[23] in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

In the filing, the Exchange notes its belief that excluding transactions executed during a Limit State or Straddle State from the provisions of Rule 720 will ensure that limit orders that are filled during a Limit or Straddle State will have certainty of execution in a manner that promotes just and equitable principles of trade and removes impediments to, and perfects the mechanism of, a free and open market and a national market system. The Exchange believes the application of the current rule would be impracticable given what it perceives will be the lack of a reliable NBBO in the options market during Limit States and Straddle States, and that the resulting actions (*i.e.,* busted trades or adjusted prices) may not be appropriate given market conditions. In addition, given the Exchange's view that options prices during Limit States or Straddle States may deviate substantially from those available shortly following the Limit State or Straddle State, the Exchange believes that providing market participants time to re-evaluate a transaction executed during a Limit or Straddle State will create an unreasonable adverse selection opportunity that will discourage participants from providing liquidity during Limit States or Straddle States.

The Exchange, however, has proposed this rule change based on its expectations about the quality of the options market during Limit States and Straddle States. The Exchange states, for example, that it believes that application of the obvious and catastrophic error rules would be impracticable given the potential for lack of a reliable NBBO in the options market during Limit States and Straddle States. Given the Exchange's recognition of the potential for unreliable NBBOs in the options markets during Limit States and Straddle States, the Commission is concerned about the extent to which investors may rely to their detriment on the quality of quotations and price discovery in the options markets during these periods. This concern is heightened by the Exchange's proposal to exclude transactions that occur during a Limit State or Straddle State from the obvious error or catastrophic error review procedures pursuant to Rule 720. The Commission urges investors and market professionals to exercise caution when considering trading options under these circumstances. Broker-dealers also should be mindful of their obligations to customers that may or may not be aware of specific options market conditions or the underlying stock market conditions when placing their orders.

While the Commission remains concerned about the quality of the options market during the Limit and Straddle States, and the potential impact on investors of executing in this market without the protections of the obvious or catastrophic error rules that are being suspended during the Limit and Straddle States, it believes that certain aspects of the proposal could help mitigate those concerns.

First, despite the removal of obvious and catastrophic error protection during Limit States and Straddle States, the Exchange states that there are additional measures in place designed to protect investors. For example, the Exchange states that by rejecting market orders and cancelling pending market orders, only those orders with a limit price will be executed during a Limit State or Straddle State. The Exchange also notes that, pursuant to ISE Rule 705(d), the Exchange may compensate Members for losses resulting directly from the malfunction of the Exchange's systems, and that this protection is independent from ISE Rule 720. Additionally, the Exchange notes the existence of SEC Rule 15c3–5 requiring broker-dealers to have controls and procedures in place that are reasonably designed to prevent the entry of erroneous orders. Finally, with respect to limit orders that will be executable during Limit States and Straddle States, the Exchange states that it applies price checks to limit orders that are priced sufficiently far through the NBBO. Therefore, on balance, the Exchange believes that removing the potential inequity of nullifying or adjusting executions occurring during Limit States or Straddle States outweighs any potential benefits from applying Rule 720 during such unusual market conditions.

The Exchange also noted that during the pilot period it will evaluate whether adopting a provision that permits the Exchange to review trades on its own motion trades during Limit and Straddle states is necessary and appropriate.

Finally, the Exchange has proposed that the changes be implemented on a one year pilot basis. The Commission believes that it is important to implement the proposal as a pilot. The one year pilot period will allow the Exchange time to assess the impact of the Plan on the options marketplace and allow the Commission to further evaluate the effect of the proposal prior to any proposal or determination to make the changes permanent. To this end, in Amendment No. 2, the Exchange has committed to: (1) evaluate the options market quality during Limit States and Straddle States; (2) assess the character of incoming order flow and transactions during Limit States and Straddle States; and (3) review any complaints from members and their customers concerning executions during Limit States and Straddle States. Additionally, the Exchange has agreed to provide the Commission with data requested to evaluate the impact of the elimination of the obvious error rule, including data relevant to assessing the various analyses noted above. On April 4, 2013, the Exchange submitted a letter stating that it would provide specific data to the Commission and the public and certain analysis to the Commission to evaluate the impact of Limit States and Straddle States on liquidity and market quality in the options markets.[24]

[23] 15 U.S.C. 78f(b)(5).

[24] In particular, the Exchange represented that, at least two months prior to the end of the one year pilot period of proposed Rule 703A(d), it would provide to the Commission an evaluation of (i) the statistical and economic impact of Straddle States on liquidity and market quality in the options market and (ii) whether the lack of obvious error rules in effect during the Limit States and Straddle States are problematic. In addition, the Exchange represented that each month following the adoption of the proposed rule change it would provide to the Commission and the public a dataset containing certain data elements for each Limit State and Straddle State in optionable stocks. The Exchange stated that the options included in the dataset will be those that meet the following conditions: (i) the options are more than 20% in the money (strike price remains greater than 80% of the last stock trade price for calls and strike price remains greater than 120% of the last stock trade price for puts when the Limit State or Straddle State is reached); (ii) the option has at least two trades during the Limit State or Straddle State; and (iii) the top ten options (as ranked by overall contract volume on that day) meeting the conditions listed above. For each of those options affected, each dataset will include, among other information: stock symbol, option symbol, time at the start of the Limit State or Straddle State and an indicator for whether it is a Limit State or Straddle State. For activity on the Exchange in the relevant options, the Exchange has agreed to provide executed volume, time-weighted quoted bid-ask spread, time-weighted average quoted depth at the bid, time-weighted average quoted depth at the offer, high execution price, low execution price, number of trades for which a request for review for error was received during Limit States and Straddle States, an indicator

This will allow the Commission, the Exchange, and other interested parties to evaluate the quality of the options markets during Limit States and Straddle States and to assess whether the additional protections noted by the Exchange are sufficient safeguards against the submission of erroneous trades, and whether the Exchange's proposal appropriately balances the protection afforded to an erroneous order sender against the potential hazards associated with providing market participants additional time to review trades submitted during a Limit State or Straddle State.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act [25] for approving the proposed rule change on an accelerated basis. This proposal is related to the Plan, which will become operative on April 8, 2013. Without accelerated approval, the proposed rule change would take effect after the Plan's implementation date. Accordingly, the Commission finds that good cause exists for approving the proposed rule change, as modified by Amendments Nos. 1 and 2, on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [26] that the proposed rule change (SR–ISE–2013–22), as modified by Amendments Nos. 1 and 2, is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[27]

Kevin M. O'Neill,

Deputy Secretary.

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variable for whether those options outlined above have a price change exceeding 30% during the underlying stock's Limit State or Straddle State compared to the last available option price as reported by OPRA before the start of the Limit or Straddle state (1 if observe 30% and 0 otherwise), and another indicator variable for whether the option price within five minutes of the underlying stock leaving the Limit State or Straddle State (or halt if applicable) is 30% away from the price before the start of the Limit State or Straddle State. *See* ISE Letter, *supra* note 7.

[25] 15 U.S.C. 78s(b)(2).

[26] 15 U.S.C. 78f(b)(2).

[27] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69320; File No. SR–MIAX–2013–13]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish an Administrative Information Subscriber (AIS) and AIS Port Fees

April 5, 2013.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 25, 2013, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to add a new category of MIAX participant, an Administrative Information Subscriber, as defined below, and to establish testing and AIS Port Fees for such new participants who wish to receive administrative information (described more fully below) via connectivity with the MIAX System. The Exchange also proposes technical amendments to the Fee Schedule as described below.

While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 1, 2013.

The text of the proposed rule change is provided in *Exhibit 5*. The text of the proposed rule change is also available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to add a new category of MIAX participant, an Administrative Information Subscriber (''AIS''), as defined below, and to establish testing and AIS Port Fees for such new participants who wish to receive administrative information (described more fully below) via connectivity with the MIAX System.

Concurrently with the instant proposal, the Exchange filed a proposed rule change to establish fees for distributors of the MIAX Top of Market data product (''ToM'').[3] ToM provides distributors with a direct data feed that includes the Exchange's best bid and offer, with aggregate size, and last sale information, based on displayable order and quoting interest on the Exchange.

In addition to MIAX's best bid and offer, with aggregate size and last sale information, distributors that subscribe to ToM also receive: opening imbalance condition information; opening routing information; Expanded Quote Range [4] information, as provided in MIAX Rule 503(f)(5); Post-Halt Notification,[5] as provided in MIAX Rule 504(d); and Liquidity Refresh [6] condition

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* SR–MIAX–2013–14.

[4] Where there is an imbalance at the price at which the maximum number of contracts can trade that is also at or within the highest valid width quote bid and lowest valid width quote offer, the System will calculate an Expanded Quote Range (''EQR''). The EQR will be recalculated any time a Route Timer or Imbalance Timer expires if material conditions of the market (imbalance size, ABBO price or size, liquidity price or size, etc.) have changed during the timer. Once calculated, the EQR will represent the limits of the range in which transactions may occur during the opening process. *See* Exchange Rule 503(f)(5).

[5] After the Exchange has determined to end a trading system halt, the System will broadcast to subscribers of the Exchange's data feeds, a Post-Halt Notification. *See* Exchange Rule 504(d).

[6] If a Market Maker quote was all or part of the MIAX Best Bid or Offer (''MBBO'') and the Market Maker's quote was exhausted by the partial execution of the initiating order, the System will

Continued

information, as provided in MIAX Rule 515(c)(1)(iii)(A). This additional information (the ''administrative information'') is included in the ToM feed and is not top of market information. The administrative information is also currently available to MIAX Market Makers via connectivity with the MIAX Express Interface (''MEI''),[7] for which they are assessed connectivity fees.

In order to accommodate those who wish to receive the administrative information but who do not wish to subscribe to the ToM product or register as a MIAX Market Maker, the Exchange will make the administrative information available to any participant via connectivity with an AIS Port, as described below.

AIS

An AIS is a market participant that connects with the MIAX System for purposes of receiving the administrative information described above. Thus, an AIS that elects not to receive the top of market data through a subscription to ToM or act as a MIAX Market Maker will be able receive [sic] the administrative information via connectivity to the MIAX System through an AIS Port.[8]

API Testing and Certification Fee

An AIS, whether a MIAX Member or non-Member, will be assessed a one-time Application Programming Interface (''API'') Testing and Certification fee of $1,000.00. An API makes it possible for Member or non-Member software to communicate with Exchange software applications, and is subject to Member testing with, and certification by, the Exchange. The fee represents costs incurred by the Exchange as it works with each Member while testing and certifying that the Member's software systems communicate properly with MIAX.

The Exchange proposes a lower API Testing and Certification Fee for an AIS than that which is already in place for other participants such as Third Party Vendors and Market Makers who are subscribers of MIAX's market and other data feeds. The higher fee charged to such participants reflects the greater amount of time spent by MIAX employees testing and certifying them due to the additional testing complexity of those feeds or configurations. Also, because third party vendors are redistributing data and reselling services to other market participants, the number and types of scenarios that need to be tested are more numerous and complex than those tested and certified for an AIS. Therefore, the Exchange believes that the proposed $1,000 API Testing and Certification Fee for an AIS is reasonable and not unfairly discriminatory.

Monthly System Connectivity Fees

MIAX will assess a monthly Network Connectivity Fee of $1,000.00 for a one Gigabit connection, and $5,000.00 for a ten Gigabit connection to an AIS, whether such AIS is a MIAX Member or non-Member. Respecting Members, the Exchange charges the same monthly Network Connectivity Fee to all individual firms, which would include an AIS. Respecting non-Members, the Exchange charges Service Bureaus[9] and Extranet Providers a higher fee of $2,000.00 for a one Gigabit connection, and $10,000.00 for a ten Gigabit connection.

MIAX proposes to assess a lower fee to an AIS than to non-Member Service Bureaus and Extranet Providers to reflect the fact that Service Bureaus and Extranet Providers serve as conduits to MIAX Members that do not have their own proprietary systems or do not directly connect to MIAX. The Service Bureaus and Extranet Providers recover the cost of the MIAX Network Connectivity fee from their customers, resulting in a lower overall fee to an AIS.

The Member Network Connectivity fee will be pro-rated for a new AIS Member or non-Member connecting to the MIAX System based on the number of trading days on which the AIS received administrative information by way of connectivity with MIAX, divided by the total number of trading days in such month, multiplied by the monthly rate.

Port Fees

The Exchange will assess monthly AIS Port Fees for the use of AIS Ports, which provide an AIS with the connectivity necessary to receive the administrative information from the MIAX System.

The Exchange will assess monthly AIS Port fees based upon the number of Exchange matching engines[10] to which an AIS connects. An AIS will be allocated two AIS ports for each matching engine they use. For example, an AIS that wishes to receive administrative information in just one symbol would require the two AIS ports in a single matching engine; an AIS wishing to receive the administrative information in all symbols traded on the Exchange would require the two AIS Ports in each of the Exchange's matching engines.

The Exchange will assess a monthly AIS Port fee of $1,000.00 to an AIS for the first matching engine on which an AIS has the two ports, $250.00 each for the second through fifth matching engines on which the AIS has the two ports, and $125.00 each for the sixth matching engine and any additional matching engines on which the AIS has the two ports.

The Exchange proposes to assess lower AIS Port Fees than it assesses for Market Maker MEI Port Fees because Market Makers will use the MEI connectivity to submit quotes, whereas an AIS will not. The higher charge for MEI Port Fees reflects the greater amount of Exchange infrastructure that will be used by Market Makers in submitting quotes as compared to the infrastructure needed by an AIS (who will not submit quotes), and the greater amount of time spent by MIAX employees engaged in support, maintenance, quality control and other services on behalf of Market Makers.

Technical Amendments to the Fee Schedule

The Exchange also proposes a technical amendment to the Fee Schedule by deleting obsolete provisions stating that monthly FIX, MEI, fees and MIAX Member Participant Identifier (''MPID'') fees will be in effect beginning January 1, 2013, and stating that Clearing Trade Drop Port Fees will be Effective February 1, 2013. The Exchange also proposes to delete language from the Fee Schedule that states that MEI Port fees will be capped at $1,000 per month per Market Maker until the first full calendar month during which the Exchange lists and trades options overlying at least 100

pause the market for a time period not to exceed one second to allow additional orders or quotes refreshing the liquidity at the MBBO to be received (''liquidity refresh pause''). *See* Exchange Rule 515(c)(1)(iii)(A).

[7] An MEI Port provides a Market Maker with the connectivity necessary to submit electronic quotes to the MIAX System.

[8] An AIS Port provides an AIS with the connectivity necessary to receive the administrative information from the MIAX System.

[9] A Service Bureau is a technology provider that offers and supplies technology and technology services to a trading firm that does not have its own proprietary system.

[10] A ''matching engine'' is a part of the MIAX electronic system that processes options quotes and trades on a symbol-by-symbol basis. Some matching engines process option classes with multiple root symbols, and other matching engines are dedicated to one single option root symbol (for example, options on SPY are processed by one single matching engine that is dedicated only to SPY options). A particular root symbol may only be assigned to a single designated matching engine. A particular root symbol may not be assigned to multiple matching engines.

underlying securities. The January 1, 2013 and February 1, 2013 effective dates are no longer relevant, and the Exchange currently lists and trades options overlying more than 100 underlying securities, thus obviating the need for this provision.

2. Statutory Basis

The Exchange believes that its proposal to amend its Fee Schedule is consistent with Section 6(b) of the Act [11] in general, and furthers the objectives of Section 6(b)(4) and 6(b)(5) of the Act [12] in particular, in that it is an equitable allocation of reasonable fees and other charges.

An AIS may access the same administrative information as any other participant that connects with the MIAX System. Currently, MIAX assesses monthly MEI Port Fees on Market Makers as set forth in the Fee Schedule. An MEI Port provides a Marker Maker with necessary connectivity to submit quotes. The Exchange believes that the proposed testing, connectivity and AIS Port fees to AIS' is reasonable and not unfairly discriminatory because an AIS will still require connectivity in order to receive the administrative information, necessitating Exchange expense for servers, configuration, testing, power, maintenance, and quality control, among other things, that is incurred for anyone connecting to the MIAX System.

The Exchange further believes that the proposed lower monthly AIS Port Fees are equitable and not unfairly discriminatory because of the reduced Exchange expense for servers, configuration, testing, power, maintenance, and quality control that is required for an AIS connecting to an AIS Port vis-à-vis Market Makers connecting with the MIAX System through the MEI Port.

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. On the contrary, because an AIS will only receive administrative information via the AIS Port, and will not submit competing quotes with MIAX Market Makers or other market participants, the Exchange believes that the proposed rule change will have no effect on competition in the markets.

[11] 15 U.S.C. 78f(b).

[12] 15 U.S.C. 78f(b)(4) and (5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[13] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–MIAX–2013–13 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2013–13. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2013–13 and should be submitted on or before May 2, 2013.

[13] 15 U.S.C. 78s(b)(3)(A)(ii).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08487 Filed 4–10–13; 8:45 am]

BILLING CODE 8011–01–P

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69308; File No. SR–NASDAQ–2013–057]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Rule 7018 To Establish Fees and Rebates in Connection With NASDAQ's Retail Price Improvement (''RPI'') Program

April 4, 2013.

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 March 27, 2013, The NASDAQ Stock Market LLC (''Exchange'' or ''NASDAQ'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. 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

NASDAQ is proposing changes to amend NASDAQ Rule 7018 to establish fees and rebates in connection with NASDAQ's Retail Price Improvement (''RPI'') Program. NASDAQ proposes to implement the proposed rule change on March 28, 2013, contemporaneously with the launch of the RPI Program.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.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. 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 NASDAQ Rule 7018 to establish fees and rebates for execution of orders under NASDAQ's recently approved RPI Program.[3] Under the RPI Program, a member (or a division thereof) approved by the Exchange to participate in the program (a ''Retail Member Organization'' or ''RMO'') may submit designated ''Retail Orders'' [4] for the purpose of seeking price improvement. All NASDAQ members may enter retail price improvement orders (''RPI Orders''),[5] a form of non-displayed orders that are priced more aggressively than the Protected National Best Bid or Offer (''NBBO'') by at least $0.001 per share, for the purpose of offering such price improvement. RMOs may use two types of Retail Order. A Type 1 Retail Order is eligible to execute only against RPI Orders and other orders (such as midpoint pegged orders) that will provide price improvement. Type 2 Retail Orders interact first with available RPI Orders and other price improving orders, and then are eligible to access non-price improving liquidity on the NASDAQ book and to route to other trading venues if so designated.

NASDAQ proposes to offer a rebate of $0.0025 per share executed to RMOs with respect to Retail Orders that execute against RPI Orders or other orders providing price improvement with respect to the NBBO. For Type 2 Retail Orders that execute against non-price improving orders on the NASDAQ book, NASDAQ will charge the fee otherwise applicable to execution of orders that access liquidity (generally, $0.0030 per share executed). Similarly, when Type 2 Retail Orders are routed and execute at another trading venue, NASDAQ will charge the fee otherwise applicable to execution of routed orders. For RPI orders that provide liquidity, NASDAQ will charge a fee of $0.0020 per share executed. Other orders that provide liquidity to Retail Orders will receive the credit or pay the fee otherwise applicable to orders that provide liquidity.

2. Statutory Basis

NASDAQ believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[6] in general, and with Sections 6(b)(4) and 6(b)(5) of the Act,[7] 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 not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed fees with respect to the RPI program are reflective of NASDAQ's ongoing efforts to use pricing incentive programs to attract orders of retail customers to NASDAQ and improve market quality. The goal of this program and similar pricing incentives is to provide meaningful incentives for members that represent the orders of retail customers to increase their participation on NASDAQ. The proposed credit of $0.0025 per share executed with respect to Retail Orders that access liquidity offering price improvement is reasonable because it will result in a significant reduction of fees with respect to such orders, thereby reducing the costs of members that represent retail customers and that take advantage of the program, and potentially also reducing costs to the customers themselves. The change is consistent with an equitable allocation of fees because NASDAQ believes that it is reasonable to use fee reductions as a means to encourage greater retail participation in NASDAQ. Because retail orders are likely to reflect long-term investment intentions, they promote price discovery and dampen volatility. Accordingly, their presence in the NASDAQ market has the potential to benefit all market participants. For this reason, NASDAQ believes that it is equitable to provide significant financial incentives to encourage greater retail participation in the market. NASDAQ further believes that the proposed program is not unreasonably discriminatory because it is offered to firms representing retail customers without regard to the firm's trading volumes, and is therefore complementary to existing programs, such as the Routable Order Program (the ''ROP'') that already aim to encourage greater retail participation but that have minimum volume requirements associated with them. The proposed fees and credits with respect to Type 2 Retail Orders that execute outside of the RPI program by accessing non-price improving liquidity or by routing to other trading venues are reasonable, equitably allocated, and not unreasonably discriminatory because they do not reflect a change from the fees and credits currently in effect with respect to orders that access liquidity on NASDAQ or route.

The proposed fee with respect to a Retail Price Improvement Order that provides liquidity is reasonable because, as previously recognized by the Commission, it reflects the fact that markets often seek to distinguish between orders of individual retail investors and orders of professional traders.[8] In this instance, the RPI seeks to balance the consideration that ''retail investors may on average be less informed about short-term price movements * * * [than] professional

[3] Securities Exchange Act Release No. 68937 (February 15, 2013), 78 FR 12397 (February 22, 2013) (SR–NASDAQ–2012–129) (approving RPI program and granting exemption from SEC Rule 612 under Regulation NMS, 17 CFR 242.612, in connection therewith).

[4] A Retail Order is defined in NASDAQ Rule 4780(a)(2), in part, as ''an agency or riskless principal order that originates from a natural person and is submitted to Nasdaq by a Retail Member Organization, provided that no change is made to the terms of the order with respect to price (except in the case that a market order is changed to a marketable limit order) or side of market and the order does not originate from a trading algorithm or any other computerized methodology.''

[5] A Retail Price Improvement Order is defined in NASDAQ Rule 4780(a)(3), in part, as consisting of ''non-displayed liquidity on NASDAQ that is priced better than the Protected NBBO by at least $0.001 and that is identified as such.''

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4) and (5).

[8] Securities Exchange Act Release No. 67347 (July 3, 2012), 77 FR 40763, 40769–40680 (July 10, 2012) (SR–NYSE–2011–55; SR–NYSEAmex–2011–84).

traders'' [9] with a fee charged to liquidity providers and a program designed to provide retail investors with price improvement and favorable execution prices. NASDAQ further believes that the fee charged with respect to Retail Price Improvement Orders is equitable and not unreasonably discriminatory for this same reason, and also because the use of such orders by liquidity providers is voluntary. Firms that believe that potential advantages of interacting with Retail Orders outweigh the costs of price improvement and the fee charged by NASDAQ will employ this new order type. Those that do not are free to forego involvement in the program and receive a rebate under NASDAQ's standard price schedule when providing liquidity.

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 to allow NASDAQ to compete with other exchanges and that offer similar price improvement programs for retail orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASDAQ 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. In this instance, the introduction of the RPI program is designed to allow NASDAQ to compete more effectively with the New York Stock Exchange (''NYSE'') and the BATS–Y Exchange, both of which offer similar programs designed to attract retail order flow. NASDAQ has structured its fees in a manner similar to these exchanges, but as a new ''entrant'' in the field of those exchanges offering such programs, NASDAQ has set the levels of its credits and fees somewhat differently in an effort to distinguish itself from its competitors. Specifically, NASDAQ will offer a higher credit to Retail Orders than NYSE, and will offer the credit with respect to all securities priced above $1 that it trades. In contrast, the BATS–Y Exchange offers a higher credit with respect to only certain securities. NASDAQ will, however, offset these higher credits for retail orders by charging a higher fee to liquidity providers than is the case with its competitors (with the exception of 10 designated securities with respect to which the BATS–Y Exchange currently charges a higher fee). NASDAQ believes that the proposed higher credits with respect to Retail Orders will enhance competition by drawing additional retail order flow to NASDAQ and possibly encouraging other trading venues to make competitive pricing changes. On the other hand, with respect to the proposed fees for Retail Price Improvement Orders, because the market for order execution is extremely competitive, members that provide liquidity may readily opt to forego participation in the NASDAQ program if they believe that alternatives offer them better value. For these reasons and the reasons discussed in connection with the statutory basis for the proposed rule change, NASDAQ does not believe that the proposed changes will impair the ability of members or competing order execution venues to maintain their competitive standing in the financial markets.

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) of the Act [10] and paragraph (f) of Rule 19b–4 thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NASDAQ–2013–057 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–057. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–NASDAQ–2013–057 and should be submitted on or before May 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08425 Filed 4–10–13; 8:45 am]

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[9] *Id.*

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69324; File No. SR–EDGX–2013–12]

Self-Regulatory Organizations; EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendments to the EDGX Exchange, Inc. Fee Schedule

April 5, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2013, EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which items have been prepared by the 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 amend its fees and rebates applicable to Members [3] of the Exchange pursuant to EDGX Rule 15.1(a) and (c). All of the changes described herein are applicable to EDGX Members. The text of the proposed rule change is available on the Exchange's Internet Web site at *www.directedge.com*, at the Exchange's principal office, and at the Public Reference Room of the Commission.

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 these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to add an additional tier, the Growth Tier, to Footnote 1 of its fee schedule. Such tier would provide Members a rebate of $0.0025 per share for liquidity added on EDGX if on a daily basis, measured monthly, they post 5,000,000 shares or more of average daily volume (''ADV'') to EDGX.

Secondly, the Exchange currently provides a rebate of $0.0032 per share for Retail Orders, as defined in Footnote 4 of the Exchange's fee schedule, that add liquidity to EDGX. The Exchange currently offers a Retail Order Tier whereby Members are provided a rebate of $0.0034 per share if they add an ADV of Retail Orders (Flag ZA) that is 0.25% or more of the Total Consolidated Volume (''TCV'') on a daily basis, measured monthly. The Exchange proposes to lower the criteria to satisfy this tier to ''an average daily volume of Retail Orders that is *0.10%* or more of the TCV on a daily basis, measured monthly.'' (emphasis added).

The Exchange proposes to implement these amendments to its fee schedule on April 1, 2013.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[4] in general, and furthers the objectives of Section 6(b)(4),[5] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange believes that the addition of the Growth Tier represents an equitable allocation of reasonable dues, fees, and other charges because it incentivizes Members to add liquidity to the EDGX Book.[6] Furthermore, such increased volume would increase potential revenue to the Exchange and would allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs in turn would allow the Exchange to pass on the savings to Members in the form of higher rebates and lower fees. The increased liquidity benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based rebates such as the one proposed to be amended herein have been widely adopted in the cash equities markets, and are equitable because they are open to all Members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes. In addition, the Exchange also believes that these proposed amendments are non-discriminatory because they apply uniformly to all Members.

The Exchange also believes that the proposed rebate of $0.0025 per share for the Growth Tier and volume thresholds that require Members to add an ADV of 5,000,000 shares or more also represents an equitable allocation of reasonable dues, fees, and other charges since higher (lower) rebates are directly correlated with more (less) stringent criteria. As explained in detail below, the proposed Growth Tier rebate of $0.0025 per share will have the least stringent criteria associated with it, and Members will receive $0.0003 less per share than the next best tiered rebates of $0.0028 per share (the Super Tier and an un-named tier in Footnote 1 of the Exchange's fee schedule in which a Member must post 0.065% of the TCV in ADV more than their February 2011 ADV added to EDGX).

In order to qualify for the next best tier after the Growth Tier, the Super Tier (rebate of $0.0028), a Member must post double the number of shares (i.e., 10,000,000 shares or more of ADV to EDGX) than that required to qualify for the Growth Tier.

In addition, the Exchange believes that the proposed rebate is reasonable in that it is in line with the BATS Exchange, Inc.'s (''BZX Exchange'') default rebate of $0.0025 per share for adding displayed liquidity to the BZX Exchange order book for members that do not satisfy a volume tier.[7]

The Exchange believes that reducing the percentage of TCV required to achieve the Retail Order Tier from 0.25% to 0.10% for Members' Retail Orders that add liquidity (Flag ZA) is reasonable, equitable and not unfairly discriminatory because it would

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As defined in Exchange Rule 1.5(n).

[4] 15 U.S.C. 78f.

[5] 15 U.S.C. 78f(b)(4).

[6] As defined in Exchange Rule 1.5(d).

[7] *See* BATS Exchange, Inc., BATS BZX Exchange Fee Schedule, *http://cdn.batstrading.com/resources/regulation/rule_book/BATS-Exchanges_Fee_Schedules.pdf.*

continue to encourage Members to send additional Retail Orders that add liquidity to the Exchange for execution in order to qualify for an incrementally higher rebate for such executions that add liquidity on the Exchange if Members satisfy the conditions of the Retail Order Tier.

The potential for increased volume from Retail Orders would increase potential revenue to the Exchange, and allow the Exchange to spread its administrative and infrastructure costs over a greater number of shares, leading to lower per share costs. These lower per share costs in turn would allow the Exchange to pass on the savings to Members in the form of lower fees. The increased liquidity benefits all investors by deepening EDGX's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. Volume-based rebates such as the one proposed herein have been widely adopted in the cash equities markets, and are equitable because they are open to all Members on an equal basis and provide discounts that are reasonably related to the value to an exchange's market quality associated with higher levels of market activity, such as higher levels of liquidity provision and introduction of higher volumes of orders into the price and volume discovery processes.

The Exchange believes that reducing the percentage of TCV required to achieve the Retail Order Tier from 0.25% to 0.10% for Members' Retail Orders that add liquidity (Flag ZA) is reasonable, equitable and not unfairly discriminatory because this percentage continues to be within a range that the Exchange believes would incentivize Members to submit Retail Orders to the Exchange in order to qualify for the applicable rebate of $0.0034 per share. The Exchange notes that certain other existing pricing tiers within its fee schedule make rebates available to Members that are also based on the Member's level of activity as a percentage of TCV. These existing percentage thresholds, depending on other related factors and the level of the corresponding rebates, are both higher and lower than the 0.10% proposed herein.[8] Moreover, like existing pricing on the Exchange that is tied to Member's volume levels as a percentage of TCV, the proposed Retail Order Tier continues to be equitable and not unfairly discriminatory because it is available to all Members on an equal and non-discriminatory basis.

The Exchange notes that a significant percentage of the orders of individual investors are executed over-the-counter.[9] The Exchange believes that it is thus appropriate to continue to create a financial incentive to bring more retail order flow to a public market, such as the Exchange, over off-exchange venues. The Exchange believes that investor protection and transparency is promoted by rewarding displayed liquidity on exchanges over off-exchange executions. In this regard, the Exchange believes that maintaining or increasing the proportion of Retail Orders in exchange-listed securities that are executed on a registered national securities exchange (rather than relying on certain available off-exchange execution methods) would contribute to investors' confidence in the fairness of their transactions and would benefit all investors by deepening the Exchange's liquidity pool, supporting the quality of price discovery, promoting market transparency and improving investor protection.

The Exchange also notes that the Retail Order Tier is reasonable in that NYSE Arca, Inc. (''NYSE Arca'') offers a comparable Retail Order Tier (with an analogous Retail Order definition) that provides a rebate of $0.0033 per share for its Retail Orders that provide liquidity on NYSE Arca in Tapes A, B and C securities for ETP Holders that execute an ADV of Retail Orders that is 0.20% or more of the TCV.[10] In addition, The NASDAQ Stock Market LLC (''Nasdaq'') offers its members a rebate of $0.0034 per share for Designated Retail Orders, as defined by Nasdaq, that are displayed orders that provide liquidity if a member enters Designated Retail Orders through an MPID through which (i) at least 90% of the shares of liquidity provided during the month are provided through Designated Retail Orders, and (ii) the members access, provide, or route shares of liquidity that represent at least 0.10% of TCV during the month.[11]

The Exchange also notes that it operates in a highly-competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive. The proposed rule change reflects a competitive pricing structure designed to incent market participants to direct their order flow to the Exchange. The Exchange believes that the proposed rates are equitable and non-discriminatory in that they apply uniformly to all Members. The Exchange believes the fees and credits remain competitive with those charged by other venues and therefore continue to be reasonable and equitably allocated to Members.

B. Self-Regulatory Organization's Statement on Burden on Competition

These proposed rule changes do not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe these changes represent a significant departure from previous pricing offered by the Exchange or pricing offered by the Exchange's competitors. Additionally, Members may opt to disfavor EDGX's pricing if they believe that alternatives offer them better value. Accordingly, EDGX does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets.

Regarding the Retail Order Tier, the Exchange believes that its proposal to amend the criteria to achieve the tier will increase competition for Retail Orders because the proposed Retail Order Tier is comparable in price and criteria to Nasdaq's retail order tier. The Exchange believes its proposal will not burden intramarket competition given that the Exchange's rates apply uniformly to all Members.

Regarding the Exchange's proposed Growth Tier, the Exchange believes its proposal will not burden competition but rather increase competition with the Exchange's competitors that offer similar tiers and rebates. The Exchange believes its proposal will not burden

[8] *See* for example, the Market Depth Tier Rebate ($0.0033 per share rebate), Mega Tier rebate ($0.0032 per share), Ultra Tier rebate ($0.0031 per share rebate), and Super Tier rebate ($0.0031 per share rebate) that are all tied to a percentage of TCV.

[9] *See* Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (January 14, 2010), 75 FR 3594 (January 21, 2010) (noting that dark pools and internalizing broker-dealers executed approximately 25.4% of share volume in September 2009). *See also* Mary L. Schapiro, Strengthening Our Equity Market Structure (Speech at the Economic Club of New York, Sept. 7, 2010) (available on the Commission's Web site). In her speech, Chairman Schapiro noted that nearly 30 percent of volume in U.S.-listed equities was executed in venues that do not display their liquidity or make it generally available to the public and the percentage was increasing nearly every month.

[10] *See* Securities Exchange Act Release No. 69134 (March 14, 2013), 78 FR 17247 (March 20, 2013) (SR–NYSEArca–2013–24). *See also,* NYSE Arca Equities, Inc., Schedule of Fees and Charges for Exchange Services, *https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_arca_marketplace_fees_3_1_13.pdf.*

[11] *See* Securities Exchange Release No. 69133 (March 14, 2013), 78 FR 17272 (March 20, 2013) (SR–NASDAQ–2013–42). Nasdaq, Price List—Trading and Connectivity, *http://www.nasdaqtrader.com/Trader.aspx?id=PriceListTrading2.*

intramarket competition given that the Exchange's rates apply uniformly to all Members.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [12] and Rule 19b–4(f)(2) [13] thereunder. 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–EDGX–2013–12 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–EDGX–2013–12. 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–EDGX–2013–12 and should be submitted on or before May 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[14]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08470 Filed 4–10–13; 8:45 am]

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[12] 15 U.S.C. 78s(b)(3)(A).

[13] 17 CFR 240.19b–4 (f)(2).

[14] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69315; File No. SR–NYSEArca–2013–37]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Establishing Non-Display Usage Fees for NYSE Arca Integrated Feed, NYSE ArcaBook, NYSE Arca Trades, and NYSE Arca BBO, and a Redistribution Fee for NYSE ArcaBook

April 5, 2013.

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 March 28, 2013, 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 establish non-display usage fees for NYSE Arca Integrated Feed, NYSE ArcaBook, NYSE Arca Trades, and NYSE Arca BBO, all of which will be operative on April 1, 2013, and a redistribution fee for NYSE ArcaBook, which will be operative on July 1, 2013. The text of the proposed rule change is available on the Exchange's Web site at *www.nyse.com,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of those statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to establish non-display usage fees for NYSE Arca Integrated Feed, NYSE ArcaBook, NYSE Arca Trades, and NYSE Arca BBO, all of which will be operative on April 1, 2013, and a redistribution fee for NYSE ArcaBook, which will be operative on July 1, 2013. The subsections below describe (1) The background on the current fees for these real-time products; (2) the rationale for creating a new non-display usage fee structure; (3) the proposed fees for non-display use, which will include internal non-display use and managed non-display use; (4) the proposed redistribution fee for NYSE ArcaBook; and (5) examples comparing the current and proposed fees.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

Background on Current Fees

The current monthly fees for NYSE Arca Integrated Feed,[4] NYSE ArcaBook,[5] NYSE Arca BBO,[6] and NYSE Arca Trades[7] are as follows:

Product	Access fee	Subscriber fees	Digital media enterprise fee	Redistribution fee
NYSE Arca Integrated Feed[8].	$3,000	Professional: $40 Non-professional: $20.	N/A	$3,000
NYSE ArcaBook	$750	Tape A & B Securities (including ETFs) Professional: $15. Non-professional: $5. Tape C Securities (excluding ETFs) Professional: $15. Non-professional: $5. Non-professional Fee Cap: $20,000.	NA	NA
NYSE Arca BBO	$750	Professional: $10 Non-professional: $5	NA	NA
NYSE Arca Trades	[9] $750	Professional: $10	$20,000	* $750

* (Operative May 1, 2013).

While the majority of subscribers pay the subscriber fee for each display or non-display device that has access to NYSE Arca BBO and NYSE Arca Trades as set forth above, a small number of vendors and subscribers are eligible for, and have elected, the NYSE Arca Unit-of-Count Policy that was first introduced by the Exchange's affiliate, New York Stock Exchange LLC (''NYSE''), 2009[10] and is now also available for NYSE Arca BBO and NYSE Arca Trades.[11] Under this fee structure, these vendors and subscribers are subject to a fee structure that utilizes the following basic principles:

i. Vendors.

• ''Vendors'' are market data vendors, broker-dealers, private network providers, and other entities that control Subscribers' access to a market data product through Subscriber Entitlement Controls (as described below).

ii. Subscribers.

• ''Subscribers'' are unique individual persons or devices (which include both display and non-display devices) to which a Vendor provides a market data product. Any individual or device that receives the market data product from a Vendor is a Subscriber, whether the individual or device works for or belongs to the Vendor, or works for or belongs to an entity other than the Vendor.

• Only a Vendor may control Subscriber access to the market data product.

• Subscribers may not redistribute the market data product in any manner.

iii. Subscriber Entitlements.

• A Subscriber Entitlement is a Vendor's permitting a Subscriber to receive access to the market data product through an Exchange-approved Subscriber Entitlement Control.

• A Vendor may not provide access to a market data product to a Subscriber except through a unique Subscriber Entitlement.

• The Exchange will require each Vendor to provide a unique Subscriber Entitlement to each unique Subscriber.

• At prescribed intervals (normally monthly), the Exchange will require each Vendor to report each unique Subscriber Entitlement.

iv. Subscriber Entitlement Controls.

• A Subscriber Entitlement Control is the Vendor's process of permitting Subscribers' access to a market data product.

• Prior to using any Subscriber Entitlement Control or changing a previously approved Subscriber Entitlement Control, a Vendor must provide the Exchange with a demonstration and a detailed written description of the control or change and the Exchange must have approved it in writing.

• The Exchange will approve a Subscriber Entitlement Control if it allows only authorized, unique end-users or devices to access the market data product or monitors access to the market data product by each unique end-user or device.

• Vendors must design Subscriber Entitlement Controls to produce an audit report and make each audit report available to the Exchange upon request. The audit report must identify:

• Each entitlement update to the Subscriber Entitlement Control;

• The status of the Subscriber Entitlement Control; and

• Any other changes to the Subscriber Entitlement Control over a given period.

• Only the Vendor may have access to Subscriber Entitlement Controls.

Vendors must count every Subscriber Entitlement, whether it be an individual person or a device. Thus, the Vendor's count would include every person and device that accesses the data regardless of the purpose for which the individual or device uses the data.

Vendors must report all Subscriber Entitlements in accordance with the following:

i. In connection with a Vendor's external distribution of the market data product, the Vendor should count as one Subscriber Entitlement each unique Subscriber that the Vendor has entitled to have access to the market data product. However, where a device is dedicated specifically to a single individual, the Vendor should count only the individual and need not count the device.

ii. In connection with a Vendor's internal distribution of a market data product, the Vendor should count as one Subscriber Entitlement each unique individual (but not devices) that the Vendor has entitled to have access to such market data.

iii. The Vendor should identify and report each unique Subscriber. If a Subscriber uses the same unique Subscriber Entitlement to gain access to multiple market data services, the Vendor should count that as one Subscriber Entitlement.

However, if a unique Subscriber uses multiple Subscriber Entitlements to gain access to one or more market data services (e.g., a single Subscriber has multiple passwords and user identifications), the Vendor should report all of those Subscriber Entitlements.

iv. Vendors should report each unique individual person who receives access through multiple devices as one Subscriber Entitlement so long as each device is dedicated specifically to that individual.

v. The Vendor should include in the count as one Subscriber Entitlement devices serving no entitled individuals. However, if the Vendor entitles one or more individuals

[4] *See* Securities Exchange Act Release No. 66128 (Jan. 10, 2012), 77 FR 2331 (Jan. 17, 2012) (SR–NYSEArca–2011–96).

[5] *See* Securities Exchange Act Release No. 63291 (Nov. 9, 2010), 75 FR 70311 (Nov. 17, 2010) (SR–NYSEArca–2010–97).

[6] *See* Securities Exchange Act Release No. 62188 (May 27, 2010), 75 FR 31484 (June 3, 2010) (SR–NYSEArca–2010–23).

[7] *See* SR–NYSEArca–2013–31.

[8] The NYSE Arca Integrated Feed includes: (i) NYSE ArcaBook; (ii) NYSE Arca BBO; (iii) NYSE Arca Trades; and (iv) order imbalance information. *See supra* n.4.

[9] One $750 monthly access fee entitles a vendor to receive both the NYSE Arca BBO data feed as well as the Exchange's NYSE Arca Trades data feed. *See supra* n.6.

[10] *See* Securities Exchange Act Release Nos. 62038 (May 5, 2010), 75 FR 26825 (May 12, 2010) (SR–NYSE–2010–22); 62181 (May 26, 2010), 75 FR 31488 (June 3, 2010) (SR–NYSE–2010–30); and 59290 (Jan. 23, 2009), 74 FR 5707 (Jan. 30, 2009) (SR–NYSE–2009–05).

[11] *See supra* n.6.

to use the same device, the Vendor should include only the entitled individuals, and not the device, in the count.

Rationale for New Non-Display Usage Fee Structure

As noted in the original NYSE Arca Unit-of-Count Policy proposal, ''technology has made it increasingly difficult to define 'device' and to control who has access to devices, [and] the markets have struggled to make device counts uniform among their customers.'' [12] Significant change has characterized the industry in recent years, stemming in large measure from changes in regulation and technological advances, which has led to the rise in automated and algorithmic trading. Additionally, market data feeds have become faster and contain a vastly larger number of quotes and trades. Today, a majority of trading is done by leveraging non-display devices consuming massive amounts of data. Some firms base their business models largely on incorporating non-display data into applications and do not require widespread data access by the firm's employees. Changes in market data consumption patterns have increased the use and importance of non-display data.

Applications that can be used in non-display devices provide added value in their capability to manipulate and spread the data they consume. Such applications have the ability to perform calculations on the live data stream and manufacture new data out of it. Data can be processed much faster by a non-display device than it can be by a human being processing information that he or she views on a data terminal. Non-display devices also can dispense data to multiple computer applications as compared with the restriction of data to one display terminal.

While the non-display data has become increasingly valuable to data recipients who can use it to generate substantial profits, it has become increasing difficult for them and the Exchange to accurately count non-display devices. The number and type of non-display devices, as well as their complexity and interconnectedness, have grown in recent years, creating administrative challenges for vendors, data recipients, and the Exchange to accurately count such devices and audit such counts. Unlike a display device, such as a Bloomberg terminal, it is not possible to simply walk through a trading floor or areas of a data recipient's premises to identify non-display devices. During an audit, an auditor must review a firm's entitlement report to determine usage. While display use is generally associated with an individual end user and/or unique user ID, a non-display use is more difficult to account for because the entitlement report may show a server name or Internet protocol (''IP'') address or it may not. The auditor must review each IP or server and further inquire about downstream use and quantity of servers with access to data; this type of counting is very labor-intensive and prone to inaccuracies.

For these reasons, the Exchange determined that its current fee structure, which is based on counting non-display devices, is no longer appropriate in light of market and technology developments and does not reflect the value of the non-display data and its many profit-generating uses for subscribers. As such, the Exchange, in conjunction with its domestic and foreign affiliate exchanges, undertook a review of its market data policies with a goal of bringing greater consistency and clarity to its fee structure; easing administration for itself, vendors, and subscribers; and setting fees at a level that better reflects the current value of the data provided. As a result of this review, the Exchange has determined to implement a new fee structure for display and non-display use of certain market data products. Initially, the Exchange will implement the new non-display use fee structure for NYSE Arca Integrated Feed, NYSE ArcaBook, NYSE Arca BBO, and NYSE Arca Trades, operative on April 1, 2013. The Exchange anticipates implementing a new display use fee structure later this year; until such time, existing fees for display use will apply.

Proposed Non-Display Usage Fees

The Exchange proposes to establish new monthly fees for non-display usage, which for purposes of the proposed fee structure will mean accessing, processing or consuming an NYSE Arca data product delivered via direct and/or Redistributor [13] data feeds, for a purpose other than in support of its display or further internal or external redistribution. The proposed non-display fees will apply to the non-display use of the data product as part of automated calculations or algorithms to support trading decision-making processes or the operation of trading platforms (''Non-Display Trading Activities''). They include, but are not limited to, high frequency trading, automated order or quote generation and/or order pegging, or price referencing for the purposes of algorithmic trading and/or smart order routing. Applications and devices that solely facilitate display, internal distribution, or redistribution of the data product with no other uses and applications that use the data product for other non-trading activities, such as the creation of derived data, quantitative analysis, fund administration, portfolio management, and compliance, are not covered by the proposed non-display fee structure and are subject to the current standard per-device fee structure. The Exchange reserves the right to audit data recipients' use of NYSE Arca market data products in Non-Display Trading Activities in accordance with NYSE Arca's vendor and subscriber agreements.

There will be two types of fees, which are described below. The first type of fee is for internal non-display use. The second type of fee is for managed non-display services. The current NYSE Arca Unit-of-Count Policy will no longer apply to any non-display usage for NYSE Arca BBO and NYSE Arca Trades.[14]

Proposed Fees for Internal Non-Display Use

The proposed internal non-display use fees will apply to NYSE Arca Integrated Feed, NYSE ArcaBook, NYSE Arca BBO, and NYSE Arca Trades. Internal non-display use occurs when a data recipient either manages its own non-display infrastructure and controls the access to and permissioning of the market data product on its non-display applications or when the data recipient's non-display applications are hosted by a third party that has not been approved to provide the managed non-display services as described below.

The fee structure will have three categories, which recognize the different uses for the market data. Category 1 Fees apply where a data recipient's non-display use of real time market data is for the purpose of principal trading.

[12] *See* Securities Exchange Act Release No. 59544 (Mar. 9, 2009), 74 FR 11162 (Mar. 16, 2009) (SR–NYSE–2008–131). At least one other Exchange also has noted such administrative challenges. In establishing a non-display usage fee for internal distributors of TotalView and OpenView, NASDAQ Stock Market LLC (''NASDAQ'') noted that as ''the number of devices increase, so does the administrative burden on the end customer of counting these devices.'' See Securities Exchange Act Release No. 61700 (Mar. 12, 2010), 75 FR 13172 (Mar. 18, 2010) (SR–NASDAQ–2010–034).

[13] ''Redistributor'' means a vendor or any other person that provides an NYSE Arca data product to a data recipient or to any system that a data recipient uses, irrespective of the means of transmission or access.

[14] Existing customers that are approved for the NYSE Arca Unit-of-Count Policy for NYSE Arca BBO and NYSE Arca Trades display usage may continue to follow that Policy until the new display fees are implemented.

Category 2 Fees apply where a data recipient's non-display use of market data is for the purpose of broker/agency trading, i.e., trading-based activities to facilitate the recipient's customers' business. If a data recipient trades both on a principal and agency basis, then the data recipient must pay both categories of fees. Category 3 Fees apply where a data recipient's non-display use of market data is, in whole or in part, for the purpose of providing reference prices in the operation of one or more trading platforms, including but not limited to multilateral trading facilities, alternative trading systems, broker crossing networks, dark pools, and systematic internalization systems. A data recipient will not be liable for Category 3 Fees for those market data products for which it is also paying Category 1 and/or Category 2 Fees.

The fees for internal non-display use per data recipient organization for each category will be as follows:

Product	Category 1 trading as principal (per month)	Category 2 trading as broker/agency (per month)	Category 3 trading platform (per month)
NYSE Arca Integrated Feed	$5,000	$5,000	$5,000
NYSE ArcaBook	4,000	4,000	4,000
NYSE Arca BBO	1,000	1,000	1,000
NYSE Arca Trades	1,000	1,000	1,000

Subscribers to NYSE Arca Integrated Feed, which includes access to NYSE ArcaBook, NYSE Arca BBO, NYSE Arca Trades, and order imbalance information, are not required to subscribe to these individual services as part of the non-display activity for these products. Subscribers who are not currently subscribing to NYSE Arca Integrated Feed [15] will be responsible for the individual product licenses for the non-display activity.

For internal non-display use, there will be no reporting requirements regarding non-display device counts, thus doing away with the administrative burdens described above. Data recipients will be required to declare the market data products used within their non-display trading applications by executing an NYSE Euronext Non-Display Usage Declaration.

Proposed Fees for Managed Non-Display Services

The Exchange also proposes to establish fees for managed non-display services for NYSE Arca Integrated Feed, NYSE ArcaBook, and NYSE Arca Trades. Under the managed non-display service, a data recipient's non-display applications must be hosted by a Redistributor approved by the Exchange, and this Redistributor must manage and control the access to NYSE Arca Integrated Feed, NYSE ArcaBook, and/or NYSE Arca Trades for these applications and may not allow for further internal distribution or external redistribution of these market data products. The Redistributor of the managed non-display services and the data recipient must be approved under the current NYSE Arca Unit-of-Count Policy described above,[16] which will no longer be available for non-display use after the proposed fees are implemented. If a data recipient is receiving NYSE Arca Integrated Feed, NYSE ArcaBook, and/or NYSE Arca Trades for Non-Display Trading Activities from a Redistributor that is not approved under the NYSE Arca Unit-of-Count Policy, then the internal non-display fees described above will apply.

The fees for managed non-display services per data recipient organization will be as follows:

Product	Managed Non-Display Use Fee (per month)
NYSE Arca Integrated Feed.	$1,750
NYSE ArcaBook	1,500
NYSE Arca Trades	400

Data recipients will not be liable for managed non-display fees for those market data products for which they pay the internal non-display fee.

Upon request, a Redistributor offering managed non-display services must provide the Exchange with a list of data recipients that are receiving NYSE Arca Integrated Feed, NYSE ArcaBook, or NYSE Arca Trades through the Redistributor's managed non-display service. Data recipients of the managed non-display service have no additional reporting requirements, thus easing the administrative burdens described above.

NYSE ArcaBook Redistribution Fee

The Exchange proposes to establish a monthly redistribution fee of $1,500 for NYSE ArcaBook that will be operative on July 1, 2013. The Exchange believes that it is reasonable to charge this redistribution fee because vendors receive value from redistributing the data in their business products for their customers.

Examples

Broker-Dealer A obtains NYSE Arca Trades directly from the Exchange for internal use and does not fall under the NYSE Arca Unit-of-Count Policy. Broker-Dealer A trades both on a principal and agency basis and has (i) 80 individual persons who use 100 display devices and (ii) 50 non-display devices.

- Under the current fee schedule, Broker-Dealer A pays the Exchange the $750 access fee plus $10 for each of the 100 display devices (although 80 individual persons use them, the number of devices is counted), or $1,000, and $10 for each of the 50 non-display devices, or $500, for a total of $2,250 per month.
- Under the proposed fee schedule, Broker-Dealer A would pay the Exchange the $750 access fee plus $10 for each of the 100 display devices, or $1,000, and Category 1 and Category 2 fees for internal non-display use, or $2,000, for a total of $3,750 per month. No redistribution fee would be charged.

Broker-Dealer B, which only trades as principal, obtains NYSE Arca Trades from Vendor X. Broker-Dealer B and Vendor X are both approved for the NYSE Arca Unit-of-Count Policy. Broker-Dealer B has (i) 10 individual persons who use 12 display devices and (ii) 5 non-display devices.

- Today, Vendor X pays the $750 access fee and Broker-Dealer B pays $150 ($10 for the 10 individual persons (under the NYSE Arca Unit-of-Count Policy, the larger number of display devices is not counted), or $100, plus $10 for each of the 5 non-display devices, or $50).

[15] *See supra* n.8.

[16] *See supra* n.11. The Redistributor and data recipient will qualify if they are approved for NYSE Arca Unit-of-Count Policy for any NYSE Arca market data product. The products that are currently approved for NYSE Arca Unit-of-Count Policy are NYSE Arca Trades and NYSE Arca BBO.

• Under the proposed fee schedule, Broker-Dealer B would pay $100 as it does today for its individual persons using display devices, and $400 for managed non-display use, for a total of $500 per month in fees. Vendor X would pay the $750 access fee and, as of May 1, 2013, the redistribution fee of $750 for a total of $1,500.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[17] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[18] in particular, in that it provides an equitable allocation of reasonable fees among users and recipients of the data and is not designed to permit unfair discrimination among customers, issuers, and brokers.

As described in detail in the section ''Rationale for New Non-Display Usage Fee Structure'' above, which is incorporated by reference herein, technology has made it increasingly difficult to define ''device'' and to control who has access to devices. Significant change has characterized the industry in recent years, stemming in large measure from changes in regulation and technological advances, which has led to the rise in automated and algorithmic trading, which have the potential to generate substantial profits. Indeed, data used in a single non-display device running a single trading algorithm can generate large profits. Market data technology and usage has evolved to the point where it is no longer practical, nor fair and equitable, to simply count non-display devices. The administrative costs and difficulties of establishing reliable counts and conducting an effective audit of non-display devices have become too burdensome, impractical, and non-economic for the Exchange, vendors, and data recipients. Rather, the Exchange believes that its proposed flat fee structure for non-display use is reasonable, equitable, and not unfairly discriminatory in light of these developments.

Other exchanges also have established differentiated fees based on non-display usage, including a flat or enterprise fee. For example, NASDAQ professional subscribers pay monthly fees for non-display usage based upon direct access to NASDAQ Level 2, NASDAQ TotalView, or NASDAQ OpenView, which range from $300 per month for customers with one to 10 subscribers to $75,000 for customers with 250 or more subscribers.[19] In addition, NASDAQ OMX PHLX, Inc. (''Phlx'') offers an alternative $10,000 per month ''Non-Display Enterprise License'' fee that permits distribution to an unlimited number of internal non-display subscribers without incurring additional fees for each internal subscriber.[20] The Non-Display Enterprise License covers non-display subscriber fees for all Phlx proprietary direct data feed products and is in addition to any other associated distributor fees for Phlx proprietary direct data feed products. NASDAQ OMX BX, Inc. (''BX'') also offers an alternative non-display usage fee of $16,000 for its BX TotalView data feed.[21] NASDAQ and Phlx also both offer managed non-display data solutions at higher overall fees than the Exchange proposes to charge.[22]

The Exchange also believes that it is reasonable, equitable, and not unfairly discriminatory to charge relatively lower fees for managed non-display services because the Exchange expects that they will generally be used by a small number of Redistributors and data recipients that are currently eligible for the NYSE Arca Unit-of-Count Policy. These data recipients are constrained by whatever applications are available via Redistributors operating in the Exchange's co-location center and other hosted facilities. In comparison, a data recipient that elects internal non-display use is free to use the data in any manner it chooses and create new uses in an unlimited number of non-display devices. The lack of constraint in this regard will make the non-display usage of the data more valuable to such an internal use data recipient.

The proposed redistribution fee for NYSE ArcaBook also is reasonable because it is comparable to other redistribution fees that are currently charged by the Exchange and other exchanges.[23] As noted above, the Exchange believes that it is reasonable to charge redistribution fees because vendors receive value from redistributing the data in their business products for their customers. The redistribution fees also are equitable and not unfairly discriminatory because they will be charged on an equal basis to those vendors that choose to redistribute the data.

The Exchange has not raised the market data fees for NYSE Arca Integrated Feed and NYSE Arca BBO since the fees were adopted in 2011 and 2010, respectively.[24] The Exchange set the NYSE ArcaBook professional subscriber fee at $15 and non-professional subscriber fee for Tape A and B Securities (including ETFs) or Tape C Securities (excluding ETFs) in 2006, and the NYSE Arca Trades professional subscriber fee at $10 in 2010.[25] The Exchange believes that the new fee schedule, which may result in certain vendors and data recipients paying more than they have in the last several years, is fair and reasonable in light of market and technology developments. The current per-device fee structure no longer reflects the significant overall value that non-display data can provide in trading algorithms and other uses that provide professional users with the potential to generate substantial profits. The Exchange believes that it is equitable and not unfairly discriminatory to establish an overall monthly fee that better reflects the value of the data to the data recipients in their profit-generating activities and does away with the costs and administrative burdens of counting non-display devices.

The Exchange also notes that products described herein are entirely optional. Firms are not required to purchase NYSE Arca Integrated Feed, NYSE ArcaBook, NYSE Arca BBO, or NYSE Arca Trades. Firms have a wide variety of alternative market data products from which to choose.[26] Moreover, the Exchange is not required to make these

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(4), (5).

[19] *See* NASDAQ Rule 7023(b)(4).

[20] *See* Securities Exchange Act Release No. 68576 (Jan. 3, 2013), 78 FR 1886 (Jan. 9, 2013) (SR–Phlx–2012–145). Alternatively, Phlx charges each professional subscriber $40 per month.

[21] *See* NASDAQ OMX BX Rule 7023(a)(2). Alternatively, BX charges each professional subscriber $40 per month.

[22] NASDAQ established fees for a Managed Data Solution to Distributors, which includes a monthly Managed Data Solution Administration fee of $1,500 and monthly Subscriber fees ranging from $60 to $300. See NASDAQ Rule 7026(b). Phlx also established a Managed Data Solution, which includes a monthly Managed Data Solution Administration fee of $1,500 and a monthly Subscriber fee of $250. The monthly License fee is in addition to Phlx's monthly Distributor fee of $2,500 (for external usage), and the $250 monthly Subscriber fee is assessed for each Subscriber of a Managed Data Solution. *See* Securities Exchange Act Release No. 67466 (July 19, 2012), 77 FR 43629 (July 25, 2012) (SR–Phlx–2012–93).

[23] The Exchange charges a $3,000 per month redistribution fee for the NYSE Arca Integrated Feed, which includes depth-of-book data. *See supra* n.4. In addition, the Exchange and NYSE MKT LLC (''NYSE MKT'') charge redistribution fees of $2,000 per month for certain proprietary options market data products. *See* Securities Exchange Act Release Nos. 68005 (Oct. 9, 2012), 77 FR 63362 (Oct. 16, 2012) (SR–NYSEArca–2012–106), and 68004 (Oct. 9, 2012), 77 FR 62582 (Oct. 15, 2012) (SR–NYSEMKT–2012–49). All distributors of a NASDAQ Last Sale Data Feed also pay a monthly fee of $1,500. *See* NASDAQ Rule 7039(d).

[24] *See supra* nn.4, 6.

[25] *See* Securities Exchange Act Release No. 54597 (Oct. 12, 2006), 71 FR 62029 (Oct. 20, 2006) (SR–NYSEArca–2006–21); *supra* n.5.

[26] *See supra* nn.19–22.

proprietary data products available or to offer any specific pricing alternatives to any customers.

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), upheld reliance by the Securities and Exchange Commission (''Commission'') upon the existence of competitive market mechanisms to set reasonable and equitably allocated fees for proprietary 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.''

Id. at 535 (quoting H.R. Rep. No. 94–229 at 92 (1975), *as reprinted in* 1975 U.S.C.C.A.N. 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.'''[27]

As explained below in the Exchange's Statement on Burden on Competition, the Exchange believes that there is substantial evidence of competition in the marketplace for data and that the Commission can rely upon such evidence in concluding that the fees established in this filing are the product of competition and therefore satisfy the relevant statutory standards.[28] In addition, the existence of alternatives to these data products, such as proprietary last sale data from other sources, as described below, further ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect such alternatives.

As the *NetCoalition* decision noted, the Commission is not required to undertake a cost-of-service or ratemaking approach, and the Exchange incorporates by reference into this proposed rule change its analysis of this topic in another rule filing.[29]

For these reasons, the Exchange believes that the proposed fees are reasonable, equitable, and not unfairly discriminatory.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. An exchange's ability to price its proprietary data feed products is constrained by actual competition for the sale of proprietary market data products, the joint product nature of exchange platforms, and the existence of alternatives to the Exchange's proprietary last sale data.

The Existence of Actual Competition. The market for proprietary data products is currently competitive and inherently contestable because there is fierce competition for the inputs necessary for the creation of proprietary data and strict pricing discipline to the proprietary products themselves. Numerous exchanges compete with each other for listings and order flow and sales of market data itself, providing virtually limitless opportunities for entrepreneurs who wish to compete in any or all of those areas, including producing and distributing their own market data. Proprietary data products are produced and distributed by each individual exchange, as well as other entities, in a vigorously competitive market.

Competitive markets for listings, order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products and therefore constrain markets from overpricing proprietary market data. The U.S. Department of Justice also has acknowledged the aggressive competition among exchanges, including for the sale of proprietary market data itself. In announcing that the bid for NYSE Euronext by NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. had been abandoned, Assistant Attorney General Christine Varney stated that exchanges ''compete head to head to offer real-time equity data products. These data products include the best bid and offer of every exchange and information on each equity trade, including the last sale.''[30]

It is common for broker-dealers to further exploit this recognized competitive constraint by sending their order flow and transaction reports to multiple markets, rather than providing them all to a single market. As a 2010 Commission Concept Release noted, the ''current market structure can be described as dispersed and complex'' with ''trading volume * * * dispersed among many highly automated trading centers that compete for order flow in the same stocks'' and ''trading centers offer[ing] a wide range of services that are designed to attract different types of market participants with varying trading needs.''[31]

In addition, in the case of products that are distributed through market data vendors, the market data vendors themselves provide additional price discipline for proprietary data products because they control the primary means of access to certain end users. These vendors impose price discipline based upon their business models. For example, vendors that assess a surcharge on data they sell are able to refuse to offer proprietary products that their end users do not or will not purchase in sufficient numbers. Internet portals, such as Google, impose price discipline by providing only data that they believe will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Similarly, vendors will not elect to make available the NYSE Arca products described herein unless their customers request them, and customers will not elect to purchase them unless they can be used for profit-generating purposes. All of these operate as constraints on pricing proprietary data products.

Joint Product Nature of Exchange Platform. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade executions are a paradigmatic example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platforms where the order can be posted, including the execution fees, data quality, and price and distribution of their data products. The more trade executions a platform does, the more valuable its market data products become.

[27] NetCoalition, 615 F.3d at 535.

[28] Section 916 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (the ''Dodd-Frank Act'') amended paragraph (A) of Section 19(b)(3) of the Act, 15 U.S.C. 78s(b)(3), to make clear that all exchange fees for market data may be filed by exchanges on an immediately effective basis.

[29] *See* Securities Exchange Act Release No. 63291 (Nov. 9, 2010), 75 FR 70311 (Nov. 17, 2010) (SR–NYSEArca–2010–97).

[30] Press Release, U.S. Department of Justice, Assistant Attorney General Christine Varney Holds Conference Call Regarding NASDAQ OMX Group Inc. and IntercontinentalExchange Inc. Abandoning Their Bid for NYSE Euronext (May 16, 2011), available at: *http://www.justice.gov/iso/opa/atr/speeches/2011/at-speech-110516.html.*

[31] Concept Release on Equity Market Structure, Securities Exchange Act Release No. 61358 (Jan. 14, 2010), 75 FR 3594 (Jan. 21, 2010) (File No. S7–02–10). This Concept Release included data from the third quarter of 2009 showing that no market center traded more than 20% of the volume of listed stocks, further evidencing the dispersal of and competition for trading activity. *Id.* at 3598.

The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's broker-dealer customers view the costs of transaction executions and market data as a unified cost of doing business with the exchange.

Other market participants have noted that the liquidity provided by the order book, trade execution, core market data, and non-core market data are joint products of a joint platform and have common costs.[32] The Exchange agrees with and adopts those discussions and the arguments therein. The Exchange also notes that the economics literature confirms that there is no way to allocate common costs between joint products that would shed any light on competitive or efficient pricing.[33]

Analyzing the cost of market data product production and distribution in isolation from the cost of all of the inputs supporting the creation of market data and market data products will inevitably underestimate the cost of the data and data products. Thus, because it is impossible to obtain the data inputs to create market data products without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of both obtaining the market data itself and creating and distributing market data products. It would be equally misleading, however, to attribute all of an exchange's costs to the market data portion of an exchange's joint products. Rather, all of an exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

The level of competition and contestability in the market is evident in the numerous alternative venues that compete for order flow, including 12 equities self-regulatory organization (''SRO'') markets, as well as internalizing broker-dealers (''BDs'') and various forms of alternative trading systems (''ATSs''), including dark pools and electronic communication networks (''ECNs''). Competition among trading platforms can be expected to constrain the aggregate return that each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market data products (or provide market data products free of charge), and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market data products, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering.

Existence of Alternatives. The large number of SROs, BDs, and ATSs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO, ATS, and BD is currently permitted to produce proprietary data products, and many currently do or have announced plans to do so, including but not limited to the Exchange, NYSE, NYSE MKT, NASDAQ OMX, BATS, and Direct Edge.

The fact that proprietary data from ATSs, BDs, and vendors can bypass SROs is significant in two respects. First, non-SROs can compete directly with SROs for the production and sale of proprietary data products. Second, because a single order or transaction report can appear in an SRO proprietary product, a non-SRO proprietary product, or both, the amount of data available via proprietary products is greater in size than the actual number of orders and transaction reports that exist in the marketplace. Because market data users can thus find suitable substitutes for most proprietary market data products,[34] a market that overprices its market data products stands a high risk that users may substitute another source of market data information for its own.

Those competitive pressures imposed by available alternatives are evident in the Exchange's proposed pricing. As noted above, the proposed non-display fees for NYSE Arca Integrated Feed, NYSE ArcaBook, NYSE Arca Trades, and NYSE Arca BBO are generally lower than the maximum non-display fees charged by other exchanges such as NASDAQ, Phlx, and BX for comparable products.[35] The proposed redistribution fee for NYSE ArcaBook also is comparable to the Exchange's and other exchanges' similar fees.[36]

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 and inexpensive. 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, TrackECN, BATS, and Direct Edge. Today, BATS and Direct Edge provide certain market data at no charge on their Web sites in order to attract more order flow, and use revenue rebates from resulting additional executions to maintain low execution charges for their users.[37]

[32] *See* Securities Exchange Act Release No. 62887 (Sept. 10, 2010), 75 FR 57092, 57095 (Sept. 17, 2010) (SR–Phlx–2010–121); Securities Exchange Act Release No. 62907 (Sept. 14, 2010), 75 FR 57314, 57317 (Sept. 20, 2010) (SR–NASDAQ–2010–110); and Securities Exchange Act Release No. 62908 (Sept. 14, 2010), 75 FR 57321, 57324 (Sept. 20, 2010) (SR–NASDAQ–2010–111) (''all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.''); *see also* August 1, 2008 Comment Letter of Jeffrey S. Davis, Vice President and Deputy General Counsel, NASDAQ OMX Group, Inc., Statement of Janusz Ordover and Gustavo Bamberger (''because market data is both an input to and a byproduct of executing trades on a particular platform, market data and trade execution services are an example of 'joint products' with 'joint costs.'''), attachment at pg. 4, available at *www.sec.gov/comments/34-57917/3457917-12.pdf.*

[33] *See generally* Mark Hirschey, Fundamentals of Managerial Economics, at 600 (2009) (''It is important to note, however, that although it is possible to determine the separate marginal costs of goods produced in variable proportions, it is impossible to determine their individual average costs. This is because common costs are expenses necessary for manufacture of a joint product. Common costs of production—raw material and equipment costs, management expenses, and other overhead—cannot be allocated to each individual by-product on any economically sound basis. * * * Any allocation of common costs is wrong and arbitrary.''). This is not new economic theory. *See, e.g.,* F.W. Taussig, ''A Contribution to the Theory of Railway Rates,'' Quarterly Journal of Economics V(4) 438, 465 (July 1891) (''Yet, surely, the division is purely arbitrary. These items of cost, in fact, are jointly incurred for both sorts of traffic; and I cannot share the hope entertained by the statistician of the Commission, Professor Henry C. Adams, that we shall ever reach a mode of apportionment that will lead to trustworthy results.'').

[34] *See supra* nn.19–22.

[35] *Id.*

[36] *See supra* n.23.

[37] This is simply a securities market-specific example of the well-established principle that in certain circumstances more sales at lower margins can be more profitable than fewer sales at higher margins; this example is additional evidence that market data is an inherent part of a market's joint platform.

Further, data products are valuable to certain end users only insofar as they provide information that end users expect will assist them or their customers. The Exchange believes the proposed non-display fees will benefit customers by providing them with a clearer way to determine their fee liability for non-display devices, and with respect to internal use, to obviate the need to count such devices. The Exchange further believes that only vendors that expect to derive a reasonable benefit from redistributing the market data products described herein will choose to become Redistributors and pay the attendant monthly fees.

In establishing the proposed fees, the Exchange considered the competitiveness of the market for proprietary data and all of the implications of that competition. The Exchange believes that it has considered all relevant factors and has not considered irrelevant factors in order to establish fair, reasonable, and not unreasonably discriminatory fees and an equitable allocation of fees among all users. The existence of numerous alternatives to the Exchange's products, including proprietary data from other sources, ensures that the Exchange cannot set unreasonable fees, or fees that are unreasonably discriminatory, when vendors and subscribers can elect these alternatives or choose not to purchase a specific proprietary data product if its cost to purchase is not justified by the returns any particular vendor or subscriber would achieve through the purchase.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

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) [38] of the Act and subparagraph (f)(2) of Rule 19b–4 [39] 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) [40] 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–2013–37 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR– NYSEArca–2013–37. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of NYSE. 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–2013–37, and should be submitted on or before May 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[41]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08464 Filed 4–10–13; 8:45 am]

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[38] 15 U.S.C. 78s(b)(3)(A).

[39] 17 CFR 240.19b–4(f)(2).

[40] 15 U.S.C. 78s(b)(2)(B).

[41] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69333; File No. SR–NASDAQ–2013–043]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Order Approving, on an Accelerated Basis, Proposed Rule Change To Adopt Chapter V, Section 3(d)(iii) Regarding Quoting Obligations

April 5, 2013.

I. Introduction

On March 5, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act''),[2] and Rule 19b–4 thereunder,[3] a proposed rule change to adopt Chapter V, Section 3(d)(iii) regarding quoting obligations. The proposed rule change was published for comment in the **Federal Register** on March 13, 2013.[4] The Commission received no comment letters on the proposal. This order approves the proposed rule change on an accelerated basis.

II. Background

On May 6, 2010, the U.S. equity markets experienced a severe disruption that, among other things, resulted in the prices of a large number of individual securities suddenly declining by significant amounts in a very short time period before suddenly reversing to prices consistent with their pre-decline levels.[5] This severe price volatility led

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] *See* Securities Exchange Act Release No. 69069 (March 7, 2013), 78 FR 15995.

[5] The events of May 6 are described more fully in a joint report by the staffs of the Commodity Futures Trading Commission (''CFTC'') and the Commission. *See* Report of the Staffs of the CFTC

Continued

to a large number of trades being executed at temporarily depressed prices, including many that were more than 60% away from pre-decline prices. One response to the events of May 6, 2010, was the development of the single-stock circuit breaker pilot program, which was implemented through a series of rule filings by the equity exchanges and by FINRA.[6] The single-stock circuit breaker was designed to reduce extraordinary market volatility in NMS stocks by imposing a five-minute trading pause when a trade was executed at a price outside of a specified percentage threshold.[7]

To replace the single-stock circuit breaker pilot program, the equity exchanges filed a National Market System Plan[8] pursuant to Section 11A of the Act,[9] and Rule 608 thereunder,[10] which featured a ''limit up-limit down'' mechanism (as amended, the ''Limit Up-Limit Down Plan'' or ''Plan'').

The Plan sets forth requirements that are designed to prevent trades in individual NMS stocks from occurring outside of the specified price bands. The price bands consist of a lower price band and an upper price band for each NMS stock. When one side of the market for an individual security is outside the applicable price band, i.e., the National Best Bid is below the Lower Price Band, or the National Best Offer is above the Upper Price band, the Processors[11] are required to disseminate such National Best Bid or National Best Offer[12] with a flag identifying that quote as non-executable. When the other side of the market reaches the applicable price band, i.e., the National Best Offer reaches the lower price band, or the National Best Bid reaches the upper price band, the market for an individual security enters a 15-second Limit State, and the Processors are required disseminate such National Best Offer or National Best Bid with an appropriate flag identifying it as a Limit State Quotation. Trading in that stock would exit the Limit State if, within 15 seconds of entering the Limit State, all Limit State Quotations were executed or canceled in their entirety. If the market does not exit a Limit State within 15 seconds, then the Primary Listing Exchange will declare a five-minute trading pause, which is applicable to all markets trading the security.

The Primary Listing Exchange may also declare a trading pause when the stock is in a Straddle State, i.e., the National Best Bid (Offer) is below (above) the Lower (Upper) Price Band and the NMS Stock is not in a Limit State. In order to declare a trading pause in this scenario, the Primary Listing Exchange must determine that trading in that stock deviates from normal trading characteristics such that declaring a trading pause would support the Plan's goal to address extraordinary market volatility.[13]

On May 31, 2012, the Commission approved the Plan as a one-year pilot, which shall be implemented in two phases.[14] The first phase of the Plan shall be implemented beginning April 8, 2013.[15]

III. Description of the Proposal

In light of and in connection with the Limit Up-Limit Down Plan, the Exchange is adopting Chapter V, Section 3(d)(iii) to provide that the Exchange shall exclude the amount of time an NMS stock underlying a NOM option is in a Limit State or Straddle State from the total amount of time in the trading day when calculating the percentage of the trading day Options Market Makers are required to quote.

Currently, under Chapter VII, Sections 5 and 6, NASDAQ requires Market Makers, on a daily basis, to make markets consistent with the applicable quoting requirements specified in Sections 5 and 6, on a continuous basis in at least 60% of the series in options in which the Market Maker is registered. To satisfy this requirement with respect to quoting a series, a Market Maker must quote such series 90% of the trading day (as a percentage of the total number of minutes in such trading day) or such higher percentage as NASDAQ may announce in advance. The Exchange's proposal would suspend a Market Maker's continuous quoting obligation for the duration that an underlying NMS stock is in a Limit State or a Straddle State. As a result, when calculating the duration necessary for a Market Maker to meet its obligations that it post valid quotes at least 90% of the time the classes are open for trading, that time will not include the duration that the underlying is in a Limit State or Straddle State.

IV. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange.[16] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[17] which, among other things, requires a national securities

and SEC to the Joint Advisory Committee on Emerging Regulatory Issues, ''Findings Regarding the Market Events of May 6, 2010,'' dated September 30, 2010, available at *http://www.sec.gov/news/studies/2010/marketevents-report.pdf.*

[6] For further discussion on the development of the single-stock circuit breaker pilot program, *see* Securities Exchange Act Release No. 67091 (May 31, 2012), 77 FR 33498 (June 6, 2012) (''Limit Up-Limit Down Plan'' or ''Plan'').

[7] *See* Securities Exchange Act Release Nos. 62884 (September 10, 2010), 75 FR 56618 (September 16, 2010) and Securities Exchange Act Release No. 62883 (September 10, 2010), 75 FR 56608 (September 16, 2010) (SR–FINRA–2010–033) (describing the ''second stage'' of the single-stock circuit breaker pilot) and Securities Exchange Act Release No. 64735 (June 23, 2011), 76 FR 38243 (June 29, 2011) (describing the ''third stage'' of the single-stock circuit breaker pilot).

[8] NYSE Euronext filed on behalf of New York Stock Exchange LLC (''NYSE''), NYSE Amex LLC (''NYSE Amex''), and NYSE Arca, Inc. (''NYSE Arca''), and the parties to the proposed National Market System Plan, BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Incorporated (''CBOE''), Chicago Stock Exchange, Inc., EDGA Exchange, Inc., EDGX Exchange, Inc., Financial Industry Regulatory Authority, Inc., NASDAQ OMX BX, Inc., NASDAQ OMX PHLX LLC, the Nasdaq Stock Market LLC, and National Stock Exchange, Inc. (collectively with NYSE, NYSE MKT, and NYSE Arca, the ''Participants''). On May 14, 2012, NYSE Amex filed a proposed rule change on an immediately effective basis to change its name to NYSE MKT LLC (''NYSE MKT''). See Securities Exchange Act Release No. 67037 (May 21, 2012) (SR–NYSEAmex–2012–32).

[9] 15 U.S.C. 78k–1.

[10] 17 CFR 242.608.

[11] As used in the Plan, the Processor refers to the single plan processor responsible for the consolidation of information for an NMS Stock pursuant to Rule 603(b) of Regulation NMS under the Exchange Act. *See id.*

[12] ''National Best Bid'' and ''National Best Offer'' has the meaning provided in Rule 600(b)(42) of Regulation NMS under the Exchange Act. *See id.*

[13] As set forth in more detail in the Plan, all trading centers would be required to establish, maintain, and enforce written policies and procedures reasonably designed to prevent the display of offers below the Lower Price Band and bids above the Upper Price Band for an NMS Stock. The Processors would be able to disseminate an offer below the Lower Price Band or bid above the Upper Price Band that nevertheless may be inadvertently submitted despite such reasonable policies and procedures, but with an appropriate flag identifying it as non-executable; such bid or offer would not be included in National Best Bid or National Best Offer calculations. In addition, all trading centers would be required to develop, maintain, and enforce policies and procedures reasonably designed to prevent trades at prices outside the price bands, with the exception of single-priced opening, reopening, and closing transactions on the Primary Listing Exchange.

[14] *See* ''Limit Up-Limit Down Plan,'' *supra* note 6. *See also* Securities Exchange Act Release No. 68953 (February 20, 2013), 78 FR 13113 (February 26, 2013) (Second Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*) and Securities Exchange Act Release No. 69062 (March 7, 2013), 78 FR 15757 (March 12, 2013) (Third Amendment to Limit Up-Limit Down Plan by BATS Exchange, Inc., BATS Y-Exchange, Inc., Chicago Board Options Exchange, Inc., *et al.*)

[15] *See* ''Second Amendment to Limit Up-Limit Down Plan,'' *supra* note 14.

[16] In approving the proposed rule changes, the Commission has considered their impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78f(b).

exchange to be so organized and have the capacity to be able to carry out the purposes of the Act and to enforce compliance by its members and persons associated with its members with the provisions of the Act, the rules and regulations thereunder, and the rules of the exchange, 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 regulation, 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 Commission finds that the proposal to suspend a Market Maker's obligations when the underlying security is in a limit up-limit down state is consistent with the Act. During a limit up-limit down state, there may not be a reliable price for the underlying security to serve as a benchmark for market makers to price options. In addition, the absence of an executable bid or offer for the underlying security will make it more difficult for market makers to hedge the purchase or sale of an option. Given these significant changes to the normal operating conditions of market makers, the Commission finds that the Exchange's decision to suspend a Market Maker's obligations in these limited circumstances is consistent with the Act.

The Commission notes, however, that the Plan was approved on a pilot basis and its Participants will monitor how it is functioning in the equity markets during the pilot period. To this end, the Commission expects that, upon implementation of the Plan, the Exchange will continue monitoring the quoting requirements that are being amended in this proposed rule change and determine if any necessary adjustments are required to ensure that they remain consistent with the Act.

The Commission also notes that the Exchange did not propose to waive its bid-ask spread requirements for Market Makers when the underlying is in a Limit or Straddle State. The Commission believes that retaining this requirement should help ensure the quality of the quotes that are entered and preserves one of the obligations of being a Market Maker.

In addition, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act [18] for approving the proposed rule change on an accelerated basis. The proposal is related to the Plan, which will become operative on April 8, 2013.[19] Without accelerated approval, the proposed rule change, and any attendant benefits, would take effect after the Plan's implementation date. Accordingly, the Commission finds that good cause exists for approving the proposed rule change on an accelerated basis.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act [20] that the proposed rule change (SR–NASDAQ–2013–043) is approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

Kevin M. O'Neill,

Deputy Secretary.

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[18] 15 U.S.C. 78s(b)(2)

[19] *See supra* note 15.

[20] 15 U.S.C. 78f(b)(2).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69323; File No. SR–MIAX–2013–14]

Self-Regulatory Organizations; Miami International Securities Exchange LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish Fees for the MIAX Top of Market (ToM) Data Product

April 5, 2013.

Pursuant to the provisions of Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 25, 2013, Miami International Securities Exchange LLC (''MIAX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is filing a proposal to amend the MIAX Options Fee Schedule (the ''Fee Schedule'') to establish fees applicable to Distributors (described below) of the Top of MIAX (''ToM'') market data product, a direct data feed that features the Exchange's best bid and offer, with aggregate size and last sale information on the MIAX system. While changes to the Fee Schedule pursuant to this proposal are effective upon filing, the Exchange has designated these changes to be operative on April 1, 2013.

The text of the proposed rule change is provided in *Exhibit 5*. The text of the proposed rule change is also available on the Exchange's Web site at *http://www.miaxoptions.com/filter/wotitle/rule_filing,* at MIAX's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to establish fees for Distributors of ToM. ToM provides Distributors with a direct data feed that includes the Exchange's best bid and offer, with aggregate size, and last sale information, based on displayable order and quoting interest on the Exchange. The ToM data feed includes data that is identical to the data sent to the processor for the Options Price Regulatory Authority (''OPRA''). The ToM and OPRA data leave the MIAX system at the same time, as required under Section 5.2(c)(iii)(B) of the Limited Liability Company Agreement of the Options Price Reporting Authority LLC (the ''OPRA Plan''), which prohibits the dissemination of proprietary information on any more timely basis than the same information is furnished to the OPRA System for inclusion in OPRA's consolidated dissemination of options information.[3]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange previously filed to adopt the ToM market data product, including a detailed

Continued

Monthly Fees for ToM

The Exchange proposes to charge monthly fees to Distributors of the ToM market data product. The Fee Schedule will reflect that a ''Distributor'' of TOM data is any entity that receives a feed of ToM data either directly from MIAX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity), and that all Distributors would be required to execute a MIAX Distributor Agreement. The monthly Distributor Fee charged will depend on whether the Distributor is an ''Internal Distributor'' or an ''External Distributor,'' as defined below.

Internal Distributor

An Internal Distributor is an organization that subscribes to the Exchange for the use of ToM, and is permitted by agreement with the Exchange to provide ToM data to internal users (*i.e.,* users within their own organization). Internal Distributors would be charged a monthly fee of $1,000 per organization.

External Distributor

An External Distributor is an organization that subscribes to the Exchange for the use of ToM, and is permitted by agreement with the Exchange to provide ToM data to both internal users and to external users (*i.e.,* users outside of their own organization). External Distributors will be charged a monthly fee of $5,000 per organization.

Market Data Fees for ToM will be reduced for new Distributors for the first month during which they subscribe to ToM, based on the number of trading days that have been held during such month as of the date on which they subscribe. Such new Distributors will be assessed a pro-rata percentage of the fees described above, which is the percentage of the number of trading days remaining in the affected calendar month as of the date on which they begin to receive the ToM feed divided by the total number of trading days in the affected calendar month.

In addition to MIAX's best bid and offer, with aggregate size and last sale information, Distributors that subscribe to ToM will also receive: opening imbalance condition information; opening routing information; Expanded Quote Range [4] information, as provided in MIAX Rule 503(f)(5); Post-Halt Notification,[5] as provided in MIAX Rule 504(d), and Liquidity Refresh,[6] condition information, as provided in MIAX Rule 515(c)(1)(iii)(A).

This additional information (the ''administrative information'') is included in the ToM feed as secondary information. The administrative information is also currently available to MIAX Market Makers via connectivity with the MIAX Express Interface (''MEI''),[7] for which they are assessed connectivity fees. In order to accommodate those who wish to receive the administrative information but who do not wish to subscribe to the ToM product, the Exchange submitted a separate proposed rule change concurrently with the instant proposed rule change,[8] to establish a new category of MIAX participant, an Administrative Information Subscriber ''AIS,'' to make the administrative information available to AIS' via AIS Port connectivity with MIAX, and to establish testing, connectivity and AIS Port Fees for such participants who wish only to receive the administrative information via connectivity with the MIAX System.

2. Statutory Basis

MIAX believes that its proposal to amend its Fee Schedule is consistent with the provisions of Section 6 of the Act,[9] in general, and with Section 6(b)(4) of the Act,[10] in particular, in that it provides an equitable allocation of reasonable fees among distributors of ToM, because all Distributors in each of the respective category of Distributor (*i.e.,* Internal and External) will be assessed the same fees as other Distributors in their category.

In adopting Regulation NMS, the Commission granted self-regulatory organizations and broker-dealers increased authority and flexibility to offer new and unique market data to the public. It was believed that this authority would expand the amount of data available to consumers, and also spur innovation and competition for the provision of market data:

> [E]fficiency is promoted when broker-dealers who do not need the data beyond the prices, sizes, market center identifications of the NBBO and consolidated last sale information are not required to receive (and pay for) such data when broker-dealers may choose to receive (and pay for) additional market data based on their own internal analysis of the need for such data.[11]

By removing ''unnecessary regulatory restrictions'' on the ability of exchanges to sell their own data, Regulation NMS advanced the goals of the Act and the principles reflected in its legislative history. If the free market should determine whether proprietary data is sold to broker-dealers at all, it follows that the price at which such data is sold should be set by the market as well.

In July, 2010, Congress adopted H.R. 4173, the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (''Dodd-Frank Act''), which amended Section 19 of the Act. Among other things, Section 916 of the Dodd-Frank Act amended paragraph (A) of Section 19(b)(3) of the Act by inserting the phrase ''on any person, whether or not the person is a member of the self-regulatory organization'' after ''due, fee or other charge imposed by the self-regulatory organization.'' As a result, all SRO rule proposals establishing or changing dues, fees or other charges are immediately effective upon filing regardless of whether such dues, fees or other charges are imposed on members of the SRO, non-members, or both. Section 916 further amended paragraph (C) of Section 19(b)(3) of the Act to read, in pertinent part, ''At any time within the 60-day period beginning on the date of filing of such a proposed rule change in accordance with the provisions of paragraph (1) [of Section 19(b)], the Commission summarily may temporarily suspend the change in the rules of the self-regulatory organization made thereby, if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of this title. If the Commission

description of ToM. *See* Securities Exchange Act Release No. 69007 (February 28, 2013), 78 FR 14617 (March 6, 2013) (SR–MIAX–2013–05).

[4] Where there is an imbalance at the price at which the maximum number of contracts can trade that is also at or within the highest valid width quote bid and lowest valid width quote offer, the System will calculate an Expanded Quote Range (''EQR''). The EQR will be recalculated any time a Route Timer or Imbalance Timer expires if material conditions of the market (imbalance size, ABBO price or size, liquidity price or size, etc.) have changed during the timer. Once calculated, the EQR will represent the limits of the range in which transactions may occur during the opening process. *See* Exchange Rule 503(f)(5).

[5] After the Exchange has determined to end a trading system halt, the System will broadcast to subscribers of the Exchange's data feeds, a Post-Halt Notification. *See* Exchange Rule 504(d).

[6] If a Market Maker quote was all or part of the MIAX Best Bid or Offer (''MBBO'') and the Market Maker's quote was exhausted by the partial execution of the initiating order, the System will pause the market for a time period not to exceed one second to allow additional orders or quotes refreshing the liquidity at the MBBO to be received (''liquidity refresh pause''). *See* Exchange Rule 515(c)(1)(iii)(A).

[7] MIAX Express Interface is a connection to MIAX systems that enables Market Makers to submit electronic quotes to MIAX.

[8] *See* SR–MIAX–2013–13.

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(4).

[11] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496 (June 29, 2005).

takes such action, the Commission shall institute proceedings under paragraph (2)(B) [of Section 19(b)] to determine whether the proposed rule should be approved or disapproved.''

The Exchange believes that these amendments to Section 19 of the Act reflect Congress's intent to allow the Commission to rely upon the forces of competition to ensure that fees for market data are reasonable and equitably allocated. Although Section 19(b) had formerly authorized immediate effectiveness for a ''due, fee or other charge imposed by the self-regulatory organization,'' the Commission adopted a policy and subsequently a rule stating that fees for data and other products available to persons that are not members of the self-regulatory organization must be approved by the Commission after first being published for comment. At the time, the Commission supported the adoption of the policy and the rule by pointing out that unlike members, whose representation in self-regulatory organization governance was mandated by the Act, non-members should be given the opportunity to comment on fees before being required to pay them, and that the Commission should specifically approve all such fees. MIAX believes that the amendment to Section 19 reflects Congress's conclusion that the evolution of self-regulatory organization governance and competitive market structure have rendered the Commission's prior policy on non-member fees obsolete. Specifically, many exchanges have evolved from member-owned, not-for-profit corporations into for-profit, investor-owned corporations (or subsidiaries of investor-owned corporations). Accordingly, exchanges no longer have narrow incentives to manage their affairs for the exclusive benefit of their members, but rather have incentives to maximize the appeal of their products to all customers, whether members or non-members, so as to broaden distribution and grow revenues. Moreover, the Exchange believes that the change also reflects an endorsement of the Commission's determinations that reliance on competitive markets is an appropriate means to ensure equitable and reasonable prices. Simply put, the change reflects a presumption that all fee changes should be permitted to take effect immediately, since the level of all fees are constrained by competitive forces. The Exchange therefore believes that the fees for ToM are properly assessed on non-member Distributors.

The decision of the United States Court of Appeals for the District of Columbia Circuit in *NetCoaliton* v. *SEC,* No. 09–1042 (D.C. Cir. 2010), although reviewing a Commission decision made prior to the effective date of the Dodd-Frank Act, upheld the Commission's reliance upon competitive markets to set reasonable and equitably allocated fees for market data:

> In fact, the legislative history indicates that the Congress intended that the market system ''evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed'' and that the SEC wield its regulatory power ''in those situations where competition may not be sufficient,'' such as in the creation of a ''consolidated transactional reporting system.'' [12]

The court's conclusions about Congressional intent are therefore reinforced by the Dodd-Frank Act amendments, which create a presumption that exchange fees, including market data fees, may take effect immediately, without prior Commission approval, and that the Commission should take action to suspend a fee change and institute a proceeding to determine whether the fee change should be approved or disapproved only where the Commission has concerns that the change may not be consistent with the Act.

MIAX believes that the proposed fee is fair and equitable in accordance with Section 6(b)(4) of the Act, and not unreasonably discriminatory in accordance with Section 6(b)(5) of the Act. As described above, the proposed fee is based on pricing that exists in the fee schedules of other exchanges.

Moreover, the decision as to whether or not to subscribe to ToM is entirely optional to all parties. Potential subscribers are not required to purchase the ToM market data feed, and MIAX is not required to make the ToM market data feed available. Subscribers can discontinue their use at any time and for any reason, including due to their assessment of the reasonableness of fees charged. The allocation of fees among Subscribers is fair and reasonable because, if the market deems the proposed fees to be unfair or inequitable, firms can diminish or discontinue their use of this data.

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.

Notwithstanding its determination that the Commission may rely upon competition to establish fair and equitably allocated fees for market data, the *NetCoalition* Court found that the Commission had not, in that case, compiled a record that adequately supported its conclusion that the market for the data at issue in the case was competitive. MIAX believes that a record may readily be established to demonstrate the competitive nature of the market in question.

There is intense competition between trading platforms that provide transaction execution and routing services and proprietary data products. Transaction execution and proprietary data products are complementary in that market data is both an input and a byproduct of the execution service. In fact, market data and trade execution are a representative example of joint products with joint costs. The decision whether and on which platform to post an order will depend on the attributes of the platform where the order can be posted, including the execution fees, data quality and price and distribution of its data products. Without the prospect of a taking order seeing and reacting to a posted order on a particular platform, the posting of the order would accomplish little.

Without trade executions, exchange data products cannot exist. Data products are valuable to many end subscribers only insofar as they provide information that end subscribers expect will assist them or their customers in making trading decisions. The costs of producing market data include not only the costs of the data distribution infrastructure, but also the costs of designing, maintaining, and operating the exchange's transaction execution platform and the cost of regulating the exchange to ensure its fair operation and maintain investor confidence. The total return that a trading platform earns reflects the revenues it receives from both products and the joint costs it incurs. Moreover, an exchange's customers view the costs of transaction executions and of data as a unified cost of doing business with the exchange. A broker-dealer will direct orders to a particular exchange only if the expected revenues from executing trades on the exchange exceed net transaction execution costs and the cost of data that the broker-dealer chooses to buy to support its trading decisions (or those of its customers). The choice of data products is, in turn, a product of the value of the products in making profitable trading decisions. If the cost of the product exceeds its expected

[12] *NetCoalition,* at 15 (quoting H.R. Rep. No. 94–229, at 92 (1975), as reprinted in 1975 U.S.C.C.A.N. 321, 323).

value, the broker-dealer will choose not to buy it.

Moreover, as a broker-dealer chooses to direct fewer orders to a particular exchange, the value of the product to the broker-dealer decreases, for two reasons. First, the product will contain less information, because executions of the broker-dealer's orders will not be reflected in it. Second, and perhaps more important, the product will be less valuable to that broker-dealer because it does not provide information about the venue to which it is directing its orders. Data from the competing venue to which the broker-dealer is directing orders will become correspondingly more valuable.

Thus, a super-competitive increase in the fees charged for either transactions or data has the potential to impair revenues from both products. ''No one disputes that competition for order flow is 'fierce'.'' [13] However, the existence of fierce competition for order flow implies a high degree of price sensitivity on the part of broker-dealers with order flow, since they may readily reduce costs by directing orders toward the lowest-cost trading venues. A broker-dealer that shifted its order flow from one platform to another in response to order execution price differentials would both reduce the value of that platform's market data and reduce its own need to consume data from the disfavored platform. Similarly, if a platform increases its market data fees, the change will affect the overall cost of doing business with the platform, and affected broker-dealers will assess whether they can lower their trading costs by directing orders elsewhere and thereby lessening the need for the more expensive data.

Analyzing the cost of market data distribution in isolation from the cost of all of the inputs supporting the creation of market data will inevitably underestimate the cost of the data. Thus, because it is impossible to create data without a fast, technologically robust, and well-regulated execution system, system costs and regulatory costs affect the price of market data. It would be equally misleading, however, to attribute all of the exchange's costs to the market data portion of an exchange's joint product. Rather, all of the exchange's costs are incurred for the unified purposes of attracting order flow, executing and/or routing orders, and generating and selling data about market activity. The total return that an exchange earns reflects the revenues it receives from the joint products and the total costs of the joint products.

[13] *NetCoalition* at 24.

Competition among trading platforms can be expected to constrain the aggregate return each platform earns from the sale of its joint products, but different platforms may choose from a range of possible, and equally reasonable, pricing strategies as the means of recovering total costs. For example, some platforms may choose to pay rebates to attract orders, charge relatively low prices for market information (or provide information free of charge) and charge relatively high prices for accessing posted liquidity. Other platforms may choose a strategy of paying lower rebates (or no rebates) to attract orders, setting relatively high prices for market information, and setting relatively low prices for accessing posted liquidity. In this environment, there is no economic basis for regulating maximum prices for one of the joint products in an industry in which suppliers face competitive constraints with regard to the joint offering. This would be akin to strictly regulating the price that an automobile manufacturer can charge for car sound systems despite the existence of a highly competitive market for cars and the availability of aftermarket alternatives to the manufacturer-supplied system.

The market for market data products is competitive and inherently contestable because there is fierce competition for the inputs necessary to the creation of proprietary data and strict pricing discipline for the proprietary products themselves. Numerous exchanges compete with each other for listings, trades, and market data itself, providing virtually limitless opportunities for entrepreneurs who wish to produce and distribute their own market data. This proprietary data is produced by each individual exchange, as well as other entities, in a vigorously competitive market.

Broker-dealers currently have numerous alternative venues for their order flow, including eleven existing options markets. Each SRO market competes to produce transaction reports via trade executions. Competitive markets for order flow, executions, and transaction reports provide pricing discipline for the inputs of proprietary data products. The large number of SROs that currently produce proprietary data or are currently capable of producing it provides further pricing discipline for proprietary data products. Each SRO is currently permitted to produce proprietary data products, and many in addition to MIAX currently do, including NASDAQ, CBOE, ISE, NYSE Amex, and NYSEArca. Additionally, order routers and market data vendors can facilitate single or multiple broker-dealers' production of proprietary data products. The potential sources of proprietary products are virtually limitless.

Market data vendors provide another form of price discipline for proprietary data products because they control the primary means of access to end subscribers. Vendors impose price restraints based upon their business models. For example, vendors such as Bloomberg and Thomson Reuters that assess a surcharge on data they sell may refuse to offer proprietary products that end subscribers will not purchase in sufficient numbers. Internet portals, such as Google, impose a discipline by providing only data that will enable them to attract ''eyeballs'' that contribute to their advertising revenue. Retail broker-dealers, such as Schwab and Fidelity, offer their customers proprietary data only if it promotes trading and generates sufficient commission revenue. Although the business models may differ, these vendors' pricing discipline is the same: They can simply refuse to purchase any proprietary data product that fails to provide sufficient value. MIAX and other producers of proprietary data products must understand and respond to these varying business models and pricing disciplines in order to market proprietary data products successfully.

In addition to the competition and price discipline described above, the market for proprietary data products is also highly contestable because market entry is rapid, inexpensive, and profitable. The history of electronic trading is replete with examples of entrants that swiftly grew into some of the largest electronic trading platforms and proprietary data producers: Archipelago, BATS Trading and Direct Edge. Regulation NMS, by deregulating the market for proprietary data, has increased the contestability of that market. While broker-dealers have previously published their proprietary data individually, Regulation NMS encourages market data vendors and broker-dealers to produce proprietary products cooperatively in a manner never before possible. Multiple market data vendors already have the capability to aggregate data and disseminate it on a profitable scale, including Bloomberg, and Thomson Reuters.

The Court in *NetCoalition* concluded that the Commission had failed to demonstrate that the market for market data was competitive based on the reasoning of the Commission's *NetCoalition* order because, in the Court's view, the Commission had not adequately demonstrated that the proprietary data at issue in the case is

used to attract order flow. MIAX believes, however, that evidence not then before the court clearly demonstrates that availability of data attracts order flow. Due to competition among platforms, MIAX intends to improve its platform data offerings on a continuing basis, and to respond promptly to customers' data needs.

The intensity of competition for proprietary information is significant and MIAX believes that this proposal itself clearly evidences such competition. MIAX is offering ToM in order to keep pace with changes in the industry and evolving customer needs. It is entirely optional and is geared towards attracting new Member Applicants and customers. MIAX competitors continue to create new market data products and innovative pricing in this space. MIAX expects to see firms challenge its pricing on the basis of MIAX's explicit fees being higher than the zero-priced fees from other competitors such as BATS. In all cases, MIAX expects firms to make decisions on how much and what types of data to consume on the basis of the total cost of interacting with MIAX or other exchanges. Of course, the explicit data fees are only one factor in a total platform analysis. Some competitors have lower transactions fees and higher data fees, and others are vice versa. The market for this proprietary information is highly competitive and continually evolves as products develop and change.

The Exchange notes that the ToM market data and fees will compete with similar products offered by other markets such as NASDAQ OMX PHLX, LLC (''PHLX'') and the International Stock Exchange LLC (''ISE''). For example, PHLX and ISE offer market data products that are similar to ToM: data feeds that show the top of the market entitled Top of PHLX Options (''TOPO'') and the ISE TOP Quote Feed.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[14] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MIAX–2013–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–MIAX–2013–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MIAX–2013–14 and should be submitted on or before May 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

Kevin M. O'Neill,

Deputy Secretary.

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[14] 15 U.S.C. 78s(b)(3)(A)(ii).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69335; File No. SR–NYSEArca–2013–34]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto To Implement a One-Year Pilot Program for Issuers of Certain Exchange-Traded Products (''ETPs'') Listed on the Exchange

April 5, 2013.

Pursuant to Section 19(b)(1)[1] of the Securities Exchange Act of 1934 (''Act'' or ''Exchange Act'')[2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on March 21, 2013, NYSE Arca, Inc. (''Exchange'' or ''NYSE Arca'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 5, 2013, the Exchange submitted Amendment No. 1 to the proposed rule change, which replaces and supersedes the proposed rule change in its entirety. The Commission is publishing this notice to solicit comments on the proposed rule change, as modified by Amendment No. 1 thereto, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to implement a one-year pilot program for issuers of certain exchange-traded products (''ETPs'') listed on the Exchange. 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 the Statutory Basis for, the Proposed Rule Change

1. Purpose

This Amendment No. 1 to SR–NYSEArca–2013–34 replaces and supercedes SR–NYSEArca–2013–34 in its entirety.[4]

The Exchange proposes to create a one-year pilot program for issuers of certain ETPs listed on the Exchange. The pilot program would be called the NYSE Arca ETP Incentive Program (''Incentive Program''). As described in more detail below, the Incentive Program is designed to enhance the market quality for ETPs by incentivizing Market Makers [5] to take Lead Market Maker (''LMM'') assignments in certain lower volume ETPs by offering an alternative fee structure for such LMMs that would be funded from the Exchange's general revenues. The costs of the Incentive Program would be offset by charging participating issuers non-refundable Optional Incentive Fees, which would be credited to the Exchange's general revenues. Participation would be entirely voluntary on the part of both LMMs and issuers. The Exchange proposes to add new NYSE Arca Equities Rule 8.800 to set forth the requirements for the Incentive Program, including performance standards specific to LMMs participating in the Incentive Program.

Background

Under the current Fee Schedule for listings, an issuer of an ETP is required to pay a Listing Fee that ranges from $5,000 to $45,000.[6] An ETP issuer also pays a graduated Annual Fee based on the number of shares of the ETP that are outstanding. The Annual Fee ranges from $5,000 to $55,000.

A qualified Market Maker may request an assignment as an LMM for an ETP, and the request is subject to approval by the Exchange.[7] For some ETPs, no Market Maker requests an assignment as an LMM, and the ETP therefore trades without an LMM assigned to it. The Exchange operates under the price-time priority model for all market participants, so there is no distinct transactional benefit to being assigned as an LMM. However, LMMs must meet certain obligations and requirements and therefore incur greater risks than other market participants on the Exchange.

An LMM is currently subject to the obligations for Market Makers that are set forth in NYSE Arca Equities Rule 7.23 and the minimum performance standards that are referenced in NYSE Arca Equities Rule 7.24. Under NYSE Arca Equities Rule 7.24, the minimum performance standards include (i) Percent of time at the National Best Bid (the ''NBB'') or National Best Offer (the ''NBO'') (collectively, the ''NBBO''), (ii) percent of executions better than the NBBO, (iii) average displayed size, (iv) average quoted spread, and (v) in the event that the security is a derivative security, the ability to transact in underlying markets. An LMM's minimum performance standards are described in an official NYSE Arca policy, titled *NYSE Arca LMM Requirements,* which may be amended from time to time. The minimum performance standards are measured daily and reviewed as a monthly average. The Exchange believes that they are stringent and help foster liquidity provision and stability in the market.[8]

The risks for LMMs that exceed those of other market participants include risks associated with managing position inventory as well as risks associated with maintaining quotes. Inventory risks may be higher for certain ETPs with low volume and low shares outstanding because there are fewer opportunities to turn over positions in such ETPs and there is an accumulation of costs from carrying those positions as well as positions in the underlying securities used for hedging.[9] LMMs are currently required to continuously quote on both sides of the market; therefore, they must be willing to buy as well as sell by posting displayed and firm quotes on the Exchange. When there is a low volume of shares outstanding, there is often less supply for securities lending purposes. In order to meet settlement requirements, LMMs acting in ETPs with low shares outstanding are often required to maintain long ETP positions. Quoting risks exist due to the complexity of pricing ETPs and the potential for human and/or technological errors. ETPs are open-ended and derivatively priced securities that typically track returns of underlying assets. LMMs' quotes can diverge from the underlying assets' values, and in such cases, the LMMs are more likely to buy (sell) at prices that are above (below) theoretical fair values. Because LMMs are currently required to continuously quote on both sides of the market and maintain certain minimum performance standards, they are more likely to face these types of risks because other market participants have more freedom to withdraw quotes upon experiencing difficulties or unusual market conditions.

To incentivize firms to take on the LMM designation and foster liquidity provision and stability in the market, the Exchange currently provides LMMs with an opportunity to receive incrementally higher transaction credits and incur incrementally lower transaction fees (''LMM Rates'') compared to standard liquidity maker-taker rates (''Standard Rates'').[10] LMM

[4] SR–NYSEArca–2013–34 replaced and superceded SR–NYSEArca–2012–37, which was withdrawn by the Exchange. *See* Securities Exchange Act Release Nos. 66966 (May 11, 2012), 77 FR 29419 (May 17, 2012) and 68616 (Jan. 10, 2013), 78 FR 3482 (Jan. 16, 2013) (SR–NYSEArca–2012–37). Attached hereto is Exhibit 4, which reflects the changes made to Exhibit 5.

[5] A Market Maker is an Equity Trading Permit Holder (''ETP Holder'') that acts as a Market Maker pursuant to NYSE Arca Equities Rule 7. *See* NYSE Arca Equities Rule 1.1(v). An ETP Holder is a sole proprietorship, partnership, corporation, limited liability company, or other organization in good standing that has been issued an Equity Trading Permit. *See* NYSE Arca Equities Rule 1.1(n).

[6] The Exchange has one Schedule of Fees and Charges for Exchange Services that is for listings (''Listing Fee Schedule'') and another that is for trade-related charges (''Trading Fee Schedule''). To differentiate them, the Exchange proposes to change the name of the former to ''SCHEDULE OF FEES AND CHARGES FOR EXCHANGE LISTING SERVICES.'' ETPs are generally classified as either Derivative Securities Products or Structured Products for purposes of the Listing Fee Schedule. *See* Listing Fee Schedule, *available at http://www.nyse.com/pdfs/NYSEArca_Listing_Fees.pdf.*

[7] *See* NYSE Arca Equities Rule 7.22(d).

[8] References in this rule filing to an LMM's minimum performance standards outside of the Incentive Program mean those set forth in *NYSE Arca LMM Requirements.* The proposed standards for LMMs in the Incentive Program are referred to as the ''proposed Incentive Program LMM performance standards.''

[9] Costs of carrying ETP inventories include the expense ratio, which includes the management fee, financing costs or the cost of capital, and the opportunity cost of allocating capital. At times, it may also include stock loan costs for maintaining a hedge in hard-to-borrow securities.

[10] The Exchange generally employs a maker-taker transactional fee structure, whereby an ETP Holder that removes liquidity is charged a fee (''Take Rate''), and an ETP Holder that provides liquidity receives a credit (''Make Rate''). The Take Rate for LMMs is currently $0.0025 per share. The Make

Rates are intended to balance the increased risks and requirements assumed by LMMs. Accordingly, the value of acting as an LMM can be measured by the incremental difference in the transaction credits or fees under the LMM Rates as compared to the Standard Rates. However, the absolute incremental difference depends on the LMM's trading volume. Trading volume for different ETPs can vary significantly and result in a corresponding variance in LMM trading volume. The benefit of acting as an LMM can therefore vary significantly depending upon the ETP to which the LMM is assigned. There are fewer financial benefits for LMM assignments in ETPs with lower CADVs than ETPs with higher CADVs. The table below provides hypothetical examples based on assumptions that NYSE Arca market share equals 22%, LMM participation rate equals 20%, LMM make ratio equals 80%, and LMM take ratio equals 20%: [11]

Symbol	CADV	Annual transaction credit/fee (LMM rates)	Annual transaction credit/fee (standard rates)	Annual incremental difference
ABC	25,000,000	$637,560	$332,640	$304,920
DEF	5,100,000	130,062	67,859	62,204
GHI	2,500,000	74,844	33,264	41,580
JKL	1,100,000	32,931	14,636	18,295
MNO	750,000	25,780	9,979	15,800
PQR	500,000	17,186	6,653	10,534
STU	100,000	3,437	1,331	2,107
VWX	10,000	344	133	211
YZ	1,000	34	13	21

The Exchange believes that the assignment of an LMM, which is held to higher standards as compared to Market Makers and other market participants, is a critical component of the promotion of a consistent, fair and orderly market in ETPs on the Exchange. However, market participants may be forgoing LMM assignments in ETPs—instead choosing to trade ETPs as Market Makers or ETP Holders with lower or no obligations or minimum performance standards—because the incentives to serve as an LMM in low-volume ETPs are insufficient to outweigh the obligations, minimum performance standards, and other risks described above. To illustrate how this change has transpired, the following table highlights the increasing proportion of new NYSE Arca ETPs that are listed without an LMM present:

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012
New NYSE Arca ETP Listings	11	34	49	133	223	195	124	196	297	147
Listed with LMM	11	34	49	133	218	190	121	175	271	135
Listed without LMM	0	0	0	0	5	5	3	21	26	12

The Exchange is concerned that this trend will continue or worsen if there is no mechanism to appropriately remunerate capable Market Makers to take on the obligations and accountability that are part and parcel of the LMM assignment. The Exchange also is concerned that this would not be limited to future listings and that existing listings could also be subject to LMM withdrawals. Indeed, since January 2008, nearly 100% of all LMM withdrawal requests for ETPs already listed and trading were made for securities that exhibited low CADV in the period prior to the withdrawal requests being made. This behavior further signals a connection between low CADV and low interest levels from firms seeking to act as LMMs. Likewise, it supports the assertion that there is less value relative to the risks of acting as the LMM for certain ETPs.

The Exchange believes that there is ample evidence, along with logical inference, to support the assertion that the presence of an obligated and accountable liquidity provider leads to superior market quality and thus benefits long-term investors. When there is an LMM assigned to a security listed on NYSE Arca, long-term investors trading on the Exchange in the secondary market likely experience enhanced market quality compared to similar securities for which there are no LMMs assigned. For instance, in the fourth quarter of 2012, there were 609 ETPs listed on NYSE Arca that traded less than 10,000 shares CADV. Of those ETPs, 567 had LMMs while 42 did not. The average spread for the ETPs with LMMs was 0.79% and the average quote size was 3,014 shares. The average spread for the ETPs without LMMs was 11.52% and the average quote size was 1,655 shares. During the same time period, there were 410 ETPs listed on NYSE Arca that traded between 10,000 shares and 100,000 shares CADV. Of those ETPs, 396 had LMMs while 14 did not. The average spread for the ETPs with LMMs was 0.23% and the average quote size was 6,643 shares. The average spread for ETPs without LMMs was 0.36% and the average quote size was 2,613 shares. Exhibits 1 and 2 illustrate that these observations were consistent over longer time periods and that there has been a greater variance in market quality for ETPs without LMMs.[12]

Rate for LMMs is currently generally between $0.0035 and $0.0045 per share depending on consolidated average daily volume (''CADV''). *See* Trading Fee Schedule, *available at https://usequities.nyx.com/sites/usequities.nyx.com/files/nyse_arca_marketplace_fees__4_4__13_copy.pdf.*

[11] Market share is the percentage of CADV traded on NYSE Arca. Participation rate is the percentage of NYSE Arca volume traded by the LMM. Make ratio is the percentage of LMM volume that provides liquidity. Take ratio is the percentage of LMM volume that takes liquidity. The formula for calculating the transaction credit is as follows: (LMM make volume * Make Rate) + (LMM take volume * Take Rate). LMM make volume equals CADV * Arca market share * LMM participation rate * LMM make ratio. LMM take volume equals CADV * Arca market share * LMM participation rate * LMM take ratio.

[12] All open-ended ETPs trading over 100,000 CADV have LMMs except SPY, which has

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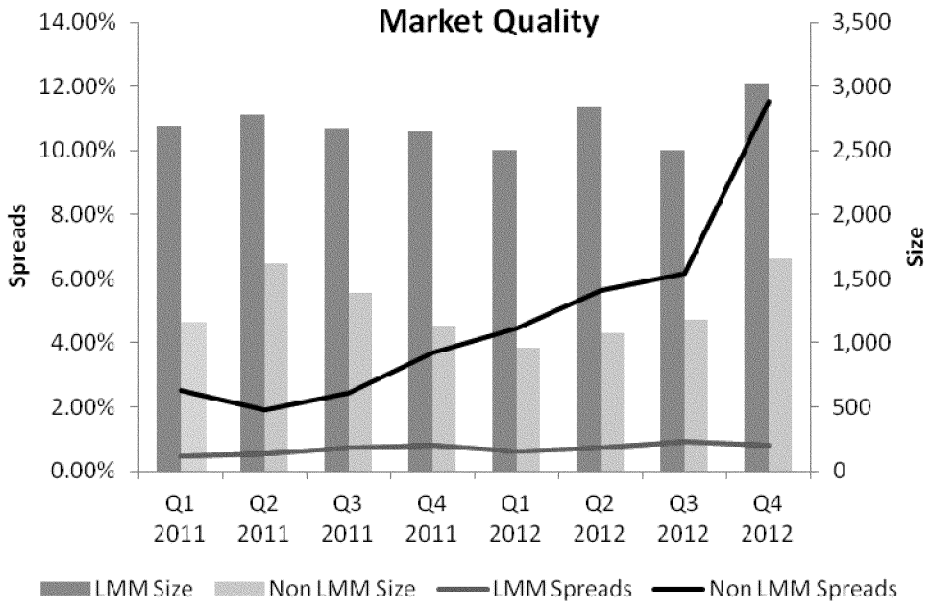
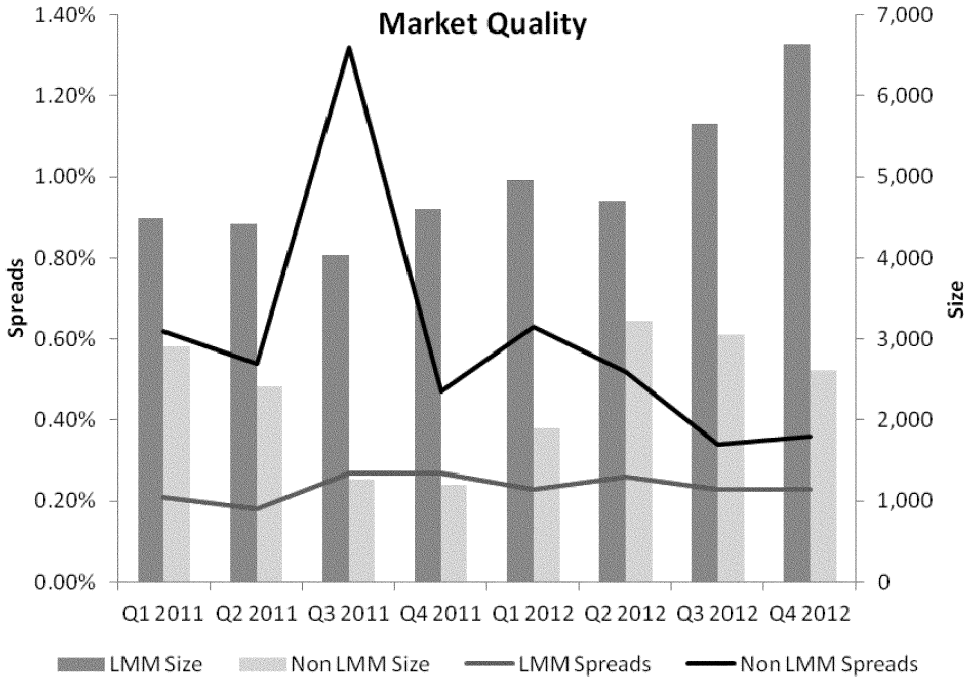
For ETPs <10,000 Shares CADV:



significant liquidity without the need for an LMM,

and UBS E–TRACS Alerian MLP Infrastructure ETN (symbol: MLPI).

For ETPs between 10,000 and 100,000 Shares CADV:



Proposed Incentive Program

To address these issues, the Exchange proposes to establish the Incentive Program as a one-year pilot to enhance the market quality for ETPs by incentivizing Market Makers to take LMM assignments in certain lower volume ETPs by offering an alternative fee structure for such LMMs funded from the Exchange's general revenues. Incentive Program costs would be offset by charging participating issuers non-refundable Optional Incentive Fees, which would be credited to the Exchange's general revenues. Participation would be entirely voluntary on the part of both LMMs and issuers. The Exchange proposes to add new NYSE Arca Equities Rule 8.800, which would set forth Incentive Program requirements, including performance standards specific to LMMs participating in the Incentive Program, as described in more detail below.

Proposed Rule

Proposed NYSE Arca Equities Rule 8.800(a) would describe the ETPs that would be eligible to participate in the Incentive Program. An ETP would be eligible to participate in the Incentive Program if:

(1) It is listed on the Exchange as of the commencement of the pilot period or becomes listed during the pilot period;

(2) the listing is under NYSE Arca Equities Rules 5.2(j)(3) (Investment Company Units), 5.2(j)(5) (Equity Gold Shares), 8.100 (Portfolio Depositary Receipts), 8.200 (Trust Issued Receipts), 8.201 (Commodity-Based Trust Shares), 8.202 (Currency Trust Shares), 8.203 (Commodity Index Trust Shares), 8.204 (Commodity Futures Trust Shares), 8.300 (Partnership Units), 8.600 (Managed Fund Shares), or 8.700 (Managed Trust Securities);

(3) with respect to an ETP that listed on the Exchange before the commencement of the Incentive Program, the ETP has a CADV of one million shares or less for at least the preceding three months and the issuer of such ETP has not suspended the issuance or redemption of new shares; [13] and

(4) it is compliant with continuing listing standards, if the ETP was added to the Incentive Program after listing on the Exchange.

Proposed NYSE Arca Equities Rule 8.800(b) would describe the issuer application and LMM assignment process. Specifically, under proposed NYSE Arca Equities Rule 8.800(b)(1), an issuer that wished to have an ETP participate in the Incentive Program and pay the Exchange an Optional Incentive Fee would be required to submit a written application in a form prescribed by the Exchange for each ETP. The issuer could apply to have its ETP participate at the time of listing or thereafter at the beginning of each quarter during the pilot period. An issuer could not have more than five ETPs that were listed on the Exchange prior to the pilot period participate in the Incentive Program.[14] However, there would not be a limitation on the number of an issuer's ETPs listed during the pilot period that could participate.

Proposed NYSE Arca Equities Rule 8.800(b)(2) would set forth eligibility requirements for issuers. Specifically, in order for its ETP to be eligible to participate in the Incentive Program, an issuer must be current in all payments due to the Exchange.

Proposed NYSE Arca Equities Rule 8.800(b)(3) would provide that the Exchange would communicate the ETP(s) proposed for inclusion in the Incentive Program on a written solicitation that would be sent to all qualified LMMs [15] along with the

[13] The Exchange maintains a list of ETPs that have suspended the issuance of new shares, which is available at *https://etp.nyx.com/en/trading-information/us/funds-closed-creation.*

[14] In light of this limitation, the Exchange does not believe that there would be any improper incentive for an LMM to pressure an issuer to place currently listed ETPs in the Incentive Program.

[15] The written solicitation would be included in the Green Sheet, which is the common term for an email communication sent by NYSE Arca staff members to all qualified LMMs prior to an LMM selection. The Green Sheet includes, among other things, the name, symbol and description of the

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Optional Incentive Fee the issuer would pay the Exchange for each ETP. The issuer would determine the amount of the Optional Incentive Fee for each ETP within a permitted range that would be set forth in the Exchange's Listing Fee Schedule. In this regard, the Exchange proposes to amend its Listing Fee Schedule to provide that the Optional Incentive Fee under NYSE Arca Rule 8.800 may initially range from $10,000 to $40,000, as determined by the issuer of an ETP.[16] The Optional Incentive Fee would be paid by the issuer to the Exchange in quarterly installments for each participating ETP at the beginning of each quarter and prorated if the issuer commenced participation for an ETP in the Incentive Program after the beginning of a quarter. If the LMM did not meet its proposed Incentive Program LMM performance standards for an ETP in any given month in such quarter, the issuer would not receive any refund or credit from the Exchange following the end of the quarter.[17] If the ETP had a sponsor, the sponsor could pay the Optional Incentive Fee to the Exchange.[18]

Proposed NYSE Arca Equities Rule 8.800(b)(4) would provide that after the Exchange provided the written solicitation to LMMs, no individual associated with an LMM could contact such issuer or the Exchange staff about that ETP until the assignment of the LMM is made, except as otherwise permitted in the rules.

Proposed NYSE Arca Equities Rule 8.800(b)(5) would describe the assignment of an LMM if more than one qualified LMM proposed to serve as such for a particular ETP.[19] If more than one qualified LMM proposed to serve as such for a particular ETP, Exchange staff would select the LMM. Each LMM could provide material to the Exchange staff, which could include a corporate overview of the LMM and the trading experience of its personnel. Exchange staff would meet with representatives of each LMM if requested by the LMM. No more than three representatives of each LMM could participate in the meeting, each of whom must be employees of the LMM, and one of whom must be the individual trader of the LMM who is proposed to trade the ETP. If the LMM were unavailable to appear in person, a telephone interview with that LMM would be acceptable. Meetings would normally be held at the Exchange, unless the Exchange agreed that they may be held elsewhere. The issuer of the ETP could choose to submit a letter to the Exchange staff indicating its preference and supporting justification for a particular LMM, and the Exchange staff could consider such letter in performing its duty to select an LMM, but such letter would not be determinative of the particular LMM selected by the Exchange. Within two business days after the final LMM interview, the Exchange staff, in its sole discretion, would select an LMM and notify the LMM and the issuer.[20]

Proposed NYSE Arca Equities Rules 8.800(b)(6) and (7) would describe required public notices relating to the Incentive Program. Under proposed NYSE Arca Equities Rule 8.800(b)(6), the Exchange would provide notification on a dedicated page on its Web site regarding (i) The ETPs participating in the Incentive Program, (ii) the date a particular ETP began participating in the Incentive Program, (iii) the date a particular ETP ceased participating in the Incentive Program, (iv) the LMM assigned to each ETP participating in the Incentive Program, and (v) the amount of the Optional Incentive Fee for each ETP. This page would also include a fair and balanced description of the Incentive Program, including (i) A description of the Incentive Program's operation as a pilot, including the effective date thereof, (ii) the potential benefits that may be realized by an ETP's participation in the Incentive Program, (iii) the potential risks that may be attendant with an ETP's participation in the Incentive Program, (iv) the potential impact resulting from an ETP's entry into and exit from the Incentive Program, and (v) how interested parties can request additional information regarding the Incentive Program and/or the ETPs participating therein.

Under proposed NYSE Arca Equities Rule 8.800(b)(7), an issuer of an ETP that is approved to participate in the Incentive Program would be required to issue a press release to the public when an ETP commences or ceases participation in the Incentive Program. The press release would be in a form and manner prescribed by the Exchange, and if practicable, would be issued at least two days before the ETP commences or ceases participation in the Incentive Program.[21] For example, there could be instances in which it would not be known two days in advance that an ETP would be ceasing participation in the Incentive Program, in which case the Exchange would request that the issuer distribute the press release as soon as possible under the particular circumstances. The issuer also would be required to dedicate space on its Web site, or, if it does not have a Web site, on the Web site of the adviser or sponsor of the ETP, that (i) included any such press releases and (ii) provided a hyperlink to the dedicated page on the Exchange's Web site that describes the Incentive Program.[22]

Proposed NYSE Arca Equities Rule 8.800(c) would describe the proposed Incentive Program LMM performance standards that would apply to an LMM for each Incentive Program security it is assigned.[23] Under proposed NYSE Arca Equities Rule 8.800(c)(1), an LMM in the Incentive Program would remain obligated to satisfy the general requirements of NYSE Arca Rule 7.23.

Under proposed NYSE Arca Equities Rule 8.800(c)(2), an LMM would be subject to a ''market wide'' requirement. Specifically, an LMM would be required to maintain quotes or orders at the NBBO or better (the ''Inside'') during the month during Core Trading Hours in accordance with certain maximum width and minimum depth thresholds, which would be provided in

ETP(s) as well as the name of the issuer and a link to the ETP prospectus. A qualified LMM must complete the application for a specific ETP or group of ETPs.

[16] Optional Incentive Fees would be credited to the Exchange's general revenues. The issuer would still be required to pay applicable Listing Fees and Annual Fees.

[17] However, as described below, if an issuer did not pay its quarterly installments to the Exchange on time and the ETP continued to be listed, the Exchange would continue to credit the LMM as long as the LMM met its performance standards.

[18] The term ''sponsor'' means the registered investment adviser that provides investment management services to an ETP or any of such investment adviser's parents or subsidiaries.

[19] As is the case with all securities traded on the Exchange, only one LMM would be assigned per ETP participating in the Incentive Program. The Exchange's market structure has long included a single LMM structure and the Exchange does not propose to change this for the Incentive Program. Indeed, the Exchange believes that its proposed payment (the range of which was established after significant analysis) might not be sufficient if it had to be divided among multiple Market Makers.

[20] Proposed NYSE Arca Equities Rule 8.800(b)(5) is modeled in part on New York Stock Exchange (''NYSE'') Rule 103B(III)(B)(1), which governs Designated Market Maker unit assignments for equities listed on the NYSE.

[21] The issuer's press release would be required to include language describing, for example, that while the impact of participation in or exit from the Incentive Program, which is optional, cannot be fully understood until objective observations can be made in the context of the Incentive Program, potential impacts on the market quality of the issuer's ETP may result, including with respect to the average spread and average quoted size for the ETP.

[22] These disclosure requirements would be in addition to, and would not supersede, the prospectus disclosure requirements under the Securities Act of 1933 or the Investment Company Act of 1940.

[23] The Exchange would specify in proposed Commentary .01 to Rule 8.800 that only displayed quotes and orders would be considered for purposes of the LMM performance standards of proposed Rule 8.800(c).

Commentary .01 to Rule 8.800.[24] However, this requirement would not apply to an LMM if the thresholds provided in Commentary .01 were otherwise met by quotes or orders of other market participants on the Exchange or across all other markets trading the security.

Under proposed NYSE Arca Equities Rule 8.800(c)(3), an LMM would also be subject to an NYSE Arca-specific requirement, which could be satisfied in one of two ways. First, an LMM could choose to satisfy the ''Time-at-the-Inside Requirement'' under proposed NYSE Arca Equities Rule 8.800(c)(3)(A), pursuant to which an LMM would be required to maintain quotes or orders on NYSE Arca at the NBBO or better at least 15% of the time when quotes may be entered during Core Trading Hours each trading day, as averaged over the course of a month.[25] Alternatively, an LMM could choose to satisfy the ''Size-Setting NBBO Requirement'' under proposed NYSE Arca Equities Rule 8.800(c)(3)(B), pursuant to which an LMM would be required to maintain ''Size-Setting'' quotes or orders on NYSE Arca, as compared to trading interest on other markets, at the NBBO or better at least 25% of the time when quotes may be entered during Core Trading Hours each trading day, as averaged over the course of a month.[26] However, this requirement would not apply to an LMM if this threshold is otherwise met by quotes or orders of other market participants on NYSE Arca.

Finally, under proposed NYSE Arca Equities Rule 8.800(c)(4), for at least 90% of the time when quotes may be entered during Core Trading Hours each trading day, as averaged over the course of a month, an LMM would be required to maintain (A) at least 2,500 shares of attributable, displayed posted buy liquidity on the Exchange that is priced no more than 2% away from the NBB for the particular ETP; and (B) at least 2,500 shares of attributable, displayed posted offer liquidity on the Exchange that is priced no more than 2% away from the NBO for the particular ETP.

Proposed NYSE Arca Equities Rule 8.800(d) would describe the payment to an LMM by the Exchange (''LMM Payment''). Under this provision, the Exchange would credit an LMM for the LMM Payment, which would be determined by the Exchange and set forth in the Trading Fee Schedule. An LMM participating in the Incentive Program would not be entitled to an LMM Payment unless and until it meets or exceeds the proposed Incentive Program LMM performance standards for an assigned ETP, as determined by the Exchange. In this regard, the Exchange proposes to amend its Trading Fee Schedule to provide that at the end of each quarter the Exchange would credit an LMM an ''LMM Payment'' for each month during such quarter that the LMM meets or exceeds its proposed Incentive Program LMM performance standards for an assigned ETP. If an LMM does not meet or exceed its proposed Incentive Program LMM performance standards for an assigned ETP for a particular month, or the ETP is withdrawn from the Incentive Program pursuant to paragraph (e) of NYSE Arca Equities Rule 8.800, then the LMM Payment would be zero for such month. The amount of the LMM Payment for a particular month would not exceed ⅓ of the quarterly Optional Incentive Fee, less an Exchange administration fee of 5%, and such LMM would be subject to Standard Rates during that quarter instead of LMM Rates. As is the case with all liquidity-adding credits currently payable to NYSE Arca ETP Holders, LMM Payments would be paid by the Exchange from its general revenues. The Trading Fee Schedule would also reflect that if an issuer did not pay its quarterly installments to the Exchange on time and the ETP continued to be listed, the Exchange would continue to credit the LMM if the LMM met its proposed Incentive Program LMM performance standards.

Proposed NYSE Arca Equities Rule 8.800(e) would describe the circumstances for withdrawal from the Incentive Program. First, if an ETP no longer met continuing listing standards, suspended the creation and/or redemption of shares, or liquidated, it would be automatically withdrawn from the Incentive Program as of the ETP suspension date.

Second, NYSE Arca, in its discretion, could allow an issuer to withdraw an ETP from the Incentive Program before the end of the pilot period if the assigned LMM was unable to meet its proposed Incentive Program LMM performance standards for any two of the three months of a quarter or for five months during the pilot period and no other qualified ETP Holder was able to take over the assignment.

Third, an LMM also could withdraw from all of its ETP assignments in the Incentive Program. Alternatively, NYSE Arca, in its discretion, could allow an LMM to withdraw from a particular ETP before the end of the pilot period if the Exchange determined that there were extraneous circumstances that prevented the LMM from meeting its proposed Incentive Program LMM performance standards for such ETP that did not affect its other ETP assignments in the Incentive Program. In either such event, the LMM's ETP(s) would be reallocated as described below.

Fourth, if an ETP maintained a CADV of one million shares or more for three consecutive months, it would be automatically withdrawn from the Incentive Program within one month thereafter. If after such automatic withdrawal the ETP failed to maintain a CADV of one million shares or more for three consecutive months, the issuer of the ETP could reapply for the Incentive Program one month thereafter. The Exchange believes that setting a one-million-share threshold would focus Incentive Program resources on particularly low volume ETPs and provide an objective measurement for evaluating the effectiveness of the Incentive Program.

Fifth, if the issuer was not current in all payments due to the Exchange for two consecutive quarters, its ETP would be automatically terminated from the Incentive Program.

Finally, proposed NYSE Arca Equities Rule 8.800(f) would describe the LMM reallocation process. If the LMM for a particular ETP did not meet or exceed its proposed Incentive Program LMM performance standards for any two of the three months of a quarter or for five months during the pilot period, or chose to withdraw from the Incentive Program, and at least one other qualified Market Maker had agreed to become the assigned LMM under the Incentive Program, then the ETP would be reallocated. If more than one qualified LMM proposed to serve as such, another

[24] The Exchange would specify in proposed Commentary .01 to Rule 8.800 that (i) the spread thresholds would be calculated as the time-weighted average throughout the trading day and then averaged, by day, across the month and (ii) the depth thresholds would be calculated as the average of (a) the average time-weighted bid depth and (b) the average time-weighted ask depth.

[25] The Exchange would specify in proposed Commentary .01 to Rule 8.800 that the Time-at-the-Inside Requirement would be calculated as the average of (a) the percentage of time the LMM has a bid on NYSE Arca at the NBB and (b) the percentage of time the LMM has an offer on NYSE Arca at the NBO.

[26] The Exchange would specify in proposed Commentary .01 to Rule 8.800 that the Size-Setting NBBO Requirement would be calculated throughout the trading day and then averaged, by day, across the month. Quotes and orders of all market participants across all markets trading the security would be considered when calculating the Size-Setting NBBO Requirement. A quote or order would be considered ''Size-Setting'' if it is at the NBB or NBO. If multiple quotes or orders exist at the same price, the quote or order with the largest size would be considered ''Size-Setting.'' If multiple quotes or orders exist at the same price and the same size, the quote or order with the earliest entry time would be considered ''Size-Setting.''

LMM would be selected in accordance with the written solicitation and assignment processes described above. The reallocation process would be completed no sooner than the end of the current quarter and no later than the end of the following quarter.

Implementation of Incentive Program

The Incentive Program would be offered to issuers from the date of implementation, which would occur no later than 90 days after Securities and Exchange Commission (''Commission'') approval of this filing, until one calendar year after implementation. As described above, each issuer could select ETPs to participate in the Incentive Program. During the pilot period, the Exchange would assess the Incentive Program and could expand the criteria for ETPs that are eligible to participate, for example, to permit issuers to include more than five ETPs that were listed on the Exchange before the pilot period commenced. At the end of the pilot period, the Exchange would determine whether to continue or discontinue the Incentive Program or make it permanent and submit a rule filing as necessary. If the Exchange determined to change the terms of the Incentive Program while it was ongoing, it would submit a rule filing to the Commission.

During the Incentive Program, the Exchange would provide the Commission with certain market quality reports each month, which would also be posted on the Exchange's Web site. Such reports would include the Exchange's analysis regarding the Incentive Program and whether it is achieving its goals, as well as market quality data such as, for all ETPs listed as of the date of implementation of the Incentive Program and listed during the pilot period (for comparative purposes), volume (CADV and NYSE Arca ADV), NBBO bid/ask spread differentials, LMM participation rates, NYSE Arca market share, LMM time spent at the inside, LMM time spent within $0.03 of the inside, percent of time NYSE Arca had the best price with the best size, LMM quoted spread, LMM quoted depth, and Rule 605 statistics (one-month delay) as agreed upon by the Exchange and the Commission staff. In connection with this proposal, the Exchange would provide other data and information related to the Incentive Program as may be periodically requested by the Commission. In addition, and as described further below, issuers could utilize ArcaVision to analyze and replicate data on their own.[27]

Benefits of the Incentive Program

The proposed LMM Payment is designed to encourage additional Market Makers to pursue LMM assignments and thereby support the provision of consistent liquidity in lower-volume ETPs listed on the Exchange. The Exchange believes that providing a quarterly LMM Payment would create a more equitable system of incentives for LMMs. The Exchange would administer all aspects of the LMM Payments, which, as noted above, would be paid by the Exchange to LMMs out of the Exchange's general revenues.

The Exchange believes that the Incentive Program would increase the supply of Market Makers seeking to take on LMM assignments, ultimately leading to improved market quality for long-term investors in ETPs, which would lead to multiple benefits. It would help to ensure that a diversified pool of qualified LMM candidates exists in the present and future. It would also help to discover a competitive balance to set the fair Optional Incentive Fees within the proposed range of $10,000 to $40,000 per ETP annually, based on the risk/reward of receiving specific LMM assignments. Issuers would be able to monitor the performance of LMMs as well as registered Market Makers and other participants that opted into the ''ArcaVision Market Maker Summary'' reporting mechanism. Thus, issuers would be able to compare and contrast the performance of various Market Makers to ensure that they were optimizing benefits vis-a-vis cost.

Consistency with FINRA Rule 5250

The Exchange believes that the Incentive Program is designed to mitigate risks and concerns that Financial Industry Regulatory Authority (''FINRA'') Rule 5250 addresses. FINRA Rule 5250 prohibits a FINRA member or a person associated with a FINRA member from accepting any payment or other consideration, directly or indirectly, from an issuer of a security, or any affiliate or promoter thereof, for publishing a quotation, acting as market maker in a security, or submitting an application in connection therewith.

FINRA Rule 5250 is designed to preserve the integrity of the marketplace by ensuring that quotations accurately reflect a broker-dealer's interest in buying or selling a security and that the decision by a firm to make a market in a given security and the question of price should not be influenced by payments to members from issuers or promoters.[28] The Exchange believes that the Incentive Program is carefully tailored to promote the beneficial purpose of improved market quality, while at the same time being designed to mitigate the public policy risks and concerns that FINRA Rule 5250 addresses and to not adversely affect market integrity.

First, the derivative and open-ended nature of many of the ETPs eligible to participate in the Incentive Program would allow for transparent intrinsic intraday pricing. As such, the Exchange does not believe that such products would lend themselves to the type of market manipulation that FINRA Rule 5250 was designed to prevent. The transparent nature of many ETPs' portfolio composition as well as their accessibility and the elasticity of shares outstanding contribute to an arbitrage process that will lead to executions of orders of many ETPs priced at or near net asset values (''NAVs''). The typical unit size is 50,000 shares to 100,000 shares and each share represents fractional ownership of the portfolio, allowing low minimum investments to access the exposure of a large notional portfolio. ETP supply (i.e., shares outstanding) can be increased or decreased through the creation and redemption process. Clearing firms that are authorized participants will have the opportunity to deliver, or take delivery of, unit-sized amounts of the underlying securities. Proprietary traders engaging in arbitrage are able to calculate an estimated intraday NAV. Such traders understand what the intrinsic per-share price is, hedge themselves using the underlying securities or correlated equivalents, and manage their positions by either creating or redeeming units. If and when the quote is priced beyond

[27] NYSE Arca provides ArcaVision free of charge to the public via the Web site www.ArcaVision.com. ArcaVision offers a significant amount of trading data and market quality statistics for every Regulation NMS equity security traded in the United States, including all ETPs. Publicly available reports within ArcaVision, which include relevant comparative data, are the Symbol Summary, Symbol Analytics, Volume Comparison and Quotation Comparison reports, among others. In addition, users can create the reports on a per-symbol basis over a flexible time frame. They can also take advantage of predefined, accurate and up-to-date symbol sets based on type of ETP or issuer. Users can also create their own symbol lists. ArcaVision also allows an ETP issuer to see additional information specific to its LMM and other Market Makers in each ETP via the ''ArcaVision Market Maker Summary'' reporting mechanism.

[28] *See* Securities Exchange Act Release No. 60066 (June 8, 2009), 74 FR 28308 (June 15, 2009) (SR–FINRA–2009–36). *See also* Securities Exchange Act Release No. 38812 (July 3, 1997), 62 FR 37105 (July 10, 1997) (SR–NASD–97–29) (order approving NASD Rule 2460, predecessor to FINRA Rule 5250).

the intrinsic value of an ETP, an arbitrage opportunity can arise, and market participants will arbitrage such spread until price equilibrium is restored.

Second, the Incentive Program would have numerous structural safeguards that were designed to prevent any adverse effect on market integrity. First, the Incentive Program would be administered by the staff of the Exchange, which is a self-regulatory organization,[29] and which would be interposed between LMMs and issuers. Second, both LMMs and issuers would be required to apply to participate in the program and to meet certain standards. The Exchange would collect the Optional Incentive Fees from issuers and credit them to the Exchange's general revenues. An LMM would be eligible to receive an LMM Payment, again from the Exchange's general revenues, only after it met the proposed Incentive Program LMM performance standards set and monitored by the Exchange. Third, the Incentive Program is rules based and subject to significant public disclosure. Application to, continuation in, and withdrawal from the Incentive Program would be governed by published Exchange rules and policies, and there would be extensive public notice regarding the Incentive Program and payments thereunder on both the Exchange's and the issuers' Web sites.

In light of the pricing mechanisms of ETPs and the structural safeguards of the Incentive Program, the Exchange believes that the payments under the Incentive Program are designed to mitigate the risks and concerns that FINRA Rule 5250 addresses. In this regard, the Exchange understands, based upon discussions with FINRA, that FINRA will file an immediately effective rule change with the Commission indicating that participation by LMMs and issuers in the Incentive Program would not violate Rule 5250.

Consistency With Regulation M

Rule 102 of Regulation M prohibits an issuer from directly or indirectly attempting ''to induce any person to bid for or purchase, a covered security during the applicable restricted period'' unless an exemption is available.[30] For the reasons discussed below, the Exchange believes that exemptive relief from Rule 102 should be granted for the Incentive Program.

First, the Exchange notes that the Commission and its staff have previously granted relief from Rule 102 to a number of ETPs (''Existing Relief'') in order to permit the ordinary operation of such ETPs.[31] In granting the Existing Relief, the Commission has relied in part on the exclusion from the provisions of Rule 102 provided by paragraph (d)(4) of Rule 102 for securities issued by an open-end management investment company or unit investment trust. In granting the Existing Relief from Rule 102 to other types of ETPs, for which the (d)(4) exception is not available, the staff has relied on (i) representations that the fund in question would continuously redeem ETP shares in basket-size aggregations at their NAV and that there should be little disparity between the market price of an ETP share and the NAV per share and (ii) a finding that ''[t]he creation, redemption, and secondary market transactions in [shares] do not appear to result in the abuses that * * * Rules 101 and 102 of Regulation M * * * were designed to prevent.''[32] The crux of the Commission's findings in granting the Existing Relief rests on the premise that the prices of ETP shares closely track their per-share NAVs. Given that the Incentive Program neither alters the derivative pricing nature of ETPs nor impacts the arbitrage opportunities inherent therein, the conclusion on which the Existing Relief is based remains unaffected by the Incentive Program. In this regard, most ETPs that would be eligible to participate in the Incentive Program would have previously been granted relief from Rule 102. Moreover, and as noted above, an ETP that suspended the creation and/or redemption of shares, or liquidated, would be automatically withdrawn from the Incentive Program as of the ETP suspension date.

Second, the Incentive Program requires, among other things, that an LMM make two-sided quotes and not just bids. It is not intended to raise ETP prices but rather to improve market quality. In light of the derivative nature of ETPs described above, the Exchange does not expect that LMMs would quote outside of the normal quoting ranges for these products as a result of the LMM Payment, but rather would quote within their normal ranges as determined by market factors. Indeed, the Incentive Program would not create any incentive for an LMM to quote outside such ranges.

Finally, the staff of the Exchange, which is a self-regulatory organization, would be interposed between the issuer and the LMM, administering a rules-based program with numerous structural safeguards described in the previous section. Specifically, both LMMs and issuers would be required to apply to participate in the program and to meet certain standards. The Exchange would collect the Optional Incentive Fees from issuers and credit them to the Exchange's general revenues. An LMM would be eligible to receive an LMM Payment, again from the Exchange's general revenues, only after it met the proposed Incentive Program LMM performance standards set and monitored by the Exchange. Application to, continuation in, and withdrawal from the Incentive Program would be governed by published Exchange rules and policies, and there would be extensive public notice regarding the Incentive Program and payments thereunder on both the Exchange's and the issuers' Web sites. Given these structural safeguards, the Exchange believes that payments under the Incentive Program are appropriate for exemptive relief from Rule 102.

In summary, the Exchange believes that exemptive relief from Rule 102 should be granted for the Incentive Program because, for example, (1) The Incentive Program would not create any incentive for an LMM to quote outside of the normal quoting ranges for the ETPs included therein; (2) the Incentive Program has numerous structural safeguards, such as the application process for issuers and LMMs, the interpositioning of the Exchange between issuers and LMMs, and significant public disclosure surrounding the Incentive Program, which in general is designed to help inform investors about the potential impact of the Incentive Program; and (3) the Incentive Program does not alter the basis on which Existing Relief is based and, furthermore, most ETPs that would be eligible to participate in the Incentive Program would have previously been granted relief from Rule 102.[33]

[29] FINRA surveils trading on the Exchange, including ETP trading, pursuant to a Regulatory Services Agreement (''RSA''). The Exchange is responsible for FINRA's performance under this RSA.

[30] Rule 102 provides that ''[i]n connection with a distribution of securities effected by or on behalf of an issuer or selling security holder, it shall be unlawful for such person, or any affiliated purchaser of such person, directly or indirectly, to bid for, purchase, or attempt to induce any person to bid for or purchase, a covered security during the applicable restricted period'' unless an exception is available. *See* 17 CFR 242.102.

[31] *See, e.g.,* Letter from James A. Brigagliano, Acting Associate Director, Division of Market Regulation, to Stuart M. Strauss, Esq., Clifford Chance US LLP (Oct. 24, 2006) (regarding class relief for exchange traded index funds).

[32] *See* Rydex Specialized Products LLC, SEC No-Action Letter (June 21, 2006).

[33] The Exchange notes that the Commission granted a limited exemption from Rule 102 of

Continued

Surveillance

The Exchange believes that its surveillance procedures would be adequate to properly monitor the trading of Incentive Program ETPs on the Exchange during all trading sessions and to detect and deter violations of Exchange rules and applicable federal securities laws. Trading of the ETPs through the Exchange would be subject to FINRA's surveillance procedures for derivative products including ETFs.[34] The Exchange may obtain information via the Intermarket Surveillance Group (''ISG'') from other exchanges that are members or affiliates of the ISG;[35] and from issuers and public and non-public data sources such as, for example, Bloomberg.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6 of the Act,[36] in general, and Sections 6(b)(4) and 6(b)(5) of the Act,[37] in particular. The proposed rule change is consistent with Section 6(b)(5) of the Act in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system. The Exchange believes that the Incentive Program would enhance quote competition, improve liquidity, support the quality of price discovery, promote market transparency, and increase competition for listings and trade executions while reducing spreads and transaction costs. The Exchange further believes that enhancing liquidity in Incentive Program ETPs with all of the structural safeguards described above would help raise investors' confidence in the fairness of the market generally and their transactions in particular. As such, the Incentive Program would foster cooperation and coordination with persons engaged in facilitating securities transactions, enhance the mechanism of a free and open market, and promote fair and orderly markets in ETPs on the Exchange.

The Exchange further believes that designating ETPs as the products eligible for inclusion in the Incentive Program is reasonable because it would incentivize Market Makers to undertake LMM assignments in ETPs with lower trading volume. As described earlier in the filing, there is ample data demonstrating that there are generally fewer financial benefits for such ETPs as compared to ETPs with higher CADVs and that market quality has been affected.

The Exchange believes that its implementation plan and the pilot period are reasonable in that they would permit the Commission, the Exchange, LMMs, and issuers to assess the impact of the Incentive Program before making it available to other securities. In particular, the Exchange believes that it is beneficial and not unfairly discriminatory to limit the ETPs participating so that the Exchange and issuers could measure the experience against nonparticipating ETPs and thereby conserve the commitment of resources to the Incentive Program. In particular, by setting an objective one-million-share CADV threshold, the Exchange and the Commission will have an opportunity to observe the impact, if any, on ETPs that exceed the threshold and ''graduate'' from the Incentive Program and compare them to other ETPs.

The Exchange believes that the proposed LMM minimum performance standards are reasonable, including aspects thereof that can be met by quotes or orders of other market participants on the Exchange or across all other markets trading the security, because such standards would contribute to reasonably ensuring that there is sufficient liquidity for the ETPs participating in the Incentive Program. In this regard, the role of the LMM is to reasonably ensure that sufficient liquidity exists for investors when such liquidity is not provided by other market participants, whether on the Exchange or across other markets trading the particular security, by submitting quotes and orders that contribute to the quality of the width and depth of liquidity for the ETP. Accordingly, when the quotes or orders of other market participants on the Exchange or across all other markets trading the security result in such sufficient liquidity, there is not a need for an LMM to quote according to the proposed LMM minimum performance standards, which are designed to reasonably ensure that such liquidity exists. However, when such liquidity is not otherwise present, the proposed LMM minimum performance standards would reasonably ensure that such liquidity exists and is available for investors.

With respect to the proposed fees, the Exchange believes that the proposed rule change is consistent with Sections 6(b)(4) and 6(b)(5) of the Act, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities and that it is not unfairly discriminatory. The Exchange believes that the proposed Optional Incentive Fees for ETPs are reasonable, given the additional costs to the Exchange of providing the LMM Payments, which are paid by the Exchange out of the Exchange's general revenues. The Exchange also believes that the proposed fees are reasonable because they would be used by the Exchange to offset the cost that the Exchange incurs to provide listing services for ETPs. These costs include, but are not limited to, ETP rulemaking initiatives, listing administration processes, issuer services, consultative legal services provided to ETP issuers in support of new product development, and administration of the proposed quarterly LMM Payment. As such, the Exchange believes that it is reasonable for it to retain an administration fee to recover the costs of administering the Incentive Program.

The Exchange believes that the Optional Incentive Fee is reasonable, equitably allocated, and not unreasonably discriminatory because it is entirely voluntary on an issuer's part to join the Incentive Program. The amount of the fee would be determined and paid by the issuer within the $10,000 to $40,000 band per ETP and credited to the Exchange's general revenues. Only issuers that voluntarily join the Incentive Program would be required to pay the fees. The Exchange believes that this is fairer than requiring all issuers to pay higher fees to fund the Incentive Program.

The Exchange believes that the LMM Payment and standard transaction fees and credits are equitable and not unfairly discriminatory in that any Market Maker could seek to participate in the Incentive Program as an LMM. Moreover, an LMM participating in the Incentive Program would not be entitled to an LMM Payment unless and until it

Regulation M to The NASDAQ Stock Market LLC (''NASDAQ'') for a program similar to the Exchange's proposed Incentive Program. *See* Securities Exchange Act Release No. 69196 (March 20, 2013), 78 FR 18410 (March 26, 2013) (Order Granting a Limited Exemption From Rule 102 of Regulation M Concerning the NASDAQ Market Quality Program Pilot Pursuant to Regulation M Rule 102(e)) (the ''NASDAQ Exemption''). The NASDAQ Exemption includes certain conditions related to, among other things, notices to the public and disclosures with respect to NASDAQ's program. The Exchange notes that if the Commission were to provide exemptive relief from Rule 102 of Regulation M for the Incentive Program it may include similar conditions.

[34] *See supra* note 29.

[35] For a list of the current members and affiliate members of ISG, *see www.isgportal.com*.

[36] 15 U.S.C. 78f(b).

[37] 15 U.S.C. 78f(b)(4) and (5).

meets or exceeds the proposed Incentive Program LMM performance standards for an assigned ETP, as determined by the Exchange. The Exchange further believes that the range of credits, which would be paid from the Exchange's general revenues, is fair and equitable in light of the LMM's obligations and proposed Incentive Program LMM performance standards, which would be higher than the standards for LMMs not participating in the Incentive Program.

Finally, for the reasons stated above, the Exchange believes that the Incentive Program would be designed to mitigate risks and concerns that FINRA Rule 5250 addresses and that the Commission should provide exemptive relief from Rule 102 of Regulation M for the Incentive Program.[38]

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. To the contrary, the Exchange believes that the Incentive Program, which is entirely voluntary, would encourage competition among markets for issuers' listings and among Market Makers for LMM assignments. The Incentive Program is designed to improve the quality of market for lower-volume ETPs, thereby incentivizing them to list on the Exchange. The competition for listings among the exchanges is fierce. The Exchange notes that BATS Exchange, Inc. (''BATS'') has already implemented a program similar to the Exchange's proposed Incentive Program,[39] and NASDAQ has received approval to do so as well.[40]

In addition, the Exchange believes that the Incentive Program will properly promote competition among Market Makers to seek assignment as the LMM for eligible ETPs. As described in detail above, the Exchange believes that market quality is significantly enhanced for ETPs with an LMM as compared to ETPs without an LMM. The Exchange believes that market quality would be even further enhanced as a result of the proposed Incentive Program LMM performance standards that the Exchange would impose on LMMs in the Incentive Program. The Exchange anticipates that the increased activity of these LMMs would attract other market participants to the Exchange, and could thereby lead to increased liquidity on the Exchange in such ETPs. For these reasons, the Exchange does not believe that the proposed rule change would impose any unnecessary or inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date 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. The Commission previously received comments on SR–NYSEArca–2012–37, which proposed rule change was withdrawn by the Exchange,[41] and all such comments are available on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml*.

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–2013–34 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NYSEArca–2013–34. 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 20549–1090, on official business days between 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–NYSEArca–2013–34 and should be submitted on or before May 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[42]

Kevin M. O'Neill,

Deputy Secretary.

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[38] *See supra* note 33.

[39] *See* Interpretation and Policy .02 of BATS Rule 11.8. *See also* Securities Exchange Act Release Nos. 66307 (February 2, 2012), 77 FR 6608 (February 8, 2012) (SR–BATS–2011–051) and 66427 (February 21, 2012), 77 FR 11608 (February 27, 2012) (SR–BATS–2012–011).

[40] *See* Securities Exchange Act Release No. 69195 (March 20, 2013), 78 FR 18393 (March 26, 2013) (SR–NASDAQ–2012–137).

[41] *See supra* note 4.

[42] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–69321; File No. SR–NASDAQ–2013–062]

Self-Regulatory Organizations; The NASDAQ Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Penny Pilot and Non-Penny Pilot Options

April 5, 2013.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934

(''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 1, 2013, The NASDAQ Stock Market LLC (''NASDAQ'' 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 NASDAQ. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDAQ proposes to modify Chapter XV, entitled ''Options Pricing,'' at Section 2 governing pricing for NASDAQ members using the NASDAQ Options Market (''NOM''), NASDAQ's facility for executing and routing standardized equity and index options. Specifically, NOM proposes to amend certain Penny Pilot Options[3] Rebates to Add Liquidity and Fees for Removing Liquidity and the Customer Non-Penny Pilot Options[4] Rebate to Add Liquidity.

While the changes proposed herein are effective upon filing, the Exchange has designated that the amendments be operative on April 1, 2013.

The text of the proposed rule change is available on the Exchange's Web site at *http://www.nasdaq.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. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

NASDAQ proposes to modify Chapter XV, entitled ''Options Pricing,'' at Section 2(1) governing the rebates and fees assessed for option orders entered into NOM. First, the Exchange proposes to amend the Customer,[5] Professional[6] and NOM Market Maker[7] Penny Pilot Options Rebates to Add Liquidity. Second, the Exchange proposes to increase the Professional, Firm,[8] Non-NOM Market Maker[9] and Broker-Dealer[10] Penny Pilot Options Fees for Removing Liquidity. Third, the Exchange proposes to amend the Customer Non-Penny Pilot Rebate to Add Liquidity.

Penny Pilot Rebates to Add Liquidity

The Exchange proposes to amend the Customer and Professional Rebates to Add Liquidity in Penny Pilot Options in order to continue to offer competitive Customer and Professional rebates to attract liquidity to the market. Currently, the Exchange has a seven tier Customer and Professional Rebate to Add Liquidity structure in Penny Pilot Options as follows:

	Monthly Volume	Rebate to Add Liquidity
Tier 1	Participant adds Customer and Professional liquidity of up to 24,999 contracts per day in a month.	$0.26
Tier 2	Participant adds Customer and Professional liquidity of 25,000 to 34,999 contracts per day in a month.	0.40
Tier 3	Participant adds Customer and Professional liquidity of 35,000 to 74,999 contracts per day in a month.	0.43
Tier 4	Participant adds Customer and Professional liquidity of 75,000 or more contracts per day in a month.	0.44
Tier 5	Participant adds (1) Customer and Professional liquidity of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014; and (3) the Participant executed at least one order on NASDAQ's equity market.	0.42

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Penny Pilot was established in March 2008 and in October 2009 was expanded and extended through June 30, 2013. *See* Securities Exchange Act Release Nos. 57579 (March 28, 2008), 73 FR 18587 (April 4, 2008) (SR–NASDAQ–2008–026) (notice of filing and immediate effectiveness establishing Penny Pilot); 60874 (October 23, 2009), 74 FR 56682 (November 2, 2009) (SR–NASDAQ–2009–091) (notice of filing and immediate effectiveness expanding and extending Penny Pilot); 60965 (November 9, 2009), 74 FR 59292 (November 17, 2009) (SR–NASDAQ–2009–097) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 61455 (February 1, 2010), 75 FR 6239 (February 8, 2010) (SR–NASDAQ–2010–013) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 62029 (May 4, 2010), 75 FR 25895 (May 10, 2010) (SR–NASDAQ–2010–053) (notice of filing and immediate effectiveness adding seventy-five classes to Penny Pilot); 65969 (December 15, 2011), 76 FR 79268 (December 21, 2011) (SR–NASDAQ–2011–169) (notice of filing and immediate effectiveness extension and replacement of Penny Pilot); 67325 (June 29, 2012), 77 FR 40127 (July 6, 2012) (SR–NASDAQ–2012–075) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through December 31, 2012); and 68519 (December 21, 2012), 78 FR 136 (January 2, 2013) (SR–NASDAQ–2012–143) (notice of filing and immediate effectiveness and extension and replacement of Penny Pilot through June 30, 2013). *See also* NOM Rules, Chapter VI, Section 5.

[4] Non-Penny Pilot Pricing includes NDX. For transactions in NDX, a surcharge of $0.10 per contract is added to the Fee for Adding Liquidity and the Fee for Removing Liquidity in Non-Penny Pilot Options, except for a Customer who will not be assessed a surcharge.

[5] The term ''Customer'' applies to any transaction that is identified by a Participant 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 Chapter I, Section 1(a)(48)).

[6] The term ''Professional'' means any person or entity that (i) is not a broker or dealer in securities, and (ii) places more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s) pursuant to Chapter I, Section 1(a)(48). All Professional orders shall be appropriately marked by Participants.

[7] The term ''NOM Market Maker'' is a Participant that has registered as a Market Maker on NOM pursuant to Chapter VII, Section 2, and must also remain in good standing pursuant to Chapter VII, Section 4. In order to receive NOM Market Maker pricing in all securities, the Participant must be registered as a NOM Market Maker in at least one security.

[8] The term ''Firm'' or (''F'') applies to any transaction that is identified by a Participant for clearing in the Firm range at OCC.

[9] The term ''Non-NOM Market Maker'' is a registered market maker on another options exchange that is not a NOM Market Maker. A Non-NOM Market Maker must append the proper Non-NOM Market Maker designation to orders routed to NOM.

[10] The term ''Broker-Dealer'' applies to any transaction which is not subject to any of the other transaction fees applicable within a particular category.

	Monthly Volume	Rebate to Add Liquidity
Tier 6	Participant has Total Volume of 130,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer or Professional liquidity.	0.46
Tier 7	Participant (1) has Total Volume of 325,000 or more contracts per day in a month, or (2) adds Customer or Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month or (3) adds Customer or Professional liquidity of 60,000 or more contracts per day in a month and NOM Market Maker liquidity of 30,000 or more per day per month.	0.48

Today, the Exchange determines if a Participant qualifies for a Customer or Professional Rebate to Add Liquidity in Penny Pilot Options for purposes of Tiers 1 through 4 by totaling Customer and Professional contracts per day in month. The Exchange proposes to modify the manner in which Participants qualify for Tiers 1 through 4 of the Customer and Professional Rebate to Add Liquidity in Penny Pilot Options by amending the metric from a fixed average daily volume number to a percentage of total industry customer equity and ETF options average daily volume (''ADV'') in Tiers 1 through 4.[11] Currently, a Participant that adds Customer and Professional liquidity of up to 24,999 contracts per day in a month qualifies for the $0.26 per contract Tier 1 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options. The Exchange proposes to amend Tier 1 to require a Participant to add Customer and Professional liquidity of up to 0.20% of total industry customer equity and ETF option ADV contracts per day in a month to earn a Tier 1 rebate. In addition, the Exchange proposes to lower the current Tier 1 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options from $0.26 to $0.25 per contract. Currently, a Participant that adds Customer and Professional liquidity of 25,000 to 34,999 contracts per day in a month qualifies for a $0.40 per contract Tier 2 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options. The Exchange proposes to amend Tier 2 to require a Participant to add Customer and Professional liquidity of 0.21% to 0.30% of total industry customer equity and ETF option ADV contracts per day in a month to receive a $0.40 per contract rebate. Currently, the Tier 3 Customer and Professional rebate pays $0.43 per contract to Participants that add Customer and Professional liquidity of 35,000 to 74,999 contracts per day in a month. The Exchange proposes to amend Tier 3 to require a Participant to add Customer and Professional liquidity of 0.31% to 0.49% of total industry customer equity and ETF option ADV contracts per day in a month to receive a rebate of $0.43 per contract. Currently, the Tier 4 Customer and Professional rebate pays $0.44 per contract to Participants that add Customer and Professional liquidity of 75,000 or more contracts per day in a month. The Exchange proposes to amend Tier 4 to require a Participant to add Customer and Professional liquidity of 0.5% or more of total industry customer equity and ETF option ADV contracts per day in a month. In addition, the Exchange proposes to increase the current Tier 4 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options from $0.44 to $0.45 per contract. The Exchange does not propose to amend the Customer and Professional Tier 5 rebate.[12] The Exchange proposes to lower the current Tier 6 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options, for Participants that have Total Volume [13] of 130,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer or Professional liquidity, from $0.46 to $0.45 per contract. The Exchange proposes to rename current Tier 7, which currently pays a $0.48 per contract rebate to Participants that have (1) Total Volume of 325,000 or more contracts per day in a month, or (2) add Customer or Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month or (3) add Customer or Professional liquidity of 60,000 or more contracts per day in a month and NOM Market Maker liquidity of 30,000 or more contracts per day per month, as Tier 8. The Exchange also proposes to amend the third prong of the qualifications for newly named Tier 8 to increase the amount of NOM Market Maker liquidity from 30,000 to 40,000 or more contracts per day per month.[14] The Exchange proposes to adopt a new Tier 7 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options which would pay $0.47 per contract to Participants that have Total Volume of 175,000 or more contracts per day in a month, of which 50,000 or more contracts per day in a month must be Customer or Professional liquidity. The Exchange also proposes to amend corresponding notes b and c to reflect the addition of new Tier 7 and renamed Tier 8 and refer to both tiers in the notes which describe the application of the Total Volume definition and Common Ownership aggregation.

The Exchange also proposes to amend the NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options to incentivize NOM Market Makers to post liquidity on the Exchange. Currently, the Exchange has a four tier NOM Market Maker Rebate to Add Liquidity structure in Penny Pilot Options as follows:

[11] Other options exchanges similarly utilize a number representative of the industry. *See* the Chicago Board Options Exchange, Incorporated's (''CBOE'') Fees Schedule. CBOE offers each Trading Permit Holder (''TPH'') a credit for each public customer order transmitted by the TPH which is executed electronically in all multiply-listed option classes, excluding QCC trades and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan, provided the TPH meets certain percentage thresholds in a month as described in the Volume Incentive Program. *See also* NASDAQ OMX PHLX LLC (''Phlx'') which calculates Customer Rebates based on a certain number contracts transacted in a month with a tier structure based on relative contracts per month as a percentage of total national customer volume in multiply-listed options transacted on Phlx would serve to control and account for industry-wide movements. *See* Phlx's Pricing Schedule.

[12] The Tier 5 rebate pays a $0.42 per contract rebate to Participants that add (1) Customer and Professional liquidity of 25,000 or more contracts per day in a month, (2) the Participant has certified for the Investor Support Program set forth in Rule 7014, and (3) the Participant executed at least one order on NASDAQ's equity market.

[13] ''Total Volume'' is defined as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and Non-Penny Pilot Options which either adds or removes liquidity on NOM.

[14] The Exchange proposes to add the word ''contracts'' to the text of renamed Tier 8 for clarity.

	Monthly Volume	Rebate to Add Liquidity
Tier 1	Participant adds NOM Market Maker liquidity in Penny Pilot Options and Non-Penny Pilot Options of up to 39,999 contracts per day in a month.	$0.25
Tier 2	Participant adds NOM Market Maker liquidity in Penny Pilot Options and Non-Penny Pilot Options of 40,000 to 89,999 contracts per day in a month.	$0.30
Tier 3	Participant and its affiliate under Common Ownership qualifies for Tier 7 of the Customer and Professional Rebate to Add Liquidity in Penny Pilot Options.	$0.32
Tier 4	Participant adds NOM Market Maker liquidity of 90,000 or more contracts per day in a month	$0.32 or $0.38 in the following symbols EEM, GLD, IWM, QQQ, SPY, VXX and XLF

Currently, the Tier 1 NOM Market Maker Penny Pilot rebate pays $0.25 per contract to Participants that add NOM Market Maker liquidity in Penny Pilot and Non-Penny Pilot Options of up to 39,999 contracts per day in a month. The Exchange proposes to amend the Tier 1 rebate to state that Participants that add NOM Market Maker liquidity in Penny Pilot Options of up to 39,999 contracts per day in a month qualify for the $0.25 per contract rebate. The Exchange would not include Non-Penny Pilot Options volume when calculating the rebate. Currently, the Tier 2 NOM Market Maker Penny Pilot rebate pays $0.30 per contract for Participants that add NOM Market Maker liquidity in Penny Pilot Options and Non-Penny Pilot Options of 40,000 to 89,999 contracts per day in a month. The Exchange proposes to amend the Tier 2 NOM Market Maker rebate to state that Participants that add NOM Market Maker liquidity in Penny Pilot Options of 40,000 to 109,999 contracts per day in a month qualify for the $0.30 per contract rebate. The Exchange would not include Non-Penny Pilot Options volume when calculating the rebate. The Exchange is proposing to amend the number of qualifying contracts in Tier 2 of the NOM Market Maker rebate from 40,000 to 89,999 contracts to 40,000 to 109,999 contracts. Today Participants that transact 90,000 or more Penny Pilot Options contracts qualify for the $0.32 per contract Tier 4 rebate, or in the case of certain symbols (BAC, GLD, IWM, QQQ, VXX and SPY) [15] a $0.38 per contract rebate. The proposed Tier 2 amendment would offer Participants that transact between 90,000 to 109,999 Penny Pilot Options contracts the Tier 2 rebate of $0.30 per contract. If a Participant transacts 110,000 or more Penny Pilot Options contracts the Participant would qualify for the proposed Tier 4 rebate as described more fully below. Currently, the Tier 3 NOM Market Maker Penny Pilot rebate pays $0.32 per contract to Participants and its affiliates under Common Ownership [16] that qualify for the Tier 7 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options. The Exchange proposes to amend Tier 3 to increase the rebate from $0.32 to $0.37 per contract and pay such a rebate to Participants and its affiliates under Common Ownership that qualify for the Tier 8 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options. The Exchange proposes to replace the reference to Tier 7 with renamed Tier 8. Finally, the Tier 4 NOM Market Maker rebate currently pays $0.32 [17] or $0.38 per contract in the following symbols, iShares MSCI Emerging Markets Index (''EEM''), SPDR Gold Shares (''GLD''), iShares Russell 2000 Index (''IWM''), PowerShares QQQ (''QQQ''), SPDR S&P 500 (''SPY''), iPath S&P 500 VIX ST Futures ETN (''VXX'') and Financial Select Sector SPDR (''XLF''), if Participants add NOM Market Maker liquidity of 90,000 or more contracts per day in a month. The Exchange proposes to amend Tier 4 to pay a rebate of $0.28 [18] or $0.38 in the following symbols, Bank of America Corporation (''BAC''),[19] SPDR Gold Shares (''GLD''), iShares Russell 2000 Index (''IWM''), PowerShares QQQ (''QQQ''), iPath S&P 500 VIX ST Futures ETN (''VXX''),[20] or $0.40 per contract in SPDR S&P 500 (''SPY'') [21] if Participants add NOM Market Maker liquidity in Penny Pilot Options of 110,000 or more contracts per day in a month. Today all NOM Market Maker liquidity counts toward qualifying for the Tier 4 NOM Market Maker rebate and the Exchange proposes to include only Penny Pilot Options as qualifying volume. Also, the number of contracts is increasing from 90,000 to 110,000 or more contracts per day in a month. As described above, Participants transacting between 90,000 to 109,999 Penny Pilot Options contracts would now qualify for the proposed NOM Market Maker Tier 2 rebate and would receive a $0.30 per contract rebate. The Exchange believes that offering NOM Market Makers the ability to obtain higher rebates in highly liquid symbols will encourage NOM Market Makers to post greater liquidity on NOM. In the instance that a Participant qualifies for both a Tier 3 and a Tier 4 NOM Market Maker Penny Pilot Option rebate, the Exchange would pay the Participant the Tier 3 rebate ($0.37 per contract) unless the Participant is eligible for an increased rebate in one of the following symbols: BAC, GLD, IWM, QQQ, VXX and SPY, then the Tier 4 rebate would be applied (either $0.38 or $0.40 per contract). The Exchange would not pay both rebates.

Penny Pilot Fees for Removing Liquidity

The Exchange proposes to amend the Fees for Removing Liquidity in Penny Pilot Options. Today, Professionals, Firms, Non-NOM Market Makers, NOM Market Makers and Broker-Dealers are currently assessed a $0.47 per contract Fee for Removing Liquidity in a Penny

[15] The Tier 4 symbols eligible for an increased NOM Market Maker rebate are described more fully below.

[16] The term ''Common Ownership'' shall mean Participants under 75% common ownership or control.

[17] Today, the Exchange pays a $0.32 per contract rebate for all other qualifying Penny Pilot Options excluding EEM, GLD, IWM, QQQ, SPY, VXX and XLF.

[18] The $0.28 per contract Tier 4 NOM Market Maker rebate would be paid on all qualifying Penny Pilot Options, excluding BAC, GLD, IWM, QQQ, VXX and SPY. This is a reduction from the current $0.32 per contract rebate paid on qualifying contracts. The Exchange proposes to amend the text of Tier 3 to change the word ''qualifies'' to ''qualify.''

[19] Participants transacting a qualifying number of BAC contracts today receive a $0.32 per contract Tier 4 NOM Market Maker rebate. Pursuant to this proposal, Participants transacting a qualifying number of BAC contracts would receive a $0.38 per contract Tier 4 NOM Market Maker rebate.

[20] The Exchange is eliminating EEM and XLF from the symbols eligible for the higher $0.38 per contract rebate for Participants that qualify for the Tier 4 NOM Market Maker Rebate to Add Liquidity. Participants that transact a qualifying number of EEM and XLF contracts would be entitled to the proposed $0.28 per contract Tier 4 NOM Market Maker rebate.

[21] The Exchange increased the rebate applicable for SPY for Participants qualifying for the Tier 4 NOM Market Maker Rebate to Add Liquidity from $0.38 to $0.40 per contract.

Pilot Option.[22] Today, this Penny Pilot Option Fee for Removing Liquidity is reduced by $0.01 per contract for Professionals, Firms, Non-NOM Market Makers, NOM Market Makers and Broker-Dealers for transactions in which the same NOM Participant or a NOM Participant under common ownership is the buyer and the seller. First, the Exchange proposes to increase the Penny Pilot Fee for Removing Liquidity for Professionals, Firms, Non-NOM Market Makers and Broker-Dealers from $0.47 to $0.48 per contract.[23] Second, the Exchange proposes to eliminate the $0.01 per contract reduction for Professionals, Firms, Non-NOM Market Makers, NOM Market Makers and Broker-Dealers for transactions in which the same NOM Participant or a NOM Participant under common ownership is the buyer and the seller.[24] The Exchange is increasing the Fees for Removing Liquidity in Penny Pilot Options so that it will be able to continue to offer additional rebates to Customers, Professionals and NOM Market Makers to attract liquidity and encourage order interaction on NOM.

Non-Penny Pilot Rebate to Add Liquidity

The Exchange proposes to amend the Customer Rebate to Add Liquidity in Non-Penny Pilot Options. Today, the Customer Rebate to Add Liquidity in Non-Penny Pilot Options, including NDX, is $0.80 per contract, unless a market participant adds Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month, then the Customer Rebate to Add Liquidity in Non-Penny Pilot Options is $0.81 per contract.[25] The Exchange proposes to eliminate the current Customer rebates that are specified for the Customer Rebate to Add Liquidity in Non-Penny Pilot Options in note 3 and instead pay a flat Customer Rebate to Add Liquidity in Non-Penny Pilot Options of $0.81 per contract. Today, no other market participant receives a Rebate to Add Liquidity in Non-Penny Pilot Options.

The Exchange also proposes to renumber note 2 as note 1 because current note 1 is being deleted from Chapter XV, Section 2 along with note 3, as described herein. The Exchange also made other technical amendments for grammatical purposes to the Chapter XV, Section 2 pricing.

2. Statutory Basis

NASDAQ believes that the proposed rule changes are consistent with the provisions of Section 6 of the Act,[26] in general, and with Section 6(b)(4) of the Act,[27] in particular, in that they provide 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 as described in detail below.

Penny Pilot Rebates to Add Liquidity

The Exchange's proposal to amend the Penny Pilot Rebates to Add Liquidity is reasonable because the Exchange will continue to offer competitive Customer and Professional rebates in order to attract liquidity to the market to the benefit of all market participants. The Exchange also believes that offering Customers, Professionals and NOM Market Makers the opportunity to earn higher rebates is reasonable because by incentivizing Participants to select the Exchange as a venue to post Customer and Professional liquidity will attract additional order flow to the benefit of all market participants and incentivizing NOM Market Makers to post liquidity will also benefit participants through increased order interaction.

The Exchange believes that the amendments to the Penny Pilot Options Rebates to Add Liquidity are equitable and not unfairly discriminatory for various reasons. The Exchange believes that continuing to pay Customers and Professionals tiered Rebates to Add Liquidity in Penny Pilot Options, as proposed herein, is equitable and not unfairly discriminatory as compared to other market participants. Pursuant to this proposal, the Exchange would pay the highest Tier 1 Rebates to Add Liquidity in Penny Pilot Options of $0.25 per contract to Customers, Professionals and NOM Market Makers for transacting one qualifying contract as compared to other market participants.[28] The Exchange believes that Customers are entitled to higher rebates because Customer order flow brings unique benefits to the market through increased liquidity which benefits all market participants. The Exchange believes that continuing to offer Professionals the same Penny Pilot Options Rebates to Add Liquidity as Customers is equitable and not unfairly discriminatory for the reasons which follow. The Exchange believes that offering Professionals the opportunity to earn the same rebates as Customers, as is the case today, and higher rebates as compared to Firms, Broker-Dealers and Non-NOM Market Makers, and in some cases NOM Market Makers, is equitable and not unfairly discriminatory because the Exchange does not believe that the amount of the rebate offered by the Exchange has a material impact on a Participant's ability to execute orders in Penny Pilot Options. In modifying its rebates and offering Professionals, as well as Customers, higher rebates, the Exchange hopes to simply remain competitive with other venues so that it remains a choice for market participants when posting orders and the result may be additional Professional order flow for the Exchange, in addition to increased Customer order flow. In addition, a Participant may not be able to gauge the exact rebate tier it would qualify for until the end of the month because Professional volume would be commingled with Customer volume in calculating tier volume. A Professional could only otherwise presume the Tier 1 rebate would be achieved in a month when determining price. Further, the Exchange initially established Professional pricing in order to "* * * bring additional revenue to the Exchange."[29] The Exchange noted in the Professional Filing that it believes "* * * that the increased revenue from the proposal would assist the Exchange to recoup fixed costs."[30] The Exchange also noted in that filing that it believes that establishing separate pricing for a Professional, which ranges between that of a customer and market maker,

[22] The Customer Penny Pilot Fee for Removing Liquidity is $0.45 per contract. This fee is not being amended.

[23] The NOM Market Maker Penny Pilot Fee for Removing Liquidity will remain at $0.47 per contract although, similar to other market participants, NOM Market Makers will no longer receive a $0.01 per contract fee reduction for transactions in which the same NOM Participant or a NOM Participant under common ownership is the buyer and the seller. The elimination of the $0.01 per contract fee is discussed below.

[24] Today, Customers are not offered the $0.01 reduction to the Penny Pilot Option Fee for Removing Liquidity.

[25] NOM Participants under common ownership may aggregate their Customer volume to qualify for the increased Customer rebate.

[26] 15 U.S.C. 78f.

[27] 15 U.S.C. 78f(b)(4).

[28] Firms, Non-NOM Market Makers and Broker-Dealers receive a $0.10 per contract Penny Pilot Option Rebate to Add Liquidity.

[29] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066) ("Professional Filing"). In this filing, the Exchange addressed the perceived favorable pricing of Professionals who were assessed fees and paid rebates like a Customer prior to the filing. The Exchange noted in that filing that a Professional, unlike a retail Customer, has access to sophisticated trading systems that contain functionality not available to retail Customers.

[30] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066).

accomplishes this objective.[31] The Exchange does not believe that providing Professionals with the opportunity to obtain higher rebates equivalent to that of a Customer creates a competitive environment where Professionals would be necessarily advantaged on NOM as compared to NOM Market Makers, Firms, Broker-Dealers or Non-NOM Market Makers. Also, a Professional is assessed the same fees as other market participants, except Customers and NOM Market Makers, as discussed herein.[32] For these reasons, the Exchange believes that continuing to offer Professionals the same rebates as Customers is equitable and not unfairly discriminatory. Finally, the Exchange believes that NOM Market Makers should be offered the opportunity to earn higher rebates as compared to Non-NOM Market Makers, Firms and Broker Dealers because NOM Market Makers add value through continuous quoting[33] and the commitment of capital.

The Exchange's proposal to amend the Customer and Professional Rebates to Add Liquidity in Penny Pilot Options is reasonable because the Exchange is offering Participants meaningful incentives to increase their participation on NOM in terms of higher Penny Pilot Options Rebates to Add Liquidity. The Exchange's proposal to convert the qualification for Customer and Professional rebate Tiers 1 through 4 from a metric which calculates the fixed average daily volume to a percentage of total industry customer equity and ETF options ADV [34] is reasonable because it allows the Exchange to control and account for changes in the national industry-wide customer volume. Market participants will continue to receive rebates on Customer and Professional volume as is the case today and in most cases similar to the rebates that they receive today. The proposed tier percentages approximate the contract volume numbers that are captured in the Customer and Professional rebate tiers today. For example, Tier 2 of the Customer and Professional rebate requires Participants to transact between 25,000 and 34,999 contacts per day in a month. The proposed percentages of total industry customer equity and ETF volume for Tier 2, which are 0.21% to 0.30%, are approximately the volume numbers that are required today to qualify for a Tier 2 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options.[35] The same is true for Tiers 1 and 3 in terms of volume requirements. The Exchange proposes to reduce the qualifying number of contracts per day in a month with respect to the Tier 4 Customer and Professional rebates. Currently, a Participant must transact 75,000 or more contracts per day in a month to qualify for a Tier 4 Customer and Professional rebate. The Exchange is proposing to amend the Tier 4 Customer and Professional Rebate to Add Liquidity today in Penny Pilot Options to require Participants to transact 0.5% or more of total industry customer equity and ETF option ADV to qualify for the rebate. This percentage is a lower approximation of the volume required today to qualify for the Tier 4 rebate. With this proposal, Participants should be able to qualify for Tier 4 with less volume than is the case today. The Exchange's proposal to amend current Tier 7 to rename it Tier 8 and amend the third prong of the qualifications for newly named Tier 8 to increase the amount of NOM Market Maker liquidity from 30,000 to 40,000 or more contracts per day in a month should incentivize NOM Market Makers to post additional liquidity. Current Tier 7 allows Participants to achieve the rebate in a number of ways,[36] and this amendment only impacts one of the ways in which a Participant may obtain the rebate. With respect to the current Customer and Professional rebate tiers, the Exchange is lowering the Tier 1 rebate from $0.26 to $0.25 per contract. This would equate the Tier 1 rebate for Customers and Professionals with the Tier 1 rebate paid to NOM Market Makers. While the Exchange is reducing this rebate, it believes that Participants will continue to be incentivized to transact Customer and Professional Penny Pilot Orders on NOM to receive the rebate. There is no required minimum volume of Customer and Professional orders to qualify for the Customer or Professional Rebate to Add Liquidity in Penny Pilot Options. The first qualifying order is entitled to the rebate. The Exchange is increasing the rebate for the Tier 4 Customer and Professional rebate from $0.44 to $0.45 per contract. In combination with requiring less qualifying contracts, given today's current industry volume, and offering a higher rebate, the Exchange believes that Participants may be incentivized to transact the requisite number of orders to qualify for the Tier 4 Customer and Professional rebate in Penny Pilot Options. The Exchange also proposes to decrease the rebate offered on the Tier 6 Customer and Professional rebate [37] from $0.46 to $0.45 per contract. The Exchange believes that Participants will continue to be incentivized to transact Total Volume [38] of 130,000 or more contracts per day in a month of which 25,000 or more contracts must be Customer or Professional liquidity. In addition, the Exchange is offering Participants the opportunity to earn a higher rebate of $0.47 per contract with new Tier 7.[39] The Exchange believes that its proposal to adopt a new Tier 7 Customer and

[31] *See* Securities Exchange Act Release No. 64494 (May 13, 2011), 76 FR 29014 (May 19, 2011) (SR–NASDAQ–2011–066). The Exchange noted in this filing that it believes the role of the retail Customer in the marketplace is distinct from that of the Professional and the Exchange's fee proposal at that time accounted for this distinction by pricing each market participant according to their roles and obligations.

[32] The Fee for Removing Liquidity in Penny Pilot Options would be $0.48 per contract for all market participants, except Customers and NOM Market Makers. Customers are assessed $0.45 per contract and NOM Market Makers would continue to be assessed $0.47 per contract.

[33] Pursuant to Chapter VII (Market Participants), Section 5 (Obligations of Market Makers), in registering as a market maker, an Options Participant commits himself to various obligations. Transactions of a Market Maker in its market making capacity must constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and Market Makers should not make bids or offers or enter into transactions that are inconsistent with such course of dealings. Further, all Market Makers are designated as specialists on NOM for all purposes under the Act or rules thereunder. *See* Chapter VII, Section 5.

[34] It is important to note that the Exchange utilizes data from OCC to determine the total industry customer equity and ETF options ADV figure. OCC classifies equity and ETF options volume under the equity options category. Also, both customer and professional orders that are transacted on options exchanges clear in the customer range at OCC and therefore both customer and professional volume would be included in the total industry figure to calculate rebate tiers. This is the case today for the Total Volume number that appears in Tiers 6 and 7 of the Customer and Professional rebate today, which includes Customer and Professional numbers in both the numerator and denominator of that percentage.

[35] The month to date volume number for March 2013, utilizing OCC total industry customer equity and ETF option ADV, is 11,248,136. Therefore, in this example, 0.31% would be ~34,869 contracts and 0.49% would be ~55,115 contracts per day.

[36] Today, a Participant may qualify for the Tier 7 rebate if the Participant (1) has Total Volume of 325,000 or more contracts per day in a month, or (2) adds Customer or Professional liquidity of 1.00% or more of national customer volume in multiply-listed equity and ETF options classes in a month or (3) adds Customer or Professional liquidity of 60,000 or more contracts per day in a month and NOM Market Maker liquidity of 30,000 or more per day per month.

[37] In order to qualify for a Tier 6 Customer and Professional Rebate to Add Liquidity in Penny Pilot Options, a Participant must have Total Volume of 130,000 or more contracts per day in a month, of which 25,000 or more contracts per day in a month must be Customer or Professional liquidity.

[38] Total Volume is defined as Customer, Professional, Firm, Broker-Dealer, Non-NOM Market Maker and NOM Market Maker volume in Penny Pilot Options and Non-Penny Pilot Options which either adds or removes liquidity on NOM.

[39] Current Tier 7 of the Customer and Professional Penny Pilot Rebate to Add Liquidity is being renamed Tier 8.

Professional rebate which requires Participants to transact a Total Volume of 175,000 or more contracts per day in a month, of which 50,000 or more contracts per day in a month must be Customer or Professional liquidity is reasonable because it offers Participants an additional opportunity to earn a higher rebate.

The Exchange believes that the addition of new Tier 7 and the aforementioned amendments to the Customer and Professional Rebates to Add Liquidity in Penny Pilot Options are reasonable because these amendments should incentivize market participants to increase the amount of Customer and Professional orders that are transacted on NOM in order to obtain rebates. In addition, other exchanges employ similar incentive programs.[40] The Exchange believes that the addition of new Tier 7 and the aforementioned amendments to the Customer and Professional Rebates to Add Liquidity in Penny Pilot Options are equitable and not unfairly discriminatory because these amendments will be applied to all market participants in a uniform matter. Any market participant is eligible to receive the rebate provided they transact a qualifying amount of Customer and Professional volume in Penny Pilot Options.

The Exchange's proposal to amend corresponding notes b and c is reasonable, equitable and not unfairly discriminatory because the amendments conform the notes to the amendments in the Customer and Professional rebate tiers and provide clarity to the rebates.

The Exchange's proposal to amend the NOM Market Maker Rebates to Add Liquidity in Penny Pilot Options is reasonable because it should incentivize NOM Market Makers to post liquidity on NOM. NOM Market Makers are valuable market participants that provide liquidity in the marketplace and incur costs unlike other market participants. The Exchange believes that encouraging NOM Market Makers to be more aggressive when posting liquidity benefits all market participants through increased liquidity. The Exchange believes that the NOM Market Maker rebate proposal is equitable and not unfairly discriminatory because it does not misalign the current rebate structure because NOM Market Makers will continue to earn higher rebates as compared to Firms, Non-NOM Market Makers and Broker-Dealers and will earn the same or lower rebates as compared to Customers and Professionals.[41] The Exchange's proposal to amend Tiers 1 and 2 of the NOM Market Maker Penny Pilot Rebates to Add Liquidity to exclude Non-Penny Pilot Options is reasonable because the Exchange believes that permitting only Penny Pilot Options to count toward the rebate would continue to incentivize NOM Market Makers to post liquidity. The Exchange's proposal to amend the number of qualifying contracts in Tier 2 of the NOM Market Maker rebate from 40,000 to 89,999 contracts to 40,000 to 109,999 contracts is reasonable because Participants that transact between 90,000 to 109,999 contracts of Penny Pilot Options would be entitled to receive a $0.30 per contract rebate as compared to the proposed $0.28 per contract Tier 4 rebate, provided the liquidity is in a symbol other than BAC, GLD, IWM, QQQ, VXX and SPY, in which case the Participant would receive a decreased rebate compared to the $0.38 per contract rebate. The Exchange's proposal seeks to encourage Participants to add liquidity in BAC, GLD, IWM, QQQ, VXX and SPY in order to obtain a higher rebate of $0.38 or $0.40 (SPY) per contract and otherwise offers Participants a higher rebate between 90,000 to 109,999 contracts in other symbols. The Exchange's proposal to increase the Tier 3 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options[42] from $0.32 to $0.37 per contract is reasonable because the increased rebate will continue to incentivize NOM Market Makers to post liquidity in order to obtain the higher rebate. The Exchange's proposal to amend the text of Tier 3 of the NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options to refer to renamed ''Tier 8'' is reasonable because pursuant to this proposal, the Exchange renamed current Tier 7 of the Customer and Professional Rebate to Add Liquidity in Penny Pilot Options as Tier 8. The Exchange is simply amending the text of Tier 3 to continue to reference the same Customer and Professional rebate tier as today. Finally, the Exchange believes that its proposal to amend Tier 4 of the NOM Market Maker rebate in Penny Pilot Options is reasonable because the proposed amendments should continue to incentivize NOM Market Makers to post liquidity. The Exchange is amending the text of Tier 4 of the NOM Market Maker rebate to specify that the liquidity must be Penny Pilot Option liquidity (similar to proposed amendments to Tiers 1 and 2 of the NOM Market Maker rebate) and is increasing the number of qualifying contracts from 90,000 to 110,000 or more contracts per day in a month. The Exchange believes that the amendment is reasonable because while the Exchange is limiting the types of contracts that will qualify for the rebate and increasing the number of contracts, the Exchange is continuing to incentivize NOM Market Makers to post liquidity. The Exchange's proposal to amend the number of qualifying contracts in Tier 2 of the NOM Market Maker rebate from 40,000 to 89,999 contracts to 40,000 to 109,999 contracts is equitable and not unfairly discriminatory because the amendments applies uniformly to all Participants. The Exchange's amendment to the Tier 4 rebate is also reasonable because the Exchange is offering different rebate incentives to remain competitive while continuing to encourage NOM Market Makers to aggressively post liquidity on NOM. The $0.32 per contract rebate, applicable to all symbols other than BAC, GLD, IWM, QQQ, VXX and SPY, is being lowered to $0.28 per contract while the $0.38 per contract rebate will remain the same for GLD, IWM, QQQ and VXX. Participants transacting a qualifying number of Tier 4 EEM and XLF contracts would be entitled to receive the lower NOM Market Maker $0.28 per contract rebate instead of the $0.38 per contract rebate. Participants transacting a qualifying number of Tier 4 BAC contracts would be entitled to receive a higher NOM Market Maker $0.38 rebate instead of the current $0.32 per contract rebate they are entitled to receive today. Participants transacting the requisite number of SPY options to qualify for the Tier 4 NOM Market Maker rebate would receive an increased rebate of $0.40 per contract as compared to the $0.38 per contract rebate that they receive today. The Exchange believes the proposed symbols selected for higher rebates will assist the Exchange in remaining competitive. Although the rebate for all other symbols is being lowered to $0.28

[40] *See* CBOE Fees Schedule. CBOE offers each Trading Permit Holder (''TPH'') a credit for each public customer order transmitted by the TPH which is executed electronically in all multiply-listed option classes, excluding QCC trades and executions related to contracts that are routed to one or more exchanges in connection with the Options Order Protection and Locked/Crossed Market Plan, provided the TPH meets certain percentage thresholds in a month as described in the Volume Incentive Program. *See also* Phlx's Pricing Schedule at Section B which contains the Customer Rebate Program.

[41] The Tier 1 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options is the same rebate as the proposed Tier 1 Customer and Professional rebate in Penny Pilot Options.

[42] Today, in order to qualify for the Tier 3 NOM Market Maker Rebate to Add Liquidity in Penny Pilot Options, a Participant and its affiliate under Common Ownership (75% common ownership or control) must qualify for Tier 7 of the Customer and Professional Rebate to Add Liquidity in Penny Pilot Options.

per contract, for Participants qualifying for the Tier 4 rebate, the Exchange believes that this rebate remains competitive. Further, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory to adopt specific pricing for BAC, GLD, IWM, QQQ, VXX and SPY because pricing by symbol is a common practice on many U.S. options exchanges as a means to incentivize order flow to be sent to an exchange for execution in the most actively traded options classes, in this case actively traded Penny Pilot Options.[43] The Exchange notes that BAC, GLD, IWM, QQQ, VXX and SPY are some of the most actively traded options in the U.S. The Exchange believes that this pricing will incentivize members to transact options on BAC, GLD, IWM, QQQ, VXX and SPY on NOM in order to obtain the higher $0.38, or in the case of SPY $0.40 per contract rebate if they transact the proposed qualifying number of Tier 4 contracts required for the NOM Market Maker rebate. The Exchange believes that it is reasonable to only pay a Participant that qualifies for both a Tier 3 and a Tier 4 NOM Market Maker Penny Pilot Option rebate, the Tier 3 rebate ($0.37 per contract) unless the Participant is eligible for an increased rebate in one of the following symbols: BAC, GLD, IWM, QQQ, VXX and SPY, then the Tier 4 rebate would be paid because the Exchange is offering to pay the Participant the higher rebate as between Tiers 4 and 5.

The Exchange believes offering NOM Market Makers the opportunity to receive higher rebates as compared to Firms, Non-NOM Market Makers and Broker-Dealers is equitable and not unfairly discriminatory because all NOM Market Makers may qualify for the NOM Market Maker rebate tiers and every NOM Market Maker is entitled to a rebate solely by adding one contract of NOM Market Maker liquidity on NOM. Also, as mentioned, the NOM Market Maker would receive the same rebate in Tier 1 as compared Customers and Professionals and a higher rebate in all other tiers as compared to a Firm, Non-NOM Market Maker or Broker-Dealer because of the obligations[44] borne by NOM Market Makers as compared to other market participants. Encouraging NOM Market Makers to add greater liquidity benefits all Participants in the quality of order interaction. The Exchange believes that it is equitable and not unfairly discriminatory to only pay a Participant that qualifies for both a Tier 3 and a Tier 4 NOM Market Maker Penny Pilot Option rebate, the Tier 3 rebate ($0.37 per contract) unless the Participant is eligible for an increased rebate in one of the following symbols: BAC, GLD, IWM, QQQ, VXX and SPY, then the Tier 4 rebate would be paid because the Exchange would uniformly pay only one NOM Market Maker rebate per month to each Participant.

Penny Pilot Fees for Removing Liquidity

The Exchange's proposal to increase the Professional, Firm, Non-NOM Market Maker and Broker-Dealer Fees for Removing Liquidity in Penny Pilot Options from $0.47 to $0.48 per contract is reasonable because the increase will afford the Exchange the opportunity to offer additional and increased rebates to Customers, Professionals and NOM Market Makers which should benefit all market participants through increased liquidity and order interaction. The Exchange believes that it is equitable and not unfairly discriminatory to increase Fees for Removing Liquidity in Penny Pilot Options for Professionals, Firms, Non-NOM Market Makers and Broker-Dealers because all market participants, other than Customers and NOM Market Makers will be assessed a uniform fee. As explained herein, Customers order flow brings unique benefits to the market through increased liquidity which benefits all market participants and NOM Market Makers add value through continuous quoting[45] and the commitment of capital.

The Exchange's proposal to eliminate the $0.01 per contract reduction for Professionals, Firms, Non-NOM Market Makers, NOM Market Makers and Broker-Dealers for transactions in which the same NOM Participant or a NOM Participant under Common Ownership is the buyer and the seller is reasonable because the Exchange does not believe it is necessary to continue to offer this incentive in order to remain competitive. Also, the Exchange prefers to reward market participants by offering additional rebates to incentivize Participants to send additional order flow to the Exchange and encourage NOM Market Makers to aggressively post liquidity on NOM. The Exchange believes that its proposal to eliminate the $0.01 per contract reduction for Professionals, Firms, Non-NOM Market Makers, NOM Market Makers and Broker-Dealers is equitable and not unfairly discriminatory because the Exchange would not offer such a reduction to any market participant.[46]

Non-Penny Pilot Rebate to Add Liquidity

The Exchange's proposal to amend the Customer Rebate to Add Liquidity in Non-Penny Pilot Options is reasonable because the Exchange proposes to eliminate the current Customer Rebate to Add Liquidity in Non-Penny Pilot Options, including NDX, of $0.80 or $0.81 per contract, depending on whether the Participant added Customer Liquidity in either or both Penny Pilot or Non-Penny Pilot Options (including NDX) of 115,000 contracts per day in a month, would be replaced with a flat rebate of $0.81 per contract regardless of volume. The Exchange believes that offering Customers the opportunity to receive a $0.81 per contract Rebate to Add Liquidity on each transaction in a Non-Penny Pilot Option where liquidity was added will incentivize Participants to post Customer liquidity in Non-Penny Pilot Options. The Exchange believes its proposal to amend the Customer Rebate to Add Liquidity in Non-Penny Pilot Options is equitable and not unfairly discriminatory because it will apply uniformly to all Customers. Today, no other market participant receives a Rebate to Add Liquidity in Non-Penny Pilot Options. The Exchange believes that it is equitable and not unfairly discriminatory to only pay Customers a rebate in Non-Penny Pilot Options because Customer order flow is unique and benefits all market participants through the increased liquidity that such order flow brings to the market.

The Exchange's proposal to renumber note 2 as note 1 because current note 1 is being deleted from Chapter XV, Section 2 along with note 3 is reasonable, equitable and not unfairly discriminatory because these amendments will add clarity to the pricing.

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.

Customers have traditionally been paid the highest rebates offered by options exchanges. While the Exchange's proposal results in a Professional receiving the same or a higher rebate as compared to a NOM

[43] *See* Phlx's Pricing Schedule. *See also* the International Securities Exchange LLC's Fee Schedule. Both of these markets segment pricing by symbol.

[44] *See* note 33.

[45] *See* note 33.

[46] Today, Customers are not offered the $0.01 reduction to the Penny Pilot Option Fee for Removing Liquidity.

Market Maker, in certain circumstances, the Exchange does not believe the proposed rebate tiers would result in any burden on competition as between market participants. The Exchange believes that offering Customers and Professionals the proposed tiered rebates creates competition among options exchanges because the Exchange believes that the rebates may cause market participants to select NOM as a venue to send Customer and Professional order flow. The Exchange believes that incentivizing NOM Market Makers to post liquidity on NOM benefits market participants through increased order interaction.

The Exchange's proposal to pay the higher Customer Rebate to Add Liquidity in Non-Penny Pilot Options on each transaction continues to incentivize Participants to direct Customer Non-Penny Pilot Option order flow to NOM to the benefit of all other market participants. The Exchange believes that Customer order flow is unique and therefore only paying a Customer a Rebate to Add Liquidity in Non-Penny Pilot Options is consistent with rebates at other options exchanges.[47] The Exchange's proposal to increase the Professional, Firm, Non-NOM Market Maker and Broker-Dealer Fees for Removing Liquidity in Penny Pilot Options does not misalign the current fees on NOM. The Exchange believes that other market participants benefit from incentivizing Customer order flow as explained herein. Customers continue to pay a lower Fee for Removing Liquidity in Penny Pilot Options, which is currently the case for most fees on NOM which are either not assessed to a Customer or where a Customer is assessed the lowest fee because of the liquidity such order flow brings to the Exchange. Also, NOM Market Makers have obligations[48] to the market which are not borne by other market participants and therefore the Exchange believes that NOM Market Makers are entitled to a lower fee.

For the reasons specified herein, the Exchange does not believe this proposal will result in any burden on competition. The Exchange operates in a highly competitive market comprised of eleven U.S. options exchanges in which sophisticated and knowledgeable market participants can readily send order flow to competing exchanges if they deem fee levels or rebate incentives at a particular exchange to be excessive or inadequate. The Exchange believes that the proposed rebate structure and tiers are competitive with rebates and tiers in place on other exchanges. The Exchange believes that this competitive marketplace impacts the rebates present on the Exchange today and substantially influences the proposals set forth above.

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.[49] 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–NASDAQ–2013–062 on the subject line.

Paper Comments

- Send paper comments in triplicate to Elizabeth M. Murphy, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File Number SR–NASDAQ–2013–062. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/sro.shtml).* Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for Web site viewing and printing in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NASDAQ–2013–062, and should be submitted on or before May 2, 2013.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[50]

Kevin M. O'Neill,

Deputy Secretary.

[FR Doc. 2013–08468 Filed 4–10–13; 8:45 am]

BILLING CODE 8011–01–P

[47] *See* Phlx's Pricing Schedule with respect to Complex Orders in Section I and NASDAQ OMX BX, Inc.'s pricing for Non-Penny Pilot Options at Chapter XV, Section 2.

[48] *See* note 32.

[49] 15 U.S.C. 78s(b)(3)(A)(ii).

[50] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 8271]

Notice of the Next CAFTA–DR Environmental Affairs Council Meeting

AGENCY: Department of State.

ACTION: Notice of the CAFTA–DR Environmental Affairs Council Meeting and request for comments.

SUMMARY: The Department of State and the Office of the United States Trade Representative are providing notice that the government parties to the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA–DR) intend to hold the seventh meeting of the Environmental Affairs Council (Council) established under Chapter 17 of that agreement in Santo Domingo, Dominican Republic on May 9, 2013 at a venue to be announced. All interested persons are invited to attend

a public session beginning at 2:00 p.m. on May 9.

During the meeting, each Council Member will present its country's progress in implementing Chapter 17 obligations and the impacts of environmental cooperation in their respective countries. The Council will also receive a presentation from the CAFTA–DR Secretariat for Environmental Matters (SEM). For the public session of the meeting, the Council will highlight issues from the above discussion elements with a particular focus on Chapter 17 obligations and environmental cooperation successes.

All interested persons are invited to attend a public session where they will have the opportunity to ask questions and discuss implementation of Chapter 17 and environmental cooperation with Council Members. In addition, the SEM will present on the public submission process established under Chapter 17. More information on the Council is included below under Supplementary Information.

The Department of State and Office of the United States Trade Representative invite written comments or suggestions regarding the meeting. In preparing comments, we encourage submitters to refer to Chapter 17 of the CAFTA–DR, the Final Environmental Review of the CAFTA–DR and the Agreement among the CAFTA–DR countries on Environmental Cooperation (ECA) (all documents available at *http://www.state.gov/e/oes/env/trade/caftadr/index.htm*).

DATES: The Council will hold the meeting on May 9, 2013, in Santo Domingo. If you are interested in attending, please email Abby Lindsay at *LindsayA@state.gov* for the specific time and place. To be assured of timely consideration, all written comments or suggestions are requested no later than April 19, 2013.

ADDRESSES: Written comments or suggestions should be submitted to both: (1) Abby Lindsay, U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Environmental Quality and Transboundary Issues by email to *LindsayA@state.gov* with the subject line ''CAFTA–DR EAC Meeting'' or by fax to (202) 647–5947; and (2) Sarah Stewart, Director for Environment and Natural Resources, Office of the United States Trade Representative by email to *Sarah_Stewart@ustr.eop.gov* with the subject line ''CAFTA–DR EAC Meeting'' or by fax to (202) 395–9517. If you have access to the Internet you can view and comment on this notice by going to: *http://www.regulations.gov/#!home* and searching on docket number DOS–2013–0009.

FOR FURTHER INFORMATION, CONTACT: Abby Lindsay, (202) 647–8772 or Sarah Stewart, (202) 395–3858.

SUPPLEMENTARY INFORMATION: Article 17.5 of the CAFTA–DR establishes an Environmental Affairs Council (the Council). Article 17.5 requires the Council to meet to oversee the implementation of, and review progress under, Chapter 17. Article 17.5 further requires, unless the governments otherwise agree, that each meeting of the Council include a session in which members of the Council have an opportunity to meet with the public to discuss matters relating to the implementation of Chapter 17.

In Article 17.9 of the CAFTA–DR, the governments recognize the importance of strengthening capacity to protect the environment and to promote sustainable development in concert with strengthening trade and investment relations and state their commitment to expanding their cooperative relationship on environmental matters. Article 17.9 also references the ECA, which sets out certain priority areas of cooperation on environmental activities that are also reflected in Annex 17.9 of the CAFTA–DR. These priority areas include, among other things: Reinforcing institutional and legal frameworks and the capacity to develop, implement, administer, and enforce environmental laws, regulations, standards and policies; conserving and managing shared, migratory and endangered species in international trade and management of protected areas; promoting best practices leading to sustainable management of the environment; and facilitating technology development and transfer and training to promote clean production technologies. The public is advised to refer to the State Department Web site at *http://www.state.gov* and the USTR Web site at *www.ustr.gov* for more information.

Disclaimer: This Public Notice is a request for comments and suggestions, and is not a request for applications. No granting of money is directly associated with this request for suggestions on the Council meeting agenda. There is no expectation of resources or funding associated with any comments or suggestions.

Dated: April 8, 2013.

George N. Sibley,

Director, Office of Environmental Quality and Transboundary Issues, U.S. Department of State.

[FR Doc. 2013–08507 Filed 4–10–13; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a public meeting of the FAA's Aviation Rulemaking Advisory Committee (ARAC) Transportation Airplane and Engine (TAE) Subcommittee to discuss transport airplane and engine issues.

DATES: The meeting is scheduled for Tuesday, May 7, 2013, starting at 9:00 a.m. Pacific Daylight Time. Arrange for oral presentations by April 30, 2013.

ADDRESSES: FAA—Northwest Mountain Region, conference room 130, 1601 Lind Ave. SW., Renton, WA 98057.

FOR FURTHER INFORMATION CONTACT: Ralen Gao, Office of Rulemaking, ARM–209, FAA, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–3168, Fax (202) 267–5075, or email at *ralen.gao@faa.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. III), notice is given of an ARAC meeting to be held May 7, 2013.

The agenda for the meeting is as follows:

- Opening Remarks, Review Agenda and Minutes
- FAA Report
- ARAC Report
- Transport Canada Report
- EASA Report
- Flight Controls Harmonization Working Group Report
- Aging Airplanes Working Group Report
- Engine Harmonization Working Group—New Tasking
- Flight Test Harmonization Working Group—New Tasking
- Action Item Review and Other Business

Attendance is open to the public, but will be limited to the availability of meeting room space. Please confirm your attendance with the person listed

in the **FOR FURTHER INFORMATION CONTACT** section no later than April 30, 2013. Please provide the following information: Full legal name, country of citizenship, and name of your industry association, or applicable affiliation. If you are attending as a public citizen, please indicate so.

For persons participating by telephone, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by email or phone for the teleconference call-in number and passcode. Anyone calling from outside the Renton, WA, metropolitan area will be responsible for paying long-distance charges.

The public must make arrangements by April 30, 2013, to present oral statements at the meeting. Written statements may be presented to the ARAC at any time by providing 25 copies to the person listed in the **FOR FURTHER INFORMATION CONTACT** section or by providing copies at the meeting. Copies of the documents to be presented to ARAC may be made available by contacting the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

If you need assistance or require a reasonable accommodation for the meeting or meeting documents, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Sign and oral interpretation, as well as a listening device, can be made available if requested 10 calendar days before the meeting.

Issued in Washington, DC, on April 8, 2013.

Brenda D. Courtney,

Acting Designated Federal Officer.

[FR Doc. 2013–08495 Filed 4–10–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–16]

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 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of 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 May 1, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2013–0257 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 electronically.
- *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 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: Theresa White, ANM–113, Standardization Branch, Transport Airplane Directorate, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057; email: *theresa.j.white@faa.gov;* (425) 227–2956; Andrea Copeland, ARM–208, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; email: *andrea.copeland@faa.gov;* (202) 267–3664.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 8, 2013.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–0257.

Petitioner: L–3 Communications Integrated Systems, Mission Integration Division.

Section of 14 CFR Affected: §§ 26.11 and 26.47.

Description of Relief Sought: The petitioner requests an exemption for two Boeing Model 757–200 airplanes, modified in accordance with all future supplemental type certificates issued to L–3 Communications, for relief from developing instructions for continued airworthiness applicable to an airplane's electrical wiring interconnection systems (§ 26.11), and from developing damage tolerance data for repairs and alterations (§ 26.47).

[FR Doc. 2013–08496 Filed 4–10–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–14]

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 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of 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 and must be received on or before May 1, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2013–0278 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 electronically.
- *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 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: Keira Jones (202) 267–4024, or Tyneka Thomas (202) 267–7626, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 8, 2013.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–0278.

Petitioner: Avemex, S.A. de C.V.

Section of 14 CFR Affected: 14 CFR 129.5(b).

Description of Relief Sought: Avemex seeks relief to operate its aircraft in the U.S. without a flight data recorder as long as its aircraft would comply with the flight data recorder requirements of part 135 or until Annex 6, Section 6.3 requirements are revised.

[FR Doc. 2013–08497 Filed 4–10–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–02]

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 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of 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 May 1, 2013.

ADDRESSES: You may send comments identified by Docket Number FAA–2012–1348 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 electronically.

• *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 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: Tyneka Thomas ARM–105, (202) 267–7626, FAA, Office of Rulemaking, 800 Independence Ave. SW., Washington, DC 20591. This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 8, 2013.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

Petition For Exemption

Docket No.: FAA–2012–1348.

Petitioner: Flight Safety International, Inc.

Section of 14 CFR Affected: 14 CFR 60.17(c)(ii).

Description of Relief Sought: The relief sought would allow Flight Safety International, Inc., to re-qualify an Embraer Flight Simulation Training Device under the qualification basis to which it was originally qualified.

[FR Doc. 2013–08498 Filed 4–10–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2013–15]

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 May 1, 2013.

ADDRESSES: You may send comments identified by docket number FAA–2013–0232 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: Mark Forseth, ANM–113, (425) 227–2796, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98057–3356, or Andrea Copeland, ARM–208, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; email *andrea.copeland@faa.gov;* (202) 267–8081.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on April 8, 2013.

Brenda D. Courtney,

Acting Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2013–0232.

Petitioner: Greenpoint Technologies.

Section of 14 CFR Affected: §§ 25.562(a) and 25.785(b).

Description of Relief Sought: Provide relief limited to side-facing seat designs in Boeing Model 747–8ZV airplanes operated as private use, not for hire, not for common carriage. Side-facing seats are to be installed by Greenpoint Technologies for the original supplemental type certificate (STC). The limitation is to be included in the Limitations section of the STC.

[FR Doc. 2013–08499 Filed 4–10–13; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Extension of Public Review and Comment Period for the Pyramid Way and McCarran Boulevard Intersection Improvement Project Draft Environmental Impact Statement (DEIS)

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Highway Administration (FHWA), in cooperation with the Regional Transportation Commission of Washoe County (RTC) and the Nevada Department of Transportation (NDOT), is extending the review and comment period of the DEIS for the Pyramid Way and McCarran Boulevard Intersection Improvement project for an additional 15 days; therefore, comments on the DEIS may now be submitted no later than April 30, 2013. A Notice of Availability was previously published in the **Federal Register** Volume 78, No. 41 on Friday, March 1, 2013.

ADDRESSES: Comments on the DEIS can be mailed to the following address: Steve Cooke, P.E., Environmental Services Division Chief, 1263 S. Stewart St., Carson City, Nevada 89712 or via email to: *scooke@dot.state.nv.us.*

The DEIS can be accessed through NDOT's Web site at: *http://www.nevadadot.com/Public_Involvement/Meetings/Meetings,_Hearings_and_Notices.aspx* or RTC's Web site at: *http://www.rtcwashoe.com/section-hot-topics.* Copies are also available by request from NDOT Headquarters, Environmental Services Division, Room 104, 1263 S. Stewart St., Carson City, NV 89712, telephone: 775–888–7013. Hard copies are available for review at the Spanish Springs Library, 7100A Pyramid Lake Highway, Sparks, NV; the Sparks Library at 1125 12th Street, Sparks, NV; RTC Offices at 1105 Terminal Way, Suite 108, Reno, NV; and NDOT District II offices, 310 Galletti Way, Sparks, NV.

FOR FURTHER INFORMATION CONTACT: Steve Cooke, Environmental Services Division Chief, NDOT, 775–888–7013 or Abdelmoez Abdalla, Environmental Program Manager, FHWA, 775–687–1231.

Dated: April 4, 2013.

Susan E. Klekar,

Division Administrator, Federal Highway Administration, Carson City, Nevada.

[FR Doc. 2013–08457 Filed 4–10–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Cherokee and Forsyth Counties, Georgia

AGENCY: Federal Highway Administration (FHWA), United States Department of Transportation (USDOT).

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for the proposed transportation project (State Route 20) located in Cherokee and Forsyth Counties, Georgia.

FOR FURTHER INFORMATION CONTACT: Chetna P. Dixon, Environmental Coordinator, Federal Highway Administration Georgia Division, 61 Forsyth Street, Suite 17T100; Atlanta, Georgia 30303. Phone 404–562–3630 or Karyn Matthews, Project Manager, Georgia Department of Transportation, 600 West Peachtree Street, 25th Floor, Atlanta, Georgia, 30308, Telephone: (404) 631–1584, Email: *kmatthews@dot.ga.gov.*

SUPPLEMENTARY INFORMATION:

The FHWA, in cooperation with the Georgia Department of Transportation (GDOT), will prepare an EIS for proposed transportation improvements in the vicinity of State Route (SR) 20. The proposed project termini extend for approximately 24 miles beginning between Interstate 575 (I–575) and State Route 400 (SR 400) in Cherokee and Forsyth Counties, Georgia. Current known issues along the corridor include congestion, limited mobility, and safety issues. An EIS will be prepared in accordance with the National Environmental Policy Act (NEPA: 42 U.S.C. 4321 et seq.) of 1969, and the regulations implementing NEPA set forth in 40 CFR PARTS 1500–1508 and 23 CFR part 771, as well as the provisions of Safe Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU) and Moving Ahead for Progress in the 21st Century (MAP–21).

Public involvement is a critical component of NEPA project development and will occur throughout the development of the EIS. Opportunities for public involvement will be provided during the scoping process. Agency and public scoping meetings will be held in the spring of 2013 to receive oral and written comments on environmental concerns that should be included in the EIS. The dates, times and locations of the public scoping meetings will be published in general circulation newspapers for the project area. Comments regarding the scope of the analysis should be received in writing 30 days after the date of the last scoping meeting. A Public and Agency Coordination Plan will be provided in accordance with 23 U.S. Code Section 139 (23 U.S.C. 139), to facilitate document the lead agencies, structure interaction with the public and other agencies of how the coordination will be accomplished. The Public and Agency Coordination Plans will promote early and continuous involvement among stakeholders, agencies and the public. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and Tribal governments. A project Web site (*www.dot.ga.gov/sr20improvements*) will be maintained throughout the study. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action and the EIS should be directed to the GDOT or FHWA address above.

(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.)

Issued on: April 5, 2013.

Rodney N. Barry,

Division Administrator, Atlanta, Georgia.

[FR Doc. 2013–08462 Filed 4–10–13; 8:45 am]

BILLING CODE P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2013–0051]

Agency Information Collection Activities; New Information Collection: Commercial Motor Vehicle Marking Requirements

AGENCY: Federal Motor Carrier Safety Administration (FMCSA) DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval, and invites public comment. This ICR will enable FMCSA to document the burden associated with the marking regulations codified in 49 CFR 390.21, ''Marking of Self-Propelled CMVs and Intermodal Equipment.'' These regulations require marking of vehicles and intermodal equipment by motor carriers, freight forwarders and intermodal equipment providers (IEPs) engaging in interstate transportation.

ACTION: Notice and request for comments.

DATES: We must receive your comments on or before June 10, 2013.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2013–0051 using any of the following methods:

- *Federal eRulemaking Portal: http://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, 20590–0001.
- *Hand Delivery or Courier:* West Building, Ground Floor, Room W12–140, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m. 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 *http://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 *http://www.regulations.gov,* and follow the online instructions for accessing the dockets, or go to the street address listed above.

Privacy Act: Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's (DOT) complete Privacy Act Statement for the Federal Docket Management System published in the **Federal Register** on January 17, 2008 (73 FR 3316).

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: Thomas Kelly, Chief, Compliance Division, Office of Enforcement and Compliance, U.S. Department of Transportation, Federal Motor Carrier Safety Administration, 1200 New Jersey Avenue SE., Washington, DC, 20590–0001. Telephone: 202–366–1812; Email: *thomas.kelly@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: The Secretary of Transportation (Secretary) is authorized to require marking of vehicles and intermodal equipment by motor carriers, freight forwarders and intermodal equipment providers (IEPs) engaging in interstate transportation under the 49 U.S.C. 31133(a)(8) and 49 U.S.C. 31133(a)(10). The Secretary has delegated authority pertaining to the marking of commercial motor vehicles (CMVs) pursuant to 49 CFR 1.87(f). The Agency's regulation governing the marking of CMVs is at 49 CFR 390.21.

Vehicle marking requirements are intended to ensure that FMCSA, the National Transportation Safety Board (NTSB), and State safety officials are able to identify motor carriers and correctly assign responsibility for regulatory violations during inspections, investigations, compliance reviews, and

crash studies. These marking requirements will also provide the public with beneficial information that could also assist in identifying carriers for the purposes of commerce, complaints or emergency notification. The marking requirements apply to motor carriers, freight forwarders and intermodal equipment providers (IEPs) engaging in interstate transportation. The Agency does not require a specific method of marking as long as the marking complies with FMCSA's regulations.

Title: Marking of Self-Propelled CMVs and Intermodal Equipment.

OMB Control Number: 2126–XXXX.

Type of Request: New collection.

Respondents: Freight carrying commercial motor carriers, Passenger carrying commercial motor carriers, and intermodal equipment providers.

Estimated Number of Respondents: 191,000.

Estimated Time per Response: 26 minutes [12 minutes to affix DOT Number + 14 minutes for affixing a carrier's name = 26].

Expiration Date: N/A.

Frequency of Response: On occasion.

Estimated Total Annual Burden Hours: 655,000 [620,000 hours for freight carrying commercial carriers + 26,000 hours for passenger carrying commercial motor carriers + 9,000 hours for intermodal equipment providers (IEPs) = 655,000].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) Whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this information collection.

Issued on: April 2, 2013.

G. Kelly Leone,

Associate Administrator, Office of Research and Information Technology and Chief Information Officer.

[FR Doc. 2013–08481 Filed 4–10–13; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2013–0019]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that by a document dated February 21, 2013, the Old Augusta Railroad (OAR) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal hours of service laws contained at 49 U.S.C. 21103(a)(4). FRA assigned the petition Docket Number FRA–2013–0019.

In its petition, OAR seeks relief from 49 U.S.C. 21103(a)(4), which, in part, requires a train employee to receive 48 hours off-duty after initiating an on-duty period for 6 consecutive days. Specifically, OAR seeks a waiver to allow a train employee to initiate an on-duty period each day for 7 consecutive days followed by 1 day off duty and an 8th day assignment with 2 days off duty. In support of its request, OAR submitted documents demonstrating its employees' support for the requested waiver and a description of its employees' work schedules. According to OAR, train employees have set start times and set off-duty days, and do not lay over at away-from-home terminals. Additionally, OAR claims that it operates one switching job per day, serving only one industry in a 12-hour cycle. The typical duty tour is from 5 a.m. to 5 p.m., 7 days per week, with an occasional switching move outside of the regular shift. Two crews share the 7-day-per-week schedule. OAR also states that before the Rail Safety Improvement Act of 2008, its employees worked 7 days on, 7 days off, subject to an infrequent call. OAR asserts that its employees worked this type of schedule for 18 years without any safety problems, and that it was awarded the American Short Line and Regional Railroad Association Jake Award each year during those 18 years.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's (DOT) Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by May 28, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as is practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on April 8, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–08490 Filed 4–10–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2012–0097]

Petition for Waiver of Compliance

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), this document provides the public notice that R. J. Corman Railroad Company (RJCC) has petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain

provisions of the Federal railroad safety regulations contained at 49 CFR part 230, Steam Locomotive Inspection and Maintenance Standards. FRA assigned the petition Docket Number FRA–2012–0097.

RJCC is a railroad company based in Nicholasville, KY, that primarily operates freight railroads in five states. RJCC operates one steam locomotive, RJCC 2008, several times a year in the spring and fall on its Central Kentucky Line. RJCC 2008 is a 2–10–2 steam locomotive that was built in China in 1986. The boiler and the running gear were rebuilt in China and received a 1472 service-day inspection, pursuant to 49 CFR 230.17, prior to entering service in the United States on March 14, 2008. Since then, RJCC 2008 has operated 37 days in service and has undergone four annual inspections. RJCC plans to operate RJCC–2008 for 4 or 5 service days in 2013.

RJCC requests relief from 49 CFR 230.16(a)(2) with respect to flexible staybolt and cap inspection and 49 CFR 230.41, *Flexible staybolts with caps.* RJCC requests that 2.5 years be added to the prescribed 5-year period to perform the flexible staybolt inspection, thereby allowing 2,760 calendar days from the date that RJCC put RJCC 2008 into service. The flexible staybolts were installed in the boiler with caps welded to the staybolt cups, which were also welded to the boiler. The inspection process would involve torching off each cap, causing possible damage to each cup, thereby requiring replacement. There are in excess of 1,200 flexible staybolts installed on the boiler of RJCC 2008. RJCC will perform the annual inspection pursuant to 49 CFR 230.16. Granting the waiver would allow RJCC 2008 to receive an annual inspection without the added burden of removing the locomotive cab, boiler jacketing, and attendant insulation, which is required for the flexible staybolt inspection.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov* and in person at the U.S. Department of Transportation's Docket Operations Facility, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590. The Docket Operations Facility is open from 9 a.m. to 5 p.m., Monday through Friday, except Federal Holidays.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted by any of the following methods:

- *Web site*: *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* Docket Operations Facility, U.S. Department of Transportation, 1200 New Jersey Avenue SE., W12–140, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE., Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays.

Communications received by May 28, 2013 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable.

Anyone is able to search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). See *http://www.regulations.gov/#!privacyNotice* for the privacy notice of regulations.gov or interested parties may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477).

Issued in Washington, DC, on April 8, 2013.

Robert C. Lauby,

Deputy Associate Administrator for Regulatory and Legislative Operations.

[FR Doc. 2013–08491 Filed 4–10–13; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection; Comment Request

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 Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request to Reissue United States Savings Bonds.

DATES: Written comments should be received on or before June 13, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Bruce A. Sharp, 200 Third Street A4–A, Parkersburg, WV 26106–1328, or *bruce.sharp@bpd.treas.gov.* The opportunity to make comments online is also available at *www.pracomment.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies should be directed to Bruce A. Sharp, Bureau of the Public Debt, 200 Third Street A4–A, Parkersburg, WV 26106–1328, (304) 480–8150.

SUPPLEMENTARY INFORMATION:

Title: Request to Reissue United States Savings Bonds.

OMB Number: 1535–0023.

Form Number: PD F 4000.

Abstract: The information is requested to support a request to reissue and to indicate the new registration required.

Current Actions: None.

Type of Review: Revision.

Affected Public: Individuals or Households.

Estimated Number of Respondents: 115,000.

Estimated Time per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 57,500.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: April 8, 2013.

Bruce A. Sharp,

Bureau Clearance Officer.

[FR Doc. 2013–08505 Filed 4–10–13; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 8865

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 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships.

DATES: Written comments should be received on or before June 10, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, 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 Martha R. Brinson, at (202) 622–3869, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Return of U.S. Persons With Respect to Certain Foreign Partnerships.

OMB Number: 1545–1668.

Form Number: 8865.

Abstract: The Taxpayer Relief Act of 1997 significantly modified the information reporting requirements with respect to foreign partnerships. The Act made the following three changes: (1) Expanded Code section 6038B to require U.S. persons transferring property to foreign partnerships in certain transactions to report those transfers; (2) expanded Code section 6038 to require certain U.S. partners of controlled foreign partnerships to report information about the partnerships, and (3) modified the reporting required under Code section 6046A with respect to acquisitions and dispositions of foreign partnership interests. Form 8865 is used by U.S. persons to fulfill their reporting obligations under Code sections 6038B, 6038, and 6046A.

Current Actions: There are no changes being made to this form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and not-for-profit institutions.

Estimated Number of Respondents: 3,300.

Estimated Time per Respondent: 74 hours, 45 minutes.

Estimated Total Annual Burden Hours: 245,074.

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: March 14, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–08412 Filed 4–10–13; 8:45 am]

BILLING CODE 4830–01–P

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, Adjustments Following Sales of Partnership Interests.

DATES: Written comments should be received on or before June 10, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Martha R. Brinson, at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3869, or through the Internet at *Martha.R.Brinson@irs.gov.*

SUPPLEMENTARY INFORMATION:

Title: Adjustments Following Sales of Partnership Interests.

OMB Number: 1545–1588.

Regulation Project Number: TD 8847.

Abstract: Partnerships, with a section 754 election in effect, are required to adjust the basis of partnership property following certain transfers of partnership interests. This regulation relates to the optional adjustments to the basis of partnership property following certain transfers of partnership interests under section 743, the calculation of gain or loss under section 751(a) following the sale or exchange of a partnership interest, the allocation of basis adjustments among partnership assets under section 755, the allocation of a partner's basis in its partnership interest to properties distributed to the partner by the partnership under section 732(c), and the computation of a partner's proportionate share of the adjusted basis of depreciable property (or depreciable real property) under section 1017.

Current Actions: There are no changes being made to the regulation at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents/Recordkeepers: 226,000.

Estimated Time per Respondent/Recordkeeper: 4 hrs.

Estimated Total Annual Burden Hours: 904,000.

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: March 14, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–08422 Filed 4–10–13; 8:45 am]

BILLING CODE 4830–01–P

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, IRS Adoption Taxpayer Identification Numbers.

DATES: Written comments should be received on or before June 10, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulation should be directed to, Martha R. Brinson at (202) 622–3869, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the Internet, at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: IRS Adoption Taxpayer Identification Numbers.

OMB Number: 1545–1564.

Regulation Project Number: TD 8839.

Abstract: The regulations provide rules for obtaining IRS adoption taxpayer identification numbers (ATINs), which are used to identify children placed for adoption. To obtain an ATIN, a prospective adoptive parent must file Form W–7A. The regulations assist prospective adoptive parents in claiming tax benefits with respect to these children.

Current Actions: There is no change to this existing regulation.

Type of Review: Extension of a currently approved collection.

The burden for the collection of information is reflected in the burden for Form W–7A.

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: March 14, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–08424 Filed 4–10–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Publication 1345

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 Publication 1345, Handbook for Authorized IRS e-file Providers.

DATES: Written comments should be received on or before June 10, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, 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 Martha R. Brinson at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or at (202) 622–3869, or through the Internet at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Publication 1345, Handbook for Authorized IRS e-file Providers.

OMB Number: 1545–1708.

Form Number: 1345.

Abstract: Publication 1345 informs those who participate in the IRS e-file Program for Individual Income Tax Returns of their obligations to the Internal Revenue Service, taxpayers, and other participants.

Current Actions: There are no changes being made to the publication at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 200,000.

Estimated Time per Respondent: 30 hours, 18 minutes.

Estimated Total Annual Burden Hours: 6,023,762.

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: March 14, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–08421 Filed 4–10–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Notice 89–61

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 Imported Substances; Rules for Filing a Petition.

DATES: Written comments should be received on or before June 10, 2013 to be assured of consideration.

ADDRESSES: Direct all written comments to Yvette Lawrence, Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection should be directed to Martha R. Brinson, at (202) 622–3869, or at Internal Revenue Service, Room 6129, 1111 Constitution Avenue NW., Washington, DC 20224, or through the internet, at *Martha.R.Brinson@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Imported Substances; Rules for Filing a Petition.

OMB Number: 1545–1117.

Notice Number: Notice 89–61.

Abstract: Section 4671 of the Internal Revenue Code imposes a tax on the sale or use of certain imported taxable substances by the importer. Code section 4672 provides an initial list of taxable substances and provides that importers and exporters may petition the Secretary of the Treasury to modify the list. Notice 89–61 sets forth the procedures to be followed in petitioning the Secretary.

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.

Estimated Number of Respondents: 100.

Estimated Time per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 100.

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: March 14, 2013.

Yvette Lawrence,

IRS Reports Clearance Officer.

[FR Doc. 2013–08423 Filed 4–10–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Internal Revenue Service Advisory Council (IRSAC); Nominations

AGENCY: Internal Revenue Service, Department of Treasury.

ACTION: Request for Applications.

SUMMARY: The Internal Revenue Service (IRS) requests applications of

individuals to be considered for selection as members of the Internal Revenue Service Advisory Council (IRSAC). Nominations should describe and document the proposed member's qualification for IRSAC membership, including the applicant's knowledge of Circular 230 regulations and the applicant's past or current affiliations and dealings with the particular tax segment or segments of the community that the applicant wishes to represent on the council. Applications will be accepted for current vacancies from qualified individuals and from professional and public interest groups that wish to have representatives on the IRSAC. The IRSAC is comprised of no more than thirty-five (35) appointed members; approximately 11 of these appointments will expire in December 2013. It is important that the IRSAC continue to represent a diverse taxpayer and stakeholder base. Accordingly, to maintain membership diversity, selection is based on the applicant's qualifications as well as areas of expertise, geographic diversity, major stakeholder representation and customer segments.

The Internal Revenue Service Advisory Council (IRSAC) provides an organized public forum for IRS officials and representatives of the public to discuss relevant tax administration issues. The council advises the IRS on issues that have a substantive effect on federal tax administration. As an advisory body designed to focus on broad policy matters, the IRSAC reviews existing tax policy and/or recommends policies with respect to emerging tax administration issues. The IRSAC suggests operational improvements, offers constructive observations regarding current or proposed IRS policies, programs, and procedures, and advises the IRS with respect to issues having substantive effect on federal tax administration.

DATES: Written applications will be accepted from May 1, 2013 through June 14, 2013.

ADDRESSES: Applications should be sent to National Public Liaison, CL:NPL:P, Room 7559 IR, 1111 Constitution Avenue NW., Washington, DC 20224, Attn: Lorenza Wilds; or by email: *publicliaison@irs.gov.* Applications may be submitted by mail to the address above or faxed to 202–927–4123. Application packages are available on the Tax Professional's Page, which is located on the IRS Internet Web site at *http://www.irs.gov/Tax-Professionals.*

FOR FURTHER INFORMATION CONTACT: Ms. Lorenza Wilds, 202–622–6440 (not a toll-free number).

SUPPLEMENTARY INFORMATION: IRSAC was authorized under the Federal Advisory Committee Act, Public Law 92–463, the first Advisory Group to the Commissioner of Internal Revenue—or the Commissioner's Advisory Group (''CAG'')—was established in 1953 as a ''national policy and/or issue advisory committee.'' Renamed in 1998, the Internal Revenue Service Advisory Council (IRSAC) reflects the agency-wide scope of its focus as an advisory body to the entire agency. The IRSAC's primary purpose is to provide an organized public forum for senior IRS executives and representatives of the public to discuss relevant tax administration issues.

Conveying the public's perception of IRS activities, the IRSAC is comprised of individuals who bring substantial, disparate experience and diverse backgrounds on the Council's activities. Membership is balanced to include representation from the taxpaying public, the tax professional community, small and large businesses, international, wage and investment taxpayers and the knowledge of Circular 230.

IRSAC members are nominated by the Commissioner of the Internal Revenue Service with the concurrence of the Secretary of the Treasury to serve a three year term. There are four subcommittees of IRSAC, the (Small Business/Self Employed (SB/SE); Large Business and International (LB&I); Wage & Investment (W&I); and the Office of Professional Responsibility (OPR).

Members are not paid for their services. However, travel expenses for working sessions, public meetings and orientation sessions, such as airfare, per diem, and transportation to and from airports, train stations, etc., are reimbursed within prescribed federal travel limitations.

An acknowledgment of receipt will be sent to all applicants. In accordance with the Department of Treasury Directive 21–03, a clearance process including, annual tax checks, and a practitioner check with the Office of Professional Responsibility will be conducted. In addition, all applicants deemed ''best qualified'' will have to undergo a Federal Bureau of Investigation (FBI) fingerprint check. Federally-registered lobbyists cannot be members of the IRSAC.

Equal opportunity practices will be followed for all appointments to the IRSAC in accordance with the Department of Treasury and IRS policies. The IRS has special interest in assuring that women and men, members of all races and national origins, and individuals with disabilities are adequately represented on advisory committees: and therefore, extends particular encouragement to nominations from such appropriately qualified candidates.

Dated: April 4, 2013.

Candice Cromling,

Director, National Public Liaison.

[FR Doc. 2013–08411 Filed 4–10–13; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0593]

Proposed Information Collection (Caution to Bidders—Bid Envelopes) Activity: Comment Request

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Logistics (OA&L), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to identify bid envelopes from other mail parcels.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 10, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov*; or to Sylvester Rainey, Office of Acquisition and Logistics (003A2A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *sylvester.rainey@va.gov*. Please refer to ''OMB Control No. 2900–0593'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Sylvester Rainey at (202) 632–5339 or Fax at (202) 343–1434.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each

collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OA&L invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OA&L's functions, including whether the information will have practical utility; (2) the accuracy of OA&L's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Affairs Acquisition Regulation (VAAR) Provision 852.214–70, Caution to Bidders—Bid Envelopes.

OMB Control Number: 2900–0593.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR provision 852.214–70, Caution to Bidders—Bid Envelopes, advises bidders that it is their responsibility to ensure their bid price cannot be ascertained by anyone prior to bid opening. It also advises bidders to identify their bids by showing the invitation number and bid opening date on the outside of the bid envelope. The information requested from bidders is needed to identify bid envelopes from other mail or packages received and to ensure the bids are delivered to the proper bid opening room on time and prior to bid opening.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 960 hours.

Estimated Average Burden per Respondent: 10 seconds.

Frequency of Response: On occasion.

Estimated Number of Respondents: 346,000.

Dated: April 8, 2013.

By direction of the Secretary:

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–08509 Filed 4–10–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0600]

Proposed Information Collection (Regulation for Reconsideration of Denied Claims) Activity: Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Health Administration (VHA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to request an informal review of veterans' denied healthcare benefits claims.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 10, 2013

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov*; or to Cynthia Harvey-Pryor, Veterans Health Administration (10B4), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420; or email: *cynthia.harvey-pryor@va.gov*. Please refer to ''OMB Control No. 2900–0600'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Cynthia Harvey-Pryor at (202) 461–5870.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Regulation for Reconsideration of Denied Claims.

OMB Control Number: 2900–0600.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans who disagree with the initial decision denying their healthcare benefits in whole or in part may obtain reconsideration by submitting a request in writing within one year of the date of the initial decision. The request must state why the decision is in error and include any new and relevant information not previously considered. This process reduces both formal appeals and allows decision making to be more responsive to veterans using the VA healthcare system.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 50,826 hours.

Estimated Average Burden per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 101,652.

Dated: April 8, 2013.

By direction of the Secretary:

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–08508 Filed 4–10–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0585]

Proposed Information Collection (Brand Name or Equal) Activity: Comment Request

AGENCY: Office of Acquisition and Logistics, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Acquisition and Logistics (OA&L), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the

Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to allow firms to offer items that are equal to the brand name item stated in the bid.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before June 10, 2013.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *www.Regulations.gov*; or to Sylvester Rainey, Office of Acquisition and Logistics (003A2A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420; or email: *sylvester.rainey@va.gov*. Please refer to ''OMB Control No. 2900–0585'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Sylvester Rainey at (202) 632–5339 or Fax at (202) 343–1434.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C. 3501–3521), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OA&L invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of OA&L's functions, including whether the information will have practical utility; (2) the accuracy of OA&L's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Veterans Affairs Acquisition Regulation (VAAR) Clause 852.211–77, Brand Name or Equal (was 852.210–77).

OMB Control Number: 2900–0585.

Type of Review: Extension of a currently approved collection.

Abstract: VAAR clause 852.211–77 advises bidders or offerors who are proposing to offer an item that is alleged to be equal to the brand name item stated in the bid, that it is the bidder's or offeror's responsibility to show that the item offered is in fact, equal to the brand name item. This evidence may be in the form of descriptive literature or material, such as cuts, illustrations, drawings, or other information. While submission of the information is voluntary, failure to provide the information may result in rejection of the firm's bid or offer if the Government cannot otherwise determine that the item offered is equal. The contracting officer will use the information to evaluate whether or not the item offered meets the specification requirements.

Affected Public: Business or other for-profit and Not-for-profit institutions.

Estimated Annual Burden: 1,666 hours.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 10,000.

Dated: April 8, 2013.

By direction of the Secretary.

William F. Russo,

Deputy Director, Office of Regulations Policy and Management, Office of General Counsel, Department of Veterans Affairs.

[FR Doc. 2013–08510 Filed 4–10–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Compensation Cost-of-Living Adjustments for Service-Connected Benefits

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by the Veterans' Compensation Cost-of-Living Adjustment Act of 2012, Public Law 112–198, the Department of Veterans Affairs (VA) is hereby giving notice of adjustments in certain benefit rates. These adjustments affect the compensation and dependency and indemnity compensation (DIC) programs.

DATES: These adjustments became effective on December 1, 2012, the date provided by Public Law 112–198.

FOR FURTHER INFORMATION CONTACT: Sarah Hill, Program Analyst, Compensation Services (212B), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 461–1468.

SUPPLEMENTARY INFORMATION: Section 2 of Public Law 112–198 provides for an increase in each of the rates in sections 1114, 1115(1), 1162, 1311, 1313, and 1314 of title 38, United States Code. VA is required to increase these benefit rates by the same percentage as increases in the benefit amounts payable under title II of the Social Security Act. In computing increased rates in the cited title 38 sections, fractions of a dollar are rounded down to the nearest dollar. The increased rates are required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 1.7 percent cost-of-living increase in Social Security benefits for 2013. Therefore, applying the same percentage, the following rates for VA compensation and DIC programs became effective on December 1, 2012:

DISABILITY COMPENSATION

[38 U.S.C. 1114]

Disability evaluation percent	Monthly rate
10	$129
20	255
30	395
40	569
50	810
60	1,026
70	1,293
80	1,503
90	1,689
100	2,816
(38 U.S.C. 1114(k) through (s)):	
38 U.S.C. 1114(k)	$100; 3,504; 100; 4,917
38 U.S.C. 1114(l)	3,504
38 U.S.C. 1114(m)	3,867
38 U.S.C. 1114(n)	4,399
38 U.S.C. 1114(o)	4,917
38 U.S.C. 1114(p)	4,917
38 U.S.C. 1114(r)	2,109; 3,142
38 U.S.C. 1114(s)	3,152

ADDITIONAL COMPENSATION FOR DEPENDENTS

[38 U.S.C. 1115(1)]

38 U.S.C. 1115(1):	
38 U.S.C. 1115(1)(A)	$157
38 U.S.C. 1115(1)(B)	272; 78
38 U.S.C. 1115(1)(C)	105; 78
38 U.S.C. 1115(1)(D)	126
38 U.S.C. 1115(1)(E)	301
38 U.S.C. 1115(1)(F)	252

CLOTHING ALLOWANCE

[38 U.S.C. 1162]

$753 per year

DIC TO A SURVIVING SPOUSE
[38 U.S.C. 1311]

Pay Grade:	
E–1	$1,215
E–2	1,215
E–3	1,215
E–4	1,215
E–5	1,215
E–6	1,215
E–7	1,257
E–8	1,327
E–9(1)	1,384
W–1	1,283
W–2	1,334
W–3	1,373
W–4	1,453
O–1	1,283
O–2	1,327
O–3	1,418
O–4	1,503
O–5	1,654
O–6	1,865
O–7	2,013
O–8	2,211
O–9	2,365
O–10(2)	2,594

(1) If the veteran served as sergeant major of the Army, senior enlisted advisor of the Navy, chief master sergeant of the Air Force, sergeant major of the Marine Corps, or master chief petty officer of the Coast Guard, the surviving spouse's monthly rate is $1,494.

(2) If the veteran served as Chairman or Vice Chairman of the Joint Chiefs of Staff, Chief of Staff of the Army, Chief of Naval Operations, Chief of Staff of the Air Force, Commandant of the Marine Corps, or Commandant of the Coast Guard, the surviving spouse's monthly rate is $2,784.

DIC TO A SURVIVING SPOUSE
[38 U.S.C. 1311(a) through (f)]

38 U.S.C. 1311(a) through (f):	
38 U.S.C. 1311(a)(1)	$1,215
38 U.S.C. 1311(a)(2)	258
38 U.S.C. 1311(b)	301
38 U.S.C. 1311(c)	301
38 U.S.C. 1311(d)	141
38 U.S.C. 1311(f)	263

DIC TO CHILDREN
[38 U.S.C. 1313]

38 U.S.C. 1313:	
38 U.S.C. 1313(a)(1)	$513
38 U.S.C. 1313(a)(2)	738
38 U.S.C. 1313(a)(3)	963
38 U.S.C. 1313(a)(4)	963; 183

SUPPLEMENTAL DIC TO CHILDREN
[38 U.S.C. 1314]

38 U.S.C. 1314:	
38 U.S.C. 1314(a)	$301
38 U.S.C. 1314(b)	513
38 U.S.C. 1314(c)	255

Approved: April 3, 2013.

Jose D. Riojas,

Interim Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2013–08529 Filed 4–10–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974: Computer Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Computer Match Program.

SUMMARY: Pursuant to 5 U.S.C. 552a, the Privacy Act of 1974, as amended, and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs, notice is hereby given that the Department of Veterans Affairs (VA) intends to conduct a computer matching program with the Social Security Administration (SSA). Data from the proposed match will be used to verify the earned income of nonservice-connected veterans, and those veterans who are zero percent service-connected (noncompensable), whose eligibility for VA medical care is based on their inability to defray the cost of medical care. These veterans supply household income information that includes their spouses and dependents at the time of application for VA health care benefits.

DATES: *Effective Date:* This match will start April 9, 2013, unless comments dictate otherwise.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand-delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Avenue NW., Room 1068, Washington, DC 20420; or by fax to (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy and Management, Room 1063B, between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through the Federal Docket Management System (FDMS) at *www.Regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Tony A. Guagliardo, Director, Health Eligibility Center, (404) 848–5300 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: The Department of Veterans Affairs has statutory authorization under 38 U.S.C. 5317, 38 U.S.C. 5106, 26 U.S.C. 6103(l)(7)(D)(viii) and 5 U.S.C. 552a to establish matching agreements and request and use income information from other agencies for purposes of verification of income for determining eligibility for benefits. 38 U.S.C. 1710(a)(2)(G), 1710(a)(3), and 1710(b) identify those veterans whose basic eligibility for medical care benefits is dependent upon their financial status. Eligibility for nonservice-connected and zero percent noncompensable service-connected veterans is determined based on the veteran's inability to defray the expenses for necessary care as defined in 38 U.S.C. 1722. This determination can affect their responsibility to participate in the cost of their care through copayments and their assignment to an enrollment priority group. The goal of this match is to obtain SSA earned income information data needed for the income verification process. The VA records involved in the match are ''Enrollment and Eligibility Records—VA'' (147VA16). The SSA records are from the Earnings Recording and Self-Employment Income System, SSA/OEEAS 09–60–0059 and Master Files of Social Security Number Holders and SSN Applications, SSA/OEEAS, 60–0058, (referred to as ''the Numident''). A copy of this notice has been sent to both Houses of Congress and OMB.

This matching agreement expires 18 months after its effective date. This match will not continue past the legislative authorized date to obtain this information.

Approved: March 26, 2013.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2013–08531 Filed 4–10–13; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Report of Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Notice of Computer Matching Program.

SUMMARY: The Department of Veterans Affairs (VA) provides notice that it intends to conduct a recurring computer-matching program matching Office of Personnel Management (OPM) records with VA pension and dependency and indemnity compensation (DIC) records. The purpose of this match is to identify beneficiaries who are receiving VA benefits and payment under the Civil Service Retirement Act or Federal Employees' Retirement System Act, and to adjust or terminate benefits, if appropriate.

DATES: The match will start no sooner than 30 days after publication of this notice in the **Federal Register** (FR), or 40 days after copies of this notice and the agreement of the parties are submitted to Congress and the Office of Management and Budget, whichever is later, and end not more than 18 months after the agreement is properly implemented by the parties. The involved agencies' Data Integrity Boards (DIB) may extend this match for 12 months provided the agencies certify to their DIBs, within 3 months of the ending date of the original match, that the matching program will be conducted without change and that the matching program has been conducted in compliance with the original matching program.

ADDRESSES: Written comments may be submitted through *www.Regulations.gov;* by mail or hand delivery to the Director, Regulations Management (02REG), Department of Veterans Affairs, 810 Vermont Ave. NW., Room 1068, Washington, DC 20420; or by fax (202) 273–9026. Copies of comments received will be available for public inspection in the Office of Regulation Policy Management, Room 10638, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays). Please call (202) 461–4902 for an appointment. In addition, during the comment period, comments may be viewed online through Federal Docket Management System (FDMS) at *www.Regulations.gov*.

FOR FURTHER INFORMATION CONTACT: Sharon Nicely, Pension Analyst, Pension and Fiduciary Service (21P), Department of Veterans Affairs, 810 Vermont Ave. NW., Washington, DC 20420, (202) 632–8863.

SUPPLEMENTARY INFORMATION: VA plans to match records of applicants and beneficiaries, including veterans and survivors, and their eligible dependent(s) who have applied for or who are receiving needs-based VA benefits with retirement annuity payment information maintained by OPM. VA will use this information to verify income information submitted by beneficiaries in VA's needs-based benefits programs and adjust VA benefit payments as prescribed by law. The proposed matching program will enable VA to ensure accurate reporting of income.

The legal authority to conduct this match is 38 U.S.C. 5106, which requires any Federal department or agency to provide VA such information as VA requests for the purposes of determining eligibility for benefits or verifying other information with respect to payment of benefits.

VA records involved in the match are in ''Compensation, Pension, Education, and Vocational Rehabilitation Records—VA (58 VA 21/22/28),'' a system of records that was first published at 41 FR 9294 (March 3, 1976), amended and republished in its entirety at 74 FR 29275 (June 19, 2009), and last amended at 75 FR 22187 (April 27, 2010). The routine use is number 39 regarding computer matches. The OPM records involved in the match are from the OPM Civil Service Retirement Pay File identified as OPM/Central-1, Civil Service Retirement and Insurance Records, published at 73 FR 15013 (March 20, 2008). The routine use is ''I.''

In accordance with the Privacy Act, 5 U.S.C. 552a(o)(2) and (r), copies of the agreement are being sent to both Houses of Congress and to the Office of Management and Budget. This notice is provided in accordance with the provisions of the Privacy Act of 1974 as amended by Public Law 100–503.

Approved: March 26, 2013.

John R. Gingrich,

Chief of Staff, Department of Veterans Affairs.

[FR Doc. 2013–08532 Filed 4–10–13; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

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Part II

Department of Defense

32 CFR Part 105

Sexual Assault Prevention and Response (SAPR) Program Procedures; Final Rule

DEPARTMENT OF DEFENSE

Office of the Secretary

[DoD–2008–OS–0100; 0790–AI36]

32 CFR Part 105

Sexual Assault Prevention and Response (SAPR) Program Procedures

AGENCY: Department of Defense (DoD).

ACTION: Interim final rule.

SUMMARY: This rule implements policy, assigns responsibilities, and provides guidance and procedures for the SAPR Program; establishes the processes and procedures for the Sexual Assault Forensic Examination (SAFE) Kit; establishes the multidisciplinary Case Management Group (CMG) and provides guidance on how to handle sexual assault; establishes SAPR minimum program standards, SAPR training requirements, and SAPR requirements for the DoD Annual Report on Sexual Assault in the Military. The Department of Defense Sexual Assault Prevention and Response (SAPR) program continues to evolve, and the Department is committed to incorporating best practices and Congressional requirements to ensure that sexual assault victims receive the services they need. As part of this commitment and in addition to the Interim Final Rule, the Department is exploring the feasibility and advisability of extending the Restricted Reporting option to DoD civilians and contractors serving overseas.

DATES: This rule is effective April 11, 2013. Comments must be received by June 10, 2013.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) number and title, by any of the following methods:

- *Federal Rulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 4800 Mark Center Drive, East Tower, Suite 02G09, Alexandria, VA 22350–3100.

Instructions: All submissions received must include the agency name and docket number or RIN for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Diana Rangoussis, Senior Policy Advisor, DoD Sexual Assault Prevention and Response Office (SAPRO), (571) 372–2648.

SUPPLEMENTARY INFORMATION: This rule is being published as an interim final rule to:

(a) Incorporate all applicable Congressional mandates and all applicable recommendations from the Inspector General of the Department of Defense (IG, DoD), Government Accountability Office (GAO), and Defense Task Force on Sexual Assault in the Military Services (DTFSAMS), to include the Defense Sexual Assault Incident Database (DSAID);

(b) Incorporate the NDAA requirement for expedited transfers of military service members who file Unrestricted Reports of sexual assault;

(c) Incorporate the NDAA requirement for document retention in cases of Restricted and Unrestricted Reports of sexual assault;

(d) Incorporate the NDAA requirement for a DoD-wide certification program with a national accreditor to ensure all sexual assault victims are offered the assistance of a certified sexual assault response coordinator (SARC) or SAPR victim advocate (VA);

(e) Incorporate the NDAA requirement for updated SAPR training standards for Service members, and in addition containing specific standards for: accessions, annual, professional military education and leadership development training, pre- and post-deployment, pre-command, General and Field Officers and SES, military recruiters, civilians who supervise military, and responders (to include legal assistance attorneys) training;

(f) Training on the new military rule of evidence (MRE) 514 that established the victim advocate privilege in UCMJ cases;

(g) Establish the SAFE Helpline is established as the sole DoD hotline for crisis intervention. DoD sexual assault advocate certification program is mandated pursuant to the mandate in NDAA FY 12;

(h) Establishes requirements for a sexual assault victim safety assessment and the execution of a high-risk team to monitor cases where the sexual assault victim's life and safety may be in jeopardy.

Executive Summary

I. Purpose of the Regulatory Action

a. The Need for the Regulatory Action and How the Action Will Meet That Need

This rule:

(1) Incorporates all applicable Congressional mandates from 10 U.S.C. 113; 10 U.S.C. chapter 47; and Public Laws 106–65, 108–375, 109–163, 109–364, 110–417, 111–84, 111–383 and 112–81; and all applicable recommendations from the IG, DoD; GAO; DoD Task Force on Care for Victims of Sexual Assault; and DTFSAMS;

(2) Establishes the creation, implementation, maintenance, and function of DSAID, an integrated database that will meet Congressional reporting requirements, support Service SAPR program management, and inform DoD SAPRO oversight activities;

(3) Increases the scope of applicability of this part by expanding the categories of persons covered by this part to include:

(i) National Guard (NG) and Reserve Component members who are sexually assaulted when performing active service, as defined in 10 U.S.C. 101(d)(3), and inactive duty training. If reporting a sexual assault that occurred prior to or while not performing active service or inactive training, NG and Reserve Component members will be eligible to receive limited SAPR support services from a Sexual Assault Response Coordinator (SARC) and a SAPR Victim Advocate (VA) and are eligible to file a Restricted Report.

(ii) Military dependents 18 years of age and older who are eligible for treatment in the military healthcare system (MHS), at installations in the continental United States (CONUS) and outside the continental United States (OCONUS), and who were victims of sexual assault perpetrated by someone other than a spouse or intimate partner.

(iii) Adult military dependents may file unrestricted or restricted reports of sexual assault.

(iv) The Family Advocacy Program (FAP), consistent with DoDD 6400.1 [1] and DoD Instruction (DoDI) 6400.06,[2] covers adult military dependent sexual assault victims who are assaulted by a spouse or intimate partner and military dependent sexual assault victims who are 17 years of age and younger.)

(4) The following non-military individuals who are victims of sexual assault are only eligible for limited emergency care medical services at a military treatment facility, unless that individual is otherwise eligible as a Service member or TRICARE (*http://www.tricare.mil*) beneficiary of the military health system to receive

[1] Available: *http://www.dtic.mil/whs/directives/corres/pdf/640001p.pdf.*

[2] Available: *http://www.dtic.mil/whs/directives/corres/pdf/640006p.pdf.*

treatment in a military medical treatment facility (MTF) at no cost to them. They are only eligible to file an Unrestricted Report. They will also be offered the limited SAPR services to be defined as the assistance of a SARC and SAPR VA while undergoing emergency care OCONUS. These limited medical and SAPR services shall be provided to:

(i) DoD civilian employees and their family dependents 18 years of age and older when they are stationed or performing duties OCONUS and eligible for treatment in the MHS at military installations or facilities OCONUS. These DoD civilian employees and their family dependents 18 years of age and older only have the Unrestricted Reporting option.

(ii) U.S. citizen DoD contractor personnel when they are authorized to accompany the Armed Forces in a contingency operation OCONUS and their U.S. citizen employees. DoD contractor personnel only have the Unrestricted Reporting option. Additional medical services may be provided to contractors covered under this part in accordance with DoDI 3020.41 [3] as applicable.

(5) Service members who are on active duty but were victims of sexual assault prior to enlistment or commissioning are eligible to receive SAPR services under either reporting option. The DoD shall provide support to an active duty Service member regardless of when or where the sexual assault took place.

b. Succinct Statement of Legal Authority for the Regulatory Action

10 U.S.C. 113; 10 U.S.C. chapter 47 (also known and hereafter referred to as ''The Uniform Code of Military Justice''); and Public Laws 106–65, 108–375, 109–163, 109–364, 110–417, 111–84, 111–383 and 112–81.

II. Summary of the Major Provisions of the Regulatory Action

This rule:

(1) Codifies the Expedited Transfer policy which provides sexual assault victims who report their assaults the opportunity to transfer from their installation.

(2) Codifies the Document Retention policy which requires the retention of certain sexual assault records in reported cases for 50 years, and requires the retention for at least 5 years in cases of restricted reports (no command or law enforcement notice). But at the request of a member of the Armed Forces who files a Restricted Report on an incident of sexual assault, the Department of Defense Form (DD Form) 2910 and DD Form 2911 filed in connection with the Restricted Report be retained for 50 years.

(3) Details for the Congressional reporting requirements for the annual sexual assault in the military services report and the Military Service Academies report are set out.

(4) Provides detailed procedures for the DSAID database.

(5) Establishes the SAFE Helpline as the sole DoD hotline for crisis intervention.

(6) Establishes the DoD sexual assault advocate certification program, pursuant to the mandate in NDAA FY 12.

(7) Revises training requirements for all levels of training and all military personnel. Specific training standards will be codified for first responders to include SARCs, SAPR VAs, medical personnel, commanders, investigators, chaplains, prosecutors, and even legal assistance attorneys.

(8) Mandates training on the new Victim Advocate Privilege found in Military Rule of Evidence 514.

(9) Requires the execution of a high-risk team to monitor cases where the sexual assault victim's life and safety may be in jeopardy.

III. Costs and Benefits

The preliminary estimate of the anticipated cost associated with this rule for the current fiscal year is approximately $15 million. Additionally, each of the Military Services establishes its own SAPR budget for the programmatic costs arising from the implementation of the training, prevention, reporting, response, and oversight requirements established by this rule.

The anticipated benefits associated with this rule include:

(1) A complete SAPR Policy consisting of this part and 32 CFR part 103, to include comprehensive SAPR procedures to implement the DoD policy on prevention and response to sexual assaults involving members of the U.S. Armed Forces.

(2) Guidance and procedures with which the DoD may establish a culture free of sexual assault, through an environment of prevention, education and training, response capability, victim support, reporting procedures, and appropriate accountability that enhances the safety and well being of all persons covered by this part and 32 CFR part 103.

(3) A focus on the victim and on doing what is necessary and appropriate to support victim recovery, and also, if a Service member, to support that Service member to be fully mission capable and engaged.

(4) A requirement that medical care and SAPR services are gender-responsive, culturally competent, and recovery-oriented.

(5) Command sexual assault awareness and prevention programs and DoD law enforcement and criminal justice procedures that enable persons to be held appropriately accountable for their actions, shall be supported by all commanders.

(6) Standardized SAPR requirements, terminology, guidelines, protocols, and guidelines for training materials shall focus on awareness, prevention, and response at all levels, as appropriate.

(7) A 24 hour, 7 day per week sexual assault response capability for all locations, including deployed areas, shall be established for persons covered in this part. An immediate, trained sexual assault response capability shall be available for each report of sexual assault in all locations, including in deployed locations.

(8) Sexual Assault Response Coordinators (SARC), SAPR Victim Advocates (VA), and other responders will assist sexual assault victims regardless of Service affiliation.

(9) Service member and adult military dependent victims of sexual assault shall receive timely access to comprehensive medical and psychological treatment, including emergency care treatment and services, as described in this part and 32 CFR part 103.

(10) Sexual assault victims shall be given priority, and treated as emergency cases. Emergency care shall consist of emergency medical care and the offer of a SAFE. The victim shall be advised that even if a SAFE is declined the victim shall be encouraged (but not mandated) to receive medical care, psychological care, and victim advocacy.

(11) Enlistment or commissioning of persons in the Military Services shall be prohibited and no waivers are allowed when the person has a qualifying conviction for a crime of sexual assault or is required to be registered as a sex offender.

(12) Two separate document retention schedules for records of Service members who report that they are victims of sexual assault, based on whether the Service member filed a Restricted or Unrestricted Report as defined 32 CFR part 103. The record retention system for Restricted Reports shall protect the Service member's desire for confidentiality. Restricted Report cases direct that DD Forms 2910 and DD Form 2911 be retained for at least 5 years, but at the request of a

[3] Available: *http://www.dtic.mil/whs/directives/corres/pdf/302041p.pdf.*

member of the Armed Forces who files a Restricted Report on an incident of sexual assault, the DD Forms 2910 and 2911 filed in connection with the Restricted Report be retained for 50 years.

Unrestricted Report cases direct that DD Forms 2910 and 2911 be retained for 50 years.

(13) Expedited reporting of threats and expedited transfer policies for victims making Unrestricted Reports and who request a transfer.

(14) Military Service members who file Unrestricted and Restricted Reports of sexual assault shall be protected from reprisal, or threat of reprisal, for filing a report.

(15) Expanding the applicability of SAPR services to military dependents 18 years and older who have been sexually assaulted and giving the option of both reporting options: Unrestricted or Restricted Reporting.

(16) Service members who are on active duty but were victims of sexual assault prior to enlistment or commissioning are eligible to receive SAPR services under either reporting option. The DoD shall provide support to an active duty Military Service member regardless of when or where the sexual assault took place.

(17) A requirement to establish a DoD-wide certification program with a national accreditor to ensure all sexual assault victims are offered the assistance of a SARC or SAPR VA who has obtained this certification.

(18) Training standards for legal assistance attorneys.

(19) Training standards to train the Executive Order 13593, ''2011 Amendments to the Manual for Courts-martial, United States,'' which established a new military rule of evidence (MRE) 514 that established the victim advocate privilege in UCMJ cases.

(20) Implementing training standards that cover general SAPR training for Service members, and contain specific standards for: accessions, annual, professional military education and leadership development training, pre- and post-deployment, pre-command, General and Field Officers and SES, military recruiters, civilians who supervise military, and responder trainings.

Regulatory Procedures

Executive Order 12866, ''Regulatory Planning and Review''

It has been determined that this rule does not:

(a) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; or

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof. However, it has been determined that this rule does raise novel legal or policy issues arising out of legal mandates, and the principles set forth in this Executive Order. This rule establishes the legal mandate from the National Defense Authorization Act to require all SARC and SAPR VAs that provide a response to be certified. Training standards for Executive Order 13593, ''2011 Amendments to the Manual for Courts-martial, United States,'' which establishes a new military rule of evidence that established the victim advocate privilege in UCMJ cases.

Sec. 202, Public Law 104–4, ''Unfunded Mandates Reform Act''

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year.

Public Law 96–354, ''Regulatory Flexibility Act'' (5 U.S.C. 601)

It has been certified that this rule is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule provides guidance and procedures for the DoD SAPR Program only.

Public Law 96–511, ''Paperwork Reduction Act'' (44 U.S.C. Chapter 35)

Section 105.15 of this interim final rule contains information collection requirements. DoD has submitted the following proposal to the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), which has been assigned OMB Control Number 0704–0482. The System of Records Notice for the rule is located at *http://www.sapr.mil/media/pdf/dsaid/DSAID_Federal_Register_SORN.pdf.* The Privacy Act Information for this rule is located at *http://www.whs.mil/EITSD/documents/DSAID-PIA.pdf.*

Executive Order 13132, ''Federalism''

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

(a) The States;

(b) The relationship between the National Government and the States; or

(c) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 105

Military personnel, crime, health, reporting and recordkeeping requirements.

Accordingly, 32 CFR part 105 is added to read as follows:

PART 105—SEXUAL ASSAULT PREVENTION AND RESPONSE PROGRAM PROCEDURES

Sec.
105.1 Purpose.
105.2 Applicability.
105.3 Definitions.
105.4 Policy.
105.5 Responsibilities.
105.6 Procedures.
105.7 Oversight of the SAPR program.
105.8 Reporting options and Sexual Assault Reporting Procedures.
105.9 Commander and management procedures.
105.10 SARC and SAPR VA procedures.
105.11 Healthcare provider procedures.
105.12 SAFE Kit collection and preservation.
105.13 Case management for Unrestricted Reports of sexual assault.
105.14 Training requirements for DoD personnel.
105.15 Defense Sexual Assault Incident Database (DSAID).
105.16 Sexual assault annual and quarterly reporting requirements.
105.17 Sexual assault offense—investigation disposition descriptions.
105.18 Information collection requirements.

Authority: 10 U.S.C. 113; 10 U.S.C. chapter 47; and Public Laws 106–65, 108–375, 109–163, 109–364, 110–417, 111–84, 111–383, and 112–81.

§ 105.1 Purpose

This part, in accordance with the authority in DoDD 5124.02 [1] and 32 CFR part 103:

(a) Establishes policy and implements 32 CFR part 103, assigns responsibilities, and provides guidance and procedures for the SAPR Program (see 32 CFR 103.3), can be found at *www.dtic.mil/whs/directives/corres/pdf/649501p.pdf*;

(b) Establishes the processes and procedures for the Sexual Assault

[1] Available: *http://www.dtic.mil/whs/directives/corres/pdf/512402p.pdf.*

Forensic Examination (SAFE) Kit; can be found at *http://www.sapr.mil/index.php/toolkit*;

(c) Establishes the multidisciplinary Case Management Group (CMG) (see § 105.3) and provides guidance on how to handle sexual assault;

(d) Establishes Sexual Assault Prevention and Response (SAPR) minimum program standards, SAPR training requirements, and SAPR requirements for the DoD Annual Report on Sexual Assault in the Military consistent with the DoD Task Force Report on Care for Victims of Sexual Assault [2] and pursuant to DoDD 5124.02 and 32 CFR part 103, 10 U.S.C. 113, 10 U.S.C. chapter 47 (also known and hereafter referred to as the ''UCMJ''), and Public Laws 106–65, 108–375, 109–163, 109–364, 110–417, 111–84, 111–383, and 112–81; and

(e) Incorporates DTM 11–063, ''Expedited Transfer of Military Service Members Who File Unrestricted Reports of Sexual Assault,'' December 16, 2011, can be found at *http://www.sapr.mil/media/pdf/policy/DTM-11-063.pdf* and DTM 11-062, ''Document Retention for Restricted and Unrestricted Reports of Sexual Assault,'' December 16, 2011, can be found at *http://www.dtic.mil/whs/directives/corres/pdf/DTM-11-062.pdf*.

(f) Implements DoD policy and assigns responsibilities for the SAPR Program on prevention, response, and oversight to sexual assault according to the policies and guidance in:

(1) DoDD 5124.02, ''Under Secretary of Defense for Personnel and Readiness (USD(P&R)),'' June 23, 2008, can be found at *http://www.dtic.mil/whs/directives/corres/pdf/512402p.pdf;*

(2) 32 CFR part 103;

(3) Under Secretary of Defense for Personnel and Readiness, ''Task Force Report on Care for Victims of Sexual Assault,'' April 2004, can be found at *http://www.sapr.mil/media/pdf/research/Task-Force-Report-for-Care-of-Victims-of-SA-2004.pdf*;

(4) Sections 101(d)(3), 113, 504, 4331, chapter 47, and chapter 80 of title 10, U.S.C.;

(5) Public Law 106–65, ''National Defense Authorization Act for Fiscal Year 2000,'' October 5, 1999;

(6) Public Law 108–375, ''Ronald Reagan National Defense Authorization Act for Fiscal Year 2005,'' October 28, 2004;

(7) Public Law 109–163, ''National Defense Authorization Act for Fiscal Year 2006,'' January 6, 2006;

(8) Public Law 109–364, ''John Warner National Defense Authorization Act for Fiscal Year 2007,'' October 17, 2006;

(9) Sections 561, 562, and 563 of Public Law 110–417, ''Duncan Hunter National Defense Authorization Act for Fiscal Year 2009,'' October 14, 2008;

(10) Public Law 111–84, ''National Defense Authorization Act for Fiscal Year 2010,'' October 28, 2009;

(11) Public Law 111–383, ''Ike Skelton National Defense Authorization Act for Fiscal Year 2011,'' January 7, 2011;

(12) Section 585 and 586 of Public Law 112–81, ''National Defense Authorization Act for Fiscal Year 2012,'' December 16, 2011;

(13) DTM 11–063, ''Expedited Transfer of Military Service Members Who File Unrestricted Reports of Sexual Assault,'' December 16, 2011 (hereby cancelled), can be found at *http://www.sapr.mil/media/pdf/policy/DTM–11–063.pdf*;

(14) DTM 11–062, ''Document Retention in Cases of Restricted and Unrestricted Reports of Sexual Assault,'' December 16, 2011, can be found at *http://www.sapr.mil/media/pdf/policy/DTM–11–062.pdf*;

(15) DoDD 6400.1, ''Family Advocacy Program (FAP),'' August 23, 2004, can be found at *http://www.dtic.mil/whs/directives/corres/pdf/640001p.pdf*;

(16) DoDI 6400.06, ''Domestic Abuse Involving DoD Military and Certain Affiliated Personnel,'' August 21, 2007, as amended, can be found at *http://www.dtic.mil/whs/directives/corres/pdf/640006p.pdf*;

(17) DoDI 3020.41, ''Operational Contract Support (OCS),'' December 20, 2011, can be found at *http://www.dtic.mil/whs/directives/corres/pdf/302041p.pdf*;

(18) U.S. Department of Defense, ''Manual for Courts-Martial, United States'';

(19) DoDI 5505.18, ''Investigation of Adult Sexual Assault in the Department of Defense,'' January 25, 2013, can be found at *http://www.dtic.mil/whs/directives/corres/pdf/550518p.pdf*;

(20) DoDI 5545.02, ''DoD Policy for Congressional Authorization and Appropriations Reporting Requirements,'' December 19, 2008, can be found at *http://www.dtic.mil/whs/directives/corres/pdf/554502p.pdf*;

(21) DTM 12–004, ''DoD Internal Information Collections,'' April 24, 2012, can be found at *http://www.dtic.mil/whs/directives/corres/pdf/DTM–12–004.pdf*;

(21) DoD 8910.1–M, ''Department of Defense Procedures for Management of Information Requirements,'' June 30, 1998, can be found at *http://www.dtic.mil/whs/directives/corres/pdf/891001m.pdf*;

(23) U.S. Department of Justice, Office on Violence Against Women, ''A National Protocol for Sexual Assault Medical Forensic Examinations, Adults/Adolescents,'' current version, can be found at *http://www.ncjrs.gov/pdffiles1/ovw/206554.pdf*;

(24) DoDI 1030.2, ''Victim and Witness Assistance Procedures,'' June 4, 2004, can be found at *http://www.dtic.mil/whs/directives/corres/pdf/103002p.pdf*;

(25) DoDD 7050.06, ''Military Whistleblower Protection,'' July 23, 2007, can be found at *http://www.dtic.mil/whs/directives/corres/pdf/705006p.pdf*;

(26) Section 102 of title 32, U.S.C.;

(27) Section 8(c) of Public Law 100–504, ''The Inspector General Act of 1978,'' as amended;

(28) DoD 6025.18–R, ''DoD Health Information Privacy Regulation,'' January 24, 2003, can be found at *http://www.dtic.mil/whs/directives/corres/pdf/602518r.pdf*;

(29) Executive Order 13593, ''2011 Amendments to the Manual for Courts-Martial, United States,'' December 13, 2011, can be found at *http://www.gpo.gov/fdsys/pkg/FR–2011–12–16/pdf/X11–11216.pdf*;

(30) DoDD 5400.11, ''DoD Privacy Program,'' May 8, 2007, can be found at *http://www.dtic.mil/whs/directives/corres/pdf/540011p.pdf*;

(31) Public Law 104–191, ''Health Insurance Portability and Accountability Act of 1996,'' August 21, 1996;

(32) Section 552a of title 5, U.S.C.;

(33) DoDD 1030.01, ''Victim and Witness Assistance,'' April 13, 2004, can be found at *http://www.dtic.mil/whs/directives/corres/pdf/103001p.pdf*;

(34) DoDI 1241.2, ''Reserve Component Incapacitation System Management,'' May 30, 2001, can be found at *http://www.dtic.mil/whs/directives/corres/pdf/124102p.pdf*;

(35) Section 1561a of Public Law 107–311, ''Armed Forces Domestic Security Act,'' December 2, 2002;

(36) Secretary of Defense Memorandum, ''Withholding Initial Disposition Authority Under the Uniform Code of Military Justice in Certain Sexual Assault Cases,'' April 20, 2012, can be found at *http://www.dod.gov/dodgc/images/withhold_authority.pdf*;

(37) Under Secretary of Defense for Personnel and Readiness Memorandum, ''Legal Assistance for Victims of Crime,'' October 17, 2011, can be found at *http://www.sapr.mil/index.php/law-and-dod-policies/directives-and-instructions*; and

(38) DoD 4165.66–M, ''Base Redevelopment and Realignment

[2] Available: *http://www.dtic.mil/whs/directives/corres/pdf/512402p.pdf.*

Manual,'' March 1, 2006, can be found at *http://www.dtic.mil/whs/directives/corres/pdf/416566m.pdf.*

§ 105.2 Applicability.

This part applies to:

(a) Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the IG, DoD, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (hereafter referred to collectively as the ''DoDComponents'').

(b) NG and Reserve Component members who are sexually assaulted when performing active service, as defined in section 101(d)(3) of title 10, U.S.C., and inactive duty training. If reporting a sexual assault that occurred prior to or while not performing active service or inactive training, NG and Reserve Component members will be eligible to receive limited SAPR support services from a SARC and a SAPR VA and are eligible to file a Restricted or Unrestricted Report.

(c) Military dependents 18 years of age and older who are eligible for treatment in the MHS, at installations CONUS and OCONUS, and who were victims of sexual assault perpetrated by someone other than a spouse or intimate partner.

(1) Adult military dependents may file unrestricted or restricted reports of sexual assault.

(2) The FAP, consistent with DoDD 6400.1 and DoDI 6400.06, covers adult military dependent sexual assault victims who are assaulted by a spouse or intimate partner and military dependent sexual assault victims who are 17 years of age and younger. The installation SARC and the installation family advocacy program (FAP) and domestic violence intervention and prevention staff shall direct coordination when a sexual assault occurs within a domestic relationship or involves child abuse.

(d) The following non-military individuals who are victims of sexual assault are only eligible for limited emergency care medical services at a military treatment facility, unless that individual is otherwise eligible as a Service member or TRICARE (*http://www.tricare.mil*) beneficiary of the military health system to receive treatment in a military MTF at no cost to them. They are only eligible to file an Unrestricted Report. They will also be offered the limited SAPR services to be defined as the assistance of a SARC and SAPR VA while undergoing emergency care OCONUS. These limited medical and SAPR services shall be provided to:

(1) DoD civilian employees and their family dependents 18 years of age and older when they are stationed or performing duties OCONUS and eligible for treatment in the MHS at military installations or facilities OCONUS. These DoD civilian employees and their family dependents 18 years of age and older only have the Unrestricted Reporting option.

(2) U.S. citizen DoD contractor personnel when they are authorized to accompany the Armed Forces in a contingency operation OCONUS and their U.S. citizen employees. DoD contractor personnel only have the Unrestricted Reporting option. Additional medical services may be provided to contractors covered under this part in accordance with DoDI 3020.41 as applicable.

(e) Service members who are on active duty but were victims of sexual assault prior to enlistment or commissioning are eligible to receive SAPR services (see § 105.3) under either reporting option. The DoD shall provide support to an active duty Service member regardless of when or where the sexual assault took place.

§ 105.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purpose of this part. Refer to 32 CFR 103.3 for terms not defined in this part.

(a) *Accessions training.* Training that a Service member receives upon initial entry into Military Service through basic military training.

(b) *Certification.* Refers to the process by which the Department credentials SARCs and SAPR VAs, assesses the effectiveness of sexual assault advocacy capabilities using a competencies framework, and evaluates and performs oversight over SARC and SAPR VA training. The certification criteria is established by the Department in consultation with subject-matter experts.

(c) *Case Management Group (CMG).* A multi-disciplinary group that meets monthly to review individual cases of Unrestricted Reports of sexual assault. The group facilitates monthly victim updates and directs system coordination, accountability, and victim access to quality services. At a minimum, each group shall consist of the following additional military or civilian professionals who are involved and working on a specific case: SARC, SAPR VA, military criminal investigator, DoD law enforcement, healthcare provider and mental health and counseling services, chaplain, command legal representative or staff judge advocate (SJA), and victim's commander.

(d) *Collateral misconduct.* Victim misconduct that might be in time, place, or circumstance associated with the victim's sexual assault incident. Collateral misconduct by the victim of a sexual assault is one of the most significant barriers to reporting assault because of the victim's fear of punishment. Some reported sexual assaults involve circumstances where the victim may have engaged in some form of misconduct (e.g., underage drinking or other related alcohol offenses, adultery, fraternization, or other violations of certain regulations or orders).

(e) *Confidential communications.* Defined in 32 CFR part 103.

(f) *Consent.* Defined in 32 CFR part 103.

(g) *Credible information.* Information that, considering the source and nature of the information and the totality of the circumstances, is sufficiently believable to presume that the fact or facts in question are true.

(h) *Credible report.* Either a written or verbal report made in support of an expedited transfer that is determined to have credible information.

(i) *Crisis intervention.* Defined in 32 CFR part 103.

(j) *Culturally-competent care.* Defined in 32 CFR part 103.

(k) *Defense Sexual Assault Incident Database (DSAID).* Defined in 32 CFR part 103.

(l) *Designated activity.* The agency that processes permanent change of station (PCS) or permanent change of assignment (PCA) for expedited transfers.

(1) Air Force: Air Force Personnel Center.

(2) Army: Human Resources Command for inter-installation transfers and the installation personnel center for intra-installation transfers.

(3) Navy: Bureau of Naval Personnel.

(4) U.S. Marine Corps: the order writing section of Headquarters Marine Corps.

(5) Air and Army NG: the National Guard Bureau (NGB) or the Joint Forces Headquarters-State for the State involved.

(m) *DoD Safe Helpline.* A crisis support service for victims of sexual assault in the DoD. The DoD Safe Helpline is available 24/7 worldwide with ''click, call, or text'' user options for anonymous and confidential support. The DoD Safe Helpline can be accessed by logging on to *www.safehelpline.org* or by calling 1–877–995–5247. The DoD Safe Helpline

does not replace local base and installation SARC or SAPR VA contact information.

(n) *Emergency.* Defined in 32 CFR part 103.

(o) *Emergency care.* Defined in 32 CFR part 103.

(p) *Executive agent.* The Head of a DoD Component to whom the Secretary of Defense or the Deputy Secretary of Defense has assigned specific responsibilities, functions, and authorities to provide defined levels of support for operational missions, or administrative or other designated activities that involve two or more of the DoD Components.

(q) *Final disposition.* Actions taken to resolve the reported incident, document case outcome, and address the misconduct by the alleged perpetrator, as appropriate. It includes, but is not limited to, military justice proceedings, non-judicial punishment, or administrative actions, including separation actions taken in response to the offense, whichever is the most serious action taken.

(r) *Gender-responsive care.* Defined in 32 CFR part 103.

(s) *Healthcare personnel.* Persons assisting or otherwise supporting healthcare providers in providing healthcare services (e.g., administrative personnel assigned to a military MTF). Includes all healthcare providers.

(t) Healthcare provider. Those individuals who are employed or assigned as healthcare professionals, or are credentialed to provide healthcare services at a MTF, or who provide such care at a deployed location or otherwise in an official capacity. This also includes military personnel, DoD civilian employees, and DoD contractors who provide healthcare at an occupational health clinic for DoD civilian employees or DoD contractor personnel. Healthcare providers may include, but are not limited to:

(1) Licensed physicians practicing in the MHS with clinical privileges in obstetrics and gynecology, emergency medicine, family practice, internal medicine, pediatrics, urology, general medical officer, undersea medical officer, flight surgeon, or those having clinical privileges to perform pelvic examinations.

(2) Licensed advanced practice registered nurses practicing in the MHS with clinical privileges in adult health, family health, midwifery, women's health, or those having clinical privileges to perform pelvic examinations.

(3) Licensed physician assistants practicing in the MHS with clinical privileges in adult, family, women's health, or those having clinical privileges to perform pelvic examinations.

(4) Licensed registered nurses practicing in the MHS who meet the requirements for performing a SAFE as determined by the local privileging authority. This additional capability shall be noted as a competency, not as a credential or privilege.

(5) A psychologist, social worker or psychotherapist licensed and privileged to provide mental health are or other counseling services in a DoD or DoD-sponsored facility.

(u) *Hospital facilities (Level 3).* Minimum operational functions required for a Level 3 hospital include: command, control, and communications; patient administration; nutritional care; supply and services; triage; emergency medical treatment; preoperative care; orthopedics; general surgery; operating rooms and central materiel and supply services; anesthesia, nursing services (to include intensive and intermediate care wards); pharmacy; clinical laboratory and blood banking; radiology services; and hospital ministry team services.

(v) *Installation.* A base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the DoD, including any leased facility. It does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the DoD.

(w) *Installation commander.* Commander of a base, camp, post, station, yard, center, homeport facility for any ship, or other activity under the jurisdiction of the DoD, including any leased facility. It does not include any facility used primarily for civil works, rivers and harbors projects, flood control, or other projects not under the primary jurisdiction or control of the DoD.

(x) *Law enforcement.* Includes all DoD law enforcement units, security forces, and Military Criminal Investigative Organizations (MCIO).

(y) *MCIOs.* The U.S. Army Criminal Investigation Command, Naval Criminal Investigative Service, and Air Force Office of Special Investigations.

(z) *Medical care.* Includes physical and psychological medical services.

(aa) *Military Services.* The term, as used in the SAPR Program, includes Army, Air Force, Navy, Marines, Reserve Components, and their respective Military Academies.

(bb) *Non-identifiable information.* Defined in 32 CFR part 103.

(cc) *Non-participating victim.* Victim choosing not to participate in the military justice system.

(dd) *Official investigative process.* Defined in 32 CFR part 103.

(ee) *Personal identifiable information.* Defined in 32 CFR part 103.

(ff) *Qualifying conviction.* Defined in 32 CFR part 103.

(gg) *Recovery-oriented care.* Defined in 32 CFR part 103.

(hh) *Reprisal.* Taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, or any other act of retaliation, against a Service member for making, preparing, or receiving a communication.

(ii) *Responders.* Includes first responders, who are generally composed of personnel in the following disciplines or positions: SARCs, SAPR VAs, healthcare personnel, law enforcement, and MCIOs. Other responders are judge advocates, chaplains, and commanders, but they are usually not first responders.

(jj) *Respond, response, or response capability.* All locations, including deployed areas, have a 24 hour, 7 day per week sexual assault response capability. The SARC shall be notified, respond or direct a SAPR VA to respond, assign a SAPR VA, and offer the victim healthcare treatment and a SAFE. In geographic locations where there is no SARC onsite, the on-call SAPR VA shall respond, offer the victim healthcare treatment and a SAFE, and immediately notify the SARC of the sexual assault. The initial response is generally composed of personnel in the following disciplines or positions: SARCs, SAPR VAs, healthcare personnel, law enforcement, and MCIOs. Other responders are judge advocates, chaplains, and commanders. When victims geographically detached from a military installation, the SARC or SAPR VA will refer to local civilian providers or the DoD Safe Helpline for resources.

(kk) *Restricted reporting.* Reporting option that allows sexual assault victims to confidentially disclose the assault to specified individuals (i.e., SARC, SAPR VA, or healthcare personnel), and receive medical treatment, including emergency care, counseling, and assignment of a SARC and SAPR VA, without triggering an investigation. The victim's report provided to healthcare personnel (including the information acquired from a SAFE Kit), SARCs, or SAPR VAs, will not be reported to law enforcement or to the command to initiate the official investigative process unless the victim consents or an established exception applies. The

Restricted Reporting Program applies to Service members and their military dependents 18 years of age and older. Additional persons who may be entitled to Restricted Reporting are NG and Reserve Component members. DoD civilians and contractors, at this time, are only eligible to file an Unrestricted Report. Only a SARC, SAPR VA, or healthcare personnel may receive a Restricted Report, previously referred to as Confidential Reporting.

(ll) *Re-victimization.* A pattern wherein the victim of abuse or crime has a statistically higher tendency to be victimized again, either shortly thereafter or much later in adulthood in the case of abuse as a child. This latter pattern is particularly notable in cases of sexual abuse.

(mm) *SAFE Kit.* Defined in 32 CFR part 103.

(nn) *SAPR Integrated Product Team (IPT).* A team of individuals that advises the Under Secretary of Defense (USD) for Personnel and Readiness (P&R) and the Secretary of Defense on policies for sexual assault issues involving persons covered by this part. The SAPR IPT serves as the implementation and oversight arm of the SAPR Program. It coordinates policy and reviews the DoD's SAPR policies and programs consistent with this part and 32 CFR part 103 and monitors the progress of program elements. The SAPR IPT is chaired by the Director, SAPRO.

(oo) *SAPR Program.* Defined in 32 CFR part 103.

(pp) *SAPR services.* Services provided by a SARC and SAPR VA.

(qq) *SAPR VA.* Defined in 32 CFR part 103.

(rr) *SAPRO.* Defined in 32 CFR part 103.

(ss) *SARC.* Defined in 32 CFR part 103.

(tt) *Secondary victimization.* The re-traumatization of the sexual assault, abuse, or rape victim. It is an indirect result of assault that occurs through the responses of individuals and institutions to the victim. The types of secondary victimization include victim blaming, inappropriate behavior or language by medical personnel and by other organizations with access to the victim post assault.

(uu) *Service member.* Defined in 32 CFR part 103.

(vv) *Sexual assault.* Intentional sexual contact characterized by the use of force, threats, intimidation, or abuse of authority or when the victim does not or cannot consent. As used in this part, the term includes a broad category of sexual offenses consisting of the following specific UCMJ offenses: rape, sexual assault, aggravated sexual contact, abusive sexual contact, forcible sodomy (forced oral or anal sex), or attempts to commit these offenses.

(ww) *Trauma informed care.* An approach to engage people with histories of trauma that recognizes the presence of trauma symptoms and acknowledges the role that trauma has played in their lives. Trauma-informed services are based on an understanding of the vulnerabilities or triggers of trauma survivors that traditional service delivery approaches may exacerbate, so these services and programs can be more supportive and avoid re-traumatization.

(xx) *Unrestricted reporting.* Defined in 32 CFR part 103.

(yy) *Victim Witness Assistance Program (VWAP).* Provides guidance in accordance with DoD 8910.1–M [3] for assisting victims and witnesses of crime from initial contact through investigation, prosecution, and confinement. Particular attention is paid to victims of serious and violent crime, including child abuse, domestic violence and sexual misconduct.

(zz) *Victim.* Defined in 32 CFR part 103.

(aaa) *Working Integrated Product Team (WIPT).* A team of individuals that focuses on one select issue, is governed by a charter with enumerated goals (the details of which will be laid out in individual work plans), and is subject to a definitive timeline for the accomplishment of the stated goals. The USD(P&R) shall provide decisions for WIPT issues that cannot be resolved by the SAPR IPT or that require higher level decision-making. Chairs or co-chairs are approved by the Director, SAPRO, who serves as the chair of the SAPR IPT. WIPT membership shall be comprised of full-time Federal employees and active duty military personnel. Membership is explained in individual WIPT work plans.

(bbb) *Work plan.* Each WIPT is governed by a work plan that provides the WIPT's specific subject, chairs or co-chairs, participants, problem statement, key issues to address, issues outside the scope of the WIPT, timeline, deliverables, and expenses.

§ 105.4 Policy.

It is DoD policy, in accordance with 32 CFR part 103, that:

(a) This part and 32 CFR part 103 establish and implement the DoD SAPR program.

(b) The DoD goal is a culture free of sexual assault, through an environment of prevention, education and training, response capability (see § 105.3), victim support, reporting procedures, and appropriate accountability that enhances the safety and well being of all persons covered by this part and 32 CFR part 103.

(c) The SAPR Program shall:

(1) Focus on the victim and on doing what is necessary and appropriate to support victim recovery, and also, if a Service member, to support that Service member to be fully mission capable and engaged.

(2) Require that medical care and SAPR services are gender-responsive, culturally-competent, and recovery-oriented as defined in 32 CFR 103.3.

(3) Not provide policy for legal processes within the responsibility of the Judge Advocates General (JAG) of the Military Departments provided in the UCMJ, the Manual for Courts-Martial, or for criminal investigative matters assigned to the IG, DoD.

(d) Command sexual assault awareness and prevention programs and DoD law enforcement (see § 105.3) and criminal justice procedures that enable persons to be held appropriately accountable for their actions shall be supported by all commanders.

(e) Standardized SAPR requirements, terminology, guidelines, protocols, and guidelines for training materials shall focus on awareness, prevention, and response at all levels, as appropriate.

(f) SARC and SAPR VA shall be used as standard terms as defined in and in accordance with 32 CFR part 103 throughout the Military Departments to facilitate communications and transparency regarding SAPR response capability.

(g) The SARC shall serve as the single point of contact for coordinating care to ensure that sexual assault victims receive appropriate and responsive care. All SARCs shall be authorized to perform VA duties in accordance with service regulations, and will be acting in the performance of those duties.

(h) All SARCs shall have direct and unimpeded contact and access to the installation commander (see § 105.3) for the purpose of this part and 32 CFR part 103.

(1) If an installation has multiple SARCs on the installation, a Lead SARC shall be designated by the Service.

(2) For SARCs that operate within deployable commands that are not attached to an installation, they shall have access to the senior commander for the deployable command.

(i) A 24 hour, 7 day per week sexual assault response capability for all locations, including deployed areas, shall be established for persons covered in this part. An immediate, trained

[3] Available: *http://www.dtic.mil/whs/directives/corres/pdf/891001m.pdf.*

sexual assault response capability shall be available for each report of sexual assault in all locations, including in deployed locations.

(j) SARCs, SAPR VAs, and other responders (see § 105.3) will assist sexual assault victims regardless of Service affiliation.

(k) Service member and adult military dependent victims of sexual assault shall receive timely access to comprehensive medical and psychological treatment, including emergency care treatment and services, as described in this part and 32 CFR part 103.

(l) Sexual assault victims shall be given priority, and treated as emergency cases. Emergency care (see § 105.3) shall consist of emergency medical care and the offer of a SAFE. The victim shall be advised that even if a SAFE is declined the victim shall be encouraged (but not mandated) to receive medical care, psychological care, and victim advocacy.

(m) The prohibition of enlistment or commissioning of persons in the Military Services when the person has a qualifying conviction (see § 105.3) for a crime of sexual assault or is required to be registered as a sex offender.

(n) Improper disclosure of confidential communications under Restricted Reporting or improper release of medical information are prohibited and may result in disciplinary action pursuant to the UCMJ or other adverse personnel or administrative actions. Even proper release of Restricted Reporting information should be limited to those with an official need to know, or as authorized by law.

(o) Information regarding Unrestricted Reports should only be released to personnel with an official need to know, or as authorized by law.

(p) The DoD will have two separate document retention schedules for records of Service members who report that they are victims of sexual assault, based on whether the Service member filed a Restricted or Unrestricted Report as defined in 32 CFR part 103. The record retention system for Restricted Reports shall protect the Service member's desire for confidentiality. Restricted Report cases direct that Department of Defense Forms (DD Form) 2910 and 2911 be retained for at least 5 years, but at the request of a member of the Armed Forces who files a Restricted Report on an incident of sexual assault, the DD Forms 2910 and 2911 filed in connection with the Restricted Report be retained for 50 years. Unrestricted Report cases direct that DD Forms 2910 and 2911 be retained for 50 years.

(1) Document Retention for Unrestricted Reports: The SARC will enter the Unrestricted Report DD Form 2910, ''Victim Reporting Preference Statement,'' in DSAID (see 32 CFR 103.3) or the DSAID-interface Military Service data system as an electronic record, where it will be retained for 50 years from the date the victim signed the DD Form 2910. DD Form 2910 is located at the DoD Forms Management Program Web site at *http://www.dtic.mil/whs/directives/infomgt/forms/index.htm.* The DD Form 2911, ''DoD Sexual Assault Forensic Examination (SAFE) Report,'' shall be retained in accordance with this part.

(2) Document Retention for Restricted Reports;

(i) The SAFE Kit, which includes the DD Form 2911 or civilian forensic examination report, if available, will be retained for 5 years in a location designated by the Military Service concerned. The 5-year time frame will start from the date the victim signs the DD Form 2910.

(ii) The SARC will retain a hard copy of the Restricted Report DD Form 2910 for 5 years, consistent with DoD guidance for the storage of personally identifiable information (PII). The 5-year time frame for the DD Form 2910 will start from the date the victim signs the DD Form 2910. However, at the request of a member of the Armed Forces who files a Restricted Report on an incident of sexual assault, the DD Forms 2910 and 2911 filed in connection with the Restricted Report be retained for 50 years.

(q) Any threat to the life or safety of a Military Service member shall be immediately reported to command and DoD law enforcement authorities (see § 105.3) and a request to transfer the victim under these circumstances will be handled in accordance with established Service regulations. DoD recognizes that circumstances may also exist that warrant the transfer of a Service member who makes an Unrestricted Report of sexual assault but may not otherwise meet established criteria for effecting the immediate transfer of Service members. Those Service members may request a transfer pursuant to the procedures in this part.

(r) Service members who file an Unrestricted Report of sexual assault shall be informed by the SARC at the time of making the report, or as soon as practicable, of the option to request a temporary or permanent expedited transfer from their assigned command or installation, or to a different location within their assigned command or installation, in accordance with the procedures for commanders in § 105.9 of this part.

(s) Service members who file Unrestricted and Restricted Reports of sexual assault shall be protected from reprisal, or threat of reprisal, for filing a report.

§ 105.5 Responsibilities.

(a) *USD(P&R).* The USD(P&R), in accordance with the authority in DoDD 5124.02 and 32 CFR part 103, shall:

(1) Oversee the DoD SAPRO (see 32 CFR 103.3) in accordance with 32 CFR part 103.

(2) Direct DoD Component implementation of this part in compliance with 32 CFR part 103.

(3) Direct that Director, SAPRO, be informed of and consulted on any changes in DoD policy or the UCMJ relating to sexual assault.

(4) With the Director, SAPRO, update the Deputy Secretary of Defense on SAPR policies and programs on a semi-annual schedule.

(5) Direct the creation, implementation, and maintenance of DSAID.

(6) Oversee DoD SAPRO in developing DoD requirements for SAPR education, training, and awareness for DoD personnel consistent with this part.

(7) Appoint a general or flag officer (G/FO) or Senior Executive Service (SES) equivalent in the DoD as the Director, SAPRO.

(8) In addition to the Director, SAPRO, assign a military officer from each of the Military Services in the grade of O–4 or above to SAPRO for a minimum tour length of at least 18 months. Of these four officers assigned to the SAPRO, at least one officer shall be in the grade of O–6 or above. See Public Law 112–81.

(9) Establish a DoD-wide certification program (see § 105.3) with a national accreditor to ensure all sexual assault victims are offered the assistance of a SARC or SAPR VA who has obtained this certification.

(b) *Director, Department of Defense Human Resource Activity (DoDHRA).* The Director, DoDHRA, under the authority, direction, and control of the USD(P&R), shall provide operational support, budget, and allocate funds and other resources for the DoD SAPRO as outlined in 32 CFR part 103.

(c) *Assistant Secretary of Defense for Health Affairs (ASD(HA)).* The ASD(HA), under the authority, direction, and control of the USD(P&R), shall:

(1) Establish DoD sexual assault healthcare policies, clinical practice guidelines, related procedures, and standards governing the DoD healthcare programs for victims of sexual assault.

(2) Oversee the requirements and procedures in § 105.11 of this part.

(3) Establish guidance to:

(i) Give priority to sexual assault patients at MTFs as emergency cases.

(ii) Require standardized, timely, accessible, and comprehensive medical care at MTFs for eligible persons who are sexually assaulted.

(iii) Require that medical care is consistent with established community standards for the healthcare of sexual assault victims and the collection of forensic evidence from victims, in accordance with the U.S. Department of Justice Protocol, instructions for victim and suspect exams found in the SAFE Kit, and DD Form 2911.

(A) Minimum standards of healthcare intervention that correspond to clinical standards set in the community shall include those established in the U.S. Department of Justice Protocol. However, clinical guidance shall not be solely limited to this resource.

(B) Healthcare providers providing care to sexual assault victims in theaters of operation are required to have access to the current version of the U.S. Department of Justice Protocol.

(iv) Include deliberate planning to strategically position healthcare providers skilled in SAFE at predetermined echelons of care, for personnel with the responsibility of assigning medical assets.

(4) Establish guidance for medical personnel that requires a SARC or SAPR VA to be called in for every incident of sexual assault for which treatment is sought at the MTFs, regardless of the reporting option.

(5) Establish guidance in drafting memorandums of understanding (MOUs) or memorandums of agreement (MOAs) with local civilian medical facilities to provide DoD-reimbursable healthcare (to include psychological care) and forensic examinations for Service members and TRICARE eligible sexual assault victims. As part of the MOU or MOA, Victims shall be asked whether they would like the SARC to be notified and, if notified, a SARC or SAPR VA shall respond. Local private or public sector providers shall have processes and procedures in place to assess that local community standards meet or exceed the recommendations for conducting forensic exams of adult sexual assault victims set forth in the U.S. Department of Justice Protocol as a condition of the MOUs or MOAs.

(6) Establish guidelines and procedures for the Surgeon Generals of the Military Departments to require that an adequate supply of resources, to include personnel, supplies, and SAFE Kits, is maintained in all locations where SAFEs may be conducted by DoD, including deployed locations. Maintaining an adequate supply of SAFE Kits is a shared responsibility of the ASD(HA) and Secretaries of the Military Departments.

(7) Establish minimum standards of initial and refresher SAPR training required for all personnel assigned to MTFs. Specialized responder training is required for personnel providing direct care to victims of sexual assault. Minimum standards shall include trauma-informed care (see § 105.3) and medical and mental health care that is gender-responsive, culturally-competent, and recovery-oriented.

(d) *General Counsel of the DoD (GC, DoD).* The GC, DoD, shall:

(1) Provide legal advice and assistance on proposed policies, DoD issuances, proposed exceptions to policy, and review of all legislative proposals affecting mission and responsibilities of the SAPRO.

(2) Inform the USD(P&R) of any sexual assault related changes to the UCMJ.

(e) *IG DoD.* The IG DoD shall:

(1) Establish guidance and provide oversight for the investigations of sexual assault in the DoD to meet the SAPR policy and training requirements of this part.

(2) Inform the USD(P&R) of any changes relating to sexual assault investigation policy or guidance.

(3) DoD IG shall collaborate with SAPRO in the development of investigative policy in support of sexual assault prevention and response.

(f) *Secretaries of the military departments.* The Secretaries of the Military Departments shall:

(1) Establish SAPR policy and procedures to implement this part.

(2) Coordinate all Military Service SAPR policy changes (Department of the Navy-level for the Navy and Marine Corps) with the USD(P&R).

(3) Establish and publicize policies and procedures regarding the availability of a SARC.

(i) Require that sexual assault victims receive appropriate and responsive care and that the SARC serves as the single point of contact for coordinating care for victims.

(ii) Direct that the SARC or a SAPR VA be immediately called in every incident of sexual assault on a military installation. There will be situations where a sexual assault victim receives medical care and a SAFE outside of a military installation through a MOU or MOA with a local private or public sector entity. In these cases, the MOU or MOA will require that victims shall be asked whether they would like the SARC to be notified as part of the MOU or MOA, and, if yes, a SARC or VA shall be notified and shall respond.

(iii) When a victim has a temporary change of station or PCS or is deployed, direct that SARCs immediately request victim consent in writing to transfer case management documents, which should be documented on the DD Form 2910. Upon receipt of victim consent, SARCs shall expeditiously transfer case management documents to ensure continuity of care and SAPR services. All Federal, DoD, and Service privacy regulations must be strictly adhered to. However, when the SARC has a temporary change of station or PCS or is deployed, no victim consent is required to transfer the case to the next SARC. Every effort must be made to inform the victim of the case transfer. If the SARC has already closed the case and terminated victim contact, no other action is needed.

(iv) Upon the full implementation of the DoD Sexual Assault Advocate Certification Program (D–SAACP), sexual assault victims shall be offered the assistance of a SARC and/or SAPR VA who has been credentialed by the D–SAACP and has passed a National Agency Check (NAC) background check.

(v) Issue guidance to ensure that equivalent standards are met for SAPR where SARCs are not installation-based but instead work within operational and/or deployable organizations.

(4) Establish guidance to meet the SAPR training requirements for legal, MCIO, DoD law enforcement, responders and other Service members in § 105.14 of this part.

(5) Upon request, submit a copy of SAPR training programs or SAPR training elements to USD(P&R) through SAPRO for evaluation of consistency and compliance with DoD SAPR training standards in this part. The Military Departments will correct USD(P&R) identified DoD SAPR policy and training standards discrepancies.

(6) Establish and publicize policies and procedures for reporting a sexual assault.

(i) Require first responders (see § 105.3) to be identified upon their assignment and trained, and require that their response times be continually monitored by their commanders to ensure timely response to reports of sexual assault.

(ii) Ensure established response time is based on local conditions but will reflect that sexual assault victims shall be treated as emergency cases. (See § 105.14 of this part for training requirements.)

(7) Establish policy that ensures commanders are accountable for implementing and executing the SAPR

program at their installations consistent with this part, 32 CFR part 103, and their Service regulations.

(8) Establish standards and periodic training for healthcare personnel and healthcare providers regarding the Unrestricted and Restricted Reporting options of sexual assault in accordance with § 105.14 of this part. Enforce eligibility standards of licensed healthcare providers to perform SAFEs.

(9) Establish guidance to direct that all Unrestricted Reports of violations (to include attempts) of sexual assault and non-consensual sodomy, as defined in title 10, U.S.C., against adults are immediately reported to the MCIO, regardless of the severity of the potential punishment authorized by the UCMJ.

(i) Commander(s) of the Service member(s) who is a subject of a sexual assault allegation shall provide in writing all disposition data, to include any administrative or judicial action taken, stemming from the sexual assault investigation to the MCIO.

(ii) Once the investigation is completed, MCIOs shall submit case disposition data that satisfies the reporting requirements for DSAID identified in § 105.15 and the annual reporting requirements in § 105.16 of this part. MCIOs shall submit case disposition data even when the sexual assault case is referred to other DoD law enforcement.

(iii) A unit commander who receives an Unrestricted Report of an incident of sexual assault shall immediately refer the matter to the appropriate MCIO. A unit commander shall not conduct internal command directed investigations on sexual assault (i.e., no referrals to appointed command investigators or inquiry officers) or delay immediately contacting the MCIOs while attempting to assess the credibility of the report.

(10) Establish SAPR policy that encourages commanders to be responsive to a victim's desire to discuss his or her case with the installation commander tasked by the Military Service with oversight responsibility for the SAPR program in accordance with 32 CFR part 103.

(11) Establish standards for command assessment of organizational SAPR climate, including periodic follow-up assessments. Adhere to USD(P&R) SAPR guidance and effectiveness of SAPR training, awareness, prevention, and response policies and programs.

(12) As a shared responsibility with ASD(HA), direct installation commanders to maintain an adequate supply of SAFE Kits in all locations where SAFEs are conducted, including deployed locations. Direct that Military Service SAPR personnel, to include medical personnel, are appropriately trained on protocols for the use of the SAFE Kit and comply with prescribed chain of custody procedures described in their Military Service-specific MCIO procedures.

(13) Establish procedures that require, upon seeking assistance from a SARC, SAPR VA, MCIO, the VWAP, or trial counsel, that each Service member who reports that she or he has been a victim of a sexual assault be informed of and given the opportunity to:

(i) Consult with legal assistance counsel, and in cases where the victim may have been involved in collateral misconduct (see § 105.3), to consult with defense counsel.

(A) When the alleged perpetrator is the commander or in the victim's chain of command, inform such victims shall be informed of the opportunity to go outside the chain of command to report the offense to other commanding officers (CO) or an Inspector General. Victims shall be informed that they can also seek assistance from the DoD Safe Helpline (see § 105.3).

(B) The victim shall be informed that legal assistance is optional and may be declined, in whole or in part, at any time.

(C) Commanders shall require that information and services concerning the investigation and prosecution be provided to victims in accordance with VWAP procedures in DoDI 1030.2.[4]

(ii) Have a SARC or SAPR VA present when law enforcement or defense counsel interviews the victim.

(14) Establish procedures to ensure that in the case of a general or special court-martial involving a sexual assault as defined in 32 CFR part 103, a copy of the prepared record of the proceedings of the court-martial (not to include sealed materials, unless otherwise approved by the presiding military judge or appellate court) shall be given to the victim of the offense if the victim testified during the proceedings. The record of the proceedings (prepared in accordance with Service regulations) shall be provided without charge and as soon as the record is authenticated. The victim shall be notified of the opportunity to receive the record of the proceedings in accordance with Public Law 112–81.

(15) The commanders shall also require that a completed DD Form 2701, ''Initial Information for Victims and Witnesses of Crime,'' be distributed to the victim by DoD law enforcement agents. (DD Form 2701 may be obtained via the Internet at *http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2701.pdf*.)

(16) Establish procedures to require commanders to protect the SARC and SAPR VA from coercion, retaliation, and reprisals, related to the execution of their duties and responsibilities.

(17) Establish procedures to protect victims of sexual assault from coercion, retaliation, and reprisal in accordance with DoDD 7050.06.[5]

(18) Establish Military Service-specific guidance to ensure collateral misconduct is addressed in a manner that is consistent and appropriate to the circumstances, and at a time that encourages continued victim cooperation.

(19) Establish expedited transfer procedures of victims of sexual assault in accordance with §§ 105.4(r) and 105.9 of this part.

(20) Appoint a representative to the SAPR IPT in accordance with § 105.7 of this part, and provide chairs or co-chairs for WIPTs, when requested. Appoint a representative to SAPRO oversight teams upon request.

(21) Provide quarterly and annual reports of sexual assault involving Service members to Director, SAPRO, to be consolidated into the annual Secretary of Defense report to Congress in accordance with 32 CFR part 103 and sections 113 and 4331 of title 10, U.S.C. (See § 105.16 of this part for additional information about reporting requirements.)

(22) Provide budget program and obligation data, as requested by the DoD SAPRO.

(23) Require that reports of sexual assault be entered into DSAID through interface with a Military Service data system or by direct data entry by SARCs.

(i) Data systems that interface with DSAID shall be modified and maintained to accurately provide information to DSAID.

(ii) Only SARCs who have, at a minimum, a favorable NAC shall be permitted access to enter sexual assault reports into DSAID.

(24) Provide Director, SAPRO, a written description of any sexual assault related research projects contemporaneous with commencing the actual research. When requested, provide periodic updates on results and insights. Upon conclusion of such research, a summary of the findings will be provided to DoD SAPRO as soon as practicable.

[4] Available: *http://www.dtic.mil/whs/directives/corres/pdf/103002p.pdf.*

[5] Available: *http://www.dodig.mil/HOTLINE/Documents/DODInstructions/DOD%20Directive%207050.06.pdf.*

(25) Establish procedures for supporting the DoD Safe Helpline in accordance with each Military Service-specific MOU or MOA between SAPRO and the Military Departments, to include but not limited to, providing and updating SARC contact information for the referral DoD Safe Helpline database, providing timely response to victim feedback, and publicizing the DoD Safe Helpline to SARCs and Service members.

(i) Utilize the DoD Safe Helpline as the sole DoD hotline to provide crisis intervention, facilitate victim reporting through connection to the nearest SARC, and other resources as warranted.

(ii) The DoD Safe Helpline does not replace local base and installation SARC or SAPR VA contact information.

(26) Establish procedures to implement SAPR training in accordance with § 105.14 of this part, to include both prevention and response.

(27) Require that reports of sexual assaults are provided to the Commanders of the Combatant Commands for their respective area of responsibility on a quarterly basis, or as requested.

(28) For CMGs:

(i) Require the installation commander or the deputy installation commander chair the multi-disciplinary CMG (see § 105.13 of this part) on a monthly basis to review individual cases of Unrestricted Reporting of sexual assault, facilitate monthly victim updates, direct system coordination, accountability, and victim access to quality services. This responsibility may not be delegated.

(ii) Require that the installation SARC (in the case of multiple SARCs on an installation, then the Lead SARC) serve as the co-chair of the CMG. This responsibility may not be delegated.

(iii) If the installation is a joint base or if the installation has tenant commands, the commander of the tenant organization and their designated Lead SARC shall be invited to the CMG meetings. The commander of the tenant organization shall provide appropriate information to the host commander, to enable the host commander to provide the necessary supporting services.

(iv) The Secretaries of the Military Departments shall issue guidance to ensure that equivalent standards are met for case oversight by CMGs in situations where SARCs are not installation-based but instead work within operational and/or deployable organizations.

(29) Establish document retention procedures for Unrestricted and Restricted Reports of sexual assault in accordance with § 105.4(p) of this part.

(30) When drafting MOUs or MOAs with local civilian medical facilities to provide DoD-reimbursable healthcare (to include psychological care) and forensic examinations for Service members and TRICARE eligible sexual assault victims, require commanders to include the following provisions:

(i) Ask the victim whether he or she would like the SARC to be notified, and if yes, a SARC or SAPR VA shall respond.

(ii) Local private or public sector providers shall have processes and procedures in place to assess that local community standards meet or exceed those set forth in the U.S. Department of Justice Protocol as a condition of the MOUs or MOAs.

(31) Comply with collective bargaining obligations, if applicable.

(32) Provide SAPR training and education for civilian employees of the military departments in accordance with Section 585 of Public Law 112–81.

(g) *Chief, NGB.* The Chief, NGB, shall on behalf of the Secretaries of the Army and Air Force, and in coordination with DoD SAPRO and the State Adjutants General, establish and implement SAPR policy and procedures for NG members on duty pursuant to title 32, U.S.C.

(h) *Chairman of the Joint Chiefs of Staff.* The Chairman of the Joint Chiefs of Staff shall monitor implementation of this part and 32 CFR part 103.

(i) *Commanders of the Combatant Commands.* The Commanders of the Combatant Commands, through the Chairman of the Joint Chiefs of Staff and in coordination with the other Heads of the DoD Components, shall:

(1) Require that a SAPR capability provided by the Executive Agent (see § 105.3) is incorporated into operational planning guidance in accordance with 32 CFR part 103 and this part.

(2) Require the establishment of an MOU, MOA, or equivalent support agreement with the Executive Agent in accordance with 32 CFR part 103 and this part and requires at a minimum:

(i) Coordinated efforts and resources, regardless of the location of the sexual assault, to direct optimal and safe administration of Unrestricted and Restricted Reporting options with appropriate protection, medical care, counseling, and advocacy.

(A) Ensure a 24 hour per day, 7 day per week response capability. Require first responders to respond in a timely manner.

(B) Response times shall be based on local conditions; however, sexual assault victims shall be treated as emergency cases.

(ii) Notice to SARC of every incident of sexual assault on the military installation, so that a SARC or SAPR VA can respond and offer the victim SAPR services. In situations where a sexual assault victim receives medical care and a SAFE outside of a military installation through a MOU or MOA with a local private or public sector entities, as part of the MOU or MOA, victims shall be asked whether they would like the SARC to be notified, and if yes, the SARC or SAPR VA shall be notified and shall respond.

§ 105.6 Procedures.

See § 105.7 through § 105.16 of this part.

§ 105.7 Oversight of the SAPR Program.

(a) *Director, SAPRO.* The Director, SAPRO, under the authority, direction and control of the USD(P&R) through the Director, DoDHRA, shall serve as the single point of authority, accountability, and oversight for the DoD SAPR program. DoD SAPRO provides recommendations to the USD(P&R) on the issue of DoD sexual assault policy matters on prevention, response, oversight, standards, training, and program requirements. The Director, SAPRO shall:

(1) Assist the USD(P&R) in developing, administering, and monitoring the effectiveness of DoD SAPR policies and programs. Implement and monitor compliance with DoD sexual assault policy on prevention and response.

(2) With the USD(P&R), update the Deputy Secretary of Defense on SAPR policies and programs on a semi-annual schedule.

(3) Develop DoD programs to direct SAPR education, training, and awareness for DoD personnel consistent with this part and 32 CFR part 103.

(4) Coordinate the management of DoD SAPR Program and oversee the implementation in the Service SAPR Programs.

(5) Provide technical assistance to the Heads of the DoD Components in addressing matters concerning SAPR and facilitate the identification and resolution of issues and concerns common to the Military Services and joint commands.

(6) Develop strategic program guidance, joint planning objectives, standard terminology, and identify legislative changes needed to advance the SAPR program.

(7) Develop oversight metrics to measure compliance and effectiveness of SAPR training, sexual assault awareness, prevention, and response policies and programs; analyze data; and make recommendations regarding SAPR policies and programs to the

USD(P&R) and the Secretaries of the Military Departments.

(8) Establish reporting categories and monitor specific goals included in the annual SAPR assessments of each Military Service and its respective Military Service Academy, as required by 32 CFR part 103, sections 113 and 4331 of title 10, U.S.C., and in accordance with § 105.16 of this part.

(9) Acquire quarterly, annual, and installation-based SAPR data from the Military Services and assemble annual congressional reports involving persons covered by this part and 32 CFR part 103. Consult with and rely on the Secretaries of the Military Departments in questions concerning disposition results of sexual assault cases in their respective Military Department.

(10) Prepare the annual fiscal year (FY) reports submitted by the Secretary of Defense to the Congress on the sexual assaults involving Service members and a report on the members of the Military Service Academies to Congress submitted by the Secretary of Defense.

(11) Publicize SAPR outreach, awareness, prevention, response, and oversight initiatives and programs.

(12) Oversee the development, implementation, maintenance, and function of the DSAID to meet congressional reporting requirements, support Military Service SAPR program management, and conduct DoD SAPRO oversight activities.

(13) Establish, oversee, publicize and maintain the DoD Safe Helpline and facilitate victim reporting through its connection to the nearest SARC, and other resources as warranted.

(14) Establish and oversee the D–SAACP to ensure all sexual assault victims are offered the assistance of a credentialed SARC or SAPR VA.

(15) Annually review the Military Services resourcing and funding of the U.S. Army Criminal Investigation Laboratory (USACIL) in the area of sexual assault.

(i) Assist the Department of the Army in identifying the funding and resources needed to operate USACIL, to facilitate forensic evidence being processed within 60 working days from day of receipt in accordance with section 113 of title 10, U.S.C.

(ii) Encourage the Military Services that use USACIL to contribute to the operation of USACIL by ensuring that USACIL is funded and resourced appropriately to complete forensic evidence processing within 60 working days.

(16) Chair the SAPR IPT.

(b) *SAPR IPT.* (1) *Membership.* The SAPR IPT shall include:

(i) Director, SAPRO. The Director shall serve as the chair.

(ii) Deputy Assistant Secretaries for Manpower and Reserve Affairs of the Departments of the Army and the Air Force.

(iii) A senior representative of the Department of the Navy SAPRO.

(iv) A G/FO or DoD SES civilian from: the Joint Staff, Manpower and Personnel (J–1); the Office of the Assistant Secretary of Defense for Reserve Affairs; the NGB; the Office of the GC, DoD; and the Office of the ASD(HA). Other DoD Components representatives shall be invited to specific SAPR IPT meetings when their expertise is needed to inform and resolve issues being addressed. A senior representative from the Coast Guard shall be an invited guest.

(v) Consistent with Section 8(c) of Public Law 100–504, the IG DoD shall be authorized to send one or more observers to attend all SAPR IPT meetings in order to monitor and evaluate program performance.

(2) *Duties.* The SAPR IPT shall:

(i) Through the chair, advise the USD(P&R) and the Secretary of Defense on SAPR IPT meeting recommendations on policies for sexual assault issues involving persons covered by this part.

(ii) Serve as the implementation and oversight arm of the DoD SAPR Program. Coordinate policy and review the DoD's SAPR policies and programs consistent with this part and 32 CFR part 103, as necessary. Monitor the progress of program elements.

(iii) Meet every other month. Ad hoc meetings may be scheduled as necessary at the discretion of the chair. Members are selected and meetings scheduled according to the SAPR IPT Charter.

(iv) Discuss and analyze broad SAPR issues that may generate targeted topics for WIPTs. WIPTs shall focus on one select issue, be governed by a charter with enumerated goals for which the details will be laid out in individual work plans (see § 105.3), and be subject to a definitive timeline for the accomplishment of the stated goals. Issues that cannot be resolved by the SAPR IPT or that require higher level decision making shall be sent to the USD(P&R) for resolution.

(3) *Chair duties.* The chair shall:

(i) Advise the USD(P&R) and the Secretary of Defense on SAPR IPT recommendations on policies for sexual assault issues involving persons covered by this part.

(ii) Represent the USD(P&R) in SAPR matters consistent with this part and 32 CFR part 103.

(iii) Oversee discussions in the SAPR IPT that generate topics for WIPTs. Provide final approval for topics, charters, and timelines for WIPTs.

§ 105.8 Reporting options and Sexual Assault Reporting Procedures.

(a) *Reporting options.* Service members and military dependents 18 years and older who have been sexually assaulted have two reporting options: Unrestricted or Restricted Reporting. Unrestricted Reporting of sexual assault is favored by the DoD. However, Unrestricted Reporting may represent a barrier for victims to access services, when the victim desires no command or DoD law enforcement involvement. Consequently, the DoD recognizes a fundamental need to provide a confidential disclosure vehicle via the Restricted Reporting option. Regardless of whether the victim elects Restricted or Unrestricted Reporting, confidentiality of medical information shall be maintained in accordance with DoD 6025.18–R.[6] DoD civilian employees and their family dependents and DoD contractors are only eligible for Unrestricted Reporting and for limited emergency care medical services at an MTF, unless that individual is otherwise eligible as a Service member or TRICARE beneficiary of the military health system to receive treatment in an MTF at no cost to them.

(1) *Unrestricted Reporting.* This reporting option triggers an investigation, command notification, and allows a person who has been sexually assaulted to access medical treatment and counseling. When a sexual assault is reported through Unrestricted Reporting, a SARC shall be notified, respond or direct a SAPR VA to respond, assign a SAPR VA, and offer the victim healthcare treatment and a SAFE. The completed DD Form 2701, which sets out victims' rights and points of contact, shall be distributed to the victim in Unrestricted Reporting cases by DoD law enforcement agents. If a victim elects this reporting option, a victim may not change from an Unrestricted to a Restricted Report.

(2) *Restricted Reporting.* This reporting option does not trigger an investigation. The command is notified that ''an alleged sexual assault'' occurred, but is not given the victim's name or other personally identifying information. Restricted Reporting allows Service members and military dependents who are adult sexual assault victims to confidentially disclose the assault to specified individuals (SARC, SAPR VA, or healthcare personnel) and receive healthcare treatment and the

[6] Available: *http://www.dtic.mil/whs/directives/corres/pdf/602518r.pdf.*

assignment of a SARC and SAPR VA. When a sexual assault is reported through Restricted Reporting, a SARC shall be notified, respond or direct a SAPR VA to respond, assign a SAPR VA, and offer the victim healthcare treatment and a SAFE. The Restricted Reporting option is only available to Service members and adult military dependents. Restricted Reporting may not remain an option in a jurisdiction that requires mandatory reporting, or if a victim first reports to a civilian facility or civilian authority, which will vary by state, territory, and oversees agreements. (See § 105.8(a)(6).) If a victim elects this reporting option, a victim may change from Restricted Report to an Unrestricted Report.

(i) Only the SARC, SAPR VA, and healthcare personnel are designated as authorized to accept a Restricted Report. Healthcare personnel, to include psychotherapist and other personnel listed in Military Rules of Evidence (MRE) 513 pursuant to the Manual for Courts-Martial, United States, who received a Restricted Report shall immediately call a SARC or SAPR VA to assure that a victim is offered SAPR services and so that a DD Form 2910 can be completed.

(ii) A SAFE and the information contained in its accompanying Kit are provided the same confidentiality as is afforded victim statements under the Restricted Reporting option. See § 105.12 of this part.

(iii) In the course of otherwise privileged communications with a chaplain or legal assistance attorney, a victim may indicate that he or she wishes to file a Restricted Report. If this occurs, a chaplain and legal assistance attorney shall facilitate contact with a SARC or SAPR VA to ensure that a victim is offered SAPR services and so that a DD Form 2910 can be completed. A chaplain or legal assistance attorney cannot accept a Restricted Report.

(iv) A victim has a privilege to refuse to disclose and to prevent any other person from disclosing a confidential communication between a victim and a victim advocate, in a case arising under the UCMJ, if such communication is made for the purpose of facilitating advice or supportive assistance to the victim.

(v) A sexual assault victim certified under the personnel reliability program (PRP) is eligible for both the Restricted and Unrestricted reporting options. If electing Restricted Reporting, the victim is required to advise the competent medical authority of any factors that could have an adverse impact on the victim's performance, reliability, or safety while performing PRP duties. If necessary, the competent medical authority will inform the certifying official that the person in question should be temporarily suspended from PRP status, without revealing that the person is a victim of sexual assault, thus preserving the Restricted Report.

(3) *Non-participating victim* (see § 105.3). For victims choosing either Restricted or Unrestricted Reporting, the following guidelines apply:

(i) Details regarding the incident will be limited to only those personnel who have an official need to know. The victim's decision to decline to participate in an investigation or prosecution should be honored by all personnel charged with the investigation and prosecution of sexual assault cases, including, but not limited to, commanders, DoD law enforcement officials, and personnel in the victim's chain of command. If at any time the victim who originally chose the Unrestricted Reporting option declines to participate in an investigation or prosecution, that decision should be honored in accordance with this subparagraph. However, the victim cannot change from an Unrestricted to a Restricted Report. The victim should be informed by the SARC or SAPR VA that the investigation may continue regardless of whether the victim participates.

(ii) The victim's decision not to participate in an investigation or prosecution will not affect access to SARC and SAPR VA services or medical and psychological care. These services shall be made available to all eligible sexual assault victims.

(iii) If a victim approaches a SARC and SAPR VA and begins to make a report, but then changes his or her mind and leaves without signing the DD Form 2910 (where the reporting option is selected), the SARC or SAPR VA is not under any obligation or duty to inform investigators or commanders about this report and will not produce the report or disclose the communications surrounding the report. If commanders or law enforcement ask about the report, disclosures can only be made in accordance with exceptions to MRE 514 privilege.

(4) *Disclosure of confidential communications.* In cases where a victim elects Restricted Reporting, the SARC, SAPR VA, and healthcare personnel may not disclose confidential communications or the SAFE and the accompanying Kit to DoD law enforcement or command authorities, either within or outside the DoD, except as provided in this part. In certain situations, information about a sexual assault may come to the commander's or DoD law enforcement official's (to include MCIO's) attention from a source independent of the Restricted Reporting avenues and an independent investigation is initiated. In these cases, a SARC, SAPR VA, and healthcare personnel are prevented from disclosing confidential communications under Restricted Reporting, unless an exception applies. Improper disclosure of confidential communications or improper release of medical information are prohibited and may result in disciplinary action pursuant to the UCMJ or other adverse personnel or administrative actions.

(5) *Victim confiding in another person.* In establishing the Restricted Reporting option, DoD recognizes that a victim may tell someone (e.g., roommate, friend, family member) that a sexual assault has occurred before considering whether to file a Restricted or Unrestricted Report.

(i) A victim's communication with another person (e.g., roommate, friend, family member) does not, in and of itself, prevent the victim from later electing to make a Restricted Report. Restricted Reporting is confidential, not anonymous reporting. However, if the person to whom the victim confided the information (e.g., roommate, friend, family member) is in the victim's officer and non-commissioned officer chain of command or DoD law enforcement, there can be no Restricted Report.

(ii) Communications between the victim and a person other than the SARC, SAPR VA, or healthcare personnel are not confidential and do not receive the protections of Restricted Reporting.

(6) *Independent investigations.* Independent investigations are not initiated by the victim. If information about a sexual assault comes to a commander's attention from a source other than a victim who has elected Restricted Reporting or where no election has been made by the victim, that commander shall report the matter to an MCIO and an official (independent) investigation may be initiated based on that independently acquired information.

(i) If there is an ongoing independent investigation, the sexual assault victim will no longer have the option of Restricted Reporting when:

(A) DoD law enforcement informs the SARC of the investigation, and

(B) The victim has not already elected Restricted Reporting.

(ii) The timing of filing a Restricted Report is crucial. The victim must take advantage of the Restricted Reporting option before the SARC is informed of the investigation. The SARC then shall

inform the victim of an ongoing independent investigation of the sexual assault. If an independent investigation begins after the victim has formally elected Restricted Reporting, the independent investigation has no impact on the victim's Restricted Report and the victim's communications and SAFE Kit remain confidential, to the extent authorized by law.

(7) *Mandatory reporting laws and cases investigated by civilian law enforcement.* Health care may be provided and SAFE Kits may be performed in a jurisdiction bound by State and local laws that require certain personnel (usually health care personnel) to report the sexual assault to civilian agencies or law enforcement. In some cases, civilian law enforcement may take jurisdiction of the sexual assault case, or the civilian jurisdiction may inform the military law enforcement or investigative community of a sexual assault that was reported to it. In such instances, it may not be possible for a victim to make a Restricted Report or it may not be possible to maintain the report as a Restricted Report. To the extent possible, DoD will honor the Restricted Report; however, sexual assault victims need to be aware that their Restricted Report is not guaranteed due to circumstances surrounding the independent investigation and requirements of individual state laws. In order to take advantage of the Restricted Reporting option the victim must file a Restricted Report BEFORE the SARC is informed of an ongoing independent investigation of the sexual assault.

(b) *Initiating medical care and treatment upon receipt of report.* Healthcare personnel will initiate the emergency care and treatment of sexual assault victims and notify the SARC or the SAPR VA. See § 105.11 of this part. Upon receipt of a Restricted Report, only the SARC or the SAPR VA will be notified. There will be no report to DoD law enforcement, a supervisory official, or the victim's chain of command by the healthcare personnel, unless an exception to Restricted Reporting applies or applicable law requires other officials to be notified. Regardless of whether the victim elects Restricted or Unrestricted Reporting, confidentiality of medical information will be maintained in accordance with applicable laws and regulations.

(c) *Implementing DoD dual objectives.* The DoD is committed to ensuring victims of sexual assault are protected; treated with dignity and respect; and provided support, advocacy, and care. The DoD supports effective command awareness and prevention programs. The DoD also strongly supports applicable DoD law enforcement and criminal justice procedures that enable persons to be held appropriately accountable for sexual assault offenses and criminal dispositions. To achieve the dual objectives of victim support and offender accountability, DoD preference is for complete Unrestricted Reporting of sexual assaults to allow for the provision of victims' services and to pursue accountability, as appropriate. However, Unrestricted Reporting may represent a barrier for victims to access services, when the victim desires no command or DoD law enforcement involvement. Consequently, the DoD recognizes a fundamental need to provide a confidential disclosure vehicle via the Restricted Reporting option. This section provides procedural guidance and considerations to implement the DoD dual objectives.

(1) *Restricted Reporting impact.* Restricted Reporting will impact investigations and the ability of the offender's commander to hold the alleged offender accountable. However, such risks shall not outweigh the overall interest in providing a Restricted Reporting option to sexual assault victims.

(2) *Victim's perception of the military justice system.* The DoD seeks increased reporting by victims of sexual assault. A system that is perceived as fair and treats victims with dignity and respect, and promotes privacy and confidentiality may have a positive impact in bringing victims forward to provide information about being assaulted. The Restricted Reporting option is intended to give victims additional time and increased control over the release and management of their personal information and empowers them to seek relevant information and support to make more informed decisions about participating in the criminal investigation. A victim who receives support, appropriate care and treatment, and is provided an opportunity to make an informed decision about a criminal investigation is more likely to develop increased trust that the victim's needs are of concern to the command. As a result, this trust may eventually lead the victim to decide to pursue an investigation and convert the Restricted Report to an Unrestricted Report.

(d) *Reports and commanders.* (1) *Unrestricted Reports to commanders.* The SARC shall provide the installation commander of sexual assault victims with information regarding all Unrestricted Reports within 24 hours of an Unrestricted Report of sexual assault. This notification may be extended by the commander to 48 hours after the Unrestricted Report of the incident when there are extenuating circumstances in deployed environments.

(2) *Restricted Reports to commanders.* For the purposes of public safety and command responsibility, in the event of a Restricted Report, the SARC shall report non-PII concerning sexual assault incidents (without information that could reasonably lead to personal identification of the victim or the alleged assailant (see exception in § 105.8(e)(2)(ii)) only to the installation commander within 24 hours of the report. This notification may be extended by the commander to 48 hours after the Restricted Report of the incident when there are extenuating circumstances in deployed environments. The SARC's communications with victims are protected by the Restricted Reporting option and the MRE 514 (Executive Order 13593).

(i) Even if the victim chooses not to pursue an investigation, Restricted Reporting gives the installation commander a clearer picture of the reported sexual assaults within the command. The installation commander can then use the information to enhance preventive measures, to enhance the education and training of the command's personnel, and to scrutinize more closely the organization's climate and culture for contributing factors.

(ii) Neither the installation commander nor DoD law enforcement may use the information from a Restricted Report for investigative purposes or in a manner that is likely to discover, disclose, or reveal the identities of the victims unless an exception applies as provided in paragraph (e) of this section. Improper disclosure of Restricted Reporting information may result in discipline pursuant to the UCMJ or other adverse personnel or administrative actions.

(e) *Exceptions to Restricted Reporting and disclosures.* (1) The SARC will evaluate the confidential information provided under the Restricted Report to determine whether an exception applies.

(i) The SARC shall disclose the otherwise protected confidential information only after consultation with the SJA of the installation commander, supporting judge advocate or other legal advisor concerned, who shall advise the SARC whether an exception to Restricted Reporting applies. In addition, the SJA, supporting judge advocate or other legal advisor concerned will analyze the impact of MRE 514 on the communications.

(ii) When there is uncertainty or disagreement on whether an exception to Restricted Reporting applies, the matter shall be brought to the attention of the installation commander for decision without identifying the victim (using non-PII information). Improper disclosure of confidential communications under Restricted Reporting, improper release of medical information, and other violations of this guidance are prohibited and may result in discipline pursuant to the UCMJ or State statute, loss of privileges, loss of certification or credentialing, or other adverse personnel or administrative actions.

(2) The following exceptions to the prohibition against disclosures of Restricted Reporting authorize a disclosure of a Restricted Report only if one or more of the following conditions apply:

(i) Authorized by the victim in writing.

(ii) Necessary to prevent or mitigate a serious and imminent threat to the health or safety of the victim or another person; for example, multiple reports involving the same alleged suspect (repeat offender) could meet this criteria. See similar safety and security exceptions in MRE 514 (Executive Order 13593).

(iii) Required for fitness for duty or disability determinations. This disclosure is limited to only the information necessary to process duty or disability determinations for Service members.

(iv) Required for the supervision of coordination of direct victim treatment or services. The SARC, SAPR VA, or healthcare personnel can disclose specifically requested information to those individuals with an official need to know, or as required by law or regulation.

(v) Ordered by a military official (e.g., a duly authorized trial counsel subpoena in a UCMJ case), Federal or State judge, or as required by a Federal or State statute or applicable U.S. international agreement. The SARC, SAPR VA, and healthcare personnel will consult with the installation commander's servicing legal office, in the same manner as other recipients of privileged information, to determine if the exception criteria apply and whether a duty to disclose the otherwise protected information is present. Until those determinations are made, only non-PII shall be disclosed.

(3) Healthcare personnel may also convey to the victim's unit commander any possible adverse duty impact related to the victim's medical condition and prognosis in accordance with DoD Directive 5400.11–R.[7] However, such circumstances do not otherwise warrant a Restricted Reporting exception to policy. Therefore, the confidential communication related to the sexual assault may not be disclosed. Improper disclosure of confidential communications, improper release of medical information, and other violations of this part and 32 CFR part 103 are prohibited and may result in discipline pursuant to the UCMJ or State statute, loss of privileges, or other adverse personnel or administrative actions.

(4) The SARC or SAPR VA shall inform the victim when a disclosure in accordance with the exceptions in this section is made.

(5) If a SARC, SAPR VA, or healthcare personnel make an unauthorized disclosure of a confidential communication, that person is subject to disciplinary action. Unauthorized disclosure has no impact on the status of the Restricted Report. All Restricted Reporting information is still confidential and protected. However, unauthorized or inadvertent disclosures made to a commander or law enforcement shall result in notification to the MCIO.

(f) *Actionable rights.* Restricted Reporting does not create any actionable rights for the victim or alleged offender or constitute a grant of immunity for any actionable conduct by the offender or the victim.

§ 105.9 Commander and management procedures.

(a) *SAPR Management.* Commanders, supervisors, and managers at all levels are responsible for the effective implementation of the SAPR program and policy. Military and DoD civilian officials at each management level shall advocate a strong SAPR program and provide education and training that shall enable them to prevent and appropriately respond to incidents of sexual assault.

(b) *Installation commander SAPR response procedures.* Each installation commander shall develop guidelines to establish a 24 hour, 7 day per week sexual assault response capability for their locations, including deployed areas. For SARCs that operate within deployable commands that are not attached to an installation, senior commanders of the deployable commands shall ensure that equivalent SAPR standards are met.

(c) *Commander SAPR response procedures.* Each Commander shall:

(1) Encourage the use of the commander's sexual assault response protocols for Unrestricted Reports as the baseline for commander's response to the victim, an offender, and proper response of a sexual assault within a unit. The Commander's Sexual Assault Response Protocols for Unrestricted Reports of Sexual Assault are located in the SAPR Policy Toolkit, on *www.sapr.mil.* These protocols maybe expanded to meet Military Service-specific requirements and procedures.

(2) Meet with the SARC within 30 days of taking command for one-on-one SAPR training. The training shall include a trends brief for unit and area of responsibility and the confidentiality requirements in Restricted Reporting. The commander must contact the judge advocate for training on the MRE 514 privilege.

(3) Require the SARC to:

(i) Be notified of every incident of sexual assault involving Service members or persons covered in this part, in or outside of the military installation when reported to DoD personnel. When notified, the SARC or SAPR VA shall respond to offer the victim SAPR services. All SARCs shall be authorized to perform VA duties in accordance with service regulations, and will be acting in the performance of those duties.

(A) In Restricted Reports, the SARC shall be notified by the healthcare personnel or the SAPR VA.

(B) In Unrestricted Reports, the SARC shall be notified by the DoD responders (see § 105.3).

(ii) Provide the installation commander with information regarding an Unrestricted Report within 24 hours of an Unrestricted Report of sexual assault.

(iii) Provide the installation commander with non-PII, as defined in § 105.3, within 24 hours of a Restricted Report of sexual assault. This notification may be extended to 48 hours after the report of the incident if there are extenuating circumstances in the deployed environment. Command and installation demographics shall be taken into account when determining the information to be provided.

(iv) Be supervised and evaluated by the installation commander or deputy installation commander in the performance of SAPR procedures in accordance with § 105.10 of this part.

(v) Receive SARC training to follow procedures in accordance with § 105.10 of this part. Upon implementation of the D–SAACP, standardized criteria for the selection and training of SARCs and SAPR VAs shall comply with specific Military Service guidelines and

[7] Available: *http://www.dtic.mil/whs/directives/corres/pdf/540011p.pdf.*

certification requirements, when implemented by SAPRO.

(vi) Follow established procedures to store the DD Form 2910 pursuant to Military Service regulations regarding the storage of documents with PII. (Copies may be obtained via the Internet at *http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2910.pdf.*) Follow established procedures to store the original DD Form 2910 and ensure that all Federal and Service privacy regulations are adhered to.

(4) Evaluate medical personnel per Military Service regulation in the performance of SAPR procedures as described in § 105.11 of this part.

(5) Require adequate supplies of SAFE Kits be maintained by the active component. The supplies shall be routinely evaluated to guarantee adequate numbers to meet the need of sexual assault victims.

(6) Require DoD law enforcement and healthcare personnel to comply with prescribed chain of custody procedures described in their Military Service-specific MCIO procedures. Modified procedures applicable in cases of Restricted Reports of sexual assault are explained in § 105.12 of this part.

(7) Require that a CMG is conducted on a monthly basis in accordance with § 105.13 of this part.

(i) Chair or attend the CMG, as appropriate. Direct the required CMG members to attend.

(ii) Commanders shall provide victims of a sexual assault who filed an Unrestricted Reports monthly updates regarding the current status of any ongoing investigative, medical, legal, or command proceedings regarding the sexual assault until the final disposition (see § 105.3) of the reported assault, and to the extent permitted pursuant to DoDI 1030.2, Public Law 104–191,[8] and section 552a of title 5, U.S.C. This is a non-delegable commander duty. This update must occur within 72 hours of the last CMG. Commanders of the NG victims who were sexually assaulted when the victim was on title 10 orders and filed unrestricted reports are required to update, to the extent allowed by law and regulations, the victim's home State title 32 commander as to all or any ongoing investigative, medical, and legal proceedings regarding the extent of any actions being taken by the active component against subjects who remain on title 10 orders.

(8) Ensure that resolution of Unrestricted Report sexual assault cases shall be expedited.

(i) A unit commander who receives an Unrestricted Report of a sexual assault shall immediately refer the matter to the appropriate MCIO, to include any offense identified by title 10, U.S.C. A unit commander shall not conduct internal command directed investigations on sexual assault (i.e., no referrals to appointed command investigators or inquiry officers) or delay immediately contacting the MCIOs while attempting to assess the credibility of the report.

(ii) The final disposition of a sexual assault shall immediately be reported by the commander to the assigned MCIO. Dispositions on cases referred by MCIOs to other DoD law enforcement agencies shall be immediately reported to the MCIOs upon their final disposition. MCIOs shall request dispositions on referred cases from civilian law enforcement agencies and, if received, those dispositions shall be immediately reported by the MCIO in DSAID in order to meet the congressional annual reporting requirements. When requested by MCIOs and other DoD law enforcement, commanders shall provide final disposition of sexual assault cases. Final case disposition is required to be inputted into DSAID.

(iii) If the MCIO has been notified of the disposition in a civilian sexual assault case, the MCIO shall notify the commander of this disposition immediately.

(9) Appoint a point of contact to serve as a formal liaison between the installation SARC and the installation FAP and domestic violence intervention and prevention staff (or civilian domestic resource if FAP is not available for a Reserve Component victim) to direct coordination when a sexual assault occurs within a domestic relationship or involves child abuse.

(10) Ensure appropriate training of all military responders be directed and documented in accordance with training standards in § 105.14 of this part. Direct and document appropriate training of all military responders who attend the CMG.

(11) Identify and maintain a liaison with civilian sexual assault victim resources. Where necessary, it is strongly recommended that an MOU or MOAs with the appropriate local authorities and civilian service organizations be established to maximize cooperation, reciprocal reporting of sexual assault information, and consultation regarding jurisdiction for the prosecution of Service members involved in sexual assault, as appropriate.

(12) Require that each Service member who reports a sexual assault, pursuant to the respective Military Service regulations, be given the opportunity to consult with legal assistance counsel, and in cases where the victim may have been involved in collateral misconduct, to consult with defense counsel. Victims shall be referred to VWAP. Information concerning the prosecution shall be provided to victims in accordance with VWAP procedures in DoDD 7050.06. The Service member victim shall be informed of this opportunity to consult with legal assistance counsel as soon as the victim seeks assistance from a SARC, SAPR VA, or any DoD law enforcement agent or judge advocate.

(13) Direct that DoD law enforcement agents and VWAP personnel provide victims of sexual assault who elect an Unrestricted Report the information outlined in DoDD 1030.01[9] and Public Law 100–504[10] throughout the investigative and legal process. The completed DD Form 2701 shall be distributed to the victim in Unrestricted Reporting cases by DoD law enforcement agents.

(14) Require that MCIOs utilize the investigation descriptions found in § 105.3 in this part.

(15) Establish procedures to ensure that in the case of a general or special court-martial involving a sexual assault as defined in 32 CFR part 103, a copy of the prepared record of the proceedings of the court-martial (not to include sealed materials, unless otherwise approved by the presiding military judge or appellate court) shall be given to the victim of the offense if the victim testified during the proceedings. The record of the proceedings (prepared in accordance with Service regulations shall be provided without charge and as soon as the record is authenticated. The victim shall be notified of the opportunity to receive the record of the proceedings in accordance with Public Law 112–81.

(16) Protect sexual assault victims from coercion, discrimination, or reprisals. Commanders shall protect SARCs and SAPR VAs from coercion, discrimination, or reprisals related to the execution of their SAPR duties and responsibilities.

(17) Require that sexual assault reports be entered into DSAID through interface with a Military Service data system, or by direct data entry by authorized personnel.

(18) Designate an official, usually the SARC, to generate an alpha-numeric

[8] Available: *http://www.gpo.gov/fdsys/pkg/PLAW–104publ191/pdf/PLAW–104publ191.pdf.*

[9] Available: *http://www.dtic.mil/whs/directives/corres/pdf/103001p.pdf.*

[10] Available: http://ntl.bts.gov/DOCS/iga.html.

Restricted Reporting case number (RRCN).

(19) Appoint a healthcare provider, as an official duty, in each MTF to be the resident point of contact concerning SAPR policy and sexual assault care.

(c) *MOUs or MOAs with local civilian authorities.* The purpose of MOUs and MOAs is to:

(1) Enhance communications and the sharing of information regarding sexual assault prosecutions, as well as of the sexual assault care and forensic examinations that involve Service members and eligible TRICARE beneficiaries covered by this part.

(2) Collaborate with local community crisis counseling centers, as necessary, to augment or enhance their sexual assault programs.

(3) Provide liaison with private or public sector sexual assault councils, as appropriate.

(4) Provide information about medical and counseling services related to care for victims of sexual assault in the civilian community, when not otherwise available at the MTFs, in order that military victims may be offered the appropriate healthcare and civilian resources, where available and where covered by military healthcare benefits.

(5) Where appropriate or required by MOU or MOA, facilitate training for civilian service providers about SAPR policy and the roles and responsibilities of the SARC and SAPR VA.

(d) *Line of Duty (LOD) procedures.* (1) Members of the Reserve Components, whether they file a Restricted or Unrestricted Report, shall have access to medical treatment and counseling for injuries and illness incurred from a sexual assault inflicted upon a Service member when performing active service, as defined in section 101(d)(3) of title 10, U.S.C., and inactive duty training.

(2) Medical entitlements remain dependent on a LOD determination as to whether or not the sexual assault incident occurred in an active duty or inactive duty training status. However, regardless of their duty status at the time that the sexual assault incident occurred, or at the time that they are seeking SAPR services (see § 105.3), Reserve Component members can elect either the Restricted or Unrestricted Reporting option (see 32 CFR 103.3) and have access to the SAPR services of a SARC and a SAPR VA.

(3) The following LOD procedures shall be followed by Reserve Component commanders.

(i) LOD determinations may be made without the victim being identified to DoD law enforcement or command, solely for the purpose of enabling the victim to access medical care and psychological counseling, and without identifying injuries from sexual assault as the cause.

(ii) When assessing LOD determinations for sexual assault victims, the commander of the Reserve command in each component and the directors of the Army and Air NGBs shall designate individuals within their respective organizations to process LODs for victims of sexual assault when performing active service, as defined in section 101(d)(3) of title 10, U.S.C., and inactive duty training.

(A) Designated individuals shall possess the maturity and experience to assist in a sensitive situation and, if dealing with a Restricted Report, to safeguard confidential communications. These individuals are specifically authorized to receive confidential communications as defined by § 105.3 of this part for the purpose of determining LOD status.

(B) The appropriate SARC will brief the designated individuals on Restricted Reporting policies, exceptions to Restricted Reporting, and the limitations of disclosure of confidential communications as specified in § 105.8(e) of this part. The SARC and these individuals may consult with their servicing legal office, in the same manner as other recipients of privileged information for assistance, exercising due care to protect confidential communications by disclosing only non-identifying information. Unauthorized disclosure may result in disciplinary action, in accordance with § 105.8(d)(1) and (2) of this part.

(iii) For LOD purposes, the victim's SARC may provide documentation that substantiates the victim's duty status as well as the filing of the Restricted Report to the designated official.

(iv) If medical or mental healthcare is required beyond initial treatment and follow-up, a licensed medical or mental health provider must recommend a continued treatment plan.

(v) When evaluating pay and entitlements, the modification of the LOD process for Restricted Reporting does not extend to pay and allowances or travel and transportation incident to the healthcare entitlement. However, at any time the Service member may request an unrestricted LOD to be completed in order to receive the full range of entitlements authorized pursuant to DoDI 1241.2.[11]

(e) *Expedited victim transfer requests.* (1) Any threat to life or safety of a Service member shall be immediately reported to command and DoD law enforcement authorities (see § 105.3) and a request to transfer the victim under these circumstances will be handled in accordance with established Service regulations.

(2) Service members who file an Unrestricted Report of sexual assault shall be informed by the SARC, SAPR VA, or the Service member's CO at the time of making the report, or as soon as practicable, of the option to request a temporary or permanent expedited transfer from their assigned command or installation, or to a different location within their assigned command or installation. The Service members shall initiate the transfer request and submit the request to their COs. The CO shall document the date and time the request is received.

(i) A presumption shall be established in favor of transferring a Service member (who initiated the transfer request) following a credible report (see § 105.3) of sexual assault. The CO, or the appropriate approving authority, shall make a credible report determination at the time the expedited request is made after considering the advice of the supporting judge advocate, or other legal advisor concerned, and the available evidence based on an MCIO's investigation's information (if available).

(ii) Expedited transfers of Service members who report that they are victims of sexual assault shall be limited to sexual assault offenses reported in the form of an Unrestricted Report.

(A) Sexual assault against adults is defined in 32 CFR part 103.3 and includes Article 120 and Article 125 of the Manual for Courts-Martial, United States. This part does not address victims covered under the FAP in DoDD 6400.1.

(B) If the Service member files a Restricted Report in accordance with 32 CFR part 103 and requests an expedited transfer, the Service member must affirmatively change his or her reporting option to Unrestricted Reporting on the DD Form 2910, in order to be eligible for an expedited transfer.

(iii) When the alleged perpetrator is the commander or otherwise in the victim's chain of command, the SARC shall inform such victims of the opportunity to go outside the chain of command to report the offense to MCIOs, other COs or an Inspector General. Victims shall be informed that they can also seek assistance from a legal assistance attorney or the DoD Safe Helpline.

(iv) The CO shall expeditiously process a transfer request from a command or installation, or to a

[11] Available: *http://www.dtic.mil/whs/directives/corres/pdf/124102p.pdf.*

different location within the command or installation. The CO shall request and take into consideration the Service member's input before making a decision involving a temporary or permanent transfer and the location of the transfer. If approved, the transfer orders shall also include the Service member's dependents or military spouse (as applicable).

(v) The CO must approve or disapprove a Service member's request for a PCS, PCA, or unit transfer within 72 hours from receipt of the Service member's request. The decision to approve the request shall be immediately forwarded to the designated activity that processes PCS, PCA, or unit transfers (see § 105.3).

(vi) If the Service member's transfer request is disapproved by the CO, the Service member shall be given the opportunity to request review by the first G/FO in the chain of command of the member, or a SES equivalent (if applicable). The decision to approve or disapprove the request for transfer must be made within 72 hours of submission of the request for review. If a civilian SES equivalent reviewer approves the transfer, the Secretary of the Military Department concerned shall process and issue orders for the transfer.

(vii) Military Departments shall make every reasonable effort to minimize disruption to the normal career progression of a Service member who reports that he or she is a victim of a sexual assault.

(viii) Expedited transfer procedures require that a CO or the appropriate approving authority make a determination and provide his or her reasons and justification on the transfer of a Service member based on a credible report of sexual assault. A CO shall consider:

(A) The Service member's reasons for the request.

(B) Potential transfer of the alleged offender instead of the Service member requesting the transfer.

(C) Nature and circumstances of the offense.

(D) Whether a temporary transfer would meet the Service member's needs and the operational needs of the unit.

(E) Training status of the Service member requesting the transfer.

(F) Availability of positions within other units on the installation.

(G) Status of the investigation and potential impact on the investigation and future disposition of the offense, after consultation with the investigating MCIOs.

(H) Location of the alleged offender.

(I) Alleged offender's status (Service member or civilian).

(J) Other pertinent circumstances or facts.

(ix) Service members requesting the transfer shall be informed that they may have to return for the prosecution of the case, if the determination is made that prosecution is the appropriate command action.

(x) Commanders shall directly counsel the Service member to ensure that he or she is fully informed regarding:

(A) Reasonably foreseeable career impacts.

(B) The potential impact of the transfer or reassignment on the investigation and case disposition or the initiation of other adverse action against the alleged offender.

(C) The effect on bonus recoupment (if, for example, they cannot work in their Air Force Specialty or Military Occupational Specialty).

(D) Other possible consequences of granting the request.

(xi) Require that expedited transfer procedures for Reserve Component, Army NG, and Air NG members who make Unrestricted Reports of sexual assault be established by commanders within available resources and authorities. If requested by the Service member, the command should allow for separate training on different weekends or times from the alleged offender or with a different unit in the home drilling location to ensure undue burden is not placed on the Service member and his or her family by the transfer. Potential transfer of the alleged offender instead of the Service member should also be considered. At a minimum, the alleged offender's access to the Service member who made the Unrestricted Report shall be controlled, as appropriate.

(xii) Even in those court-martial cases in which the accused has been acquitted, the standard for approving an expedited transfer still remains whether a credible report has been filed. The commander shall consider all the facts and circumstances surrounding the case and the basis for the transfer request.

(f) *Military Protective Orders (MPO).* In Unrestricted Reporting cases, commanders shall execute the following procedures regarding MPOs:

(1) Require the SARC or the SAPR VA to inform sexual assault victims protected by an MPO, in a timely manner, of the option to request transfer from the assigned command in accordance with section 567(c) of Public Law 111–84.

(2) Notify the appropriate civilian authorities of the issuance of an MPO and of the individuals involved in the order, in the event an MPO has been issued against a Service member and any individual involved in the MPO does not reside on a military installation at any time during the duration of the MPO pursuant to Public Law 110–417.

(i) An MPO issued by a military commander shall remain in effect until such time as the commander terminates the order or issues a replacement order.

(ii) The issuing commander shall notify the appropriate civilian authorities of any change made in a protective order, or its termination, covered by chapter 80 of title 10, U.S.C., and the termination of the protective order.

(iii) When an MPO has been issued against a Service member and any individual involved in the MPO does not reside on a military installation at any time during the duration of the MPO, notify the appropriate civilian authorities of the issuance of an MPO and of the individuals involved in the order. The appropriate civilian authorities shall include, at a minimum, the local civilian law enforcement agency or agencies with jurisdiction to respond to an emergency call from the residence of any individual involved in the order.

(3) Advise the person seeking the MPO that the MPO is not enforceable by civilian authorities off base and that victims desiring protection off base should seek a civilian protective order (CPO). Off base violations of the MPO should be reported to the issuing commander, DoD law enforcement, and the relevant MCIO for investigation.

(i) Pursuant to section 1561a of Public Law 107–311,[12] a CPO shall have the same force and effect on a military installation as such order has within the jurisdiction of the court that issued such order. Commanders, MCIOs, and installation DoD law enforcement personnel shall take all reasonable measures necessary to ensure that a CPO is given full force and effect on all DoD installations within the jurisdiction of the court that issued such order.

(ii) If the victim has informed the SARC of an existing CPO, a commander shall require the SARC to inform the CMG of the existence of the CPO and its requirements. After the CPO information is received at the CMG, DoD law enforcement agents shall be required to document CPOs for all Service members in their investigative case file, to include documentation for Reserve Component personnel in title 10 status.

[12] Available: *http://www.gpo.gov/fdsys/pkg/PLAW-107publ311/pdf/PLAW-107publ311.pdf.*

(4) Note that MPOs in cases other than sexual assault matters may have separate requirements.

(5) Issuing commanders are required to fill out the DD Form 2873, ''Military Protective Order (MPO),'' and provide victims and alleged offenders with copies of the completed form. Verbal MPOs can be issued, but need to be subsequently documented with a DD Form 2873, as soon as possible.

(6) Require DoD law enforcement agents document MPOs for all Service members in their investigative case file, to include documentation for Reserve Component personnel in title 10 status. The appropriate DoD law enforcement agent representative to the CMG shall brief the CMG chair and co-chair on the existence of an MPO.

(7) If the commander's decision is to deny the MPO request, document the reasons for the denial. Denials of MPO requests go to the installation commander or equivalent command level (in consultation with a judge advocate) for the final decision.

(g) *Collateral misconduct in sexual assault cases.* (1) Collateral misconduct by the victim of a sexual assault is one of the most significant barriers to reporting assault because of the victim's fear of punishment. Some reported sexual assaults involve circumstances where the victim may have engaged in some form of misconduct (e.g., underage drinking or other related alcohol offenses, adultery, fraternization, or other violations of certain regulations or orders). Commanders shall have discretion to defer action on alleged collateral misconduct by the sexual assault victims (and shall not be penalized for such a deferral decision), until final disposition of the sexual assault case, taking into account the trauma to the victim and responding appropriately so as to encourage reporting of sexual assault and continued victim cooperation, while also bearing in mind any potential speedy trial and statute of limitations concerns.

(2) In accordance with Secretary of Defense Memorandum, the initial disposition authority is withheld from all commanders within the DoD who do not possess at least special court-martial convening authority and who are not in the grade of 0–6 (i.e., colonel or Navy captain) or higher, with respect to the alleged offenses of rape, sexual assault, forcible sodomy, and all attempts to commit such offenses, in violation of Articles 120, 125, and 80 of the Manual for Courts-Martial, United States. Commanders may defer taking action on a victim's alleged collateral misconduct arising from or that relates to the sexual assault incident until the initial disposition action for the sexual assault investigation is completed.

(3) Commanders and supervisors should take appropriate action for the victim's alleged collateral misconduct (if warranted), responding appropriately in order to encourage sexual assault reporting and continued cooperation, while avoiding those actions that may further traumatize the victim. Ultimately, victim cooperation should significantly enhance timely and effective investigations, as well as the appropriate disposition of sexual assaults.

(4) Subordinate commanders shall be advised that taking action on a victim's alleged collateral misconduct may be deferred until final disposition of the sexual assault case. The Military Departments shall establish procedures so that commanders and supervisors are not penalized for deferring collateral misconduct actions for the sexual assault victim until final disposition of the sexual assault case.

(5) Commanders shall have the authority to determine, in a timely manner, how to best manage the disposition of alleged misconduct, to include making the decision to defer disciplinary actions regarding a victim's alleged collateral misconduct until after the final disposition of the sexual assault case, where appropriate. For those sexual assault cases for which the victim's alleged collateral misconduct is deferred, Military Service reporting and processing requirements should take such deferrals into consideration and allow for the time deferred to be subtracted, when evaluating whether a commander took too long to resolve the collateral misconduct.

(h) *Commander SAPR prevention procedures.* Each commander shall implement a SAPR prevention program that:

(1) Establishes a command climate of sexual assault prevention predicated on mutual respect and trust, recognizes and embraces diversity, and values the contributions of all its Service members.

(2) Emphasizes that sexual assault is a crime and violates the core values of being a professional in the Military Services and ultimately destroys unit cohesion and the trust that is essential for mission readiness and success.

(3) Emphasizes DoD and Military Service policies on sexual assault and the potential legal consequences for those who commit such crimes.

(4) Monitors the organization's SAPR climate and responds with appropriate action toward any negative trends that may emerge.

(5) Identifies and remedies environmental factors specific to the location that may facilitate the commission of sexual assaults (e.g., insufficient lighting).

(6) Emphasizes sexual assault prevention training for all assigned personnel.

(7) Establishes prevention training that focus on identifying the behavior of potential offenders.

§ 105.10 SARC and SAPR VA procedures.

(a) *SARC procedures.* The SARC shall:

(1) Serve as the single point of contact to coordinate sexual assault response when a sexual assault is reported. All SARCs shall be authorized to perform VA duties in accordance with Military Service regulations, and will be acting in the performance of those duties.

(2) Upon implementation of the D–SAACP, comply with DoD Sexual Assault Advocate Certification requirements.

(3) Be trained in and understand the confidentiality requirements of Restricted Reporting and MRE 514. Training must include exceptions to Restricted Reporting and MRE 514.

(4) Assist the installation commander in ensuring that victims of sexual assault receive appropriate responsive care and understand their available reporting options (Restricted and Unrestricted) and available SAPR services.

(5) Be authorized by this part to accept reports of sexual assault along with the SAPR VA and healthcare personnel.

(6) Report directly to the installation commander in accordance with 32 CFR part 103, to include providing regular updates to the installation commander and assist the commander to meet annual SAPR training requirements, including providing orientation briefings for newly assigned personnel and, as appropriate, providing community education publicizing available SAPR services.

(7) Provide a 24 hour, 7 day per week response capability to victims of sexual assault, to include deployed areas.

(i) SARCs shall respond (see § 105.3) to every Restricted and Unrestricted Report of sexual assault on a military installation and the response shall be in person, unless otherwise requested by the victim.

(ii) Based on the locality, the SARC may ask the SAPR VA to respond and speak to the victim.

(A) There will be situations where a sexual assault victim receives medical care and a SAFE outside of a military installation under a MOU or MOA with local private or public sector entities. In

these cases, pursuant to the MOU or MOA, victims shall be asked whether they would like the SARC to be notified, and, if so, the SARC or SAPR VA shall be notified, and a SARC or SAPR VA shall respond.

(B) When contacted by the SARC or SAPR VA, a sexual assault victim can elect not to speak to the SARC or SAPR VA, or the sexual assault victim may ask to schedule an appointment at a later time to speak to the SARC or SAPR VA.

(iii) SARCs shall provide a response that recognizes the high prevalence of pre-existing trauma (prior to the present sexual assault incident).

(iv) SARCs shall provide a response that is gender-responsive, culturally-competent, and recovery-oriented.

(v) SARCs shall offer appropriate referrals to sexual assault victims and facilitate access to referrals. Provide referrals at the request of the victim.

(A) Encourage sexual assault victims to follow-up with the referrals and facilitate these referrals, as appropriate.

(B) In order to competently facilitate referrals, inquire whether the victim is a Reservist or an NG member to ensure that victims are referred to the appropriate geographic location.

(8) Explain to the victim that the services of the SARC and SAPR VA are optional and these services may be declined, in whole or in part, at any time. The victim may decline advocacy services, even if the SARC or SAPR VA holds a position of higher rank or authority than the victim. Explain to victims the option of requesting a different SAPR VA (subject to availability, depending on locality staffing) or continuing without SAPR VA services.

(i) Explain the available reporting options to the victim.

(A) Have the victim fill out the DD Form 2910 where the victim elects to make a Restricted or Unrestricted Report.

(B) Inform the victim that the DD Form 2910 will be uploaded to DSAID and maintained for 50 years in Unrestricted Reports and retained in hard copy for 5 years in Restricted Reports, for the purpose of providing the victim access to document their sexual assault victimization with the Department of Veterans Affairs for care and benefits. However, at the request of a member of the Armed Forces who files a Restricted Report on an incident of sexual assault, the DD Forms 2910 and 2911 filed in connection with the Restricted Report be retained for 50 years.

(C) The SARC or SAPR VA shall tell the victim of any local or State sexual assault reporting requirements that may limit the possibility of Restricted Reporting. At the same time, the victims shall be briefed of the protections and exceptions to MRE 514.

(ii) Give the victim a hard copy of the DD Form 2910 with the victim's signature.

(A) Advise the victim to keep the copy of the DD Form 2910 in their personal permanent records as this form may be used by the victim in other matters before other agencies (e.g., Department of Veterans Affairs) or for any other lawful purpose.

(B) Store the original DD Form 2910 pursuant to secure storage Military Service regulations and privacy laws. A SARC being reassigned shall be required to assure their supervisor of the secure transfer of stored DD Forms 2910 to the next SARC. In the event of transitioning SARCs, the departing SARC shall inform their supervisor of the secure storage location of the DD Forms 2910, and the SARC supervisor will ensure the safe transfer of the DD Forms 2910.

(iii) Explain SAFE confidentiality to victims and the confidentiality of the contents of the SAFE Kit.

(iv) Explain the implications of a victim confiding in another person resulting in a third-party report to command or DoD law enforcement (§ 105.8 of this part).

(v) Provide the installation commander with information regarding an Unrestricted Report within 24 hours of an Unrestricted Report of sexual assault. This notification may be extended to 48 hours after the Unrestricted Report of the incident if there are extenuating circumstances in the deployed environments.

(vi) Provide the installation commander with non-PII within 24 hours of a Restricted Report of sexual assault. This notification may be extended to 48 hours after the Restricted Report of the incident if there are extenuating circumstances in a deployed environment. Command and installation demographics shall be taken into account when determining the information to be provided.

(vii) Exercise oversight responsibility for SAPR VAs authorized to respond to sexual assaults when they are providing victim advocacy services.

(viii) Perform victim advocacy duties, as needed. DoD recognizes the SARC's authority to perform duties as SAPR VAs, even though the SARC may not be designated in writing as a SAPR VA pursuant to Military Service regulation.

(ix) Inform the victim that pursuant to their Military Service regulations, each Service member who reports having been sexually assaulted shall be given the opportunity to consult with legal assistance counsel, and in cases where the victim may have been involved in collateral misconduct, to consult with defense counsel.

(A) Inform the victim that information concerning the prosecution shall be provided to them in accordance with DoDI 1030.2.

(B) The Service member victim shall be informed of the opportunity to consult with legal assistance counsel as soon as the victim seeks assistance from a SARC or SAPR VA.

(x) Facilitate education of command personnel on sexual assault and victim advocacy services.

(xi) Facilitate briefings on victim advocacy services to Service members, military dependents, DoD civilian employees (OCONUS), DoD contractors (accompanying the Military Services in contingency operations OCONUS), and other command or installation personnel, as appropriate.

(xii) Facilitate Annual SAPR training.

(xiii) Facilitate the development and collaboration of SAPR public awareness campaigns for victims of sexual assault, including planning local events for Sexual Assault Awareness Month. Publicize the DoD Safe Helpline on all outreach materials.

(xiv) Coordinate medical and counseling services between military installations and deployed units related to care for victims of sexual assault.

(xv) Conduct an ongoing assessment of the consistency and effectiveness of the SAPR program within the assigned area of responsibility.

(xvi) Collaborate with other agencies and activities to improve SAPR responses to and support of victims of sexual assault.

(xvii) Maintain liaison with commanders, DoD law enforcement, and MCIOs, and civilian authorities, as appropriate, for the purpose of facilitating the following protocols and procedures to:

(A) Activate victim advocacy 24 hours a day, 7 days a week for all incidents of reported sexual assault occurring either on or off the installation involving Service members and other persons covered by this part.

(B) Collaborate on public safety, awareness, and prevention measures.

(C) Facilitate ongoing training of DoD and civilian law enforcement and criminal investigative personnel on the SAPR policy and program and the roles and responsibilities of the SARC and SAPR VAs.

(xviii) Consult with command legal representatives, healthcare personnel, and MCIOs, (or when feasible, civilian law enforcement), to assess the potential impact of State laws governing the

reporting requirements for adult sexual assault that may affect compliance with the Restricted Reporting option and develop or revise applicable MOUs and MOAs, as appropriate.

(xix) Collaborate with MTFs within their respective areas of responsibility to establish protocols and procedures to direct notification of the SARC and SAPR VA for all incidents of reported sexual assault, and facilitate ongoing training of healthcare personnel on the roles and responsibilities of the SARC and SAPR VAs.

(xx) Collaborate with local private or public sector entities that provide medical care Service members or TRICARE eligible beneficiaries who are for sexual assault victims and a SAFE outside of a military installation through an MOU or MOA.

(A) Establish protocols and procedures with these local private or public sector entities to facilitate direct notification of the SARC for all incidents of reported sexual assault and facilitate training of healthcare personnel of local private or public sector entities on the roles and responsibilities of SARCs and SAPR VAs, for Service members and persons covered by this policy.

(B) Provide off installation referrals to the sexual assault victims, as needed.

(xxi) When a victim has a temporary or PCS or is deployed, request victim consent to transfer case management documents and upon receipt of victim consent, expeditiously transfer case management documents to ensure continuity of care and SAPR services. If the SARC has already closed the case and terminated victim contact, no other action is needed.

(xxii) Document and track the services referred to and requested by the victim from the time of the initial report of a sexual assault through the final case disposition or until the victim no longer desires services.

(A) Enter information into DSAID or Military Service DSAID-interface within 48 hours of the report of sexual assault. In deployed locations that have internet connectivity issues, the time frame is extended to 96 hours.

(B) Maintain in DSAID, or the DSAID-interfaced Military Service data system, an account of the services referred to and requested by the victim for all reported sexual assault incidents, from medical treatment through counseling, and from the time of the initial report of a sexual assault through the final case disposition or until the victim no longer desires services.

(xxiii) Provide information to assist installation commanders to manage trends and characteristics of sexual assault crimes at the Military Service-level and mitigate the risk factors that may be present within the associated environment (e.g., the necessity for better lighting in the showers or latrines and in the surrounding area).

(xxiv) Participate in the CMG to review individual cases of Unrestricted Reports of sexual assault.

(A) The installation SARC, shall serve as the co-chair of the CMG. This responsibility is not delegable. If an installation has multiple SARCs on the installation, a Lead SARC shall be designated by the Service concerned, and shall serve as the co-chair.

(B) Other SARCs and SAPR VAs shall actively participate in each CMG meeting by presenting oral updates on their assigned sexual assault victim cases, providing recommendations and, if needed, seeking assistance from the chair or victim's commander.

(xxv) Familiarize the unit commanders and supervisors of SAPR VAs with the SAPR VA roles and responsibilities, using the DD Form 2909, ''Victim Advocate Supervisor Statement of Understanding.'' DD Form 2909 is available via the Internet at *http://www.dtic.mil/whs/directives/infomgt/forms/eforms/dd2909.pdf.*

(b) *SAPR VA procedures.* (1) The SAPR VA shall:

(i) Upon implementation of the D–SAACP, comply with DoD Sexual Assault Advocate Certification requirements.

(ii) Be trained in and understand the confidentiality requirements of Restricted Reporting and MRE 514. Training must include exceptions to Restricted Reporting and MRE 514.

(iii) Facilitate care and provide referrals and non-clinical support to the adult victim of a sexual assault.

(A) Support will include providing information on available options and resources so the victim can make informed decisions about his or her case.

(B) The SAPR VA will be directly accountable to the SARC in adult sexual assault cases (not under the FAP jurisdiction) and shall provide victim advocacy for adult victims of sexual assault.

(iv) Acknowledge their understanding of their advocacy roles and responsibilities using DD Form 2909.

(2) At the Military Service's discretion, victim advocacy may be provided by a Service member or DoD civilian employee. Personnel responsible for providing victim advocacy shall:

(i) Be notified and immediately respond upon receipt of a report of sexual assault.

(ii) Provide coordination and encourage victim service referrals and ongoing, non-clinical support to the victim of a reported sexual assault and facilitate care in accordance with the Sexual Assault Response Protocols prescribed SAPR Policy Toolkit located on *www.sapr.mil.* Assist the victim in navigating those processes required to obtain care and services needed. It is neither the SAPR VA's role nor responsibility to be the victim's mental health provider or to act as an investigator.

(iii) Report directly to the SARC while carrying out sexual assault advocacy responsibilities.

§ 105.11 Healthcare provider procedures.

This section provides guidance on medical management of victims of sexual assault to ensure standardized, timely, accessible, and comprehensive healthcare for victims of sexual assault, to include the ability to elect a SAFE Kit. This policy is applicable to all MHS personnel who provide or coordinate medical care for victims of sexual assault covered by this part.

(a) *Standardized medical care.* To ensure standardized healthcare, the Surgeons General of the Military Departments shall:

(1) Require the recommendations for conducting forensic exams of adult sexual assault victims in the U.S. Department of Justice Protocol be used to establish minimum standards for healthcare intervention for victims of sexual assault. Training for military sexual assault medical examiners and healthcare providers shall be provided to maintain optimal readiness.

(2) Require that MTFs that provide SAFEs for Service members or TRICARE eligible beneficiaries through an MOU or MOA with private or public sector entities verify initially and periodically that those entities meet or exceed standards of the recommendations for conducting forensic exams of adult sexual victims in the U.S. Department of Justice Protocol. In addition, verify that as part of the MOU or MOA, victims are be asked whether they would like the SARC to be notified, and if notified, that a SARC or SAPR VA actually responds.

(3) Require that medical providers providing healthcare to victims of sexual assault in remote areas or while deployed have access to the current version of the U.S. Department of Justice Protocol for conducting forensic exams.

(4) Implement procedures to provide the victim information regarding the availability of a SAFE Kit, which the victim has the option of refusing. If performed in the MTF, the healthcare provider shall use a SAFE Kit and the

most current edition of the DD Form 2911.

(5) Require that the SARC be notified of all incidents of sexual assault in accordance with sexual assault reporting procedures in § 105.8 of this part.

(i) Require processes be established to support coordination between healthcare personnel and the SARC.

(ii) If a victim initially seeks assistance at a medical facility, SARC notification must not delay emergency care treatment of a victim.

(6) Require that care provided to sexual assault victims shall be gender-responsive, culturally competent, and recovery-oriented. Healthcare providers giving medical care to sexual assault victims shall recognize the high prevalence of pre-existing trauma (prior to present sexual assault incident) and the concept of trauma-informed care.

(7) If the healthcare provider is not appropriately trained to conduct a SAFE Kit, require that he or she arrange for a properly trained DoD healthcare provider to do so, if available.

(i) In the absence of a properly trained DoD healthcare provider, the victim shall be offered the option to be transported to a non-DoD healthcare provider for the SAFE Kit, if the victim wants a forensic exam. Victims who are not beneficiaries of the MHS shall be advised that they can obtain a SAFE Kit through a local civilian healthcare provider.

(ii) When a SAFE Kit is performed at local civilian medical facilities, those facilities are bound by State and local laws, which may require reporting the sexual assault to civilian law enforcement.

(iii) If the victim requests to file a report of sexual assault, the healthcare personnel, to include psychotherapists and other personnel listed in MRE 513 (Executive Order 13593), shall immediately call a SARC or SAPR VA, to assure that a victim is offered SAPR services and so that a DD Form 2910 can be completed.

(8) Require that SAFE Kit evidence collection procedures are the same for a Restricted and an Unrestricted Report of sexual assault.

(i) Upon completion of the SAFE Kit and securing of the evidence, the healthcare provider will turn over the material to the appropriate Military Service-designated law enforcement agency or MCIO as determined by the selected reporting option.

(ii) Upon completion of the SAFE Kit, the sexual assault victim shall be provided with a hard copy of the completed DD Form 2911. Advise the victim to keep the copy of the DD Form 2911 in their personal permanent records as this form may be used by the victim in other matters before other agencies (e.g., Department of Veterans Affairs) or for any other lawful purpose.

(9) Publicize availability of medical treatment (to include behavioral health), and referral services for alleged offenders who are also active duty Service members.

(10) Require the healthcare provider in the course of, preparing a SAFE Kit for Restricted Reports of sexual assault:

(i) Contact the designated installation official, usually the SARC, who shall generate an alpha-numeric RRCN, unique to each incident. The RRCN shall be used in lieu of PII to label and identify evidence collected from a SAFE Kit (e.g., accompanying documentation, personal effects, and clothing). The SARC shall provide (or the SARC will designate the SAPR VA to provide) the healthcare provider with the RRCN to use in place of PII.

(ii) Upon completion of the SAFE Kit, package, seal, and completely label of the evidence container(s) with the RRCN and notify the Military Service designated law enforcement agency or MCIO.

(11) Require that healthcare personnel must maintain the confidentiality of a Restricted Report to include communications with the victim, the SAFE, and the contents of the SAFE Kit, unless an exception to Restricted reporting applies. Healthcare personnel who make an unauthorized disclosure of a confidential communication are subject to disciplinary action and that unauthorized disclosure has no impact on the status of the Restricted Report; all Restricted Reporting information remains confidential and protected. Improper disclosure of confidential communications under Restricted Reporting, improper release of medical information, and other violations of this guidance are prohibited and may result in discipline pursuant to the UCMJ or State statute, loss of privileges, or other adverse personnel or administrative actions.

(b) *Timely medical care.* To comply with the requirement to provide timely medical care, the Surgeons General of the Military Departments shall:

(1) Implement processes or procedures giving victims of sexual assault priority as emergency cases.

(2) Provide sexual assault victims with priority treatment as emergency cases, regardless of evidence of physical injury, recognizing that every minute a patient spends waiting to be examined may cause loss of evidence and undue trauma. Priority treatment as emergency cases includes activities relating to access to healthcare, coding, and medical transfer or evacuation, and complete physical assessment, examination, and treatment of injuries, including immediate emergency interventions.

(c) *Comprehensive medical care.* To comply with the requirement to provide comprehensive medical care, the Surgeons General of the Military Departments shall:

(1) Establish processes and procedures to coordinate timely access to emergency, follow-up, and specialty care that may be provided in the direct or civilian purchased care sectors for eligible beneficiaries of the Military Health System.

(2) Evaluate and implement, to the extent feasible, processes linking the medical management of the sexually assaulted patient to the primary care manager. To locate his or her primary care manager, a beneficiary may go to beneficiary web enrollment at *https://www.hnfs.com/content/hnfs/home/tn/bene/res/faqs/beneficiary/enrollment_eligibility/who_pcm.html.*

(d) *Clinically stable.* Require the healthcare provider to consult with the victim, once clinically stable, regarding further healthcare options to the extent eligible, which shall include, but are not limited to:

(1) Testing, prophylactic treatment options, and follow-up care for possible exposure to human immunodeficiency virus (HIV) and other sexually transmitted diseases or infections (STD/I).

(2) Assessment of the risk of pregnancy, options for emergency contraception, and any necessary follow-up care and referral services.

(3) Assessment of the need for behavioral health services and provisions for a referral, if necessary or requested by the victim.

(e) *Other responsibilities.* (1) The Surgeons General of the Military Departments shall:

(i) Identify a primary office to represent their Department in Military Service coordination of issues pertaining to medical management of victims of sexual assault.

(ii) Assign a healthcare provider at each MTF as the primary point of contact concerning DoD and Military Service SAPR policy and for updates in sexual assault care.

(2) The Combatant Commanders shall:

(i) Require that victims of sexual assault in deployed locations within their area of responsibility are transported to an appropriate evaluation site, evaluated, treated for injuries (if any), and offered SAPR VA assistance and a SAFE as quickly as possible.

(ii) Require that U.S. theater hospital facilities (Level 3, North Atlantic Treaty Organization role 3) (see § 105.3) have appropriate capability to provide experienced and trained SARC and SAPR VA services, SAFE providers, and those victims of sexual assault, regardless of reporting status, are medically evacuated to such facilities as soon as possible (within operational needs) of making a report, consistent with operational needs.

§ 105.12 SAFE Kit collection and preservation.

For the purposes of the SAPR Program, forensic evidence collection and document and evidence retention shall be completed in accordance with this section pursuant to 32 CFR part 103, taking into account the medical condition, needs, requests, and desires of each sexual assault victim covered by this part.

(a) Medical services offered to eligible victims of sexual assault include the ability to elect a SAFE Kit in addition to the general medical management related to sexual assault response, to include mental healthcare. The SAFE of a sexual assault victim should be conducted by a healthcare provider who has specialized education and clinical experience in the collection of forensic evidence and treatment of these victims. The forensic component includes gathering information in DD Form 2911 from the victim for the medical forensic history, an examination, documentation of biological and physical findings, collection of evidence from the victim, and follow-up as needed to document additional evidence.

(b) The process for collecting and preserving sexual assault evidence for the Restricted Reporting option is the same as the Unrestricted Reporting option, except that the Restricted Reporting option does not trigger the official investigative process, and any evidence collected has to be placed inside the SAFE Kit, which is marked with the RRCN in the location where the victim's name would have otherwise been written. The victim's SAFE and accompanying Kit is treated as a confidential communication under this reporting option. The healthcare provider shall encourage the victim to obtain referrals for additional medical, psychological, chaplain, victim advocacy, or other SAPR services, as needed. The victim shall be informed that the SARC will assist them in accessing SAPR services.

(c) In situations where installations do not have a SAFE capability, the installation commander will require that the eligible victim, who wishes to have a SAFE, be transported to a MTF or local off-base, non-military facility that has a SAFE capability. A local sexual assault nurse examiner or other healthcare providers who are trained and credentialed to perform a SAFE may also be contracted to report to the MTF to conduct the examination.

(d) The SARC or SAPR VA shall tell the victim of any local or State sexual assault reporting requirements that may limit the possibility of Restricted Reporting before proceeding with the SAFE.

(e) Upon completion of the SAFE in an Unrestricted Reporting case, the healthcare provider shall package, seal, and label the evidence container(s) with the victim's name and notify the Military Service designated law enforcement agency or MCIO.

(1) The DoD law enforcement or MCIO representative shall be trained and capable of collecting and preserving evidence to assume custody of the evidence using established chain of custody procedures, consistent with the guidelines published under the authority and oversight of the IG, DoD.

(2) MOUs and MOAs, with off-base, non-military facilities for the purposes of providing medical care to eligible victims of sexual assault covered under this part, shall include instructions for the notification of a SARC (regardless of whether a Restricted or Unrestricted Report of sexual assault is involved), and procedures of the receipt of evidence and disposition of evidence back to the DoD law enforcement agency or MCIO.

(f) Upon completion of the SAFE in a Restricted Reporting case, the healthcare provider shall package, seal, and label the evidence container(s) with the RRCN and store in accordance with Service regulations.

(1) The DoD law enforcement or MCIO representative shall be trained and capable of collecting and preserving evidence to assume custody of the evidence using established chain of custody procedures, consistent with the guidelines published under the authority and oversight of the IG, DoD. MOUs and MOAs, with off-base, non-military facilities for the purpose of to providing medical care to eligible victims of sexual assault covered under this part, shall include instructions for the notification of a SARC (regardless of whether a Restricted or Unrestricted Report of sexual assault is involved), procedures for the receipt of evidence, how to request an RRCN, instructions on where to write the RRCN on the SAFE Kit, and disposition of evidence back to the DoD law enforcement agency or MCIO.

(2) Any evidence and the SAFE Kit in Restricted Reporting cases (to include the DD Form 2911) shall be stored for 5 years from the date of the victim's Restricted Report of the sexual assault, thus allowing victims additional time to accommodate, for example, multiple deployments or deployments exceeding 12 months.

(i) The SARC will contact the victim at the 1-year mark of the report to inquire whether the victim wishes to change their reporting option to Unrestricted.

(A) If the victim does not change to Unrestricted Reporting, the SARC will explain to the victim that the SAFE Kit, DD Form 2911, and the DD Form 2910 will be retained for a total of 5 years from the time the victim signed the DD Form 2910 (electing the Restricted Report) and will then be destroyed. (However, at the request of a member of the Armed Forces who files a Restricted Report on an incident of sexual assault, the Department of Defense Forms 2910 and 2911 filed in connection with the Restricted Report be retained for 50 years.) The SARC will emphasize to the victim that his or her privacy will be respected and he or she will not be contacted again by the SARC. The SARC will stress it is the victim's responsibility from that point forward, if the victim wishes to change from a Restricted to an Unrestricted Report, to affirmatively contact a SARC before the 5-year retention period elapses.

(B) The victim will be advised again to keep a copy of the DD Form 2910 and the DD Form 2911 in his or her personal permanent records as these forms may be used by the victim in other matters with other agencies (e.g., Department of Veterans Affairs) or for any other lawful purpose.

(C) If the victim needs another copy of either of these forms, he or she can request it at this point and the SARC shall assist the victim in accessing the requested copies within 7 business days. The SARC will document this request in the DD Form 2910.

(ii) At least 30 days before the expiration of the 5-year storage period, the DoD law enforcement or MCIO shall notify the installation SARC that the storage period is about to expire and confirm with the SARC that the victim has not made a request to change to Unrestricted Reporting or made a request for any personal effects.

(A) If there has been no change, then at the expiration of the storage period in compliance with established procedures for the destruction of evidence, the designated activity, generally the DoD law enforcement agency or MCIO, may

destroy the evidence maintained under that victim's RRCN.

(B) If, before the expiration of the 5-year storage period, a victim changes his or her reporting preference to the Unrestricted Reporting option, the SARC shall notify the respective MCIO, which shall then assume custody of the evidence maintained by the RRCN from the DoD law enforcement agency or MCIO, pursuant to established chain of custody procedures. MCIO established procedures for documenting, maintaining, and storing the evidence shall thereafter be followed.

(1) The DoD law enforcement agency or MCIO, which will receive forensic evidence from the healthcare provider if not already in custody, and label and store such evidence shall be designated.

(2) The designated DoD law enforcement agency or MCIO representative must be trained and capable of collecting and preserving evidence in Restricted Reports prior to assuming custody of the evidence using established chain of custody procedures.

(iii) Evidence will be stored by the DoD law enforcement agency or MCIO until the 5-year storage period for Restricted Reporting is reached or a victim changes to Unrestricted Reporting.

§ 105.13 Case management for Unrestricted Reports of sexual assault.

(a) *General.* (1) The installation commander or the deputy installation commander shall chair the CMG on a monthly basis to review individual cases, facilitate monthly victim updates, and direct system coordination, accountability, entry of disposition and victim access to quality services. This responsibility may not be delegated. If there are no cases in a given month, the CMG will still meet to ensure training, processes, and procedures are complete for the system coordination.

(2) The installation SARC shall serve as the co-chair of the CMG. This responsibility may not be delegated. Only a SARC who is a Service member or DoD civilian employee may co-chair the multi-disciplinary CMG.

(3) Required CMG members shall include: victim's commander; all SARCs assigned to the installation (mandatory attendance regardless of whether they have an assigned victim being discussed); victim's SAPR VA, MCIO and DoD law enforcement who are involved with and working on a specific case; victim's healthcare provider or mental health and counseling services provider; chaplain, legal representative, or SJA; installation personnel trained to do a safety assessment of current sexual assault victims; victim's VWAP representative (or civilian victim witness liaison, if available). MCIO, DoD law enforcement and the legal representative or SJA shall provide case dispositions. The CMG chair will ensure that the appropriate principal is available.

(4) If the installation is a joint base or if the installation has tenant commands, the commander of the tenant organization and the designated Lead SARC shall be invited to the CMG meetings. The commander of the tenant organization shall provide appropriate information to the host commander, to enable the host commander to provide the necessary supporting services.

(5) CMG members shall receive the mandatory SAPR training pursuant to § 105.14 of this part.

(6) Service Secretaries shall issue guidance to ensure that equivalent standards are met for case oversight by CMGs in situations where SARCs are not installation-based but instead work within operational and/or deployable organizations.

(b) *Procedures.* (1) The CMG members shall carefully consider and implement immediate, short-term, and long-term measures to help facilitate and assure the victim's well-being and recovery from the sexual assault. They will closely monitor the victim's progress and recovery and strive to protect the victim's privacy, ensuring only those with an official need to know have the victim's name and related details. Consequently, where possible, each case shall be reviewed independently bringing in only those personnel associated with the case, as well as the CMG chair and co-chair.

(2) The CMG chair shall:

(i) Ensure that commander(s) of the Service member(s) who is a subject of a sexual assault allegation, provide in writing all disposition data, to include any administrative or judicial action taken, stemming from the sexual assault investigation to the MCIO. Information provided by commanders is used to meet the Department's requirements for the submission of criminal history data to the Criminal Justice Information System, Federal Bureau of Investigation; and to record the disposition of offenders into DSAID.

(ii) Require that case dispositions are communicated to the sexual assault victim within 2 business days of the final disposition decision. The CMG chair will require that the appropriate paperwork (pursuant to Service regulation) is submitted for each case disposition within 24 hours, which shall be inputted into DSAID or a DSAID Service interface system by the designated officials.

(iii) Monitor and require immediate transfer of sexual assault victim information between SARCs and SAPR VAs, in the event of the SARC's or SAPR VA's change of duty station, to ensure continuity of SAPR services for victims.

(iv) Require that the SARCs and SAPR VAs actively participate in each CMG meeting by presenting oral updates (without disclosing protected communications and victim confidentiality), providing recommendations and, if needed, the SARC or the SAPR VA shall affirmatively seek assistance from the chair or victim's commander.

(v) Require an update of the status of each expedited transfer request and MPO.

(vi) If the victim has informed the SARC of an existing CPO, the chair shall require the SARC to inform the CMG of the existence of the CPO and its requirements.

(vii) After protective order documentation is presented at the CMG from the SARC or the SAPR VA, the DoD law enforcement agents at the CMG will document the information provided in their investigative case file, to include documentation for Reserve Component personnel in title 10 status.

(3) The CMG Co-chair shall:

(i) Confirm that all reported sexual assaults are entered into DSAID or a DSAID Service interface system within 48 hours of the report of sexual assault. In deployed locations that have internet connectivity issues, the time frame is extended to 96 hours.

(ii) Confirm that only the SARC is inputting information into DSAID or a DSAID Service interface system.

(iii) Keep minutes of the monthly meetings to include those in attendance and issues discussed. CMG participants are only authorized to share case information with those who have an official need to know.

(4) For each victim, the assigned SARC and SAPR VA will confirm at the CMG that the victim has been informed of their SAPR services to include counseling, medical, and legal resources without violating victim confidentiality.

(5) For each victim, each CMG member who is involved with and working on a specific case will provide an oral update without violating victim confidentiality or disclosing privileged communications.

(6) For each victim, the victim's commander will confirm at the CMG that the victim has received a monthly update from the victim's commander of her/his case within 72 hours of the last

CMG, to assure timely victim updates. This responsibility may not be delegated.

(7) On a joint base or if the installation has tenant commands:

(i) The CMG membership will explore the feasibility of joint use of existing SAPR resources, to include rotating on-call status of SARCs and SAPR VAs. Evaluate the effectiveness of communication among SARCs, SAPR VAs, and first responders.

(ii) The CMG chair will request an analysis of data to determine trends and patterns of sexual assaults and share this information with the commanders on the joint base or the tenant commands. The CMG membership will be briefed on that trend data.

(8) There will be a safety assessment capability. The CMG chair will identify installation personnel who have been trained and are able to perform a safety assessment of each sexual assault victim.

(i) The CMG chair will require designated installation personnel, who have been trained and are able to perform a safety assessment of each sexual assault victim, to become part of the CMG and attend every monthly meeting.

(ii) The CMG chair will request a safety assessment by trained personnel of each sexual assault victim at each CMG meeting, to include a discussion of expedited military transfers or MPOs, if needed.

(iii) The CMG co-chair will confirm that the victims are advised that MPOs are not enforceable off-base by civilian law enforcement.

(iv) If applicable, the CMG chair will confirm that both the suspect and the victim have a hard copy of the MPO.

(v) Form a High-Risk Response Team if a victim is assessed to be in a high-risk situation. The CMG chair will immediately stand up a multi-disciplinary High-Risk Response Team to continually monitor the victim's safety, by assessing danger and developing a plan to manage the situation.

(A) The High-Risk Response Team shall be chaired by the victim's commander and, at a minimum, include the suspect's commander; the victim's SARC and SAPR VA; the MCIO, the judge advocate, and the VWAP assigned to the case, victim's healthcare provider or mental health and counseling services provider; and the personnel who conducted the safety assessment.

(B) The High-Risk Response Team shall make their first report to the installation commander, CMG chair, and CMG co-chair within 24 hours of being activated. A briefing schedule for the CMG chair and co-chair will be determined, but briefings shall occur at least once a week while the victim is on high-risk status.

(C) The High-Risk Response Team assessment of the victim shall include, but is not limited to evaluating:

(*1*) Victim's safety concerns.

(*2*) Suspect's access to the victim or whether the suspect is stalking or has stalked the victim.

(*3*) Previous or existing relationship or friendship between the victim and the suspect, or the suspect and the victim's spouse, or victim's dependents. The existence of children in common. The sharing (or prior sharing) of a common domicile.

(*4*) Whether the suspect (or the suspect's friends or family members) has destroyed victim's property; threatened or attacked the victim; or threatened, attempted, or has a plan to harm or kill the victim or the victim's family members; or intimidated the victim to withdraw participation in the investigation or prosecution.

(*5*) Whether the suspect has threatened, attempted, or has a plan to commit suicide.

(*6*) Whether the suspect has used a weapon, threatened to use a weapon, or has access to a weapon that may be used against the victim.

(*7*) Whether the victim has sustained serious injury during the sexual assault incident.

(*8*) Whether the suspect has a history of law enforcement involvement regarding domestic abuse, assault, or other criminal behavior.

(*9*) Whether the victim has a civilian protective order or command has an MPO against the suspect, or there has been a violation of a civilian protective order or MPO by the suspect.

(*10*) History of drug or alcohol abuse by either the victim or the suspect.

(*11*) Whether the suspect exhibits erratic or obsessive behavior, rage, agitation, or instability.

(*12*) Whether the suspect is a flight risk.

§ 105.14 Training requirements for DoD personnel.

(a) *Management of training requirements.* (1) Commanders, supervisors, and managers at all levels shall be responsible for the effective implementation of the SAPR program.

(2) Military and DoD civilian officials at each management level shall advocate a robust SAPR program and provide education and training that shall enable them to prevent and appropriately respond to incidents of sexual assault.

(3) Data shall be collected according to the annual reporting requirements in accordance with Public Law 111–383 and explained in § 105.16 of this part.

(b) *General training requirements.* (1) The Secretaries of the Military Departments and the Chief, NGB, shall direct the execution of the training requirements in this section to individually address SAPR prevention and response in accordance with § 105.5 of this part. These SAPR training requirements shall apply to all Service members and DoD civilian personnel who supervise Service members.

(i) The Secretaries and the Chief, NGB, shall develop dedicated SAPR training to ensure comprehensive knowledge of the training requirements.

(ii) The SAPR training, at a minimum, shall incorporate adult learning theory, which includes interaction and group participation.

(iii) Upon request, the Secretaries and the Chief, NGB, shall submit a copy of SAPR training programs or SAPR training elements to USD(P&R) through SAPRO for evaluation of consistency and compliance with DoD SAPR training standards in this part. The Military Departments will correct USD(P&R) identified DoD SAPR policy and training standards discrepancies.

(2) Commanders and managers responsible for training shall require that all personnel (i.e., all Service members, DoD civilian personnel who supervise Service members, and other personnel as directed by the USD(P&R)) are trained and that completion of training data is annotated. Commanders for accession training will ensure all new accessions are trained and that completion of training data is annotated.

(3) If responsible for facilitating the training of civilians supervising Service members, the unit commander or civilian director shall require all SAPR training requirements in this section are met. The unit commander or civilian equivalent shall be accountable for requiring data collection regarding the training.

(4) The required subject matter for the training shall be appropriate to the Service member's grade and commensurate with their level of responsibility, to include:

(i) Defining what constitutes sexual assault. Utilizing the term ''sexual assault'' as defined in 32 CFR part 103.

(ii) Explaining why sexual assaults are crimes.

(iii) Defining the meaning of ''consent'' as defined in 32 CFR part 103.

(iv) Explaining offender accountability and UCMJ violations.

(v) Explaining the distinction between sexual harassment and sexual assault and that both are unacceptable forms of

behavior even though they may have different penalties. Emphasizing the distinction between civil and criminal actions.

(vi) Explaining available reporting options (Restricted and Unrestricted), the advantages and limitations of each option, the effect of independent investigations on Restricted Reports (See § 105.8(a)(6) of this part) and explaining MRE 514.

(vii) Providing an awareness of the SAPR program (DoD and Service) and command personnel roles and responsibilities, including all available resources for victims on and off base.

(viii) Identifying prevention strategies and behaviors that may reduce sexual assault, including bystander intervention, risk reduction, and obtaining affirmative consent.

(ix) Discussing process change to ensure that all sexual assault response services are gender-responsive, culturally-competent, and recovery-oriented.

(x) Discussing expedited transfers and MPO procedures.

(xi) Providing information to victims when the alleged perpetrator is the commander or in the victim's chain of command, to go outside the chain of command to report the offense to other COs or an Inspector General. Victims shall be informed that they can also seek assistance from a legal assistance attorney or the DoD Safe Helpline.

(xii) Discussing of document retention for sexual assault documents (DD Forms 2910 and 2911), to include retention in investigative records. Explaining why it is recommended that sexual assault victims retain sexual assault records for potential use in the Department of Veterans Affairs benefits applications.

(c) *DoD personnel training requirements.* Refer to Military Service-specific training officers that maintain personnel training schedules.

(1) Accessions training shall occur upon initial entry.

(i) Mirror the General Training Requirements in § 105.14(b).

(ii) Provide scenario-based, real-life situations to demonstrate the entire cycle of prevention, reporting, response, and accountability procedures to new accessions to clarify the nature of sexual assault in the military environment.

(2) Annual training shall occur once a year and is mandatory for all Service members regardless of rank or occupation or specialty.

(i) Mirror the General Training Requirements in § 105.14(b).

(ii) Explain the nature of sexual assault in the military environment using scenario-based, real-life situations to demonstrate the entire cycle of prevention, reporting, response, and accountability procedures.

(iii) Deliver to Service members in a joint environment from their respective Military Services and incorporate adult learning theory.

(3) Professional military education (PME) and leadership development training (LDT).

(i) For all trainees, PME and LDT shall mirror the General Training Requirements in § 105.14.

(ii) For senior noncommissioned officers and commissioned officers, PME and LDT shall occur during developmental courses throughout the military career and include:

(A) Explanation and analysis of the SAPR program.

(B) Explanation and analysis of the necessity of immediate responses after a sexual assault has occurred to counteract and mitigate the long-term effects of violence. Long-term responses after sexual assault has occurred will address the lasting consequences of violence.

(C) Explanation of rape myths (See SAPR Toolkit on *www.sapr.mil*), facts, and trends pertaining to the military population.

(D) Explanation of the commander's and senior enlisted Service member's role in the SAPR program.

(E) Review of all items found in the commander's protocols for Unrestricted Reports of sexual assault. (See SAPR Toolkit on *www.sapr.mil.*)

(F) Explanation of what constitutes reprisal according to § 105.3 and procedures for reporting allegations of reprisal in accordance with DoDD 7050.06.

(4) Pre-deployment training shall be provided.

(i) Mirror the General Training Requirements in § 105.14(b).

(ii) Explain risk reduction factors tailored to the deployment location.

(iii) Provide a brief history of the specific foreign countries or areas anticipated for deployment, and the area's customs, mores, religious practices, and status of forces agreement. Explain cultural customs, mores, and religious practices of coalition partners.

(iv) Identify the type of trained sexual assault responders who are available during the deployment (e.g., law enforcement personnel, legal personnel, SARC, SAPR VAs, healthcare personnel, chaplains).

(v) Upon implementation of the D–SAACP, and unless previously credentialed, include completion of certification for SARCs and VAs.

(5) Post-deployment reintegration training shall occur within 30 days of returning from deployment and:

(i) Commanders of re-deploying personnel will ensure training completion.

(ii) Explain available counseling and medical services, reporting options, and eligibility benefits for Service members and the Reserve Component.

(iii) Explain MRE 514. Explain that Reserve members not in active service at the time of the incident or at the time of the report can make a Restricted or Unrestricted report with the SARC or SAPR VA when on active duty and then be eligible to receive SAPR services.

(6) Pre-command training shall occur prior to filling a command position.

(i) Mirror the General Training Requirements in § 105.14(b).

(A) The personnel trained shall include all officers who are selected for command and the unit's senior enlisted Service member.

(B) The required subject matter for the training shall be appropriate to the level of responsibility and commensurate with level of command.

(ii) Explain rape myths, facts, and trends.

(iii) Provide awareness of the SAPR program and explain the commander's and senior enlisted Service member's role in executing their SAPR service program.

(iv) Review all items found in the commander's protocols for Unrestricted Reports of sexual assault. (See SAPR Toolkit on *www.sapr.mil.*)

(v) Explain what constitutes reprisal and procedures for addressing reprisal allegations.

(d) *G/FO and SES personnel training requirements.* G/FO and SES personnel training shall occur at the initial executive level program training and annually thereafter. Mirror the General Training Requirements in § 105.14(b).

(1) The Military Services' executive level management offices are responsible for tracking data collection regarding the training.

(2) The required subject matter for the training shall be appropriate to the level of responsibility and commensurate with level of command.

(3) Training guidance for other DoD components other than the Military Departments, will be provided in a separate issuance.

(e) Military Recruiters. Military recruiter training shall occur annually and mirror the General Training Requirements in § 105.14(b).

(f) *Training for civilians who supervise service members.* Training is required for civilians who supervise Service members, for all civilians in accordance with section 585 of Public Law 112–81 and, if feasible, highly recommended for DoD contractors.

Training shall occur annually and mirror the General Training Requirements in § 105.14(b).

(g) *Responder training requirements.* To standardize services throughout the DoD, as required in 32 CFR part 103, all DoD sexual assault responders shall receive the same baseline training. These minimum training standards form the baseline on which the Military Services and specialized communities can build. First responders are composed of personnel in the following disciplines or positions: SARCs; SAPR VAs; healthcare personnel; DoD law enforcement; MCIOs; judge advocates; chaplains; firefighters and emergency medical technicians. Commanders and VWAP personnel can be first responders. Commanders receive their SAPR training separately.

(1) All responder training shall:

(i) Be given in the form of initial and annual refresher training from their Military Service in accordance with § 105.5 of this part. Responder training is in addition to annual training.

(ii) Be developed for each responder functional area from each military service and shall:

(A) Explain the different sexual assault response policies and critical issues.

(*1*) DoD SAPR policy, including the role of the SARC, SAPR VA, victim witness liaison, and CMG.

(*2*) Military Service-specific policies.

(*3*) Unrestricted and Restricted Reporting as well as MRE 514.

(*4*) Exceptions to Restricted Reporting and limitations to use.

(*5*) Change in victim reporting preference election.

(*6*) Victim advocacy resources.

(B) Explain the requirement that SARCs must respond in accordance with this part.

(C) Describe local policies and procedures with regards to local resources, referrals, procedures for military and civilians as well as collaboration and knowledge of resources and referrals that can be utilized at that specific geographic location.

(D) Explain the range of victim responses to sexual assault to include:

(*1*) Victimization process, including re-victimization and secondary victimization.

(*2*) Counterintuitive behavior.

(*3*) Impact of trauma on memory and recall.

(*4*) Potential psychological consequences, including acute stress disorder and post traumatic stress disorder.

(E) Explain deployment issues, including remote location assistance.

(F) Explain the possible outcomes of investigations of sexual assault.

(G) Explain the possible flow of a sexual assault investigation. (See flowchart in the SAPR Policy Toolkit, located at www.sapr.mil.)

(H) Be completed prior to deployment.

(I) Recommend, but not require, that SAPR training for responders include safety and self care.

(2) SARC training shall:

(i) Provide the responder training requirements in § 105.14(g)(1).

(ii) Be scenario-based and interactive. Provide for role play where a trainee SARC counsels a sexual assault victim and is critiqued by a credentialed SARC and/or an instructor.

(iii) Explain roles and responsibilities and command relationships.

(iv) Explain the different reporting options, to include the effects of independent investigations (see § 105.8 of this part). Explain the exceptions to Restricted Reporting, with special emphasis on suspending Restricted Reporting where it is necessary to prevent or mitigate a serious and imminent threat to the health or safety of the victim or another person.

(v) Provide training on entering reports of sexual assault into DSAID through interface with a Military Service data systems or by direct data entry. Provide training on potential discovery obligations regarding any notes entered in DSAID.

(vi) Provide training on document retention of Restricted and Unrestricted cases.

(vii) Provide training on expedited transfer and MPO procedures.

(viii) Provide instruction on all details of SAPR VA screening, including addressing:

(A) What to do if SAPR VA is a recent victim, or knows sexual assault victims.

(B) What to do if SAPR VA was accused of being an offender or knows someone who was accused.

(C) Identifying the SAPR VA's personal biases.

(D) The necessary case management skills.

(*1*) Required reports and proper documentation as well as records management.

(*2*) Instruction to complete DD Form 2910 and proper storage according to Federal service privacy regulations.

(*3*) Ability to conduct SAPR training, when requested by the SARC or commander.

(*4*) Transferring cases to another installation SARC.

(ix) Explain the roles and responsibilities of the VWAP and DD Form 2701.

(x) Inform SARCs of the existence of the SAPRO Web site at *http://www.sapr.mil*, and encourage its use for reference materials and general DoD-level SAPR information.

(3) SAPR VA training shall:

(i) Provide the responder training requirements in § 105.14(g)(1).

(ii) Be scenario-based and interactive. Provide for role play where a trainee SAPR VA counsels a sexual assault victim, and then that counseling session is critiqued by an instructor.

(iii) Explain the different reporting options, to include the effects of independent investigations (see § 105.8 of this part). Explain the exceptions to Restricted Reporting, with special emphasis on suspending Restricted Reporting where it is necessary to prevent or lessen a serious and imminent threat to the health or safety of the victim or another person.

(iv) Include:

(A) Necessary critical advocacy skills.

(B) Basic interpersonal and assessment skills.

(*1*) Appropriate relationship and rapport building.

(*2*) Sensitivity training to prevent re-victimization.

(C) Crisis intervention.

(D) Restricted and Unrestricted Reporting options as well as MRE 514.

(E) Roles and limitations, to include: command relationship, SAPR VA's rights and responsibilities, reporting to the SARC, and recognizing personal biases and issues.

(F) Preparing proper documentation for a report of sexual assault.

(G) Document retention in Restricted and Unrestricted cases.

(H) Expedited transfer and MPO procedures.

(I) Record keeping rules for protected disclosures relating to a sexual assault.

(J) A discussion of ethical issues when working with sexual assault victims as a VA.

(K) A discussion of individual versus system advocacy.

(L) A review of the military justice process and adverse administrative actions.

(M) Overview of criminal investigative process and military judicial requirements.

(N) A review of the issues in victimology.

(*1*) Types of assault.

(*2*) Health consequences such as mental and physical health.

(*3*) Cultural and religious differences.

(*4*) Victims' rights and the victim's role in holding offenders appropriately accountable and limitations on offender accountability when the victim elects Restricted Reporting.

(*5*) Healthcare management of sexual assault and medical resources and treatment options to include the medical examination, the forensic examination, mental health and counseling, pregnancy, and STD/I and HIV.

(*6*) Identification of safety issues and their immediate report to the SARC or law enforcement, as appropriate.

(*7*) Identification of reprisal and retaliation actions against the victim; procedures for responding to reprisal actions and their immediate reporting to the SARC and the VWAP; safety planning to include how to prevent retaliation or reprisal actions against the victim.

(*8*) Separation of the victim and offender as well as the MPO and CPO process.

(*9*) Expedited transfer process for the victim.

(O) An explanation of the roles and responsibilities of the VWAP and DD Form 2701.

(P) Safety and self care, to include vicarious trauma.

(4) Healthcare personnel training shall be in two distinct training categories:

(i) Training for Healthcare Personnel Assigned to an MTF. In addition to the responder training requirements in § 105.14(g)(1), MTF healthcare personnel shall be trained and remain proficient in medical treatment resources, in conducting a sexual assault patient interviews, and in conducting the SAFE Kit process. Healthcare personnel who received a Restricted Report shall immediately call a SARC or SAPR VA, so a DD Form 2910 can be completed.

(ii) Training for Healthcare Providers Performing SAFEs in MTFs (see 32 CFR 103.4). In addition to the responder training requirements in § 105.14(g)(1), healthcare providers performing SAFEs shall be trained and remain proficient in conducting SAFEs. Healthcare providers who may be called on to provide comprehensive medical treatment to a sexual assault victim, including performing SAFEs are: obstetricians and gynecologists and other licensed practitioners (preferably family physicians, emergency medicine physicians, and pediatricians); advanced practice nurses with specialties in midwifery, women's health, family health, and pediatrics; physician assistants trained in family practice or women's health; and registered nurses with documented education, training, and clinical practice in sexual assault examinations in accordance with the U.S. Department of Justice Protocol. Healthcare personnel who received a Restricted Report shall immediately call a SARC or SAPR VA so a DD Form 2910 can be completed.

(iv) Healthcare personnel and provider training shall:

(A) Explain how to conduct a sexual assault patient interview to obtain medical history and assault information.

(B) Explain how to conduct a SAFE in accordance with the U.S. Department of Justice Protocol and include explanations on:

(*1*) SAFE Kit and DD Form 2911.

(*2*) Toxicology kit for suspected drug-facilitated cases.

(*3*) Chain of custody.

(*4*) Translation of findings.

(*5*) Proper documentation.

(*6*) Storage of evidence in Restricted Reports (e.g., RRCN).

(*7*) Management of the alleged offender.

(*8*) Relevant local and State laws and restrictions.

(*9*) Medical treatment issues during deployments including remote location assistance to include: location resources including appropriate personnel, supplies (drying device, toluidine blue dye, colposcope, camera), standard operating procedures, location of SAFE Kit and DD Form 2911; and availability and timeliness of evacuation to echelon of care where SAFEs are available.

(C) Explain how to deal with emergency contraception and STD/I treatment.

(D) Discuss physical and mental health assessment.

(E) Explain how to deal with trauma, to include:

(*1*) Types of injury.

(*2*) Photography of injuries.

(*3*) Behavioral health and counseling needs.

(*4*) Consulting and referral process.

(*5*) Appropriate follow-up.

(*6*) Drug or alcohol facilitated sexual assault, to include review of best practices, victim interview techniques, and targeted evidence collections.

(F) Explain medical record management.

(G) Explain legal process and expert witness testimony.

(5) DoD law enforcement (those elements of DoD components, to include MCIOs, authorized to investigate violations of the UCMJ) training shall:

(i) Include the Responder Training requirements in § 105.14(g)(1) for DoD law enforcement personnel who may respond to a sexual assault complaint.

(ii) Remain consistent with the guidelines published under the authority and oversight of the IG, DoD. In addition, DoD law enforcement training shall:

(A) Explain how to respond in accordance with the SAPR program.

(*1*) Notify the command, SARC, and SAPR VA.

(*2*) Work with SAPR VAs and SARCs, and medical personnel.

(B) Explain how to work with sexual assault victims, to include the effects of trauma on sexual assault victims. Ensure victims are informed of and accorded their rights, in accordance with DoDI 1030.2 and DoDD 1030.01 by contacting the VWAP.

(C) Take into consideration the victim's safety concerns and medical needs.

(D) Review IG policy and Military Service regulations regarding the legal transfer of the SAFE Kit and the retention of the DD Form 2911 or reports from civilian SAFEs in archived files.

(E) Discuss sex offender issues.

(6) Training for MCIO agents assigned to investigate sexual assaults shall:

(i) In accordance with Public Law 112–81, be detailed in IG policy.

(ii) Adhere to the responder training requirements in § 105.14(g)(1) for military and civilian criminal investigators assigned to MCIOs who may respond to a sexual assault complaint.

(iii) Remain consistent with the guidelines published under the authority and oversight of the IG, DoD. In addition, MCIO training shall:

(A) Include initial and annual refresher training on essential tasks specific to investigating sexual assault investigations that explain that these reports shall be included in sexual assault quarterly and annual reporting requirements found in § 105.16 of this part.

(B) Include IG policy and Military Service regulations regarding the legal transfer of the SAFE Kit and the retention of the DD Form 2911 or reports from civilian SAFEs in archived files.

(C) Explain how to work with victims of sexual assault.

(*1*) Effects of trauma on the victim to include impact of trauma and stress on memory as well as balancing investigative priorities with victim needs.

(*2*) Ensure victims are informed of and accorded their rights, in accordance with DoDI 1030.2 and DoDD 1030.01 by contacting the VWAP.

(*3*) Take into consideration the victim's safety concerns and medical needs.

(D) Explain how to respond to a sexual assault in accordance with to 32 CFR part 103, this part, and the assigned Military Service regulations on:

(*1*) Notification to command, SARC, and VWAP.

(*2*) Investigating difficult cases to include drug and alcohol facilitated sexual assaults, having multiple suspects and sexual assaults in the domestic violence context as well as same-sex sexual assaults (male/male or female/female).

(E) Review of available research regarding false information and the factors influencing false reports and false information, to include possible victim harassment and intimidation.

(F) Explain unique issues with sex offenders to include identifying, investigating, and documenting predatory behaviors.

(G) Explain how to work with the SARC and SAPR VA to include SAPR VA and SARC roles, responsibilities, and limitations; victim services and support program; and MRE 514.

(7) Judge advocate training shall:

(i) Prior to performing judge advocate duties, adhere to the Responder Training requirements in § 105.14(g)(1) for judge advocates who are responsible for advising commanders on the investigation or disposition of, or who prosecute or defend, sexual assault cases.

(ii) Explain legal support services available to victims.

(A) Pursuant to the respective Military Service regulations, explain that each Service member who reports a sexual assault shall be given the opportunity to consult with legal assistance counsel, and in cases where the victim may have been involved in collateral misconduct, to consult with defense counsel.

(*1*) Provide information concerning the prosecution, if applicable, in accordance with DoD 8910.1–M. Provide information regarding the opportunity to consult with legal assistance counsel as soon as the victim seeks assistance from a SARC, SAPR VA, or any DoD law enforcement agent or judge advocate.

(*2*) Ensure victims are informed of their rights and the VWAP program, in accordance with DoDI 1030.2 and DoDD 1030.01.

(B) Explain the sex offender registration program.

(iii) Explain issues encountered in the prosecution of sexual assaults.

(A) Typologies (characteristics) of victims and sex offenders in non-stranger sexual assaults.

(B) Addressing the consent defense.

(C) How to effectively prosecute alcohol and drug facilitated sexual assault.

(D) How to introduce forensic and scientific evidence (e.g., SAFE Kits, DNA, serology, toxicology).

(E) MRE issues and updates to regard sexual assault prosecution in accordance with MRE 412, 413, and 615 of the Manual for Courts-Martial, United States.

(F) How to advise victims, SAPR VAs, and VWAP about the military justice process, and MRE 514. Explain:

(*1*) Victims' rights during trial and defense counsel interviews (e.g., guidance regarding answering questions on prior sexual behavior, interviewing parameters, coordinating interviews, case outcomes).

(*2*) In the case of a general or special court-martial involving a sexual assault as defined in 32 CFR part 103, a copy of the prepared record of the proceedings of the court-martial (not to include sealed materials, unless otherwise approved by the presiding military judge or appellate court) shall be given to the victim of the offense if the victim testified during the proceedings in accordance with Public Law 112–81.

(*3*) Guidance on victim accompaniment (e.g., who may accompany victims to attorney interviews, what is their role, and what should they do if victim is being mistreated).

(*4*) MRE 412 of the Manual for Courts-Martial, United States, to investigations pursuant to an Article 32 hearing.

(*5*) Protecting victim privacy (e.g., access to medical records and conversations with SARC or SAPR VA, discovery consequences of making victim's mental health an issue, MRE 514).

(8) Legal Assistance Attorney training shall adhere to the requirements of annual training in § 105.14(c)(2). Attorneys shall receive training in order to have the capability to provide legal assistance to sexual assault victims in accordance with the USD(P&R) Memorandum. Legal assistance attorney training shall include:

(i) The VWAP, including the rights and benefits afforded the victim.

(A) The role of the VWAP and what privileges do or do not exist between the victim and the advocate or liaison.

(B) The nature of the communication made to the VWAP as opposed to those made to the legal assistance attorney.

(ii) The differences between the two types of reporting in sexual assault cases.

(iii) The military justice system, including the roles and responsibilities of the trial counsel, the defense counsel, and investigators. This may include the ability of the Government to compel cooperation and testimony.

(iv) The services available from appropriate agencies or offices for emotional and mental health counseling and other medical services.

(v) The availability of protections offered by military and civilian restraining orders.

(vi) Eligibility for and benefits potentially available as part of transitional compensation benefits found in section 1059 of title 10, U.S.C., and other State and Federal victims' compensation programs.

(vii) Traditional forms of legal assistance.

(9) Chaplains, chaplain assistants and religious personnel training shall:

(i) Adhere to the responder training requirements in § 105.14(g)(1).

(ii) Pre-deployment SAPR training shall focus on counseling services needed by sexual assault victims and offenders in contingency and remote areas.

(iii) Address:

(A) Privileged communications and the Restricted Reporting policy rules and limitations, including legal protections for chaplains and their confidential communications, assessing victim or offender safety issues (while maintaining chaplain's confidentiality), and MRE 514.

(B) How to support victims with discussion on sensitivity of chaplains in addressing and supporting sexual assault victims, identifying chaplain's own bias and ethical issues, trauma training with pastoral applications, and how to understand victims' rights as prescribed in DoDI 1030.2 and DoDD 1030.01.

(C) Other counseling and support topics.

(*1*) Offender counseling should include: assessing and addressing victim and offender safety issues while maintaining confidentiality; and counseling an offender when the victim is known to the chaplain (counseling both the offender and the victim when there is only one chaplain at a military installation).

(*2*) Potential distress experienced by witnesses and bystanders over the assault they witnessed or about which they heard.

(*3*) Counseling for SARCs, SAPR VAs, healthcare personnel, chaplains, JAGs, law enforcement or any other professionals who routinely works with sexual assault victims and may experience secondary effects of trauma.

(*4*) Providing guidance to unit members and leadership on how to mitigate the impact that sexual assault has on a unit and its individuals, while keeping in mind the needs and concerns of the victim.

§ 105.15 Defense Sexual Assault Incident Database (DSAID).

(a) *Purpose.* (1) In accordance with section 563 of Public Law 110–417,

DSAID shall support Military Service SAPR program management and DoD SAPRO oversight activities. It shall serve as a centralized, case-level database for the collection and maintenance of information regarding sexual assaults involving persons covered by this part. DSAID will include information, if available, about the nature of the assault, the victim, services offered to the victim, the offender, and the disposition of the reports associated with the assault. DSAID will serve as the DoD's SAPR source for internal and external requests for statistical data on sexual assault in accordance with section 563 of Public Law 110–417. The DSAID has been assigned OMB Control Number 0704–0482. DSAID contains information provided by the military services, which are the original source of the information.

(2) Disclosure of data stored in DSAID will only be granted when disclosure is authorized or required by law or regulation.

(b) *Procedures.* DSAID shall:

(1) Contain information about sexual assaults reported to the DoD involving persons covered by this part, both via Unrestricted and Restricted Reporting options.

(2) Include adequate safeguards to shield PII from unauthorized disclosure. The system will not contain PII about victims who make a Restricted Report. Information about sexual assault victims and subjects will receive the maximum protection allowed under the law. DSAID will include stringent user access controls.

(3) Assist with annual and quarterly reporting requirements, identifying and managing trends, analyzing risk factors or problematic circumstances, and taking action or making plans to eliminate or to mitigate risks. DSAID shall store case information. Closed case information shall be available to DoD SAPRO for SAPR program oversight, study, research, and analysis purposes. DSAID will provide a set of core functions to satisfy the data collection and analysis requirements for the system in five basic areas: data warehousing, data query and reporting, SARC victim case management functions, subject investigative and legal case information, and SAPR program administration and management.

(4) Receive information from the Military Services' existing data systems or direct data entry by authorized Military Service personnel.

(c) *Notification procedure and record access procedures.* (1) Requests for information contained in DSAID are answered by the Services. All requests for information should be made to the DoD Component that generated the information in DSAID. Individuals seeking to determine whether information about themselves is contained in this system of records or seeking access to records about themselves should address written inquiries to the appropriate Service office (see Service list at *www.sapr.mil*).

(2) Requests for information to the DoD Components must be responded to by the office(s) designated by the Component to respond to Freedom of Information Act and Privacy Act requests. Requests shall not be informally handled by the SARCs.

§ 105.16 Sexual assault annual and quarterly reporting requirements.

(a) *Annual reporting for the military services.* The USD(P&R) submits annual FY reports to Congress on the sexual assaults involving members of the Military Services. Each Secretary of the Military Departments must submit their Military Service report for the prior FY to the Secretary of Defense through the DoD SAPRO by March 1. The Secretary of the Navy must provide separate reports for the Navy and the Marine Corps. The annual report is accomplished in accordance with section 1631(d) of Public Law 111–383, and includes:

(1) The policies, procedures, and processes in place or implemented by the SAPR program during the report year in response to incidents of sexual assault.

(2) An assessment of the implementation of the policies and procedures on the prevention, response, and oversight of sexual assaults in the military to determine the effectiveness of SAPR policies and programs, including an assessment of how Service efforts executed DoD SAPR priorities.

(3) Any plans for the following year on the prevention of and response to sexual assault, specifically in the areas of advocacy, healthcare provider and medical response, mental health, counseling, investigative services, legal services, and chaplain response.

(4) Matrices for Restricted and Unrestricted Reports of the number of sexual assaults involving Service members, that includes case synopses, and disciplinary actions taken in substantiated cases and relevant information.

(5) Analyses of the matrices of the number of sexual assaults involving Service members.

(b) *Quarterly reports.* The quarterly data reports from the Military Services are the basis for annual reports, including the data fields necessary for comprehensive reporting. The information collected to prepare the quarterly reports has been assigned Reporting Control Symbol DD–P&R(A)2205. In quarterly reports, the policies and planned actions are not required to be reported. Each quarterly report and subsequent FY annual report shall update the status of those previously reported investigations that had been reported as opened but not yet completed or with action pending at the end of a prior reporting period. Once the final action taken is reported, that specific investigation no longer needs to be reported. This reporting system will enable the DoD to track sexual assault cases from date of initiation to completion of command action or disposition. Quarterly reports are due:

(1) January 31 for investigations opened during the period of October 1–December 31.

(2) April 30 for investigations opened during the period of January 1–March 31.

(3) July 31 for investigations opened during the period of April 1–June 30.

(4) The final quarterly report (July 1–September 30) shall be included as part of the FY annual report.

(c) *Annual reporting for the Military Service Academies (MSA).* Pursuant to section 532 of Public Law 109–364, the USD(P&R) submits annual reports on sexual harassment and violence at MSAs to the House of Representatives and Senate Armed Services Committees each academic program year (APY). The MSA Sexual Assault Survey conducted by the Defense Manpower Data Center (DMDC) has been assigned Report Control Symbol DD–P&R(A)2198.

(1) In odd-numbered APYs, superintendents will submit a report to their respective Military Department Secretaries assessing their respective MSA policies, training, and procedures on sexual harassment and violence involving cadets and midshipmen no later than October 15 of the following APY. DMDC will simultaneously conduct gender relations surveys of cadets and midshipmen to collect information relating to sexual assault and sexual harassment at the MSA to supplement these reports. DoD SAPRO will summarize and consolidate the results of each MSA's APY assessment, which will serve as the mandated DoD annual report to Congress.

(2) In even-numbered APYs, DoD SAPRO and the DoD Diversity Management and Equal Opportunity (DMEO) Office conduct MSA site visits and a data call to assess each MSA's policies; training, and procedures regarding sexual harassment and violence involving cadets and

midshipmen; perceptions of Academy personnel regarding program effectiveness; the number of reports and corresponding case dispositions; program accomplishments progress made; and challenges. Together with the DoD SAPRO and DMEO MSA visits, DMDC will conduct focus groups with cadets and midshipmen to collect information relating to sexual harassment and violence from the MSAs to supplement this assessment. DoD SAPRO consolidates the assessments and focus group results of each MSA into a report, which serves as the mandated DoD annual report to Congress that will be submitted in December of the following APY.

(d) *Annual reporting of installation data.* Installation data is drawn from the annual reports of sexual assault listed in § 105.16(a). The Secretaries of each Military Department must submit their Military Service report of sexual assault for the prior FY organized by installation to the Secretary of Defense through the DoD SAPRO by April 30. The Secretary of the Navy must provide separate reports for the Navy and the Marine Corps. Reports will contain matrices for Restricted and Unrestricted Reports of the number of sexual assaults involving Service members organized by military installation, and matrices including the synopsis and disciplinary actions taken in substantiated cases.

§ 105.17 Sexual assault offense—investigation disposition descriptions.

Pursuant to the legislated requirements specified in Public Law 111–383, the following definitions are used by the Services for annual and quarterly reporting of the dispositions of subjects in sexual assault investigations conducted by the MCIOs. Services must adapt their investigative policies and procedures to comply with these definitions.

(a) *Substantiated reports.* Dispositions in this category come from Unrestricted Reports that have been investigated and found to have sufficient evidence to provide to command for consideration of action to take some form of punitive, corrective, or discharge action against an offender.

(1) *Substantiated reports against Service member subjects.* A substantiated report of sexual assault is an Unrestricted Report that was investigated by an MCIO, provided to the appropriate military command for consideration of action, and found to have sufficient evidence to support the command's action against the subject. Actions against the subject may include court-martial charge preferral, Article 15 UCMJ punishment, nonjudicial punishment, administrative discharge, and other adverse administrative action that result from a report of sexual assault or associated misconduct (e.g., adultery, housebreaking, false official statement, etc.).

(2) *Substantiated reports by Service member victims.* A substantiated report of a sexual assault victim's Unrestricted Report that was investigated by a MCIO, and provided to the appropriate military command for consideration of action, and found to have sufficient evidence to support the command's action against the subject. However, there are instances where an Unrestricted Report of sexual assault by a Service member victim may be substantiated but the command is not able to take action against the person who is the subject of the investigation. These categories include the following: the subject of the investigation could not be identified; the subject died or deserted from the Service before action could be taken; the subject was a civilian or foreign national not subject to the UCMJ; or the subject was a Service member being prosecuted by a civilian or foreign authority.

(b) *Substantiated report disposition descriptions.* In the event of several types of action a commander takes against the same offender, only the most serious action taken is reported, as provided for in the following list, in descending order of seriousness. For each offender, any court-martial sentence and non-judicial punishment administered by commanders pursuant to Article 15 of the UCMJ is reported annually to the DoD in the case synopses or via DSAID. Further additional actions of a less serious nature in the descending list should also be included in the case synopses reported to the Department. Public Law 111–383 requires the reporting of the number of victims associated with each of the following disposition categories.

(1) *Commander action for sexual assault offense.* (i) *Court-martial charges preferred (initiated) for sexual assault offense.* A court-martial charge was preferred (initiated) for at least one of the offenses punishable by Articles 120 and 125 of the UCMJ, or an attempt to commit an Article 120 or 125, UCMJ offense that would be charged as a violation of Article 80 of the UCMJ. (See Rules for Courts-Martial (RCM) 307 and 401 of the Manual for Courts-Martial, United States.[13])

(ii) *Nonjudicial punishments (Article 15, UCMJ).* Disciplinary action for at least one of the UCMJ offenses comprised within the SAPR definition of sexual assault that was initiated pursuant to Article 15 of the UCMJ.

(iii) *Administrative discharges.* Commander action taken to involuntarily separate the offender from military service that is based in whole or in part on an offense within the SAPR definition of sexual assault.

(iv) *Other adverse administrative actions.* In the absence of an administrative discharge action, any other administrative action that was initiated (including corrective measures such as counseling, admonition, reprimand, exhortation, disapproval, criticism, censure, reproach, rebuke, extra military instruction, or other administrative withholding of privileges, or any combination thereof), and that is based in whole or in part on an offense within the SAPR definition of sexual assault. Cases should be placed in this category only when an administrative action other than an administrative discharge is the only action taken. If an ''other administrative action'' is taken in combination with another more serious action (e.g., courts-martial, non-judicial punishment, administrative discharge, or civilian or foreign court action), only report the case according to the more serious action taken.

(2) *Commander action for other criminal offense.* Report actions against subjects in this category when there is probable cause for an offense, but only for a non-sexual assault offense (i.e., the commander took action on a non-sexual assault offense because an investigation showed that the allegations did not meet the required elements of, or there was insufficient evidence for, any of the UCMJ offenses that constitute the SAPR definition of sexual assault). Instead, an investigation disclosed other offenses arising from the sexual assault allegation or incident that met the required elements of, and there was sufficient evidence for, another offense under the UCMJ. Report court-martial charges preferred, non-judicial punishments, and sentences imposed in the case synopses provided to the DoD. To comply with Public Law 111–383, the number of victims associated with each of the following categories must also be reported.

(i) Court-martial charges preferred (initiated) for a non-sexual assault offense.

(ii) Nonjudicial punishments (Article 15, UCMJ) for non-sexual assault offense.

(iii) Administrative discharges for non-sexual assault offense.

(iv) Other adverse administrative actions for non-sexual assault offense.

[13] Available: *http://www.dod.gov/dodgc/images/mcm2012.pdf.*

(c) *Command action precluded.* Dispositions reported in this category come from an Unrestricted Report that was investigated by a MCIO and provided to the appropriate military command for consideration of action, but the evidence did not support taking action against the subject of the investigation because the victim declined to participate in the military justice action, there was insufficient evidence of any offense to take command action, the report was unfounded by command, the victim died prior to completion of the military justice action, or the statute of limitations for the alleged offense(s) expired. Public Law 111–383 requires the reporting of the number of victims associated with each of the following disposition categories.

(1) *Victim declined to participate in the military justice action.* Commander action is precluded or declined because the victim has declined to further cooperate with military authorities or prosecutors in a military justice action.

(2) *Insufficient evidence for prosecution.* Although the allegations made against the alleged offender meet the required elements of at least one criminal offense listed in the SAPR definition of sexual assault (see 32 CFR part 103), there was insufficient evidence to legally prove those elements beyond a reasonable doubt and proceed with the case. (If the reason for concluding that there is insufficient evidence is that the victim declined to cooperate, then the reason for being unable to take action should be entered as ''victim declined to participate in the military justice action,'' and not entered as ''insufficient evidence.'')

(3) *Victim's death.* Victim died before completion of the military justice action.

(4) *Statute of limitations expired.* Determination that, pursuant to Article 43 of the UCMJ, the applicable statute of limitations has expired and the case may not be prosecuted.

(d) *Command action declined.* Dispositions in this category come from an Unrestricted Report that was investigated by a MCIO and provided to the appropriate military command for consideration of action, but the commander determined the report was unfounded as to the allegations against the subject of the investigation. Unfounded allegations reflect a determination by command, with the supporting advice of a qualified legal officer, that the allegations made against the alleged offender did not occur nor were attempted. These cases are either false or baseless. Public Law 111–383 requires the reporting of the number of victims associated with this category.

(1) *False cases.* Evidence obtained through an investigation shows that an offense was not committed nor attempted by the subject of the investigation.

(2) *Baseless cases.* Evidence obtained through an investigation shows that alleged offense did not meet at least one of the required elements of a UCMJ offense constituting the SAPR definition of sexual assault or was improperly reported as a sexual assault.

(e) *Subject outside DoD's legal authority.* When the subject of the investigation or the action being taken are beyond DoD's jurisdictional authority or ability to act, use the following descriptions to report case disposition. To comply with Public Law 111–383, Services must also identify the number of victims associated with these dispositions and specify when there was insufficient evidence that an offense occurred in the following categories.

(1) *Offender is unknown.* The investigation is closed because no person could be identified as the alleged offender.

(2) *Subject is a civilian or foreign national not subject to UCMJ.* The subject of the investigation is not amenable to military UCMJ jurisdiction for action or disposition.

(3) *Civilian or foreign authority is prosecuting Service member.* A civilian or foreign authority has the sexual assault allegation for action or disposition, even though the alleged offender is also subject to the UCMJ.

(4) *Offender died or deserted.* Commander action is precluded because of the death or desertion of the alleged offender or subject of the investigation.

(f) *Report unfounded by MCIO.* Determination by the MCIO that the allegations made against the alleged offender did not occur nor were attempted. These cases are either false or baseless. Public Law 111–383 requires the reporting of the number of victims associated with this category.

(1) *False cases.* Evidence obtained through a MCIO investigation shows that an offense was not committed nor attempted by the subject of the investigation.

(2) *Baseless cases.* Evidence obtained through an investigation shows that alleged offense did not meet at least one of the required elements of a UCMJ offense constituting the SAPR definition of sexual assault or was improperly reported as a sexual assault.

§ 105.18 Information collection requirements.

(a) The DSAID and the DD Form 2910, referred to in this Instruction, have been assigned OMB control number 0704–0482.

(b) The annual report regarding sexual assaults involving Service members and improvement to sexual assault prevention and response programs referred to in §§ 105.5(f)(22); 105.7(a)(9), 105.7(a)(10), and 105.7(a)(12); 105.9(c)(8)(ii); and 105.16(a) and (d) of this part is submitted to Congress in accordance with section 1631(d) of Public Law 111–383 and is coordinated with the Assistant Secretary of Defense for Legislatives Affair in accordance with the procedures in DoDI 5545.02.

(c) The quarterly reports of sexual assaults involving Service members referred to in §§ 105.5, 105.7, 105.14, 105.15, and 105.16 of this part are prescribed by DoDD 5124.02 and have been assigned a DoD report control symbol in accordance with the procedures in DTM 12–004 and DoD 8910.1–M.

(d) The Service Academy sexual assault survey referred to in § 105.16(c) of this part has been assigned DoD report control symbol in accordance with the procedures in DTM 12–004 and DoD 8910.1–M.

Dated: March 18, 2013.

Patricia Toppings,

OSD Federal Register Liaison, Department of Defense.

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Part III

Commodity Futures Trading Commission

17 CFR Part 50

Clearing Exemption for Swaps Between Certain Affiliated Entities; Final Rule

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 50

RIN 3038–AD47

Clearing Exemption for Swaps Between Certain Affiliated Entities

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is adopting regulations to exempt swaps between certain affiliated entities within a corporate group from the clearing requirement under the Commodity Exchange Act (CEA or Act), enacted by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The regulations include specific conditions, as well as reporting requirements, that affiliated entities must satisfy in order to elect the inter-affiliate exemption from required clearing.

DATES: This final rule is effective June 10, 2013.

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SUPPLEMENTARY INFORMATION:

Table of Contents

I. Background
II. Comments on the Notice of Proposed Rulemaking
A. Overview of Comments Received
B. Section 4(c) Authority
C. Definition of Affiliate Status
D. Inter-Affiliate Swap Documentation
E. Centralized Risk Management Program
F. Variation Margin
G. Treatment of Outward-Facing Swaps and Relief
H. Reporting Requirements and Annual Election
I. Implementation
III. Cost-Benefit Considerations
A. Statutory and Regulatory Background
B. Costs and Benefits of Exemption for Eligible Affiliate Counterparties
C. Costs and Benefits of Exemption's Conditions
D. Costs and Benefits to Market Participants and the Public
E. Costs and Benefits Compared to Alternatives
F. Consideration of CEA Section 15(a) Factors
IV. Related Matters
A. Regulatory Flexibility Act
B. Paperwork Reduction Act

I. Background

On August 21, 2012, the Commission published a notice of proposed rulemaking proposing to exempt swaps between certain affiliated entities from the clearing requirement under section 2(h)(1)(A) of the CEA (NPRM).[1] As proposed, § 39.6(g) provides that counterparties to a swap may elect an inter-affiliate exemption from the clearing requirement if: (1) The financial statements of both counterparties are reported on a consolidated basis, and either one counterparty directly or indirectly holds a majority ownership interest in the other, or a third party directly or indirectly holds a majority ownership interest in both counterparties; (2) both counterparties comply with the conditions set forth in the proposed rule; and (3) one of the counterparties provides certain information on behalf of both affiliated counterparties to either a registered swap data repository (SDR) or the Commission if a registered SDR does not accept the information. The Commission is hereby adopting proposed § 39.6(g), finalized as § 50.52,[2] subject to the changes discussed below.

Section 723(a)(3) of the Dodd-Frank Act amended the CEA to provide, under new section 2(h)(1)(A) of the CEA, that it shall be unlawful for any person to engage in a swap unless that person submits such swap for clearing to a derivatives clearing organization (DCO) that is registered under the CEA or a DCO that is exempt from registration under the CEA if the swap is required to be cleared.[3] Section 2(h)(2) of the CEA charges the Commission with the responsibility for determining whether a swap is required to be cleared, through one of two means: (1) Pursuant to a Commission-initiated review; or (2) pursuant to a submission from a DCO of each swap, or any group, category, type, or class of swaps that the DCO ''plans to accept for clearing.'' On November 29, 2012, the Commission adopted its first clearing requirement determination, requiring that swaps meeting the specifications outlined in four classes of interest rate swaps and two classes of credit default swaps (CDS) are required to be cleared.[4]

The Clearing Requirement Determination adopting release provided a specific compliance schedule for market participants to bring their swaps into compliance with the clearing requirement.[5] Swap dealers (SDs), major swap participants (MSPs), and private funds active in the swaps market were required to comply beginning on March 11, 2013, for swaps they enter into on or after that date.[6] Accounts managed by third-party investment managers, as well as ERISA pension plans, have until September 9, 2013, to begin clearing swaps entered into on or after that date. All other financial entities are required to clear swaps beginning on June 10, 2013, for swaps entered into on or after that date. With regard to the CDS indices on European corporate names, iTraxx, the Clearing Requirement Determination provided that, if no DCO offered iTraxx for client clearing by February 11, 2013, the Commission would delay compliance for those swaps until 60 days after an eligible DCO offers iTraxx indices for client clearing. On February 25, 2013, the Commission received notice from ICE Clear Credit LLC that it had begun offering customer clearing of the iTraxx CDS indices that are subject to the clearing requirement under § 50.4(b). In accordance with the timeframe previously set forth by the Commission,[7] the following compliance

[1] Clearing Exemption for Swaps Between Certain Affiliated Entities, 77 FR 50425 (Aug. 21, 2012).

[2] For ease of reference, the Commission is re-codifying proposed § 39.6(g) as § 50.52 so that market participants are able to locate all rules related to the clearing requirement in one part of the Code of Federal Regulations.

[3] Section 2(h)(7) of the CEA provides an exception to the clearing requirement when one of the counterparties to a swap (i) is not a financial entity, (ii) is using the swap to hedge or mitigate commercial risk, and (iii) notifies the Commission how it generally meets its financial obligations associated with entering into a non-cleared swap.

[4] Clearing Requirement Determination Under Section 2(h) of the CEA, 77 FR 74284 (Dec. 13, 2012) (hereinafter ''Clearing Requirement Determination'').

[5] *See* Clearing Requirement Determination at 74319–21.

[6] The first compliance date for required clearing applies to Category 1 Entities, as defined in § 50.25(a). SDs and MSPs and private funds active in the swaps market are defined as Category 1 Entities. Security-based swap dealers and major security-based participants also are included in the definition. However, as the Commission has stated, if a security-based swap dealer or a major security-based swap participant is not yet required to register with the Securities and Exchange Commission (SEC) at such time as the Commission issues a clearing determination, then the security-based swap dealer or a major security-based swap participant would be treated as a Category 2 Entity, as defined in § 50.25(a). *See* Swap Transaction Compliance Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA, 76 FR 58186, 58190 n.38 (Sept. 20, 2011).

[7] Clearing Requirement Determination at 74319–21.

dates shall apply to the clearing of iTraxx indices: Category 1 Entities: Friday, April 26, 2013; Category 2 Entities: Thursday, July 25, 2013; and all other entities: Wednesday, October 23, 2013.[8]

II. Comments on the Notice of Proposed Rulemaking

The Commission received 13 comments during the 30-day public comment period following publication of the NPRM on August 21, 2012, and one additional comment after the comment period ended. The Commission considered each of these comments in formulating the final regulation, § 39.6(g) (finalized as § 50.52).

During the process of proposing and finalizing this rule, the Chairman and Commissioners, as well as Commission staff, participated in informational meetings with market participants, trade associations, public interest groups, and other interested parties. In addition, the Commission has consulted with other U.S. financial regulators including: (i) The SEC; (ii) the Board of Governors of the Federal Reserve System; (iii) the Office of the Comptroller of the Currency; and (iv) the Federal Deposit Insurance Corporation (FDIC). Staff from each of these agencies has had the opportunity to provide oral and/or written comments to this adopting release, and the final regulations incorporate elements of the comments provided.

The Commission is mindful of the benefits of harmonizing its regulatory framework with that of its counterparts in foreign countries. The Commission has therefore monitored global advisory, legislative, and regulatory proposals, and has consulted with foreign authorities in developing the final regulations.

A. Overview of Comments Received

Of the 14 comment letters received by the Commission in response to its NPRM, ten commenters expressed general support for the concept of an inter-affiliate exemption from the clearing requirement.[9] These commenters offered comments addressing the proposed rule generally and comments addressing specific provisions of the proposed rule. Comments addressing specific provisions of the proposed rule are discussed in detail below.

A number of commenters requested a broader exemption with few or no conditions. Cravath and DLA Piper requested that the Commission exempt swaps between affiliates from all clearing, margining, and reporting obligations. The Working Group, Cravath, CDEU, ISDA & SIFMA, DLA Piper, and EEI[10] recommended that the Commission eliminate, simplify or minimize the conditions imposed, or unconditionally exempt inter-affiliate swaps from clearing. These commenters stated that inter-affiliate swaps pose little or no risk to the U.S. financial system and do not increase the interconnectedness between major financial institutions, particularly if affiliates' financial statements are consolidated for accounting purposes. The Working Group commented that entities use inter-affiliate trades not only to net risk related to market-facing swaps, but also to transfer physical commodity or futures exposure between affiliates for compliance with international tax law, customs, or accounting laws. Similarly, MetLife and Prudential supported the proposed exemption and noted that transactions between affiliates do not present the same risks as market-facing swaps.

ISDA & SIFMA commented that inter-affiliate swaps provide important benefits to corporate groups by enabling centralized management of market, liquidity, capital, and other risks, and allowing affiliated groups to realize associated hedging efficiencies and netting benefits. Imposing mandatory clearing on inter-affiliate swaps, according to ISDA & SIFMA, could compromise the ability of affiliated groups to realize these benefits.[11] ISDA & SIFMA also commented that third parties face no increased risk from inter-affiliate swaps. In their view, the credit risks faced by a third party entering into an uncleared swap with a group member are a function of the group member's entire portfolio of assets and liabilities and other credit factors.

Along the same lines, CDEU commented that non-financial entities typically enter into external swaps with swap dealers and other large banks that typically evaluate the risks of entering into swaps based on the overall creditworthiness of their counterparties. These financial entity counterparties, according to CDEU, have the opportunity to review financial statements, the creditworthiness of any guarantor, and a number of other credit-related items. After the credit review, according to CDEU, the counterparties may request credit risk mitigants such as corporate parent guarantees, collateral, and credit-based legal terms.

On the other hand, Americans for Financial Reform (AFR) commented that a wide-ranging exemption for inter-affiliate swaps could create systemic risk and threaten the U.S. financial system. AFR cited a number of reasons for its concern such as: the risk transfer between separate corporate entities; the possibility for financial contagion to be transferred from one part of a large financial institution to different groups within the institution; restrictions on access to affiliate assets across national boundaries; and reduction in volumes at DCOs that could hurt liquidity and risk management. AFR further noted that because the end-user exception is available for non-financial and small financial entities in connection with swaps that hedge or mitigate systemic risk, the inter-affiliate exemption is primarily available for large financial institutions and speculative trades by large commercial institutions with many affiliates.

Better Markets Inc. (Better Markets) also expressed concern that an inter-affiliate exemption could be contrary to Congressional intent, as expressed in the Dodd-Frank Act, if it is not a very narrow and strictly implemented exemption.

Two individual persons commented against the proposed exemption. Steve Wentz requested that the Commission not issue any exemptions because the exemptions ''would just open the door to divert trades through that open door to avoid protective oversight.'' Aaron D. Small commented that the ''unregulated derivatives market has been a disaster for the U.S. and world economy and must be reined in.''

Having considered these comments, and the specific comments discussed below, the Commission is adopting the

[8] *See* Press Release, CFTC's Division of Clearing and Risk Announces Revised Compliance Schedule for Required Clearing of iTraxx CDS Indices (Feb. 25, 2013), available at *http://www.cftc.gov/PressRoom/PressReleases/pr6521-13.*

[9] Cravath, Swaine & Moore LLP (Cravath), the Coalition for Derivatives End-Users (CDEU), the Financial Services Roundtable (FSR), Chris Barnard, the Commercial Energy Working Group (The Working Group), the Edison Electric Institute (EEI), The Prudential Insurance Company of America (Prudential), Metropolitan Life Insurance Company (MetLife), the International Swaps and Derivatives Association and Securities Industry and Financial Markets Association, (together, ISDA & SIFMA), and DLA Piper.

[10] EEI commented that ''corporate families typically face bankruptcy together'' and that it is ''unusual for only one member of a corporate group to go bankrupt.'' EEI also noted that a bankruptcy could cause increased risk to clearinghouses that would face multiple entities going into default at the same time if all affiliates of one corporate group were required to clear their inter-affiliate swaps.

[11] ISDA & SIFMA commented that inter-affiliate swaps do not introduce risk into a corporate group, stating, ''[b]ecause capital, liquidity and risk allocation decisions, as well as the exercise of default remedies between group members are under unified management, group entities do not face default risk of other group entities, so long as the group as a whole is solvent.''

proposed inter-affiliate exemption rule, subject to several important modifications. The Commission recognizes the need for an exemption from clearing for inter-affiliate swaps, but believes it is important to establish certain conditions for entities electing the exemption. In reaching this conclusion, the Commission considered the benefits of clearing as recognized by the fact that Congress included a clearing requirement in the Dodd-Frank Act, against the benefit to market participants of being able to continue entering into inter-affiliate swaps on an uncleared basis. The Commission believes it has reached an appropriate balance by allowing an exemption from required clearing for certain inter-affiliate swaps while imposing necessary conditions on that exemption in order to ensure that all inter-affiliate swaps exempted from required clearing meet certain risk-mitigating conditions.

1. Benefits of Clearing and Its Role in the Dodd-Frank Act

As the Commission has previously stated,[12] in the fall of 2008, a series of large financial institution failures triggered a financial and economic crisis that led to unprecedented governmental intervention to ensure the stability of the U.S. financial system. The financial crisis made clear that an uncleared, over-the-counter (OTC) derivatives market can pose significant risks to the U.S. financial system.[13]

One of the most significant examples of this risk was the accumulation of uncleared CDS entered into by an affiliate in the AIG corporate group providing default protection on more than $440 billion in bonds, leaving it with obligations that the AIG corporate family could not cover as a result of changed market conditions.[14] As a result of the CDS exposure of this one affiliate, the U.S. Federal government bailed out the AIG corporate group with over $180 billion of taxpayer money in order to prevent AIG's failure and a possible contagion event in the broader economy.[15] While the downfall of AIG was not caused by inter-affiliate swaps, the events surrounding AIG during the 2008 crisis demonstrate how the risks of uncleared swaps at one affiliate can have significant ramifications for the entire affiliated business group.

Recognizing the peril that the U.S. financial system faced during the financial crisis, Congress and the President came together to pass the Dodd-Frank Act in 2010. Title VII of the Dodd-Frank Act establishes a comprehensive new regulatory framework for swaps, and the requirement that certain swaps be cleared by DCOs is one of the cornerstones of that reform. The CEA, as amended by Title VII, now requires a swap to be cleared through a DCO if the Commission has determined that the swap, or group, category, type, or class of swaps, is required to be cleared, unless an exception to the clearing requirement applies. As noted above, the only exception to the clearing requirement provided by Congress was the end-user exception in section 2(h)(7) of the CEA.[16]

The benefits of clearing derivatives have been recognized internationally, as well. In September 2009, leaders of the Group of 20 (G–20)—whose membership includes the United States, the European Union, and 18 other countries—agreed that: (1) OTC derivatives contracts should be reported to trade repositories; (2) all standardized OTC derivatives contracts should be cleared through central counterparties by the end of 2012; and (3) non-centrally cleared contracts should be subject to higher capital requirements.

The Commission believes that required clearing through a DCO is the best means of mitigating counterparty credit risk and providing an organized mechanism for collateralizing the risk exposures posed by swaps. By clearing a swap, each counterparty no longer needs to rely on the individual creditworthiness of the other counterparty for payment. Both original counterparties now look to the DCO that has cleared their swap to ensure that the payment obligations associated with the swap are fulfilled. The DCO manages the risk of failure of a counterparty through appropriate margining, a mutualized approach to default management among clearinghouse members, and other risk management mechanisms that have been developed over the more than 100 years that modern clearinghouses have been in operation. Clearing can avert the development of systemic risk by reducing the potential knock-on, or domino, effect resulting from counterparties with large outstanding exposures defaulting on their swap obligations and causing their counterparties—counterparties that would otherwise be financially sound if they had been paid—to default. Failure of those counterparties could lead to the failure of yet other counterparties, cascading through the economy and potentially causing systemic harm to the U.S. financial system. Required clearing reduces this risk by ensuring that uncollateralized risk does not accumulate in the financial system.

2. Risks and Benefits Posed by Inter-affiliate Swaps

The Commission is not persuaded by comments suggesting that inter-affiliate swaps pose no risk to the financial system or that clearing would not mitigate those risks. Entities that are affiliated with each other are separate legal entities notwithstanding their affiliation. As separate legal entities, affiliates generally are not legally responsible for each other's contractual obligations. This legal reality becomes readily apparent when one or more affiliates become insolvent.[17] Affiliates, as separate legal entities, are managed in bankruptcy as separate estates and the trustee for each debtor estate has a duty to the creditors of the affiliate, not the corporate family, the parent of the affiliates, or the corporate family's creditors.[18] This potential for separate

[12] *See* Clearing Requirement Determination at 74284–86; Cross-Border Application of Certain Swaps Provisions of the Commodity Exchange Act, 77 FR 41214, 41215–17 (July 12, 2012) (hereinafter ''Proposed Cross-Border Interpretive Guidance'').

[13] *See* Financial Crisis Inquiry Commission, ''The Financial Crisis Inquiry Report: Final Report of the National Commission on the Causes of the Financial and Economic Crisis in the United States,'' Jan. 2011, at 386, available at *http://www.gpo.gov/fdsys/pkg/GPO-FCIC/pdf/GPO-FCIC.pdf* (''The scale and nature of the [OTC] derivatives market created significant systemic risk throughout the financial system and helped fuel the panic in the fall of 2008: millions of contracts in this opaque and deregulated market created interconnections among a vast Web of financial institutions through counterparty credit risk, thus exposing the system to a contagion of spreading losses and defaults.'').

[14] Adam Davidson, ''How AIG fell apart,'' Reuters, Sept. 18, 2008, available at *http://www.reuters.com/article/2008/09/18/us-how-aig-fell-apart-idUSMAR85972720080918.*

[15] Hugh Son, ''AIG's Trustees Shun 'Shadow Board,' Seek Directors,'' Bloomberg, May 13, 2009, available at *http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aaog3i4yUopo&refer=us.*

[16] Congress did not provide for an exception or exemption for inter-affiliate swaps in the Dodd-Frank Act. However, commenters have pointed to legislative history and statements made by members of Congress supporting such an exemption at the time the Dodd-Frank Act was enacted.

[17] Note, for example, that while the Rule 1015 of the Federal Rules of Bankruptcy Procedure (FRBP) permits a court to consolidate bankruptcy cases between a debtor and affiliates, FRBP Rule 2009 provides that, among other things, if the court orders a joint administration of two or more estates under FRBP Rule 1015, the trustee shall keep separate accounts of the property and distribution of each estate. *See* Federal Rules of Bankruptcy Procedure (2011).

[18] *See In re L & S Indus., Inc.,* 122 B.R. 987, 993–994 (Bankr. N.D. Ill. 1991), *aff'd* 133 B.R. 119, *aff'd* 989 F.2d 929 (7th Cir. 1993) (''A trustee in bankruptcy represents the interests of the debtor's estate and its creditors, not interests of the debtor's principals, other than their interests as creditors of estate.''); *In re New Concept Housing, Inc.,* 951 F.2d 932, 938 (8th Cir. 1991) (quoting *In re L & S Indus., Inc.*). While the concept of ''substantive

treatment in bankruptcy, calls into question commenters' claims that third parties can rely on the creditworthiness of the entire corporate group when entering into swaps with affiliates.

On the other hand, inter-affiliate swaps offer certain risk-mitigating, hedging, and netting benefits as described by several commenters including ISDA & SIFMA, The Working Group, CDEU, and EEI. Furthermore, because affiliates in a corporate family generally internalize the risks of inter-affiliate transactions in the affiliated group, as described in the NPRM, the corporate family could face serious reputational harm if affiliates default on their swaps. Consequently, the entities within an affiliated group are incentivized to fulfill their inter-affiliate swap obligations to each other, to support each other to prevent outward-facing failures, and to resolve any disagreements about the terms of inter-affiliate swaps more quickly and amicably. As noted by ISDA & SIFMA, when an affiliated business group is fiscally sound, the capital, liquidity, and risk allocation decisions and default remedies between group members may be centrally managed thereby reducing the likelihood of group entities facing default risk of other group entities, ''so long as the group as a whole is solvent.''

While in many circumstances, these characteristics of inter-affiliate swaps may mitigate the risk of an affiliate defaulting on its obligations—particularly when the group as a whole is financially healthy—they do not constitute legally enforceable obligations pre-bankruptcy or in bankruptcy.[19] Accordingly, despite the existence of mutual support incentives, a corporate group facing insolvency risk may ultimately make the decision to allow some affiliates to fail and default on their swap obligations so that other affiliates can survive without becoming insolvent.[20] In cases where an insolvent affiliate has multiple obligations to third parties (swap-related or otherwise), those third parties may be subject to a pro rata distribution along with other creditors if the trust estate of the defaulting affiliate does not have sufficient liquid assets to cover losses on its uncleared swaps. It is at such times of financial stress that central clearing serves as the most effective systemic risk mitigant.

3. The Commission's Consideration of the Risks and Benefits

In providing an inter-affiliate exemption from required clearing, the Commission has considered the benefits that inter-affiliate swaps offer corporate groups against the risk of allowing an exemption from required clearing for swaps entered into by separate, but affiliated, legal entities. In considering the risks and benefits, the Commission was guided, in part, by comments pointing to the risk-mitigating characteristics of inter-affiliate swaps and the sound risk management practices of corporate groups that rely on inter-affiliate swaps. In crafting the rule, the Commission sought to codify these characteristics as eligibility criteria, or conditions, for the exemption from required clearing. The conditions imposed are designed to increase the likelihood that affiliates will take into consideration their mutual interests when entering into, and fulfilling, their inter-affiliate swap obligations. For example, the inter-affiliate exemption may be elected only if the affiliates are majority owned and their financial statements are consolidated, thereby increasing the likelihood that entities will be mutually obligated to meet the group's swap obligations. Additionally, the affiliates must be subject to a centralized risk management program, the swaps and the trading relationship between affiliates must be documented, and outward-facing swaps must be cleared or subject to an exemption or exception from clearing.

Despite the conditions to the exemption adopted in this final rule, the Commission reminds market participants that the conditions included in the final rule do not mitigate potential losses between inter-affiliates to the extent that clearing would, particularly if one or more affiliated entities become insolvent.

B. Section 4(c) Authority

Section 4(c)(1) of the CEA grants the Commission the authority to exempt any transaction or class of transactions, including swaps, from certain provisions of the CEA, including the clearing requirement, in order to ''promote responsible economic or financial innovation and fair competition.'' Section 4(c)(2) of the Act further provides that the Commission may not grant exemptive relief unless it determines that: (1) The exemption is appropriate for the transaction and consistent with the public interest; (2) the exemption is consistent with the purposes of the CEA; (3) the transaction will be entered into solely between ''appropriate persons''; and (4) the exemption will not have a material adverse effect on the ability of the Commission or any contract market to discharge its regulatory or self-regulatory responsibilities under the CEA.[21] In enacting section 4(c), Congress noted that the purpose of the provision is to give the Commission a means of providing certainty and stability to existing and emerging markets so that financial innovation and market development can proceed in an effective and competitive manner.[22]

In the NPRM, the Commission requested comment as to whether exempting inter-affiliate swaps from the clearing requirement under certain terms and conditions would be an appropriate exercise of its section 4(c) authority.[23] A number of commenters supported the Commission's use of its section 4(c) authority to exempt inter-affiliate swaps from clearing. According to MetLife and Prudential, the inter-affiliate exemption as proposed promotes responsible economic or financial innovation and fair competition by allowing corporate groups to use inter-affiliate swaps to engage in effective and efficient risk management activities. As an example, MetLife and Prudential explained that corporate groups can use a single conduit in the market on behalf of multiple affiliates within the group, which permits the corporate group to net affiliates' trades. This netting effectively reduces the overall risk of the corporate group and the number of open positions with external market participants, which in turn reduces operational, market, counterparty credit, and settlement risk. MetLife and Prudential both expressed the view that inter-affiliate swaps do not pose risks to

consolidation'' of affiliates in a business enterprise when they all enter into bankruptcy is sometimes used by a bankruptcy court, substantive consolidation is generally considered an extraordinary remedy to be used in limited circumstances. *See Substantive Consolidation—A Post-Modern Trend,* 14 Am. Bankr. Inst. L. Rev. 527 (Winter 2006).

[19] *See Bankrupt Subsidiaries: The Challenges to the Parent of Legal Separation,* 25 Emory Bankr. Dev. J. 65 (2008); *Liability of a Parent Corporation for the Obligations of an Insolvent Subsidiary Under American Case Law and Argentine Law,* 10 Am. Bankr. Inst. L. Rev. 217 (Spring 2002).

[20] *See, e.g.,* the bankruptcy of Residential Capital (ResCap) and its subsidiaries. ResCap was a mortgage subsidiary of Ally Financial Inc. ResCap declared bankruptcy independent of Ally Financial Inc., which is not part of the bankruptcy proceeding and continues to operate as a legally separate, solvent entity. *See In re Residential Capital, LLC,* No. 12–12020 (MG) (Bankr. S.D.N.Y. 2012), available at *http://www.kccllc.net/rescap.* While the bankruptcy of ResCap was not the direct result of inter-affiliate swaps, ResCap's bankruptcy demonstrates that an affiliate can be put into bankruptcy without forcing the affiliated parent to declare bankruptcy or to be legally responsible for the affiliate's debts.

[21] 7 U.S.C. 6(c)(2).

[22] House Conf. Report No. 102–978, 1992 U.S.C.C.A.N. 3179, 3213.

[23] *See* NPRM at 50428.

corporate groups and third parties, and both stated that inter-affiliate swaps may pose less risk to corporate groups given efficient netting across the corporate group. EEI also supported the Commission's use of its section 4(c) authority for similar reasons to those stated by MetLife and Prudential.

ISDA & SIFMA stated that the Commission's proposed exemption meets the requirements of section 4(c) of the CEA by promoting innovation and competition, and the exemption serves the public interest. ISDA & SIFMA noted that inter-affiliate swaps are integral to the strategies consolidated financial institutions rely upon to meet customer needs in an efficient, competitive, and sound manner. According to ISDA & SIFMA, inter-affiliate swaps maximize hedging efficiencies and allow customers to transact with a single client-facing entity in the customer's jurisdiction, which increases the scope of risk-reducing netting with individual customers as well as risk-reducing netting of offsetting positions within the financial group. This allows the institution to meet customer needs across jurisdictions and provide improved pricing or other risk management benefits to customers, thereby promoting financial innovation and competition. ISDA & SIFMA also commented that inter-affiliate swaps allocate and transfer risks among members of a corporate group rather than increasing risks.

CDEU also supported the Commission's use of its section 4(c) authority. CDEU stated that the inter-affiliate exemption would promote financial innovation, fair competition, and the public interest by preserving the ability of corporate entities to centrally hedge the risks of their affiliates. CDEU stated that without such an exemption firms that currently use a central hedging model will be disadvantaged as compared to direct competitors that do not use the same, efficient risk management model. CDEU also noted the additional costs that would be incurred from subjecting inter-affiliate swaps to clearing.

In the NPRM, the Commission requested comments on whether the inter-affiliate exemption would be in the public interest. In addition to responses noted above with regard to the public interest,[24] the Commission received two comment letters questioning whether the proposed exemption serves the public interest.

According to AFR, there are serious doubts about whether the inter-affiliate exemption is in the public interest. AFR stated that any hedging and netting benefits gained from corporate groups engaging in inter-affiliate swaps must be weighed against the benefits of full novation to a central counterparty in the form of a clearinghouse, which is a more comprehensive level of risk management. Given the experience of the 2008 financial crisis, AFR noted that any risk-reducing benefit of corporate group risk management practices assumes that the corporate group actually implements and adheres to sufficient risk management procedures. AFR is concerned about relying on such an assumption in light of the fact that there was a large-scale failure of proper risk management prior to and during the 2008 financial crisis.

Better Markets similarly commented that only a very narrow and strict inter-affiliate exemption could be in the public interest. Better Markets suggested ways in which the Commission should strengthen the proposed exemption to satisfy the public interest standard, including requiring a 100% majority ownership interest standard, requiring that both initial and variation margin be exchanged, and banning rehypothecation of posted collateral.[25]

After considering the complete record in this matter, the Commission has determined that the requirements of section 4(c) of the Act have been met with respect to the exemptive relief described above. The Commission believes that the exemption, as modified in this release, is consistent with the public interest and with the purposes of the CEA. The Commission's determination is based, in large part, on the transactions that are covered under the exemption. Namely, as most commenters noted, inter-affiliate transactions provide an important risk management role within corporate groups. In addition, and as discussed in the NPRM, the Commission recognizes that swaps entered into between corporate affiliates, if properly risk-managed, may be beneficial to the entity as a whole. Accordingly, in promulgating this rule, the Commission concludes that an exemption subject to certain conditions is appropriate for the transactions at issue, promotes responsible financial innovation and fair competition, and is consistent with the public interest. As the Commission noted in the NPRM and as reiterated in AFR's comment, any benefits to the corporate entity have to be considered in light of the risks that uncleared swaps pose to corporate groups and market participants generally. For this reason, the Commission is adopting an inter-affiliate exemption that is narrowly tailored and subject to a number of important conditions, including that affiliates seeking eligibility for the exemption document and manage the risks associated with the swaps.

Further, the Commission finds that the exemption is only available to ''appropriate persons.'' Section 4(c)(3) of the CEA includes within the term ''appropriate person'' a number of specified categories of persons, including ''such other persons that the Commission determines to be appropriate in light of their financial or other qualifications, or the applicability of appropriate regulatory protections.''[26] Given that only eligible contract participants (ECPs) can enter into uncleared swaps and that the elements of the ECP definition (as set forth in section 1a(18)(A) of the CEA and Commission regulation 1.3(m)) generally are more restrictive than the comparable elements of the enumerated ''appropriate person'' definition, the Commission finds that ECPs are appropriate persons within the scope of section 4(c)(3)(K) for purposes of this final release and that in so doing, the class of persons eligible to rely on the exemption will be limited to ''appropriate persons'' within the scope of section 4(c)(3) of the CEA.

Finally, the Commission finds that this exemption will not have a material effect on the ability of the Commission to discharge its regulatory responsibilities. This exemption is limited in scope and, as described further below, the Commission will have access to information regarding the inter-affiliate swaps subject to this exemption because they will be reported to an SDR pursuant to the conditions of the exemption. In addition to the reporting conditions in the rule, the Commission retains its special call, anti-fraud, and anti-evasion authorities, which will enable it to adequately discharge its regulatory responsibilities under the CEA.

For the reasons described in this release, the Commission believes it is appropriate and consistent with the public interest to adopt such an exemption.

[24] As noted above, CDEU, MetLife, Prudential, and ISDA & SIFMA stated that an inter-affiliate exemption is consistent with the public interest.

[25] As discussed further below, both AFR and Better Markets contend that all the proposed conditions must be retained and the conditions must be strengthened in a number of ways.

[26] 7 U.S.C. 6(c)(3)(K).

C. Definition of Affiliate Status

As proposed, § 39.6(g)(1) provides that counterparties to a swap may elect the inter-affiliate exemption to the clearing requirement if the financial statements of both counterparties are reported on a consolidated basis, and either one counterparty directly or indirectly holds a majority ownership interest in the other, or a third party directly or indirectly holds a majority ownership interest in both counterparties. The proposed rule further specified that a counterparty or third party directly or indirectly holds a majority ownership interest if it directly or indirectly holds a majority of the equity securities of an entity, or the right to receive upon dissolution, or the contribution of, a majority of the capital of a partnership.

1. Majority Ownership Interest

Four commenters supported proposed § 39.6(g)(1), which set forth the requirements of an affiliate status. CDEU commented that the majority-ownership test strikes an appropriate balance between ensuring that the rule is not overly broad and providing companies with the flexibility to account for differences in corporate structures. EEI stated that majority ownership is sufficient to mitigate what EEI believes is ''minimal'' risk posed by uncleared inter-affiliate swaps. In addition, EEI noted that majority-owned affiliates will have strong incentives to internalize one another's risks because the failure of one affiliate impacts all affiliates within the corporate group. The Working Group generally supported the Commission's definition, but stated that inter-affiliate swaps should be unconditionally exempt from mandatory clearing when the affiliates are consolidated for accounting purposes.[27] MetLife stated that it would likely limit inter-affiliate trading to ''commonly-owned'' affiliates, but agreed with the flexibility of including majority-owned affiliates.[28]

Two commenters objected to proposed § 39.6(g)(1) and requested the Commission require 100% ownership of affiliates. AFR stated that the systemic impact of swaps is based on ownership, not on corporate control. AFR also stated that permitting such a low level of joint ownership would lead to evasion of the clearing requirement through the creation of joint ventures set up to enable swap trading between banks without the need to clear the swaps. Similarly, Better Markets agreed that only 100% owned affiliates should be eligible for the exemption because allowing the exemption for the majority owner permits that owner to disregard the views of its minority partners [29] and creates an incentive to evade the clearing requirement by structuring subsidiary partnerships. Finally, Better Markets stated that the majority-ownership standard would result in corporate groups transferring price risk and credit risk to different locations, facilitating interconnectedness and potentially giving rise to systemic risk during times of market stress.

Having considered these comments, the Commission is adopting proposed § 39.6(g)(1) (now § 50.52(a)) with the modifications discussed below. The Commission believes that the majority-owned standard is not overly broad and provides entities with flexibility to account for differences in corporate structure. In particular, requiring majority ownership serves to ensure that counterparty credit risk posed by inter-affiliate swaps is internalized by the corporate group.

In addition, as the NPRM noted, it is important for the inter-affiliate clearing exemption to be harmonized with foreign jurisdictions that have or are developing comparable clearing regimes consistent with the 2009 G–20 Leaders' Statement.[30] For example, the European Parliament and Council of the European Union have adopted the European Market Infrastructure Regulation (EMIR).[31] Subject to the relevant provisions, technical standards, and regulations under EMIR, certain OTC derivatives transactions between parent and subsidiary entities, could be exempt from its general clearing requirement. Generally speaking, it appears that the intragroup exemptions under EMIR will require majority-ownership rights and consolidated accounting and annual reporting.[32]

In response to the concerns of AFR and Better Markets regarding the need for the Commission to adopt a stricter requirement of 100% ownership, the Commission recognizes the potential for corporate entities to structure their affiliates in such a manner as to evade the clearing requirement. However, the Commission believes it has carefully crafted a narrow exemption based on the condition that the affiliate is majority-owned, along with the other conditions imposed under this exemption. In terms of the interests of minority shareholders, the Commission believes that the views of all shareholders should be taken into account when an entity decides whether to clear a swap, but ultimately, the decision is a matter for corporate and securities laws.

2. Consolidated Financial Statements

In addition to the majority-ownership requirement, proposed § 39.6(g)(1) provided that counterparties to a swap may elect the inter-affiliate exemption to the clearing requirement if the financial statements of both counterparties are reported on a consolidated basis. The Commission received several comments on this provision. The FSR requested that the

[27] The Working Group also stated that it was unable to determine the scope of the proposed rule until the Commission provides further guidance on the definition of ''financial entity'' under section 2(h)(7) of the CEA. In particular, The Working Group asked that the Commission clarify the status of treasury affiliates acting on behalf of affiliates able to claim an exception or exemption from required clearing. The Working Group further requested that the Commission provide guidance regarding what constitutes being predominantly engaged in activities that are in the business of banking or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956, and clarify that trading physical commodities is not financial in nature. In response to The Working Group and other comments regarding the applicability of the end-user exception for certain inter-affiliate swaps, the Commission notes that it will address the use of treasury affiliates under a separate Commission action. With regard to the definition of financial entity, the Commission provided additional guidance in the end-user exception rulemaking, and declined to interpret statutory provisions within the jurisdiction of other U.S. authorities. *See* End-User Exception to the Clearing Requirement for Swaps, 77 FR 42560, 42567 (July 19, 2012) (explaining that ''business of banking'' is a term of art found in the National Bank Act and is within the jurisdiction of, and therefore subject to interpretation by, the Office of the Comptroller of the Currency and section 4(k) of the Bank Holding Company Act is within the jurisdiction of, and therefore subject to interpretation by, the Board of Governors of the Federal Reserve System). Accordingly, further guidance on this issue is beyond the scope of this rulemaking, except as provided in note 76 of this release.

[28] Prudential stated that its affiliates are all wholly-owned affiliates and expressed no view on the issue of majority-owned affiliates.

[29] Two other commenters also discussed the issue of minority investors. ISDA & SIFMA stated that any concerns about the protection of minority investors in group entities is ''the province of corporate and securities laws.'' EEI noted that ''to the extent minority owners have an opinion about electing the exemption, they may negotiate with majority-owners as they deem commercially appropriate for the right to participate in inter-affiliate clearing decisions.''

[30] At the G–20 meeting in Pittsburgh in 2009, as noted above, the G–20 Leaders declared that, ''[a]ll standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest.'' G–20 Leaders' Final Statement at Pittsburgh Summit: Framework for Strong, Sustainable and Balanced Growth (Sept. 29, 2009).

[31] *See* Regulation (EU) No 648/2012 of the European Parliament and of the Council on OTC Derivatives, Central Counterparties and Trade Repositories, 2012 O.J. (L 201) (hereinafter ''EMIR'') available at *http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2012:201:0001:0059:EN:PDF.*

[32] *Id.* at Articles 3 and 4.

Commission clarify that alternative accounting standards can be used for purposes of meeting the requirement that the financial statements of both affiliates be reported on a consolidated basis. In response to a question in the NPRM regarding whether the exemption should be limited to the ownership threshold based on section 1504 of the Internal Revenue Code, MetLife and Prudential both explained that a U.S. taxpayer cannot file consolidated U.S. tax returns with its non-U.S. affiliate. Accordingly, both MetLife and Prudential stated that they did not support such a limitation on the exemption.

In an effort to clarify the consolidated financial reporting condition, the Commission is modifying the requirement that financial statements be reported on a consolidated basis in two ways. First, the Commission is clarifying which entities are subject to the consolidated reporting condition. Under revised § 50.52(a)(1)(i), if one of the two affiliate counterparties claiming the exemption holds a majority interest in the other affiliate counterparty (the ''majority-interest holder''), then the financial statements of the majority-interest holder must be reported on a consolidated basis and such statements must include the financial results of the majority-owned counterparty. On the other hand, under revised § 50.52(a)(1)(ii), if a third party is the majority-interest holder of both affiliate counterparties claiming the exemption (the ''third-party majority-interest holder''), then the financial statements of the third-party majority-interest holder must be reported on a consolidated basis and such statements must include the financial results of both affiliate counterparties to the swap. In essence, the rule requires that the financial statements of the majority-owner (whether a third party or not) are subject to consolidation under accounting standards and must include either the other affiliate counterparty's or both majority-owned affiliate counterparties' financial results. The Commission is using the term ''financial results'' to refer to the financial statements, reports, or other material of the majority-owned counterparty or counterparties that must be consolidated with the majority owner's financial statements.

The second modification to the proposed rule responds to FSR's request that the Commission clarify that alternative accounting standards are permitted. Accordingly, the consolidated financial statements of the majority-interest holder or the third-party majority-interest holder, as appropriate, may be prepared under either Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS). The modification reflects the fact that entities claiming the exemption may be subject to different accounting standards.

The Commission is not modifying the rule to limit the exemption to an ownership threshold based on section 1504 of the Internal Revenue Code.

D. Inter-Affiliate Swap Documentation

As proposed, § 39.6(g)(2)(ii) provided that eligible affiliate counterparties that elect the inter-affiliate exemption must enter into swaps with a swap trading relationship document that is in writing and includes all the terms governing the relationship between the affiliates. These terms include, but are not limited to, payment obligations, netting of payments, transfer of rights and obligations, governing law, valuation, and dispute resolution. This requirement will be satisfied if an eligible affiliate counterparty is an SD or MSP that complies with the swap trading relationship documentation requirements of § 23.504. Regulation 23.504 includes all the proposed terms under proposed § 39.6(g)(2)(ii) plus a number of other specific requirements. The NPRM stated that the burden on affiliates would not be onerous because all affiliates should be able to use a master agreement to document their swaps, however, in the NPRM the Commission did not require the use of such a master agreement.

The Commission received a number of comments both supporting and opposing the swap documentation requirement. Better Markets, MetLife, and Prudential all supported the proposed documentation requirement. Specifically, MetLife and Prudential did not believe that the documentation requirement would be any more ''burdensome or costly'' for them because they already document all of their swaps. Additionally, MetLife and Prudential commented that the proposed documentation method is ''preferable'' to any other method and represents industry best practice. Better Markets agreed with the conditions imposed on the exemption, including the documentation requirements, and stated that the conditions should not be weakened.[33]

Cravath, EEI, CDEU, and DLA Piper opposed the proposed documentation requirement. Cravath stated that the costs associated with the imposition of documentation requirements outweigh any benefits to the financial system, and that the Commission should leave the determination as to the appropriate level of documentation to boards of directors and management of companies, to determine based on the ''reasonable exercise of their fiduciary responsibilities.'' DLA Piper commented that inter-affiliate swaps are typically documented by a simple intercompany agreement, trade ticket or accounting entry rather than ISDA Master Agreements, and that the documentation requirements would be burdensome.

CDEU expressed concern that proposed § 39.6(g)(2)(ii)(B) would require that full ISDA Master Agreements be used to document inter-affiliate swaps. CDEU explained that while many market participants use master agreements, some end users many not have full master agreements because inter-affiliate swaps are purely internal and do not increase systemic risk.[34] CDEU recommended that the proposed rule be revised to require that the swap documentation ''include all terms necessary for compliance with its centralized risk management program'' and eliminate the list of required terms. CDEU also requested that the Commission clarify that (1) market participants can continue to use documentation required by their risk management programs, and (2) the rule does not require market participants to use the ISDA Master Agreements.

EEI recommended that the Commission eliminate the documentation requirement because the requirement is duplicative of corporate accounting records that affiliates maintain as a matter of prudent business practice. According to EEI, current accounting practices will address the Commission's tracking and proof-of-claim concerns related to inter-affiliate swaps. EEI commented that a documentation requirement imposes ''an additional, costly layer of ministerial process and documentation that is unnecessary to achieve the Commission's stated objectives.''[35] EEI

[33] While it did not address the documentation requirements specifically, AFR stated that the proposed conditions on the exemption should be fully retained. Similarly, Chris Barnard generally expressed support for the proposed rules but did not specifically mention the documentation provisions.

[34] CDEU recognized that SDs and MSPs and their counterparties, including affiliates, will be subject to the requirements of § 23.504, but stated that it is not appropriate to apply the same requirements to non-registrant affiliates.

[35] EEI commented on the NPRM's consideration of costs and benefits and stated that the costs of the proposed documentation requirement are unjustified. The NPRM included an estimate that there would be a one-time cost of $15,000 to

requested that the Commission allow market participants ''to document their inter-affiliate risk transfers pursuant to standard commercial accounting and business records practices.''

ISDA & SIFMA stated that the documentation requirements were overly prescriptive and would impose unnecessary costs on affiliates. Specifically, ISDA & SIFMA identified the valuation and dispute resolution requirements as serving little purpose. ISDA & SIFMA recommended a more flexible approach that would require adequate documentation of ''all transaction terms under applicable law.''

The Commission considered all of the comments relating to the proposed documentation requirement and is retaining the swap documentation requirement subject to certain modifications recommended by commenters. As discussed in the NPRM, the Commission is concerned that without adequate documentation entities will be unable to track and manage the risks arising from inter-affiliate swaps. Equally important, affiliates must be able to offer sufficient proof of claim in the event of insolvency. The Commission is adopting proposed § 39.6(g)(2)(ii)(A) (now § 50.52(b)(2)(i)), which essentially confirms the applicability of § 23.504 to swaps between affiliates where one of the affiliates is an SD or MSP. However, with regard to swaps between affiliates that are not SDs or MSPs, and in response to commenters' requests for a more flexible standard, the Commission is adopting ISDA & SIFMA's recommendation that the focus of the documentation requirement be on documenting all of an inter-affiliate transaction's terms. Accordingly, the Commission is modifying proposed § 39.6(g)(2)(ii)(B) (now § 50.52(b)(2)(ii)), to require that ''the terms of the swap are documented in a swap trading relationship document that shall be in writing and shall include all terms governing the trading relationship between the eligible affiliate counterparties.''

Under this modification, the Commission is eliminating the non-exclusive list of terms, which included payment obligations, netting of payments, transfer of rights and obligations, governing law, valuation, and dispute resolution. The change responds to commenters' requests for a more flexible approach that reflects current market best practices. While, in most instances, the Commission anticipates that documentation between affiliates will include all of the previously enumerated terms, the more general rule formulation signals that market participants retain the ability to craft appropriate documentation for their affiliated entities. This modification also serves to address concerns that the intent of the proposed rule was to require formal master agreements, such as the ISDA Master Agreement. As explained above, the proposed rule was not intended to require affiliates to enter into formal master agreements. Rather, the Commission observed that parties that already use master agreements to document their inter-affiliate swaps would likely meet the requirements of the inter-affiliate exemption without additional costs.[36] This observation was supported by commenters such as MetLife and Prudential.

This modification also responds, in part, to CDEU's request that the documentation ''include all terms necessary for compliance with its centralized risk management program.'' While the Commission is modifying the rule to delete the specific references to valuation and dispute resolution procedures, ensuring that affiliates entering into swaps have sound procedures in place to value their swaps and resolve any disputes is critical to risk management. Accordingly, as discussed further below, the Commission anticipates that affiliates will include rigorous valuation provisions and procedures for elevating and resolving disputes in their risk management programs.

In response to comments from Better Markets and AFR that the proposed regulations should be retained and not weakened, the Commission does not believe that eliminating the non-exclusive list of terms and replacing it with a simple requirement that all terms of the swap transaction and the relationship between the affiliates be documented will weaken the rule. Rather, eligible affiliates will have some discretion, but also have the obligation to ensure that their documentation contains an accurate and thorough written record of their swaps. The Commission clarifies, however, that book entries would not suffice for purposes of complying with the swap documentation condition because such entries do not contain sufficient information to adequately document the swap or the trading relationship between affiliates.

EEI requested that, if the Commission retains the documentation requirement, the Commission clarify that swap confirmations are not required because executing confirmations would impose substantial costs. In response to this request, the Commission clarifies that for swaps between affiliates where one or both of the affiliates is an SD or MSP, the confirmation rules under § 23.501 are incorporated into § 23.504.[37] As a result, those affiliates must confirm all the terms of their transactions according to the applicable timeframes set forth under § 23.501.[38] By contrast, for swaps between affiliates that are not SDs or MSPs, the provisions of § 23.501 do not apply and formal confirmation pursuant to § 23.501 is not required. However, the Commission notes that the terms of the swap will be documented by the affiliates and confirmation of those terms will be reported to an SDR under the Commission's reporting rules.[39]

E. Centralized Risk Management Program

Proposed § 39.6(g)(2)(iii) requires the swap to be subject to a centralized risk management program that is ''reasonably designed to monitor and manage the risks associated with the swap.'' If at least one of the eligible affiliate counterparties is an SD or MSP, the centralized risk management requirement is satisfied by complying with the requirements of § 23.600.[40]

develop appropriate documentation for use by an entity's affiliates. EEI objected to this estimate because, in its view, the legal costs associated with individually negotiating and amending standard agreements between individual affiliates would exceed the NPRM's estimates. In addition, EEI objected to the NPRM's estimate of 22 affiliated counterparties for each corporate group as ''far too low'' for U.S. energy companies. However, EEI did not provide specific, quantitative information in terms of either the legal costs of complying with the proposed documentation requirement or number of affiliates for a corporate group subject to this rule.

[36] *See* Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904, 55906 (Sept. 11, 2012) (recognizing that the ISDA Master Agreement, and other associated documents in their pre-printed form as published by ISDA are capable of compliance with the rules, but noting that such agreements are subject to customization by counterparties and such customization may or may not comply with Commission requirements).

[37] *See* 17 CFR 23.504(b)(2); 77 FR 55907–08.

[38] *See* 17 CFR 23.501.

[39] *See, e.g.,* 17 CFR 45.3(c)(1)(iii) (requiring the reporting counterparty to report all confirmation data for the swap as soon as technologically practicable after confirmation, but no later than 30 minutes after confirmation if confirmation occurs electronically or 24 business hours after confirmation if confirmation does not occur electronically).

[40] 17 CFR 23.600; Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflict of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20128 (Apr. 2, 2012).

Five commenters generally supported proposed § 39.6(g)(2)(iii). AFR supported the proposed risk management program requirement and stated that dispensing with or weakening this condition, or any of the conditions, would heighten systemic risk and call into question the Commission's exemptive authority. Better Markets agreed that requiring a centralized risk management program was wholly appropriate and should be maintained as a requirement.

Prudential and MetLife confirmed that both companies currently have centralized risk management programs and consider them to be consistent with current practice in the industry. Prudential noted that it structured its risk management system to allow only one affiliate to enter into swaps with third parties, which permits Prudential to impose a single credit limit on its market-facing counterparty relationships. MetLife's enterprise-wide risk management system provides all affiliates trading derivatives with affiliate-specific sets of guidelines and limits that are also included in enterprise-wide guidance and limits.

Finally, CDEU expressed support for the centralized risk management program requirement, but requested that the Commission clarify that the level of risk management for inter-affiliate swaps not be interpreted as requiring the same level of risk management that end-users maintain for external third-party swaps. CDEU noted that most end users that use inter-affiliate swaps currently have robust centralized risk management programs in place to monitor all external swap risks and affiliates are required to follow group-wide risk polices. CDEU was supportive of the proposal so long as the requirement is interpreted reasonably and permits entities to ''implement risk policies and procedures appropriate to the risks of a corporate group's inter-affiliate swaps.''

Four commenters objected to the proposed requirement, suggested alternatives, and/or requested clarification. FSR stated that the condition should be eliminated because integrated risk management systems ''are generally not established across international boundaries'' and are not consistent with general risk practices in large, multinational organizations. FSR suggested that the requirement be dropped in favor of each entity making ''its own evaluations of the risk associated with an inter-affiliate position.''

Cravath stated that in many cases, for companies outside of the financial sector, the proposed rule will require a substantial change in the processes and procedures currently maintained by such companies, and the cost of complying with the risk management program requirements outweigh any benefits to the financial system. Cravath commented that rather than subject companies to a risk management rule, ''[c]ompanies should have the flexibility to engage in prudent risk management for their corporate group in a manner consistent with the overall level of risks to their business.''

EEI suggested that the Commission eliminate the centralized risk management program requirement on the grounds that it would be duplicative for corporate groups that already have risk management programs in place. According to EEI, it is standard industry practice for both private and public companies to have a risk management program. EEI accordingly does not see a ''need to impose a separate, discrete regulatory requirement to document with an SDR or the Commission the existence of a centralized risk management program.'' If the Commission decides to retain the requirement, EEI requested that the Commission require a program be ''reasonably designed to monitor and manage the risks associated with the swap'' and provide the flexibility to design risk management programs that address the unique risks of an entity's business.

The Working Group requested that the Commission clarify whether non-SDs and non-MSPs would be subject to the same enterprise-level risk management program as required for SDs and MSPs under § 23.600. If the Commission intended to require the same level of risk management, The Working Group commented that there are ''a number of commercially and legally valid reasons'' why a centralized risk management program in accordance with § 23.600 would be inconsistent with current industry practice. The Working Group cited cost as a reason companies do not provide for centralized risk management on different continents, in addition to antitrust and other regulatory reasons. The Working Group requested that the Commission clarify that the rule requires only that both counterparties be subject to a ''robust risk management program.''

In response to comments, the Commission observes a general consensus that market participants have risk management policies and procedures in place, at least with regard to affiliates located in the same jurisdiction. FSR and The Working Group questioned whether entities have centralized risk management programs for affiliates in different jurisdictions and whether such cross-border risk management systems are prohibitively costly. In response to these comments, the Commission points to comments stating that inter-affiliate swaps play a critical role in an entity's overall management of risk and provide netting benefits among affiliates. Consequently, it stands to reason that inter-affiliate swaps between affiliates in different jurisdictions are as much a part of an entity's overall risk management framework as swaps between affiliates located in the same jurisdiction. The Commission does not believe that it would be prudent business practice for affiliates to enter into inter-affiliate swaps without risk management systems integrated across international boundaries to the extent that the entity permits affiliates across jurisdictions to enter into swaps with one another.

In response to comments asking that the Commission clarify the level of risk management required for non-SDs and non-MSPs, the Commission confirms that the requirements of proposed § 39.6(g)(2)(iii) (now § 50.52(b)(3)) are intended to be flexible and do not require the same level of policies and procedures as required under § 23.600 for SDs and MSPs. Under the rule, a company is free to structure its centralized risk management program according to its unique needs, provided that the program reasonably monitors and manages the risks associated with its uncleared inter-affiliate swaps. In all likelihood, if a corporate group has a centralized risk management program in place that reasonably monitors and manages the risk associated with its inter-affiliate swaps as part of current industry practice, it is likely that the program would fulfill the requirements of proposed § 39.6(g)(2)(iii) (now § 50.52(b)(3)).

The Commission did not receive comments regarding the requirement that SD and MSP affiliates must comply with § 23.600.[41] The Commission is adopting that provision of the rule as proposed.

Given that a number of commenters stated that it is common practice for market participants, including end users, to have risk management programs in place, the Commission is not persuaded by Cravath's comment that the rule will require a substantial change in the processes and procedures currently maintained by companies to manage risk. Accordingly, costs will be

[41] 17 CFR 23.600(c)(1)(ii) (''The Risk Management Program shall take into account risks posed by affiliates and the Risk Management Program shall be integrated into risk management at the consolidated entity level.'').

limited where an entity only needs to make modifications to existing risk management programs. Moreover, a corporate group may not have to incur any costs if it already has a risk management system that meets the requirements of the inter-affiliate exemption in place.

F. Variation Margin

Proposed § 39.6(g)(2)(iv) required that variation margin be collected for swaps between affiliates that are financial entities, in compliance with the proposed variation margin requirements in proposed § 39.6(g)(3).[42] The rule further proposed an exception to the variation margin requirement for 100% commonly-owned and commonly-guaranteed affiliates, provided that the common guarantor is under 100% common ownership.

Some commenters expressed support for the proposed variation margin requirement. Prudential commented that it did not take issue with the variation margin requirement, but noted that variation margin may not be appropriate or required in every circumstance.[43] Prudential also commented that the Commission should not impose initial margin requirements for the inter-affiliate exemption.[44] Chris Barnard agreed that the Commission should require the exchange of variation margin for financial entities and noted that the exchange of variation margin is consistent with the key principles proposed by the Basel Committee on Banking Supervision (BCBS) and the Board of the International Organization of Securities Commissions (IOSCO).[45] Better Markets expressed support for the variation margin requirement and commented that it should be expanded to non-financial entities.[46] AFR expressed support for the variation margin proposal. Both Better Markets and AFR also expressed support for the requirement that affiliates post initial margin for inter-affiliate swaps subject to the exemption.[47]

Several commenters stated that the proposed variation margin requirement for swaps between affiliates that are financial entities is not necessary and should not be a condition of the inter-affiliate exemption to clearing.[48] ISDA & SIFMA commented that the benefits of variation margin for inter-affiliate swaps are ''tenuous'' because the third party to a swap is exposed to the credit risk of the entire group not just the specific affiliate with which it enters into a swap. ISDA & SIFMA maintain that it is not necessary to protect group entities from the credit risk of other group entities because group management possesses the tools needed to resolve potential defaults within the group. According to ISDA & SIFMA, the Commission can fully achieve its regulatory mandate to protect third-party swap counterparties through the application of the clearing requirement to those outward-facing swaps that are subject to the Commission's regulation, as well as regulation of those group entities whose outward-facing swap activities are sufficiently large to subject them to SD and MSP registration.[49]

FSR commented that affiliates should be required to post margin only in instances where their primary regulator imposes such a requirement for affiliate transactions.[50] FSR states that requiring variation margin for inter-affiliate swaps involving non-bank financial entities will limit the ability of companies to efficiently allocate risk among affiliates and manage risk centrally.[51] FSR further commented that initial margin should not be required between affiliates, and requested that the Commission clarify that the exemption does not require the exchange of initial margin between affiliates.

CDEU commented that the Commission should not require variation margin, or initial margin, with respect to inter-affiliate swaps between end-user affiliates. According to CDEU, while margin requirements may serve as a risk-management tool for market-facing swaps, inter-affiliate swaps do not increase counterparty credit risk or contribute to interconnectedness among market participants. CDEU stated that a number of specific entities, including banks and insurance companies, already post variation margin for inter-affiliate swaps, largely because of prudential requirements, and that applying variation margin requirement to these entities is unnecessary.[52] CDEU requested that if the Commission retains the variation margin requirement, that it limit the exchange of variation margin to SDs and MSPs, and that the requirement should not apply to entities that are considered ''financial entities.''

With respect to the proposed common guarantor exception to the variation margin requirement, ISDA & SIFMA commented that the Commission has not provided adequate rationale for requiring a common guarantor as a condition for exempting group members from the proposed variation margin requirement, nor has the Commission made it clear which obligations must be guaranteed. ISDA & SIFMA requested that the Commission further clarify the guarantee exception in proposed § 39.6(g)(2)(iv), including to clarify that it includes ''direct or indirect'' ownership, and that swaps between the

[42] The Commission also requested comments on, among other things, whether the Commission should promulgate regulations that set forth minimum standards for initial margin for inter-affiliate swaps.

[43] Prudential also commented that there is ''no less costly risk-management tool'' than variation margin.

[44] MetLife also commented that the Commission should not impose initial margin requirements for the inter-affiliate exemption.

[45] *See* Margin Requirements for Non-Centrally-Cleared Derivatives, Consultative Report (July 2012), available at *http://www.bis.org/publ/bcbs226.pdf.*

[46] Better Markets also suggested that the Commission ban the rehypothecation of collateral.

[47] Better Markets commented that initial margin should be required because initial margin is the true ''statistical estimate of the potential consequences of a default'' and that variation margin is merely the ''daily recalibration'' of the risk estimation of initial margin.

[48] Cravath commented that variation margin requirements ''tie up capital that could otherwise be used for investment purposes to create jobs and goods and services for the economy.'' MetLife commented that while it is subject to variation margin under state insurance law, MetLife believes that the Commission should eliminate the variation margin requirement for 100%-owned affiliates and should not require ''inter-affiliate guarantees.'' DLA Piper also urged the Commission to provide corporate groups with legal certainty that no margin requirements will be imposed on any inter-company swaps.

[49] ISDA & SIFMA claimed that the additional liquidity demands resulting from variation margin will distort the group's risk management choices. ISDA & SIFMA further claimed that while they have previously stated that inter-affiliate margin occurs ''routinely,'' this does not mean that it occurs ''uniformly'' or that imposing variation margin would not increase cost.

[50] Citing to sections 23A and 23B of the Federal Reserve Act and Regulation W as well as public utility, insurance, and investment company law, FSR commented that a number of regulated entities may be subject to various restrictions on affiliate transactions and that for purposes of the inter-affiliate exemption, margin requirements should only apply ''to the extent other applicable law . . . imposes such restrictions on affiliate transactions.'' FSR also points out that subsidiaries of banks are ''generally not treated as 'affiliates' '' within the restrictions of sections 23A and 23B of the Federal Reserve Act.

[51] FSR further requested that the Commission clarify that to the extent that financial entities are required, through credit support arrangements with their affiliates, to have minimum transfer amounts, thresholds, and other similar arrangements in place, that such arrangements would be permitted in connection with inter-affiliate swaps relying on the inter-affiliate exemption.

[52] Moreover, CDEU claims that many inter-affiliate swaps between end-user corporate groups are not subject to variation margin requirements, and that these entities likely will not have the liquidity to exchange variation margin, and would likely be required to borrow the money from the centralized hedging unit with which it is entering the internal swap. Such an arrangement, according to CDEU, would transfer the loan back to the centralized hedging unit and effectively eliminate any perceived benefit from the exchange of variation margin.

common guarantor and its affiliates are eligible for the exception.[53]

CDEU commented that the Commission should not limit the guarantee exception to 100% commonly-owned affiliates and should allow the exception for majority-owned affiliates. CDEU requested that the Commission clarify that only the related market-facing swaps with third parties are required to be guaranteed by the common owner or parent. CDEU suggested that the Commission clarify that the parent company has the option to act as the guarantor of the transactions.

FSR commented that the variation margin requirement should not apply to 100% commonly-owned affiliates even if they do not have a common guarantor that is under 100% common ownership. According to FSR, the 100% common ownership requirement creates sufficient alignment of interests between swap counterparties and places the risk of the swap on the ultimate parent entity, and thus, the exchange of variation margin would do little to mitigate intercompany risk.

MetLife and Prudential commented that inter-affiliate swaps should not be commonly guaranteed by a 100% wholly-owned affiliate in order to be exempt from the variation margin requirement. Specifically, MetLife stated that the Commission should not require guarantees or explicit credit support as a condition for an exception from the variation margin requirement and should rely instead on the direct or indirect common ownership requirement. Both MetLife and Prudential stated that the corporate group of 100% wholly owned affiliates should be able to decide whether internal swaps need to be guaranteed by an affiliate.

After considering the comments submitted in response to the proposed variation margin requirement, the Commission is determining not to require variation or initial margin as a condition for electing the inter-affiliate exemption. In so doing, the Commission was guided by comments expressing concern that a variation margin requirement will limit the ability of U.S. companies to efficiently allocate risk among affiliates and manage risk centrally. Notwithstanding the Commission's determination not to impose variation margin as a condition of the inter-affiliate exemption, the Commission is encouraged by comments noting that many companies already exchange variation margin, and agrees with commenters that collateralizing risk exposure with respect to any swaps, including inter-affiliate swaps, is critical, and encourages market participants to do so as a matter of sound business practice.

G. Treatment of Outward-Facing Swaps and Relief

Proposed § 39.6(g)(2)(v) provided that eligible affiliate counterparties to a swap may elect the inter-affiliate exemption from clearing provided that each affiliate counterparty either: (i) Is located in the United States; (ii) is located in a jurisdiction with a clearing requirement that is comparable and comprehensive to the clearing requirement in the United States; (iii) is required to clear swaps with non-affiliated parties in compliance with U.S. law; or (iv) does not enter into swaps with non-affiliated parties.[54]

The Commission received several comments both in support of and in opposition to various aspects of the conditions related to the treatment of outward-facing swaps in proposed § 39.6(g)(2)(v). The Commission has considered each of the comments and has determined to adopt the treatment of outward-facing swaps conditions of the inter-affiliate exemption, with certain modifications described below, because such conditions are necessary to prevent evasion of the clearing requirement and to help protect the U.S. financial markets. The remainder of this Section II.G describes the comments received in response to proposed § 39.6(g)(2)(v) (now § 50.52(b)(4)), along with the Commission's responses and clarifications with respect to those comments.

1. Basis for the Cross-border Conditions

While recognizing the benefits of exempting certain inter-affiliate transactions from the clearing requirement, in the NPRM, the Commission described two separate grounds for proposing the treatment of outward-facing swaps condition to the inter-affiliate exemption. First, the Commission explained that an inter-affiliate exemption from required clearing could enable entities to evade the clearing requirement through trades with affiliates that are located in foreign jurisdictions that do not have a comparable and comprehensive clearing regime. In addition, the Commission noted in the NPRM that uncleared inter-affiliate swaps may pose risk to other market participants, and therefore, the financial system if the affiliate enters into swaps with third parties that are related on a back-to-back or matched book basis with inter-affiliate swaps.

In support of the proposed treatment of outward-facing swaps conditions, AFR stated that inter-affiliate swaps could, without appropriate restrictions, bring risk back to the U.S. from foreign affiliates. AFR commented that an inter-affiliate swap might be used to move parts of the U.S. swaps market outside of U.S. regulatory oversight by transferring risk to jurisdictions with little or no regulatory oversight, whereby a non-U.S. affiliate of a U.S. entity could enter into an outward-facing swap. AFR stated that an inter-affiliate swap could contribute to financial contagion across different groups within a complex financial institution, making it more difficult to ''ring-fence'' risks in one part of an organization. AFR further commented that laws and regulations of a foreign country might prevent U.S. counterparties to swaps from having access to the financial resources of an affiliate in the event of a bankruptcy or insolvency.[55] The inability of an affiliate to access resources in other jurisdictions, according to AFR, may threaten the ability of U.S. creditors to retrieve assets and may put U.S. taxpayers at risk.[56] Better Markets also

[53] ISDA requested that the Commission clarify that the shareholders of a publicly-owned holding company are the common owners and that its 100% owned subsidiaries meet the definition of ''100% commonly owned,'' and further stated that the Commission should address the consequences of a guarantee of a swap being considered a swap itself.

[54] In this release, the requirements of proposed § 39.6(g)(2)(v), which are now being adopted in new § 50.52(b)(4), are referred to as the ''treatment of outward-facing swaps condition.''

[55] AFR suggested that the Commission consult with the U.S. banking agencies, such as the FDIC, regarding the potential issues relating to bankruptcy of non-U.S. affiliates. As noted above, the Commission has consulted with both U.S. and international authorities in preparing this adopting release. In response to AFR's comments pertaining to the limitations of foreign bankruptcy laws, the Commission notes that the specific bankruptcy limitations attendant to U.S. counterparties with respect to their non-U.S. affiliates are outside the scope of this rulemaking. The Commission further notes that the conditions imposed by the rules being adopted in this release, in large part, are aimed at ensuring that the benefits of central clearing, particularly with respect to counterparty and systemic risk mitigation, are maintained with respect to inter-affiliate swaps involving non-U.S. affiliates. Specifically, the Commission believes that the conditions imposed by the rules being adopted in this release will help to mitigate potential issues that could arise in uncleared inter-affiliate swaps when financial solvency is not an issue for the corporate enterprise. Furthermore, these conditions may, to some extent, diminish the impact of swaps in transmitting losses across affiliates, and in turn, to third-party creditors, following a default.

[56] AFR also noted restrictions under U.S. banking law with respect to the transfer of risk from non-depository to depository institutions, and stated that it may be necessary to require ''ring-fencing'' and separate capitalization of swaps affiliates. The Commission believes that these issues are outside of the scope of this rulemaking, and as AFR correctly noted, may be an issue that is more

supported the proposed treatment of outward-facing swaps condition.[57]

By contrast, ISDA & SIFMA, The Working Group, and CDEU all stated that the treatment of outward-facing swaps condition of the proposed rule is not necessary or appropriate and that the Commission should eliminate it altogether. FSR commented that the inter-affiliate exemption should extend to swaps between non-U.S. affiliates, such that the swaps should not be subject to mandatory clearing or margin requirements, even if the affiliated parties are financial entities.

Certain commenters stated that the proposed treatment of outward-facing swaps condition is not necessary to prevent evasion. ISDA & SIFMA noted that the Commission's existing anti-evasion authority [58] can address the anti-evasion objectives of the proposed condition, and the CDEU made a similar argument with respect to the Commission's new anti-evasion authority under section 721(c) of the Dodd-Frank Act. ISDA & SIFMA further noted that the Commission should limit application of its anti-evasion authority to instances where a foreign affiliate engages in a pattern of back-to-back swaps with the U.S. affiliate and where neither the affiliates nor the third-party counterparty are subject to capital regulation.[59]

Other commenters opposed the proposed treatment of outward-facing swaps condition based on their view that inter-affiliate swaps involving non-U.S. affiliates do not pose a risk to the U.S. financial markets. CDEU commented that the proposed ''comparable and comprehensive'' condition is not necessary or appropriate to reduce risk and prevent evasion because, according to CDEU, transactions between affiliates do not increase systemic risk, regardless of the location of the affiliate.[60] ISDA & SIFMA stated that the concern that foreign inter-affiliate swaps pose risk to the U.S. financial system is unfounded because internal swaps have no conclusive effect on systemic risk.[61]

The Commission has considered these comments, and for the reasons described below, has determined to retain the treatment of outward-facing swaps condition to the inter-affiliate exemption, with certain modifications and amendments, in order to address comments and provide greater clarity.

i. Prevention of Evasion

As an initial matter, as discussed above, the Commission believes that the benefits of inter-affiliate swaps for entities in affiliated groups warrant the Commission's use of its exemptive authority under section 4(c) of the Act to exclude certain inter-affiliate swaps from the clearing requirement. However, the Commission must exercise its exemptive authority in view of the Commission's charge under the CEA to prevent evasion of the clearing requirement.[62] The Commission remains concerned that absent the treatment of outward-facing swaps condition, the inter-affiliate exemption from clearing may create a ready means through which some U.S. entities may be able to evade the clearing requirement. Accordingly, the Commission believes that the treatment of outward-facing swaps condition to the inter-affiliate clearing exemption is necessary to address the potential for evasion.

Section 2(h)(4)(A) of the CEA requires that ''the Commission shall prescribe rules * * * as determined by the Commission to be necessary to prevent evasions of the clearing requirement under this Act.'' [63] As the Commission explained in the NPRM, and as AFR also described in its comments, a broad inter-affiliate exemption from the clearing requirement could enable entities to evade the clearing requirement potentially through third-party trades with their foreign affiliates that are located in jurisdictions that do not have a clearing regime that is comparable to, or as comprehensive as, the Commission's clearing requirement. For example, rather than execute a swap opposite a U.S. counterparty, which would be subject to the clearing requirements of section 2(h) of the Act, a U.S. entity could execute an uncleared swap with its foreign affiliate or subsidiary, which could then execute a swap with a non-affiliated third-party in a jurisdiction that is either unregulated or does not have a clearing requirement that is comparable to or as comprehensive as the U.S. clearing requirement.

The Commission disagrees with commenters that suggest that the treatment of outward-facing swaps condition is not necessary to deter evasion because the Commission can rely on its general anti-evasion authority under the CEA or under section 721(c) of the Dodd-Frank Act to address the Commission's evasion concerns pertaining to the inter-affiliate exemption. The Commission notes that section 2(h)(4)(A) of the CEA specifically imposes an obligation on the part of the Commission to ''prescribe rules'' and ''issue interpretations of rules'' that are necessary to prevent evasions of the clearing requirement.[64] Furthermore, from an enforcement perspective, a specific regulation provides more transparency to market participants with respect to the Commission's enforcement program. While the Commission has ample general authority to prevent evasion of the CEA and the swaps-related provisions of the Dodd-Frank Act, the Commission believes it is appropriate to impose the treatment of outward-facing swaps condition to the inter-affiliate exemption to prevent evasion of the clearing requirement.

In response to ISDA & SIFMA's claim that anti-evasion authority should only be applied in limited scenarios where there are back-to-back trades involving affiliates and non-affiliates who are not subject to capital requirements, the Commission declines to pre-judge the potential incentives or ways of evading, or complying with, the Commission's clearing requirement and the inter-affiliate exemption from clearing. To the extent that ISDA & SIFMA suggest that the treatment of outward-facing swaps condition should be limited to transactions involving back-to-back trades where the affiliates and the respective third-party are subject to capital requirements, the Commission is not persuaded that the rule should be so narrowly tailored to address only the scenario ISDA & SIFMA describe. In particular, the Commission notes that back-to-back transactions may not serve as the only potential means by which

appropriate for the prudential regulators of such entities to consider.

[57] Prudential also commented that in relation to its own structure, it did not have concerns with the proposed cross-border conditions applicable to inter-affiliate swaps involving foreign affiliates.

[58] See e.g., Section 2(i)(2) of the CEA (providing authority to promulgate rules addressing activities outside of the U.S. to prevent evasion of the Dodd-Frank Act); section 2(h)(4) of the CEA (requiring the Commission to issue rules to prevent evasion of the mandatory clearing requirement); section 721(c) of the Dodd-Frank Act (requiring the Commission to promulgate a rule defining certain terms to prevent evasion of the Dodd-Frank Act).

[59] Entities that are subject to capital regulations include SDs, MSPs, and banking entities subject to prudential regulation.

[60] CDEU further stated that inter-affiliate swaps do not create systemic risk.

[61] Prudential also stated that it does not believe that there are any additional risk implications of cross-border inter-affiliate swaps for the U.S. market, to the extent that the market-facing entity is located in the U.S.

[62] *See* sections 2(h)(4) and 2(i)(2) of the CEA.

[63] 7 U.S.C. 2(h)(4).

[64] Under the authority of sections 2(h)(4)(A), 2(h)(7)(F), and 8a(5) of the CEA, the Commission recently adopted § 50.10 to prohibit evasions of the requirements of section 2(h) of the CEA, including the end-user exception or any other exception or exemption that the Commission may provide by rule, regulation, or order. *See* Clearing Requirement Determination at 74317–19.

affiliates can evade the U.S. clearing mandate, and for that matter, transfer risk to one another. Accordingly, the Commission does not believe that the treatment of outward-facing swaps condition should be limited to the specific circumstances described by ISDA & SIFMA.

ii. Protection of Financial Markets

In addition to preventing evasion, the Commission believes that the treatment of outward-facing swaps condition will help to limit the potential transfer of risks to U.S. companies and financial markets that may result from third-party swaps between affiliates and non-affiliated entities domiciled in jurisdictions that do not regulate swaps or where the regulation is not comparable to, or as comprehensive as, the CEA and Commission regulations. As described in the preceding sections of this adopting release, there are numerous benefits associated with central clearing of swaps. In particular, clearing mitigates counterparty credit risk, provides an organized mechanism for collateralizing the risk exposures posed by swaps, and when applied on a market-wide scale, clearing reduces systemic risk. The counterparty and systemic risk mitigation benefits of central clearing are also realized from clearing transactions between affiliates.

The benefits of clearing notwithstanding, the Commission recognized in the NPRM, commenters' assertions that there is less counterparty risk associated with inter-affiliate swaps than with swaps between third parties to the extent that the affiliated counterparties that are members of the same corporate group internalize each other's counterparty credit risk.[65] While the Commission recognizes, generally, the benefits of inter-affiliate swaps and the incentives for inter-affiliates to fulfill their inter-affiliate swap obligations to each other, these swaps are not immune from some of the risks that are associated with swaps between non-affiliated parties.

In particular, the Commission is not persuaded that inter-affiliate swaps, and swaps between affiliate counterparties outside the U.S. and non-affiliated counterparties, pose no risks to the U.S financial markets or that central clearing would not mitigate the risks associated with such swaps. To the contrary, the counterparty and systemic risks associated with inter-affiliate swaps are heightened where, for example, the inter-affiliate transaction involves an uncleared swap with a foreign affiliate counterparty that is subsequently hedged with a third-party uncleared swap. Thus, the Commission disagrees with commenters that suggested that inter-affiliate swaps involving foreign affiliates do not have the potential to create systemic risk. As the Commission noted in the NPRM, systemic risk implications may be present where the foreign affiliate has large inter-affiliate swap positions and enters into related outward-facing swaps. If the foreign affiliate defaults on its obligations arising from the inter-affiliate swaps, it then increases the likelihood that the foreign affiliate could default on the outward-facing swaps, potentially jeopardizing the financial integrity of the third-party counterparty. Furthermore, to the extent that a foreign affiliate enters into both inter-affiliate swaps and related third-party swaps, any losses incurred by the foreign affiliate with respect to its inter-affiliate swaps may flow not only to the unaffiliated third-party counterparty, but conceivably, to the broader financial system.[66]

Moreover, the Commission notes AFR's comment that inter-affiliate swaps can, in some circumstances, contribute to financial contagion across different groups within a complex financial institution, making it more difficult to contain risks in one part of an organization. As evidenced by the events surrounding the 2008 financial crisis, many large financial institutions are interconnected and highly inter-dependent, with affiliated legal entities that are inextricably linked to each other.[67] The interconnected nature of corporate groups, therefore, increases the potential that risk in any part of a corporate group may spread throughout the organization, jeopardizing the financial integrity of not only the U.S affiliate, but depending on the scope of a potential default, the broader financial system.

For the aforementioned reasons, the Commission believes that the risk of evasion of U.S. laws and the potential systemic risk associated with uncleared inter-affiliate swaps involving foreign affiliates necessitates that the inter-affiliate exemption include the treatment of outward-facing swaps condition.

The treatment of outward-facing swaps condition that is being adopted as part of the inter-affiliate clearing exemption in this final release is aimed at addressing the potential risks associated with an eligible foreign affiliate's swaps with non-affiliated counterparties. As modified, the final rule requires that, as a condition to the inter-affiliate exemption, each eligible affiliate counterparty must clear all swaps that it enters into with an unaffiliated counterparty to the extent that the swap is included in the Commission's clearing requirement, *i.e.,* in a class of swaps identified in § 50.4.[68] In order to satisfy this requirement, eligible affiliate counterparties must clear their third-party swaps pursuant to the Commission's clearing requirement or comply with the requirements for clearing the swap under a foreign jurisdiction's clearing mandate that is comparable, and comprehensive but not necessarily identical, to the clearing requirement of section 2(h) of the Act and part 50 of the Commission's regulations, as determined by the Commission. In addition, the Commission is modifying the inter-affiliate exemption to allow for recognition of clearing exceptions and exemptions under the CEA and an exception or exemption under a foreign clearing mandate provided that the foreign jurisdiction's clearing mandate is comparable, and comprehensive but not necessarily identical, to the clearing requirement of section 2(h) of the Act and part 50 and the foreign jurisdiction's exception or exemption is comparable to an exception or exemption under the CEA or part 50, in each instance as determined by the Commission.

For eligible affiliate counterparties that are not located in the U.S. or in a comparable foreign jurisdiction, as determined by the Commission, the rule permits such eligible affiliates to clear any outward-facing swap that is required to be cleared under § 50.4 through a registered DCO or a clearing organization that is subject to supervision by appropriate government authorities in the home country of the clearing organization and has been assessed to be in compliance with the Principles for Financial Market Infrastructures (PFMIs).[69]

The Commission believes that this modified formulation of the treatment of outward-facing swaps condition being adopted as part of the final rule will

[65] *See* NPRM at 50427.

[66] In the Proposed Cross-Border Interpretive Guidance, the Commission specifically discussed the flow of risk to the U.S. by entities that facilitate a U.S. person's ability to execute swaps outside the Dodd-Frank Act regulatory regime. 77 FR 41228–29, 41234.

[67] For a discussion of specific institutional risks leading up to the 2008 financial crisis, *see* Proposed Cross-Border Interpretive Guidance at 41215–16.

[68] Currently, the scope of the Commission's clearing requirement is limited to four classes of interest rate swaps and two classes of CDS.

[69] *See* Principles for Financial Market Infrastructures, April 2012, available at *http://www.iosco.org/library/pubdocs/pdf/IOSCOPD377.pdf.*

more clearly establish the conditions to the exemption and alternative methods by which eligible affiliates may satisfy the requirements.

Moreover, in finalizing the requirement that eligible affiliate counterparties clear their swaps with unaffiliated counterparties, the Commission considered the approach adopted in EMIR. Articles 3, 4, and 13 of EMIR generally exempt from clearing OTC derivatives transactions between intragroup counterparties, where one counterparty is located in the European Union and the other counterparty is located outside the European Union, provided that, among other things, the European Commission determines that the foreign counterparty is established in a country with ''equivalent'' requirements to EMIR.[70] By requiring that a foreign counterparty to an intragroup transaction be located in a country with equivalent requirements to EMIR, including clearing, any third-party swaps entered into by either the European Union counterparty or the non-European Union counterparty would be subject to a clearing requirement under EMIR or one that is equivalent to that required under EMIR, respectively.

In addition to the modifications to the treatment of outward-facing swaps condition described above, the Commission also is providing a transition period with alternative compliance frameworks, in response to concerns raised by commenters pertaining to the timing and sequencing of the implementation of the inter-affiliate exemption, which are discussed below.

2. Time-limited Alternative Compliance Frameworks

A number of commenters expressed concern with respect to the ''comparable and comprehensive'' requirement of the proposed rule. Several commenters expressed concern with respect to the timing and sequencing of the Commission's comparability determination in relation to the expected compliance date for the initial clearing requirement under section 2(h) of the Act.[71] These commenters noted that the comparability requirement is dependent upon the adoption of clearing regimes by other jurisdictions, and that because the U.S. clearing requirement is likely to take effect in advance of other jurisdictions adopting or finalizing their clearing regimes, non-U.S. affiliates effectively will not be able to rely on the inter-affiliate exemption from clearing when the Commission's initial clearing requirement takes effect. Significantly, ISDA & SIFMA commented that the cross-border condition may prove to be unnecessary because it is expected that the major financial jurisdictions will implement their own clearing regimes. However, ISDA & SIFMA and CDEU noted that questions of timing and criteria for comparability render the proposed treatment of outward-facing swaps condition problematic, and that unless the condition is satisfactorily resolved, the condition could hamper the ability of U.S.-based groups to compete in foreign markets. ISDA & SIFMA further commented that if the Commission retains the cross-border requirements, the Commission should provide an appropriate transition period in order to allow foreign jurisdictions to implement their own G–20 mandates.

The Working Group commented that because no other jurisdiction has a comparable clearing requirement,[72] the proposed rule would impose an obligation on almost all non-U.S. persons to comply with the U.S. clearing requirement in the event such entities wanted to engage in a non-hedge swap that was subject to mandatory clearing with a U.S. person affiliate. The Working Group claimed that this limitation would render the exemption unusable and questioned the public policy benefit of extending the clearing requirement in such instances. The Working Group further commented that the proposed rule represents a broad extension of U.S. law by, in effect, imposing the clearing requirement under section 2(h)(1)(A) on non-U.S. persons that enter into swaps with U.S. person affiliates in order to satisfy the conditions of the inter-affiliate exemption. AFR supported the comparability condition and suggested that the Commission should grant the inter-affiliate exemption only with respect to foreign affiliate swaps once foreign jurisdictions finalize and implement their own clearing requirements.

The Commission recognizes commenters' concerns pertaining to the timing and sequencing of the inter-affiliate exemption in light of the Commission's clearing requirement, and in view of the ongoing progress of other jurisdictions to adopt and implement their respective clearing regimes. Accordingly, the Commission has determined to modify the proposed rule, as described in this release.

As an initial matter, and informed in large part by the reports of relevant international organizations and ongoing dialogue with international regulators, the Commission believes that many jurisdictions have made significant progress in implementing their clearing regimes. It is the Commission's understanding that the G–20 Leaders reaffirmed their commitment that all standardized OTC derivatives should be cleared through central counterparties by end-2012.[73] Importantly, the majority of G–20 members with major financial markets have been preparing for mandatory clearing, and significant steps towards further implementation have been taken by the United States, Japan, Singapore, and the European Union. In Japan, for example, the Japanese Financial Services Authority (JFSA) cabinet office ordinance regarding central counterparties and trade repositories which, among other things, subjects certain transactions to mandatory central clearing, became effective on November 1, 2012. The JFSA initially requires certain financial institutions to clear yen-denominated interest rate swaps that reference Yen-LIBOR, and CDS based on the Japanese iTraxx indices at a licensed CCP.

On November 15, 2012, the Singapore Parliament passed the Securities and Futures (Amendment) Bill 2012 to amend the Singapore Securities and Futures Act (SFA). This bill puts in place the regulatory regime for OTC derivatives in Singapore. This legislation institutes mandatory reporting and clearing requirements for financial entities and large non-financial entities. The Monetary Authority of

[70] *See* EMIR Article 13(1)–(3). The European Union has yet to make determinations as to whether third countries have equivalent requirements to EMIR. The European Commission (EC) has instructed the European Securities and Markets Authority (ESMA) to prepare possible implementing acts concerning the equivalence between the legal and supervisory frameworks of certain third countries and EMIR. Pursuant to the EC's instructions, ESMA must make its determination regarding the United States' clearing requirement by March 15, 2013. ''Formal Request to ESMA for Technical Advice on Possible Implementing Acts Concerning Regulation 648/2012 on OTC Derivatives, Central Counterparties and Trade Repositories (EMIR)'' available at *http://www.esma.europa.eu/system/files/formal_request_for_technical_advice_on_equivalence.pdf.*

[71] *See* Clearing Requirement at 74319–21 (discussing the compliance dates for the first clearing requirement determination).

[72] This assertion is no longer accurate. As discussed below, Japan has adopted a clearing mandate for certain interest rate swaps and CDS.

[73] ''G20 Leaders Declaration Los Cabos Mexico'' (June 18–19, 2012) at paragraph 39. According to the October 2012 Report of the Financial Stability Board (FSB), 10 out of the 19 members of the G–20 group have either proposed or adopted legislation and/or regulations to implement their clearing framework, as of the date of that release. FSB, OTC Derivatives Market Reforms: Fourth Progress Report on Implementation, Oct. 31, 2012 at 74–77, available at *https://www.financialstabilityboard.org/publications/r_121031a.pdf.*

Singapore is deliberating how to implement these legislative requirements and is expected to issue further consultation in 2013.

In the European Union, EMIR entered into force on August 16, 2012, and requires the clearing of all OTC derivatives subject to the clearing obligation. Clearing determinations are made at the initiative of the national authorities or the European Securities and Markets Authority (ESMA). Within six months of ESMA receiving notification by a national authority that a central counterparty has been authorized to clear a class of OTC derivatives, ESMA must determine whether that the class of OTC derivatives should be subject to the clearing obligation. At its own initiative, ESMA can also identify classes of OTC derivatives that should be subject to the clearing obligation. Additional details regarding the specific manner in which clearing determinations will be made have been set forth in implementing regulations adopted by the European Commission on December 19, 2012.[74]

As evidenced by the progress of these jurisdictions, and others that host major financial markets across the world in implementing their clearing frameworks, the Commission agrees with ISDA & SIFMA that the comparability requirement of the inter-affiliate exemption is unlikely to pose a significant impediment to the use of the inter-affiliate exemption by most foreign affiliates because it is expected that the major financial jurisdictions will implement their own mandatory clearing regimes. Notwithstanding the progress of other jurisdictions to implement their clearing regimes, as discussed above, the Commission is mindful of commenters' concerns that the compliance timeframe for the clearing requirement in the U.S. is likely to precede the adoption and/or implementation of the clearing regimes of most other jurisdictions.

Accordingly, the Commission believes that it is important to provide for a transition period for foreign regimes to implement their clearing mandates to bring swaps into clearing. For certain eligible affiliate counterparties located in jurisdictions that have adopted swap clearing regimes and are currently in the process of implementation, namely Japan, the European Union, and Singapore, the Commission is modifying the proposed rule to allow for a transition period of one year from the first compliance date of the U.S. clearing mandate, until March 11, 2014, for those foreign jurisdictions that are working to implement their mandatory clearing regimes.[75] The Commission believes that a transition period of 12 months after required clearing began in the U.S. is appropriate given its understanding of the progress being made on mandatory clearing in the specified foreign jurisdictions. Regulation 50.52(b)(4)(ii)(A) provides that during that one-year period, affiliates domiciled in such foreign jurisdictions can satisfy the requirements of § 50.52(b)(4)(i) through the following: (i) Each eligible affiliate counterparty, or a majority-interest holder on behalf of both eligible affiliate counterparties, pays and collects full variation margin daily on all its swaps with unaffiliated counterparties; or (ii) each eligible affiliate counterparty, or a majority-interest holder on behalf of both eligible affiliate counterparties, pays and collects full variation margin daily on all its swaps with other eligible affiliate counterparties.

Moreover, the Commission has determined to provide further time-limited relief for certain eligible affiliated counterparties located in the European Union, Japan, or Singapore from complying with the requirements of § 50.52(b)(4)(i) (or (b)(4)(ii)(A)) as a condition of electing the inter-affiliate exemption. In particular, § 50.52(b)(4)(ii)(B) provides that if one of the eligible affiliate counterparties is located in the European Union, Japan, or Singapore, the requirements of paragraph (b)(4)(i) will not apply to such eligible affiliate counterparty until March 11, 2014, provided that two conditions are met. The first condition provides that the one counterparty that directly or indirectly holds a majority ownership interest in the other counterparty or the third party that directly or indirectly holds a majority ownership interest in both counterparties is not a ''financial entity'' as defined in section 2(h)(7)(C)(i) of the Act.[76] The second condition requires that neither eligible affiliate counterparty is affiliated with an entity that is an SD or MSP, as defined in § 1.3. This condition essentially requires that the eligible affiliate counterparties are not part of a corporate group with a member affiliate that is an SD or MSP. Accordingly, eligible affiliate counterparties that are located in European Union, Japan, or Singapore and meet these two conditions, are exempt from the requirements of § 50.52(b)(4)(i) until March 11, 2014. The Commission believes that providing the time-limited exemption in § 50.52(b)(4)(ii)(B) to the specific entities described above is consistent with comments requesting that the exchange of variation margin requirement, to the extent retained, be limited to SDs and MSPs. Specifically, ISDA & SIFMA noted in their comments that the scope of the Commission's regulatory concern should be limited to SDs and MSPs, and that the regulatory regime applicable to SDs already contained applicable safeguards, including variation margin requirements. Similarly, CDEU commented that any variation margin requirements be limited to SDs and MSPs.

For eligible affiliate counterparties that are located in jurisdictions other than the European Union, Japan or Singapore, the Commission also is providing another time-limited alternative compliance framework for meeting the requirements of § 50.52(b)(4)(i). Specifically, § 50.52(b)(4)(iii) provides that if an eligible affiliate counterparty located in the United States enters into swaps (that are included in a class of swaps identified in § 50.4), with eligible

[74] *See http://ec.europa.eu/internal_market/financial-markets/derivatives/index_en.htm.*

[75] While the time-limited alternative compliance framework of § 50.52(b)(4)(ii) is limited to jurisdictions that currently have the legal authority to adopt mandatory clearing regimes, any jurisdiction that later adopts a mandatory clearing regime will be eligible for a comparability determination for purposes of this rule.

[76] For purposes of meeting the requirements of § 50.52(b)(4)(ii)(B)(1) until March 11, 2014, the holding company (*i.e.,* the ultimate parent of the corporate group) may not be considered to be a ''financial entity,'' as defined in section 2(h)(7)(C)(i) of the CEA, under certain circumstances. The holding company must be able to identify all affiliates that meet the requirements of § 50.52(a). Of those identified affiliates, a predominant number must qualify for the end-user exception under § 50.50. If a predominant number of the affiliates meeting the requirements of § 50.52(a) qualify for the end-user exception under § 50.50, then the holding company may treat the activities of all of its affiliates meeting the requirements of § 50.52(a) as if the holding company was engaged directly in such activities and consider such affiliates' activities on a cumulative basis with the holding company's other activities when assessing whether the holding company is ''predominantly engaged in activities that are in the business of banking, or in activities that are financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956'' under section 2(h)(7)(C)(i)(VIII) of the CEA. In effect, the holding company may ''look through'' its investment in affiliates to all of the activities of the affiliates meeting the requirements of § 50.52(a). Accordingly, the activities of affiliates meeting the requirements of § 50.52(a) that are not in the business of banking or financial in nature, as defined in section 4(k) of the Bank Holding Company Act of 1956, would be attributed to the holding company. Conversely, if the affiliates meeting the requirements of § 50.52(a) are engaged in activities that are in the business of banking or of a financial nature, then those activities would be attributed to the holding company for purposes of determining whether the holding company is a financial entity for purposes of meeting the requirements of § 50.52(b)(4)(ii)(B)(1).

affiliate counterparties located in jurisdictions other than the United States, the European Union, Japan, and Singapore, and the aggregate notional value of such swaps, which are included in a class of swaps identified in § 50.4 does not exceed five percent of the aggregate notional value of all swaps, which are included in a class of swaps identified in § 50.4, in each instance the notional value as measured in U.S. dollar equivalents and calculated for each calendar quarter, held by the eligible affiliate counterparty located in the United States, then such swaps shall be deemed to satisfy the requirements of paragraph (b)(4)(i) until March 11, 2014, provided that: (A) Each eligible affiliate counterparty, or a third party that directly or indirectly holds a majority interest in both eligible affiliate counterparties, pays and collects full variation margin daily on all swaps entered into between the eligible affiliate counterparties located in jurisdictions other than the United States, the European Union, Japan, and Singapore and an unaffiliated counterparty; or (B) each eligible affiliate counterparty, or a third party that directly or indirectly holds a majority interest in both eligible affiliate counterparties, pays and collects full variation margin daily on all of the eligible affiliate counterparties' swaps with the other eligible affiliate counterparties.

The options provided under the two alternative compliance frameworks described above are intended to mitigate the risk associated with uncleared third-party swaps. The payment and collection of variation margin is a vital component of the clearing process. As the Commission noted in the NPRM, variation margin is an essential risk-management tool that serves both as a check on risk-taking that might exceed a party's financial capacity and as a limitation on losses when there is a failure.[77] In addition to the risk-management benefits of variation margin, certain commenters expressed support for the inclusion of variation margin as a condition of the inter-affiliate exemption, and thus, the inclusion of variation margin within the alternative compliance frameworks is consistent with those comments. The Commission further clarifies that eligible affiliate counterparties that are eligible to comply with the alternative compliance frameworks in § 50.52(b)(4)(ii) or § 50.52(b)(4)(iii) and choose to pay and collect variation margin daily on either all of their inter-affiliate swaps or all of their third party swaps, will have flexibility in tailoring their daily variation margin arrangements, including with respect to establishing appropriate prices for purposes of marking to market and threshold levels at which margin will be settled.

Notwithstanding the alternative compliance frameworks, the Commission encourages all eligible affiliate counterparties to clear their outward-facing swaps on a voluntary basis in order to best mitigate the risks associated with those swaps. The Commission notes that in lieu of complying with the alternative compliance frameworks through March 11, 2014, eligible affiliate counterparties also may satisfy the outward-facing swap condition by complying with § 50.52(b)(4)(ii)(E) by clearing their third-party swaps through a registered DCO or a clearing organization that is subject to supervision by the appropriate government authorities in the home country of the clearing organization and has been assessed to be in compliance with the PFMIs.

The Commission believes that the alternative compliance framework adopted in this release addresses commenters' concerns pertaining to the timing and sequencing of the inter-affiliate exemption and the effective date of the Commission's initial clearing determination, and incorporates ISDA & SIFMA's recommendation to provide an appropriate transition period for foreign jurisdictions to implement their clearing regimes.

In response to The Working Group, the Commission notes that the treatment of outward-facing swaps condition is needed to protect U.S. financial markets and to prevent evasion of the clearing requirement. The modified condition requires that eligible affiliate counterparties, whether domiciled in the U.S. or in a foreign jurisdiction, that elect the inter-affiliate exemption must clear their outward-facing swaps, if such swaps fall within a class identified in § 50.4, or satisfy one the provisions in the alternative compliance frameworks, as applicable, until March 11, 2014. The alternative compliance frameworks are a direct response to concerns raised by The Working Group, and other commenters, regarding providing other jurisdictions with sufficient time to implement their clearing regimes. The alternative compliance framework provides eligible affiliates that elect the inter-affiliate exemption with other options, in addition to clearing, for managing the risks associated with their outward-facing swaps. In response to concerns that foreign-domiciled eligible affiliates would not be able to enter into uncleared non-hedge swaps with third parties that are foreign-domiciled end users, the Commission notes that it would take into consideration any comparable exceptions or exemptions granted under a comparable foreign jurisdiction's clearing regime.

In response to The Working Group's statement that the treatment of outward-facing swap condition expands the cross-border application of the clearing requirement to cover swaps between U.S. persons and non-U.S. persons, the Commission observes that U.S. persons are subject to the CEA's clearing requirement and part 50 of the Commission's regulations. Furthermore, the Commission notes that the final rule would permit eligible affiliate counterparties that are not located in the U.S. or in a comparable and comprehensive jurisdiction, to elect the inter-affiliate exemption provided that they clear any outward-facing swaps that are required to be cleared under § 50.4, through a registered DCO or a clearing organization that is subject to supervision by appropriate government authorities in the home country of the clearing organization and has been assessed to be in compliance with the PFMIs.[78]

Although the Commission believes that the alternative frameworks described above are necessary in the circumstances described, these alternatives are not equivalent to clearing and would not mitigate potential losses between swap counterparties in the same manner that clearing would. Thus, notwithstanding the alternative compliance frameworks, the Commission believes that the requirement that eligible affiliates clear

[77] As described in the NPRM, variation margin entails marking open positions to their current market value each day and transferring funds between the parties to reflect any change in value since the previous time the positions were marked. This process prevents uncollateralized exposures from accumulating over time and thereby reduces the size of any loss resulting from a default should one occur. NPRM at 50429.

[78] The Commission believes that the use of an international standard that is substantially similar, though not identical, to the requirements under part 39 imposed upon DCOs registered with the Commission is appropriate for purposes of the condition. The PFMIs were developed with broad participation and comment from entities from multiple nations and have been approved by both IOSCO's Technical Committee and the CPSS. The Commission further notes that eligible affiliate counterparties that are not located in the U.S. or in a comparable and comprehensive jurisdiction must comply with the requirements of § 50.52(b)(4)(i)(E). However, if such entities prefer to clear their swaps pursuant to the clearing requirement regime in the U.S. or in a jurisdiction that the Commission has determined to have a comparable clearing requirement, they also may comply with one of the conditions in § 50.52(b)(4)(i)(A) or (b)(4)(i)(B).

swaps entered into with non-affiliated counterparties is the most appropriate method in which to prevent evasion of the clearing requirement and to help protect U.S. financial markets, and encourages market participants to do so. As noted above, incorporated within the requirement that eligible affiliate counterparties clear their outward-facing swaps is the option to comply with the requirements of a foreign jurisdiction's clearing mandate for the outward-facing swaps, including any comparable exception or exemption granted under the foreign clearing mandate, provided that such foreign jurisdiction's clearing mandate is determined by the Commission to be comparable, and comprehensive but not necessarily identical, to the clearing requirement established under the CEA, and the exception or exemption is determined by the Commission to be comparable to an exception or exemption provided under the CEA or part 50.

In the next section of the release, the Commission describes the specific comments raised with respect to the proposed ''comparable and comprehensive'' standard and provides a discussion of the its consideration of these comments, as well as an explanation of the Commission's anticipated process for reviewing and issuing comparability determinations in the context of the inter-affiliate exemption from clearing.

3. Application of the Comparable and Comprehensive Standard to Mandatory Clearing

Commenters raised questions as to the criteria the Commission would consider in rendering a comparability determination. ISDA & SIFMA requested that the Commission clarify that ''comparability'' does not mean that the host country must have the ''same'' requirement. CDEU questioned what specific criteria the Commission would consider in making a comparability finding. CDEU recommended that the Commission limit the applicability of the comparability requirement to SDs and MSPs, and claimed that extending the condition to end-users would disproportionately impact end-users that have global operations, particularly in emerging markets.[79] CDEU further suggested that the Commission extend the inter-affiliate exemption to non-U.S. affiliates that enter into 20 or less third-party swaps per month. The Working Group noted that many commercial energy firms have operations in foreign jurisdictions that have less commercially robust financial markets than those in the U.S., and that the treatment of outward-facing swaps condition may place significant limitations on the ability of commercial enterprises to hedge risk associated with such operations, thereby resulting in higher cost of doing business in the foreign country or decreasing the business activity of the U.S. company in the foreign jurisdiction. The Working Group further commented that the proposed rule extends the reach of U.S. law on non-U.S. persons ''far beyond'' the immediate clearing requirement.[80]

AFR suggested that the final rule should specifically state that the ''comparable and comprehensive'' requirement must apply to each ''specific type of swap'' being considered for the exemption. AFR further stated that the Commission should provide a detailed comparability procedure, such as the procedure described in the proposed cross-border guidance. MetLife also suggested that rather than broadly prohibiting non-U.S. affiliates (that are not located in a comparable jurisdiction) from entering into any third-party swaps as a condition of the inter-affiliate exemption, the Commission should narrow the prohibition in the proposed rule to prohibit non-U.S. affiliates (that are not located in a comparable jurisdiction) from entering into ''similar swaps of the same product type'' with unaffiliated third parties.

As described above, a number of commenters requested further clarification on how the Commission will apply the ''comparable and comprehensive'' standard in the context of the mandatory clearing. The comparability requirement originally was discussed in the Commission's Proposed Cross-Border Interpretive Guidance. Drawing on its experience in exempting foreign brokers from certain registrations requirements under its rule 30.10 ''comparability'' determinations, the Commission proposed the ''comparable and comprehensive'' concept in the Proposed Cross-Border Interpretive Guidance[81] in order to permit certain classes of non-U.S. registrants to substitute compliance with the requirements of its home jurisdiction's law and regulations, in lieu of compliance with the CEA and the Commission's regulations, if the Commission finds that the relevant jurisdiction's laws and regulations are comparable to the relevant requirements of the CEA and Commission regulations.[82]

In the Proposed Cross-Border Interpretive Guidance, the Commission, in describing its intended approach to making comparability determinations, noted that similar to its policy with respect to rule 30.10, the Commission would retain broad discretion to determine that the objectives of any program elements are met, notwithstanding the fact that the foreign requirements may not be identical to that of the Commission.

i. Comparability of Foreign Clearing Mandate

In response to comments seeking additional clarity around the Commission's comparability determination process, the Commission clarifies that it will review the comparability and comprehensiveness of a foreign jurisdiction's clearing mandate under § 50.52(b)(4)(i)(B) by reviewing: (i) The foreign jurisdiction's laws and regulations with respect to its mandatory clearing regime (*i.e.,* jurisdiction-specific review), and (ii) the foreign jurisdiction's clearing determinations with respect to each class of swaps for which the Commission has issued a clearing determination under § 50.4 of the Commission's regulations (*i.e.,* product-specific review).

As noted above, and in response to ISDA & SIFMA, the Commission reiterates that for purposes of the treatment of outward-facing swaps condition of the inter-affiliate exemption, comparability findings with respect to a foreign jurisdiction's clearing regime will not require an identical regime to the clearing framework established under the Act and Commission regulations. Rather, the Commission anticipates that it will

[79] CDEU claimed that end users would be adversely impacted by the increased costs for risk-mitigating transactions between affiliates, and noted that the Dodd-Frank Act did not contemplate regulation of end-user transactions in the same manner as SD and MSP transactions.

[80] According to The Working Group, the proposed rule, for instance, would require certain non-U.S. persons to enter into an agreement with a futures commission merchant (FCM), and to enter into a commercial relationship in the U.S. including posting capital in U.S. markets that would subject such entities to U.S. bankruptcy law.

[81] Proposed Cross-Border Interpretive Guidance at 41232–35.

[82] The Proposed Cross-Border Interpretive Guidance identified transaction-level requirements to include mandatory clearing and swap processing, margining, segregation, trade execution, swap trading documentation, portfolio reconciliation and compression, real time public reporting, trade confirmation, and daily trading records requirements. The Proposed Cross-Border Interpretive Guidance proposed to allow substituted compliance with respect to transaction level requirements for swaps between a non-U.S. SD or non-U.S. MSP with a non-U.S. person that is guaranteed by a U.S. person, as well as swaps with non-U.S. affiliate conduits. *See* Proposed Cross-Border Interpretive Guidance at 41230.

make jurisdiction-specific comparability determinations by comparing the regulatory requirements of a foreign jurisdiction's clearing regime with the requirements and objectives of the Dodd-Frank Act. Notably, the Commission anticipates that the product-specific comparability determination will necessarily be made on the basis of whether the applicable swap is included in a class of swaps covered under § 50.4, and if so, whether such swap or class of swaps is covered under the foreign jurisdiction's clearing mandate.

ii. Comparability of Exemption or Exception Under Foreign Clearing Regime

With respect to determining whether an exemption or exception under a comparable foreign clearing mandate is comparable to an exception or exemption under the CEA or part 50, as provided under § 50.52(b)(4)(i)(D), the Commission anticipates that it would review for comparability purposes the foreign jurisdiction's laws and regulations with respect to its mandatory clearing regime, as well as the relevant exception or exemption. In doing so, the Commission would exercise broad discretion to determine whether the requirements and objectives of such exemption or exception are consistent with those under the Dodd-Frank Act and that such objectives are being met, notwithstanding the fact that the exemption or exception from clearing under the comparable foreign clearing regime may not be identical to those established under the Act or the Commission's regulations. Accordingly, the Commission anticipates that comparability determinations with respect to a foreign jurisdiction's exemption or exception from mandatory clearing could be made at either the entity level, or the transaction type, as appropriate.

iii. Responses to Additional Comments

In response to comments seeking clarification on what will trigger a Commission comparability determination, the Commission anticipates that it will render jurisdiction-specific and product-specific comparability determinations upon the adoption of clearing regimes by foreign jurisdictions for classes of swaps covered under § 50.4, upon the request of a counterparty that is located in a foreign jurisdiction, or upon receipt of a request from another appropriate party.

The Commission further anticipates that once a comparability determination is made with respect to the foreign jurisdiction's clearing regime, and with regard to a particular class of swaps covered under § 50.4, eligible affiliates domiciled in such jurisdiction may rely on such determinations for swaps included within the applicable class, without further Commission action. To the extent that the Commission proposes a change to its regulations governing the clearing requirement generally or with respect to any particular product class, the Commission will reevaluate whether the proposed regulatory change would affect the basis upon which the Commission made the comparability determination. To the extent that there are discrepancies in the requirements between the foreign jurisdiction and the Commission's proposed regulatory change, the Commission anticipates that it would issue additional guidance or notifications to market participants to determine how affected entities can address any discrepancy in requirements.

The Commission declines to limit the condition that eligible affiliates clear their outward-facing swaps to SDs and MSPs, as suggested by CDEU. As explained throughout this release, the Commission believes that the requirements of § 50.52(b)(4) are necessary to prevent evasion of the clearing requirement and to protect U.S. financial markets. Moreover, the requirements of section 2(h)(1)(A) apply to all market participants not able to elect an exception under section 2(h)(7) of the CEA, not just to SDs and MSPs. The Commission believes that the modified rule and time-limited alternative compliance frameworks adopted in the final rule will provide end users, amongst others, with substantial flexibility to comply with the conditions of the exemption. Furthermore, the Commission notes that end users also may elect the end-user exception from clearing for hedging transactions that comply with the requirements of the CEA and § 50.50.

For the reasons described in this release, the Commission is adopting in § 50.52(b) the conditions to the inter-affiliate exemption, initially proposed as § 39.6(g)(2)(v), pertaining to swaps entered into with unaffiliated counterparties, with the modifications described above.

H. Reporting Requirement and Annual Election

In the NPRM, the Commission explained that general reporting requirements under sections 2(a)(13) and 4r of the CEA and part 45 apply to uncleared inter-affiliate swaps.[83] In addition, the proposed regulations require the reporting counterparty to provide, or cause to be provided, to a registered SDR, or if no registered SDR is available, to the Commission, certain additional information. Proposed § 39.6(g)(4)(i) requires the reporting counterparty to confirm that both counterparties to the inter-affiliate swap are electing not to clear the swap and that both counterparties meet the requirements in proposed § 39.6(g)(1)–(2). Proposed § 39.6(g)(4)(ii) requires the reporting counterparty to submit information regarding how the financial obligations of both counterparties are generally satisfied with respect to uncleared swaps. Proposed § 39.6(g)(4)(iii) implements section 2(j) of the CEA for purposes of the inter-affiliate exemption. Section 2(j) of the CEA applies to an issuer of securities registered under section 12 of the Securities Exchange Act of 1934 (Exchange Act)[84] or an entity required to file reports under Exchange Act section 15(g) (''electing SEC Filers'') that elects an exemption from the CEA's clearing requirement under section 2(h)(1)(A) of the CEA. Section 2(j) requires that an appropriate committee of the electing SEC Filer's board or governing body review and approve its decision to enter into swaps subject to an exemption clearing. Proposed § 39.6(g)(4)(iii)(A) requires an electing SEC Filer to notify the Commission of its SEC Filer status by submitting its SEC Central Index Key number. In addition, proposed § 39.6(g)(4)(iii)(B) requires the counterparty to report whether an appropriate committee of its board of directors (or equivalent governing body) has reviewed and approved the decision to enter into the inter-affiliate swaps that are exempt from clearing.[85]

Lastly, proposed § 39.16(g)(5) permits a counterparty to provide information related to how it generally meets its financial obligations and information related to its status as an electing SEC Filer on an annual basis in anticipation of electing the inter-affiliate clearing exemption for one or more swaps. This election is effective for inter-affiliate swaps entered into within 365 days following the date of such reporting. During the 365-day period, the affiliate counterparty would be required to amend the information as necessary to

[83] *See* NPRM at 50432.

[84] 15 U.S.C. 78l.

[85] The proposed requirements under regulations implementing section 2(j) mirror the requirements that the Commission finalized in its end-user exception rulemaking, End-User Exception to the Clearing Requirement for Swaps, 77 FR 42560.

reflect any material changes to the reported information. Under the proposal, confirmation that both counterparties are electing not to clear the swap and that they both satisfy the other requirements of the exemption would not be subject to an annual filing, but must be done on a swap-by-swap basis.

The Commission received several comments in response to the reporting obligations of affiliates. Prudential and MetLife both commented that the Commission should clarify that only one counterparty is required to report the swap to an SDR. In addition, both Prudential and MetLife stated that annual reporting is more efficient than swap-by-swap reporting.

EEI stated that the Commission should eliminate the transaction-by-transaction reporting requirement under proposed § 39.6(g)(4)(i) for the election of the exemption and confirmation that the conditions have the exemption have been met. Instead, EEI recommended that one of the affiliates be permitted to file an annual notice on behalf of both affiliates to exempt all of their swaps from clearing for an entire year. EEI contended that it will increase costs if both affiliates have to communicate that they elect not to clear the swap and meet the conditions of the exemption for each swap. EEI also stated that the Commission should state that part 45 does not apply to inter-affiliate swaps because the Commission will be able to obtain information regarding an inter-affiliate transaction based on reporting of a corresponding market-facing swap.[86]

CDEU also objected to reporting any information to an SDR on a trade-by-trade basis for inter-affiliate swaps as such reporting would be costly and onerous for parties. Instead, CDEU recommended that all reporting be done on an annual basis through a board resolution.[87] CDEU also requested that part 45 data be reported on a quarterly basis for all inter-affiliate swaps between financial and non-financial end users, and that inter-affiliate swaps not be subject to historical swap reporting under part 46. Similarly, Cravath asked that the Commission ''provide meaningful relief from the reporting requirements of Part 45 and Part 46.''

DLA Piper commented that the regulatory reporting requirements are unnecessary for inter-affiliate swaps and should be eliminated.[88] DLA Piper claimed that the reporting of both the outward-facing swap and the inter-affiliate swap would increase systemic risk by distorting the risk to the financial system. DLA Piper also commented that the imposition of recordkeeping obligations with respect to inter-affiliate swaps would result in significant additional burdens on corporate groups. DLA Piper stated that inter-affiliate swaps should be expressly exempt from the part 45 and part 46 reporting requirements.

Under sections 2(a)(13) and 4r of the CEA, all swaps must be reported to an SDR (or the Commission if there is no available SDR) and are subject to comprehensive recordkeeping obligations.[89] Reporting and recordkeeping obligations apply to both historical swaps[90] and those swaps executed after the applicable compliance date listed in part 45 of the Commission's regulations.[91] As indicated in the preamble to the final end-user exception[92] and the NPRM,[93] parts 45 and 46 of the Commission's regulations apply to inter-affiliate swaps.[94] Whether an inter-affiliate swap is subject to the part 43 real-time reporting rules will depend on whether the transaction fits within the definition of a ''publically reportable swap transaction.''[95]

In response to commenters' requests, the Commission is clarifying that the reporting obligations under § 39.6(g)(2)(i) (now § 50.52(c)) can be fulfilled by one of the affiliate counterparties on behalf of both counterparties. The selection of which affiliate will be considered to be the reporting counterparty should be determined in accordance with the provisions of § 45.8 and, for part 43, the reporting party under § 43.3(a)(3).

As noted in the NPRM, the Commission believes that affiliates within a corporate group may make independent determinations on whether to submit an inter-affiliate swap for clearing. Given the possibility that each affiliate may reach different conclusions regarding clearing the swap, § 39.6(g)(2)(i) would require that both counterparties elect the proposed inter-affiliate clearing exemption. The Commission is therefore adopting the electing requirement as proposed.

With regard to comments recommending that all reporting be done on an annual basis rather than a swap-by-swap basis, the Commission declines to modify the rule. The Commission believes it is appropriate to provide for annual reporting of certain information, including how affiliates generally meet their financial obligations and information related to its status as an electing SEC Filer.[96] However, it would not be appropriate to allow one annual report to cover both

[86] EEI cited to a statement in the NPRM's consideration of costs and benefits as support for an argument that the Commission did not intend for part 45 reporting to apply to inter-affiliate swaps. *See* NPRM at 50433. The statement in the cost-benefit consideration of the NPRM merely drew a comparison between the reporting requirements under the proposed exemption and the general reporting requirements under parts 45 and 46, and those reporting requirements applicable to SDs and MSPs under part 23. The statement should not be read as calling into question the applicability of part 45 to inter-affiliate swaps.

[87] Cravath stated that the Commission has determined that part 43 reporting does not apply to inter-affiliate swaps.

[88] According to its comment letter, DLA Piper's comments are limited to corporate end-users who enter into intercompany hedging transactions.

[89] *See* 17 CFR part 45; 17 CFR 45.2 (recordkeeping obligations); Swap Data Recordkeeping and Reporting Requirements, 77 FR 2136 (Jan. 13, 2012); 17 CFR part 46; Swap Data Recordkeeping and Reporting: Pre-Enactment and Transition Swaps, 77 FR 35200 (June 12, 2012).

[90] As described in the part 46 rules, historical swaps include pre-enactment swaps, that is, swaps still in existence after the date of enactment of the Dodd-Frank Act, and transition swaps, that is, swaps entered into on or after the date of enactment but before the compliance date specified in part 45 and other no-action or regulatory guidance issued by the Commission or one of the Commission's divisions or offices.

[91] These reporting obligations may be subject to no-action or other regulatory guidance issued by the Commission or any of the Commission's divisions or offices. *See www.cftc.gov* for a complete list of the staff no-action letters, Frequently Asked Questions, and other regulatory guidance.

[92] *See* End-User Exception to the Clearing Requirement for Swaps, 77 FR 42567 (''Congress did not exempt such inter-affiliate swaps from the reporting requirements'' and ''inter-affiliate swaps must be reported'').

[93] NPRM at 50432 (noting that section 4r applies to uncleared swaps and that counterparties must comply with proposed rule 39.6(g)(4) ''[i]n addition to any general reporting requirements applicable under other applicable rules'').

[94] In addition, under part 45 non-SDs and MSPs must keep ''full, complete, and systematic records, together with all pertinent data and memoranda, with respect to each swap in which they are a counterparty.'' 17 CFR 45.2(b). These recordkeeping obligations applied to inter-affiliate swaps as early as October 14, 2010. *See* Interim Final Rule for Reporting Pre-Enactment Swap Transactions, 75 FR 63090 (Oct. 14, 2010). Thus, as of the date of this release, swap counterparties already have an obligation to maintain swap records that has existed for more than two years.

[95] *See* 17 CFR 43.2 (defining ''publicly reportable swap transaction'' as an executed swap that is an arm's length transaction between two parties that results in a change in the market risk position between the two parties and citing ''internal swaps between one-hundred percent owned subsidiaries of the same parent entity'' as an example of a swap that does not meet the definition); *see also* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182, 1187 (Jan. 9, 2012) (discussing the real-time public reporting of inter-affiliate swaps).

[96] The Commission is modifying the proposed reporting requirements relating to section 2(j) of the CEA to make them consistent with the approach adopted in the end-user exception to required clearing. As finalized, under § 50.52(c)(3)(ii), the committee of the board of directors (or equivalent body) of the eligible affiliate counterparty must have ''reviewed and approved the decision to enter into swaps that are exempt from the requirements of sections 2(h)(1) and 2(h)(8) of the Act.''

affiliate counterparties' election of the exemption from clearing and the confirmation that both affiliates meet the conditions of the exemption because each affiliate is under an ongoing obligation to demonstrate its eligibility to claim the exemption and because effective regulatory monitoring requires an indication of the election on a swap-by-swap basis.[97] Accordingly, the election of the exemption and the confirmation that the exemption's conditions are met must be made for each swap. The Commission does not believe that this reporting requirement will impose a significant burden on affiliate counterparties because, as discussed above, other detailed information for every swap must be reported under sections 2(a)(13) and 4r of the CEA and Commission regulations. This approach comports with the approach adopted for market participants claiming the end-user exception under section 2(h)(7) of the CEA.[98]

The Commission does not agree with EEI's comment that the Commission will be able to obtain information on inter-affiliate swaps from the information reported on market-facing swaps, and disagrees with DLA Piper's comment that reporting and recordkeeping obligations are unnecessary or would increase systemic risk. The reporting and recordkeeping requirements promote accountability and transparency, and will aid the Commission in monitoring compliance with the inter-affiliate exemption. Moreover, the Commission does not believe that the information relating to inter-affiliate swaps will necessarily be identical to market-facing swaps. Also, the Commission does not believe that all inter-affiliate swaps will match up to market-facing swaps because, as The Working Group commented, entities use inter-affiliate trades to transfer physical commodity or futures exposure between affiliates for compliance with international tax law, customs, or accounting laws.

I. Implementation

The clearing requirement under section 2(h)(1)(A) of the CEA and part 50 of the Commission's regulations shall not apply to a swap executed between affiliated counterparties that have the status of eligible affiliate counterparties, as defined in § 50.52(a), and elect not to clear such swap until the effective date of this rulemaking. The effective date of this rulemaking shall be 60 days after publication in the **Federal Register**.

III. Cost-Benefit Considerations

A. Statutory and Regulatory Background

Section 15(a) of the CEA [99] requires the Commission to consider the costs and benefits of its actions before promulgating a regulation under the CEA or issuing certain orders. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission considers the costs and benefits resulting from its discretionary determinations with respect to the section 15(a) factors.

Prior to the passage of the Dodd-Frank Act, swaps were not required to be cleared. In the wake of the financial crisis of 2008, Congress adopted the Dodd-Frank Act, which, among other things, amends the CEA to impose a clearing requirement for swaps based on determinations by the Commission regarding which swaps are required to be cleared through a DCO.[100] This clearing requirement is designed to reduce counterparty risk associated with swaps and, in turn, mitigate the potential systemic impact of such risk and reduce the risk that swaps could cause or exacerbate instability in the financial system.[101] In amending the CEA, however, the Dodd-Frank Act preserved the Commission's authority to ''promote responsible economic or financial innovation and fair competition'' by exempting any transaction or class of transactions, including swaps, from select provisions of the CEA.[102] For reasons explained above,[103] the Commission proposes to exercise its authority under section 4(c)(1) of the CEA to exempt inter-affiliate swaps—that is, swaps between majority-owned affiliates with financial statements that are reported on a consolidated basis under GAAP or IFRS—from the clearing requirement under section 2(h)(1)(A) of the CEA, subject to certain conditions.

In the discussion that follows, the Commission considers the costs and benefits of the inter-affiliate exemption to the public and market participants generally. The Commission also separately considers the costs and benefits of the conditions placed on affiliates that would elect the exemption: (1) Majority ownership and financial statements that are reported on a consolidated basis under GAAP or IFRS as conditions for status as an eligible affiliate counterparty; (2) swap trading relationship documentation, which would require affiliates to document in writing all terms governing the trading relationship; (3) centralized risk management requirement, which would require affiliates to subject the swap to centralized risk management; and (4) reporting requirements, which would require counterparties to advise an SDR, or the Commission if no SDR is available, that both counterparties elect the inter-affiliate clearing exemption and to identify the types of collateral used to meet financial obligations. In addition to the foregoing reporting requirements, counterparties that are issuers of securities registered under section 12 of the Securities Exchange Act of 1934 or those that are required to file reports under section 15(d) of that Act, would be required to identify the SEC central index key number and confirm that an appropriate committee of board of directors has approved of the affiliates' decision not to clear a swap. The rule also would permit affiliates to report certain information on an annual basis, rather

[97] If reports to the SDR were made on an annual basis, but included swap-by-swap information, regulators would not be able to monitor the transmission of risk through the market in a timely fashion. Regulators would have a one-year lag before such data could be used effectively for such purposes. If reports to the SDR were made on an annual basis and did not include swap-by-swap information, the regulators would be permanently hindered in their ability to monitor the swap markets. As noted above, inter-affiliate swaps and outward-facing swaps both transfer risk, but they do so in different ways and in differing degrees. Regulators must be able to distinguish between inter-affiliate swaps and outward-facing swaps in order to monitor markets effectively. If electing entities provided an annual statement that they are electing the exemption, and do not identify the individual swaps for which the exemption has been elected, the data would not allow regulators to distinguish between the two groups.

[98] *See* End-User Exception to the Clearing Requirement for Swaps, 77 FR 42565–66.

[99] 7 U.S.C. 19(a).

[100] *See* section 2(h)(1) of the CEA, 7 U.S.C. 2(h)(1).

[101] When a bilateral swap is moved into clearing, the clearinghouse becomes the counterparty to each of the original participants in the swap. This standardizes counterparty risk for the original swap participants in that they each bear the same risk attributable to facing the clearinghouse as counterparty. In addition, clearing mitigates counterparty risk to the extent that the clearinghouse is a more creditworthy counterparty relative to those that each participant in the trade might have otherwise faced. Clearinghouses have demonstrated resilience in the face of past market stress. Most recently, they remained financially sound and effectively settled positions in the midst of turbulent events in 2007–2008 that threatened the financial health and stability of many other types of entities.

[102] Section 4(c)(1) of the CEA, 7 U.S.C. 6(c)(1). Section 4(c)(1) is discussed in greater detail above in Section II.A.

[103] *See* Section II.A above.

than swap-by-swap. Finally, the Commission considers the costs and benefits of the condition regarding the treatment of outward-facing swaps.

In the NPRM, where reasonably feasible, the Commission sought to estimate quantifiable dollar costs. In some instances, however, the Commission explained that certain costs were not susceptible to meaningful quantification, and in those instances, the Commission discussed proposed costs and benefits in qualitative terms. As stated above, the Commission received a total of 14 comment letters following the publication of the NPRM, many of which strongly supported the proposed regulations. Some commenters generally addressed the cost-and-benefit aspect of the current rule; none of them, however, provided any quantitative data in response to the Commission's requests for comment.[104]

In the sections that follow the Commission considers: (1) Costs and benefits of the exemption for eligible affiliate counterparties; (2) costs and benefits of the exemption for market participants and the public; (3) alternatives contemplated by the Commission and the costs and benefits relative to the approach adopted herein; (4) the impact of exemption in light of the 15(a) factors. The Commission also discusses the corresponding comments accordingly.

B. Costs and Benefits of Exemption for Eligible Affiliate Counterparties

Without the final rule exempting swaps between certain affiliated counterparties, those entities would have to clear their inter-affiliate swaps pursuant to section 2(h)(1)(A) of the CEA (unless one of the affiliates is able to claim an exception under section 2(h)(7) of the CEA and/or § 50.50).[105] This rule allows eligible affiliates to exempt inter-affiliate swaps from clearing, which creates both costs and benefits for those entities. Regarding costs, by allowing affiliates not to clear certain swaps that would otherwise be subject to required clearing, the rule may allow those affiliates to be exposed to greater measures of counterparty credit risk with respect to one another. On the other hand, the primary benefit of providing this exemption for inter-affiliate swaps between eligible affiliate counterparties is that each affiliate will not have to incur the costs of required clearing. These costs include clearing fees, as well as costs associated with margin and capital requirements. The rule also facilitates affiliates' use of swaps to hedge various types of risk more efficiently.

1. Benefits of Clearing Inter-Affiliate Swaps

The benefits of required clearing have been well-documented by the Commission.[106] As described in the preceding sections of this adopting release, there are numerous benefits associated with central clearing of swaps. In particular, clearing mitigates counterparty credit risk, provides an organized mechanism for collateralizing the risk exposures posed by swaps, and when applied to channels where systemic risk could be transmitted, clearing reduces systemic risk.

The counterparty and systemic risk mitigation benefits of central clearing also are realized from clearing transactions between affiliates. Central clearing would ensure that inter-affiliate swaps are fully documented and abide by valuation procedures set by the DCO, which would help to ensure that affiliates have current and accurate information regarding the value of their positions and would help prevent the possibility of valuation disputes.[107] In addition, when a bilateral swap is cleared, the clearinghouse becomes the counterparty to each of the original counterparties to the swap. This reduces and standardizes the counterparty risk borne by each of the original parties to the swap.[108] Moreover, clearing mitigates the risk of financial contagion because the clearinghouse serves as a sort of ''buffer'' that protects each of the original counterparties from the credit risk of the other. This would also be true for inter-affiliate swaps. Novating the swap to a clearinghouse so that each affiliate faces the clearinghouse would ensure that each affiliate is facing minimal counterparty credit risk and would minimize the possibility of inter-affiliate swaps becoming a mechanism through which financial instability could pass from one affiliate to another.

This rule reduces these benefits by allowing affiliates to exempt swaps from required clearing. In the absence of clearing, affiliated entities will not be required to collect initial or variation margin, or to implement other measures that clearinghouses typically use to mitigate their own counterparty credit risk. As a consequence, the affiliates may accumulate large outstanding positions with one another as the value of their swap positions change value between payment dates. If an affiliate with large, out-of-the-money, inter-affiliate swap positions defaulted, it could cause financial instability in its affiliates, leading to a cascading series of defaults among them. As discussed below, the Commission expects that internalization of costs and risks among

[104] As discussed further below, EEI commented on the NPRM's consideration of costs and benefits and stated that the costs of the proposed documentation requirement are unjustified. The NPRM included an estimate that there would be a one-time cost of $15,000 to develop appropriate documentation for use by an entity's affiliates. EEI objected to this estimate because, in its view, the legal costs associated with individually negotiating and amending standard agreements between individual affiliates would exceed the NPRM's estimates. In addition, EEI objected to the NPRM's estimate of 22 affiliated counterparties for each corporate group as ''far too low'' for U.S. energy companies. However, EEI did not provide specific, quantitative information in terms of either the legal costs of complying with the proposed documentation requirement or number of affiliates for a corporate group subject to this rule.

[105] Under the § 50.50 exception, end users and small financial institutions that are hedging or mitigating commercial risk may elect not to clear their swaps, subject to certain conditions. Because of this exception, as explained in the NPRM, the Commission anticipates that the inter-affiliate exemption will be elected only when the two counterparties are financial entities that do not qualify for the end-user exception. *See* NPRM at 50426.

[106] *See e.g.,* Clearing Requirement Determination at 74329.

[107] ISDA & SIFMA stated that valuation and dispute resolution procedures would appear to serve little purpose among majority-owned affiliates. This comment is discussed above in Section II.D, as well as in Section III.C.2. below.

[108] A clearinghouse is one of the most credit-worthy counterparties available in the market because of the panoply of risk management tools it has at its disposal. These tools include the contractual right to: (1) Collect initial and variation margin associated with outstanding swap positions; (2) mark positions to market regularly (usually one or more times per day) and issue margin calls whenever the margin in a customer's account has dropped below predetermined levels set by the DCO; (3) adjust the amount of margin that is required to be held against swap positions in light of changing market circumstances, such as increased volatility in the underlying; and (4) close out the swap positions of a customer that does not meet margin calls within a specified period of time.

Moreover, in the event that a clearing member defaults on their obligations to the DCO, the latter has a number of remedies to manage associated risks, including transferring the swap positions of the defaulted member, and covering any losses that may have accrued with the defaulting member's margin and other collateral on deposit. In order to transfer the swap positions of a defaulting member and manage the risk of those positions while doing so, the DCO has the ability to: (1) Hedge the portfolio of positions of the defaulting member to limit future losses; (2) partition the portfolio into smaller pieces; (3) auction off the pieces of the portfolio, together with their corresponding hedges, to other members of the DCO; and (4) allocate any remaining positions to members of the DCO. In order to cover the losses associated with such a default, the DCO would typically draw from (in order): (1) The initial margin posted by the defaulting member; (2) the guaranty fund contribution of the defaulting member; (3) the DCO's own capital contribution; (4) the guaranty fund contribution of non-defaulting members; and (5) an assessment on the non-defaulting members. These mutualized risk mitigation capabilities are largely unique to clearinghouses, and help to ensure that they remain solvent and creditworthy swap counterparties even when dealing with defaults by their members or other challenging market circumstances.

affiliated entities, as well as the conditions for electing the exemption will mitigate this cost, but will not eliminate it entirely.

2. Reduced Clearing Costs

As stated above, by exempting qualified affiliates from clearing inter-affiliate swaps that would otherwise be subject to the clearing requirement, the rule ensures that each affiliate will not incur the costs of required clearing for those swaps. These costs include clearing fees as well as costs associated with margin and capital requirements. Regarding clearing fees, assuming that the affiliated counterparties cannot clear on their own behalves or through an affiliated clearing member of a DCO, the affiliated counterparties would have to arrange to clear their swaps through a futures commission merchant (FCM) that is a member of a DCO. Regardless of whether the affiliated counterparties clear on their own behalf or contract with an FCM, they will incur fees from the DCO.

For customer clearing, DCOs typically charge FCMs an initial transaction fee for each customer swap that is cleared, as well as an annual maintenance fee for each of the customers' open positions. For example, not including customer-specific and volume discounts, the transaction fees for interest rate swaps at CME range from $1 to $24 per million notional amount and the maintenance fees are $2 per year per million notional amount for open positions.[109] LCH transaction fees for interest rate swaps range from $1 to $20 per million notional amount, and the maintenance fee ranges from $5 to $20 per swap per month, depending on the number of outstanding swap positions that an entity has with the DCO.[110] It is within the FCM's discretion to determine whether or how to pass these fees on to their customers.[111] Accordingly, allowing affiliates to elect not to clear swaps that meet the requirements of the final rule will result in the affiliates not having to pay clearing-related fees, either directly or indirectly, with respect to those swaps.

Second, permitting an exemption from clearing for swaps between affiliates, the final rule will reduce the amount of initial margin that such entities are required to post or pay for those swaps. In the clearing requirement determination, the Commission estimated that if every interest rate swap and CDS that is not currently cleared were moved into clearing, the additional initial margin that would need to be posted is approximately $19.2 billion for interest rate swaps and $53 billion for CDS.[112] While the estimates provided by the Commission in its clearing requirement determination adopting release did not include data related to inter-affiliate swaps,[113] the estimates do support a conclusion that the exemption will reduce the amount of margin that affiliates would be obligated to allocate to initial margin in order to clear inter-affiliate swaps that are subject to the clearing requirement. As a consequence, the exemption is likely to increase the amount of capital that affiliates may distribute to their owners or put to other uses.

Third, by exempting inter-affiliate swaps from required clearing, inter-affiliate swaps would not be subject to variation margin requirements under a DCO's rules. Exempting inter-affiliate swaps from required clearing's variation margin requirements may help affiliates and corporate entities as a whole manage their liquidity needs because the entities would not have to routinely collateralize losses at the DCO. It is also likely to reduce the operational costs that the affiliates would otherwise bear in order to manage margin calls and associated variation margin payments.

3. Risk Management Benefits of Inter-Affiliate Swaps

A number of commenters stated that executing swaps with the market through one affiliate enables entities to more efficiently and effectively manage corporate risk.[114] In this arrangement, the one affiliate engages in inter-affiliate swaps with other affiliated entities in order to hedge the risks of those affiliates. The one, central affiliate then engages in market-facing swaps to offset the risk that it has taken on. Executing swaps through one affiliate may enable corporate entities to concentrate their swap and hedging expertise and activity within a single affiliate, which reduces personnel costs. It also allows the corporation to net various positions before facing the market, thus reducing the number of market facing swaps, and the attendant fees.

Moreover, these affiliate structures may not only reduce costs, but certain types of risk for the corporation as well. By concentrating personnel with swap and hedging expertise in one affiliate, and running inter-affiliate and market facing swap activities through a single entity, corporations may reduce the risk of operational errors. Such errors can create considerable risk when engaging in large hedging transactions. Moreover, the corporation's operational risk may be further mitigated by reducing the total number of market facing swaps into which the affiliated entities enter.[115]

Additionally, as stated above and as noted in the NPRM, affiliates that are commonly owned internalize a portion of one another's risk.[116] To the extent that affiliated entities internalize one another's risk, those entities have an economic incentive to perform on their obligations with respect to one another, thus reducing the counterparty risk that they bear as a consequence of their swaps with one another. However, the qualification ''to the extent that affiliated entities internalize one other's risk'' is significant. Two important factors limit the degree to which affiliates internalize one another's risk. First, if either of the affiliated entities has a portion of ownership that is not held in common, then a corresponding portion of the risks transferred to that entity will not be borne by the common owners, and thus will not be internalized. In other words, a smaller common ownership stake will cause less counterparty risk to be internalized, and will lessen the incentive affiliates will have to perform on their obligations toward one another. Second, as described above, there are circumstances in bankruptcy where affiliates do not internalize each other's risks, which may also reduce, or

[109] *See* CME pricing charts at: *http://www.cmegroup.com/trading/cds/files/CDS-Fees.pdf; http://www.cmegroup.com/trading/interest-rates/files/CME–IRS-Customer-Fee.pdf;* and *http://www.cmegroup.com/trading/interest-rates/files/CME–IRS-Self-Clearing-Fee.pdf.*

[110] *See* LCH pricing for clearing services related to OTC interest rate swaps at: *http://www.lchclearnet.com/swaps/swapclear_for_clearing_members/fees.asp.*

[111] *See* discussion of clearing fees in the Clearing Requirement Determination, 77 FR 74324–25.

[112] *See* Clearing Requirement Determination at 74326 (explaining how this estimate was reached and noting that the estimate may either over-estimate or under-estimate the amount of additional initial margin that would need to be posted).

[113] For example, swap data collected by the Bank of International Settlements (BIS) does not contain information regarding transactions between affiliates (*i.e.,* branches and subsidiaries) of the same institution. *See, e.g.,* Statistical release: OTC derivatives statistics at end-June 2012, Monetary and Economic Department, Bank of International Settlements (Nov. 2012), available at *http://www.bis.org/publ/otc_hy1211.pdf.* The Commission relied on BIS data in calculating its additional initial margin requirements for required clearing of certain interest rate swaps and credit default swaps.

[114] *See, e.g.,* letters from The Working Group, EEI, and ISDA & SIFMA.

[115] Commenters also asserted that inter-affiliate swaps are used in order to assist in tax management and compliance with international laws, stating that the exemption would help to preserve those benefits. Commenters did not provide sufficient information regarding their operations, tax management strategies, and international compliance requirements for the Commission to evaluate these stated benefits.

[116] *See* NPRM at 50426 and Section II.A.

eliminate, the affiliates' incentives to perform with respect to their obligations they have toward one another.[117]

Reduced internalization of risk among affiliates may create incentives for certain affiliates to use inter-affiliate swaps to shift risk to other affiliates in ways that are not necessarily in the best interests of minority stakeholders or counterparties to certain affiliates. In order to address this concern, the Commission has conditioned election of the exemption on several requirements that are intended to mitigate the costs created by reduced internalization of risk among affiliates, as well as the foregone benefits of required clearing.

C. Costs and Benefits of Exemption's Conditions

The inter-affiliate exemption from required clearing sets forth five conditions that must be satisfied in order to elect the exemption: (1) Both affiliates must be majority-owned and their financial statements must be reported on a consolidated basis; (2) the swap must be documented in a written swap trading relationship document; (3) the swap must be subject to a centralized risk management program; (4) certain information regarding the swap must be reported to an SDR; and (5) both affiliates must meet certain conditions with regard to their outward-facing swaps. The Commission believes that entities will have to incur costs to satisfy these conditions. Those costs may offset some of the benefits that would otherwise result from the exemption. However, the exemption is permissive, and therefore the Commission also believes that an affiliate will elect the exemption only if these costs are less than the costs that an affiliate will incur should it decide not to elect the exemption. Moreover, as described below, the conditions provide certain benefits to the affiliates' counterparties and to the public that the Commission believes are essential in order to mitigate counterparty credit risk in situations where affiliates do not completely internalize each other's risks. Lastly, the Commission believes that in some cases entities are already meeting some or all of the requirements for electing the exemption, in which cases the affiliates would bear less new costs, or no new costs at all, due to the conditions.[118]

1. Eligible Affiliate Counterparty Status

In order to qualify as an eligible affiliate counterparty under the terms of the exemption, two factors must be met. First, one affiliate must directly or indirectly hold a majority ownership interest in the other, or a third party must hold a majority ownership interest in both. Second, the financial statements of both affiliates are reported on a consolidated basis under Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS).

The Commission anticipates that in a relatively small number of cases entities may alter their ownership structures in order to qualify for the inter-affiliate exemption's majority-ownership condition. In these cases, entities may bear certain legal costs, and in some cases, costs associated with negotiations with other owners in the entity. These costs could vary significantly, depending on the complexity of the entity's existing ownership structure, including the number of owners and the alignment or misalignment of their interests. The Commission does not have adequate information to determine which entities or how many entities may consider altering their ownership structure in order to become eligible for the inter-affiliate exemption, but notes again that entities would only do this if they anticipate that the benefits of the exemption are greater than the costs of meeting the qualifying criteria.

Four commenters supported proposed majority-ownership requirement. CDEU commented that the majority-ownership test strikes an appropriate balance between ensuring that the rule is not overly broad and providing companies with the flexibility to account for differences in corporate structures. EEI noted that majority-owned affiliates will have strong incentives to internalize one another's risks because the failure of one affiliate impacts all affiliates within the corporate group. The Working Group generally supported the Commission's definition, but stated that inter-affiliate swaps should be unconditionally exempt from mandatory clearing when the affiliates are consolidated for accounting purposes. MetLife stated that it would likely limit inter-affiliate trading to ''commonly-owned'' affiliates, but agreed with the flexibility of including majority-owned affiliates.

Two commenters objected to the proposal and requested the Commission require 100% ownership of affiliates. AFR stated that permitting such a low level of joint ownership would lead to evasion of the clearing requirement through the creation of joint ventures set up to enable swap trading between banks without the need to clear the swaps. Similarly, Better Markets agreed that only 100% owned affiliates should be eligible for the exemption because allowing the exemption for the majority owner permits that owner to disregard the views of its minority partners and creates an incentive to evade the clearing requirement by structuring subsidiary partnerships. Finally, Better Markets stated that the majority-ownership standard will result in corporate groups transferring price risk and credit risk to different locations facilitating interconnectedness and potentially giving rise to systemic risk during times of market stress.

As discussed above, the degree to which one affiliate's risks are internalized by another affiliate depends significantly on the percentage of common ownership between them. For example, two affiliates that are 100% commonly owned are likely to internalize much of one another's risk. This creates a strong incentive for affiliates to perform on their obligations to one another. Therefore, if the Commission were to increase the common ownership requirement above a majority stake, it would likely result in affiliate counterparties internalizing more of one another's risk with respect to inter-affiliate swaps in order to qualify for the exemption. This, in turn, would provide additional incentives for affiliates to perform on their inter-affiliate swap obligations. However, if the Commission were to increase the common ownership percentage requirement, it also would reduce the number of affiliates that could qualify for, and benefit from, the exemption.

On the other hand, if the Commission lowered the percentage of common ownership that is required to be eligible for the exemption (*i.e.,* made it 50% or less), it would increase the number of affiliates that are eligible for the exception. This lower standard would allow affiliates that internalize less of each other's risks and therefore have weaker incentives to perform on their obligations to one another to qualify for the exemption. Moreover, the absence of a majority common ownership requirement could create opportunities for otherwise unrelated entities to form joint ventures and transact swaps with one another in order to claim the inter-affiliate exemption from clearing, which would undermine the effectiveness of the clearing requirement.

The Commission considered each of these factors and concluded that the majority stake requirement is sufficient to internalize costs and incentivize affiliates to perform on their obligations

[117] *See* Section II.A.

[118] *See, e.g.,* letters from MetLife and Prudential (explaining that it is current business practice to document inter-affiliate swaps); letter from EEI (explaining that inter-affiliate swaps are subject to risk management).

to one another. The Commission also believes that the potential for evasion is mitigated through the conditions to the final rule, which have been carefully crafted in order to narrow the exemption. For example, two unrelated entities cannot each hold a majority stake in the same affiliate. Consequently, such unrelated entities cannot use an inter-affiliate swap as an indirect means of trading without being subject to the clearing requirement under section 2(h) of the CEA and part 50 of the Commission's regulations.

As an additional consideration, as noted above, the majority requirement also harmonizes with Commission's understanding of the EMIR requirements. Harmonizing with EMIR is likely to reduce compliance monitoring costs for entities electing the affiliated entity exemption. In terms of potential costs in the form of disregarding the interests of minority shareholders, the Commission recognizes that a 100% ownership requirement would eliminate the risk of minority shareholders' interests not being aligned with decisions to elect the exemption. However, the Commission is also cognizant that such a requirement would reduce the number of affiliates that are able to claim the exemption. The Commission believes that the majority-ownership requirement appropriately considers the risk of the former and the benefits of the latter.

With regard to the consolidation of financial statements, FSR requested that the Commission clarify that alternative accounting standards can be used for purposes of meeting the requirement that the financial statements of both affiliates be reported on a consolidated basis. The Commission considered this comment and is adopting the alternative suggested by FSR. As modified the rule requires that the financial statements of both counterparties be reported on a consolidated basis under GAAP or IFRS. This change recognizes the fact that some entities claiming the exemption may report their financial statements under different accounting standards, and makes it possible for those entities to elect the exemption as long as they would be required to report their financial statements on a consolidated basis under GAAP or IFRS. This likely increases the number of entities that may elect the exemption relative to the form of the rule proposed in the NPRM while maintaining the protections that were intended with the requirement for consolidated financial statements. The Commission also modified the rule to clarify which entities are subject to the consolidated financial statement requirement.

2. Inter-Affiliate Swap Documentation

As proposed, the inter-affiliate exemption required that eligible affiliate counterparties that elect the inter-affiliate exemption must enter into swaps with a swap trading relationship document that is in writing and includes all the terms governing the relationship between the affiliates. These terms included, but were not limited to, payment obligations, netting of payments, transfer of rights and obligations, governing law, valuation, and dispute resolution. This requirement would be satisfied if an eligible affiliate counterparty is an SD or MSP that complies with the swap trading relationship documentation requirements of § 23.504.[119]

The Commission received a number of comments both supporting and opposing the swap documentation requirement. Better Markets, MetLife, and Prudential all supported the proposed documentation requirement. Specifically, MetLife and Prudential did not believe that the documentation requirement would be any more ''burdensome or costly'' for them because they already document all of their swaps.

Cravath, EEI, CDEU, and DLA Piper opposed the proposed documentation requirement. Cravath stated that the costs associated with the imposition of documentation requirements outweigh any benefits to the financial system, and that the Commission should leave the determination as to the appropriate level of documentation to boards of directors and management of companies, to determine based on the ''reasonable exercise of their fiduciary responsibilities.'' DLA Piper commented that the documentation requirements are burdensome and questioned the benefits of imposing documentation requirements on transactions between two parties.

CDEU expressed concern that proposed documentation condition would require that full ISDA Master Agreements be used to document inter-affiliate swaps. CDEU explained that while many market participants use master agreements, some end users many not have full master agreements because inter-affiliate swaps are purely internal and do not increase systemic risk. CDEU recommended that the proposed rule be revised to require that the swap documentation ''include all terms necessary for compliance with its centralized risk management program'' and eliminate the list of required terms. CDEU also requested that the Commission clarify that (1) market participants can continue to use documentation required by their risk management programs and (2) the rule does not require market participants use ISDA Master Agreements.

EEI recommended that the Commission eliminate the documentation requirement because the requirement is duplicative of corporate accounting records that affiliates currently maintain. EEI commented that a documentation requirement imposes ''an additional, costly layer of ministerial process and documentation that is unnecessary to achieve the Commission's stated objectives.'' EEI commented on the NPRM's consideration of costs and benefits and stated that the costs of the proposed documentation requirement are unjustified. The NPRM included an estimate that there would be a one-time cost of $15,000 to develop appropriate documentation for use by an entity's affiliates. EEI objected to this estimate because, in its view, the legal costs associated with individually negotiating and amending standard agreements between individual affiliates would exceed the NPRM's estimates. In addition, EEI objected to the NPRM's estimate of 22 affiliated counterparties for each corporate group as ''far too low'' for U.S. energy companies.[120] However, EEI did not provide specific, quantitative information in terms of either the legal costs of complying with the proposed documentation requirement or number of affiliates for a corporate group subject to this rule. Accordingly, the Commission is unable to verify whether the legal costs or average number of affiliates estimates are too low.

ISDA & SIFMA stated that the documentation requirements were overly prescriptive and would impose unnecessary costs on affiliates. ISDA & SIFMA recommended a more flexible approach that would require adequate documentation of ''all transaction terms under applicable law.''

In response to commenters' requests for a more flexible standard, the Commission modified the proposal for swaps between affiliates that are not

[119] For a discussion of the costs and benefits incurred by swap dealers and major swap participants that must satisfy requirements under § 23.504, *see* Confirmation, Portfolio Reconciliation, Portfolio Compression, and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 77 FR 55904, 55906 (Sept. 11, 2012) (final rule) and Swap Trading Relationship Documentation Requirements for Swap Dealers and Major Swap Participants, 76 FR 6715, 6724–25 (Feb. 8, 2011) (proposed rule).

[120] This estimate appeared in the NPRM section regarding the Paperwork Reduction Act not in the consideration of costs and benefits section.

SDs or MSPs. The Commission adopted ISDA & SIFMA's recommendation that the focus of the documentation requirement be on documenting all of an inter-affiliate transaction's terms.[121]

Under this modification, the Commission is eliminating the non-exclusive list of terms, which included payment obligations, netting of payments, transfer of rights and obligations, governing law, valuation, and dispute resolution. The change responds to commenters' requests for a more flexible approach that reflects current market best practices, and signals that market participants retain the ability to craft appropriate documentation for their affiliated entities so long as such documentation includes the terms of the swap and ''all terms governing the trading relationship between the eligible affiliate counterparties.'' [122] This modification also serves to address concerns that the intent of the proposed rule was to require formal master agreements, such as the ISDA Master Agreement.[123] The proposed rule was not intended to require affiliates to enter into formal master agreements. Rather, the Commission observed that parties that already use master agreements (of any sort) to document their inter-affiliate swaps would likely meet the requirements of the proposed rule without additional costs. This observation was supported by commenters such as MetLife and Prudential. The Commission believes that these modifications to the proposal and clarifications respond to commenters' concerns and will serve to reduce documentation costs for those electing the inter-affiliate exemption.[124]

Entities that have already established systems for documenting the terms of their inter-affiliate swaps and all the terms of the trading relationship between eligible affiliates will not bear any costs as a consequence of this requirement.[125] However, as noted in the NPRM, the Commission understands that some affiliates may enter into inter-affiliate swaps with little documentation regarding the terms of the swaps.[126] Such entities may not have systems to document the terms of their inter-affiliate swaps or all the terms of the trading relationship between eligible affiliates. They will bear some initial costs and ongoing costs in order to comply with this requirement. In the NPRM, the Commission estimated that the initial costs of up to $15,000 to create such the necessary documentation, and less than $1,000 per year on an ongoing basis to sign and retain appropriate documentation.[127]

In response to EEI's comment regarding duplicative requirements, to the extent that the documentation requirement is duplicative of an affiliate's existing recordkeeping practices, it will not introduce new costs. However, the Commission notes that if existing records do not contain the terms of each inter-affiliate swap or all the terms of the trading relationship between affiliates, affiliates will be required to implement new documentation that creates incremental costs, as noted above.

Regarding benefits, documentation of inter-affiliate swaps is essential to effective risk management. In the absence of such documentation, affiliates cannot track or value their swaps effectively. Documentation also helps ensure that affiliates have proof of claim in the event of bankruptcy. As explained earlier, insufficient proof of claim could create challenges and uncertainty at bankruptcy that could adversely affect affiliates and third party creditors. The documentation requirement, to the extent that it requires entities to document all the terms that are necessary in order to value inter-affiliate swaps and to provide legal certainty in the event of bankruptcy, will promote effective risk management and resolution of claims in the event of insolvency.[128]

3. Centralized Risk Management

Another condition of the inter-affiliate exemption requires that the swap be subject to a centralized risk management program that is ''reasonably designed to monitor and manage the risks associated with the swap.'' If at least one of the eligible affiliate counterparties is an SD or MSP, the centralized risk management requirement is satisfied by complying with the requirements of § 23.600.[129]

Four commenters objected to the proposed requirement, suggested alternatives, and/or requested clarification. FSR stated that the condition should be eliminated because integrated risk management systems ''are generally not established across international boundaries'' and are not consistent with general risk practices in large, multinational organizations. FSR suggested that the requirement be dropped in favor of each entity making ''its own evaluations of the risk associated with an inter-affiliate position.''

Cravath stated that in many cases, for companies outside of the financial sector, the proposed rule will require a substantial change in the processes and procedures currently maintained by such companies, and the cost of complying with the risk management program requirements outweigh any benefits to the financial system. Cravath commented that rather than subject companies to a risk management rule, ''[c]ompanies should have the flexibility to engage in prudent risk management for their corporate group in a manner consistent with the overall level of risks to their business.''

EEI suggested that the Commission eliminate the centralized risk

[121] The Commission is modifying the documentation condition to require that ''the terms of the swap are documented in a swap trading relationship document that shall be in writing and shall include all terms governing the trading relationship between the affiliates.''

[122] *See* § 50.52(b)(2)(ii).

[123] In the NPRM, the Commission estimated that affiliates could pay a law firm for up to 30 hours of work at $495 per hour to modify an ISDA Master Agreement, resulting in a one-time cost of $15,000, and there may be additional costs related to revising documentation to address a particular swap. All salaries in these calculations are taken from the 2011 SIFMA Report on Management and Professional Earnings in the Securities Industry. Annual wages were converted to hourly wages assuming 1,800 work hours per year and then multiplying by 5.35 to account for bonuses, firm size, employee benefits and overhead. The Commission also estimated that affiliates would incur costs of less than $1,000 per year related to signing swap documents and retaining copies.

[124] In response to comments from Better Markets and AFR that the proposed regulations should be retained and not weakened, the Commission does not believe that eliminating the non-exclusive list of terms and replacing it with a simple requirement that all terms of the swap transaction and the relationship between the affiliates be documented will weaken the rule. Rather, while affiliates will have discretion to select the appropriate terms to document their swap, they will still have an obligation to ensure that their documentation contains an accurate and thorough written record of their swaps. In most instances, this will necessarily include all of the previously enumerated terms.

[125] *See* comments letters from MetLife and Prudential.

[126] *See* NPRM at 50428–50429.

[127] *See id.* at 50434.

[128] As discussed in Section II.D above, the Commission expects that, in most instances, documentation between affiliates will include all of the previously enumerated terms, several of which are essential to effective valuation of swaps and resolution in bankruptcy. However, the Commission notes that a more flexible approach makes it possible that some entities could document the terms of their inter-affiliate swaps and all the terms of their trading relationship without covering all of the terms that are necessary for effective valuation or resolution in bankruptcy. If this occurs, it would reduce the risk management and bankruptcy benefits created by the documentation requirement.

[129] For a discussion of the costs and benefits incurred by swap dealers and major swap participants that must satisfy requirements under § 23.600, *see* Swap Dealer and Major Swap Participant Recordkeeping, Reporting, and Duties Rules; Futures Commission Merchant and Introducing Broker Conflicts of Interest Rules; and Chief Compliance Officer Rules for Swap Dealers, Major Swap Participants, and Futures Commission Merchants, 77 FR 20173–75.

management program requirement on the grounds that it would be duplicative for corporate groups that already have risk management programs in place. According to EEI, it is standard industry practice for both private and public companies to have a risk management program. EEI accordingly does not see a ''need to impose a separate, discrete regulatory requirement to document with an SDR or the Commission the existence of a centralized risk management program.'' If the Commission decides to retain the requirement, EEI requested that the Commission require a program be ''reasonably designed to monitor and manage the risks associated with the swap'' and provide the flexibility to design risk management programs that address the unique risks of an entity's business.

The Working Group requested that the Commission clarify whether non-SDs and non-MSPs would be subject to the same enterprise-level risk management program as required for SDs and MSPs under § 23.600. The Working Group proposed that the Commission require ''a robust risk management program'' rather than ''a centralized risk management program.''

In response to comments asking that the Commission clarify the level of risk management required for non-SDs and non-MSPs, the Commission confirms that the risk management condition is intended to be flexible and does not require the same level of policies and procedures as required under § 23.600 for SDs and MSPs. Under the rule, a company would be free to structure its centralized risk management program according to its unique needs, provided that the program reasonably monitors and manages the risks associated with its uncleared inter-affiliate swaps. In all likelihood, if a corporate group has a centralized risk management program in place that reasonably monitors and manages the risk associated with its inter-affiliate swaps as part of current industry practice, it is likely that the program would fulfill the requirements of exemption and therefore the exemption would not create new costs in such cases.

Given that a number of commenters stated that it is common practice for market participants, including end users, to have risk management programs in place,[130] expects that the majority of companies with eligible affiliates will not have to create centralized risk management programs from scratch in order to meet the eligibility requirements for the exemption. Those with existing systems may need to make some changes in order to centralize them, but the Commission has provided significant flexibility to companies in determining the specific contours of the centralized risk management system. Given this flexibility, and the fact that it is common practice for market participants to have risk management programs in place, the Commission is not persuaded by Cravath's comment that the rule will require a substantial change in the processes and procedures currently maintained by companies to manage risk. Accordingly, costs will be limited where an entity only needs to make modifications to existing risk management programs. Moreover, a corporate group may not have to incur any costs if it already has in place a risk management system that meets the requirements of the inter-affiliate exemption.

The Commission also declined to modify the requirement to state ''a robust risk management program'' rather than ''a centralized risk management program.'' While change proposed by the Working Group may prevent certain entities from having to reorganize their risk management program in order to meet the requirements of the inter-affiliate exemption, it could also significantly reduce the ability of the risk management program to mitigate counterparty risk among affiliates. In the absence of variation margin, or clearing to mitigate counterparty credit risk among affiliates, risk management committees must have a clear line of sight into the financial health and obligations of each affiliate involved in inter-affiliate swaps.

In the NPRM, the Commission explained that some affiliates may have to create a risk management system to meet the risk management condition.[131] The Commission itemized a number of specific costs, including the purchase of equipment and software to adequately evaluate and measure inter-affiliate swap risk.[132] In addition, in the NPRM, the Commission estimated that centralized risk management could require up to ten full-time staff at an average salary of $150,000 per year.[133] The Commission received no comments in response to its risk management condition cost estimates.

There are benefits that derive from the centralized-risk management condition. The Commission expects that centralized risk management programs will establish appropriate measurements and procedures to monitor the amount of risk that each individual affiliate bears, and to monitor the condition of each entity's affiliate counterparties. Because a centralized risk management program is more likely to have a clear line of sight into the financial condition of all affiliated entities, it is better positioned to manage each affiliate's exposure to the counterparty risk of other affiliates than a risk management program situated inside any single affiliate. As a consequence, centralized risk management programs may reduce the likelihood that individual affiliates could become insolvent because of their exposure to other affiliates, which not only benefits the affiliates, but their third party counterparties as well.

4. Reporting to an SDR

Another condition of electing the inter-affiliate exemption is that certain information about the swap and the election of the exemption be reported to an SDR. The reporting condition requires affiliates to report specific information to an SDR, or to the Commission if no SDR is available. Such information includes a notice that both affiliates are electing the exemption and that they both meet the other conditions of exemption, as well as information regarding how the financial obligations of both affiliates are generally satisfied with respect to uncleared swaps. The final rule also requires reporting certain information if the affiliate is an SEC filer.

The Commission received several comments in response to the reporting obligations of affiliates. Prudential and MetLife both commented that the Commission should clarify that only one counterparty is required to report the swap to an SDR. EEI stated that the Commission should eliminate the transaction-by-transaction reporting

[130] *See, e.g.,* letters from Prudential, MetLife, and CDEU.

[131] As pointed out above, industry commenters underscored the fact that many corporate groups that currently use inter-affiliate swaps have centralized-risk-management procedures in place.

[132] *See* NPRM at 50434 (estimating such costs to be as high as $150,000 for purchasing a computer network at approximately $20,000; purchasing personal computers and monitors for 15 staff members at approximately $30,000; purchasing software at approximately $20,000; purchasing other office equipment, such as printers, at approximately $5,000; and installation and unexpected costs that could increase up-front costs).

[133] This average annual salary is based on 15 senior credit risk analysts only. The Commission appreciates that an affiliate would likely choose to employ different positions as well, such as risk management specialists at $130,000 per year, and computer supervisors at $140,000. But for the purposes of this estimate, the Commission has assumed salaries at the high end for risk management professionals. The Commission also estimated a data subscription for price and other market data may have to be purchased at cost of up to $100,000 per year.

requirement for the election of the exemption and confirmation that the conditions have the exemption have been met. Instead, EEI recommended that one of the affiliates be permitted to file an annual notice on behalf of both affiliates to exempt all of their swaps from clearing for an entire year. EEI contended that it will increase costs if both affiliates have to communicate that they elect not to clear the swap and meet the conditions of the exemption for each swap.[134] CDEU also objected to reporting any information to an SDR on a trade-by-trade basis for inter-affiliate swaps as such reporting would be costly and onerous for parties. Instead, CDEU recommended that all reporting be done on an annual basis through a board resolution.

In response to commenters' requests, the Commission clarified that the reporting condition can be fulfilled by one of the affiliate counterparties on behalf of both counterparties. As noted in the NPRM, the Commission believes that affiliates within a corporate group may make independent determinations on whether to submit an inter-affiliate swap for clearing. Given the possibility that each affiliate may reach different conclusions regarding clearing the swap, the final rule requires that both counterparties elect the proposed inter-affiliate clearing exemption.

DLA Piper commented that corporate groups do not maintain back-office systems necessary to keep the level of detail required under parts 45 and 46 with respect to their inter-company swaps. DLA Piper further commented that many corporate groups will need to develop costly systems and procedures, which will increase their hedging costs, in order to comply with the reporting rules. The Commission observes that the costs of parts 45 and 46 reporting have been addressed in prior rulemakings and are beyond the scope of this rule.

With regard to comments recommending that all reporting be done on an annual basis rather than a swap-by-swap basis, the Commission declines to modify the rule. The Commission believes it is appropriate to provide for annual reporting of certain information, including how affiliates generally meet their financial obligations and information related to its status as an electing SEC Filer. However, it would not be sufficient to allow one annual report to cover both affiliate counterparties' election of the exemption from clearing and the confirmation that both affiliates meet the conditions of the exemption.

Eligible affiliates may choose to elect or not elect the exemption on a swap-by-swap basis. As noted above, whether a swap is cleared or not has a significant impact on its ability to transfer credit risk from one entity to another. Regulators must know which swaps are cleared and which swaps are not cleared in order to monitor potential accumulations and transfers of risk within the financial system. In addition, they must know which exemption is being used to exempt certain swaps in order to monitor the use of each exemption and its possible effect on systemic risk. Consequently, the election of the exemption and the confirmation that the exemption's conditions are met must be made for each swap.

The Commission does not believe that this reporting requirement will impose a significant burden on affiliate counterparties because, as discussed above, other detailed information for every swap must be reported under sections 2(a)(13) and 4r of the CEA and Commission regulations. This approach comports with the approach adopted for market participants claiming the end-user exception under section 2(h)(7) of the CEA.[135]

In the NPRM, the Commission estimated specific costs for the reporting condition, including entering a notice of election into the reporting system.[136] Cost estimates in the NPRM also included costs of identifying how the affiliates expect to meet the financial obligations associated with their uncleared swap and providing information if either electing affiliate is an SEC Filer.[137] The Commission also estimated costs for entities to modify their reporting systems to accommodate the additional data fields required by this rule.[138] The Commission also estimated costs for non-reporting affiliates.[139] Finally, in the NPRM, the Commission explained that SDRs would bear costs associated with the reporting conditions insofar as SDRs would be required to add or edit reporting data fields to accommodate information reported by affiliates electing the inter-affiliate clearing exemption.[140] The Commission received no comments in response to its cost estimates for the reporting condition.

The benefits of the reporting condition include enhancing the level of transparency associated with inter-affiliate swaps activity, thereby affording the Commission new insights into the practices of affiliates that engage in inter-affiliate swaps, and helping the Commission and other appropriate regulators identify emerging or potential risks. As noted above, regulators must know whether swaps are cleared or uncleared in order to use swap data to monitor emerging risks. In short, the overall benefit of reporting would be a greater body of information for the Commission to analyze with the goal of identifying and reducing systemic risk.[141]

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[134] EEI also commented that the Commission should state that part 45 does not apply to inter-affiliate swaps because the Commission will be able to obtain information regarding an inter-affiliate transaction based on reporting of a corresponding market-facing swap. EEI cited to a statement in the NPRM's consideration of costs and benefits as support for an argument that the Commission did not intend for part 45 reporting to apply to inter-affiliate swaps. *See* NPRM at 50433. As explained above, the statement in the cost-benefit consideration of the NPRM merely drew a comparison between the reporting requirements under the proposed exemption and the general reporting requirements under parts 45 and 46, and those reporting requirements applicable to SDs and MSPs under part 23. The statement should not be read as calling into question the applicability of part 45 to inter-affiliate swaps.

[135] *See* End-User Exception to the Clearing Requirement for Swaps, 77 FR 42565–66.

[136] The NPRM at 50435, included an estimate that each counterparty may spend 15 seconds to two minutes per swap entering a notice of election of the exemption into the reporting system. The hourly wage for a compliance attorney is $390, resulting in a per transaction cost of $1.63-$13.00.

[137] *See* NPRM at 50435. Affiliates may decide to report financial obligation information and SEC Filer information on either a swap-by-swap or annual basis, and the costs would vary depending on the reporting frequency. Regarding the financial obligation information, the Commission estimated in the NPRM that it may take the reporting counterparty up to 10 minutes to collect and submit the information for the first transaction, and one to five minutes to collect and submit the information for subsequent transactions with that same counterparty. The hourly wage for a compliance attorney is $390 resulting in a cost of $65.00 for reporting the first inter-affiliate swap, and a cost range of $6.50-$32.50 for reporting subsequent inter-affiliate swaps.

[138] *See id.* (estimating that such modifications would create a one-time programming expense of approximately one to ten burden hours per affiliate, which means a one-time, per entity cost ranging from $341 and $3,410).

[139] *See id.* (noting that costs would likely vary substantially depending on how frequently the affiliate enters into swaps, whether the affiliate undertakes an annual filing, and the due diligence that the reporting counterparty chooses to conduct, but estimating that a non-reporting affiliate would incur annually between five minutes and ten hours of compliance attorney time to communicate information to the reporting counterparty, translating to an aggregate annual cost for communicating information to the reporting counterparty of between $33 to $3,900). *See also, id.* (noting that an annual filing option may be less costly than swap-by-swap reporting and estimating that such an option would take an average of 30 to 90 minutes, translating to an aggregate annual cost for submitting the annual report of between $195 to $585).

[140] *See generally,* Swap Data Recordkeeping and Reporting Requirements, 77 FR 2176–2193 (for costs and benefits incurred by SDRs). To the extent that no SDR is available to accept this data, the costs would fall to the Commission.

[141] The Commission received no comments in response to its cost estimates for the reporting condition.

5. Treatment of Outward-Facing Swaps

The final condition imposed on the inter-affiliate exemption from required clearing relates to the treatment of outward-facing swaps entered into by the two eligible affiliate counterparties to the inter-affiliate swap. As proposed, the condition required that each affiliate counterparty either: (i) Is located in the United States; (ii) is located in a jurisdiction with a clearing requirement that is comparable and comprehensive to the clearing requirement in the United States; (iii) is required to clear swaps with non-affiliated parties in compliance with U.S. law; or (iv) does not enter into swaps with non-affiliated parties.

The Commission received a number of comments in support of and opposed to this proposed condition, but did not receive any comments quantifying the costs or benefits of the proposed condition. AFR supported the proposal and stated that inter-affiliate swaps could, without appropriate restrictions, bring risk back to the U.S. from foreign affiliates. AFR commented that an inter-affiliate swap might be used to move parts of the U.S. swaps market outside of U.S. regulatory oversight by transferring risk to jurisdictions with little or no regulatory oversight, whereby a non-U.S. affiliate of a U.S. entity could enter into an outward-facing swap. AFR stated that an inter-affiliate swap could contribute to financial contagion across different groups within a complex financial institution, making it more difficult to ''ring-fence'' risks in one part of an organization. AFR further commented that laws and regulations of a foreign country might prevent U.S. counterparties to swaps from having access to the financial resources of an affiliate in the event of a bankruptcy or insolvency. Better Markets also supported the proposed treatment of outward-facing swaps condition.

In opposition to the proposed condition, CDEU commented that the proposed ''comparable and comprehensive'' condition is not necessary or appropriate to reduce risk and prevent evasion because, according to CDEU, transactions between affiliates do not increase systemic risk, regardless of the location of the affiliate. ISDA & SIFMA stated that the concern that foreign inter-affiliate swaps pose risk to the U.S. financial system is unfounded because internal swaps have no conclusive effect on systemic risk.[142]

The Commission considered each of these comments and decided to adopt the treatment of outward-facing swaps condition, with certain important modifications, because the Commission believes that the risk of evasion of the U.S. clearing requirement and the potential systemic risk associated with uncleared inter-affiliate swaps involving foreign affiliates and non-affiliated counterparties necessitates that the inter-affiliate exemption include such a condition. As modified, the final rule requires that each eligible affiliate counterparty must clear all swaps that it enters into with third parties to the extent that the swap is subject to the Commission's clearing requirement. In order to satisfy this requirement, eligible affiliates may clear their third-party swaps pursuant to the Commission's clearing requirement or comply with the requirements for clearing the swap under a foreign jurisdiction's clearing mandate that is comparable to, and as comprehensive as, the clearing requirement of section 2(h) of the Act and part 50 of the Commission's regulations, as determined by the Commission. In addition, the Commission modified the condition to allow for recognition of clearing exemptions and exceptions under the CEA and an exception or exemption under a comparable foreign jurisdiction's clearing mandate that is comparable to an exception or exemption under section 2(h)(7) of the CEA or part 50. For entities that are not in a jurisdiction with a clearing requirement that is comparable to, and as comprehensive as, the clearing mandate in 2(h) of the Act, they may comply by clearing swaps with unaffiliated counterparties through a registered DCO or clearing organization that is subject to supervision by appropriate government authorities in the home country of the clearing organization and has been assessed to be in compliance with the PFMIs.

The Commission believes that this modification will provide greater clarity and transparency by more clearly establishing the conditions to the exemption and alternative methods by which eligible affiliates may satisfy the requirements. In addition, the Commission considered the approach adopted in EMIR.[143] To the extent there is consistency with the international authorities, including the European Union, the likelihood of regulatory arbitrage is reduced. Regulatory arbitrage can impose high costs in terms of market efficiency.

As AFR noted, without appropriate restrictions, inter-affiliate swaps could transfer risk back to the United States from foreign affiliates. The final rule takes steps to mitigate this risk insofar as the intent of the condition on outward-facing swaps is to narrow the exemption such that the risk of a cascading series of defaults among unrelated entities is reduced.

For companies whose inter-affiliate swap activities are conducted exclusively through entities in the United States and jurisdictions with clearing mandates that are comparable to, and as comprehensive as, the clearing requirement of section 2(h) of the CEA, all outward-facing swaps that fall under a § 50.4 class will be subject to required clearing,[144] which will serve as a buffer to the spread of credit risk from one corporation to another through those swaps, thus reducing the risk of financial contagion. Affiliates that meet the conditions of the inter-affiliate exemption will be able to transfer risk from one affiliate to the other without clearing those swaps, but third parties that enter into swaps that are required to be cleared with either of those affiliates will continue to be protected by clearing requirement.

For companies whose inter-affiliate swap activities extend to countries without clearing mandates that are comparable to, and as comprehensive as, the clearing requirement of section 2(h) of the CEA, the requirements of the rule mitigate counterparty risk associated with swaps that are required to be cleared under § 50.4 by requiring those swaps to be cleared at a DCO or a clearing organization that is subject to supervision by appropriate government authorities and that is in compliance with the PFMIs. In this manner, swaps that the Commission has determined must be cleared cannot be used as a means of transferring financial risk among unaffiliated entities where one of the counterparties is also claiming an exemption from required clearing under this inter-affiliate exemption. However, the Commission observes that outward-facing swaps that are not required to be cleared under § 50.4 and that are entered into between unrelated entities in a jurisdiction without comparable margin requirements, may be a means through which financial risk could be passed between unaffiliated entities without the protection of required clearing, creating the possibility of

[142] Other commenters, including The Working Group and FSR also opposed the condition regarding treatment of outward-facing swaps. *See* Section II.G above.

[143] *See* Section II.G above.

[144] In these jurisdictions, outward-facing swaps that are not subject to required clearing may be subject to margin requirements, which can serve to mitigate counterparty credit risk.

financial contagion.[145] It is possible that such contagion could then be transferred back to the United States or other jurisdictions through inter-affiliate swaps, creating potential costs for the public.[146] The Commission notes, however, that this is only a concern to the extent that affiliates in such jurisdictions enter into outward-facing swaps that are not required to be cleared under § 50.4 in order to meet their needs.

The Commission does not agree with CDEU's assertion that transactions between affiliates do not increase systemic risk, regardless of the location of the affiliate, or with ISDA & SIFMA's comment that the concern that foreign inter-affiliate swaps pose risk to the U.S. financial system is unfounded. As noted above, in the absence of any restrictions on outward-facing swaps, inter-affiliate swaps could be used to transfer risk to jurisdictions without clearing requirements or margin requirements for uncleared swaps. Risk could then be transferred between unrelated entities without the protection of clearing or margin requirements to mitigate the risk of financial contagion spreading from one to the other.

In addition to the modifications to the treatment of outward-facing swaps condition described above, the Commission also accepted commenter's suggestions and is providing a transition period with two alternative compliance frameworks for eligible affiliates domiciled in certain foreign jurisdictions that have the legal authority to implement mandatory clearing regimes. As noted above, ISDA & SIFMA and CDEU stated that questions of timing and criteria for comparability render the proposed treatment of outward-facing swaps condition problematic, and that unless the condition is satisfactorily resolved, the condition could hamper the ability of U.S.-based groups to compete in foreign markets. ISDA & SIFMA further commented that if the Commission retains the cross-border requirements, the Commission should provide an appropriate transition period in order to allow foreign jurisdictions to implement their own G–20 mandates. The Commission is adopting two alternative compliance frameworks in response to concerns raised by commenters pertaining to the timing and sequencing of the implementation of the inter-affiliate exemption.

The Commission is adopting a time-limited alternative compliance framework, available until March 11, 2014, for certain eligible affiliates transacting swaps with affiliated counterparties located in the European Union, Japan, or Singapore. The alternative compliance framework will allow affiliated counterparties, or a third party that directly or indirectly holds a majority interest in both eligible affiliate counterparties, to pay and collect full variation margin daily on all swaps entered into between affiliates or between an affiliate and its unaffiliated counterparties, rather than submitting such swaps for clearing. In addition, the Commission has determined to provide time-limited relief for certain eligible affiliated counterparties located in the European Union, Japan, or Singapore from complying with the requirements of § 50.52(b)(4)(i) as a condition of electing the inter-affiliate exemption. In particular, § 50.52(b)(4)(ii)(B) provides that if one of the eligible affiliate counterparties is located in the European Union, Japan, or Singapore, the requirements of paragraph (b)(4)(i) will not apply to such eligible affiliate counterparty until March 11, 2014, provided that: (1) The one counterparty that directly or indirectly holds a majority ownership interest in the other counterparty or the third party that directly or indirectly holds a majority ownership interest in both counterparties is not a ''financial entity'' as defined in section 2(h)(7)(C)(i) of the Act, and (2) neither eligible affiliate counterparty is affiliated with an entity that is a swap dealer or major swap participant, as defined in § 1.3.

Another time-limited alternative compliance framework also will be available for eligible affiliates transacting swaps with affiliated counterparties located outside the European Union, Japan, and Singapore, as long as the aggregate notional value of such swaps, which are included in a class of swaps identified in § 50.4, does not exceed five percent of the aggregate notional value of all swaps, which are included in a class of swaps identified in § 50.4, in each instance the notional value as measured in U.S. dollar equivalents and calculated for each calendar quarter, entered into by the eligible affiliate counterparty located in the United States.

These alternative compliance frameworks will mitigate the competitive effects that ISDA & SIFMA and CDEU noted by allowing certain entities to collect variation margin rather than clearing such swaps until March 11, 2014. The Commission expects that collecting full variation margin is likely to be less costly than clearing because the latter includes initial margin in addition to variation margin, as well as clearing fees. To the extent that the alternative compliance approach is less costly, it will reduce the competitive effects that foreign affiliates experience during the period of time when comparable clearing requirements do not yet exist for competitors operating in foreign jurisdictions.

The time-limited alternative compliance frameworks may, nevertheless, have some temporary competitive effects in the market. Companies with foreign affiliates that are required to pay and collect variation margin daily on all swaps entered into between affiliates or between an affiliate and its unaffiliated counterparties will bear some costs that competing firms based entirely in foreign jurisdictions may not bear because comparable clearing mandates have not yet been implemented. In the European Union, Japan, and Singapore, these effects are likely to largely disappear once comparable regimes are established and companies with entities in those jurisdictions are required to clear. In jurisdictions where comparable regimes are never implemented, the competitive effects will be longer-standing.

The Commission, however, believes that such costs are warranted in light of the benefits provided by mitigating the likelihood of transferring risk back to the United States through inter-affiliate swaps that are not cleared or margined. Requiring the payment and collection of full variation margin will address the possibility of foreign affiliates developing significant counterparty credit risk exposures and then passing that risk back to affiliates in the United States through non-cleared swaps. Variation margin is one of the tools used by clearinghouses to mitigate counterparty credit risk. As an independent risk management tool, it reduces counterparty credit risk by requiring counterparties to make daily payments reflecting gains or losses based on each swap's value. However, it is not a complete replacement for the panoply of risk management tools that are used by clearinghouses to manage counterparty credit risk. As a consequence, this time-limited alternative compliance framework will mitigate counterparty credit risk, but not to the extent that clearing would. The Commission, however, believes that this measure will enable affiliates in the European Union, Japan, or Singapore to take advantage of the exemption while comparable clearing regimes are being established in those jurisdictions, while

[145] This risk may be mitigated if such swaps were subject to bilateral margining.

[146] Not only is there the possibility of risk transfer but also a potential inability for regulators to monitor the risks that are capable of being transferred.

simultaneously mitigating the risk of financial risk being transferred back to the United States through uncleared inter-affiliate swaps. In this way it provides benefits to companies with affiliates in these jurisdictions, and also to the American public.

Moreover, the Commission believes that providing additional time-limited relief for certain affiliates located in the European Union, Japan, or Singapore from the requirements of § 50.52(b)(4)(i) to clear their outward-facing swaps until March 11, 2014 under § 50.52(b)(4)(ii)(B) also will mitigate the competitive effects noted commenters by allowing such entities to continue to enter into inter-affiliate swaps without requiring those swaps to be submitted to clearing or variation margin, and is likely to be less costly than requiring such entities to either clear or exchange variation margin on their inter-affiliate or outward-facing swaps.

Lastly, the Commission received several comments regarding the criteria for issuing comparability determinations, and expressing concern that unless such issues are satisfactorily resolved, the condition could hamper the ability of U.S.-based groups to compete in foreign markets. In response, the Commission has provided in this final release a significant amount of additional information regarding how and when those determinations will be made.

In the NPRM, the Commission stated that the condition for the treatment of outward-facing swaps would not impose additional costs.[147] Commenters stated that the proposed condition would increase the costs of inter-affiliate swaps.[148] In terms of the revised rule, there may be some additional costs for entities that must clear their outward-facing swaps. Such costs, as discussed above, would include the cost of initial and variation margin, contributions to a guaranty fund, and clearing fees. However, in light of the comments discussed above, the Commission observes that, as modified, and with the transition period provided for under the rule, costs have been mitigated to the extent possible while preserving the goal of preventing evasion.

In terms of benefits, the Commission stated in the NPRM that the corporate group and U.S. financial markets may bear additional risk if the foreign affiliate is free to enter into an uncleared swap with a third-party that would be subject to clearing were it entered into in the United States. The Commission believes that the requirements for outward-facing swaps will prevent foreign affiliates from taking on significant risk through outward-facing swaps that fall under a § 50.4 class, which reduces the risk that could then be transferred back to the United States through exempt inter-affiliate swaps.

D. Costs and Benefits to Market Participants and the Public

Many commenters asserted that inter-affiliate swaps do not create any additional risk for third parties facing those affiliates.[149] In addition, some commenters state that third parties may benefit from an inter-affiliate exemption because it will allow corporate entities to hedge their swaps more efficiently.[150]

The Commission recognizes that these claims may be true to the extent that each affiliate, or a common parent, completely internalizes the risks facing the other affiliate. Majority ownership facilitates such internalization of costs among affiliated entities, and the threat of reputational risk is another factor that may cause related entities to act in the best interests of affiliate counterparties. However, as discussed above, two other factors reduce the degree to which affiliated entities may internalize each other's costs. Ownership stakes that are less than 100% reduce the percentage of costs that one affiliate internalizes from another, and bankruptcy laws providing protection for the assets of one affiliate from the creditors of another affiliate may create incentives to permit one affiliate to fail. These factors reduce the internalization of costs among affiliates.

As a consequence, the counterparty risk that creditors to a given entity face may be increased by the inter-affiliate swaps into which that the entity enters. This risk may not be ''new'' in the sense that it is risk that was previously borne by another affiliate. But from the perspective of counterparties to the entity that now bears the risk, it is new. It increases the credit risk that the entity they face bears.

The Commission, however, has established conditions on the inter-affiliate exemption that are intended to mitigate any increase in counterparty risk that third parties might bear as the result of the exemption. As described above, the documentation and centralized risk management requirements help to ensure that each group of affiliates engaging in inter-affiliate swaps has a centralized risk management program with adequate information to value and risk manage swap positions effectively. Moreover, the reporting requirements will help to ensure that regulators have information that is necessary to understand the use of inter-affiliate swaps under this exemption.

In terms of costs, some commenters assert that this exception creates risk of contagion and systemic risk that could threaten the U.S. financial system.[151] As explained above, this concern is substantiated to the extent that the inter-affiliate exemption prevents affiliates from protecting themselves from counterparty risk they bear with respect to one another, and to the extent that it prevents third parties from protecting themselves from affiliates' counterparty risk. The Commission believes that internalization of risk among affiliated entities mitigates this concern, and that the application of required clearing to swaps between affiliates and third parties further reduces the probability of risk cascading through the financial system via inter-affiliate swaps.

AFR stated that the exemption may deprive DCOs of swaps volume and liquidity that is necessary for risk management. In effect, the exemption will reduce the number of swaps being cleared. All other things being equal, this may cause DCOs to increase the margin requirements for those swaps to compensate for having less volume, which may increase the cost of using cleared swaps. AFR also stated that the inter-affiliate exception will enable banks to set up joint ventures to trade swaps without clearing them. The Commission believes that its conditions with regard to treatment of outward-facing swaps address AFR's concerns about evasion of the clearing requirement.

E. Costs and Benefits Compared to Alternatives

The Commission considered several alternatives to the final rulemaking, including: (1) Alternative definitions of eligible affiliate counterparty; (2) more prescriptive documentation requirements; (3) alternative risk management requirements; (4) different requirements for treatment of outward-facing swaps; and (5) requiring variation margin for swaps between affiliated financial entities. The first four alternatives are discussed at length above. The fifth alternative, the imposition of variation margin on swaps between affiliates that are financial entities, was considered by the Commission and ultimately rejected based on comments.

[147] *See* NPRM at 50435.

[148] *See e.g.,* letter from CDEU.

[149] *See, e.g.,* letters from EEI, The Working Group, and DLA Piper.

[150] *See, e.g.,* letters from EEI, The Working Group, and ISDA & SIFMA.

[151] *See* letters from AFR and Better Markets.

As proposed, the inter-affiliate exemption would have required affiliated financial entities to pay and collect variation margin associated with their swaps unless the affiliates were 100% commonly owned and commonly guaranteed by a 100% commonly owned guarantor. In the final rule, the Commission has eliminated the variation margin requirement. This change is likely to create significant savings for eligible affiliates. Reduced margin requirements will reduce the capital costs that entities bear when transacting inter-affiliate swaps, and may reduce the capital requirements for financial entities under prudential regulation. In addition, it may help entities avoid liquidity crunches when their positions move significantly out of the money in a short period of time.

However, eliminating the variation margin requirement also significantly reduces the protective value of the eligibility requirements that the Commission established in order to reduce the likelihood of cascading defaults among affiliated entities, and the associated risk to third parties transacting with those entities. Without the variation margin requirements, affiliated entities may develop large outstanding exposures toward one another, and to the degree that affiliated entities do not internalize one another's costs, an affiliate that is out of the money will have incentives not to perform on its obligations. In addition if the obligations of one entity are sufficiently large, its default may jeopardize the health of other affiliated entities, which would also increase counterparty risk for third parties that have uncleared outstanding positions with those entities.

F. Consideration of CEA Section 15(a) Factors

1. Protection of Market Participants and the Public

In deciding to finalize the inter-affiliate clearing exemption, the Commission assessed how to protect affiliated entities, third parties in the swaps market, and the public. The Commission has sought to ensure that in the absence of a clearing requirement the risks presented by uncleared inter-affiliate swaps would be mitigated so that significant losses to one affiliate counterparty or a default of one of the affiliate counterparties is less likely to create significant repercussions for third-parties or the American public. Toward that end, the Commission has required that affiliates to execute swap trading relationship documentation, maintain a centralized-risk management process, and report specific information to an SDR, and meet certain requirements related to outward-facing swaps in order to be eligible for the exception. As explained in this cost-benefit section, these conditions serve multiple objectives that ultimately protect market participants and the public.

For instance, the documentation requirement will reduce uncertainties where affiliates incur significant swaps-related losses or where there is a defaulting affiliate. Because the documentation would be in writing, the Commission expects that there will be less contractual ambiguity should disagreements between affiliates arise. The condition that an inter-affiliate swap be subject to a centralized risk management program reasonably designed to monitor and manage risk will also help mitigate the risks associated with inter-affiliate swaps. As noted throughout this final rulemaking, inter-affiliate swap risk could adversely impact third parties that enter into uncleared swaps or other contracts with affiliates engaging in inter-affiliate swaps.

The reporting condition would help the Commission and the affiliate's leadership monitor compliance with the inter-affiliate clearing exemption. For example, an affiliate that also is an SEC Filer must receive a governing board's approval for electing the proposed exemption. It cannot act independently. In the Commission's opinion, the reporting conditions promote accountability and transparency, offering another public safeguard by keeping the Commission and each entity's board of directors informed.

On the other hand, the rule also creates certain costs that will be borne by eligible entities, the counterparties to those entities, and the public. Regarding costs for eligible entities, the qualification requirements will create some new costs for those that do not already have recordkeeping and risk management systems that are in compliance with the rule. However, as noted above, the Commission believes that some entities may already have systems in place that meet most or all of the requirements. Moreover, entities will elect the exemption only if they project the benefit of doing so is greater than the costs associated with the qualifying requirements. Therefore, these costs may decrease the value of the exemption, but they will not create new costs for entities that choose not to elect the exemption.

2. Efficiency, Competitiveness, and Financial Integrity of Futures Markets

Exempting swaps between majority-owned affiliates within a corporate group from the clearing requirement will promote allocational efficiency by reducing overall clearing costs for eligible affiliate counterparties. The Commission also anticipates that the exemption will increase allocational efficiency and the financial integrity of markets because it will make it less costly for corporate groups to centralize their hedging and market facing swap activities within a single affiliate. As explained above, commenters stated that clearing swaps through single affiliates enables affiliates and corporate groups to more efficiently and effectively manage corporate risk.

Certain provisions of the proposed rule, such as the requirements that inter-affiliate swaps be subject to centralized risk management and that certain information be reported, also would discourage abuse of the exemption. Together, these conditions promote the financial integrity of swap markets and financial markets as a whole.

3. Price Discovery

Under Commission regulation 43.2, a ''publicly reportable swap transaction,'' means, among other things, ''any executed swap that is an arm's length transaction between two parties that results in a corresponding change in the market risk position between the two parties.'' [152] The Commission does not consider non-arms-length swaps as contributing to price discovery in the markets.[153] Given that inter-affiliate swaps as defined in this rulemaking are generally not arm's length transactions, the Commission does not anticipate the inter-affiliate clearing exemption to have any significant effect on price discovery.[154]

4. Sound Risk Management Practices

As a general rule, the Commission believes that clearing swaps is a sound

[152] 17 CFR 43.2. *See also* Real-Time Public Reporting of Swap Transaction Data, 77 FR 1182 (Jan. 9, 2012).

[153] Transactions that fall outside the definition of ''publicly reportable swap transaction''—that is, transactions that are not arms-length—''do not serve the price discovery objective of CEA section 2(a)(13)(B).'' Real-Time Public Reporting of Swap Transaction Data, 77 FR 1195. *See also id.* at 1187 (discussing ''Swaps Between Affiliates and Portfolio Compression Exercises'').

[154] The definition of ''publicly reportable swap transaction'' identifies two examples of transactions that fall outside the definition, including ''internal swaps between one-hundred percent owned subsidiaries of the same parent entity.'' 17 CFR 43.2 (adopted by Real-Time Public Reporting of Swap Transaction Data, 77 FR 1244). The Commission notes that the list of examples is not exhaustive.

risk management practice. Exempting certain inter-affiliate swaps from the clearing requirement creates additional counterparty exposure for affiliates that do not completely internalize each other's risk, and for third parties that enter into uncleared swaps or other transactions with those affiliated entities. This increased counterparty risk among affiliates may increase the likelihood that a default within one affiliate could cause significant losses in other affiliated entities. If the default causes other affiliated entities to default, then third parties that have entered into uncleared swaps or other agreements with those entities also could be affected. But, in finalizing the inter-affiliate clearing exemption, the Commission has assessed the risks of inter-affiliate swaps, and believes that the partial internalization of costs among affiliated entities, combined with the documentation, risk management, reporting, and treatment of outward-facing swaps requirements for electing the exception, will mitigate some of the risks associated with uncleared inter-affiliate swaps. However, they are not a complete substitute for the protections that would be provided by required clearing, or by a requirement to use some of the same risk management tools that a clearinghouse would use to mitigate counterparty credit risk (*i.e.,* initial and variation margin).

Also, as noted above, without clearing to mitigate transmission of risk among affiliates, the risk that any one affiliate takes on, and any contagion that may be caused by that risk, may be transferred more easily to other affiliates. This makes the risk mitigation requirements for outward-facing swaps more important. The Commission's requirements for outward-facing swaps mitigate the risk that swaps that the Commission has determined are required to be cleared could transfer risk that would then be spread among the affiliates, but does not eliminate the possibility that swaps that are not required to be cleared and are transacted in a regime without mandatory clearing (or bilateral margin requirements) for uncleared swaps could result in financial risk that impacts its affiliates and counterparties of those affiliates.[155]

The Commission also believes that SEC Filer reporting is a prudent practice. As detailed in this preamble and the rule text, SEC Filers are affiliates that meet certain SEC-related qualifications, and their governing boards or equivalent bodies are directly responsible to shareholders for the financial condition and performance of the affiliate. The boards also have access to information that would give them a comprehensive picture of the company's financial condition and risk management strategies. Therefore, any oversight they provide to the affiliate's risk management strategies would likely encourage sound risk management practices. In addition, the condition that affiliates electing the inter-affiliate clearing exemption must report their boards' knowledge of the election is a sound risk management practice.

5. Other Public Interest Considerations

Aside from those discussed in Section II.A above, the Commission has identified no other public interest considerations.

IV. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that agencies consider whether the rules they propose will have a significant economic impact on a substantial number of small entities and, if so, provide a regulatory flexibility analysis respecting the impact.[156] As stated in the NPRM, the clearing requirement determinations and rules proposed by the Commission will affect only ECPs because all persons that are not ECPs are required to execute their swaps on a designated contract market (DCM), and all contracts executed on a DCM must be cleared by a DCO, as required by statute and regulation; not by operation of any clearing requirement.[157] Accordingly, the Chairman, on behalf of the Commission, certified pursuant to 5 U.S.C. 605(b) that the proposed rules would not have a significant economic impact on a substantial number of small entities. The Commission then invited public comment on this determination. The Commission received no comments.

The Commission has previously determined that ECPs are not small entities for purposes of the RFA.[158] However, in its proposed rulemaking to establish a schedule to phase in compliance with certain provisions of the Dodd-Frank Act, including the clearing requirement under section 2(h)(1)(A) of the CEA, the Commission received a joint comment (Electric Associations Letter) from the Edison Electric Institute (EEI), the National Rural Electric Cooperative Association (NRECA) and the Electric Power Supply Association (EPSA) asserting that certain members of NRECA may both be ECPs under the CEA and small businesses under the RFA.[159] These members of NRECA, as the Commission understands, have been determined to be small entities by the Small Business Administration (SBA) because they are ''primarily engaged in the generation, transmission, and/or distribution of electric energy for sale and [their] total electric output for the preceding fiscal year did not exceed 4 million megawatt hours.'' [160] Although the Electric Associations Letter does not provide details on whether or how the NRECA members that have been determined to be small entities use the interest rate swaps and CDS that are the subject of this rulemaking, the Electric Associations Letter does state that the EEI, NRECA, and EPSA members ''engage in swaps to hedge commercial risk.'' [161] Because the NRECA members that have been determined to be small entities would be using swaps to hedge commercial risk, the Commission expects that they would be able to use the end-user exception from the clearing requirement and therefore would not be affected to any significant extent by this rulemaking.

Thus, because nearly all of the ECPs that may be subject to the proposed clearing requirement are not small entities, and because the few ECPs that have been determined by the SBA to be small entities are unlikely to be subject to the clearing requirement, the Chairman, on behalf of the CFTC, hereby certifies pursuant to 5 U.S.C. 605(b) that the rules herein will not have a significant economic impact on a substantial number of small entities.

[155] The Commission notes that even in the absence of required clearing or margin requirements for swaps between certain affiliated entities, such entities may choose to use initial and variation margin to manage risks that could otherwise be transferred from one affiliate to another. Similarly, third parties that have entered into swaps with affiliates may also include variation margin requirements in their swap agreements.

[156] *See* 5 U.S.C. 601 *et seq.*

[157] To the extent that this rulemaking affects DCMs, DCOs, or FCMs, the Commission has previously determined that DCMs, DCOs, and FCMs are not small entities for purposes of the RFA. *See,* respectively and as indicated, 47 FR 18618, 18619 (Apr. 30, 1982) (DCMs and FCMs); and 66 FR 45604, 45609 (Aug. 29, 2001) (DCOs).

[158] *See* 66 FR 20740, 20743 (Apr. 25, 2001).

[159] *See* joint letter from EEI, NRECA, and ESPA, dated Nov. 4, 2011, (Electric Associations Letter), commenting on Swap Transaction Compliance and Implementation Schedule: Clearing and Trade Execution Requirements under Section 2(h) of the CEA, 76 FR 58186 (Sept. 20, 2011).

[160] Small Business Administration, Table of Small Business Size Standards, Nov. 5, 2010.

[161] *See* Electric Associations Letter, at 2. The letter also suggests that EEI, NRECA, and EPSA members are not financial entities. *See id.,* at note 5, and at 5 (the associations' members ''are not financial companies'').

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) [162] imposes certain requirements on Federal agencies in connection with their conducting or sponsoring any collection of information as defined by the PRA. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it has been approved by the Office of Management and Budget (OMB) and displays a currently valid control number.[163]

Certain provisions of this final rulemaking impose new information collection requirements within the meaning of the PRA, for which the Commission must obtain a valid control number. Accordingly, the Commission requested, and OMB has assigned control number 3038–0104 for the new collection of information. The Commission also has submitted this final rule release, the proposed rulemaking, and all required supporting documentation to OMB for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for this new collection of information is ''Rule 50.52 (proposed as rule 39.6(g)) Affiliate Transaction Uncleared Swap Notification.'' Responses to this collection of information will be mandatory.

The Commission will protect proprietary information in accordance with the Freedom of Information Act and 17 CFR part 145, entitled ''Commission Records and Information.'' In addition, section 8(a)(1) of the CEA strictly prohibits the Commission, unless specifically authorized by the Act, from making public ''data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.'' [164] The Commission also is required to protect certain information contained in a government system of records according to the Privacy Act of 1974, 5 U.S.C. 552a.

1. Information Provided by Reporting Entities

The regulations being adopted in this final rule release impose certain reporting requirements on eligible affiliates that enter into inter-affiliate swaps and elect the inter-affiliate exemption from clearing such swaps. As described in the NPRM and in this final release, the reporting requirements are designed to address Commission concerns regarding inter-affiliate swap risk and to provide the Commission with information necessary to regulate the swaps market. In particular, regulation 50.52(c) (proposed as § 39.6(g)(4)) will require an electing counterparty to provide, or cause to be provided, certain information to a registered SDR or, if no registered SDR is available to receive the information, to the Commission, in the form and manner specified by the Commission. As further described in this final rule release, § 50.52(c)(1) requires reporting counterparties to notify the Commission each time they elect the inter-affiliate clearing exemption for each swap, by reporting certain information to a registered SDR, or to the Commission, if no registered SDR is available to receive the information. Reporting counterparties also must report the information required by § 50.52(c)(2) and (3), and have the option to report such information each time that the eligible counterparties elect the inter-affiliate exemption for each swap, or on an annual basis in anticipation of electing the exemption.

To determine the total time burden and cost associated with the proposed rule for PRA purposes, the Commission estimated the number of affiliates that likely would seek to claim the exemption and the average number of inter-affiliate swaps for which the affiliates would elect to use the proposed exemption. The Commission also estimated the time burden required for entities to comply with the reporting requirements.

In estimating the number of affiliates and the average number of inter-affiliate swaps that likely would claim the inter-affiliate exemption, the Commission used data from the U.S. Bureau of Economic Analysis (BEA) to estimate that there are approximately 22 subsidiaries per U.S. multinational parent company (MNC), resulting in a total of 53,195 affiliates that might elect the inter-affiliate exemption.[165] As more fully described in the NPRM, the Commission surveyed five corporations to obtain information that allowed it to estimate that affiliates enter into an average of 2,230 inter-affiliate swaps annually.[166]

In estimating the time burden associated with complying with the reporting requirements of the rules, the Commission stated in the NPRM that it expected each reporting counterparty would likely spend between 15 seconds to two minutes per transaction entering information required by § 50.52(c)(1) (proposed § 39.6(g)(4)(i)) into the reporting system.[167] The Commission further estimated that it would take the reporting counterparty up to 10 minutes to collect and submit the information required under § 50.52(c)(2)–(3) (proposed § 39.6(g)(4)(ii)–(iii)), for the first transaction and one to five minutes to collect and submit the information for subsequent transactions with that same counterparty. The Commission estimated that together these requirements would cost a reporting counterparty between $1.63 and $13.00 to comply with § 50.52(c)(1) (proposed § 39.6(g)(4)(i)), $65.00 to comply with § 50.52(c)(2)–(3) (proposed § 39.6(g)(4)(ii)–(iii)) for the first inter-affiliate swap, and between $6.50 and $32.50 to comply with § 50.52(c)(2)–(3) (proposed § 39.6(g)(4)(ii)–(iii)) for subsequent inter-affiliate swaps with the same counterparty.[168]

With respect to the annual reporting option described in § 50.52(d), the Commission stated in the NPRM that it anticipated that at least 90% of MNCs would choose to file an annual report in lieu of reporting each swap separately. The Commission estimated in the NPRM that it would take an average of 30 to 90 minutes to complete and submit the filing, resulting in an annual aggregate cost for submitting the annual report of approximately $195 to $585.[169]

In addition to the specific reporting obligations described in the rules, the NPRM also noted that reporting counterparties may need to update established reporting systems to comply with the reporting requirement, and non-reporting affiliate counterparties may need to transmit information to reporting counterparties after entering into a swap subject to the rules. In the NPRM, the Commission stated that it anticipated that reporting counterparties may have to modify their established reporting systems in order to accommodate the additional data fields required by § 50.52(c) (proposed § 39.6(g)(4)), and estimated that the modifications would create a one-time cost of between $341 and $3,410 per entity.[170] The Commission further stated in the NPRM that it anticipated that an affiliate who is not the reporting counterparty may need to communicate information to the reporting counterparty after executing an inter-affiliate swap, and estimated the cost of, among other things, providing

[162] 44 U.S.C. 3501 *et seq.*

[163] *Id.*

[164] 7 U.S.C. 12(a)(1).

[165] NPRM at 50439–40.

[166] *Id.*

[167] The NPRM noted that to comply with proposed § 39.6(g)(4)(i) (now § 50.52(c)(1)), each reporting counterparty would be required to check a box indicating that both counterparties to the swap are electing not to clear the swap.

[168] NPRM at 50440.

[169] NPRM at 50441.

[170] *Id.*

information to facilitate any due diligence that the reporting counterparty may conduct, to be between $33 and $3,900.[171]

Using these figures, the Commission estimated that the inter-affiliate exemption could result in an average total annual burden of 1,758,369 hours and average total annual costs of $685,309,281, or approximately 1.8 minutes and $10.48 per inter-affiliate swap.

2. Information Collection Comments

The Commission invited public comment on the proposed PRA analysis and estimates and on any aspect of the reporting burdens resulting from proposed § 39.6(g) (now § 50.52(c)). One commenter submitted comments in relation to the Commission's estimate of the number of eligible affiliates seeking to claim the exemption. No commenters submitted comments to OMB, and OMB itself did not submit any comments to the Commission pertaining to the proposed rule.[172]

In the context of its comments pertaining to the costs and benefits of the reporting requirements of the proposed rule, EEI claimed that the Commission's estimation of 22 eligible affiliates per MNC was ''far too low'' for many U.S. energy companies. Although EEI commented that the Commission's estimate of the number of affiliates per MNC was too low in the context of U.S. energy companies, EEI did not provide an alternative estimate or point to any other sources of information that might provide an alternative source for estimating the average number of subsidiaries per MNC.

The Commission has considered EEI's comment and declines to revise its estimate of the number of affiliates of an MNC.[173] As described in the NPRM, the Commission estimated that a total of 53,195 affiliates might elect the inter-affiliate clearing exemption. The Commission's estimation of the number of affiliates of an MNC was based on the most recent data collected by the BEA, which indicated that there are 2,347 MNCs in the U.S. and 25,424 foreign subsidiaries that are majority owned by such MNCs.[174] To account for the number of majority-owned U.S. subsidiaries of MNCs, the Commission doubled the BEA's foreign subsidiaries, and determined that there are an estimated 50,848 U.S. and foreign subsidiaries, or approximately 22 subsidiaries per MNC.

The Commission further notes that the estimate of the number of affiliates per MNC proposed in the NPRM and adopted in this release for purposes of the PRA, is an averaged approximation based on publically available information collected by the BEA, and acknowledges that the number of affiliates of an MNC may be higher or lower than 22. However, there is no basis for concluding that the use of a different source for estimating the average number of affiliates per MNC would result in a higher number estimate, nor did the Commission receive comments to that effect. Accordingly, the Commission believes that its estimation is reasonable in light of the information that is publicly available at this time, and that its original proposed estimates remain appropriate for purposes of the PRA.

List of Subjects in 17 CFR Part 50

Business and industry, Clearing, Swaps.

For the reasons stated in the preamble, amend 17 CFR part 50 as follows:

PART 50—CLEARING REQUIREMENT AND RELATED RULES

■ 1. The authority citation for part 50 continues to read as follows:

Authority: 7 U.S.C. 2(h) and 7a–1 as amended by Pub. L. 111–203, 124 Stat. 1376.

■ 2. The heading for part 50 is revised to read as set forth above.

■ 3. Add § 50.52 to subpart C to read as follows:

§ 50.52 Exemption for swaps between affiliates.

(a) *Eligible affiliate counterparty status.* Subject to the conditions in paragraph (b) of this section:

(1) Counterparties to a swap may elect not to clear a swap subject to the clearing requirement of section 2(h)(1)(A) of the Act and this part if:

(i) One counterparty, directly or indirectly, holds a majority ownership interest in the other counterparty, and the counterparty that holds the majority interest in the other counterparty reports its financial statements on a consolidated basis under Generally Accepted Accounting Principles or International Financial Reporting Standards, and such consolidated financial statements include the financial results of the majority-owned counterparty; or

(ii) A third party, directly or indirectly, holds a majority ownership interest in both counterparties, and the third party reports its financial statements on a consolidated basis under Generally Accepted Accounting Principles or International Financial Reporting Standards, and such consolidated financial statements include the financial results of both of the swap counterparties.

(2) For purposes of this section:

(i) A counterparty or third party directly or indirectly holds a majority ownership interest if it directly or indirectly holds a majority of the equity securities of an entity, or the right to receive upon dissolution, or the contribution of, a majority of the capital of a partnership; and

(ii) The term ''eligible affiliate counterparty'' means an entity that meets the requirements of this paragraph.

(b) *Additional conditions.* Eligible affiliate counterparties to a swap may elect the exemption described in paragraph (a) of this section if:

(1) Both counterparties elect not to clear the swap;

(2)(i) A swap dealer or major swap participant that is an eligible affiliate counterparty to the swap satisfies the requirements of § 23.504 of this chapter; or

(ii) If neither eligible affiliate counterparty is a swap dealer or major swap participant, the terms of the swap are documented in a swap trading relationship document that shall be in writing and shall include all terms governing the trading relationship between the eligible affiliate counterparties;

(3) The swap is subject to a centralized risk management program that is reasonably designed to monitor and manage the risks associated with the swap. If at least one of the eligible affiliate counterparties is a swap dealer or major swap participant, this centralized risk management requirement shall be satisfied by complying with the requirements of § 23.600 of this chapter; and

(4)(i) Each eligible affiliate counterparty that enters into a swap, which is included in a class of swaps identified in § 50.4, with an unaffiliated counterparty shall:

[171] *Id.*

[172] *See* 5 CFR 1320.11(f).

[173] The Commission further notes that EEI's comments were made exclusively with respect to U.S. energy companies and not the broader spectrum of potential MNCs that are included within the estimation.

[174] *See* Table I.A 2., ''Selected Data for Foreign Affiliates and U.S. Parents in All Industries,'' located at *http://www.bea.gov/international/pdf/usdia_2009p/Group%20I%20tables.pdf.* The BEA defines a U.S. Parent of a MNC as a person that is a resident in the United States and owns or controls 10 percent or more of the voting securities, or the equivalent, of a foreign business enterprise. A Guide to BEA Statistics on U.S. Multinational Companies, available at *http://www.bea.gov/scb/pdf/internat/usinvest/1995/0395iid.pdf.*

(A) Comply with the requirements for clearing the swap in section 2(h) of the Act and this part;

(B) Comply with the requirements for clearing the swap under a foreign jurisdiction's clearing mandate that is comparable, and comprehensive but not necessarily identical, to the clearing requirement of section 2(h) of the Act and this part, as determined by the Commission;

(C) Comply with an exception or exemption under section 2(h)(7) of the Act or this part;

(D) Comply with an exception or exemption under a foreign jurisdiction's clearing mandate, provided that:

(*1*) The foreign jurisdiction's clearing mandate is comparable, and comprehensive but not necessarily identical, to the clearing requirement of section 2(h) of the Act and this part, as determined by the Commission; and

(*2*) The foreign jurisdiction's exception or exemption is comparable to an exception or exemption under section 2(h)(7) of the Act or this part, as determined by the Commission; or

(E) Clear such swap through a registered derivatives clearing organization or a clearing organization that is subject to supervision by appropriate government authorities in the home country of the clearing organization and has been assessed to be in compliance with the Principles for Financial Market Infrastructures.

(ii)(A) Except as provided in paragraph (b)(4)(ii)(B) of this section, if one of the eligible affiliate counterparties is located in the European Union, Japan, or Singapore, the following may satisfy the requirements of paragraph (b)(4)(i) of this section until March 11, 2014:

(*1*) Each eligible affiliate counterparty, or a third party that directly or indirectly holds a majority interest in both eligible affiliate counterparties, pays and collects full variation margin daily on all swaps entered into between the eligible affiliate counterparty located in the European Union, Japan, or Singapore and an unaffiliated counterparty; or

(*2*) Each eligible affiliate counterparty, or a third party that directly or indirectly holds a majority interest in both eligible affiliate counterparties, pays and collects full variation margin daily on all of the eligible affiliate counterparties' swaps with other eligible affiliate counterparties.

(B) If one of the eligible affiliate counterparties is located in the European Union, Japan, or Singapore, the requirements of paragraph (b)(4)(i) of this section shall not apply to the eligible affiliate counterparty located in the European Union, Japan, or Singapore until March 11, 2014, provided that:

(*1*) The one counterparty that directly or indirectly holds a majority ownership interest in the other counterparty or the third party that directly or indirectly holds a majority ownership interest in both counterparties is not a ''financial entity'' as defined in section 2(h)(7)(C)(i) of the Act; and

(*2*) Neither eligible affiliate counterparty is affiliated with an entity that is a swap dealer or major swap participant, as defined in § 1.3.

(iii) If an eligible affiliate counterparty located in the United States enters into swaps, which are included in a class of swaps identified in § 50.4, with eligible affiliate counterparties located in jurisdictions other than the United States, the European Union, Japan, and Singapore, and the aggregate notional value of such swaps, which are included in a class of swaps identified in § 50.4, does not exceed five percent of the aggregate notional value of all swaps, which are included in a class of swaps identified in § 50.4, in each instance the notional value as measured in U.S. dollar equivalents and calculated for each calendar quarter, entered into by the eligible affiliate counterparty located in the United States, then such swaps shall be deemed to satisfy the requirements of paragraph (b)(4)(i) of this section until March 11, 2014, provided that:

(A) Each eligible affiliate counterparty, or a third party that directly or indirectly holds a majority interest in both eligible affiliate counterparties, pays and collects full variation margin daily on all swaps entered into between the eligible affiliate counterparties located in jurisdictions other than the United States, the European Union, Japan, and Singapore and an unaffiliated counterparty; or

(B) Each eligible affiliate counterparty, or a third party that directly or indirectly holds a majority interest in both eligible affiliate counterparties, pays and collects full variation margin daily on all of the eligible affiliate counterparties' swaps with other eligible affiliate counterparties.

(c) *Reporting requirements.* When the exemption described in paragraph (a) of this section is elected, the reporting counterparty, as determined in accordance with § 45.8 of this chapter, shall provide or cause to be provided the following information to a registered swap data repository or, if no registered swap data repository is available to receive the information from the reporting counterparty, to the Commission, in the form and manner specified by the Commission:

(1) Confirmation that both eligible affiliate counterparties to the swap are electing not to clear the swap and that each of the electing eligible affiliate counterparties satisfies the requirements in paragraph (b) of this section applicable to it;

(2) For each electing eligible affiliate counterparty, how the counterparty generally meets its financial obligations associated with entering into non-cleared swaps by identifying one or more of the following categories, as applicable:

(i) A written credit support agreement;

(ii) Pledged or segregated assets (including posting or receiving margin pursuant to a credit support agreement or otherwise);

(iii) A written guarantee from another party;

(iv) The electing counterparty's available financial resources; or

(v) Means other than those described in paragraphs (c)(2)(i), (ii), (iii) or (iv) of this section; and

(3) If an electing eligible affiliate counterparty is an entity that is an issuer of securities registered under section 12 of, or is required to file reports under section 15(d) of, the Securities Exchange Act of 1934:

(i) The relevant SEC Central Index Key number for that counterparty; and

(ii) Acknowledgment that an appropriate committee of the board of directors (or equivalent body) of the eligible affiliate counterparty has reviewed and approved the decision to enter into swaps that are exempt from the requirements of section 2(h)(1) and 2(h)(8) of the Act.

(d) *Annual reporting.* An eligible affiliate counterparty that qualifies for the exemption described in paragraph (a) of this section may report the information listed in paragraphs (c)(2) and (3) of this section annually in anticipation of electing the exemption for one or more swaps. Any such reporting by a reporting counterparty under this paragraph will be effective for purposes of paragraphs (c)(2) and (3) of this section for 365 days following the date of such reporting. During the 365-day period, the reporting counterparty shall amend the report as necessary to reflect any material changes to the information reported. Each reporting counterparty shall have a reasonable basis to believe that the eligible affiliate counterparties meet the requirements for the exemption under this section.

Issued in Washington, DC, on April 1, 2013, by the Commission.

Melissa D. Jurgens,

Secretary of the Commission.

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

Appendices to Clearing Exemption for Swaps Between Certain Affiliated Entities—Commission Voting Summary and Statements of Commissioners

Appendix 1—Commission Voting Summary

On this matter, Chairman Gensler and Commissioners Chilton, O'Malia, and Wetjen voted in the affirmative; Commissioner Sommers voted in the negative.

Appendix 2—Statement of Chairman Gary Gensler

I support the final rule to exempt swaps between certain affiliated entities within a corporate group from the clearing requirement in the Dodd-Frank Wall Street Reform and Consumer Protection Act.

Since the late 19th century, clearinghouses have lowered risk for the public and fostered competition in the futures market. Clearing also has democratized the market by fostering access for farmers, ranchers, merchants and other participants.

The Commission approved the first clearing requirement for swaps last November, following through on the U.S. commitment at the 2009 G–20 meeting that standardized swaps be cleared by the end of 2012. Following Congress' direction, end-users are not required to bring swaps into central clearing.

A key milestone was reached on March 11 with the requirement that swap dealers and the largest hedge funds begin clearing the vast majority of interest rate and credit default index swaps. Compliance will continue to be phased in throughout this year. Other financial entities begin clearing June 10. Accounts managed by third party investment managers and ERISA pension plans have until September 9.

The final rule allows for an exemption from clearing for swaps between affiliates under the following limitations:

- First, the exemption covers swaps between majority-owned affiliates whose financial statements are reported on a consolidated basis.
- Second, the rule requires documentation of such exempted swaps, centralized risk management, and reporting requirements for such swaps.
- Third, the exemption requires that each swap entered into by the affiliated counterparties with unaffiliated counterparties must be cleared. This approach largely aligns with the Europeans' approach to an exemption for inter-affiliate clearing.

In order to promote international harmonization regarding mandatory clearing, the final rulemaking provides for two time-limited alternative compliance frameworks for swaps entered into with unaffiliated counterparties in jurisdictions outside of the United States.

With regard to affiliated counterparties located in the European Union, Japan and Singapore—jurisdictions that have adopted swap clearing regimes and are currently in the process of implementation—the Commission is phasing compliance with the requirement to clear swaps with unaffiliated counterparties until March 11, 2014. During the phase-in period affiliated counterparties located in these jurisdictions will be able to pay and collect variation margin in lieu of clearing. Affiliated counterparties that are located in these jurisdictions (that are not affiliated with swap dealers or major swap participants) will not have to pay or collect such variation margin during the phase-in period, provided they are not directly or indirectly majority-owned by a financial entity.

With regard to affiliated counterparties located in other foreign jurisdictions, the Commission is phasing compliance with the requirement to clear swaps with unaffiliated counterparties until March 11, 2014. Until that date, an affiliated counterparty located outside the United States, the European Union, Japan and Singapore does not have to clear its swaps with unaffiliated counterparties so long as the aggregate notional value of such swaps does not exceed five percent of the notional value of all swaps entered into by the affiliated counterparty located in the United States.

This phasing in of the inter-affiliate exemption provides a transition period for foreign jurisdictions to implement comparable and comprehensive clearing regimes.

[FR Doc. 2013–07970 Filed 4–10–13; 8:45 am]

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Part IV

Department of Commerce

United States Patent and Trademark Office

37 CFR Parts 1 and 3

Changes To Implement the Patent Law Treaty; Proposed Rule

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 1 and 3

[Docket No. PTO–P–2013–0007]

RIN 0651–AC85

Changes To Implement the Patent Law Treaty

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Patent Law Treaties Implementation Act of 2012 (PLTIA) amends the patent laws to implement the provisions of the Hague Agreement Concerning International Registration of Industrial Designs (Hague Agreement) in title I, and the Patent Law Treaty (PLT) in title II. The PLT harmonizes and streamlines formal procedures pertaining to the filing and processing of patent applications. This notice proposes changes to the rules of practice for consistency with the changes in the PLT and title II of the PLTIA. The United States Patent and Trademark Office (Office) is implementing the Hague Agreement and title I of the PLTIA in a separate rulemaking. The notable changes in the PLT and title II of the PLTIA pertain to: (1) The filing date requirements for a patent application; (2) the restoration of patent rights via the revival of abandoned applications and acceptance of delayed maintenance fee payments; and (3) the restoration of the right of priority to a foreign application or the benefit of a provisional application via the permitting of a claim to priority to a foreign application or the benefit of a provisional application in a subsequent application filed within two months of the expiration of the twelve-month period (six-month period for design applications) for filing such a subsequent application.

DATES: *Comment Deadline Date:* Written comments must be received on or before June 10, 2013.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: *AC85.comments@uspto.gov*. Comments may also be submitted by postal mail addressed to: Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Robert W. Bahr, Senior Patent Counsel, Office of Patent Examination Policy.

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 eRulemaking Portal.

Although comments may be submitted by postal mail, the Office prefers to receive comments by electronic mail message over the Internet because sharing comments with the public is more easily accomplished. Electronic comments are preferred to be submitted in plain text, but also may be submitted in ADOBE® portable document format or MICROSOFT WORD® format. Comments not submitted electronically should be submitted on paper in a format that facilitates convenient digital scanning into ADOBE® portable document format.

The comments will be available for public inspection at the Office of the Commissioner for Patents, currently located in Madison East, Tenth Floor, 600 Dulany Street, Alexandria, Virginia. Comments also will be available for viewing via the Office's Internet Web site (*http://www.uspto.gov*). Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Robert W. Bahr, Senior Patent Counsel, Office of Patent Examination Policy, at (571) 272–8090.

SUPPLEMENTARY INFORMATION:

Executive Summary: Purpose: The PLT harmonizes and streamlines formal procedures pertaining to the filing and processing of patent applications. Title II of the PLTIA amends the patent laws to implement the provisions of the PLT. This notice proposes changes to the rules of practice for consistency with the changes in the PLT and title II of the PLTIA.

Summary of Major Provisions: The major changes in the PLT and title II of the PLTIA pertain to: (1) The filing date requirements for a patent application; (2) the restoration of patent rights via the revival of abandoned applications and acceptance of delayed maintenance fee payments; and (3) the restoration of the right of priority to a foreign application or the benefit of a provisional application via the permitting of a claim to priority to a foreign application or the benefit of a provisional application in a subsequent application filed within two months of the expiration of the twelve-month period (six-month period for design applications) for filing such a subsequent application.

The Office is specifically proposing to revise the rules of practice pertaining to the filing date requirements for a patent application to provide that a claim is not required for a nonprovisional application (other than for a design patent) to be entitled to a filing date (a claim is currently not required for a provisional application to be entitled to a filing date). The Office is also providing for the filing of a nonprovisional application ''by reference'' to a previously filed application in lieu of filing the specification and drawings. An application filed either without at least one claim or ''by reference'' to a previously filed application in lieu of the specification and drawings will be treated in a manner analogous to the current provisions for treating an application that is missing application components not required for a filing date under 35 U.S.C. 111(a) (37 CFR 1.53(f)), in that the applicant will be given a period of time within which to supply a claim and/or claims or a copy of the specification and drawings of the previously filed application.

The Office is also proposing to revise the rules of practice pertaining to the revival of abandoned applications (37 CFR 1.137) and acceptance of delayed maintenance fee payments (37 CFR 1.378) to provide for the revival of abandoned applications and acceptance of delayed maintenance fee payments solely on the basis of ''unintentional'' delay. The PLTIA eliminates the provisions of the patent statutes relating to revival of abandoned applications or acceptance of delayed maintenance fee payments on the basis of a showing of ''unavoidable'' delay.

The Office is also proposing to revise the rules of practice pertaining to priority and benefit claims to provide for the restoration of the right of priority to a prior-filed foreign application and restoration of the right to benefit of a prior-filed provisional application. The Office is providing with respect to the right of priority to a prior-filed foreign application that if the subsequent application is filed after the expiration of the twelve-month period (six-month period in the case of a design application) set forth in 35 U.S.C. 119(a), but within two months from the expiration of the twelve-month period (six-month period in the case of a design application), the right of priority in the subsequent application may be restored upon petition and payment of the applicable fee if the delay in filing the subsequent application within the twelve- or six-month period was

unintentional. The Office is providing with respect to benefit of a prior-filed provisional application that if the subsequent application is filed after the expiration of the twelve-month period set forth in 35 U.S.C. 119(e), but within two months from the expiration of the twelve-month period, the benefit of the provisional application may be restored upon petition and payment of the applicable fee if the delay in filing the subsequent application within the twelve-month period was unintentional.

The Office is also proposing to revise the patent term adjustment rules to provide for a reduction of any patent term adjustment if an application is not in condition for examination within eight months of its filing date (or date of commencement of national stage in an international application). The PLT and PLTIA provide applicants with additional opportunities to delay the examination process (e.g., the ability to file an application without any claims and to file an application merely by reference to a previously filed application). This proposed change to the patent term adjustment rules is to avoid the situation in which an applicant obtains patent term adjustment as a consequence of the applicant's taking advantage of the additional opportunities to delay the examination process provided by the PLT and PLTIA.

Costs and Benefits: This rulemaking is not economically significant under Executive Order 12866 (Sept. 30, 1993).

Background: The PLT was concluded on June 1, 2000, and entered into force on April 28, 2005. The PLT harmonizes and streamlines formal procedures pertaining to the filing and processing of patent applications. With the exception of the filing date requirements specified in PLT Article 5, the PLT specifies maximum form and content requirements that an Office that is a party to the PLT (a Contracting Party) may apply, in that a Contracting Party is free to provide for requirements that are more permissive from the viewpoint of applicants and patent owners. The PLT does not apply to design, plant, provisional, or reissue applications. *See* PLT Art. 3 (the PLT applies to the types of applications that are permitted to be filed as international applications under the Patent Cooperation Treaty). The PLT Articles and Regulations under the PLT are available on the World Intellectual Property Organization (WIPO) Internet Web site (*www.wipo.int*).

The United States Senate ratified the PLT on December 7, 2007. The PLT did not enter into force in the United States upon ratification in 2007 as the PLT is not a self-executing treaty. *See Patent Law Treaty and Regulations under Patent Law Treaty,* Executive Report 110–6 at 3–4 (2007). Legislation (title II of the PLTIA) to amend the provisions of title 35, United States Code, to implement the PLT was enacted on December 18, 2012. *See* Public Law 112–211, sections 201 through 203, 126 Stat. 1527, 1533–37 (2012). The changes in title II (sections 201 through 203) of the PLTIA are divided into three groups: (1) The changes pertaining to a patent application filing date; (2) the changes pertaining to the revival of abandoned applications and acceptance of delayed maintenance fee payments; and (3) the changes pertaining to the restoration of the right of priority application to a foreign application or the benefit of a provisional application. *See id.* The major provisions of the PLT and title II of the PLTIA are as follows:

PLT Article 5 sets forth the requirements for obtaining a filing date. PLT Article 5(1) provides that a filing date will be accorded to an application upon compliance with three formal requirements: (1) An indication that the elements received by the Office are intended to be an application for a patent for an invention; (2) indications that would allow the Office to identify and to contact the applicant; and (3) a part which appears to be a description of the invention. No additional elements (such as a claim or a drawing) can be required for a filing date to be accorded to an application. Pre-PLTIA 35 U.S.C. 111(a) provides that the filing date of an application shall be the date on which ''the specification and any required drawing'' are received in the Office, and thus requires that an application contain a drawing where necessary for an understanding of the invention (35 U.S.C. 113 (first sentence)) and at least one claim to be entitled to a filing date. *See Baxter Int'l, Inc.* v. *McGaw, Inc.,* 149 F.3d 1321, 1333 (Fed. Cir. 1998) (both statute and regulation make clear the requirement that an application for a patent must include, *inter alia,* a specification containing claims and a drawing, and the omission of any of these component parts makes a patent application incomplete and thus not entitled to a filing date). Section 201(a) of the PLTIA amends 35 U.S.C. 111(a) to provide that the filing date of an application (other than for a design patent) is the date on which a specification, ''with or without claims,'' is received in the Office. *See* 126 Stat. at 1533.

PLT Article 5(1)(b) permits a Contracting Party to accept a drawing as a description of the invention in appropriate circumstances. This is considered to be consistent with current jurisprudence in the United States and thus no change in that regard is necessary. *See Vas-Cath Inc.* v. *Mahurkar,* 935 F.2d 1555, 1565 (Fed. Cir. 1991) (''under proper circumstances, drawings alone may provide a 'written description' of an invention as required by [35 U.S.C.] 112'').

PLT Article 5 and PLTIA 35 U.S.C. 111(a) specify the formal requirements necessary for an application to be entitled to a filing date, and compliance with these requirements ensures only that the disclosure present upon filing in the application will be entitled to a filing date. An application whose disclosure satisfies only the requirements of 35 U.S.C. 111(a) to be entitled to a filing date may nonetheless not meet the requirements of 35 U.S.C. 112 and 113 necessary for the applicant to be entitled to a patent for any claimed invention presented in the application, or even for the application to effectively serve as a priority or benefit application for an application subsequently filed in the United States or abroad. Therefore, the ability to file an application without a claim or drawing should be viewed as a safeguard against the loss of a filing date due to a technicality and not as a best practice.

PLT Article 5(2) permits the description of the invention to be filed in any language.

As discussed previously, the filing date requirements in PLT Article 5 are not simply the maximum requirements but constitute the absolute requirements for an application to be accorded a filing date. *See* PLT Art. 2(1).

Finally, as discussed previously, the PLT does not apply to design applications. Section 202(a) of the PLTIA amends 35 U.S.C. 171 to provide that the filing date of an application for design patent shall be the date on which the specification as prescribed by 35 U.S.C. 112 and any required drawings are filed. *See* 126 Stat. at 1535. Therefore, a design application must contain a claim and any required drawings to be entitled to a filing date.

35 U.S.C. 111(a) currently provides that the fee and oath or declaration may be submitted after the specification and any required drawing are submitted, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director, and that upon failure to submit the fee and oath or declaration within such prescribed period, the application shall be regarded as abandoned. *See* 35 U.S.C. 111(a)(3) and (a)(4). Section 201(a) of the PLTIA amends 35 U.S.C. 111(a)(3) and (a)(4) to provide that the fee, oath or declaration, and claim or

claims may be submitted after the filing date of the application, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Office, and that upon failure to submit the fee, oath or declaration, and claim or claims within the period prescribed by the Office, the application shall be regarded as abandoned. *See* 126 Stat. at 1533.

Section 201(a) of the PLTIA further amends 35 U.S.C. 111 to: (1) more closely align the corresponding provisions for nonprovisional applications in 35 U.S.C. 111(a) and provisional applications in 35 U.S.C. 111(b); (2) more clearly distinguish the filing date requirements in those sections from the more substantive requirements of 35 U.S.C. 112 and 113; and (3) delete the reference to the ''unavoidable or unintentional'' standard in favor of an ''unintentional'' standard in new 35 U.S.C. 27. *See id.*

PLT Article 5(6) pertains to applications containing a missing part of the description or a missing drawing. PLT Article 5(6)(a) provides that if the missing part of the description or a missing drawing is timely filed, the filing date of the application shall be the date on which the Office has received that part of the description or that drawing. PLT Article 5(6)(c) provides that if the missing part of the description or the missing drawing is timely withdrawn by the applicant, the filing date of the application shall be the date on which the applicant complied with requirements provided for in PLT Article 5(1) and (2). PLT Article 5(6)(b) provides that where a prior-filed application contains the missing part of the description and/or missing drawing, the application as filed claims the priority to the prior-filed application, and the applicant timely files a copy of the prior-filed application (and translation if necessary), the filing date of the application (including the missing part of the description and/or missing drawing) shall be the date on which the applicant complied with requirements provided for in PLT Article 5(1) and (2). The Office's procedures concerning the handling of applications containing a missing part of the description or a missing drawing are set forth in MPEP 601.01(d) (applications filed without all pages of the specification) and 601.01(g) (applications filed without all figures of drawings).

PLT Article 5(7) provides that a reference to a previously filed application, made upon the filing of the application, shall replace the description and any drawings of the application for purposes of the filing date of the application. PLT Rule 2(5) requires that this reference to the previously filed application indicate that, for the purposes of the filing date, the description and any drawings of the application are replaced by the reference to the previously filed application, and also indicate the application number and Office with which the previously filed application was filed. PLT Rule 2(5) further provides that a Contracting Party may require that: (1) a copy of the previously filed application and a translation of the previously filed application (if not in a language accepted by the Office) be filed with the Office within a time limit of not less than two months from the date on which the application containing the reference was received by the Office; and (2) a certified copy of the previously filed application be filed with the Office within a time limit of not less than four months from the date on which the application containing the reference was received by the Office.

Section 201(a) of the PLTIA amends 35 U.S.C. 111 to provide for this reference filing in a new 35 U.S.C. 111(c). New 35 U.S.C. 111(c) provides that a reference made upon the filing of an application to a previously filed application shall, as prescribed by the Office, constitute the specification and any drawings of the subsequent application for purposes of a filing date. *See* 126 Stat. at 1533–34. New 35 U.S.C. 111(c) specifically provides that the Director may prescribe the conditions, including the payment of a surcharge, under which a reference made upon the filing of an application under 35 U.S.C. 111(a) to a previously filed application, specifying the previously filed application by application number and the intellectual property authority or country in which the application was filed, shall constitute the specification and any drawings of the subsequent application for purposes of a filing date. *See* 126 Stat. at 1533. New 35 U.S.C. 111(c) further provides that a copy of the specification and any drawings of the previously filed application shall be submitted within such period and under such conditions as may be prescribed by the Director, and that a failure to submit the copy of the specification and any drawings of the previously filed application within the prescribed period shall result in the application being regarded as abandoned. *See* 126 Stat. at 1533–34. New 35 U.S.C. 111(c) finally provides that such an abandoned application shall be treated as having never been filed, unless: (1) the application is revived under 35 U.S.C. 27; and (2) a copy of the specification and any drawings of the previously filed application are submitted to the Director. *See* 126 Stat. at 1534.

PLT Article 6 standardizes application format requirements by providing that a Contracting Party may not impose form or content requirements different from or in addition to the form and content requirements provided for in the Patent Cooperation Treaty (PCT), or permitted by the PCT for international applications during national processing or examination, or as prescribed in the PLT Regulations. The United States has taken a reservation with respect to PLT Article 6, in that PLT Article 6(1) shall not apply to any requirement relating to unity of invention applicable under the PCT to an international application. *See Patent Law Treaty and Regulations under Patent Law Treaty,* Executive Report 110–6 at 6 (2007). The Office appreciates that patent stakeholders prefer that the Office move from the ''independent and distinct'' restriction standard of 35 U.S.C. 121 to the ''unity of invention'' standard of PCT Rule 13. The Office is in the process of studying the changes to the patent statute, regulations, examination practices, and filings fees that would be necessary to move from the ''independent and distinct'' restriction standard of 35 U.S.C. 121 to the ''unity of invention'' standard of PCT Rule 13 in a practical manner.

The PLT further provides for the establishment of standardized Model International Forms, which will have to be accepted by all Contracting Parties. The following Model International Forms have been established under the PLT: (1) Model International Request Form; (2) Model International Power of Attorney Form; (3) Model International Request for Recordation of Change in Name or Address Form; (4) Model International Request for Correction of Mistakes Form; (5) Model International Request for Recordation of Change in Applicant or Owner Form; (6) Model International Certificate of Transfer Form; (7) Model International Request for Recordation of a License/Cancellation of the Recordation of a License Form; and (8) Model International Request for Recordation of a Security Interest/Cancellation of the Recordation of a Security Interest Form.

PLT Articles 6, 7, and 8 provide for simplified procedures, such as exceptions from mandatory representation for certain actions, restrictions on requiring evidence on a systematic basis, permitting a single communication for more than one application or patent from the same person in certain situations (e.g., powers

of attorney), and restrictions on the requirement to submit a copy and any necessary translation of an earlier application.

PLT Rule 7(2)(b) specifically provides that a single power of attorney is sufficient even where it relates to more than one application or patent of the same person, and also that a power of attorney will be sufficient where it relates to future applications of such person. PLT Rule 7(2)(b) permits the Office to require a separate copy of the power of attorney be filed in each application and patent to which it relates. The Office permits a single power of attorney for multiple applications or patents of the same person, but requires a separate copy of the power of attorney be filed in each application or patent to which it relates. *See* 37 CFR 1.4(b). A person may give a power of attorney that is not specific to an application or patent, similar to the General Power of Attorney used in PCT practice (general power of attorney), and a practitioner having authority from such person may submit a copy of the general power of attorney in any application or patent of that person.

PLT Articles 11, 12, and 13 provide procedures to avoid the loss of substantive rights as a result of an unintentional failure to comply with formality requirements or time periods.

PLT Article 11 requires a Contracting Party to provide for either extensions of time (or an alternative to reinstate the applicant or owner's rights) for time limits fixed by the Contracting Party. The PLT distinguishes between time limits fixed by applicable law and time limits fixed by the Contracting Party. A time limit is fixed by applicable law when the time limit is provided for in a statute (e.g., the three-month period in 35 U.S.C. 151) or regulation (e.g., the three-month period in 37 CFR 1.85(c)). A time limit is fixed by the Contracting Party when the applicable statute or regulation provides for a time period to be set, but does not specify the time limit itself (e.g., 35 U.S.C. 133, 37 CFR 1.53(f)(1), or 37 CFR 1.134). While many time limits fixed by regulation are extendable (e.g., 37 CFR 1.53(f)(1), and 1.137(e)), PLT Article 11 applies only to time limits that are not fixed by statute or regulation.

PLT Article 12 provides for reinstatement of rights on the basis of unintentional delay (or alternatively if the failure occurred in spite of due care). Section 201(b) of the PLTIA adds a new section 27 to title 35. New 35 U.S.C. 27 provides that the Director may establish procedures, including the payment of a surcharge, to revive an unintentionally abandoned application for patent, accept an unintentionally delayed payment of the fee for issuing each patent, or accept an unintentionally delayed response by the patent owner in a reexamination proceeding, upon petition by the applicant for patent or patent owner. *See* 126 Stat. at 1534. As discussed previously, the PLTIA eliminates the provisions of the patent statutes relating to revival or acceptance of delayed maintenance fee payments on the basis of a showing of ''unavoidable'' delay. Thus, the PLTIA provides a single standard (unintentional delay) for reviving abandoned applications, accepting delayed issue fee and maintenance fee payments, and accepting delayed responses by the patent owner in a reexamination proceeding.

Section 202(b)(1)(A) of the PLTIA amends 35 U.S.C. 41(a)(7) to provide that the Office shall charge $1,700.00 on filing each petition for the revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, for the delayed response by the patent owner in any reexamination proceeding, for the delayed payment of the fee for maintaining a patent in force, for the delayed submission of a priority or benefit claim, or for the extension of the twelve-month period for filing a subsequent application. *See* 126 Stat. at 1535. Section 202(b)(1)(A) of the PLTIA also amends 35 U.S.C. 41(a)(7) to provide that the Director may refund any part of this fee in exceptional circumstances as determined by the Director. *See id.*

Section 202(b)(1)(B) of the PLTIA also amends 35 U.S.C. 41(c)(1) to conform procedures for the late payment of maintenance fees to those provided in new 35 U.S.C. 27. Section 202(b)(1)(B) of the PLTIA specifically amends 35 U.S.C. 41(c)(1) to delete the twenty-four month time limit for unintentionally delayed maintenance fee payments and the reference to an unavoidable standard. PLTIA 35 U.S.C. 41(c)(1) provides that: (1) The Director may accept the payment of any maintenance fee required by 35 U.S.C. 41(b) after the six-month grace period if the delay is shown to the satisfaction of the Director to have been unintentional; (2) the Director may require the payment of the fee specified in 35 U.S.C. 41(a)(7) as a condition of accepting payment of any maintenance fee after the six-month grace period; and (3) if the Director accepts payment of a maintenance fee after the six-month grace period, the patent shall be considered as not having expired at the end of the grace period (subject to the current intervening rights provision of 35 U.S.C. 41(c)(2)). *See* 126 Stat. at 1535–36.

Section 202(b) of the PLTIA also amends 35 U.S.C. 122(b)(2)(B)(iii), 133, 151, 364(b), and 371(d) to delete the reference to an unavoidable standard in light of new 35 U.S.C. 27. *See* 126 Stat. at 1536.

Section 202(b)(6) of the PLTIA also amends 35 U.S.C. 151 to delete the third and fourth paragraphs pertaining to the lapsed patent practice. *See id.*

PLT Article 13 provides for the restoration of the right of priority where there is a failure to timely claim priority to the prior application, and also where there is a failure to file the subsequent application within twelve months of the filing date of the priority application. Section 201(c) of the PLTIA amends 35 U.S.C. 119 to provide that the twelve-month periods set forth in 35 U.S.C. 119(a) and (e) may be extended by an additional two months if the delay in filing an application claiming priority to a foreign application or the benefit of a provisional application within the twelve-month period was unintentional. Section 201(c) of the PLTIA also amends 35 U.S.C. 119(a) and 365(b) to provide for unintentionally delayed claims for priority under the PCT and the Regulations under the PCT, and priority claims to an application not filed within the priority period specified in the PCT and the Regulations under the PCT but filed within the additional two-month period.

Section 201(c) of the PLTIA specifically amends 35 U.S.C. 119(a) by adding that the Director may prescribe regulations, including the requirement for payment of the fee specified in 35 U.S.C. 41(a)(7), pursuant to which the twelve-month period set forth in 35 U.S.C. 119(a) may be extended by an additional two months if the delay in filing the application in the United States within the twelve-month period was unintentional. *See* 126 Stat. at 1534.

Section 201(c) of the PLTIA specifically amends 35 U.S.C. 119(e)(1) by adding that the Director may prescribe regulations, including the requirement for payment of the fee specified in 35 U.S.C. 41(a)(7), pursuant to which the twelve-month period set forth in 35 U.S.C. 119(e) may be extended by an additional two months if the delay in filing the application under 35 U.S.C. 111(a) or 363 within the twelve-month period was unintentional. *See id.*

Section 201(c) of the PLTIA amends 35 U.S.C. 119(e)(3) by adding that for an application for patent filed under 35 U.S.C. 363 in a Receiving Office other than the United States Patent and

Trademark Office, the twelve-month and additional two-month period set forth in 35 U.S.C. 119(e) shall be extended as provided under the PCT and PCT Regulations. *See* 126 Stat. at 1534–35.

Section 201(c) of the PLTIA amends 35 U.S.C. 365(b) by adding that the Director may establish procedures, including the requirement for payment of the fee specified in 35 U.S.C. 41(a)(7), to accept an unintentionally delayed claim for priority under the PCT and PCT Regulations, and to accept a priority claim that pertains to an application that was not filed within the priority period specified in the PCT and PCT Regulations, but was filed within the additional two-month period specified under 35 U.S.C. 119(a) or the PCT or PCT Regulations. *See* 126 Stat. at 1535.

Sections 201(c) and 202(b)(2) and (b)(3) of the PLTIA amend 35 U.S.C. 119(b), 119(e), and 120 to change the phrase ''including the payment of a surcharge'' in the provision pertaining to the submission of delayed priority or benefit claims to ''including the requirement for payment of the fee specified in [35 U.S.C.] 41(a)(7).'' *See* 126 Stat. at 1534 and 1536.

PLT Article 14 and PLT Rules 15, 16, and 17 pertain to requests for a change in the applicant's or owner's name or address, requests for a change in the applicant or owner (e.g., due to an assignment), requests for recordation of a license or a security interest, and requests for correction of a mistake.

35 U.S.C. 261 currently provides that: ''Subject to the provisions of this title, patents shall have the attributes of personal property.'' Section 201(d) of the PLTIA amends 35 U.S.C. 261, first paragraph, by adding: ''The [United States] Patent and Trademark Office shall maintain a register of interests in applications for patents and patents and shall record any document related thereto upon request, and may require a fee therefor.'' *See* 126 Stat. at 1535. Section 201(d) of the PLTIA also amends 35 U.S.C. 261, fourth paragraph, to read as follows: ''An interest that constitutes an assignment, grant or conveyance shall be void as against any subsequent purchaser or mortgagee for a valuable consideration, without notice, unless it is recorded in the [United States] Patent and Trademark Office within three months from its date or prior to the date of such subsequent purchase or mortgage.'' *See id.*

PLT Rule 15(3)(b) provides that a single request for recordation of a change in the name and/or address of the applicant or owner is sufficient even where it relates to more than one application or patent of the same person, but also permits the Office to require a separate copy of the request for each application and patent to which it relates. PLT Rules 16(5) and 17(5) provide that a single request for recordation of a change in the applicant or owner and a single request for recordation of a license or security interest is sufficient even where it relates to more than one application or patent of the same person, but also permits the Office to require a separate copy of the request for each application and patent to which it relates. The Office will permit a single request for recordation of a change in the name and/or address of the applicant or owner, single request for recordation of a change in the applicant or owner, and a single request for recordation of a license or security interest power of attorney for multiple applications or patents of the same person, but will require that a separate copy of such a request for each application and patent to which it relates. *See* 37 CFR 1.4(b).

PLT Rule 18(3) provides that a single request for correction of a mistake is sufficient even where it relates to more than one application or patent of the same person, provided that the mistake and correction are common to all applications or patents concerned, but also permits the Office to require a separate copy of the request for each application and patent to which it relates. The Office will permit a single request for correction of a mistake to more than one application or patent of the same person, provided that the mistake and correction are common to all applications or patents concerned, but will require a separate copy of such a request for each application and patent to which it relates. *See* 37 CFR 1.4(b).

Section 203(a) provides that the amendments made by title II of the PLTIA take effect on December 18, 2013 (the date that is one year after the date of the enactment of the PLTIA) and apply to: (1) any patent issued before, on, or after December 18, 2013; and (2) any application for patent that is pending on or filed after December 18, 2013. *See* 126 Stat. at 1536. Section 203(b) provides that the amendments to 35 U.S.C. 111 made by title II of the PLTIA apply only to applications that are filed on or after December 18, 2013. Section 203(b) also provides that the amendments made by title II of the PLTIA shall have no effect with respect to any patent that is the subject of litigation in an action commenced before December 18, 2013. *See* 126 Stat. at 1537.

Discussion of Specific Rules

The following is a discussion of proposed amendments to Title 37 of the Code of Federal Regulations, Part 1.

Section 1.4: Section 1.4(c) is proposed to be amended to provide that subjects provided for on a single Office or WIPO form may be contained in a single paper. This provision is to clarify that subjects that are provided for on a single Office or WIPO form are not considered separate subjects for purposes of § 1.4(c) (which thus must be contained in separate papers).

Section 1.4(d) is proposed to be amended to implement the signature provisions of PLT Rule 9(4) concerning electronic communications. PLT Rule 9(4) provides that where an Office permits the filing of communications in electronic form or by electronic means of transmittal, it shall consider such a communication signed if a graphic representation of a signature accepted by that Office appears on that communication as received by the Office. Section 1.4(d) is specifically proposed to be amended to provide that correspondence permitted via the Office electronic filing system may be signed by a graphic representation of a handwritten signature as provided for in § 1.4(d)(1) or a graphic representation of an S-signature as provided for in § 1.4(d)(2) when it is submitted via the Office electronic filing system.

Section 1.16: Section 1.16(f) is proposed to be amended to provide that it is also applicable to an application that does not contain at least one claim on the filing date of the application and to an application filed by reference to a previously filed application under § 1.57(a). *See* discussion of §§ 1.53 and 1.57.

Section 1.17: Section 1.17(f) is proposed to be amended for consistency with the proposed change to § 1.57. *See* discussion of § 1.57.

Section 1.17(m) is proposed to be amended to implement the change to 35 U.S.C. 41(a)(7), 41(c)(1), 119, 120 and 365 in section 202(b) of the PLTIA. Section 202(b)(1)(A) of the PLTIA amends 35 U.S.C. 41(a)(7) to provide that the Office shall charge $1,700.00 ($850.00 small entity) on filing each petition for the revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, for the delayed response by the patent owner in any reexamination proceeding, for the delayed payment of the fee for maintaining a patent in force, for the delayed submission of a priority or benefit claim, or for the extension of the twelve-month period for filing a subsequent application. Sections

202(b)(1)(B), 202(b)(2) and 202(b)(3) of the PLTIA amend 35 U.S.C. 41(c)(1), 119, and 120 to replace ''payment of a surcharge'' with ''payment of the fee specified in section 41(a)(7).'' Section 1.17(m) does not include a micro entity fee amount as this fee is set under 35 U.S.C. 41(a)(7) as amended by 202(b)(1)(A) of the PLTIA and not section 10(a) of the Leahy-Smith America Invents Act (AIA). Section 10(b) of the AIA provides that the micro entity discount applies to fees set under section 10(a) of the AIA. *See* Pub. L. 112–29, 125 Stat. 284, 316–17 (2011). The fee specified in § 1.17(m) will have a micro entity amount when patent fees are again set under section 10(a) of the AIA.

Section 1.17(p) is proposed to be amended and § 1.17(o) is proposed to be added to provide for information disclosure statements under §§ 1.97(c) or (d) in § 1.17(p) and for third-party submissions under § 1.290 in § 1.17(o). Section 1.17(p) currently provides for both information disclosure statements under §§ 1.97(c) or (d) and third-party submissions under § 1.290, which may cause confusion as a third party is not eligible for the micro entity discount. Thus, § 1.17(p) as proposed provides for information disclosure statements under §§ 1.97(c) or (d) and includes both a small entity and micro entity discount, and § 1.17(o) as proposed provides for third-party submissions under § 1.290 and includes only a small entity discount.

Sections 1.17(l) and 1.17(t) are proposed to be removed in view of the change to 35 U.S.C. 41(a)(7), 119, and 120 in section 202(b) of the PLTIA.

Section 1.20: Section 1.20(i) is proposed to be removed in view of the change to 35 U.S.C. 41(a)(7) and 41(c)(1) in section 202(b)(1) of the PLTIA.

Section 1.23: Section 1.23(c) is proposed to be added to provide that a fee transmittal letter may be signed by a juristic applicant or patent owner. PLT Article 7(2) provides that an assignee of an application, an applicant, owner or other interested person may act *pro se* before the Office for the mere payment of a fee.

Section 1.29: Section 1.29(e) is proposed to be amended to provide that a micro entity certification in an international application filed in a Receiving Office other than the United States Receiving Office may be signed by a person authorized to represent the applicant under § 1.455.

Section 1.29(k)(4) is proposed to be amended to delete ''but payment of a deficiency based upon the difference between the current fee amount for a small entity and the amount of the previous erroneous micro entity fee payment will not be treated as an assertion of small entity status under § 1.27(c)'' and ''[o]nce a deficiency payment is submitted under this paragraph, a written assertion of small entity status under § 1.27(c)(1) is required to obtain small entity status.'' This proposed change is for consistency with the provision of § 1.29(i) that a notification of loss of micro entity status is not automatically treated as a notification of loss of small entity status.

Section 1.51: Section 1.51(a) is proposed to be amended to provide that an application transmittal letter limited to the transmittal of the documents and fees comprising a patent application under this section may be signed by a juristic applicant or patent owner. PLT Article 7(2) provides that an assignee of an application, an applicant, owner or other interested person may act *pro se* before the Office for the filing of an application for the purposes of the filing date.

Section 1.53: Section 1.53 is proposed to be amended to implement the changes to 35 U.S.C. 111 in section 201 of the PLTIA and the change to 35 U.S.C. 172 in section 202(a) of the PLTIA.

Section 201(a) of the PLTIA amends 35 U.S.C. 111(a) to provide that the filing date of an application (other than for a design patent) is the date on which a specification, ''with or without claims,'' is received in the Office. Section 1.53(b) is thus proposed to be amended to provide that the filing date of an application for patent filed under § 1.53, except for an application for a design patent or a provisional application under § 1.53(c), is the date on which a specification, with or without claims is received in the Office.

Section 202(a) of the PLTIA amends 35 U.S.C. 171 to provide that the filing date of an application for design patent shall be the date on which the specification as prescribed by 35 U.S.C. 112 and any required drawings are filed. Therefore, a design application must contain a claim to be entitled to a filing date. Section 1.53(b) is thus proposed to be amended to provide that the filing date of an application for a design patent filed under this section, except for a continued prosecution application under § 1.53(d), is the date on which the specification as prescribed by 35 U.S.C. 112, including at least one claim, and any required drawings are received in the Office.

Section 201(a) of the PLTIA amends 35 U.S.C. 111(b) to more closely align the corresponding provisions for nonprovisional applications in 35 U.S.C. 111(a) and provisional applications in 35 U.S.C. 111(b). Section 1.53(c) is thus proposed to be amended to provide that the filing date of a provisional application is the date on which a specification, with or without claims, is received in the Office.

As discussed previously, PLT Article 5 and PLTIA 35 U.S.C. 111(a) provide minimal formal requirements necessary for an application to be entitled to a filing date to safeguard against the loss of a filing date due to a technicality. PLT Article 5 and PLTIA 35 U.S.C. 111 should not be viewed as prescribing a best practice for the preparation and filing of a patent application. The drafting of claims at the time an application (provisional or nonprovisional) is prepared to any claimed invention for which patent protection is desired and inclusion of such claims with the application will help ensure that the application will contain an adequate disclosure under 35 U.S.C. 112.

Section 201(a) of the PLTIA amends 35 U.S.C. 111(a) to provide that the claim or claims may be submitted after the filing date of the application, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Office, and that upon failure to submit one or more claims within the period prescribed by the Office, the application shall be regarded as abandoned. Section 1.53(f) is thus proposed to be amended to provide that an application filed without at least one claim would be treated in a manner analogous to how an application without the filing, search, or examination fee is treated under current § 1.53. Section 1.53(f) is specifically proposed to be amended to provide that if an application which has been accorded a filing date pursuant to § 1.53(b) does not include at least one claim: (1) the applicant will be notified and given a period of time within which to file a claim or claims and pay the surcharge if required by § 1.16(f) to avoid abandonment if the applicant has provided a correspondence address; and (2) the applicant has three months from the filing date of the application within which to file a claim or claims and pay the surcharge required by § 1.16(f) to avoid abandonment if the applicant has not provided a correspondence address.

In the rulemaking to implement the inventor's oath or declaration provisions of the AIA, the Office provided that applicants may postpone filing the inventor's oath or declaration until the application is otherwise in condition for allowance if the applicant provides an application data sheet before examination indicating the name, residence, and mailing address of each

inventor. *See Changes to Implement the Inventor's Oath or Declaration Provisions of the Leahy-Smith America Invents Act,* 77 FR 48776, 48779–80 (Aug. 14, 2012) (final rule). AIA 35 U.S.C. 115(f) provided that a notice of allowance under 35 U.S.C. 151 may be provided to an applicant only if the applicant has filed each required oath or declaration under 35 U.S.C. 115(a), substitute statement under 35 U.S.C. 115(d), or recorded assignment meeting the requirements of 35 U.S.C. 115(e). The Office thus provided that if an application is in condition for allowance but does not include an oath or declaration in compliance with § 1.63, or a substitute statement in compliance with § 1.64, executed by or with respect to each actual inventor, the Office will issue a ''Notice of Allowability'' (PTOL–37) (but not a ''Notice of Allowance and Fee(s) Due'' (PTOL–85)) giving the applicant three months to file an oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, executed by or with respect to each actual inventor, to avoid abandonment, and that the ''Notice of Allowance and Fee(s) Due'' (PTOL–85)) will not be issued until the application includes an oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, executed by or with respect to each actual inventor. *See Changes to Implement the Inventor's Oath or Declaration Provisions of the Leahy-Smith America Invents Act,* 77 FR at 48787–88.

Section 1(f) of the Act to correct and improve certain provisions of the Leahy-Smith America Invents Act and title 35, United States Code (AIA Technical Corrections Act) amends 35 U.S.C. 115(f) to read as follows: ''The applicant for patent shall provide each required oath or declaration under [35 U.S.C. 115](a), substitute statement under [35 U.S.C. 115](d), or recorded assignment meeting the requirements of [35 U.S.C. 115](e) no later than the date on which the issue fee for the patent is paid.'' *See* Public Law 112–274, section 1(f), 126 Stat. 2456–57 (2013). This change to 35 U.S.C. 115(f) permits the Office to issue a ''Notice of Allowance and Fee(s) Due'' (PTOL–85) before the application includes an oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, executed by or with respect to each actual inventor. *See Changes to Implement the Inventor's Oath or Declaration Provisions of the Leahy-Smith America Invents Act,* 77 FR at 48802 (noting that the only effect of AIA 35 U.S.C. 115(f) is to preclude the Office from issuing a notice of allowance until each required inventor's oath or declaration has been filed). The Office is thus revising the provisions pertaining to the filing of an application without the inventor's oath or declaration to provide that if an application is in condition for allowance but does not include an oath or declaration in compliance with § 1.63, or a substitute statement in compliance with § 1.64, executed by or with respect to each actual inventor, the Office will issue a ''Notice of Allowability'' (PTOL–37) requiring an oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, executed by or with respect to each actual inventor, together with the ''Notice of Allowance and Fee(s) Due'' (PTOL–85).

35 U.S.C. 115(f) does not specifically provide for the consequence that results if an applicant fails to provide an oath or declaration in compliance with § 1.63, or a substitute statement in compliance with § 1.64, executed by or with respect to each actual inventor. PLTIA 35 U.S.C. 111(a)(3), however, provides that the ''fee, oath or declaration, and 1 or more claims may be submitted after the filing date of the application, within such period and under such conditions, including the payment of a surcharge, as may be prescribed by the Director,'' and that ''[u]pon failure to submit the fee, oath or declaration, and 1 or more claims within such prescribed period, the application shall be regarded as abandoned.'' The Office is thus proposing to amend § 1.53(f)(3)(ii) to provide that if the applicant is notified in a notice of allowability that an oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, executed by or with respect to each named inventor has not been filed, the applicant must file each required oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, no later than the date on which the issue fee is paid to avoid abandonment (which time period is not extendable). The Office is also proposing to amend § 1.53(f)(3)(ii) to provide that: (1) the applicant must file each required oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, no later than the date on which the issue fee for the patent is paid (as required by 35 U.S.C. 115(f)); and (2) that the Office may dispense with the notice provided for in § 1.53(f)(1) if each required oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, has been filed before the application is in condition for allowance.

Section 1.54: Section 1.54(b) is amended to provide that a letter limited to a request for a filing receipt (which includes a corrected filing receipt) may be signed by a juristic applicant or patent owner. PLT Article 7(2) provides that an assignee of an application, an applicant, owner or other interested person may act *pro se* before the Office for the issue of a receipt or notification by the Office in respect of any procedure referred to in PLT Article 7(2)(a)(i) through 7(2)(a)(iii).

Section 1.55: Section 1.55(b) is proposed to be amended to implement the provisions in section 201(c) of the PLTIA and PLT Article 13 for the restoration of the right of priority. Section 201(c) of the PLTIA amends 35 U.S.C. 119(a) by adding that the Director may prescribe regulations, including the requirement for payment of the fee specified in 35 U.S.C. 41(a)(7), pursuant to which the twelve-month period set forth 35 U.S.C. 119(a) may be extended by an additional two months if the delay in filing the application in the United States within the twelve-month period was unintentional. Section 1.55(b) is thus proposed to be amended to provide that if the subsequent application has a filing date which is after the expiration of the twelve-month period (six-month period in the case of a design application) set forth in § 1.55(b)(1) but within two months from the expiration of the period set forth in § 1.55(b)(1), the right of priority in the subsequent application may be restored upon petition if the delay in filing the subsequent application within the period set forth in § 1.55(b)(1) was unintentional. Section 1.55(b) is further proposed to be amended to provide that a petition to restore the right of priority under § 1.55(b) filed in the subsequent application must include: (1) the priority claim under 35 U.S.C. 119(a) through (d) or (f) or 365(a) in an application data sheet (§ 1.76(b)(6)), identifying the foreign application for which priority is claimed, by specifying the application number, country (or intellectual property authority), day, month, and year of its filing, unless previously submitted; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the delay in filing the subsequent application within the twelve-month period (six-month period in the case of a design application) set forth in § 1.55(b)(1) was unintentional. Section 1.55(b) is further proposed to provide that the Director may require additional information where there is a

question whether the delay was unintentional.

Section 1.55(b) as proposed also provides that the right of priority in the subsequent application may be restored under PCT Rule 26*bis*.3. A decision by a Receiving Office to restore a right of priority under PCT Rule 26*bis*.3 in an international application designating the United States is effective as to the United States in the national stage of such application in accordance with PCT Rule 49*ter*.1.

Section 1.55(c) is proposed to provide for the situation in which a certified copy of the foreign application is not filed during the international stage of an international application. Section 1.55(c) is specifically proposed to provide that in such a situation: (1) A certified copy of the foreign application must be filed within four months from the date of entry into the national stage as set forth in § 1.491 or sixteen months from the filing date of the prior-filed foreign application (except as provided in §§ 1.55(h) and (i)); and (2) the certified copy of the foreign application must be accompanied by a petition including a showing of good and sufficient cause for the delay and the petition fee set forth in § 1.17(g), if a certified copy of the foreign application is not filed within the later of four months from the date of entry into the national stage as set forth in § 1.491 or sixteen months from the filing date of the prior-filed foreign application, and the exceptions in §§ 1.55(h) and (i) are not applicable.

Section 1.55(e) is proposed to be amended to provide for delayed priority claims under 35 U.S.C. 365(b) in a national stage application under 35 U.S.C. 371. Section 1.55(e) is also proposed to be amended for consistency with the change to 35 U.S.C. 119(b) in section 202(b)(2) of the PLTIA (replaces ''payment of a surcharge'' with ''payment of the fee specified in section 41(a)(7)''). *See* discussion of § 1.17(m).

Section 1.55(i) is proposed to be amended to also refer to § 1.55(c) for consistency with the proposed change to § 1.55(c).

Section 1.57: Sections 1.57(a) through (g) are proposed to be redesignated as §§ 1.57(b) through (h), respectively. Section 1.57(a) is proposed to be added to implement the reference filing provisions of section 201(a) of the PLTIA (new 35 U.S.C. 111(c)) and PLT Article 5(7). Section 1.57 already implements the provisions of PLT Article 5(6) pertaining to applications containing a missing part of the description or a missing drawing. *See Changes to Support Implementation of the United States Patent and Trademark Office 21st Century Strategic Plan,* 69 FR 56482, 56499 (Sept. 21, 2004).

35 U.S.C. 111(c) provides that a reference made upon the filing of an application to a previously filed application shall, as prescribed by the Office, constitute the specification and any drawings of the subsequent application for purposes of a filing date.

35 U.S.C. 111(c) specifically provides that the Director may prescribe the conditions, including the payment of a surcharge, under which a reference made upon the filing of an application under 35 U.S.C. 111(a) to a previously filed application, specifying the previously filed application by application number and the intellectual property authority or country in which the application was filed, shall constitute the specification and any drawings of the subsequent application for purposes of a filing date. PLT Rule 2(5) requires that this reference to the previously filed application indicate that, for the purposes of the filing date, the description and any drawings of the application are replaced by the reference to the previously filed application, and also provides that a Contracting Party may require that the reference also indicate the filing date of the previously filed application. Proposed § 1.57(a) thus provides that, subject to the conditions and requirements of § 1.57(a), a reference made in the English language in an application data sheet in accordance with § 1.76 upon the filing of an application under 35 U.S.C. 111(a) to a previously filed application, indicating that the specification and any drawings of the application are replaced by the reference to the previously filed application, and specifying the previously filed application by application number, filing date, and the intellectual property authority or country in which the application was filed, shall constitute the specification and any drawings of the subsequent application for purposes of a filing date under § 1.53(b). The requirement for a reference to the previously filed application in an application data sheet will be satisfied by the presentation of such priority or benefit claim on the Patent Law Treaty Model International Request Form filed in the Office (*see* discussion of § 1.76).

For an application filed by reference to a previously filed application under proposed § 1.57(a), the specification and any drawings of the previously filed application will constitute the specification and any drawings of the application filed by reference under proposed § 1.57(a). Thus, the specification and any drawings of the previously filed application will be considered in determining whether an application filed by reference under proposed § 1.57(a) is entitled to a filing date under § 1.53(b).

35 U.S.C. 111(c) further provides that a copy of the specification and any drawings of the previously filed application shall be submitted within such period and under such conditions as may be prescribed by the Director, and that a failure to submit the copy of the specification and any drawings of the previously filed application within the prescribed period shall result in the application's being regarded as abandoned. Proposed § 1.57(a) thus provides that: (1) The applicant will be notified and given a period of time within which to file a copy of the specification and drawings from the previously filed application, an English language translation of the previously filed application and the fee required by § 1.17(i) if the previously filed application is in a language other than English, and pay the surcharge required by § 1.16(f) to avoid abandonment if the applicant has provided a correspondence address (proposed § 1.57(a)(1)); and (2) the applicant has three months from the filing date of the application to file a copy of the specification and drawings from the previously filed application, an English language translation of the previously filed application and the fee required by § 1.17(i) if the previously filed application is in a language other than English, and pay the surcharge required by § 1.16(f) to avoid abandonment if the applicant has not provided a correspondence address (proposed § 1.57(a)(2)). Proposed § 1.57(a)(1) also provides that such a notice may be combined with a notice under § 1.53(f) (e.g., a notice requiring that the applicant provide at least one claim and pay the filing fees).

35 U.S.C. 111(c) finally provides that such an application shall be treated as having never been filed, unless: (1) the application is revived under 35 U.S.C. 27; and (2) a copy of the specification and any drawings of the previously filed application are submitted to the Director. Section 1.57(a)(3) is thus proposed to provide that an application abandoned under §§ 1.57(a)(1) or (a)(2) shall be treated as having never been filed, unless: (1) the application is revived under § 1.137; and (2) a copy of the specification and any drawings of the previously filed application are filed in the Office.

Section 1.57(a)(4) is proposed to provide that a certified copy of the previously filed application must be filed in the Office or received by the

Office from a foreign intellectual property office participating in a priority document exchange agreement within the later of four months from the filing date of the application or sixteen months from the filing date of the previously filed application, unless the previously filed application is an application filed under 35 U.S.C. 111 or 363. Proposed § 1.57(a)(4) also provides that failure to comply with this requirement, absent a petition pursuant to § 1.57(a) accompanied by the fee set forth in § 1.17(f), will result in the application not being accorded a filing date earlier than the date a copy of the specification and drawings from the previously filed application is filed in or received by the Office.

Section 1.57(i) is proposed to be added to provide that an application transmittal letter limited to the transmittal of a copy of the specification and drawings from a previously filed application submitted under §§ 1.57(a) or (b) of this section may be signed by a juristic applicant or patent owner. PLT Article 7(2) and PLT Rule 7(1) provide that an assignee of an application, an applicant, owner or other interested person may act *pro se* before the Office for the filing of a copy of a previously filed application for purposes of the reference filing provisions of PLT Article 5(7) and reliance upon a reference to a prior-filed application to provide the missing parts of the description or missing drawings under PLT Article 5(6).

Section 1.58: Section 1.58(a) is proposed to be amended to provide that the description portion of the specification may contain tables, but the same tables should (rather than ''must'') not be included in both the drawings and description portion of the specification.

Section 1.72: Section 1.72(b) is proposed to be amended to provide that the abstract must be as concise as the disclosure permits, preferably not exceeding 150 words in length. *See* PCT Rule 8.1(b) (''The abstract shall be as concise as the disclosure permits (preferably 50 to 150 words if it is in English or when translated into English)'').

Section 1.76: Section 1.76(b)(3) is proposed to be amended to include the sentence: ''[t]his information also includes the reference to the previously filed application, indicating that the specification and any drawings of the application are replaced by the reference to the previously filed application, and specifying the previously filed application by application number, filing date, and the intellectual property authority or country in which the application was filed, for an application filed by reference to a previously filed application under § 1.57(a).'' *See* discussion of § 1.57(a).

Section 1.76 is also proposed to be amended to permit the use of PLT Model International Forms as appropriate in lieu of an application data sheet under § 1.76. Section 1.76(f) specifically provides that: (1) the requirement in § 1.55 or 1.78 for the presentation of a priority or benefit claim under 35 U.S.C. 119, 120, 121, or 365 in an application data sheet will be satisfied by the presentation of such priority or benefit claim in the Patent Law Treaty Model International Request Form; (2) the requirement in § 1.57(a) for a reference to the previously filed application in an application data sheet will be satisfied by the presentation of such priority or benefit claim in the Patent Law Treaty Model International Request Form; and (3) the requirement in § 1.46 for the presentation of the name of the applicant under 35 U.S.C. 118 in an application data sheet will be satisfied by the presentation of the name of the applicant in the Patent Law Treaty Model International Request Form, Patent Law Treaty Model International Request for Recordation of Change in Name or Address Form, or Patent Law Treaty Model International Request for Recordation of Change in Applicant or Owner Form, as applicable. Section 1.76 is also proposed to be amended to permit the use of a PCT Request Form in lieu of an application data sheet under § 1.76 if the PCT Request Form is accompanied by a clear indication that treatment of the application as an application under 35 U.S.C. 111 is desired.

Section 1.78: Section 1.78(a) is proposed to be amended to implement the provisions in section 201(c) of the PLTIA and PLT Article 13 for the restoration of the right to the benefit of a provisional application. Section 201(c) of the PLTIA specifically amends 35 U.S.C. 119(e)(1) by adding that the Director may prescribe regulations, including the requirement for payment of the fee specified in 35 U.S.C. 41(a)(7), pursuant to which the twelve-month period set forth in 35 U.S.C. 119(e) may be extended by an additional two months if the delay in filing the application under 35 U.S.C. 111(a) or 363 within the twelve-month period was unintentional. Section 1.78(a)(1) is thus proposed to be amended to provide that if the nonprovisional application or international application designating the United States of America has a filing date which is after the expiration of the twelve-month period set forth in § 1.78(a)(1)(i) but within two months from the expiration of the period set forth in § 1.78(a)(1)(i), the benefit of the provisional application may be restored upon petition if the delay in filing the nonprovisional application or international application designating the United States of America within the period set forth in § 1.78(a)(1)(i) section was unintentional. Section 1.78(a)(1) is further proposed to be amended to provide that a petition to restore the benefit of the provisional application under this paragraph filed in the nonprovisional application or international application designating the United States of America must include: (1) the reference required by 35 U.S.C. 119(e) and § 1.78(a)(3) to the prior-filed provisional application, unless previously submitted; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the delay in filing the nonprovisional application or international application designating the United States of America within the twelve-month period set forth in § 1.78(a)(1)(i) was unintentional. Section 1.78(a)(1) is further proposed to be amended to provide that the Director may require additional information where there is a question whether the delay was unintentional.

Section 1.78(a) as proposed also provides that the right of priority in the subsequent application may be restored under PCT Rule 26*bis*.3. A decision by a Receiving Office to restore a right of priority under PCT Rule 26*bis*.3 to a provisional application in an international application designating the United States is effective as to the United States in the national stage of such application in accordance with PCT Rule 49*ter*.1.

Section 1.78(a) as proposed provides that the restoration of the right of priority under PCT Rule 26*bis*.3 to a provisional application does not affect the requirement to include the reference required by § 1.78(a)(3) to the provisional application in a national stage application under 35 U.S.C. 371 within the time period provided by § 1.78(a)(4) to avoid waiver of the benefit claim.

Section 1.78(a) is also proposed to be amended to provide that the twelve-month period is subject to PCT Rule 80.5, as well as 35 U.S.C. 21(b) (and § 1.7(a)).

Section 1.78(a)(4) is proposed to be amended to provide that if the later-filed application is a national stage application under 35 U.S.C. 371, this reference must be submitted within the latest of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f), four

months from the date of the initial submission under 35 U.S.C. 371 to enter the national stage, or sixteen months from the filing date of the prior-filed provisional application. This change is proposed in order to avoid the need for petitions under both § 1.137 and § 1.78(b) in the situation in which the applicant does not make the initial submission under 35 U.S.C. 371 to enter the national stage within four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application.

Section 1.78(b) is proposed to be amended to implement the changes to 35 U.S.C. 119(e) in section 201(c)(1)(B)(i)(II) of the PLTIA. Section 201(c)(1)(B)(i)(II) of the PLTIA replaces ''payment of a surcharge'' with ''payment of the fee specified in section 41(a)(7)'' (*see* discussion of § 1.17(m)) and deletes ''during the pendency of the application.'' Section 1.78(b) is thus proposed to be amended to provide that if the reference required by 35 U.S.C. 119(e) and § 1.78(a)(3) is presented in an application (either a nonprovisional application or an international application designating the United States) after the time period provided by § 1.78(a)(4), the claim under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application may be accepted if the reference identifying the prior-filed application by provisional application number was unintentionally delayed. Section 1.78(b) is further proposed to be amended to provide that a petition to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application must be accompanied by: (1) the reference required by 35 U.S.C. 119(e) and § 1.78(a)(3) to the prior-filed provisional application, unless previously submitted; (2) the petition fee as set forth in § 1.17(m); and (3) a statement that the entire delay between the date the benefit claim was due under § 1.78(a)(4) and the date the benefit claim was filed was unintentional. Section 1.78(b) as proposed would continue to provide that the Director may require additional information where there is a question as to whether the delay was unintentional.

Section 1.78(c)(3) is proposed to be amended to provide that if the later-filed application is a nonprovisional application entering the national stage from an international application under 35 U.S.C. 371, this reference must also be submitted within the latest of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in the later-filed international application, four months from the date of the initial submission under 35 U.S.C. 371 to enter the national stage, or sixteen months from the filing date of the prior-filed application. This change is proposed to avoid the need for petitions under both § 1.137 and § 1.78(d) in the situation in which the applicant does not make the initial submission under 35 U.S.C. 371 to enter the national stage within four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in an international application.

Section 1.78(d)(2) is proposed to be amended for consistency with the change to 35 U.S.C. 120 in section 202(b)(3) of the PLTIA (replaces ''payment of a surcharge'' with ''payment of the fee specified in section 41(a)(7)''). *See* discussion of § 1.17(m).

Section 1.81: Section 1.81(a) is proposed to be amended to delete the provision that a drawing (where necessary for the understanding of the subject matter sought to be patented), or a high quality copy thereof, must be filed with the application. As discussed previously, 35 U.S.C. 111 no longer requires that an application contain a drawing where necessary for the understanding of the subject matter sought to be patented to be entitled to a filing date. 35 U.S.C. 113 continues to provide that ''[t]the applicant shall furnish a drawing where necessary for the understanding of the subject matter sought to be patented'' and that ''[d]rawings submitted after the filing date of the application may not be used (i) to overcome any insufficiency of the specification due to lack of an enabling disclosure or otherwise inadequate disclosure therein, or (ii) to supplement the original disclosure thereof for the purpose of interpretation of the scope of any claim.'' *See* 35 U.S.C. 113. Thus, the absence of any drawing on the filing of an application where a drawing is necessary for the understanding of the subject matter sought to be patented may result in an applicant not being able to obtain a patent for any claimed invention presented in the application, but the absence of any drawing on the filing of an application no longer raises a question as to whether the application as deposited is entitled to a filing date.

As discussed previously, PLT Article 5 and PLTIA 35 U.S.C. 111 should not be viewed as prescribing a best practice for the preparation and filing of a patent application. The preparation of drawings at the time an application (provisional or nonprovisional) is prepared for any claimed invention for which patent protection is desired where a drawing is necessary for the understanding of the subject matter sought to be patented, and inclusion of such drawing(s) will help ensure that the application will contain a drawing where required by 35 U.S.C. 113 for any such claimed invention.

Section 1.83: Section 1.83(a) is proposed to be amended to provide that tables that are included in the specification and sequences that are included in sequence listings ''should'' (rather than must) not be duplicated in the drawings.

Section 1.85: Section 1.85(c) is proposed to be amended to provide that if a corrected drawing is required or if a drawing does not comply with § 1.84 at the time an application is allowed, the Office may notify the applicant in a notice of allowability and set a three-month (non-extendable) period of time from the mail date of the notice of allowability within which the applicant must file a corrected drawing in compliance with § 1.84 to avoid abandonment.

Section 1.137: Section 1.137 is revised to implement the change in the PLTIA to eliminate revival of abandoned applications under the ''unavoidable'' standard and to provide for the revival of abandoned applications (as well as the acceptance of delayed responses in reexamination by patent owners and delayed maintenance fee payments) on the basis of unintentional delay. As discussed previously, section 201(b) of the PLTIA specifically adds new 35 U.S.C. 27, providing that the Director may establish procedures, including the payment of a surcharge, to revive an unintentionally abandoned application for patent, accept an unintentionally delayed payment of the fee for issuing each patent, or accept an unintentionally delayed response by the patent owner in a reexamination proceeding, upon petition by the applicant for patent or patent owner. The patent law formerly provided for revival of an unintentionally abandoned application only in the patent fee provisions of 35 U.S.C. 41(a)(7). *See* Pub. L. 97–247, section 3(a), 96 Stat. 317–18 (1982). This raised questions concerning the Office's authority to revive an unintentionally abandoned application (without a showing of unavoidable delay) in certain situations. *See e.g., Aristocrat Techs. Australia Pty Ltd.* v. *Int'l Game Tech.,* 543 F.3d 657 (Fed. Cir. 2008).

Sections 1.137(a) is proposed to be amended to eliminate the provisions pertaining to petitions on the basis of unavoidable delay. Section 1.137(a) is proposed to be amended to instead provide that if the delay in reply by applicant or patent owner was unintentional, a petition may be filed

pursuant to § 1.137 to revive an abandoned application or a reexamination prosecution terminated under § 1.550(d) or § 1.957(b) or limited under § 1.957(c).

Section 1.137(b) is proposed to be amended to set out the petition requirements. Section 1.137(b) is specifically proposed to be amended to provide that a grantable petition pursuant to § 1.137 must be accompanied by: (1) The reply required to the outstanding Office action or notice, unless previously filed; (2) the petition fee as set forth in § 1.17(m); (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this section was unintentional; and (4) any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to § 1.137(d). Section 1.137 as proposed would continue to provide that the Director may require additional information where there is a question whether the delay was unintentional.

Sections 1.137(c) and (e) are proposed to be amended to remove the language pertaining to ''lapsed'' patents. Section 202(b)(6) of the PLTIA amends 35 U.S.C. 151 to delete the third and fourth paragraphs pertaining to the lapsed patent practice.

Section 1.137(c) is also proposed to be amended to provide that in an application abandoned under § 1.57(a), the reply must include a copy of the specification and any drawings of the previously filed application, and to clarify that an application must be abandoned after the close of prosecution as defined in § 1.114(b), for the reply requirement to be met by the filing of a request for continued examination in compliance with § 1.114.

Section 1.137(f) is proposed to be amended to remove as unnecessary the language limiting petitions to the unintentional standard. The PLTIA eliminates revival of abandoned applications under the ''unavoidable'' standard.

Section 1.290: Section 1.290(f) is proposed to be amended to reference § 1.17(o), rather than § 1.17(p), for consistency with the proposed change to § 1.17. *See* discussion of § 1.17.

Section 1.317: Section 1.317 is proposed to be removed and reserved. Section 202(b)(6) of the PLTIA amends 35 U.S.C. 151 to delete the third and fourth paragraphs pertaining to the lapsed patent practice.

Section 1.366: Section 1.366(a) is proposed to be amended to provide that a maintenance fee transmittal letter may be signed by a juristic applicant or patent owner. PLT Article 7(2)(b) provides that a maintenance fee may be paid by any person.

Section 1.378: Section 1.378 is proposed to be amended to implement the changes to 35 U.S.C. 41(c)(1) in section 202(b)(1)(B) of the PLTIA. Section 202(b)(1)(B) of the PLTIA amends 35 U.S.C. 41(c)(1) to delete the twenty-four month time limit for unintentionally delayed maintenance fee payments and to delete the reference to an unavoidable standard. PLTIA 35 U.S.C. 41(c)(1) provides that: (1) The Director may accept the payment of any maintenance fee required by 35 U.S.C. 41(b) after the six-month grace period if the delay is shown to the satisfaction of the Director to have been unintentional; (2) the Director may require the payment of the fee specified in 35 U.S.C. 41(a)(7) as a condition of accepting payment of any maintenance fee after the six-month grace period; and (3) if the Director accepts payment of a maintenance fee after the six-month grace period, the patent shall be considered as not having expired at the end of the grace period.

Sections 1.378(a) is proposed to be amended to eliminate the provisions pertaining to petitions on the basis of unavoidable delay.

Section 1.378(b) is also proposed to be amended to eliminate the provisions pertaining to petitions asserting unavoidable delay. Section 1.378(b) is proposed to be amended to set out the requirements for petitions asserting unintentional delay (these requirements are currently set out in § 1.378(c)). Section 1.378(b) is also proposed to be amended to refer to the petition fee set forth in § 1.17(m) rather than the surcharge set forth in § 1.20(i) as PLTIA 35 U.S.C. 41(c)(1) refers to the fee specified in 35 U.S.C. 41(a)(7) rather than a surcharge.

Section 1.378(c) is proposed to be amended to provide that any petition under this section must be signed in compliance with § 1.33(b) (§ 1.378(d) sets out the current signature requirement for a petition to accept a delayed maintenance fee payment).

Section 1.378(d) is proposed to be amended to include the current provisions pertaining to a request for reconsideration of a maintenance fee decision, except that § 1.378(d) is proposed to be amended to eliminate the provision that after the decision on the petition for reconsideration, no further reconsideration or review of the matter will be undertaken by the Director.

Section 1.378(e) is proposed to be amended to include the current provisions of § 1.378(e) pertaining to the situation in which the maintenance fee or any petition fee will be refunded.

Section 1.452: Section 201(c) of the PLTIA amends 35 U.S.C. 365(b) by adding that the Director may establish procedures, including the requirement for payment of the fee specified in 35 U.S.C. 41(a)(7), to accept an unintentionally delayed claim for priority under the treaty and the Regulations, and to accept a priority claim that pertains to an application that was not filed within the priority period specified in the treaty and Regulations, but was filed within the additional two-month period specified under 35 U.S.C. 119(a) or the PCT or PCT Regulations. Section 1.452(b)(2) is thus proposed to be amended to refer to the petition fee as set forth in § 1.17(m) for consistency with section 201(c) of the PLTIA.

Section 1.452(d) currently contains a caveat that restoration of a right of priority to a prior application by the United States Receiving Office under § 1.452, or by any other Receiving Office under the provisions of PCT Rule 26*bis*.3, will not entitle applicants to a right of priority in any application which has entered the national stage under 35 U.S.C. 371, or in any application filed under 35 U.S.C. 111(a) which claims benefit under 35 U.S.C. 120 and 365(c) to an international application in which the right to priority has been restored. Section 1.452(d) is proposed to be removed in view of PLTIA 35 U.S.C. 119 and 365(b).

Section 1.495: As discussed previously, the Office is revising the provisions pertaining to the filing of an application without the inventor's oath or declaration to provide that if an application is in condition for allowance but does not include an oath or declaration in compliance with § 1.63, or a substitute statement in compliance with § 1.64, executed by or with respect to each actual inventor, the Office will issue a ''Notice of Allowability'' (PTOL–37) requiring an oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, executed by or with respect to each actual inventor, together with the ''Notice of Allowance and Fee(s) Due'' (PTOL–85), since the AIA Technical Corrections Act amends 35 U.S.C. 115(f) to permit the Office to issue a ''Notice of Allowance and Fee(s) Due'' (PTOL–85) before the application includes an oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, executed by or with respect to each actual inventor. As also discussed previously, 35 U.S.C. 115(f) does not specifically provide for the consequence

that results if an applicant fails to provide an oath or declaration in compliance with § 1.63, or a substitute statement in compliance with § 1.64, executed by or with respect to each actual inventor. PLTIA 35 U.S.C. 371(d), however, provides that ''[t]he requirement with respect to * * * the oath or declaration referred to in [35 U.S.C. 371(c)(4)] shall be complied with by the date of the commencement of the national stage or by such later time as may be fixed by the Director,'' and that the ''[f]ailure to comply with these requirements shall be regarded as abandonment of the application by the parties thereof.'' The Office is thus proposing to amend § 1.495(c)(3)(ii) to provide that if the applicant is notified in a notice of allowability that an oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, executed by or with respect to each named inventor has not been filed, the applicant must file each required oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, no later than the date on which the issue fee is paid to avoid abandonment (which time period is not extendable). The Office is also proposing to amend § 1.495(c)(3)(ii) to provide that: (1) the applicant must file each required oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, no later than the date on which the issue fee for the patent is paid (as required by 35 U.S.C. 115(f)); and (2) that the Office may dispense with the notice provided for in § 1.495(c)(1) if each required oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, has been filed before the application is in condition for allowance.

Section 1.704: Section 1.704 is proposed to be amended to provide for the situation in which an application is not in condition for examination within eight months from the date on which the application was filed under 35 U.S.C. 111(a) or the date of commencement of the national stage under 35 U.S.C. 371(b) or (f) in an international application. In implementing the patent term adjustment provisions of the American Inventors Protection Act of 1999 (Pub. L. 106–113, 113 Stat. 1501, 1501A–557 through 1501A–560 (1999)), the Office proposed a reduction of any patent term adjustment if an application was not complete on filing. *See Changes to Implement Patent term Adjustment Under Twenty-Year Patent Term,* 65 FR 17215, 17219–20, 17228 (Mar. 31, 2000) (proposed rule). The Office received a number of comments in response to this proposal suggesting that an application being in condition for examination on filing is not necessary for the Office to meet the fourteen-month timeframe in 35 U.S.C. 154(b)(1)(A)(i) and that an applicant should be permitted to complete the application and correct application informalities after the filing date of the application. *See Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term,* 65 FR 56366, 56381 (Sept. 18, 2000) (final rule). The Office did not adopt this proposed reduction in 2000 because an applicant could not delay placing an application in condition for examination to the point that it would contribute to the Office's missing the fourteen-month timeframe in 35 U.S.C. 154(b)(1)(A)(i) under the provisions for completing an application (§ 1.53(f)) in effect in 2000 without the applicant's incurring a reduction of patent term adjustment under 35 U.S.C. 154(b)(2)(C)(ii). *See id.* Specifically, the fourteen-month timeframe in 35 U.S.C. 154(b)(1)(A)(i) did not begin (under the patent laws in effect between 2000 and 2012) until the specification and drawings of an application were filed in the Office, which permitted the Office to conduct a formalities review and issue a notice (if necessary) requiring the applicant to complete the application and correct any application informalities no later than one to two months from the filing of an application. Thus, the Office could review the specification and drawings and issue a notice (if necessary) requiring the applicant to complete the application and correct the application papers no later than two months from the filing of an application. As such, applications would either be in condition for examination within five months from the filing of an application, or the applicant would incur a reduction of any patent term adjustment under 35 U.S.C. 154(b)(2)(C)(ii) (providing a reduction of any patent term adjustment for the cumulative total of any periods of time in excess of three months that are taken to respond to a notice from the Office making any rejection, objection, argument, or other request, and measuring such three-month period from the date the notice was given or mailed to the applicant). The Office, however, also noted that it would revisit this decision if the provisions for completing an application and correcting application formalities contributed to the Office's missing the fourteen-month timeframe under 35 U.S.C. 154(b)(1)(A)(i). *See id.*

The PLT and PLTIA 35 U.S.C. 111 provide applicants with additional opportunities to delay the examination process (e.g., the ability to file an application without any claims and to file an application merely by reference to a prior-filed application). Specifically, the fourteen-month timeframe specified in 35 U.S.C. 154(b)(1)(A)(i) may now begin before the specification and drawings of an application are filed in the Office in an application filed under 35 U.S.C. 111(a), due to the change to 35 U.S.C. 111 in the PLTIA. In addition, the fourteen-month timeframe specified in 35 U.S.C. 154(b)(1)(A)(i) may now begin before the specification and drawings of an application are filed in the Office in an international application, due to the change to 35 U.S.C. 154(b)(1)(A)(i)(II) in section 1(h)(1)(A) of the AIA Technical Corrections Act, Public Law 112–274, 126 Stat. 2456, 2457 (2013), (changing ''the date on which an international application fulfilled the requirements of section 371'' to ''the date of commencement of the national stage under section 371 in an international application'')).

The Office is not proposing to require that applications be in condition for examination on filing (or commencement of national stage in an international application) in order for an applicant to avoid a reduction of patent term adjustment. It is, however, reasonable to expect that an application should be placed in condition for examination within eight months of its filing date (or date of commencement of national stage in an international application). Therefore, the Office is proposing to provide that the circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of an application also include the failure to provide an application in condition for examination within eight months from the date on which the application was filed under 35 U.S.C. 111(a) or the date of commencement of the national stage under 35 U.S.C. 371(b) or (f) in an international application. Section 1.704(c) is also proposed to be amended to provide that in such a case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is eight months from the date on which the application was filed under 35 U.S.C. 111(a) or the date of commencement of the national stage under 35 U.S.C. 371(b) or (f) in an international application and ending on

the date the application is in condition for examination.

Section 1.704(f) is proposed to be added to define when an application is ''in condition for examination'' for purposes of § 1.704(c). Proposed § 1.704(f) provides that an application filed under 35 U.S.C. 111(a) is in condition for examination when the application includes a specification, including at least one claim and an abstract (§ 1.72(b)), and has papers in compliance with § 1.52, drawings in compliance with § 1.84, any English translation required by § 1.52(d) or § 1.57(a), a sequence listing in compliance with §§ 1.821 through 1.825 (if applicable), the inventor's oath or declaration or application data sheet containing the information specified in § 1.63(b), the basic filing fee (§ 1.16(a) or § 1.16(c)), any certified copy of the previously filed application required by § 1.57(a), and any application size fee required by the Office under § 1.16(s). Section 1.704(f) as proposed provides that an international application is in condition for examination when the application has entered the national stage as defined in § 1.491(b), and includes a specification, including at least one claim and an abstract (§ 1.72(b)), and has papers in compliance with § 1.52, drawings in compliance with § 1.84, a sequence listing in compliance with §§ 1.821 through 1.825 (if applicable), the inventor's oath or declaration or application data sheet containing the information specified in § 1.63(b), and any application size fee required by the Office under § 1.492(j).

Section 1.809: Section 1.809(c) is proposed to be amended to provide that if an application for patent is otherwise in condition for allowance except for a needed deposit and the Office has received a written assurance that an acceptable deposit will be made, the Office may notify the applicant in a notice of allowability and set a three-month (non-extendable) period of time from the mail date of the notice of allowability within which the deposit must be made in order to avoid abandonment.

Section 3.11: Section 3.11(a) is proposed to be amended to implement section 201(d) of the PLTIA. Section 201(d) of the PLTIA amends 35 U.S.C. 261, first paragraph, by adding: ''The Patent and Trademark Office shall maintain a register of interests in applications for patents and patents and shall record any document related thereto upon request, and may require a fee therefor.'' Section 3.11(a) is thus proposed to be amended to provide that other documents relating to interests in patent applications and patents, accompanied by completed cover sheets as specified in § 3.28 and § 3.31, will be recorded in the Office.

Section 3.31: Section 3.31(h) is proposed to be amended to permit the use of PLT International Model forms as appropriate in lieu of an assignment cover sheet under § 3.31. Section 3.31(h) specifically provides that the assignment cover sheet required by § 3.28 for a patent application or patent will be satisfied by the Patent Law Treaty Model International Request for Recordation of Change in Applicant or Owner Form, Patent Law Treaty Model International Request for Recordation of a License/Cancellation of the Recordation of a License Form, Patent Law Treaty Model International Certificate of Transfer Form, or Patent Law Treaty Model International Request for Recordation of a Security Interest/Cancellation of the Recordation of a Security Interest Form, as applicable, except where the assignment is also an oath or declaration under § 1.63.

Rulemaking Considerations

A. Administrative Procedure Act: This rulemaking implements the PLT and title II of the PLTIA. The changes proposed in this rulemaking are to revise application filing and prosecution procedures to conform them to the changes to the patent laws in title II of the PLTIA and to eliminate procedural requirements to ensure that the rules of practice are consistent with the PLT (except for the proposed change to the patent term adjustment provisions of 37 CFR 1.704). Therefore, the changes proposed in this rulemaking (except for the proposed change to the patent term adjustment provisions of 37 CFR 1.704) involve rules of agency practice and procedure, 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 standard for reviewing claims); *Nat'l Org. of Veterans' Advocates, Inc.* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive).

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), except for the proposed change to the patent term adjustment provisions of 37 CFR 1.704. *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), does 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)). The Office, however, is publishing all of these proposed changes (rather than only the proposed change to the patent term adjustment provisions of 37 CFR 1.704) for comment as it seeks the benefit of the public's views on the Office's proposed implementation of the PLT and title II of the PLTIA.

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 notice are to revise application filing and prosecution procedures to conform them to the changes to the patent laws in title II of the PLTIA and to eliminate procedural requirements to ensure that the rules of practice are consistent with the PLT.

The notable changes in the PLT and title II of the PLTIA pertain to: (1) The filing date requirements for a patent application; (2) the restoration of patent rights via the revival of abandoned applications and acceptance of delayed maintenance fee payments; and (3) the restoration of the right of priority to a foreign application or the benefit of a provisional application via the permitting of a claims to priority to a foreign application or the benefit of a provisional application in a subsequent application filed within two months of the expiration of the twelve-month period (six-month period for design applications) for filing such a subsequent application.

The requirements and fees for filing of an application without a claim track the existing provisions in 37 CFR 1.53(f) for an application that is missing application components not required for a filing date. The requirements and fees for filing of an application ''by reference'' to a previously filed application in lieu of filing the specification and drawings (reference filing) are simpler than the existing requirements in 37 CFR 1.57(a) that apply when relying upon the specification and drawings of a prior-filed application as the specification and drawings of an application.

The requirements for a petition to revive an abandoned application (37 CFR 1.137) or accept a delayed maintenance fee payment (37 CFR 1.378) on the basis of ''unintentional'' delay are the current requirements for a petition to revive an abandoned application or accept a delayed maintenance fee payment. PLTIA 35 U.S.C. 41(a)(7) and (c)(1) set the petition fee amount for a petition to accept a delayed maintenance fee payment at an amount equal to the fee for a petition to revive an unintentionally abandoned application, which is lower than the current surcharge for accepting an unintentionally delayed maintenance fee payment.

The requirements and fees for a petition to restore the right of priority to a prior-filed foreign application or a petition to restore the right to benefit of a prior-filed provisional application correspond to the current requirements for petitions based upon unintentional delay (i.e., a petition to revive an abandoned application (37 CFR 1.137) or accept a delayed maintenance fee payment (37 CFR 1.378)). PLTIA 35 U.S.C. 41(a)(7) and 119 set the petition fee amount for a petition to restore the right of priority to a prior-filed foreign application or a petition to restore the right to benefit of a prior-filed provisional application at an amount equal to the fee for a petition to revive an unintentionally abandoned application. Current 35 U.S.C. 119 does not permit an applicant who missed the filing period requirement in 35 U.S.C. 119(a) or (e) to restore the right of priority to the prior-filed foreign application or restore the right to benefit of the prior-filed provisional application.

The proposed changes to the patent term adjustment reduction provisions do not impose any additional burden on applicants. The proposed change to 37 CFR 1.704(c) simply specifies that the failure to place an application in condition for examination within eight months from the date on which the application was filed under 35 U.S.C. 111(a) (or the date of commencement of the national stage under 35 U.S.C. 371(b) or (f) in an international application) constitutes failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. This proposed change will not have a significant economic impact on a substantial number of small entities because: (1) Applicants already have to place an application in a condition for examination; (2) applicants are not entitled to patent term adjustment for examination delays that result from an applicant's delay in prosecuting the application (35 U.S.C. 154(b)(2)(C)(i) and 37 CFR 1.704(a)); and (3) applicants may avoid any consequences from this provision simply by placing the application in condition for examination within eight months from the date on which the application was filed under 35 U.S.C. 111(a) (or the date of commencement of the national stage under 35 U.S.C. 371(b) or (f) in an international application).

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 final 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 notice 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 notice is not expected to result in 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 notice 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 *et seq.*) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This rulemaking 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).

The notable changes in the PLT and title II of the PLTIA pertain to: (1) The filing date requirements for a patent application; (2) the restoration of patent rights via the revival of abandoned applications and acceptance of delayed maintenance fee payments; and (3) the restoration of the right of priority to a foreign application or the benefit of a provisional application via the permitting of a claims to priority to a foreign application or the benefit of a provisional application in a subsequent application filed within two months of the expiration of the twelve-month period (six-month period for design applications) for filing such a subsequent application.

The information collection requirements pertaining to petitions to accept a delayed maintenance fee payment have been reviewed and approved by the OMB under OMB control number 0651–0016. The information collection requirements pertaining to patent term adjustment have been reviewed and approved by the OMB under OMB control number 0651–0020. The information collection requirements pertaining to recording assignments (and other interests) in patents and patent applications have been reviewed and approved by the OMB under OMB control number 0651–0027. The information collection requirements pertaining to petitions to revive an abandoned application have been reviewed and approved by the OMB under OMB control number 0651–0031. The information collection requirements pertaining to the specification (including claims) and drawings required for a patent application have been reviewed and approved by the OMB under OMB control number 0651–0032. The information collection requirements pertaining to representative and correspondence address have been reviewed and approved by the OMB under OMB control number 0651–0035. The changes in this rulemaking pertaining to petitions to accept a delayed maintenance fee payment, patent term adjustment, petitions to revive an abandoned application, the specification (including claims) and drawings required for a patent application, and representative and correspondence address, do not propose to add any additional requirements (including information collection requirements) or fees for patent applicants or patentees. Therefore, the Office is not resubmitting information collection packages to OMB for its review and approval because the changes in this rulemaking do not affect the information collection requirements associated with the information collections approved under OMB control numbers 0651–0016, 0651–0020, 0651–0027, 0651–0031, 0651–0032, and 0651–0035.

This rulemaking also provides for the optional use by applicants of the following Patent Law Treaty Model International Forms: (1) Model International Request Form; (2) Model International Power of Attorney Form; (3) Model International Request for Recordation of Change in Name or Address Form; (4) Model International Request for Correction of Mistakes Form; (5) Model International Request for Recordation of Change in Applicant or Owner Form; (6) Model International Certificate of Transfer Form; (7) Model International Request for Recordation of a License/Cancellation of the Recordation of a License Form; and (8) Model International Request for Recordation of a Security Interest/Cancellation of the Recordation of a Security Interest Form. This rulemaking also requires revisions to the pre-printed information on the forms for petitions to accept a delayed maintenance fee payment and petitions to revive an abandoned application (PTO/SB/64, PTO/SB/64a, PTO/SB/66) and elimination of the forms for petitions based upon unavoidable delay (PTO/SB/61 and PTO/SB/65) in the information collections approved under OMB control numbers 0651–0016 and 0651–0031. The Office will submit a change worksheet to OMB to add these Patent Law Treaty Model International Forms and form revisions to the information collections approved under OMB control numbers 0651–0016, 0651–0020, 0651–0027, 0651–0031, 0651–0032, and 0651–0035.

This rulemaking proposes to add petitions to restore the right of priority to a prior-filed foreign application or a petition to restore the right to benefit of a prior-filed provisional application. The collection of information involved in this notice has been submitted to OMB under OMB control number 0651–00xx. The proposed collection will be available at OMB's Information Collection Review Web site: *www.reginfo.gov/public/do/PRAMain.*

Title of Collection: Patent Law Treaty.

OMB Control Number: 0651–00xx.

Needs and Uses: This information collection is necessary so that patent applicants and/or patentees may seek restoration of the right of priority to a prior-filed foreign application or of the right to benefit of a prior-filed provisional application. The Office will use the petition to restore the right of priority to a prior-filed foreign application or the right to benefit of a prior-filed provisional application to determine whether the applicant has satisfied the conditions of the applicable statute (35 U.S.C. 119) and regulations (proposed 37 CFR 1.55(b) and 1.78(a)(1)).

Method of Collection: By mail, facsimile, hand delivery, or electronically to the Office.

Affected Public: Individuals or households; businesses or other for-profits; and not-for-profit institutions.

Estimated Number of Respondents: 500 responses per year.

Estimated Time per Response: The Office estimates that the responses in this collection will take the public approximately 1.0 hours.

Estimated Total Annual Respondent Burden Hours: 500 hours per year.

Estimated Total Annual (Hour) Respondent Cost Burden: $185,500 per year (500 hours per year at $371 per hour).

The Office is soliciting comments to: (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the Office, including whether the information will have practical utility; (2) evaluate the accuracy of the Office's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of collecting the information on those who are to respond, including by using appropriate automated, electronic, mechanical, or other technological collection

techniques or other forms of information technology.

Please send comments on or before June 10, 2013 to Mail Stop Comments—Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313–1450, marked to the attention of Raul Tamayo, Legal Advisor, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy. Comments should also be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, 725 17th Street NW., Washington, DC 20503, Attention: Desk Officer for the United States Patent and Trademark Office.

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

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and record keeping requirements, Small Businesses.

37 CFR Part 3

Administrative practice and procedure, Inventions and patents, Trademarks.

For the reasons set forth in the preamble, 37 CFR parts 1 and 3 are proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

■ 1. The authority citation for 37 CFR part 1 continues to read as follows:

Authority: 35 U.S.C. 2(b)(2).

■ 2. Section 1.4 is amended by revising paragraph (c), redesignating paragraphs (d)(3) and (d)(4) as paragraphs (d)(4) and (d)(5), respectively, and adding a new paragraph (d)(3) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

* * * * *

(c) Since different matters may be considered by different branches or sections of the Office, each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects. Subjects provided for on a single Office or World Intellectual Property Organization form may be contained in a single paper.

(d) * * *

(3) *Electronically submitted correspondence.* Correspondence permitted via the Office electronic filing system may be signed by a graphic representation of a handwritten signature as provided for in paragraph (d)(1) of this section or a graphic representation of an S-signature as provided for in paragraph (d)(2) of this section when it is submitted via the Office electronic filing system.

* * * * *

3. Section 1.16 is amended by revising paragraph (f) to read as follows:

§ 1.16 National application filing, search, and examination fees.

* * * * *

(f) Surcharge for filing any of the basic filing fee, the search fee, the examination fee, or the inventor's oath or declaration on a date later than the filing date of the application, for an application that does not contain at least one claim on the filing date of the application, and for an application filed by reference to a previously filed application under § 1.57(a), except provisional applications:

By a micro entity (§ 1.29)	$35.00
By a small entity (§ 1.27(a))	70.00
By other than a small or micro entity	140.00

* * * * *

■ 4. Section 1.17 is amended by revising paragraphs (f), (m), and (p), adding new paragraph (o), and removing and reserving paragraphs (l) and (t) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(f) For filing a petition under one of the following sections which refers to this paragraph:

By a micro entity (§ 1.29)	$100.00
By a small entity (§ 1.27(a))	200.00
By other than a small or micro entity	400.00

§ 1.36(a)—for revocation of a power of attorney by fewer than all of the applicants.

§ 1.53(e)—to accord a filing date.

§ 1.57(a)—to accord a filing date.

§ 1.57(b)—to accord a filing date.

§ 1.182—for decision on a question not specifically provided for.

§ 1.183—to suspend the rules.

§ 1.741(b)—to accord a filing date to an application under § 1.740 for extension of a patent term.

* * * * *

(l) [Reserved]

(m) For filing a petition for the revival of an abandoned application for a patent, for the delayed payment of the fee for issuing each patent, for the delayed response by the patent owner in any reexamination proceeding, for the delayed payment of the fee for maintaining a patent in force, for the delayed submission of a priority or benefit claim, or for the extension of the twelve-month (six-month for designs) period for filing a subsequent application (§§ 1.55(b), 1.55(d), 1.78(a)(1), 1.78(b), 1.78(d), 1.137, and 1.378):

By a small entity (§ 1.27(a))	$850.00
By other than a small or micro entity	1,700.00

* * * * *

(o) For every ten items or fraction thereof in a third-party submission under § 1.290:

By a small entity (§ 1.27(a))	$90.00
By other than a small entity ...	180.00

(p) For an information disclosure statement under § 1.97(c) or (d):

By a micro entity (§ 1.29)	$45.00
By a small entity (§ 1.27(a))	90.00
By other than a small or micro entity	180.00

* * * * *

(t) [Reserved]

■ 5. Section 1.20 is amended by removing and reserving paragraph (i).

§ 1.20 Post issuance fees.

* * * * *

(i) [Reserved]

* * * * *

■ 6. Section 1.23 is amended by adding a new paragraph (c) to read as follows:

§ 1.23 Methods of payment.

* * * * *

(c) A fee transmittal letter may be signed by a juristic applicant or patent owner.

■ 7. Section 1.29 is amended by revising the first sentence of paragraph (e) and paragraph (k)(4) to read as follows:

§ 1.29 Micro entity status.

* * * * *

(e) Micro entity status is established in an application by filing a micro entity certification in writing complying with the requirements of either paragraph (a) or paragraph (d) of this section and signed either in compliance with § 1.33(b) or in an international application filed in a Receiving Office other than the United States Receiving Office by a person authorized to represent the applicant under § 1.455. * * *

* * * * *

(k) * * *

(4) Any deficiency payment (based on a previous erroneous payment of a micro entity fee) submitted under this paragraph will be treated as a notification of a loss of entitlement to micro entity status under paragraph (i) of this section.

■ 8. Section 1.51 is amended by revising paragraph (a) to read as follows:

§ 1.51 General requisites of an application.

(a) Applications for patents must be made to the Director of the United States Patent and Trademark Office. An application transmittal letter limited to the transmittal of the documents and fees comprising a patent application under this section may be signed by a juristic applicant or patent owner.

* * * * *

■ 9. Section 1.53 is amended by revising the introductory text of paragraphs (b) and (c), and revising paragraphs (f)(1), (f)(2) and (f)(3)(ii) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(b) *Application filing requirements—Nonprovisional application.* The filing date of an application for patent filed under this section, other than an application for a design patent or a provisional application under paragraph (c) of this section, is the date on which a specification, with or without claims is received in the Office. The filing date of an application for a design patent filed under this section, except for a continued prosecution application under paragraph (d) of this section, is the date on which the specification as prescribed by 35 U.S.C. 112, including at least one claim, and any required drawings are received in the Office. No new matter may be introduced into an application after its filing date. A continuing application, which may be a continuation, divisional, or continuation-in-part application, may be filed under the conditions specified in 35 U.S.C. 120, 121, or 365(c) and §§ 1.78(c) and (d).

* * * * *

(c) *Application filing requirements—Provisional application.* The filing date of a provisional application is the date on which a specification, with or without claims is received in the Office. No amendment, other than to make the provisional application comply with the patent statute and all applicable regulations, may be made to the provisional application after the filing date of the provisional application.

* * * * *

(f) *Completion of application subsequent to filing—Nonprovisional (including continued prosecution or reissue) application.* (1) If an application which has been accorded a filing date pursuant to paragraph (b) or (d) of this section does not include the basic filing fee, the search fee, or the examination fee, or if an application which has been accorded a filing date pursuant to paragraph (b) of this section does not include at least one claim or the inventor's oath or declaration (§§ 1.63, 1.64, 1.162 or 1.175), and the applicant has provided a correspondence address (§ 1.33(a)), the applicant will be notified and given a period of time within which to file a claim or claims, pay the basic filing fee, search fee, and examination fee, and pay the surcharge if required by § 1.16(f) to avoid abandonment.

(2) If an application which has been accorded a filing date pursuant to paragraph (b) of this section does not include the basic filing fee, the search fee, the examination fee, at least one claim, or the inventor's oath or declaration, and the applicant has not provided a correspondence address (§ 1.33(a)), the applicant has three months from the filing date of the application within which to file a claim or claims, pay the basic filing fee, search fee, and examination fee, and pay the surcharge required by § 1.16(f) to avoid abandonment.

(3) * * *

(ii) The applicant must file each required oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, no later than the date on which the issue fee for the patent is paid. If the applicant is notified in a notice of allowability that an oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, executed by or with respect to each named inventor has not been filed, the applicant must file each required oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, no later than the date on which the issue fee is paid to avoid abandonment. This time period is not extendable under § 1.136 (*see* § 1.136(c)). The Office may dispense with the notice provided for in paragraph (f)(1) of this section if each required oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, has been filed before the application is in condition for allowance.

* * * * *

■ 10. Section 1.54 is amended by revising paragraph (b) to read as follows

§ 1.54 Parts of application to be filed together; filing receipt.

* * * * *

(b) Applicant will be informed of the application number and filing date by a filing receipt, unless the application is an application filed under § 1.53(d). A letter limited to a request for a filing receipt may be signed by a juristic applicant or patent owner.

■ 11. Section 1.55 is amended by revising paragraphs (b), (c), and (e), and the introductory text of paragraph (i) to read as follows:

§ 1.55 Claim for foreign priority.

* * * * *

(b) *Time for filing subsequent application.* (1) Except as provided in paragraph (b)(2) of this section, the nonprovisional application must be filed not later than twelve months (six months in the case of a design application) after the date on which the foreign application was filed, or be entitled to claim the benefit under 35 U.S.C. 120, 121, or 365(c) of an application that was filed not later than twelve months (six months in the case of a design application) after the date on which the foreign application was filed. The twelve-month period is subject to 35 U.S.C. 21(b) (and § 1.7(a)) and PCT Rule 80.5, and the six-month period is subject to 35 U.S.C. 21(b) (and § 1.7(a)).

(2) If the subsequent application has a filing date which is after the expiration of the twelve-month period (six-month period in the case of a design application) set forth in paragraph (b)(1) of this section but within two months from the expiration of the period set forth in paragraph (b)(1) of this section, the right of priority in the subsequent application may be restored under PCT Rule 26*bis*.3 for an international application or upon petition if the delay in the subsequent application within the period set forth in paragraph (b)(1) of this section was unintentional. A petition to restore the right of priority under this paragraph filed in the subsequent application must include:

(i) The priority claim under 35 U.S.C. 119(a) through (d) or (f), or 365(a) or (b) in an application data sheet (§ 1.76(b)(6)), identifying the foreign application for which priority is claimed, by specifying the application number, country (or intellectual property authority), day, month, and year of its filing, unless previously submitted;

(ii) The petition fee as set forth in § 1.17(m); and

(iii) A statement that the delay in filing the subsequent application within the twelve-month period (six-month period in the case of a design application) as set forth in paragraph (b)(1) of this section was unintentional. The Director may require additional

information where there is a question whether the delay was unintentional.

(c) *Time for filing priority claim and certified copy of foreign application in an application entering the national stage under 35 U.S.C. 371.* In an international application entering the national stage under 35 U.S.C. 371, the claim for priority must be made and a certified copy of the foreign application must be filed within the time limit set forth in the PCT and the Regulations under the PCT. If a certified copy of the foreign application is not filed during the international stage, a certified copy of the foreign application must be filed within four months from the date of entry into the national stage as set forth in § 1.491 or sixteen months from the filing date of the prior-filed foreign application, except as provided in paragraphs (h) and (i) of this section. If a certified copy of the foreign application is not filed within four months from the date of entry into the national stage as set forth in § 1.491 or sixteen months from the filing date of the prior-filed foreign application, and the exceptions in paragraphs (h) and (i) of this section are not applicable, the certified copy of the foreign application must be accompanied by a petition including a showing of good and sufficient cause for the delay and the petition fee set forth in § 1.17(g).

* * * * *

(e) *Delayed priority claim in an application filed under 35 U.S.C. 111(a) or in a national stage application under 35 U.S.C. 371.* Unless such claim is accepted in accordance with the provisions of this paragraph, any claim for priority under 35 U.S.C. 119(a) through (d) or (f), or 365(a) or (b) in an original application filed under 35 U.S.C. 111(a) not presented in an application data sheet (§ 1.76(b)(6)), or in a national stage application under 35 U.S.C. 371 not presented in accordance with the PCT and the Regulations under the PCT, within the time period provided by paragraph (c) or (d) of this section is considered to have been waived. If a claim for priority is presented after the time period provided by paragraph (c) or (d) of this section, the claim may be accepted if the priority claim was unintentionally delayed. A petition to accept a delayed claim for priority under 35 U.S.C. 119(a) through (d) or (f), or 365(a) or (b) must be accompanied by:

(1) The priority claim under 35 U.S.C. 119(a) through (d) or (f), or 365(a) or (b) in an application data sheet (§ 1.76(b)(6)), identifying the foreign application for which priority is claimed, by specifying the application number, country (or intellectual property authority), day, month, and year of its filing, unless previously submitted;

(2) A certified copy of the foreign application if required by paragraph (c) or (f) of this section, unless previously submitted;

(3) The petition fee as set forth in § 1.17(m); and

(4) A statement that the entire delay between the date the priority claim was due under paragraph (c) or (d) of this section and the date the priority claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

* * * * *

(i) *Interim copy.* The requirement in paragraph (c) or (f) for a certified copy of the foreign application to be filed within the time limit set forth therein will be considered satisfied if:

* * * * *

■ 12. Section 1.57 is amended by redesignating paragraphs (a) through (g) as paragraphs (b) through (h), respectively, and adding paragraphs (a) and (i) to read as follows:

§ 1.57 Incorporation by reference.

(a) Subject to the conditions and requirements of this paragraph, a reference made in the English language in an application data sheet in accordance with § 1.76 upon the filing of an application under 35 U.S.C. 111(a) to a previously filed application, indicating that the specification and any drawings of the application are replaced by the reference to the previously filed application, and specifying the previously filed application by application number, filing date, and the intellectual property authority or country in which the application was filed, shall constitute the specification and any drawings of the subsequent application for purposes of a filing date under § 1.53(b).

(1) If the applicant has provided a correspondence address (§ 1.33(a)), the applicant will be notified and given a period of time within which to file a copy of the specification and drawings from the previously filed application, an English language translation of the previously filed application and the fee required by § 1.17(i) if it is in a language other than English, and pay the surcharge required by § 1.16(f) to avoid abandonment. Such a notice may be combined with a notice under § 1.53(f).

(2) If the applicant has not provided a correspondence address (§ 1.33(a)), the applicant has three months from the filing date of the application to file a copy of the specification and drawings from the previously filed application, an English language translation of the previously filed application and the fee required by § 1.17(i) if it is in a language other than English, and pay the surcharge required by § 1.16(f) to avoid abandonment.

(3) An application abandoned under paragraph (a)(1) or (a)(2) of this section shall be treated as having never been filed, unless:

(i) The application is revived under § 1.137; and

(ii) A copy of the specification and any drawings of the previously filed application are filed in the Office.

(4) A certified copy of the previously filed application must be filed in the Office or received by the Office from a foreign intellectual property office participating in a priority document exchange agreement within the later of four months from the filing date of the application or sixteen months from the filing date of the previously filed application, unless the previously filed application is an application filed under 35 U.S.C. 111 or 363. Failure to comply with this requirement will result in the application not being accorded a filing date earlier than the date a copy of the specification and drawings from the previously filed application is filed in or received by the Office in the absence of a petition pursuant to this paragraph accompanied by the fee set forth in § 1.17(f).

* * * * *

(i) An application transmittal letter limited to the transmittal of a copy of the specification and drawings from a previously filed application submitted under paragraph (a) or (b) of this section may be signed by a juristic applicant or patent owner.

■ 13. Section 1.58 is amended by revising paragraph (a) to read as follows:

§ 1.58 Chemical and mathematical formulae and tables.

(a) The specification, including the claims, may contain chemical and mathematical formulae, but shall not contain drawings or flow diagrams. The description portion of the specification may contain tables, but the same tables should not be included in both the drawings and description portion of the specification. Claims may contain tables either if necessary to conform to 35 U.S.C. 112 or if otherwise found to be desirable.

* * * * *

■ 14. Section 1.72 is amended by revising paragraph (b) to read as follows:

§ 1.72 Title and abstract.

* * * * *

(b) A brief abstract of the technical disclosure in the specification must commence on a separate sheet, preferably following the claims, under the heading ''Abstract'' or ''Abstract of the Disclosure.'' The sheet or sheets presenting the abstract may not include other parts of the application or other material. The abstract must be as concise as the disclosure permits, preferably not exceeding 150 words in length. The purpose of the abstract is to enable the Office and the public generally to determine quickly from a cursory inspection the nature and gist of the technical disclosure.

■ 15. Section 1.76 is amended by revising paragraph (b)(3) and adding a new paragraph (f) to read as follows:

§ 1.76 Application data sheet.

* * * * *

(b) * * *

(3) *Application information.* This information includes the title of the invention, the total number of drawing sheets, a suggested drawing figure for publication (in a nonprovisional application), any docket number assigned to the application, the type of application (e.g., utility, plant, design, reissue, provisional), whether the application discloses any significant part of the subject matter of an application under a secrecy order pursuant to § 5.2 of this chapter (*see* § 5.2(c)), and, for plant applications, the Latin name of the genus and species of the plant claimed, as well as the variety denomination. This information also includes the reference to the previously filed application, indicating that the specification and any drawings of the application are replaced by the reference to the previously filed application, and specifying the previously filed application by application number, filing date, and the intellectual property authority or country in which the application was filed, for an application filed by reference to a previously filed application under § 1.57(a).

* * * * *

(f) *Patent Law Treaty Model International Forms.* The requirement in § 1.55 or § 1.78 for the presentation of a priority or benefit claim under 35 U.S.C. 119, 120, 121, or 365 in an application data sheet will be satisfied by the presentation of such priority or benefit claim in the Patent Law Treaty Model International Request Form, and the requirement in § 1.57(a) for a reference to the previously filed application in an application data sheet will be satisfied by the presentation of such reference to the previously filed application in the Patent Law Treaty Model International Request Form. The requirement in § 1.46 for the presentation of the name of the applicant under 35 U.S.C. 118 in an application data sheet will be satisfied by the presentation of the name of the applicant in the Patent Law Treaty Model International Request Form, Patent Law Treaty Model International Request for Recordation of Change in Name or Address Form, or Patent Law Treaty Model International Request for Recordation of Change in Applicant or Owner Form, as applicable. The requirement in § 1.55 or § 1.78 for the presentation of a priority or benefit claim under 35 U.S.C. 119, 120, 121, or 365 in an application data sheet and the requirement in § 1.46 for the presentation of the name of the applicant under 35 U.S.C. 118 in an application data sheet will also be satisfied by the presentation of such priority or benefit claim and presentation of the name of the applicant in a Patent Cooperation Treaty Request Form if the Patent Cooperation Treaty Request Form is accompanied by a clear indication that treatment of the application as an application under 35 U.S.C. 111 is desired.

■ 16. Section 1.78 is amended by revising paragraphs (a)(1), (a)(4), (b), (c)(3), and (d)(2) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a) * * *

(1)(i) Except as provided in paragraph (a)(1)(ii) of this section, the nonprovisional application or international application designating the United States of America must be filed not later than twelve months after the date on which the provisional application was filed, or be entitled to claim the benefit under 35 U.S.C. 120, 121, or 365(c) of an application that was filed not later than twelve months after the date on which the provisional application was filed. This twelve-month period is subject to 35 U.S.C. 21(b) (and § 1.7(a)) and PCT Rule 80.5.

(ii) If the nonprovisional application or international application designating the United States of America has a filing date which is after the expiration of the twelve-month period set forth in paragraph (a)(1)(i) of this section but within two months from the expiration of the period set forth in paragraph (a)(1)(i) of this section, the benefit of the provisional application may be restored under PCT Rule 26*bis*.3 for an international application or upon petition if the delay in filing the nonprovisional application or international application designating the United States of America within the period set forth in paragraph (a)(1)(i) of this section was unintentional. A petition to restore the benefit of the provisional application under this paragraph filed in the nonprovisional application or international application designating the United States of America must include:

(A) The reference required by 35 U.S.C. 119(e) and paragraph (a)(3) of this section to the prior-filed provisional application, unless previously submitted;

(B) The petition fee as set forth in § 1.17(m); and

(C) A statement that the delay in filing the nonprovisional application or international application designating the United States of America within the twelve-month period set forth in paragraph (a)(1)(i) of this section was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

(iii) The restoration of the right of priority under PCT Rule 26*bis*.3 to a provisional application does not affect the requirement to include the reference required by paragraph (a)(3) of this section to the provisional application in a national stage application under 35 U.S.C. 371 within the time period provided by paragraph (a)(4) of this section to avoid the benefit claim being considered waived.

* * * * *

(4) The reference required by paragraph (a)(3) of this section must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed provisional application. If the later-filed application is a national stage application under 35 U.S.C. 371, this reference must also be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f), four months from the date of the initial submission under 35 U.S.C. 371 to enter the national stage, or sixteen months from the filing date of the prior-filed provisional application. Except as provided in paragraph (b) of this section, failure to timely submit the reference is considered a waiver of any benefit under 35 U.S.C. 119(e) of the prior-filed provisional application.

* * * * *

(b) *Delayed claims under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application.* If the reference required by 35 U.S.C. 119(e) and

paragraph (a)(3) of this section is presented in an application after the time period provided by paragraph (a)(4) of this section, the claim under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application may be accepted if the reference identifying the prior-filed application by provisional application number was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of a prior-filed provisional application must be accompanied by:

(1) The reference required by 35 U.S.C. 119(e) and paragraph (a)(3) of this section to the prior-filed provisional application, unless previously submitted;

(2) The petition fee as set forth in § 1.17(m); and

(3) A statement that the entire delay between the date the benefit claim was due under paragraph (a)(4) of this section and the date the benefit claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

* * * * *

(c) * * *

(3) The reference required by 35 U.S.C. 120 and paragraph (c)(2) of this section must be submitted during the pendency of the later-filed application. If the later-filed application is an application filed under 35 U.S.C. 111(a), this reference must also be submitted within the later of four months from the actual filing date of the later-filed application or sixteen months from the filing date of the prior-filed application. If the later-filed application is a nonprovisional application entering the national stage from an international application under 35 U.S.C. 371, this reference must also be submitted within the later of four months from the date on which the national stage commenced under 35 U.S.C. 371(b) or (f) in the later-filed international application, four months from the date of the initial submission under 35 U.S.C. 371 to enter the national stage, or sixteen months from the filing date of the prior-filed application. Except as provided in paragraph (d) of this section, failure to timely submit the reference required by 35 U.S.C. 120 and paragraph (c)(2) of this section is considered a waiver of any benefit under 35 U.S.C. 120, 121, or 365(c) to the prior-filed application. The time periods in this paragraph do not apply in a design application.

* * * * *

(d) * * *

(2) The petition fee as set forth in § 1.17(m); and

* * * * *

■ 17. Section 1.81 is amended by revising paragraph (a) to read as follows:

§ 1.81 Drawings required in patent application.

(a) The applicant for a patent is required to furnish a drawing of his or her invention where necessary for the understanding of the subject matter sought to be patented. Since corrections are the responsibility of the applicant, the original drawing(s) should be retained by the applicant for any necessary future correction.

* * * * *

■ 18. Section 1.83 is amended by revising paragraph (a) to read as follows:

§ 1.83 Content of drawing.

(a) The drawing in a nonprovisional application must show every feature of the invention specified in the claims. However, conventional features disclosed in the description and claims, where their detailed illustration is not essential for a proper understanding of the invention, should be illustrated in the drawing in the form of a graphical drawing symbol or a labeled representation (e.g., a labeled rectangular box). In addition, tables that are included in the specification and sequences that are included in sequence listings should not be duplicated in the drawings.

* * * * *

■ 19. Section 1.85 is amended by revising paragraph (c) to read as follows:

§ 1.85 Corrections to drawings.

* * * * *

(c) If a corrected drawing is required or if a drawing does not comply with § 1.84 at the time an application is allowed, the Office may notify the applicant in a notice of allowability and set a three-month period of time from the mail date of the notice of allowability within which the applicant must file a corrected drawing in compliance with § 1.84 to avoid abandonment. This time period is not extendable under § 1.136 (*see* § 1.136(c)).

■ 20. Section 1.137 is amended by revising its section heading and paragraphs (a), (b), (c), (e) and (f) to read as follows:

§ 1.137 Revival of abandoned application, or terminated or limited reexamination prosecution.

(a) *Revival on the basis of unintentional delay.* If the delay in reply by applicant or patent owner was unintentional, a petition may be filed pursuant to this section to revive an abandoned application or a reexamination prosecution terminated under § 1.550(d) or § 1.957(b) or limited under § 1.957(c).

(b) *Petition requirements.* A grantable petition pursuant to this section must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;

(2) The petition fee as set forth in § 1.17(m);

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this section was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

(c) *Reply.* In an application abandoned under § 1.57(a), the reply must include a copy of the specification and any drawings of the previously filed application. In an application or patent abandoned for failure to pay the issue fee or any portion thereof, the required reply must include payment of the issue fee or any outstanding balance. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, abandoned after the close of prosecution as defined in § 1.114(b), the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114.

* * * * *

(e) *Request for reconsideration.* Any request for reconsideration or review of a decision refusing to revive an abandoned application, or a terminated or limited reexamination prosecution, upon petition filed pursuant to this section, to be considered timely, must be filed within two months of the decision refusing to revive or within such time as set in the decision. Unless a decision indicates otherwise, this time period may be extended under:

(1) The provisions of § 1.136 for an abandoned application;

(2) The provisions of § 1.550(c) for a terminated *ex parte* reexamination prosecution, where the *ex parte* reexamination was filed under § 1.510; or

(3) The provisions of § 1.956 for a terminated *inter partes* reexamination prosecution or an *inter partes* reexamination limited as to further prosecution, where the *inter partes* reexamination was filed under § 1.913.

(f) *Abandonment for failure to notify the Office of a foreign filing.* A nonprovisional application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to timely notify the Office of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing, may be revived pursuant to this section. The reply requirement of paragraph (c) of this section is met by the notification of such filing in a foreign country or under a multinational treaty, but the filing of a petition under this section will not operate to stay any period for reply that may be running against the application.

* * * * *

■ 21. Section 1.290 is amended by revising paragraph (f) to read as follows:

§ 1.290 Submissions by third parties in applications.

* * * * *

(f) Any third-party submission under this section must be accompanied by the fee set forth in § 1.17(o) for every ten items or fraction thereof identified in the document list.

* * * * *

§ 1.317 [Reserved]

■ 22. Section 1.317 is removed and reserved.

■ 23. Section 1.366 is amended by revising paragraph (a) to read as follows:

§ 1.366 Submission of maintenance fees.

(a) The patentee may pay maintenance fees and any necessary surcharges, or any person or organization may pay maintenance fees and any necessary surcharges on behalf of a patentee. A maintenance fee transmittal letter may be signed by a juristic applicant or patent owner. A patentee need not file authorization to enable any person or organization to pay maintenance fees and any necessary surcharges on behalf of the patentee.

* * * * *

■ 24. Section 1.378 is revised to read as follows:

§ 1.378 Acceptance of delayed payment of maintenance fee in expired patent to reinstate patent.

(a) The Director may accept the payment of any maintenance fee due on a patent after expiration of the patent if, upon petition, the delay in payment of the maintenance fee is shown to the satisfaction of the Director to have been unintentional. If the Director accepts payment of the maintenance fee upon petition, the patent shall be considered as not having expired, but will be subject to the conditions set forth in 35 U.S.C. 41(c)(2).

(b) Any petition to accept an unintentionally delayed payment of a maintenance fee must include:

(1) The required maintenance fee set forth in § 1.20(e) through (g);

(2) The petition fee as set forth in § 1.17(m); and

(3) A statement that the delay in payment of the maintenance fee was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

(c) Any petition under this section must be signed in compliance with § 1.33(b).

(d) Reconsideration of a decision refusing to accept a maintenance fee may be obtained by filing a petition for reconsideration within two months of the decision, or such other time as set in the decision refusing to accept the delayed payment of the maintenance fee. Any such petition for reconsideration must be accompanied by the petition fee set forth in § 1.17(f).

(e) If the delayed payment of the maintenance fee is not accepted, the maintenance fee will be refunded following the decision on the petition for reconsideration, or after the expiration of the time for filing such a petition for reconsideration, if none is filed. Any petition fee under this section will not be refunded unless the refusal to accept and record the maintenance fee is determined to result from an error by the Office.

■ 25. Section 1.452 is amended by removing paragraph (d) and revising paragraph (b)(2) to read as follows:

§ 1.452 Restoration of right of priority.

* * * * *

(b) * * *

(2) The petition fee as set forth in § 1.17(m); and

* * * * *

■ 26. Section 1.495 is amended by revising paragraph (c)(3)(ii) to read as follows:

§ 1.495 Entering the national stage in the United States of America.

* * * * *

(c) * * *

(3) * * *

(ii) The applicant must file each required oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, no later than the date on which the issue fee for the patent is paid. If the applicant is notified in a notice of allowability that an oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, executed by or with respect to each named inventor has not been filed, the applicant must file each required oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, no later than the date on which the issue fee is paid to avoid abandonment. This time period is not extendable under § 1.136 (*see* § 1.136(c)). The Office may dispense with the notice provided for in paragraph (c)(1) of this section if each required oath or declaration in compliance with § 1.63, or substitute statement in compliance with § 1.64, has been filed before the application is in condition for allowance.

* * * * *

■ 27. Section 1.704 is amended by redesignating paragraphs (c)(11) and (c)(12) as paragraphs (c)(12) and (c)(13), respectively, and adding new paragraphs (c)(11) and (f) to read as follows:

§ 1.704 Reduction of period of adjustment of patent term.

* * * * *

(c) * * *

(11) Failure to provide an application in condition for examination as defined in paragraph (f) of this section within eight months from either the date on which the application was filed under 35 U.S.C. 111(a) or the date of commencement of the national stage under 35 U.S.C. 371(b) or (f) in an international application, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the day after the date that is eight months from either the date on which the application was filed under 35 U.S.C. 111(a) or the date of commencement of the national stage under 35 U.S.C. 371(b) or (f) in an international application and ending on the date the application is in condition for examination as defined in paragraph (f) of this section.

* * * * *

(f) An application filed under 35 U.S.C. 111(a) is in condition for examination when the application includes a specification, including at least one claim and an abstract (§ 1.72(b)), and has papers in compliance with § 1.52, drawings (if any) in compliance with § 1.84, any English translation required by § 1.52(d) or § 1.57(a), a sequence listing in compliance with § 1.821 through § 1.825 (if applicable), the inventor's oath or declaration or application data sheet containing the information specified in

§ 1.63(b), the basic filing fee (§ 1.16(a) or § 1.16(c)), any certified copy of the previously filed application required by § 1.57(a), and any application size fee required by the Office under § 1.16(s). An international application is in condition for examination when the application has entered the national stage as defined in § 1.491(b), and includes a specification, including at least one claim and an abstract (§ 1.72(b)), and has papers in compliance with § 1.52, drawings (if any) in compliance with § 1.84, a sequence listing in compliance with § 1.821 through § 1.825 (if applicable), the inventor's oath or declaration or application data sheet containing the information specified in § 1.63(b), and any application size fee required by the Office under § 1.492(j).

■ 28. Section 1.809 is amended by revising paragraph (c) to read as follows:

§ 1.809 Examination procedures.

* * * * *

(c) If an application for patent is otherwise in condition for allowance except for a needed deposit and the Office has received a written assurance that an acceptable deposit will be made, the Office may notify the applicant in a notice of allowability and set a three-month period of time from the mail date of the notice of allowability within which the deposit must be made in order to avoid abandonment. This time period is not extendable under § 1.136 (*see* § 1.136(c)).

* * * * *

PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

■ 29. The authority citation for part 3 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 2(b)(2).

■ 30. Section 3.11 is amended by revising paragraph (a) to read as follows:

§ 3.11 Documents which will be recorded.

(a) Assignments of applications, patents, and registrations, and other documents relating to interests in patent applications and patents, accompanied by completed cover sheets as specified in § 3.28 and § 3.31, will be recorded in the Office. Other documents, accompanied by completed cover sheets as specified in § 3.28 and § 3.31, affecting title to applications, patents, or registrations, will be recorded as provided in this part or at the discretion of the Director.

* * * * *

■ 31. Section 3.31 is amended by revising paragraph (h) to read as follows:

§ 3.31 Cover sheet content.

* * * * *

(h) The assignment cover sheet required by § 3.28 for a patent application or patent will be satisfied by the Patent Law Treaty Model International Request for Recordation of Change in Applicant or Owner Form, Patent Law Treaty Model International Request for Recordation of a License/Cancellation of the Recordation of a License Form, Patent Law Treaty Model Certificate of Transfer Form or Patent Law Treaty Model International Request for Recordation of a Security Interest/Cancellation of the Recordation of a Security Interest Form, as applicable, except where the assignment is also an oath or declaration under § 1.63 of this chapter. An assignment cover sheet required by § 3.28 must contain a conspicuous indication of an intent to utilize the assignment as an oath or declaration under § 1.63 of this chapter.

Dated: April 1, 2013.

Teresa Stanek Rea,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 2013–07955 Filed 4–10–13; 8:45 am]

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FEDERAL REGISTER

Vol. 78 Thursday,

No. 70 April 11, 2013

Part V

The President

Proclamation 8955—National Equal Pay Day, 2013

Proclamation 8956—National Former Prisoner of War Recognition Day, 2013

Federal Register
Vol. 78, No. 70
Thursday, April 11, 2013

Presidential Documents

Title 3—

The President

Proclamation 8955 of April 8, 2013

National Equal Pay Day, 2013

By the President of the United States of America

A Proclamation

Over the past 4 years, the American people have come together to lift our economy out of recession and forge a foundation for lasting prosperity. Our businesses have created millions of new jobs, our stock market is rebounding, and our housing market has begun to heal. But even now, too many Americans are seeing their hard work go unrewarded because of circumstances beyond their control. Women—who make up nearly half of our Nation's workforce—face a pay gap that means they earn 23 percent less on average than men do. That disparity is even greater for African-American women and Latinas. On National Equal Pay Day, we recognize this injustice by marking how far into the new year women have to work just to make what men did in the previous one.

Wage inequality undermines the promise of fairness and opportunity upon which our country was founded. For families trying to make ends meet, that gap can also mean the difference between falling behind and getting ahead. When working mothers make less than their male counterparts, they have less to spend on basic necessities like child care, groceries, and rent. Small businesses see fewer customers walk through their doors. Tuition payments get harder to afford, and rungs on the ladder of opportunity get farther apart. And just as diminished wages shortchange families, they slow our entire economy—weakening growth here at home and eroding American competitiveness abroad.

To grow our middle class and spur progress in the years ahead, we need to address longstanding inequity that keeps women from earning a living equal to their efforts. That is why I have made pay equity a top priority—from signing the Lilly Ledbetter Fair Pay Act days after I took office to cracking down on equal pay law violations wherever they occur. And to back our belief in equality with the weight of law, I continue to call on the Congress to pass the Paycheck Fairness Act.

Our country has come a long way toward ensuring everyone gets a fair shot at opportunity, no matter who you are or where you come from. But our journey will not be complete until our mothers, our wives, our sisters, and our daughters are treated equally in the workplace and always see an honest day's work rewarded with honest wages. Today, let us renew that vision for ourselves and for our children, and let us rededicate ourselves to realizing it in the days ahead.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 9, 2013, as National Equal Pay Day. I call upon all Americans to recognize the full value of women's skills and their significant contributions to the labor force, acknowledge the injustice of wage inequality, and join efforts to achieve equal pay.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2013–08728
Filed 4–10–13; 11:15 am]
Billing code 3295–F3

Presidential Documents

Proclamation 8956 of April 8, 2013

National Former Prisoner of War Recognition Day, 2013

By the President of the United States of America

A Proclamation

From the days of the Revolutionary War to the trials of our times, America has been blessed with an unbroken chain of patriots who have always stepped forward to serve. Whenever our country has come under attack, our men and women in uniform have risen to its defense. And whenever our freedoms have been threatened, they have responded with unyielding resolve—sometimes trading their liberty to secure our own.

Today, we pay tribute to former prisoners of war who made that profound sacrifice. Caught behind enemy lines and stripped of their rights, these service members endured trials few of us can imagine. Many lost their lives. But in reflecting on the tragic price they paid, we also remember how their courage lit up even the darkest night. Where others might have given up or broken down, they dug in. They summoned an iron will. In their strength, we see the measure of their character; in their sacrifice, we see the spirit of a Nation.

As we express our gratitude to heroes who gave so much for their country, we remain mindful that no one gesture is enough to truly honor their service. For that, we must recommit to serving our veterans as well as they served us—not just today, but every day. We must pursue a full accounting of those who are still missing. And for service members who have come home, we must never stop fighting to give them the stability and the support they have earned. That is the promise we renew today—for former prisoners of war, for their families, and for every American who has sworn an oath to protect and defend.

NOW, THEREFORE, I, BARACK OBAMA, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim April 9, 2013, as National Former Prisoner of War Recognition Day. I call upon all Americans to observe this day of remembrance by honoring all American prisoners of war, our service members, and our veterans. I also call upon Federal, State, and local government officials and organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighth day of April, in the year of our Lord two thousand thirteen, and of the Independence of the United States of America the two hundred and thirty-seventh.

[FR Doc. 2013–08729
Filed 4–10–13; 11:15 am]
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Reader Aids

Federal Register

Vol. 78, No. 70

Thursday, April 11, 2013

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FEDERAL REGISTER PAGES AND DATE, APRIL

19393–19584 1
19585–19978 2
19979–20212 3
20213–20408 4
20409–20782 5
20783–21014 8
21015–21210 9
21211–21502 10
21503–21816 11

CFR PARTS AFFECTED DURING APRIL

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
8948 20213
8949 20215
8950 20217
8951 20219
8952 20221
8953 20223
8954 20409
8955 21813
8956 21815

Executive Orders:
13635 (superseded by 13641) 21503
13639 19979
13640 21211
13641 21503

Administrative Orders:
Memorandums:
Memo. of May 31, 2011 (revoked by Memo. of March 29, 2013) 20225
Memo. of March 29, 2013 20225
Memo. of April 5, 2013 21213

5 CFR

532 21515
1201 21517

Proposed Rules:
733 20497
950 20820

7 CFR

272 20411
922 21518
923 21520
927 21521
1437 21015
3201 .....19393, 20783

8 CFR

1292 19400

10 CFR

430 21215

Proposed Rules:
2 20498
50 21275
52 21275
73 21567
429 .....19606, 20832
430 .....19606, 20502, 20832, 20842
431 20503

12 CFR

Ch. X 21218
240 21019
242 20756
272 19981
615 21035
621 21035
652 21035

14 CFR

25 .....19981, 21037
33 19982
39 .....19983, 20227, 20229, 20234, 21227, 21230, 21233, 21236
71 .....19985, 21043, 21044
95 20783
97 .....21239, 21242
1209 20422

Proposed Rules:
39 .....19628, 20503, 20505, 20507, 20509, 20844, 21072, 21074, 21077, 21079, 21082, 21276, 21279, 21569, 21571, 21573, 21576, 21578
71 .....20846, 21084
121 19630

16 CFR

Proposed Rules:
1112 20511
1226 20511

17 CFR

1 21045
3 20788
23 .....20788, 21045
50 21750
140 21522
240 21046
249 21046

Proposed Rules:
23 20848

18 CFR

154 19409
376 21245

19 CFR

351 21246

20 CFR

Proposed Rules:
638 19632
670 19632

21 CFR

73 19413
510 .....19986, 21058
520 21058
522 .....19986, 21058
524 21058
526 21058
529 21058
558 .....19986, 21058
600 19585

Proposed Rules:
Ch. I 21085
876 20268
882 20268
892 20268

22 CFR
120 21523
126 21523

23 CFR
Proposed Rules:
771 20074

25 CFR
518 20236
581 21060
584 21060
585 21060

26 CFR
Proposed Rules:
1 ....19950, 20523
53 20523

27 CFR
Proposed Rules:
9 20544

29 CFR
Proposed Rules:
15 19632
4000 20039
4001 20039
4043 20039
4204 20039
4206 20039
4231 20039

30 CFR
250 20423
1206 20244
Proposed Rules:
701 20394
736 20394
737 20394
738 20394
750 20394

32 CFR
103 20443
105 21716
226 21256

33 CFR
100 21258
117 ....19415, 19585, 20451, 21063, 21064, 21537
165 ....19988, 20454, 20792, 21260
Proposed Rules:
100 ....19632, 20066, 20277, 20849
101 ....20289, 20558
104 ....20289, 20558
105 ....20289, 20558
106 ....20289, 20558
165 ....19431, 20277, 20559, 20852

34 CFR
Proposed Rules:
Ch. III 20069

36 CFR
Proposed Rules:
1280 20563

37 CFR
1 ....19416, 20180
2 20180
7 20180
10 20180
11 20180
41 20180
Proposed Rules:
1 21788
3 21788

38 CFR
17 19586
59 21262

40 CFR
52 ....19421, 19596, 19599, 19602, 19990, 19991, 19994, 19998, 20001, 20244, 20793, 21065, 21537, 21540, 21542, 21545, 21547
63 20246
70 19602
81 ....20001, 21547
82 20004
98 19605
131 20252
180 ....20029, 20032, 20461, 21267
239 20035
258 20035
Proposed Rules:
52 ....19434, 19636, 20290, 20855, 20856, 20868, 21281, 21296, 21302, 21580, 21581, 21582, 21583
70 19636
80 20881
81 ....20856, 20868, 21583
98 19802
239 20073
258 20073
450 19434

42 CFR
68 20466
433 19918
Proposed Rules:
411 21308
488 20564
489 20564
1001 21314

44 CFR
67 ....21272, 21273

45 CFR
60 20473
61 20473
Proposed Rules:
155 20581

47 CFR
1 ....19424, 21555
2 21555
20 21555
22 ....19424, 21555
24 ....19424, 21555
27 ....19424, 21555
54 20796
73 21565
76 20255
90 ....19424, 21555
Proposed Rules:
15 21320
20 19442
73 21337

49 CFR
Proposed Rules:
575 20597
622 20074

50 CFR
217 20800
635 20258
648 ....20037, 20260, 21071
679 20037
Proposed Rules:
17 ....20074, 21086
20 21200
216 20604
223 20718
224 20718
600 20291
622 ....20292, 20496
635 21584

LIST OF PUBLIC LAWS

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H.R. 933/P.L. 113–6
Consolidated and Further Continuing Appropriations Act, 2013 (Mar. 26, 2013; 127 Stat. 198)

Last List March 15, 2013

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